

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

FACTUM

(PCC Representative Counsel's Motion for Injunctive Relief)
(Returnable on December 9, 2024)

December 9, 2024

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**THE COMMON SERVICE
LIST**

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(PCC Representative Counsel's Motion for Injunctive Relief)
(Returnable on December 9, 2024)

1. Through the Notice of Motion dated December 8, 2024, PCC Representative Counsel seeks injunctive relief from this Honourable Court against Actis Law Group and its principal, Ms. Andrea Grass (together, "Actis Law Group"). Specifically, PCC Representative Counsel requests an order compelling the immediate removal of a misleading website that falsely promotes legal representation for individual victims of tobacco harm. Further, PCC Representative Counsel seeks an order prohibiting Actis Law Group from soliciting, contacting, engaging, or advising Pan-Canadian Claimants ("PCCs"), in connection with the CCAA Plans, the PCC Compensation Plan, or any related compensation processes.

2. This relief is sought on an interlocutory basis, to remain in place until the Court renders the decision on the Sanction Order, or until any such later date if this order is thereafter extended or made permanent.
3. Please accept this document as the moving party's factum submitted under s. 40.04 of the Civil Rules of Procedure. Proof of service is or will be established by Affidavit of Service.

Facts

4. On December 9, 2019, Wagners was appointed by this Court to represent the interests of the Pan-Canadian Claimants in the proceedings under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as am. ("CCAA").¹
5. Wagners, as court-appointed PCC Representative Counsel, is the moving party in this motion.²
6. PCC Representative Counsel participated in thousands of hours of mediation with the Court-Appointed Mediator, Monitors and other Claimants. This extensive and complex mediation process led to the filing of the CCAA Plans on October 17, 2024, by the Mediator and Monitors, proposing a global settlement of all affected claims brought against the Tobacco Companies subject to these proceedings.³
7. As outlined in the Meeting Order issued by the CCAA Court on October 31, 2024, PCC Representative Counsel has been appointed as the sole proxy to represent the interests of all Pan-Canadian Claimants. PCC Representative Counsel also holds a continuing and exclusive mandate to act on behalf of PCCs until the claims and distribution process is complete, as set out in the PCC Compensation Plan, which is included as a schedule to each of the CCAA Plans.
8. The PCC Compensation Plan is an integral part of the proposed global settlement, allocating funds to compensate individual tobacco harm victims across Canada.⁴ However,

¹ Affidavit of Kate Boyle affirmed December 8, 2024, para. 2.

² Notice of Motion (Pan-Canadian Claimant Representative Counsel) dated December 8, 2024.

³ Affidavit of Kate Boyle affirmed December 8, 2024, para. 10-11.

⁴ Affidavit of Kate Boyle affirmed December 8, 2024, para. 12.

the CCAA Plans, including the PCC Compensation Plan, have not yet been sanctioned by the CCAA Court. They are scheduled for consideration at the sanction hearing set for January 29 to 31, 2025.⁵

9. The CCAA Plans allocate \$2.521 billion to the PCC Compensation Plan and \$1 billion to the Cy-Près Fund in settlement of the PCC Claims.⁶ If approved, the funds will be distributed in accordance with the PCC Compensation Plan.⁷
10. The PCC Compensation Plan prioritizes simplicity, ensuring it is straightforward for PCC-Claimants to complete the Claim Form and submit the Claim Package for consideration and approval by the Claims Administrator. The plan aims to minimize the need for legal representation, thereby streamlining the administration process and maximizing the funds available to PCC-Claimants.⁸
11. While claims for PCC Compensable Diseases—Lung Cancer, Throat Cancer, or Emphysema/COPD (GOLD Grade III or IV)—must be supported by specific medical evidence, the precise medical documents required are outlined in the PCC Compensation Plan,⁹ and obtaining such evidence does not require legal representation or advice.
12. Further, the Claims Administrator and the PCC Representative Counsel Agent play important roles in communication with, and providing assistance to, PCC-Claimants or their Legal Representatives (the latter being someone authorized to make a claim on behalf of a PCC-Claimant, such as a Power of Attorney, or Estate Representative). Under the CCAA Plans, the Claims Administrator will:
 - (i) manage the overall administration of the individual claims process and perform all other duties and responsibilities assigned to it in regard to the PCC Compensation Plan, including acting as agent for the PCCs, and

⁵ Affidavit of Kate Boyle affirmed December 8, 2024, para. 17.

