

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 OF PCC REPRESENTATIVE COUNSEL**

**Motions for Sanction Orders  
(Returnable on January 29, 2025)**

January 24, 2025

**WAGNERS**  
1869 Upper Water Street, Suite PH301  
3rd Floor, Historic Properties  
Halifax, NS B3J 1S9

**Raymond F. Wagner, K.C.**  
Tel: 902 425 7330  
Email: raywagner@wagners.co

**Kate Boyle (LSO# 69570D)**  
Tel: 902 425 7330  
Email: kboyle@wagners.co

PCC Representative Counsel

## TABLE OF CONTENTS

<b>Part I - Introduction .....</b>	<b>1</b>
<b>Part II - Summary of Facts .....</b>	<b>3</b>
A.    PCC Representative Counsel Represents All Pan-Canadian Claimants .....	3
B.    The PCC Compensation Plan .....	4
(i) PCC Eligibility Criteria Are Fair and Evidence-Based .....	6
(ii) The Quantum to Fund Direct Compensation to Eligible PCCs is Adequate.....	9
(iii) Claims Administration is Accessible and Claimant-Centered .....	11
C.    The Cy-près Fund .....	12
(i) Governance of the Cy-près Foundation – Framework Emphasizes Oversight and Accountability .....	15
<b>Part III - Statement of Issues, Law &amp; Argument.....</b>	<b>16</b>
A.    This Court has Jurisdiction to Approve the PCC Compensation Plan and Cy-près Fund.....	16
(i) Resolution of PCCs Claims Align with Class Action Principles.....	17
(ii) Cy-près Distributions Provide Indirect Benefits to PCCs where Direct Compensation is Impractical.....	18
B.    The PCC Compensation Plan and Cy-près Fund are Fair and Reasonable and Should be Approved.....	19
(i) The PCC Compensation Plan is Fair and Reasonable .....	20
(ii) The Cy-près Fund is Fair and Reasonable .....	22
C.    Conclusion.....	24
<b>Part IV - Orders Requested .....</b>	<b>25</b>

## PART I - INTRODUCTION<sup>1</sup>

1. The plans of compromise and arrangement (“**CCAA Plans**”) sought to be sanctioned by this Honourable Court arise from the financial distress of the three Applicant companies, which together comprise the legal tobacco industry in Canada. The Applicants sought creditor protection under the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (“**CCAA**”) in March 2019, following decades of litigation and a landmark Quebec Court of Appeal judgment in 2019 that upheld a \$13.7 billion award to the Quebec Class Action Plaintiffs (“**QCAPs**”).

2. By Orders dated December 9, 2019, amended and restated on November 22, 2024, the CCAA Court appointed Wagners as Representative Counsel for the Pan-Canadian Claimants (“**PCC Representative Counsel**”) to represent the interests of all Pan-Canadian Claimants (“**PCCs**”) in the mediation, CCAA Proceedings and throughout the implementation of the CCAA Plans, if they are approved.<sup>2</sup>

3. The CCAA Plans, initially filed on October 17, 2024, and amended and restated on December 5, 2024, are the product of over five years and thousands of hours of intensive Court-supervised mediation. Throughout the mediation, the Mediator, Monitors, and counsel for the Pan-Canadian Claimants (“**PCCs**”), Quebec Class, and Provinces and Territories worked through

---

<sup>1</sup> This Factum is filed by PCC Representative Counsel and provides an overview of the key points supporting the sanction and approval of the PCC Compensation Plan and Cy-près Fund. The Amended and Restated Plans of Compromise and Arrangement dated December 5, 2024 in respect of the Applicants (“**CCAA Plans**”) contain detailed submissions outlining the methodology, analysis, and legal and factual basis for the PCC Compensation Plan and Cy-près Fund. These documents are found at Schedule “Q” (RBH/JTIM) and “N” (Imperial) (“**PCC Compensation Plan: Methodology and Analysis**”) and Schedule “V” (RBH/JTIM) and “S” (Imperial) (“**Cy-près Fund: Methodology and Analysis**”). For comprehensive analysis, reference should be made to those schedules to the CCAA Plans. The Book of Authorities containing the authorities referenced in the PCC Compensation Plan: Methodology and Analysis and Cy-près Fund: Methodology and Analysis has been filed by PCC Representative Counsel concurrently with this Factum.

<sup>2</sup> Order of Justice McEwen dated December 9, 2019; Order of Chief Justice Morawetz dated November 22, 2024.

complex issues to develop a principled and practical settlement that will provide significant direct and indirect benefits to PCCs through two components: the Pan-Canadian Claimants' Compensation Plan ("**PCC Compensation Plan**" or at times, the "**Plan**")<sup>3</sup> and the Cy-près Fund.<sup>4</sup>

- (a) The PCC Compensation Plan offers direct monetary compensation to PCCs who meet the PCC Eligibility Criteria; and
- (b) The Cy-près Fund will deliver indirect benefits through the Cy-près Foundation (the "**Foundation**") to PCCs and *Létourneau* Class Members whose claims are resolved and released through the CCAA Plans, but who do not qualify for direct compensation. The Foundation will focus on research, programs and initiatives that are rationally connected to Tobacco-related Diseases and the diverse circumstances of those covered by the Cy-près Fund.<sup>5</sup>

4. A critical component of this historic resolution is that it achieves a global compromise of all claims and potential claims against the Applicants in Canada, providing a global release in exchange for significant benefits to claimants. If approved, the resolution will pay \$32.5 billion, comprised of Upfront Contributions and Annual Contributions until the Global Settlement Amount is fully paid. Of this, \$7.64 billion is allocated for compensation to Tobacco Victims,<sup>6</sup> including \$2.52 billion to PCCs directly, and \$1 billion indirectly via the Cy-près Fund.

5. The PCC-specific components of the CCAA Plans are unique in their scope and magnitude, providing an innovative and comprehensive resolution of PCCs' claims and potential claims. They reflect a carefully negotiated compromise designed to provide benefits to hundreds of thousands, if not millions, of Canadians while achieving finality for all parties within the CCAA framework.

---

<sup>3</sup> CCAA Plans, Schedule "S" (RBH/JTIM) and "P" (Imperial) ("**PCC Compensation Plan**").

<sup>4</sup> CCAA Plans, s 1.1 "Cy-près Fund" and "Cy-près Foundation", Article 9.

<sup>5</sup> CCAA Plans, ss 9.1, 9.3.

<sup>6</sup> Including PCCs and QCAPs, s 16.1.

It is important to note, however, that the CCAA Plans are not intended to resolve all public policy issues or broader societal challenges related to tobacco, such as regulation, government-led cessation and prevention efforts, or systemic healthcare impacts. Instead, they focus on resolving claims equitably within the confines of the CCAA process.

6. Ultimately, the PCC Compensation Plan and Cy-près Fund are products of negotiation and compromise – aiming to achieve the feasible, the doable, and not the impossible. They are not to be measured by a standard of perfection; but instead, fairness and reasonableness. Given the significant direct and indirect benefits these components of the CCAA Plans will deliver to PCCs, and their essential role in achieving a global release of claims, they are fair, reasonable, and merit the approval of this Honourable Court through the granting of the Sanction Order.

