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

REPLY FACTUM OF THE IMPERIAL AND RBH MONITORS

Motions for Sanction Orders and
CCAA Plan Administrator Appointment Orders
(Returnable commencing January 29, 2025)

January 28, 2025

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Applicants

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PART I – INTRODUCTION[1]

1. After five years of intensive Mediation, and further to this Court's direction, the Court-Appointed Mediator and Monitors developed CCAA Plans that each obtained the unanimous support of voting creditors.

2. *First*, the allocation issue can be resolved either among the Tobacco Companies consensually or, failing that, by the Court in its Sanction Order. The Imperial and RBH Monitors reiterate that they do not take a position on this issue. Whatever the ultimate resolution of the allocation issue, the integrity of the CCAA Plans should be respected. Once the allocation issue is resolved, the purpose of section 5.2 is exhausted and it should be removed.[2]

3. *Second*, the remaining objections do not prevent the sanctioning of the CCAA Plans. For instance, it is incorrect that a debtor may veto any plan that obtained the support of the requisite double majorities of creditors and is otherwise fair and reasonable; arguments to the contrary seek to avoid sanction based on policy-based arguments that are wrong on their own terms and, in any event, defeated by the unambiguous words of the statute.

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[1] This Reply Factum is jointly filed by (i) FTI Consulting Canada Inc. ("**FTI**") in its capacity as Court-appointed monitor of Imperial Tobacco Canada Limited ("**ITCAN**") and Imperial Tobacco Company Limited (together with ITCAN, "**Imperial**") in the above-captioned coordinated proceedings (the "**Proceedings**") under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended ("**CCAA**"); (ii) Ernst & Young Inc. ("**EYI**") in its capacity as monitor for Rothmans Benson & Hedges Inc. ("**RBH**"). Deloitte Restructuring Inc. ("**Deloitte**") in its capacity as monitor for JTI-Macdonald Corp. ("**JTIM**") does not join this Factum. JTIM, ITCAN, and RBH are collectively referred to as "**Tobacco Companies**" or "**Applicants**". FTI, EYI, and Deloitte are collectively referred to as the "**Monitors**". Capitalized terms not defined herein have the meanings given to them in the Notices of Motion of each Monitor dated January 15, 2025, the Joint Factum of the Imperial and RBH Monitors dated January 22, 2025 or the amended and restated plans of compromise or arrangement in respect of each Applicant dated January 27, 2025 (the "**Amended CCAA Plans**"). References to the "**CCAA Plans**" in this factum refer either to the initial plans of compromise or arrangement in respect of each Applicant dated October 17, 2024 or the Amended CCAA Plans, as the context requires.

[2] CCAA Plans Section 5.2 provides that "[t]he issue of allocation of the Global Settlement Amount as between the Tobacco Companies in the three CCAA Proceedings remains unresolved".

4. *Third*, irrespective of the merits of the policy arguments advanced by certain social stakeholders, the Court should exercise great caution before amending CCAA Plans that reflect five years of negotiation and compromise between various sophisticated stakeholders and have commanded the unanimous support of voting creditors. To borrow from a similar context: When presented with a CCAA Plan, a reviewing court is constrained "to determine whether the [plan] is fair and reasonable and in the best interests of the [stakeholders] as a whole in the context of the legal issues. Consequently, extra-legal concerns even though they may be valid in a social or political context, remain extra-legal and outside the ambit of the court's review of the [plan]."[3] Thus, even crediting the policy concerns raised by certain social stakeholders, the CCAA Plans are ultimately not the forum for their resolution.

5. As this Court has observed, these proceedings "are not a typical CCAA proceeding".[4] Rather, these proceedings are *sui generis* and exceedingly unusual in their complexity. Indeed, each of the settled claims would comprise a serious and complicated piece of litigation on its own. These CCAA Plans thus represent a fair and reasonable solution to a colossal challenge, melding these disparate proceedings involving different causes of action, different issues, and different parties into a single solution in order to obtain the comprehensive release necessary to fulfil the mandate of a pan-Canadian global plan. Accordingly, the Imperial and RBH Monitors respectfully submit that the Court should sanction these unique plans without amendment.[5]

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3 *Baxter v. Canada (Attorney General)*, 2006 CanLII 41673 (ONSC) [***Baxter***] at para. 9 (quotation omitted).