⁶ Affidavit of Kate Boyle affirmed December 8, 2024, para. 18.

⁷ Affidavit of Kate Boyle affirmed December 8, 2024, para. 19.

⁸ Affidavit of Kate Boyle affirmed December 8, 2024, para. 16.

⁹ Affidavit of Kate Boyle affirmed December 8, 2024, paras. 21, 22.

- (ii) manage the overall administration of the individual claims process and perform all other duties and responsibilities assigned to it in regard to the Quebec Administration Plan.¹⁰
13. A professional class action claims administrator, Epiq, has been identified to perform this role, subject to approval by the Court.¹¹
14. To assist PCCs, register individuals for updates, and provide information regarding the PCC Compensation Plan in advance of the Sanction Hearing, PCC Representative Counsel retained Epiq on September 13, 2024, to act as Agent for the PCCs within the CCAA proceedings.¹² In part, the goal of retaining an Agent was to ensure PCCs have access to free, legitimate, and accurate information about the Plan and claims process. This measure also seeks to protect PCCs from exploitation by lawyers and entities unaffiliated with the CCAA Proceedings who may attempt to profit from the compensation intended for victims of tobacco harm.
15. Epiq's responsibilities as Agent include:
- a. Establishing a call centre, website, and registration portal to communicate with PCCs;
 - b. Assisting PCC Claimants or their Legal Representatives in preparing Claim Packages;
 - c. Providing support after Notices are distributed by the Claims Administrator; and
 - d. Reporting to PCC Representative Counsel, the Mediator, and the Monitors.¹³
16. Critically, under the CCAA Plans to be considered by the Court, all fees, costs, disbursements, and expenses incurred by PCC Representative Counsel in administering the

¹⁰ Affidavit of Kate Boyle affirmed December 8, 2024, para. 24.

¹¹ Affidavit of Kate Boyle affirmed December 8, 2024, para. 25.

¹² Affidavit of Kate Boyle affirmed December 8, 2024, para. 27.

¹³ Affidavit of Kate Boyle affirmed December 8, 2024, para. 28.

claims process, including the services of Epiq, will be paid directly by the Tobacco Companies.¹⁴

17. These costs and expenses, including legal fees, will not be deducted from the amount a PCC-Claimant may receive under the PCC Compensation Plan. PCC Claimants will not be charged for any services by the Agent related to the assistance the Agent may provide to them under the PCC Compensation Plan.¹⁵
18. On October 17, 2024, Epiq launched a website in English and French informing the public about the PCC Compensation Plan and allowing any PCC or other person to register for updates. The website includes answers to frequently asked questions and provides information about claim eligibility, submission and documentation required.¹⁶ Epiq also launched a call centre on October 18, 2024, to assist claimants. Finally, any PCC or person may contact Epiq toll-free/free of charge, by telephone or email.¹⁷
19. The filing of the CCAA Plans received significant media attention across Quebec and Canada.¹⁸
20. On December 5, 2024, PCC Representative Counsel became aware of a website hosted by Actis Law Group and its principal, Andrea Grass, purporting to provide settlement representation in the “Canadian Tobacco Class Action” (the “Actis Website”).¹⁹
21. The Actis Website makes a number of false or misleading representations including the following:
 - (a) Actis Law Group holds itself out as “representing persons who are smokers or former smokers of tobacco cigarettes”;²⁰

¹⁴ Affidavit of Kate Boyle affirmed December 8, 2024, para. 29.

¹⁵ Affidavit of Kate Boyle affirmed December 8, 2024, para. 29.