## **PART II - SUMMARY OF FACTS**

### **A. PCC Representative Counsel Represents All Pan-Canadian Claimants**

7. The PCCs encompass individuals across Canada, excluding the QCAPs, who have or may assert PCC Claims against the Tobacco Companies for harms arising from Tobacco Products.<sup>7</sup> Prior to commencement of the CCAA Proceedings, litigation involving PCCs was fragmented and undeveloped.<sup>8</sup> While some claims were advanced through proposed class actions in common law jurisdictions, those actions remained uncertified and dormant for over a decade.<sup>9</sup> Additionally, significant legal and evidentiary barriers – such as expired limitation periods, the “but for”

---

<sup>7</sup> CCAA Plans, s 1.1 “Pan-Canadian Claimants”; “PCC Claim” “Tobacco Claims”. PCC Claims include those related to, *inter alia*, the manufacture, marketing, and sale of Tobacco Products, historical or ongoing use, or misrepresentations regarding their safety.

<sup>8</sup> See CCAA Plans, Schedules “Y” (RBH/JTIM) “V” (Imperial) (“**List of Actions Commenced Under Provincial Class Proceedings Legislation**”); Schedules “Z” (RBH/JTIM), “W” (Imperial) (“**List of Actions Commenced by Individuals**”).

<sup>9</sup> See e.g. List of Actions Commenced Under Provincial Class Proceedings Legislation.

causation test in the common law jurisdictions, and the prohibitive costs of litigation against the Applicants – rendered the likelihood of success for individual or collective claims against the Applicants highly remote.<sup>10</sup>

8. To address these challenges and ensure that the interests of all PCCs were represented within the CCAA Proceedings, Court-supervised mediation, and before and after the Plan Implementation Date, this Court appointed Wagners as PCC Representative Counsel in December 2019 (as amended and restated on November 22, 2024).<sup>11</sup>

9. At the Creditors Meetings, PCC Representative Counsel, the Eligible Voting Creditor for PCCs, voted in favour of the CCAA Plans. Ultimately, all Eligible Voting Creditors, representing 100% of the value of Voting Claims, unanimously voted to approve the CCAA Plans.<sup>12</sup>

### **B. The PCC Compensation Plan**

10. The PCC Compensation Plan will offer monetary compensation to PCCs across Canada diagnosed with specific Tobacco-related Diseases who meet the PCC Eligibility Criteria. Through a uniform and accessible Claims Process, the PCC Compensation Plan offers a fair and pragmatic resolution to claims of PCCs that would otherwise face significant legal and practical barriers. To achieve a comprehensive global settlement, secure a global release, and ensure equitable treatment

---

<sup>10</sup> E.g. *Caputo v Imperial Tobacco Ltd.*, [2004] OJ No 299 at paras 29-33 and 43 (SCJ) [*Caputo*]: In *Caputo*, Justice Winkler declined to certify a class action against ITCAN, RBH and JTIM seeking damages for tobacco-related personal injuries in Canada. On January 11, 2006, the Court granted an Order discontinuing *Caputo* on a “with prejudice” basis as against the representative plaintiffs only, [2006] OJ No 537.

<sup>11</sup> Order of Justice McEwen dated December 9, 2019; Order of Chief Justice Morawetz dated November 22, 2024.

<sup>12</sup> FTI 24<sup>th</sup> Report at Appendix A: Scrutineer’s Report; EY 22<sup>nd</sup> Report at Appendix A: Scrutineer’s Report; Deloitte 21<sup>st</sup> Report at Appendix A: Scrutineer’s Report.

of PCCs nationwide, the PCC Compensation Plan extends benefits to some PCCs beyond their strict legal entitlements, while limiting others.<sup>13</sup>

11. A fundamental principle underlying the PCC Compensation Plan is parity among PCCs across all provinces and territories, with alignment, where appropriate, to the judicial findings in the Quebec Class Actions, as set out under the Quebec Administration Plan.<sup>14</sup> This commitment to uniformity also advances the goal of avoiding excessive administrative complexity that could materially diminish the compensation available to claimants. The Plan was developed with expert input, comprehensive legal analysis, and largely drew upon the findings and principles established in the Quebec Class Actions.<sup>15</sup> The Plan reflects analyses including:

- (a) a detailed assessment of the PCC population across Canada;
- (b) consideration of limitation periods<sup>16</sup> and causation principles applicable to PCC claims;<sup>17</sup>
- (c) epidemiological analysis by Dr. Prabhat Jha, renowned epidemiology expert, identifying the PCC Compensable Diseases and estimating the population eligible for compensation;<sup>18</sup> and
- (d) consultation with Daniel Shapiro, K.C., an expert in the administration of complex class action settlements.<sup>19</sup>

---

<sup>13</sup> E.g. PCC Compensation Plan: Methodology and Analysis, Section I(v) at para 129: For e.g. Although the claims of all PCCs resident in Alberta are statute-barred, the PCC Compensation Plan adopts a uniform PCC Claims Period from March 8, 2015, to March 8, 2019, allowing PCCs in Alberta to be eligible for compensation.

<sup>14</sup> CCAA Plans, Schedule “N” (RBH/JTIM), “K” (Imperial) (“**Quebec Administration Plan**”).

<sup>15</sup> *Létourneau v JTI-Macdonald Corp*, [2015 QCCS 2382](#) [*Létourneau QCS*]; *Imperial Tobacco Canada ltée c Conseil québécois sur le tabac et la santé et al*, [2019 QCCA 358](#) [*Imperial QCA*].

<sup>16</sup> PCC Compensation Plan: Methodology and Analysis, Section J at paras 136-144; Section K at paras 145-150.

<sup>17</sup> PCC Compensation Plan: Methodology and Analysis, Section O at paras 193-199.

<sup>18</sup> PCC Compensation Plan: Methodology and Analysis, Section M at paras 155-165; CCAA Plans, Schedule “L” (RBH/JTIM), Schedule “I” (Imperial) (“**Jha Report**”).

<sup>19</sup> CCAA Plans, Schedule “P” (RBH/JTIM), “M” (Imperial) (“**Curriculum vitae of Daniel Shapiro, K.C.**”); PCC Compensation Plan: Methodology and Analysis, Section S at para 261.

12. These efforts resulted in the PCC Compensation Plan, which balances fairness, nationwide parity, accessibility for PCC-Claimants and administrative feasibility. The rationales behind the key parameters of the Plan are explained below, and in extensive detail in the “PCC Compensation Plan: Methodology and Analysis”.