4 *Imperial Tobacco Limited*, 2024 ONSC 6061 [***Imperial Tobacco Limited***] at para. 34.

5 The Imperial and RBH Monitors address here only the most significant arguments advanced in the responding materials. We reserve the right to address arguments raised in the materials and not addressed here in oral arguments.

PART II – ARGUMENT

A. The Allocation Issue Exists Solely as Between the Tobacco Companies and Can Be Resolved as Part of Sanction

6. The allocation issue should be kept in proper perspective. Most significantly, it exists ***solely*** between the Tobacco Companies: Imperial and JTIM, on the one hand, contend that the CCAA Plans are "operative on [their] own terms" because "the allocation among the Tobacco Companies is as set out" in the CCAA Plans;[6] and RBH, on the other hand contends that the CCAA Plans lack an "appropriate allocation" and that the Court's intervention is necessary to ensure it is not "forced to subsidize its co-defendants".[7] As noted above, the Imperial and RBH Monitors do not take a position on this issue. If the Tobacco Companies are unable to resolve that disagreement among themselves, the Court can decide it as part of the sanction process. Once this occurs, section 5.2 should be removed from the CCAA Plans, as it was merely a placeholder to acknowledge this disagreement among the Tobacco Companies.

B. The Monitors and Court-Appointed Mediator Have Not Overstepped Their Proper Roles In Developing the CCAA Plans

7. The Monitors and Court-Appointed Mediator have not overstepped their proper roles in first proposing and now seeking the sanction of the CCAA Plans. The CCAA is a flexible statute that "allows creative solutions to be put forward" to respond to each unique set of circumstances.[8] This Court's decision directing the Monitors and Court-Appointed Mediator to develop the CCAA Plans was precisely the kind of "innovat[ion]" that the statute calls for.[9]

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6 Imperial Aide Memoire at para. 3 (Case Center A567; A58); JTIM Responding Factum at para. 2 (Case Center A1312; A332).

7 RBH Responding Factum at para. 45 (Case Center A2232; A1081).

8 *Montréal (City) v. Deloitte Restructuring Inc.*, 2021 SCC 53 at paras. 114-115; *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 [***Century Services***] at para. 21. See also *1057863 B.C. Ltd. (Re)*, 2022 BCSC 759 at paras. 48 and 50.

9 *Century Services*, *supra* at para. 61.

8. *First*, it is incorrect that the development of a plan of compromise is the exclusive province of a debtor. While it is typically the debtor company that develops a CCAA plan, the statute itself contemplates that "[a] creditor or of the trustee in bankruptcy or liquidator of the company" may likewise advance a plan.[10] And the statute does not foreclose a role for others in the formulation and advancement of a plan. Thus, the Court's decision to direct the Monitors and Court-Appointed Mediator to do so in the unique context of these proceedings in October 2023 was a familiar exercise of the discretion conferred to the Court under sections 11 and 23(1)(k) of the CCAA, as this Court has already concluded.[11] It was also not unprecedented.[12]

9. Notably, no party objected to this Court's October 2023 endorsement directing the Monitors and Court-Appointed Mediator to develop a plan, nor did any party seek to appeal it. Nor did any party object to the Monitors and Court-Appointed Mediator's role in advancing the CCAA Plans when they moved for Meetings Orders and Claims Procedure Orders in October 2024. Thus, even in circumstances where a party now protests the actions of the Monitors and Court-Appointed Mediator in developing the CCAA Plans, it was incumbent on that party to act "*post haste*" in lodging its objections.[13] As this Court has previously admonished, "[l]ying in the weeds is not an option".[14] Consequently, in circumstances where a party has long acquiesced (if not consented) to the procedures adopted by this Court to bring these complex proceedings to a sensible conclusion, it should not be heard to complain about the role of the Monitors and Court-Appointed Mediator at this late date.

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10 CCAA at ss. 4 and 5.