¹⁶ Affidavit of Kate Boyle affirmed December 8, 2024, para. 30-31.

¹⁷ Affidavit of Kate Boyle affirmed December 8, 2024, para. 32-33.

¹⁸ Affidavit of Kate Boyle affirmed December 8, 2024, para. 13-14.

¹⁹ Affidavit of Kate Boyle affirmed December 8, 2024, para. 34.

²⁰ Affidavit of Kate Boyle affirmed December 8, 2024, para. 35(a).

- (b) Offers to allow persons to “participate in the class action” and “Join for Legal Representation” by signing up with the Actis Law Group;²¹
 - (c) While charging no fee for “joining this class action”, Actis Law Group proposes they will act for claimants on a contingency fee basis and “receive payment only if the class action is successful”;²²
 - (d) The amount stated on the website to be available for distribution to smokers and former smokers is wrong by a factor of over three: \$7.639 billion has been allocated in the CCAA Plans to compensate individual tobacco harm victims across Canada, including both Quebec Class Members and Pan-Canadian Claimants, not \$32.5 billion as represented by Actis Law Group.²³ The website further omits critical information about the claim eligibility criteria;²⁴ and
 - (e) Finally, the Actis Law Group website does not describe the role of Epiq to assist claimants free of charge, acting as Agent to PCC Representative Counsel.²⁵
22. Actis Law Group has played no role whatsoever in the resolution for Pan-Canadian Claimants set out in the CCAA Plans.²⁶ Nevertheless, Actis Law Group appears poised to charge PCC-Claimants a portion of the compensation they may receive under the CCAA Plans on a contingency basis.²⁷
23. Ms. Boyle, a Partner with Wagners, the PCC Representative Counsel, has deposed to her belief that Actis Law Group is passing themselves off as representing the interests of Canadian tobacco harm victims, and thus as PCC Representative Counsel, a role to which they have not been appointed by this Court.²⁸
24. Ms. Boyle further expressed her concern that the Actis Website is likely to mislead PCCs into entering unnecessary contingency fee agreements with Actis Law Group or Ms. Grass.

²¹ Affidavit of Kate Boyle affirmed December 8, 2024, para. 35(b).

²² Affidavit of Kate Boyle affirmed December 8, 2024, para. 35(c).

²³ Affidavit of Kate Boyle affirmed December 8, 2024, para. 37.

²⁴ Affidavit of Kate Boyle affirmed December 8, 2024, para. 38.

²⁵ Affidavit of Kate Boyle affirmed December 8, 2024, para. 38.

²⁶ Affidavit of Kate Boyle affirmed December 8, 2024, para. 35(c).

²⁷ Affidavit of Kate Boyle affirmed December 8, 2024, para. 35(c).

²⁸ Affidavit of Kate Boyle affirmed December 8, 2024, para. 42.

These agreements would result in PCCs paying a portion of their compensation for services already provided free of charge by Epiq under the PCC Compensation Plan. Such financial harm would be irreparable, as it would reduce the compensation intended to address the PCCs' losses.²⁹

25. Ms. Boyle has further deposed to her belief that Actis Law Group's misleading and false representations engage a public interest, including the right to be free from predatory practices that bring the legal profession into disrepute.³⁰

A. Issues

- Q1. Should the Court abridge the time for service of the Notice of Motion and Motion Record on the responding party and, if necessary, on what terms and conditions?
- Q2. Should the Court grant an interlocutory injunction against the Actis Law Group and Andrea Grass on the terms stated in the Notice of Motion and draft Order, including the following:
- (a) take down and permanently remove the Actis Website;
 - (b) cease and desist from soliciting, communicating, approaching, entering into retainer agreements with or providing information or advice to Tobacco-Victims including PCCs;
 - (c) deliver a list of all persons who signed up or provided information to Actis Law Group regarding the advertised, "Canadian Tobacco Class Action";
 - (d) destroy and confirm destruction of electronic and paper records in the possession of Actis Law Group and provide an affidavit confirming such destruction; and
 - (e) such other relief as this Honourable Court may order.