*(i) PCC Eligibility Criteria Are Fair and Evidence-Based*

13. The Plan provides compensation to PCCs who meet the following PCC Eligibility Criteria:

- (a) on the date of claim submission to the PCC Compensation Plan, the claimant:
  - (i) resides in Canada, if living, or
  - (ii) resided in Canada on the date of their death, if deceased;
- (b) the claimant was alive on March 8, 2019;
- (c) between January 1, 1950 and November 20, 1998 (“**Breach Period**”), the claimant smoked a minimum of Twelve Pack-Years of cigarettes sold by the Applicants (“**Critical Tobacco Dose**”);
- (d) between March 8, 2015 and March 8, 2019, inclusive of those dates (“**PCC Claims Period**”), the claimant was diagnosed with one of the following PCC Compensable Diseases:
  - (i) primary lung cancer,
  - (ii) squamous cell carcinoma of the larynx, oropharynx, or hypopharynx (“**throat cancer**”), or
  - (iii) Emphysema/COPD (GOLD Grade III and IV); and
- (e) the claimant resided in Canada on the date of diagnosis.

14. These criteria were ultimately chosen to achieve uniformity (including with the QCAPs), fairness, and administrative manageability for a nationwide Claims Process:



- (a) Uniform PCC Claims Period: The four-year PCC Claims Period (March 8, 2015 to March 8, 2019 inclusive) within which a PCC must have been diagnosed with a PCC Compensable Disease was adopted to provide equitable treatment to PCC-Claimants across Canada, in light of the disparate limitation laws across jurisdictions, which provide a variety of limitation-barred claims across the country. This approach ensures consistency while compensating some individuals who might otherwise be barred from recovery due to expired limitation periods.<sup>20</sup>
- (b) Breach Period and Critical Tobacco Dose: The PCC Compensation Plan adopted the *Blais* Class Period of January 1, 1950 to November 20, 1998, within which the PCC-Claimant must have smoked a minimum of Twelve Pack-Years of cigarettes. The start date reflects liability evidence accepted by the QSC and upheld by the QCA, while the end date, two and a half years after the *Blais* Public Knowledge Date of March 1, 1996, aligns with when individuals knew or should have known the risks of smoking.<sup>21</sup> The Critical Tobacco Dose of Twelve-Pack Years was determined by the QSC, based on expert evidence and was upheld by the QCA.<sup>22</sup>
- (c) PCC Compensable Diseases: Based on Dr. Jha’s epidemiological analysis, the Plan includes compensation for diseases with a strong causal link to smoking, being Lung Cancer, Throat Cancer, and Emphysema/COPD (GOLD Grade III or IV), allowing for presumptive causation without individual assessments.<sup>23</sup> Diseases with weaker causal links were excluded to avoid very complex and costly determination of “but for” causation on an individual-Claimant basis, which would involve an assessment of Claimant health habits and family histories.<sup>24</sup> The PCC Compensable Diseases align with

---

<sup>20</sup> E.g. PCC Compensation Plan: Methodology and Analysis, Section I at paras 107-135; CCAA Plans, Schedules “R” (RBH/JTIM) and “O” (Imperial) (“**Analysis of Limitations Law applicable to Pan-Canadian Claimants dated September 2, 2020**”).

<sup>21</sup> PCC Compensation Plan: Methodology and Analysis, Section F(iii)(a) at paras 53-58.

<sup>22</sup> PCC Compensation Plan: Methodology and Analysis, Section F(iii)(c) at paras 61-64; *Létourneau QCS*, *supra* at paras [756-759](#); *Imperial QCA*, at para [8](#).

<sup>23</sup> PCC Compensation Plan: Methodology and Analysis, Section M(iii) at paras 164-165: If a smoker has smoked Twelve Pack-Years and has been diagnosed with one of the PCC Compensable Diseases, then it is inferred that cigarette smoking likely caused the disease.

<sup>24</sup> PCC Compensation Plan: Methodology and Analysis, Section F(iii)(d) at paras 65-66, Section M at paras 155-165; Jha Report.

the diseases compensated under the Quebec Administration Plan and reflect Dr. Jha’s scientific evidence and practical considerations.

- (d) Prioritization of Living Victims: By requiring that PCCs be alive on March 8, 2019, the Plan mirrors the decision in the *Blais* certification judgment, which limited eligibility to individuals alive when the action was first served (November 20, 1998) and their heirs if they later passed away. It aims to achieve parity across all provinces and territories, and administrative simplicity for estate claims.<sup>25</sup>

15. Claims by surviving family members were excluded to address the patchwork of provincial legislation regarding loss of care, guidance, and companionship damages. Including these claims would introduce significant administrative complexity, as Dr. Jha’s estimates suggest over a million potential claims.<sup>26</sup> This also aligns with the approach taken in the *Blais* Class Action, where surviving family member claims were not recognized under the judgment. These claims are instead addressed through the Cy-près Fund, which will provide broader indirect benefits.<sup>27</sup>

16. A fundamental principle of the PCC Compensation Plan is that PCCs across Canada will be subject to a uniform system for determining compensation. The Plan is built upon and reflects the rigorously tested judicial findings from the Quebec Class Actions, which were upheld after adversarial trials and appellate review, while addressing the unique challenges faced by PCCs in common law jurisdictions, such as “but for” causation standards and varied limitation defenses. By extending presumptive causation for PCC Compensable Diseases and offering an accessible, claimant-friendly Claims Process, the Plan balances fairness and administrative practicality.

---

<sup>25</sup> PCC Compensation Plan: Methodology and Analysis, Section J at paras 136-144; *Létourneau QCS*, *supra* at paras [1045-1050](#) and [1208](#); *Imperial QCA*, *supra* at para [1282](#).

<sup>26</sup> PCC Compensation Plan: Methodology and Analysis, Section K(ii) at para 148.

<sup>27</sup> PCC Compensation Plan: Methodology and Analysis, Section K at paras 145-150.

***(ii) The Quantum to Fund Direct Compensation to Eligible PCCs is Adequate***

17. The starting place to determine compensation amounts under the Plan was consideration of the damages awarded to QCAPs in the Quebec Class Action: \$100,000 for Lung Cancer and Throat Cancer and \$30,000 for Emphysema. To account for legal and evidentiary barriers in the common law jurisdictions and achieve a global settlement, these amounts were reduced by 40%, resulting in maximum net payments of \$60,000 for Lung and Throat Cancers and \$18,000 for Emphysema/COPD (GOLD Grade III or IV) for eligible PCCs.<sup>28</sup> Consistent with the *Blais* Class Action findings on the Public Knowledge Date, PCCs who began smoking after January 1, 1976, are deemed 20% contributorily negligent and will receive 80% of the base award.<sup>29</sup>

18. These adjustments to the Individual Payments under the PCC Compensation Plan reflect the absence of judicial findings outside Quebec, the limited litigation progress in other provinces, and the significant challenges of proving individual or collective claims under common law causation standards. They also acknowledge the pivotal role of QCAPs, whose decades of litigation in the *Blais* and *Létourneau* Class Actions secured favorable trial and appellate judgments, laying the foundation for this global settlement. Without their work and the substantial risks they assumed, it is unlikely that any compensation for Tobacco-related Diseases would exist for claimants, apart from QCAPs, today. Although *Blais* Class Members' gross base awards under the Quebec Administration Plan are higher, their recoveries are subject to legal fees, meaning their net compensation may not ultimately significantly exceed that of PCCs under the Plan.<sup>30</sup>

---

<sup>28</sup> PCC Compensation Plan, Article 40, s 52.1: These are maximum amounts because if the PCC Compensation Plan Amount, including accrued interest, is insufficient to cover the total Individual Payments, a *pro rata* adjustment will be applied to ensure that the aggregate does not exceed the funds in the PCC Trust Account.