11 *Imperial Tobacco Limited, supra* at para. 37.

12 See *Arrangement relatif à 9323-7055 Québec inc.*, 2019 QCCS 5904, aff'd 2020 QCCA 659.

13 *Canada North Group Inc (Companies' Creditors Arrangement Act)*, 2017 ABQB 550 [***Canada North ABQB***] at para. 56, aff'd 2019 ABCA 314, aff'd 2021 SCC 30.

14 *Air Canada, Re*, 2004 CanLII 11153 (ONSC) [Commercial List] [***Air Canada***] at para. 3.

10. *Second*, it is also incorrect that the debtor alone, through its board, is charged with considering, and protecting to the extent possible, the interests of vulnerable groups such as pensioners, employees, customers and suppliers. This argument overlooks the "independent and impartial" role of the Monitors,[15] who are the eyes and ears of the court, and as this Court has recognized, are "neutral parties".[16] It also ignores the role of the Court-Appointed Mediator, who "shall act as a neutral third party ... to mediate a global settlement of the Tobacco Claims" and to "[c]onsult with all Persons with Tobacco Claims", "stakeholders", and "any other persons the Court-Appointed Mediator considers appropriate".[17] The argument also ignores the role of the supervising judge whose principal function is "to balance the interests of the various stakeholders during the reorganization process".[18] In short, it is incorrect that a debtor alone is considering the interests of these stakeholders.

C. The CCAA Plans Comply with Section 6 of the CCAA

11. Debtor consent is not a prerequisite for a court to sanction a CCAA plan under section 6. Arguments to the contrary rely largely on the strength of various policy concerns and an analogy to the law of contract. For the reasons explained below, however, neither of these approaches is persuasive, particularly in the context of these unique proceedings. As a result, whatever consideration a court may wish to afford a debtor as part of plan sanction in an ordinary CCAA proceeding, the Court has the authority to and may appropriately chart a different path in the context of this extraordinary case.

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15 *Canada v. Canada North Group Inc.*, 2021 SCC 30 [***Canada North***] at para. 28.

16 *Imperial Tobacco Canada Limited*, 2023 ONSC 5449 [***Imperial Tobacco***] at para. 19.

17 Imperial Second and Restated Amended Initial Order at paras. 39 and 40(c).

18 *Edgewater Casino Inc. (Re)*, 2009 BCCA 40 at para. 20.

(i) *The Court Has the Jurisdiction To Impose Commercial Terms on a Debtor Under Section 6*

12. Although the CCAA is "skeletal in nature" and "does not contain a comprehensive code that lays out all that is permitted or barred", it remains a statute.[19] And as with any statute, "[t]he first and cardinal principle of statutory interpretation is that one must look to the plain words of the provision".[20] That is so because "[t]he text specifies, among other things, the means chosen by the legislature to achieve its purposes".[21]

13. A plain reading of section 6 of the CCAA forecloses arguments that the Court may not impose commercial terms on a CCAA debtor. That provision provides in relevant part:

> **6 (1)** ***If a majority in number representing two thirds in value of the creditors***, or the class of creditors, as the case may be — other than, unless the court orders otherwise, a class of creditors having equity claims, — ***present and voting either in person or by proxy at the meeting or meetings of creditors*** respectively held under sections 4 and 5, or either of those sections, ***agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings***, ***the compromise or arrangement may be sanctioned by the court and, if so sanctioned, is binding***
>
> **(a)** ***on all the creditors*** or the class of creditors, as the case may be, and on any trustee for that class of creditors, whether secured or unsecured, as the case may be, ***and on the company***; …

14. Simply put, where the required double majority of creditors have approved a plan and the court has sanctioned it, that plan is binding "on all the creditors … ***and on the company***"— regardless of the company's consent.

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19 *Metcalfe & Mansfield Alternative Investments II Corp., (Re)*, 2008 ONCA 587 at para. 44.

20 *R v. D.A.I.*, 2012 SCC 5 at para. 26.

21 *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43 at para. 24.