²⁹ Affidavit of Kate Boyle affirmed December 8, 2024, para. 47.

³⁰ Affidavit of Kate Boyle affirmed December 8, 2024, para. 44.

B. Law & Argument**(a) Abridgement of Time Period for Service**

26. A motion made on notice must be served at least seven days before the date on which the motion is to be heard.³¹ The moving party's factum for a motion seeking an interlocutory injunction or other mandatory order shall similarly be served seven days before the hearing.³²
27. However, this Court has the jurisdiction to dispense with compliance with any rule where and as necessary in the interest of justice.³³ This Court further has the jurisdiction to extend or abridge any time prescribed by the Rules on such terms as are just.³⁴ Finally, should the motion proceed for any reason without notice, the Court still has the power to grant a ten-day interim injunction.³⁵
28. The moving party submits it is both just and in the interests of justice that the procedures foreseen in this CCAA proceeding continue toward the Sanction Hearing without the false and misleading representations of Actis Law Group proliferating regarding the terms of the proposed settlement, causing confusion, misinformation, and likely harm to PCCs.
29. Accurate, helpful and timely communications are and will be undertaken by PCC Representative Counsel's Agent, Epiq, as well as via Court-approved Notice programs related to the PCC Compensation Plan. False and misleading representations are more difficult to reverse once entrenched. Timely action is called for in response to Actis Law Group's publicity, discovered only last week.
30. Halting and attempting to reverse the recent actions of Actis Law Group must be undertaken immediately, before persons or more persons are induced into a contractual relationship with Actis Law Group that is unnecessary, financially punitive, and detrimental to such persons if enforced.

³¹ Rules of Civil Procedure, Ont. S. 37.07(6).

³² Rules of Civil Procedure, Ont. Reg. 194, s 40.04(2).

³³ Rules of Civil Procedure, Ont. Reg. 194, s 2.03.

³⁴ Rules of Civil Procedure, Ont. Reg. 194, s 3.02(1).

³⁵ Rules of Civil Procedure, Ont. Reg. 194, s 40.02(1).

31. Finally, PCC Representative Counsel submit that PCCs suffering from the PCC Compensable Diseases of Lung Cancer, Throat Cancer, or Emphysema/COPD (GOLD Grade III or IV) are inherently vulnerable to inflated and false promises of ready financial reward, deserving of swift and timely protection via equitable remedy.

(b) Jurisdiction to Grant an Injunction

32. This Honourable Court has the jurisdiction to grant a mandatory injunction under Section 101 of the *Courts of Justice Act*³⁶ and Section 40 of the Rules of Civil Procedure.³⁷

(i) Courts of Justice Act, Section 101

101(1) Injunctions and receivers

In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

101(2) Terms

An order under subsection (1) may include such terms as are considered just.

(ii) Rules of Civil Procedure, Section 40

40.01. An interlocutory injunction or mandatory order under section 101 or 102 of the Courts of Justice Act may be obtained on motion to a judge by a party to a pending or intended proceeding.

33. Further, the CCAA is deliberately flexible, enabling the Court to address the complexities inherent in restructuring proceedings and respond to unforeseen challenges, including those requiring the preservation of the *status quo*. While the statute outlines specific types of orders, Section 11 empowers the Court with broad discretion to make any order it deems just and appropriate in the circumstances.

³⁶ Courts of Justice Act, R.S.O. 1990, c. C.43, s. 101.

³⁷ Rules of Civil Procedure, Ont. Reg. 194, s 40.

34. The order sought by PCC Representative Counsel is reasonable, pursued in good faith, and reflects a diligent effort to address the issues at hand.
35. The relief requested is critical to safeguarding the integrity of the distribution processes established under the CCAA Plans. These measures aim to protect vulnerable PCCs, who the CCAA Plans are intended to compensate, from being taken advantage of by opportunistic actors. Such individuals or entities have no legitimate role in the CCAA Proceedings, the PCC Compensation Plan, or the claims process, and their actions risk undermining the purpose of the settlement framework.
36. Accordingly, this Court has the authority to exercise its broad discretion to issue orders that safeguard vulnerable stakeholders within the CCAA process and uphold the integrity of the process as a whole.