<sup>29</sup> PCC Compensation Plan: Methodology and Analysis, Section O at paras 190-192.

<sup>30</sup> PCC Compensation Plan: Methodology and Analysis, Section O at paras 190-217; Section R at paras 256-260.

19. The funding requirement of \$2.52 billion for the PCC Compensation Plan was calculated based on Dr. Jha’s epidemiological analysis of Canadians alive as of March 8, 2019, who were diagnosed with a PCC Compensable Disease during the PCC Claims Period.<sup>31</sup> This calculation incorporates an estimated 50% take-up rate,<sup>32</sup> reflecting factors likely to increase claimant participation – such as the anticipated public outreach through notices, the straightforward Claims Process, and substantial compensation amounts – and barriers, including PCC-Claimants’ advanced age, poor health, and the absence of a centralized claimant database like in Quebec.<sup>33</sup>

20. This estimated 50% take-up rate is higher than those observed in comparable settlements, such as pharmaceutical cases (10–12%), breast implant cases (15–20%), and the Hepatitis C settlements (up to 40%). It is supported by the fact that the Plan is designed to be accessible and straightforward, and well-publicized. It also incorporates a reasonable buffer in case participation exceeds historical norms.<sup>34</sup>

21. Any residual funds from the PCC Compensation Plan will be allocated to the Provinces and Territories Settlement Amount.<sup>35</sup> This allocation reflects the role of provincial and territorial governments in funding health care, including the treatment of PCC Compensable Diseases, as well as their statutory entitlement to recover health care costs under HCCR legislation for Tobacco-related Diseases. It also furthers governments’ ability to support efforts to address

---

<sup>31</sup> PCC Compensation Plan: Methodology and Analysis, Appendix “H”; Dr. Jha estimated that 198,884 persons were diagnosed with PCC Compensable Diseases during the four-year PCC Claims Period, before adjustments. With adjustments, the total number of PCCs alive on March 8, 2019 was estimated to be 186,002.

<sup>32</sup> PCC Compensation Plan: Methodology and Analysis, Section P at paras 218-227; “Take-up rate” is a term used in class actions to refer to the percentage of claimants who submit claims and receive compensation out of the estimated total number of potentially eligible persons.

<sup>33</sup> PCC Compensation Plan: Methodology and Analysis, Section P at paras 220-227.

<sup>34</sup> PCC Compensation Plan: Methodology and Analysis, Section Q at paras 228-255.

<sup>35</sup> PCC Compensation Plan, s 54.1: Residual funds will be allocated to the Provinces and Territories Settlement Amount three years after the Claims Administrator begins processing PCC Claims, or at such other time as the CCAA Plan Administrators determine that the administration of the PCC Claims is substantially complete.

systemic health care impacts of Tobacco-related Wrongs, including government-led efforts in cessation, prevention, and tobacco regulation, while preventing reversion to the Applicants.<sup>36</sup>

***(iii) Claims Administration is Accessible and Claimant-Centered***

22. The Claims Process under the Plan is intentionally designed to be accessible, claimant-friendly, and straightforward. It employs a paper-based, non-adjudicative process designed to minimize barriers to compensation. PCC-Claimants should not require third-party legal assistance. Instead, a key innovation is the engagement of Epiq – an independent arm of the proposed Claims Administrator – as agent to PCC Representative Counsel to provide free assistance to PCC-Claimants throughout the Claims Process.<sup>37</sup> Thousands of PCCs have already contacted Epiq regarding the PCC Compensation Plan and Raymond Chabot for the Quebec Administration Plan in anticipation of the Claims Process. It is expected that future notices about these compensation programs will generate a surge of inquiries for participation in the Claims Processes.

23. To qualify for compensation, claimants must submit a complete Claim Package by the PCC Claims Application Deadline, which is 24 months after the First Notice Date.<sup>38</sup> The 24-month deadline is designed to provide claimants sufficient time to gather medical records balanced against the need for timely distribution of Individual Payments. Claim Packages must include:

- (a) evidence of smoking history established through statements in the Claim Form detailing smoking patterns, including cigarette brands and quantities;<sup>39</sup>

---

<sup>36</sup> PCC Compensation Plan: Methodology and Analysis, Section T at paras 275-278.

<sup>37</sup> PCC Compensation Plan, s 18.3.

<sup>38</sup> PCC Compensation Plan, s 23.1: The PCC Claims Application Deadline may be extended by the CCAA Court if it is deemed necessary and expedient to do so as the implementation of the PCC Compensation Plan unfolds.

<sup>39</sup> PCC Compensation Plan, s 34.1.

- (b) diagnosis of a PCC Compensable Disease, supported by pathology or spirometry reports, other medical records, or, if unavailable, statements from physicians (using a Physician Form or other acceptable form);<sup>40</sup> and
- (c) documentation verifying their authority, if the claim is submitted by a Legal Representative of a PCC-Claimant.<sup>41</sup>

24. The Claims Administrator will use standardized tools, such as checklists and decision trees, for consistency, efficiency and harmonization with the Quebec Administration Plan.<sup>42</sup> Claimants will have the opportunity to submit a Request for Review by an independent Review Officer if their claim is rejected.<sup>43</sup> All decisions by the Claims Administrator and Review Officer are final and binding, with no further recourse to the courts, promoting finality.<sup>44</sup>

25. The costs of administering the PCC Compensation Plan are covered entirely by the Applicants, and are not deducted from the PCC Compensation Plan Amount, ensuring that the \$2.52 billion is available for Eligible PCC-Claimants.<sup>45</sup>

### **C. The Cy-près Fund<sup>46</sup>**

26. The Cy-près Fund is the second Pan-Canadian component of the global settlement, designed to complement the PCC Compensation Plan by addressing the claims of individuals who are *not* eligible for direct compensation. This Fund will be administered by an independent public

---

<sup>40</sup> PCC Compensation Plan, ss 35, 36.

<sup>41</sup> PCC Compensation Plan, s 37.1.

<sup>42</sup> See e.g. PCC Compensation Plan, Appendices “B”, “F”, “G”, “H”, “I”, “J”, “K”.

<sup>43</sup> PCC Compensation Plan, ss 1.1 (“Review Officer”), 29.

<sup>44</sup> PCC Compensation Plan, s 30.

<sup>45</sup> PCC Compensation Plan, ss 14.1, 17.1, 18.4, 21.2, 47.1.