15. This straightforward reading of section 6 is reinforced by the well-recognized remedial purpose of the CCAA. Among the CCAA's "overarching remedial objectives", the statute generally prioritizes the objective of "avoiding the social and economic losses resulting from liquidation of an insolvent company".[22] The CCAA aims to allow companies to emerge as a going concern for the benefit of a broad range of stakeholders. When enacting the CCAA, Parliament understood that "liquidation of an insolvent company was harmful for most of those it affected—notably creditors and employees—and that a workout which allowed the company to survive was optimal".[23] While a debtor has a role to play in a CCAA proceeding, the CCAA creates a special, judicially-supervised process for the reorganization of debtor companies that aims to protect a number of interests, including the public interest.[24]

16. Precedent also supports the conclusion that a plan that meets the section 6 requirements can bind a non-consenting debtor. In *Cable Satisfaction*, the Superior Court of Quebec rejected the argument that debtor consent is a predicate to the court's sanction of a plan. The court rejected that argument on the grounds that, under the CCAA, the only requirement is for a plan "to be presented to the creditors for their consideration and eventual acceptance".[25] The binding force of a plan of arrangement or compromise "arises from the law itself through the sanction of the Court".[26] Similarly, in *Paris Fur*, the Court rejected a debtor company's attempt to withdraw a plan that had already obtained creditor approval.[27] The court observed that if a plan meets the

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22 *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 [***Callidus***] at paras. 40-42.

23 *Century Services*, *supra* at para. 17.

24 *Callidus*, *supra* at para. 40.

25 *Cable Satisfaction International Inc. v. Richter & Associés Inc.*, 2004 CanLII 28107 (QCCS) [***Cable Satisfaction***] at para. 35.

26 *Cable Satisfaction*, *supra* at para. 36.

27 *Paris Fur Co. v. Nu-West Fur Corp.*, 1950 CarswellQue 23 (SC) [***Paris Fur***] at p. 2.

requirements for sanction, the Court does not have discretion to refuse its sanction.[28] Thus, in both cases, plans were sanctioned over the objections of the debtor.

17. Abstract appeals to public policy cannot override the statute's plain text, its undisputed purpose, and the weight of precedent. As the Supreme Court of Canada has cautioned, "policy considerations ... cannot be permitted to distort the actual words of the statute, read harmoniously with the scheme of the statute, its object, and the intention of the legislature, so as to make the provision say something it does not".[29]

(ii) *A Compromise or Arrangement Under Section 6 Is Not a Contract*

18. A CCAA plan is also not a contract that requires the consent of all parties. To be sure, principles of contractual interpretation can sometimes be helpful in interpreting plans.[30] Yet courts have refused to interpret CCAA plans as contracts requiring consent by all parties.[31] As the statute's language itself indicates, "a compromise or an arrangement is a ***propos[al]*** between a debtor company" and its creditors that is subsequently subject to creditor and court approval.[32] Thus, as the Superior Court of Quebec has explained, a CCAA plan is *not* a contract; rather, "[i]t is a plan of terms and conditions for the arrangement or compromise to be presented to the creditors for their consideration and eventual acceptance".[33] While a plan of arrangement must be "accepted by the creditors in the proportions required by the CCAA", the plan is rendered "enforceable by the sole effect of the law" and "it is not correct … to qualify the resulting legal

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28 *Paris Fur*, *supra* at p. 2.

29 *TELUS Communications Inc. v. Wellman*, 2019 SCC 19 at paras. 78-79.

30 See, *e.g.*, *Canadian Red Cross/Société de la Croix-Rouge, Re*, 2002 CanLII 49603 (ONSC) at para. 13; *SFC Litigation Trust v. Chan*, 2019 ONCA 525 at paras. 57-58.

31 *Cable Satisfaction*, *supra* at paras. 34-35.