(c) The Test for an Interlocutory Injunction

37. To obtain an interlocutory injunction, the moving party must establish the following components of the test set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*:

43 Metropolitan Stores adopted a three-stage test for courts to apply when considering an application for either a stay or an interlocutory injunction. First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits. ...³⁸

(d) The Test for a Mandatory Interlocutory Injunction

38. To obtain a mandatory interlocutory injunction – one compelling a person to do something rather than simply refrain – the burden is higher but only on the first prong of the *RJR-MacDonald* test.³⁹

³⁸ *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311; 1994 CarswellQue 120 (SCC), para. 43.

³⁹ *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5; 2018 CarswellAlta 206 (SCC), para. 15 & 18.

18 In sum, to obtain a mandatory interlocutory injunction, an applicant must meet a modified RJR — MacDonald test, which proceeds as follows:

(1) The applicant must demonstrate a strong *prima facie* case that it will succeed at trial. This entails showing a strong likelihood on the law and the evidence presented that, at trial, the applicant will be ultimately successful in proving the allegations set out in the originating notice;

(2) The applicant must demonstrate that irreparable harm will result if the relief is not granted; and

(3) The applicant must show that the balance of convenience favours granting the injunction.

(e) Precedent Exists for Granting the Requested Relief

39. The moving party submits analogous circumstances called for the same motion to be brought and granted in *Moushoom v. Canada (Attorney General)* as exist here.⁴⁰
40. In that case, the Plaintiffs in a class action, within which a Settlement had been reached and Notice Plan approved by the court, moved for an interim and interlocutory injunction against named legal practitioners (including Ms. Grass) who had invited class members via websites to contact them about a settlement in a proceeding in which they had no involvement and were not class counsel. Those legal practitioners also offered to enter into contingency fee agreements with class members to submit individual claims in the class action, despite a claims procedure having been adopted by the supervising Court that was designed to avoid any need for individual claimants to act through legal counsel. The plaintiffs sought an order prohibiting the publication of communications regarding the proceeding without judicial approval on notice, and to compel the law firm to take down its websites.
41. The Federal Court judge held that it was within her court’s plenary jurisdiction to manage its own proceedings to grant the relief sought.⁴¹

⁴⁰ *Moushoom v. Canada (Attorney General)*, 2022 FC 1212.

⁴¹ *Moushoom v. Canada (Attorney General)*, 2022 FC 1212, para. 11.

42. The Court applied the *RJR-MacDonald* test to the evidence and found it was just and equitable in the circumstances to grant the relief sought.⁴²

(e) The Criteria for the Issuance of Interlocutory Injunctive Relief Are Met

a. Strong *prima facie* case

43. The Actis Website presents a misleading and inaccurate picture of the CCAA Plans overseen by this Court, scheduled for further consideration at the Sanction Hearing in late January 2025.

44. An injunction is sought restraining and reversing the responding parties' communications with Pan-Canadian Claimants, at least until the Sanction Order is rendered or until any such later date if this Order is thereafter extended or made permanent.

45. The process for asserting claims under the PCC Compensation Plan will be largely administrative in nature, will be implemented by a professional Court-appointed Claims Administrator, and should not require individuals to retain legal counsel in order to submit a claim for compensation.

46. Contingency Fee Agreements, once entered into, create a contractual relationship between the Claimant and law firm, arguably enforceable at law. PCCs may have or soon enter into agreements to give a percentage of the claim – typically 25%-33% – to persons who have performed no services to initiate a class action or obtain a settlement and will only be providing “services” that are unnecessary under the proposed PCC Compensation Plan process foreseen in this matter. While such agreements may be unconscionable, monies may pass through the law firm if Actis Law Group serves as legal representative, with “fees” diverted before ever reaching the Claimant. This scheme must be stopped now at its outset, before PCCs place their faith and trust in Actis Law Group.

