

Court File No. CV-19-616077-00CL

**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 IMPERIAL TOBACCO CANADA  
LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

APPLICANTS

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**MOTION RECORD OF IMPERIAL TOBACCO CANADA LIMITED  
AND IMPERIAL TOBACCO COMPANY LIMITED  
(Motion for Stay Extension returnable March 25, 2024)**

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March 11, 2024

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**TO: THE COMMON SERVICE LIST**

Court File No. 19-CV-615862-00CL  
 Court File No. 19-CV-616077-00CL  
 Court File No. 19-CV-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**

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Court File No. CV-19-616077-00CL

**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 IMPERIAL TOBACCO CANADA  
LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

APPLICANTS

**TABLE OF CONTENTS**

<b>TAB</b>	<b>DOCUMENT</b>	<b>PAGE</b>
1.	Notice of Motion, returnable March 25, 2024	31
2.	Affidavit of Eric Thauvette, sworn March 11, 2024	45
3.	Draft Stay Extension Order	58

# TAB 1

Court File No. CV-19-616077-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

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 IMPERIAL TOBACCO CANADA  
LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

APPLICANTS

**NOTICE OF MOTION  
(Motion for Stay Extension returnable March 25, 2024)**

The Applicants will make a motion before the Honourable Chief Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) on Monday, March 25, 2024 at 9:00 a.m., or as soon after that time as the motion can be heard.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard

- In writing under subrule 37.12.1(1);
- In writing as an opposed motion under subrule 37.12.1(4);
- In person;
- By telephone conference;
- By video conference

at the following location:

Please refer to the Virtual Hearing Protocol attached as Schedule “A” for details on attending the motion.

### **THE MOTION IS FOR**

1. An Order substantially in the form included in the Motion Record at Tab 3 providing the following relief:
  - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with service on any person other than those served;
  - (b) extending the Stay Period (defined below) until and including September 30, 2024; and
  - (c) permitting a temporary extension of additional security, in the amount of \$5 million, in order for the Applicants to secure a “vaping product” license once the amendments proposed by Bill C-59 (*Fall Economic Statement Implementation Act, 2023*) are introduced; and
2. Such further and other relief as this Court may deem just.

### **THE GROUNDS FOR THE MOTION ARE**

1. The Applicants face an existential threat from tobacco-related litigation across Canada, including multiple class actions, government claims seeking to recover health care costs, and other ongoing proceedings (collectively, the “**Tobacco Litigation**”);
2. On March 1, 2019, the Court of Appeal for Quebec issued a judgment affirming a lower court decision that held Imperial Tobacco Canada Limited, JTI-Macdonald Corp., and Rothmans Benson & Hedges Inc. jointly and severally liable for a maximum of \$13.6 billion;



3. In addition, the plaintiffs in the Tobacco Litigation collectively seek hundreds of billions of dollars in damages, which exceeds the Applicants' total assets by many orders of magnitude;
4. The Applicants were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "CCAA"), pursuant to the Initial Order of the Ontario Superior Court of Justice (Commercial List) dated March 12, 2019 (as amended from time to time, the "**Initial Order**");
5. FTI Consulting Canada Inc. was appointed to act as the Monitor in the Initial Order;
6. Justice Winkler was appointed as the Court-Appointed Mediator in the Initial Order;
7. The Initial Order granted a stay of proceedings until April 11, 2019, or such later date as this Court may order (as extended by further court orders, the "**Stay Period**");
8. The Court has previously extended the Stay Period until March 29, 2024;
9. The requested extension of the Stay Period is necessary and appropriate in the circumstances to allow for the continued operation of the Applicants' business while they work towards developing a consensual plan of compromise or arrangement for the resolution of the Tobacco Claims (as defined in the Initial Order);
10. The Applicants have been acting in and continue to act in good faith and with due diligence in these CCAA proceedings;
11. During the extended Stay Period, the Applicants intend to continue engaging in the mediation process under the direction of the Court-Appointed Mediator and to work diligently (in

consultation with the Monitor) to explore a negotiated resolution with the Tobacco Litigation stakeholders;

12. It is just and convenient and in the interests of the Applicants and their respective stakeholders that the Stay Period be extended;

13. The Applicants have sufficient liquidity to continue operations through the requested Stay Period;

14. The Monitor supports the extension of the Stay Period;

15. In addition to the extension of the Stay Period, the Applicants are seeking additional relief from the Court, permitting a temporary extension of additional security, in the amount of \$5 million, in order for the Applicants to secure a “vaping product” license once the amendments proposed by Bill C-59 (*Fall Economic Statement Implementation Act, 2023*) are introduced;