<sup>46</sup> The Cy-près Fund: Methodology and Analysis document (Schedules “V” (RBH/JTI) and “S” (Imperial) to the CCAA Plans), provides a comprehensive rationale for the inclusion of a cy-près remedy in the global settlement. For additional information regarding the Cy-près Foundation, reference should be made to Article 9 of the CCAA Plans.

charitable foundation (the “**Foundation**”), formally named “The Foundation for Improved Outcomes in Tobacco-Related Disease” (FIORD).<sup>47</sup>

27. Subject to future CCAA Court approval, the Foundation will be established to fund research, programs, and initiatives focused on improving the screening, diagnosis, treatment, and palliation of Tobacco-related Diseases.<sup>48</sup> It is an integral component of the global settlement, as it will provide consideration for the full and final settlement and release of all claims and potential claims of PCCs and *Létourneau* Class Members who are not eligible for direct compensation under the PCC Compensation Plan or the Quebec Administration Plan.<sup>49</sup> This includes the following individuals, as well as their affected family members and estates:

- (a) smokers suffering from Lung Cancer, Throat Cancer or Emphysema/COPD (GOLD Grade III or IV) who are outside the PCC Claims Period, smoked less than the requisite Twelve Pack-Years or, in the case of Emphysema/COPD, were not classified as GOLD Grade III or IV or equivalent;
- (b) smokers with other tobacco-related harms;<sup>50</sup> and
- (c) persons who use or have used Tobacco Products and have not yet developed tobacco-related harms, or may never, including future indeterminable claims.<sup>51</sup>

---

<sup>47</sup> CCAA Plans, s 9.3.

<sup>48</sup> CCAA Plans, s 9.3: see “Potential Areas of Cy-près Foundation Financial Support”.

<sup>49</sup> CCAA Plans, s 9.1.

<sup>50</sup> CCAA Plans, Schedule “L” (RBH/JTIM), Schedule “I” (Imperial) (“Jha Report”): Tobacco-related Diseases encompass various diseases, including many forms of cancer, respiratory disease, vascular diseases, etc.

<sup>51</sup> Cy-près Fund: Methodology and Analysis, Section C at para 13: Such PCCs do not have a legal entitlement in the form of a judgment, membership in a class in a certified class action, or an individual claim that would likely be successful on a balance of probabilities, or any other practicable means to recover direct compensation for Tobacco-related Diseases caused by smoking the Applicants’ cigarettes.

28. The guiding principle of the Cy-près Foundation is that there must be a rational connection between the diverse circumstances of the PCCs and *Létourneau* Class Members covered by the Cy-près Fund and the Cy-près Foundation's purpose and ultimate work.<sup>52</sup>

29. To provide these indirect benefits to PCCs and *Létourneau* Class Members, \$1 billion will be allocated from the Global Settlement Amount to establish and operate the Foundation, including \$131 million designated as the QCAP Cy-près Contribution, serving as consideration for the claims of *Létourneau* Class Members.<sup>53</sup>

30. The Cy-près Fund, through the important work of the Foundation, will confer indirect benefits on PCCs, and incidentally to the population at large. However, the Foundation is not intended to replicate government-funded health care, nor is it intended to serve as a regulator, advocate, or policy-maker. These roles remain within the purview of governments. Instead, the Foundation's mandate is to provide indirect benefits to the broad group of claimants as consideration for the release of their claims under the CCAA Plans. To maintain this focus, the Foundation excludes funding for tobacco regulation, prevention or cessation programs, which fall under governmental jurisdiction and involve advocacy beyond the Foundation's scope.<sup>54</sup> Importantly, the Foundation's establishment should not diminish governments' commitment to adequately fund and prioritize these important public health initiatives.

---

<sup>52</sup> CCAA Plans, s 9.1.

<sup>53</sup> CCAA Plans, Article 16, ss 16.1, 16.2; The \$1.0 billion total is comprised of \$0.5 billion from the Upfront Contributions (including the \$0.131 billion QCAP Cy-près Contribution) and four annual payments of \$0.125 billion each, from Years 2 through 5, drawn from the Annual Contributions.

<sup>54</sup> CCAA Plans, s 9.3.



***(i) Governance of the Cy-près Foundation – Framework Emphasizes Oversight and Accountability***

31. The administrative aspects relating to establishment of the Foundation are subject to future CCAA Court approval.<sup>55</sup> Following the issuance of the Sanction Order, the Cy-près Foundation will be established as an independent, registered charity with governance and oversight mechanisms to ensure its operations align with its mission and CRA regulations. Key preliminary steps include drafting governing documents, appointing an independent Foundation Board and Chair, and implementing management systems.<sup>56</sup> The Foundation will not begin its work until all legal, technical, and operational requirements are completed and approved by the Court.<sup>57</sup>

32. The Foundation’s governance framework is designed to ensure transparency, accountability, and alignment with its purpose of providing indirect benefits to PCCs and *Létourneau* Class Members. An independent working Board, including representatives nominated by PCC Representative Counsel, will oversee funding decisions, ensuring initiatives are merit-based, ethically sound, and rationally connected to the Foundation’s mission.<sup>58</sup>

33. The Foundation will operate under CCAA Court oversight. The Board will provide at least annual reports detailing its financial status, activities, and distributions, which will be reviewed by the CCAA Plan Administrators, PCC Representative Counsel, and submitted for Court approval.<sup>59</sup> This multi-layered accountability framework safeguards the Foundation’s integrity and ensures its activities deliver meaningful benefits to PCCs and *Létourneau* Class Members.

---

<sup>55</sup> CCAA Plans, s 9.4.

<sup>56</sup> CCAA Plans, s 9.4.

<sup>57</sup> CCAA Plans, s 9.10.

<sup>58</sup> CCAA Plans, ss 9.3, 9.5, 9.6: Board representative nominations will be in consultation with the Court-Appointed Mediator and the CCAA Plan Administrators.

<sup>59</sup> CCAA Plans, s 9.8; Cy-près Fund: Methodology and Analysis, para 60.

### **PART III - STATEMENT OF ISSUES, LAW & ARGUMENT**

34. The issue on this motion is whether the Court should grant the Sanction Order approving and sanctioning the CCAA Plans. These submissions focus on the portions of the CCAA Plans that address the claims of the PCCs, specifically the PCC Compensation Plan and the Cy-près Fund. For the reasons set out below, these components of the CCAA Plans are fair and reasonable, and should be approved.

#### **A. This Court has Jurisdiction to Approve the PCC Compensation Plan and Cy-près Fund**

35. The CCAA confers broad jurisdiction on courts to make any order “appropriate in the circumstances” to achieve its objectives.<sup>60</sup> CCAA courts may authorize measures not explicitly addressed in the statute, provided they align with the statute’s purpose.<sup>61</sup> This flexible framework enables courts to approve innovative solutions – like the PCC Compensation Plan and Cy-près Fund – which address the diverse claims of PCCs, while advancing the remedial goals of the CCAA of avoiding the economic losses resulting from liquidation of an insolvent company.<sup>62</sup>

36. Chief Justice Morawetz emphasized the flexibility of the CCAA in *Labourers’ Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation*, noting that CCAA courts have jurisdiction to approve major settlements, including those involving class-action settlements, within the CCAA regime, by “filling in the gaps” to give effects to the objects of the CCAA.<sup>63</sup>

---

<sup>60</sup> CCAA, s 11.