47. Further, the Actis Website misleads and may create confusion among PCCs, persons already vulnerable due to the medical conditions that underlie their very claims. The interests of those persons have been considered and taken into account in this proceeding, including by the appointment of PCC Representative Counsel in 2019. A simplified Claims

⁴² *Moushoom v. Canada (Attorney General)*, 2022 FC 1212, para. 19-20.

procedure has been adopted with Claimant characteristics in mind. Inserting uninformed and uninvolved law firms into this process is both unnecessary and gratuitous in this case.

48. The PCCs' interests now require an injunction to preserve the relationships of communication and assistance created in the CCAA Proceedings. The services of PCC Representative Counsel's Agent, Epiq, will be delivered without charge to the Claimant.
49. The actions of the responding parties represent a predatory attempt to exploit vulnerable PCCs by misleading them into "joining" class actions that do not exist and have already been resolved under the CCAA Plans. These actions encourage PCCs to share personal information with unauthorized actors, "sign up" for unnecessary legal representation, and ultimately to charge such individuals a percentage of their compensation for unnecessary legal "services".
50. While the Court need not address or resolve this question in the context of this motion, brought within existing CCAA Proceedings, the representations being made to Claimants may even be actionable, if fraudulently made (the person making the statement knows the statement to be false or be reckless as to its truth or falsehood) or negligently made (without due care as to its truth or falsehood).⁴³
51. If the Actis Law Group holds itself out as PCC Representative Counsel, it is passing itself off as another law firm for personal gain, knowing its representations to be false. To sell merchandise or carry on business in such a manner as to mislead the public into believing that the merchandise or business is that of another person is a wrong actionable.⁴⁴

b. Irreparable Harm

52. Any PCC "signing up" with Actis Law Group may believe they will receive accurate, timely and disinterested information about the progress of the CCAA Proceedings and the claims administration process to follow.

⁴³ *BG Checo International Ltd. v. British Columbia Hydro & Power Authority*, [1993] 1 S.C.R. 12; 1993 CarswellBC 10 (SCC) (per Iacobucci J, dissenting in part, with Sopinka J. concurring).

⁴⁴ *Consumers Distributing Co. v. Seiko Time Canada Ltd.*, [1984] 1 S.C.R. 583; 1984 CarswellOnt 869 (SCC), para. 23-25.

53. However, “signing up” or agreeing to “join” something not authorized by PCC Representative Counsel or its Agent, Epiq, may cause PCC-Claimants to miss critical communications regarding the PCC Compensation Plan. Claimants may suffer a real loss simply by placing their confidence in a law firm that is not informed about or involved in this proposed settlement or the foreseen procedure for the administration of claims.
54. PCC Representative Counsel further submit that the Claims procedure foreseen is one in which Claimants will not be out-of-pocket and it is the Tobacco Companies, not Claimant monies, that will pay legal fees, and Claims Administration and Agent’s expenses.
55. PCCs may suffer financial harm that cannot be remedied after the fact, which will reduce the compensation intended to address their tobacco-use losses. Further, as Actis Law Group is not a party to this proceeding, otherwise subject to the Court’s jurisdiction, no award of Costs can remedy the harms that may arise, normally an alternative to an injunction.

c. Balance of Convenience

56. PCC Representative Counsel submit that failing to prevent Actis Law Group from continuing with its misleading and predatory practices may encourage others to adopt similar practices. The PCCs, like any member of the public, have the right not to be misled by legal professionals and should be protected from predatory practices which bring the profession into disrepute.⁴⁵ Enjoining the responding parties here may achieve this result.
57. Given the risks of financial loss and exploitation faced by Claimants, when compared with a loss of unearned and self-serving gain by Actis Law Group, the moving party submits the balance of convenience clearly favours the protection of rights of vulnerable PCCs to not be misled, over any purported right of a law firm to solicit clients in a misleading manner.