32 See CCAA, ss. 4-5 (emphasis added) and s. 6.

33 *Cable Satisfaction*, *supra* at para. 35.

situation as a 'contract binding the parties'."[34] Indeed, as Justice Deschamps, then of the Quebec Court of Appeal, observed, the concept of a "contract" is a concept "foreign" to the CCAA.[35]

19. Against that backdrop, commentators have unsurprisingly recognized that the CCAA was revolutionary precisely because it represented "a marked departure from ordinary private law principle[s]".[36] Unlike in contract law where agreement is required, the CCAA allowed the majority to bind a minority so long as the statutory requirements were satisfied.[37] A "restructuring plan does not require unanimous consent to be binding on the creditors"—a result that would not be the case under ordinary contract law principles.[38] Thus, far from embracing contract law principles, the statute shows Parliament's intention to depart from them.

20. The two cases brought to the Court's attention are not to the contrary. In *Ursel*, the court relied on the dictionary definition of "compromise" to find that the plan of reorganization submitted by the debtor was "not for the legitimate purpose of a compromise or arrangement", as it was merely a scheme to benefit the company's owners "to the detriment of the creditors and in particular the principal secured creditor".[39] To the extent that *Ursel* suggests that a "compromise" under section 6 requires consent, it is that of the ***creditors***, not the debtor.[40]

21. The *Norcen* case is similarly unhelpful. This Court has been pointed to a single sentence of *obiter* where the judge in *Norcen* remarked that the CCAA grants the court the authority to alter

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34 *Steinberg Inc. c. Michaud*, 1993 CanLII 3991 (QCCA) [***Steinberg***] at p. 24 (informal translation).

35 *Steinberg* at p. 11 (informal translation).

36 Roderick Wood, *Bankruptcy and Insolvency Law* (Toronto: Irwin Law, 2015) [***Bankruptcy and Insolvency Law***] at p. 346.

37 *Bankruptcy and Insolvency Law* at p. 346.

38 *Bankruptcy and Insolvency Law* at p. 346.

39 *Ursel Investments Ltd., Re*, 1990 CanLII 7504 (SKKB) at para. 54.

40 Even if the Court were to rely on dictionary definitions, as *Ursel* did, a compromise can be unilateral as in the "partial surrender or one's position, for the sake of coming to terms". *Oxford English Dictionary*, online ed. (Oxford: Clarendon Press, 2025), "compromise".

legal rights of other parties without consent.[41] But that observation, made in passing, cannot transform the proper interpretation of section 6. It certainly does not create a new requirement that all terms of a plan be consented to by the debtor in the way that parties to a contract must consent.

D. The CCAA Plans Are Otherwise Fair and Reasonable

22. In assessing whether the CCAA Plans are fair and reasonable, the Court must look at the CCAA Plans as a whole and their impact on the broad range of stakeholders.[42] Having regard for such considerations, none of the remaining objections as to the fairness and reasonableness of the CCAA Plans support any argument that the plans should not be sanctioned.

23. In particular, the Court should approach the recommendations offered by social stakeholders with great caution. To be sure, the Canadian Cancer Society ("**CCS**") and the Heart & Stroke Foundation ("**HSF**") are social stakeholders with substantial expertise in advancing their respective charitable missions. But the Court's role in determining what is fair and reasonable for purposes of sanction does not extend to endorsing and incorporating the concerns of social stakeholders into a plan, however laudable those concerns may be. As this Court has observed in the comparable context of a class action settlement:

> The parties have chosen to settle the issues on a legal basis and the agreement before the court is part of that legal process. The court is therefore constrained by its jurisdiction, that is, to determine whether the settlement is fair and reasonable and in the best interests of the classes as a whole in the context of the legal issues. Consequently, ***extra-legal concerns even though they may be***

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41 *Norcen Energy Resources Ltd. v. Oakwood Petroleums Ltd.*, 1988 CanLII 3570 at para. 27.

42 To the extent that the Court wishes to consider the "workability" of the Plan, the Imperial and RBH Monitors submit that such an exercise would be appropriately subsumed within the holistic assessment of the impact on stakeholders. That said, "workability" has not previously been identified as an independent part of the well-established test for sanction of a CCAA plan. See *Laurentian University of Sudbury*, 2022 ONSC 5645 at paras. 21-24; *Lydian International Limited (Re)*, 2020 ONSC 4006 at para. 22; *Sino-Forest Corporation (Re)*, 2012 ONSC 7050 at paras. 50-51 and 60.