<sup>61</sup> *Century Services Inc v Canada (Attorney General)*, [2010 SCC 60](#) at paras [58](#), [61](#), [66](#), [68](#), [70](#) [*Century Services*]; *Labourers’ Pension Fund of Central and Eastern Canada v Sino-Forest Corporation*, [2013 ONSC 1078](#) at paras [44](#), [45](#) [*Sino-Forest*]; leave to appeal denied [2013 ONCA 456](#); application for leave to appeal to SCC denied [\[2013\] SCCA No 395](#).

<sup>62</sup> CCAA Plans, s. 11; *Century Services*, *supra* at paras [15](#), [59](#).

<sup>63</sup> *Sino-Forest*, *supra* at paras [44](#), [72](#); Also see *Robertson v ProQuest Information and Learning Company*, [2011 ONSC 1647](#) at para [27](#) [*Robertson*].

***(i) Resolution of PCCs Claims Align with Class Action Principles***

37. The nature and scope of the PCCs' claims are analogous to those advanced in a multi-jurisdictional class action, involving an identifiable class of persons whose claims raise common issues of fact and law, making resolution through this global settlement both practical and preferable.

38. In *Western Canadian Shopping Centres Inc v. Dutton*, the Supreme Court of Canada lauded class actions for providing access to justice and serving as an efficient mechanism for addressing widespread harm.<sup>64</sup> Chief Justice McLachlin held that absent comprehensive legislation, courts may fill the void by applying established legal principles to analogous situations to achieve a just resolution.<sup>65</sup>

39. The principles applied in approving class action settlements – whether the settlement is fair, reasonable, and in the best interests of the class as a whole<sup>66</sup> – may therefore be considered in assessing the PCC-provisions of the CCAA Plans. As Justice Winkler articulated in *Parsons v. Canadian Red Cross Society*, the settlement need not achieve perfection but must fall within a “zone or range of reasonableness.”<sup>67</sup> Similarly, in the CCAA context, the court assesses whether settlements are fair, reasonable, and consistent with the statute’s objectives.<sup>68</sup> As Justice Pepall noted in *Robertson v. ProQuest Information and Learning Company*, “although the CCAA and class proceeding tests for approval are not identical, a certain symmetry exists between the two.”<sup>69</sup>

---

<sup>64</sup> *Western Canadian Shopping Centres Inc v Dutton*, [2001 SCC 46](#) at paras [27-29](#) [*Dutton*].

<sup>65</sup> *Ibid* at para [34](#); see also paras [35-37](#) and [43](#).

<sup>66</sup> *Parsons v Canadian Red Cross Society*, [1999] OJ No 3572 (SCJ) at paras 69, 70 [*Parsons*].

<sup>67</sup> *Ibid* at paras 69, 70; Also see *Robertson, supra* at para [25](#) re “A perfect settlement is not required.”

<sup>68</sup> *Robertson, supra* at para [22](#).

<sup>69</sup> *Ibid* at para [24](#).

40. The PCC Compensation Plan mirrors class action principles by offering a streamlined Claims Process for direct compensation to PCCs meeting the PCC Eligibility Criteria. The establishment of the Cy-près Fund aligns with Canadian jurisprudence and class action legislation and principles which permit cy-près distributions when direct compensation to individuals is impracticable, and reversion of funds to defendants would be unjust.<sup>70</sup>

***(ii) Cy-près Distributions Provide Indirect Benefits to PCCs where Direct Compensation is Impractical***

41. The cy-près doctrine allows courts to give effect “as nearly as possible” to the intentions of a donor of property when literal compliance is impossible.<sup>71</sup> Long recognized in Canadian class actions, cy-près distributions ensure settlement funds indirectly benefit class members when individual distribution is impractical.<sup>72</sup> These distributions ensure settlement funds are applied to purposes as close as possible to their original intent, providing indirect benefits to claimants while preventing reversion to defendants.<sup>73</sup>

42. In the decision of *Slark (Litigation guardian of) v. Ontario*, Justice Perell outlined principles for approving cy-près distributions in a class action settlement:

---

<sup>70</sup> Cy-près Fund: Methodology and Analysis, Section D at paras 29-40; See e.g. *Sutherland v Boots Pharmaceutical PLC* (2002), 21 CPC (5<sup>th</sup>) 196 at paras 9, 14 (ONSC) [*Sutherland*]; *Sorenson v Easyhome Ltd*, [2013 ONSC 4017](#) at paras [25-27](#) and [30](#) [*Sorenson*]; *Sun-Rype Products Ltd v Archer Daniels Midland Company*, [2013 SCC 58](#) at paras [25](#), [26](#) [*Sun-Rype*]; *Slark (Litigation guardian of) v Ontario*, [2017 ONSC 4178](#) at paras [36-39](#) [*Slark*]; *Ford v F Hoffmann-La Roche Ltd*, (2005), [74 OR \(3d\) 758 \(SCJ\)](#) at paras [49](#), [79-86](#), [95-96](#) [*Ford*].

<sup>71</sup> Rachael P. Mulheron, *The Modern Cy-Près Doctrine: Applications and Implications* (Oxon: UCL Press, 2006) at 53.

<sup>72</sup> *Sun-Rype*, *supra* at paras [25](#), [26](#); Also see *Sutherland*, *supra* at paras 9, 14 (ONSC), in which Justice Winkler approved a \$2.25 million settlement entirely through cy-près distributions to research institutions and organizations addressing hypothyroidism where direct compensation via individual distributions was impractical due to the large class size (520,000) and minimal individual recovery.

<sup>73</sup> Rachael P. Mulheron, *The Modern Cy-Près Doctrine: Applications and Implications* (Oxon: UCL Press, 2006) at 215; Warren K. Winkler et al., *The Law of Class Actions in Canada* (Toronto: Canada Law Book, 2014) at 32; Also see: *Sorenson*, *supra* at para [26](#); *Carom v Bre-X Minerals Ltd*, [2014 ONSC 2507](#) at para [124](#); *Cappelli v Nobilis Health Corp*, [2019 ONSC 4521](#) at para [45](#) for the principle that where in all the circumstances an aggregate settlement recovery cannot be economically distributed to individual class members, the court will approve a *cy près* distribution to credible organizations or institutions that will benefit class members.