⁴⁵ Affidavit of Kate Boyle affirmed December 8, 2024, para. 44.

C. The Court Should Dispense the PCC Representative Counsel from Providing an Undertaking as to Damages

58. 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 should not be required.⁴⁶
59. In this instance, PCC Representative Counsel has been appointed to act on behalf of a large nation-wide group of individuals harmed by tobacco, and in the public interest to protect the rights and compensation of PCCs. Accordingly, PCC Representative Counsel should be relieved of the requirement to provide an undertaking as to damages pursuant to Rule 40.03 of the Rules of Civil Procedure. Should the Court determine otherwise, PCC Representative Counsel respectfully requests leave to address this issue further.

D. Relief

60. The moving party, PCC Representative Counsel, asks this Honourable Court to grant the relief sought as proposed in the draft Order.

All of which is respectfully submitted.

December 9, 2024



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⁴⁶ Affidavit of Kate Boyle affirmed December 8, 2024, para. 51-52; Rules of Civil Procedure, Ont. Reg. 194, s 40.03.

SCHEDULE “A”
LIST OF AUTHORITIES

1. *BG Checo International Ltd. v. British Columbia Hydro & Power Authority*, [1993] 1 S.C.R. 12; 1993 CarswellBC 10 (SCC)
2. *Consumers Distributing Co. v. Seiko Time Canada Ltd.*, [1984] 1 S.C.R. 583; 1984 CarswellOnt 869 (SCC)
3. *Moushoom v. Canada (Attorney General)*, 2022 FC 1212
4. *R. v. Canadian Broadcasting Corp*, 2018 SCC 5; 2018 CarswellAlta 206 (SCC)
5. *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311; 1994 CarswellQue 120 (SCC)

SCHEDULE “B”**TEXT OF STATUTES AND REGULATIONS****Companies’ Creditors Arrangement Act, RSC 1985 c C-36****General power of court**

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Courts of Justice Act, RSO 1990, c C.43**Injunctions and receivers**

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

Terms

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

Rules of Civil Procedure, RRO 1990, Reg 194**RULE 40 INTERLOCUTORY INJUNCTION OR MANDATORY ORDER****How Obtained**

40.01 An interlocutory injunction or mandatory order under [section 101](#) or [102](#) of the *Courts of Justice Act* may be obtained on motion to a judge by a party to a pending or intended proceeding. R.R.O. 1990, Reg. 194, r. 40.01.

Where Motion Made without Notice***Maximum Duration***

40.02 (1) An interlocutory injunction or mandatory order may be granted on motion without notice for a period not exceeding ten days. R.R.O. 1990, Reg. 194, r. 40.02 [\(1\)](#).

Extension

(2) Where an interlocutory injunction or mandatory order is granted on a motion without notice, a motion to extend the injunction or mandatory order may be made only on notice to every party affected by the order, unless the judge is satisfied that because a party has been evading service or because there are other exceptional circumstances, the injunction or mandatory order ought to be extended without notice to the party. R.R.O. 1990, Reg. 194, r. 40.02 [\(2\)](#).

(3) An extension may be granted on a motion without notice for a further period not exceeding ten days. R.R.O. 1990, Reg. 194, r. 40.02 [\(3\)](#).

Labour Injunctions Excepted

(4) Subrules (1) to (3) do not apply to a motion for an injunction in a labour dispute under [section 102](#) of the *Courts of Justice Act*. R.R.O. 1990, Reg. 194, r. 40.02 [\(4\)](#).

Undertaking

40.03 On a motion for an interlocutory injunction or mandatory order, 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. R.R.O. 1990, Reg. 194, r. 40.03.

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.

**IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY
LIMITED**

ROTHMANS, BENSON & HEDGES INC.

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)**
Proceeding commenced at Toronto

MOTION RECORD
**PCC Representative Counsel's Motion for Injunctive Relief
(Returnable December 9, 2024)**

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