16. Paragraph 14 of the Initial Order permits the Applicants to, among other things, post security or grant security interests or incur liabilities in the ordinary course of the Business (as defined in the Initial Order);

17. The Applicants believe it is in the best interests of the Applicants and their stakeholders to secure the vaping product license to permit the Applicants to continue to conduct business in the ordinary course after the proposed amendments come into force;

18. In July 2022, the Applicants sought and obtained an order permitting them to issue fresh security under the *Excise Act Amendments* in “an aggregate amount not exceeding \$5 million”. Once the new license is obtained, the \$5 million in security permitted by the July 2022 Stay

Extension Order will no longer be required. However, the relief sought is necessary as the \$5 million required to secure the Applicants' new vaping product license will be (temporarily) extant at the same time as the \$5 million bond authorized by the July 2022 Stay Extension Order, albeit for a brief transitional period (most likely a matter of days or weeks). The relief is sought in order to avoid business interruptions during this transitional period;

19. As the two forms of security cannot be separately called upon, there is no material risk to creditors arising from this requested relief;

20. The provisions of the CCAA, including section 11.02, and the inherent and equitable jurisdiction of this Honourable Court;

21. Paragraphs 14 and 63 of the Initial Order, permitting the Applicants to apply to the Court to supplement the Initial Order;

22. Rules 1.04 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and section 106 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and

23. Such further and other grounds as counsel may advise and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

1. The Affidavit of Eric Thauvette, sworn March 11, 2024;
2. The Seventeenth Report of the Monitor (to be filed); and

3. Such further and other evidence as counsel may advise and this Court may permit.

March 11, 2024

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## PROTOCOL FOR MOTION BY ZOOM VIDEO CONFERENCE

Scheduling and Specific Requirements

1. Any person on the Service List that wishes to appear virtually on the motion (“**Participants**”) must register by 4:00 p.m. two (2) business days in advance of the hearing (Thursday, March 21, 2024 for the motion scheduled Monday, March 25, 2024), by emailing Veritext Litigation Solutions Canada, Inc. (scheduling@neesonsreporting.com) and copying each Monitor’s counsel (tbarbiero@dwpv.com, sfernandes@cassels.com, nancy.thompson@blakes.com). In their email, Participants should provide contact information, including their name, the party they are acting for, their email address and phone number for the counsel slip, along with a statement regarding whether they intend to make submissions.
2. Subject to the Court’s overriding discretion over all matters, Monitors’ counsel will coordinate with Participants and the Court to develop an agenda for the hearing.
3. All material for use on the motion is to be posted on CaseLines, as more fully described in Appendix “B”.
4. Participants will appear by video. Veritext will distribute the Zoom link to Participants. Participants are not permitted to forward or share the Zoom link. No person should have access to the hearing on Zoom other than Participants. If a Participant is unable to attend by video, they should contact Monitors’ counsel. Participants should carefully review the technical requirements below.
5. Counsel are required to gown for the hearing.
6. For access by the general public, a YouTube link will be posted on each of the Monitors’ websites by 10:00 a.m. not less than two (2) business days prior to the hearing. The YouTube link will allow the general public to view a livestream of the hearing, but not participate in the hearing. For greater clarity, individuals viewing the livestream via YouTube will not be heard or seen by the Court, Judge or Participants.
7. No recording of any part of the hearing (including audio) may be made unless authorized in advance by the Court.
8. For greater certainty, notice and service requirements are set out in the Rules of Civil Procedure and the various orders and endorsements in the proceedings. For ease of reference, we have included paragraphs 58-63 of the Second Amended and Restated Initial Order dated March 8, 2019 in the JTIM proceedings, attached as Appendix “A”. It should be noted that similar

notice and service requirements have been set out in various orders and endorsements in the parallel proceedings of Imperial and RBH. Nothing in this protocol modifies or amends Orders of the Court related to service requirements, the Rules of Civil Procedure, any Commercial List Practice Direction or other applicable rules.

9. Participants will be placed into a virtual waiting room upon entering the Zoom meeting.

#### Technical Requirements for Zoom Participants

10. Participants will require a device with a working microphone and camera. The device can be a computer (desktop or laptop), tablet or smartphone. The device must be connected to an internet connection that is sufficient to send and receive video and audio.