> ***valid in a social or political context, remain extra-legal and outside the ambit of the court's review of the settlement***.[43]

24. So too here. To illustrate the point, consider for example the CCS and HSF's request of an expanded mandate for the Cy-près Foundation. While the CCS and HSF contend that the public interest requires that the Foundation have a mandate that extends to prevention,[44] section 9.3 of the CCAA Plans is clear that "[p]rograms and initiatives aimed at reducing or preventing tobacco use in Canada are outside the scope of the Cy-près ***because they fall within the purview of the Provinces and Territories, involving policy issues and advocacy***" (emphasis added). Thus, the CCS and HSF would, in the name of advancing the public interest, ask this Court to second-guess the negotiations not only of the Tobacco Companies, but also the provincial and territorial governments that participated in the definition of the Foundation's mandate and are responsible for safeguarding the public interest. The Court should decline the invitation to do so.

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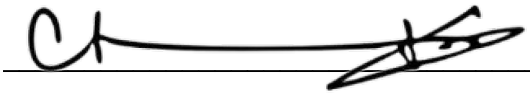
43 *Baxter*, *supra* at para. 9 (emphasis added, quotation omitted). See also *Skydome Corp., Re*, 1998 CarswellOnt 5922 (SC) [Commercial List] at paras. 5-7.

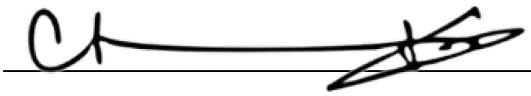
44 CCS Factum at paras. 58-62 (Case Center F4407; F3213 - F4409; F3215), HSF Responding Factum at para. 51 (Case Center F4533; F3339 - F4534; F3340).

PART III – CONCLUSION

25. For the reasons stated above and in the Joint Factum of the Imperial and RBH Monitors, the Sanction Orders and CCAA Plan Administrator Appointment Orders should be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of January, 2025.





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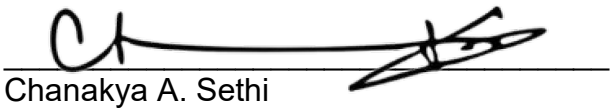
CERTIFICATE REQUIRED BY RULE 4.06.1(2.1)

I am satisfied as to the authenticity of every authority listed in Schedule A.

January 28, 2025



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SCHEDULE "A"

LIST OF AUTHORITIES

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1. *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10
2. *1057863 B.C. Ltd. (Re)*, 2022 BCSC 759
3. *Air Canada, Re*, 2004 CanLII 11153 (ONSC) [Commercial List]
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11. *Edgewater Casino Inc. (Re)*, 2009 BCCA 40
12. *Imperial Tobacco Canada Limited*, 2023 ONSC 5449
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14. *Laurentian University of Sudbury*, 2022 ONSC 5645
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19. *Paris Fur Co. v. Nu-West Fur Corp.*, 1950 CarswellQue 23 (SC)
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SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY – LAWS

***Companies' Creditors Arrangement Act* (R.S.C., 1985, c. C-36)**

Compromise with unsecured creditors

4 Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

Compromise with secured creditors

5 Where a compromise or an arrangement is proposed between a debtor company and its secured creditors or any class of them, the court may, on the application in a summary way of the company or of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

Compromises to be sanctioned by court

6 (1) If a majority in number representing two thirds in value of the creditors, or the class of creditors, as the case may be — other than, unless the court orders otherwise, a class of creditors having equity claims, — present and voting either in person or by proxy at the meeting or meetings of creditors respectively held under sections 4 and 5, or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court and, if so sanctioned, is binding

> **(a)** on all the creditors or the class of creditors, as the case may be, and on any trustee for that class of creditors, whether secured or unsecured, as the case may be, and on the company; and

[…]

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.

Monitors

Duties and functions

23 (1) The monitor shall

[…]

(k) carry out any other functions in relation to the company that the court may direct.

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.**

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

REPLY FACTUM OF THE IMPERIAL AND RBH MONITORS
Motions for Sanction Orders and
CCAA Plan Administrator Appointment Orders
(Returnable commencing January 29, 2025)

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