- (a) the distribution must be fair, reasonable, and in the best interests of the class;
- (b) a significant number of class members who would not otherwise receive monetary relief must benefit, even indirectly;
- (c) the distribution should enhance access to justice and provide behavior modification by ensuring unclaimed funds do not revert to defendants; and
- (d) there must be a rational connection between the subject matter of the case, the class members' interests, and the selected cy-près recipients of the funds.<sup>74</sup>

43. In *Ford v. F. Hoffmann-La Roche Ltd.*, the court stressed the importance of transparency, accountability, and ensuring cy-près recipients are selected based on objective criteria, with funds used for purposes rationally connected to the settlement and class members' interests.<sup>75</sup>

44. The Cy-près Fund in the CCAA Plans adheres to these principles, providing indirect benefits to PCCs and *Létourneau* Class Members through the funding of research, programs and initiatives related to, *inter alia*, improving outcomes in Tobacco-related Diseases.<sup>76</sup>

**B. The PCC Compensation Plan and Cy-près Fund are Fair and Reasonable and Should be Approved**

45. Approving the PCC-specific provisions of the CCAA Plans fulfills the objectives of both the CCAA and class proceedings legislation by providing for the fair and efficient resolution of a vast number of claims. The PCC Compensation Plan provides meaningful monetary compensation to Eligible PCC-Claimants while the Cy-près Fund offers indirect benefits to PCCs and Canadian

---

<sup>74</sup> *Slark, supra* at paras [36-39](#); For the requirement of a rational connection, also see: *Sutherland, supra* at para 16; *Markson v MBNA Canada Bank*, [2012 ONSC 5891](#) at para [43](#); *Sorenson, supra* at paras [26-29](#); *O'Neil v Sunopta, Inc.*, [2015 ONSC 6213](#) at para [16](#).

<sup>75</sup> *Ford, supra* at paras [84, 96](#).

<sup>76</sup> CCAA Plans, s 9.3 "Cy-près Foundation Terms of Reference" for a list of Potential Areas of Cy-près Foundation Financial Support, which also includes researching the treatment of nicotine addiction and dependence, and tobacco use in Canada.

society at large, promoting access to justice, behaviour modification, judicial efficiency,<sup>77</sup> and fairness within the global settlement.

***(i) The PCC Compensation Plan is Fair and Reasonable***

46. The PCC Compensation Plan offers a fair, practical and efficient resolution of the claims of hundreds of thousands of PCCs harmed by the Applicants' conduct. By offering timely compensation to Eligible PCC-Claimants, it circumvents significant legal and evidentiary barriers they would face in individual or class action litigation, such as expired limitation periods, complex individual causation proof requirements, and prohibitive costs.

47. Its evidence-based eligibility criteria and streamlined Claims Process aim to provide fairness, nationwide parity, and administrative efficiency. Specifically:

- (a) The uniform four-year PCC Claims Period was based on an in-depth analysis of limitations laws across the provinces and territories and ensures consistency and addresses jurisdictional disparities.
- (b) Adoption of the Breach Period and Critical Tobacco Dose criteria aligns with the judicially upheld parameters in the Quebec Class Actions.
- (c) Epidemiological analysis by Dr. Jha informed the selection of PCC Compensable Diseases based on their strong causal link to Tobacco use, facilitating presumptive causation without the need for individual assessment, and enabling a streamlined paper-based administration. The PCC Compensable Diseases also mirror those compensated under the Quebec Administration Plan, promoting fairness and parity.

---

<sup>77</sup> *Dutton, supra* at paras [27-29](#): Access to justice, behaviour modification, and judicial efficiency are the primary objectives of class actions.

- (d) Prioritizing compensation for individuals alive as of March 8, 2019, while also extending eligibility to estates of those who passed away after this date, achieves fair treatment for estate claims across the country while addressing administrative practicalities.
- (e) Excluding claims by surviving family members promotes administrative simplicity and equitable treatment across jurisdictions and aligns with the Quebec Class Actions.
- (f) Finally, the maximum Individual Payment amounts under the Plan are derived from the judgments in the Quebec Class Actions, adjusted to account for, *inter alia*, the role and work of Quebec Class Counsel, the net versus gross compensation comparison to the Quebec Administration Plan, and distinct legal barriers in common law jurisdictions.

48. The innovative engagement of Epiq as the agent for PCC Representative Counsel provides claimants free support throughout the Claims Process. This reduces the need for third-party legal assistance and involvement of “form filler” lawyers, thereby maximizing the funds each approved PCC-Claimant will pocket. The agent and Claims Administrator roles are separate and independent, promoting accessibility to the Claims Process while safeguarding impartiality.

49. The PCC Compensation Plan provides a fair, reasonable, and accessible resolution for thousands of claims that would otherwise likely never be paid.<sup>78</sup> Continued litigation is not a viable option, given the significant barriers PCCs would face, including expired limitation periods, the requirement to prove “but for” causation on an individual basis without the benefit of a causative presumption, and the prohibitive costs and delays associated with complex litigation against the Applicants. Furthermore, the Applicants’ filings for CCAA protection underscores the impracticality of litigation as a means of recovery. Without the global release of claims enabled

---

<sup>78</sup> See e.g. *Caputo, supra* at paras [29-33](#), [44](#), [59](#), [61](#), [68](#), [73](#), [74](#), [77](#), [79](#).

by the PCC provisions of the CCAA Plans, the global settlement could not have been achieved, leaving PCCs (and potentially all claimants) without any realistic avenue for resolution.

50. Approval of the PCC Compensation Plan advances the CCAA's remedial objectives of avoiding the economic effects of bankruptcy. The Plan provides Eligible PCCs with a fair and reasonable resolution of their claims, offers meaningful compensation, and ensures that the Claims Process is accessible and claimant-friendly.

***(ii) The Cy-près Fund is Fair and Reasonable***

51. The Cy-près Fund is a critical component of the global settlement, ensuring the comprehensive and pragmatic resolution of claims that cannot practically be addressed through direct compensation. Inclusion of the Cy-près Fund within the global settlement aligns with class action legislation and established jurisprudence by providing a mechanism for delivering indirect benefits where direct compensation is not feasible.<sup>79</sup>

52. Here, direct compensation to PCCs who do not meet PCC-Eligibility Criteria via individual distributions is not feasible due to significant legal and evidentiary barriers.<sup>80</sup> These challenges include but are not limited to:

- (a) statutory limitations<sup>81</sup> and the defence of laches;
- (b) the absence of presumptive causation for any Tobacco-related Diseases that are not PCC Compensable Diseases, and thus requirement for proof of factual and legal causation and damages on an individual basis; and

---

<sup>79</sup> Cy-près Fund: Methodology and Analysis, Section D at paras 29-40; See e.g. *Sutherland, supra* at paras 9, 14; *Sorenson, supra* at paras [25-27](#), [30](#); *Sun-Rype, supra* at paras [25](#), [26](#); *Slark, supra* at paras [36-39](#); *Ford, supra* at paras [49](#), [79-86](#), [95-96](#).

<sup>80</sup> PCC Compensation Plan: Methodology and Analysis, Section E at paras 38 -41.

<sup>81</sup> PCC Compensation Plan: Methodology and Analysis, Section I at paras 107-135.



(c) the impracticality of individualized or even class litigation due to the complexities of personal health histories, linking harm to the Defendants' conduct, causation at common law, and the high cost and complexity of litigation against the Applicants.<sup>82</sup>

53. The Cy-près Fund also resolves the *Létourneau* Judgment through the \$131 million QCAP Cy-près Contribution. The trial judge in *Létourneau* declined to award moral damages on a collective basis due to the variability in injuries amongst the class, instead awarding punitive damages,<sup>83</sup> illustrating the appropriateness of addressing these claims through cy-près distribution.