11. Each Participant is responsible for ensuring that they have suitable equipment to participate in the hearing and that such equipment works properly. Participants must test such equipment well in advance of the scheduled hearing to ensure:

- (a) that they are familiar with how to use such equipment;
- (b) the compatibility and functioning of such equipment; and
- (c) that the remote location has adequate internet bandwidth to support the use of Zoom without interruption.

12. Each Participant is also responsible for ensuring that they are familiar with the features and operation of Zoom. Participants must ensure that they have downloaded any necessary software, and practiced using Zoom, well in advance of the scheduled hearing.

13. Counsel on Zoom should identify their display name in the following format: [First Name] [Last name], for [Client].

14. Participants should log on using the Zoom link provided approximately 30 minutes before the hearing is scheduled to begin. During this time, Participants should speak to each other to determine if there are any audio/visual/connection issues.

15. It is suggested that Participants use the “gallery view” mode, rather than the “active speaker” mode, available on Zoom.

16. It is suggested that only counsel who are making submissions turn on their cameras during the hearing.

17. Should a Participant become disconnected from Zoom or experience technical difficulties during the hearing, they should immediately inform the Court by sending an email to Veritext Litigation Solutions Canada, Inc. ([scheduling@neesonsreporting.com](mailto:scheduling@neesonsreporting.com)).

18. Further participant information is included in Appendix "B."

**APPENDIX "A"**

58. **THIS COURT ORDERS** that, subject to paragraph 59, all motions in this proceeding are to be brought on not less than seven (7) calendar days' notice to all persons on the Service List. Each Notice of Motion shall specify a date (the "**Return Date**") and time for the hearing.

59. **THIS COURT ORDERS** that motions for relief on an urgent basis need not comply with the notice protocol described herein.

60. **THIS COURT ORDERS** that any interested Person wishing to object to the relief sought in a motion must serve responding motion material or, if they do not intend to file material, a notice in all cases stating the objection to the motion and the grounds for such objection in writing (the "**Responding Material**") to the moving party, the Applicant and the Monitor, with a copy to all Persons on the Service List, no later than 5 p.m. on the date that is four (4) calendar days prior to the Return Date (the "**Objection Deadline**").

61. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the judge having carriage of the motion (the "**Presiding Judge**") may determine:

- (a) whether a hearing is necessary;
- (b) whether such hearing will be in person, by telephone or by written submissions only; and
- (c) the parties from whom submissions are required

(collectively, the "**Hearing Details**"). In the absence of any such determination, a hearing will be held in the ordinary course.



62. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the Monitor shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concerning the Hearing Details. The Monitor shall thereafter advise the Service List of the Hearing Details and the Monitor shall report upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the Monitor's next report in the proceeding.

63. **THIS COURT ORDERS** that if any party objects to the motion proceeding on the Return Date or believes that the Objection Deadline does not provide sufficient time to respond to the motion, such objecting party shall, promptly upon receipt of the Notice of Motion and in any event prior to the Objection Deadline, contact the moving party and the Monitor (together with the objecting party and any other party who has served Responding Materials, the "**Interested Parties**") to advise of such objection and the reasons therefor. If the Interested Parties are unable to resolve the objection to the timing and schedule for the motion following good faith consultations, the Interested Parties may seek a scheduling appointment before the Presiding Judge to be held prior to the Return Date or on such other date as may be mutually agreed by the Interested Parties or as directed by the Presiding Judge to establish a schedule for the motion. At the scheduling appointment, the Presiding Judge may provide directions including a schedule for the delivery of any further materials and the hearing of the contested motion, and may address such other matters, including interim relief, as the Court may see fit. Notwithstanding the foregoing, the Presiding Judge may require the Interested Parties to proceed with the contested motion on the Return Date or on any other date as may be directed by the Presiding Judge or as may be mutually agreed by the Interested Parties, if otherwise satisfactory to the Presiding Judge.

**APPENDIX “B”**

1. All Participants will have their microphones muted and may only unmute their own microphones when they are addressing the Court. When parties are not muted, they must avoid making extraneous noise (including for example, typing and shuffling papers) as these noises may interfere with the hearing.
2. Participants must ensure that they participate in the Zoom hearing from a well-lit room so that they are easily visible. Participants must also ensure that no filters are active that may distort or otherwise conceal their appearance.
3. Participants must ensure that they participate in the Zoom hearing from a quiet location where they (and the Court) will not be interrupted or disturbed during the hearing.
4. All mobile devices must be turned off or put on silent mode during the hearing.
5. Participants must refrain from speaking over other Participants.
6. Participants should make submissions in accordance with the order set out in the agenda. If there is a need to make submissions out of sequence, Participants should make a request in a manner directed by the Court. The Court may ask Participants to signal when they intend to address the Court by raising their hand (either by physically raising their hand or by using the virtual “raise hand” feature in Zoom).
7. Participants must state their name and who they represent before addressing the Court.
8. Upon entry into the virtual waiting room, each Participant joining by video should identify themselves, including any person off camera that may be viewing the video feed. This also allows any audio or visual issues to be identified. Each Participant is obligated to immediately notify the presiding judge if any additional person joins them in viewing the video feed.
9. If a Participant intends to rely on any documents, the materials you intend to rely on must be served and shared on the relevant CaseLines bundle and all references during the hearing should reference the CaseLines page numbering associated with such CaseLines bundle.
10. If a party wishes to share certain documents during the hearing, the documents should be provided to the Monitors in advance so that it can be added to the agenda and a method for sharing can be set up.

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

**APPLICANTS**

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

**NOTICE OF MOTION**  
**(Motion for Stay Extension**  
**returnable March 25, 2024)**

**OSLER, HOSKIN & HARCOURT LLP**  
Box 50, 1 First Canadian Place  
Toronto ON M5X 1B8

**Deborah Glendinning (LSO# 31070N)**  
**Marc Wasserman (LSO# 44066M)**  
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Lawyers for the Applicants, Imperial Tobacco Canada  
Limited and Imperial Tobacco Company Limited

# TAB 2

Court File No. CV-19-616077-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

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 IMPERIAL TOBACCO CANADA  
LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

APPLICANTS

**AFFIDAVIT OF ERIC THAUVETTE  
(sworn March 11, 2024)**

I, Eric Thauvette, of the City of Montreal, in the Province of Quebec, the Vice President and Chief Financial Officer of Imperial Tobacco Canada Limited (“**ITCAN**”), MAKE OATH AND SAY:

1. I am the Chief Financial Officer of ITCAN and, in that role, I am responsible for all financial-related aspects of ITCAN’s business operations. I am also an officer and director of ITCAN’s subsidiary and the other applicant, Imperial Tobacco Company Limited (“**ITCO**”, and collectively with ITCAN, the “**Applicants**”). As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources for information, I have stated the sources of my information and believe them to be true.

2. In preparing this affidavit, I have consulted with other members of the Applicants’ senior management team, legal, financial and other advisors of the Applicants, and representatives of FTI Consulting Canada Inc. (“**FTI**” or the “**Monitor**”). In addition, I receive frequent updates from the Applicants’ counsel regarding these proceedings.

3. This affidavit is made in support of a motion by the Applicants for an order under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”), extending the Stay Period (defined below) up to and including September 30, 2024.

#### **PART I - BACKGROUND**

4. The Applicants were granted CCAA protection by an order of the Ontario Superior Court of Justice (Commercial List) dated March 12, 2019 (as amended from time to time, the “**Initial Order**”). The Initial Order appointed FTI as the Monitor and granted a stay of proceedings (the “**Stay**”) in favour of the Applicants and certain related parties until and including April 11, 2019 or such later date as the Court may order (as extended by further court orders, the “**Stay Period**”). At the most recent stay extension hearing, held on September 27, 2023, this Court extended the Stay Period until and including March 29, 2024.

5. The Applicants sought CCAA protection following the judgment (the “**Quebec Judgment**”) of the Quebec Court of Appeal on March 1, 2019, affirming a lower court decision in favour of the Quebec Class Action Plaintiffs (the “**QCAPs**”) that held ITCAN, JTI-Macdonald Corp. (“**JTIM**”), and Rothmans Benson & Hedges Inc. (“**RBH**” and, with the Applicants and JTIM, the “**Tobacco Companies**”) jointly and severally liable for a maximum of \$13.6 billion. This class proceeding, together with the various consumer and government claims across the country (the “**Tobacco Litigation**”), collectively seek notional recovery of hundreds of billions of dollars from the Applicants and the other legal Canadian tobacco manufacturers.