54. Importantly, the Cy-près Fund satisfies the criteria of fairness, reasonableness, and alignment with the best interests of the PCCs. Through the Foundation, the Fund will support programs, initiatives, and research aimed at addressing Tobacco-related Diseases. This ensures the requisite rational connection between the interests of the PCCs and *Létourneau* Class Members, and the recipients of the Cy-près Foundation funding, is upheld.

55. Without the work of the Cy-près Foundation, it is exceedingly unlikely that claimants falling under its scope would be able to receive any benefit or remedy from the Applicants. The structure and administration of the Foundation, to be approved by further order of the Court, will ensure that resources are allocated to recipients based on objective criteria and used for purposes directly and rationally connected to Tobacco-related Diseases, enhancing access to justice and providing indirect benefits to the vast group of individuals it is designed to cover.

---

<sup>82</sup> PCC Compensation Plan: Methodology and Analysis, Section O(ii)-(iv) at paras 196-199, Section F(vi) at paras 80-82: Quebec Class Counsel opted to renounce individual claims and pursue collective recovery limited to moral and punitive damages, declaring that “outside of collective recovery, recourses of the members against the defendants are just impossible.” The Court agreed, emphasizing the impracticality of individual adjudications and the likely failure of the case against the Tobacco Companies without this approach: *Létourneau QCS*, *supra* at paras [15](#), [170](#) and [1193](#).

<sup>83</sup> *Létourneau QCS*, *supra* at paras [946-950](#).

56. Finally, the \$1 billion allocation from the Global Settlement Amount to the Cy-près Fund is adequate to provide consideration for the release of these many claims. While the governance framework, including capital management and the duration of operations, remains subject to finalization and CCAA Court approval,<sup>84</sup> the substantial size of the Fund ensures its capacity to provide significant and impactful grants over an extended period. The precise duration of the operation of the Foundation will be determined by the CCAA Court.<sup>85</sup>

57. The Cy-près Fund is fair and reasonable, and its approval is in the best interests of PCCs and *Létourneau* Class Members who are not eligible for direct compensation. It also benefits all stakeholders and advances the remedial objectives of the CCAA. The Cy-près Fund is the “final piece of the puzzle,” facilitating the comprehensive release of all *Létourneau* Class Members and PCC Claims, including both past and indeterminable future claims, provided they arise from conduct, actions, omissions, or occurrences existing or taking place prior to the Effective Time.<sup>86</sup> Through the Foundation, the global settlement will provide equitable consideration through indirect benefits to claimants while addressing the broader impact of tobacco-related harms and incidentally benefitting the population at large.

### **C. Conclusion**

58. The PCC Compensation Plan and Cy-près Fund represent a carefully negotiated resolution of all PCCs’ claims and potential claims against the Applicants. If approved, they will provide direct compensation to hundreds of thousands of PCCs suffering from Tobacco-related Diseases, along with significant indirect benefits to all other PCCs and society at large through the Cy-près

---

<sup>84</sup> CCAA Plans, s 9.4.

<sup>85</sup> CCAA Plans, s 9.10.

<sup>86</sup> CCAA Plans, s 1.1 “Tobacco Claim”, “Released Claim”.

Fund. Together, these PCC provisions of the CCAA Plans embody a principled compromise and an equitable resolution within the framework of the CCAA, fulfilling its remedial objectives by providing meaningful outcomes to PCCs while achieving finality for all parties. They are fair, reasonable, and merit this Court's approval.

#### **PART IV - ORDERS REQUESTED**

59. For the above reasons, PCC Representative Counsel respectfully request that the Court grant the Sanction Orders.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of January, 2025.



---

**WAGNERS**  
1869 Upper Water Street, Suite PH301  
3rd Floor, Historic Properties  
Halifax, NS B3J 1S9

**Raymond F. Wagner, K.C.**  
Tel: 902 425 7330  
Email: raywagner@wagners.co

**Kate Boyle (LSO# 69570D)**  
Tel: 902 425 7330  
Email: kboyle@wagners.co

PCC Representative Counsel

## SCHEDULE "A"

### LIST OF AUTHORITIES

#### CASES

1. *Cappelli v Nobilis Health Corp.*, [2019 ONSC 4521](#).
2. *Caputo v Imperial Tobacco Ltd.*, [\[2004\] OJ No 299 \(SCJ\)](#); on January 11, 2006, the Court granted an Order discontinuing *Caputo* on a "with prejudice" basis as against the representative plaintiffs only, [\[2006\] OJ No 537 \(SCJ\)](#).
3. *Carom v Bre-X Minerals Ltd.*, [2014 ONSC 2507](#).
4. *Century Services Inc. v Canada (Attorney General)*, [2010 SCC 60](#).
5. *Ford v F. Hoffmann-La Roche Ltd.* (2005), [74 OR \(3d\) 758 \(SCJ\)](#).
6. *Imperial Tobacco Canada ltée c Conseil québécois sur le tabac et la santé et al*, [2019 QCCA 358](#).
7. *Labourers' Pension Fund of Central and Eastern Canada v Sino-Forest Corporation*, [2013 ONSC 1078](#), leave to appeal denied [2013 ONCA 456](#); application for leave to appeal to SCC denied [\[2013\] SCCA No 395](#).
8. *Létourneau v JTI-Macdonald Corp.*, [2015 QCCS 2382](#), affirmed *Imperial Tobacco Canada ltée c Conseil québécois sur le tabac et la santé et al*, [2019 QCCA 358](#).
9. *Markson v MBNA Canada Bank*, [2012 ONSC 5891](#).
10. *O'Neil v Sunopta, Inc.*, [2015 ONSC 6213](#).
11. *Parsons v Canadian Red Cross Society*, [\[1999\] OJ No 3572 \(SCJ\)](#).
12. *Robertson v ProQuest Information and Learning Company*, [2011 ONSC 1647](#).
13. *Slark (Litigation guardian of) v Ontario*, [2017 ONSC 4178](#).
14. *Sorenson v Easyhome Ltd.*, [2013 ONSC 4017](#).
15. *Sun-Rype Products Ltd. v Archer Daniels Midland Company*, [2013 SCC 58](#).
16. *Sutherland v Boots Pharmaceutical PLC* (2002), 21 CPC (5th) 196 (ONSC).
17. *Western Canadian Shopping Centres Inc. v Dutton*, [2001 SCC 46](#).

**SCHEDULE “B”**  
**SECONDARY SOURCES**

18. Rachael P. Mulheron, *The Modern Cy-Près Doctrine: Applications and Implications* (Oxon: UCL Press, 2006).
19. Warren K. Winkler et al., *The Law of Class Actions in Canada* (Toronto: Canada Law Book, 2014).

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

**FACTUM OF PCC REPRESENTATIVE COUNSEL  
(Returnable January 29, 2025)**

**WAGNERS**

1869 Upper Water Street, Suite PH301  
3rd Floor, Historic Properties  
Halifax, NS B3J 1S9

**Raymond F. Wagner, K.C.**

Tel: 902 425 7330

Email: raywagner@wagners.co

**Kate Boyle (LSO# 69570D)**

Tel: 902 425 7330

Email: kboyle@wagners.co

**PCC Representative Counsel**