6. Although the Applicants dispute both the legal and factual foundation of the claims asserted in the Tobacco Litigation, as well as the corresponding quantification of damages, they ultimately determined that it is in the best interests of the Applicants' stakeholders to engage in a restructuring

process with the overriding objective of preserving the value of their business and resolving all Tobacco Claims (as defined in the Initial Order) in an orderly process under Court supervision.

7. ITCAN, JTIM, and RBH are the three major Canadian manufacturers and distributors of tobacco products. JTIM and RBH have also been granted CCAA protection under orders made on March 8, 2019 and March 22, 2019, respectively. Counsel for the Tobacco Companies have consulted on common issues in order to coordinate the three CCAA proceedings to the maximum extent possible.

## **PART II - THE MEDIATION AND CURRENT STATUS OF THE CCAA PROCEEDINGS**

8. At the joint comeback hearing for the ITCAN, JTIM, and RBH CCAA proceedings on April 4 – 5, 2019 (the “**Comeback Hearing**”), Justice Winkler was appointed the “Court-Appointed Mediator” in all three CCAA proceedings with a mandate to, among other things, adopt any process he considered appropriate for facilitating a global settlement of the Tobacco Claims.

9. Pursuant to an endorsement dated May 24, 2019, the mediation conducted by the Court-Appointed Mediator (the “**Mediation**”) is confidential and all steps taken or information produced by any of the parties in the Mediation shall not be disclosed. Therefore, the description of the Mediation and the Applicants’ participation below is general in nature.

10. During the most recent Stay Period, the Applicants have continued to engage in the Mediation in accordance with the directions provided by the Court-Appointed Mediator, including participating in numerous meetings with the Court-Appointed Mediator and others. In addition, the Applicants have responded from time to time to requests for information from Tobacco

Litigation stakeholders and uploaded documents on an as needed basis to the confidential data room set up in connection with the Mediation.

11. The Applicants continue to believe that the Mediation and interactions facilitated by the Court-Appointed Mediator will allow all stakeholders to better understand the competing interests of other parties in the CCAA proceedings, and assist in identifying a path forward for ultimately developing a consensual plan of compromise or arrangement. The Applicants have diligently adhered to all directions made by the Court-Appointed Mediator relating to scheduling and the Mediation, and will continue to do so during the extended Stay Period.

### **PART III - OTHER MATTERS**

12. As an update to matters addressed in my prior affidavits, it is noted that:

- ITCAN is proposing to wind up the Imasco Holdings Group Inc. (“**IHGI**”) pension plan in order to save money on future pension funding costs. The IHGI pension plan is a US-tax qualified, registered defined benefit pension plan covering former US employees of certain of ITCAN’s predecessor companies. If the termination of the IHGI pension plan proceeds by the end of March, ITCAN expects to complete the wind-up of the plan by the end of 2024;
- ITCAN has continued implementing its previously announced reorganization plan to ensure its structure is fit for its current and future business needs and to align its organizational structure and ways of working to those of the BAT Group. As of January 1, 2024, in line with the BAT Group’s structure, the Legal and External Affairs Function previously led by Eric Gagnon has been split into two functions: Legal Affairs and



Corporate and Regulatory Affairs. Eric Gagnon resumed as Head of Corporate and Regulatory Affairs and Ludwig Ureel has taken on the position of Head of Legal Affairs, as of March 1, 2024;

- As described in my previous affidavits, following the Health Canada consultation in the summer of 2022 on draft packaging and labelling regulations, the *Regulations Amending the Tobacco Products Regulations (Plain and Standardized Appearance)* came into effect in August 2023. All required packaging changes that were mandated for “Phase 1” (with an effective date at manufacturing of January 31 and April 30, 2024) were implemented on time. The compliance readiness for “Phase 2” (with an effective date at manufacturing of January 31, 2025) has already been initiated by ITCAN;
- The Quebec government implemented a flavour ban on vaping products as of October 31, 2023 and ITCAN stopped selling flavoured vaping products in Quebec as of that date. After the implementation of the flavour ban, the vaping category for the legal market contracted significantly (while a market for illicit flavoured vaping products is developing due, in part, to limited enforcement activities). During Q4 2023, ITCAN continued taking back the unsalable products from the trade. The cost of the returned products is directly charged to Nicoventures Trading Limited for full reimbursement in 2024;
- Wallace & Carey (“**W&C**”), a logistics supplier and purchaser of goods, filed for CCAA protection in June 2023. ITCAN has implemented a plan to continue to service its customers since the contract with W&C ended. All the customers formerly serviced by W&C were either moved to Ryder Truck Rental of Canada Ltd. (“**Ryder**”) or transferred

to a new logistics provider (Deshaies or Massey), depending on geographical location, by year-end 2023;

- In late August 2023, ITCAN suffered an intrusion into one of its IT platforms. As previously reported, this platform is not business critical, and the intrusion did not affect any of ITCAN's banking, payment, accounting or order taking functions. Since the swearing of my last affidavit, no additional exposure has been identified;
- ITCAN's cigarette volumes declined -12.5% in the last reporting period versus the same period last year, driven mainly by the high levels of illicit trade especially in western provinces. ITCAN expects that the new packaging and labelling restrictions that come into effect in 2024, pursuant to the *Regulations Amending the Tobacco Products Regulations (Plain and Standardized Appearance)*, will result in increased demand for illicit products and further impact the legal market volume;
- The Canada Border Services Agency ("CBSA") has launched the CBSA Assessment and Revenue Management ("CARM") system. The goal of CARM is to align the importation reporting cycles and relating excise payments to a calendar month, instead of the current cycles that overlap two months. This will result in a one-time cashflow positive impact of \$100,000,000 for the forecast period. This positive variance will resorb in the following period; and
- A review of the cash flow actuals versus forecast for the period from September 4, 2023, until March 1, 2024, shows a net positive operating cash flow of approximately \$290 million and forecasted net cash inflow of approximately \$318 million.

13. ITCAN has also continued, alone or in concert with BAT, with certain initiatives to improve or streamline business operations and expand its product offering including:

- The project for the replacement of automated equipment in the Ryder distribution centres in Ontario and Quebec is ongoing and is following a revised scope and budget, as previously reported. The expected completion date for Ontario is April 2024 and Quebec is under reassessment;
- The transition from the distribution centre located in Brampton, Ontario to a new distribution centre located in Vaughan, Ontario has been underway since January 15, 2024. The automation equipment is installed and functional. The number and volume of orders being prepared at the new Vaughan facility has been gradually ramping up while the level of activity at the Brampton facility has been gradually decreasing. The optimization of the equipment is progressing, and this phase is expected to be completed in April 2024;
- In the fall of 2023, ITCAN implemented the environmental risk management measures that were previously approved by the Ministry of Environment for its Aylmer site. ITCAN is now proposing to donate the land at that site and is in the process of obtaining a property value assessment for that site, which comprises 15,400 square meters and was valued at \$59,000, based on the 2023 municipal assessment;
- ITCAN is continuing operation of seven VUSE stores for the sale of vape related products including e-cigarettes, liquids and accessories. Although there were previous plans to operate additional retail stores in 2023, there are still no longer concrete plans to open any new stores in the next six months;

- Upon obtaining a Health Canada license, beginning October 9, 2023, Zonnic nicotine pouches were launched as a nicotine replacement therapy product in traditional retail stores, pharmacies and online, as permitted by local legislation. In fiscal year 2023, ITCAN reported \$4.5 million Net Turnover for Zonnic; and
- ITCAN plans to apply for a new “vaping product” license, as described in more detail below.

14. Overall, there has been negligible disruption of the Applicants’ business operations. The stay of proceedings has therefore achieved its objective of providing operational stability and fostering an environment that encourages stakeholder discussions.

15. In addition, ITCAN intends to apply for a “vaping product” license once the amendments proposed by Bill C-59 (*Fall Economic Statement Implementation Act, 2023*) are introduced. Among other things, these amendments will permit “vaping product” licensees to import finished vaping products and stamp them in Canada.

16. In order to obtain a “vaping product” license, ITCAN will be required to post a bond of \$5 million. However, once licensed, ITCAN will no longer be required to maintain its existing bond of \$5 million as a “prescribed person”. To avoid business interruption during the transition period (*i.e.*, the period between the application for the “vaping product” license and the return of the bond posted by ITCAN as a “prescribed person”), ITCAN plans to order a safety stock of stamps under the “prescribed person” license and then submit an application for a “vaping product” license along with a certified cheque in the amount of \$5 million, payable to the CRA, to allow for the issuance of the license. Once the “vaping product” license is issued to ITCAN, the bond securing the

“prescribed person” license will be returned to ITCAN for cancellation and ITCAN will arrange for the issuance of a new bond to secure the “vaping product” license (to replace the certified cheque).

17. As the \$5 million certified cheque in favour of CRA to secure the vaping product license will be extant at the same time as the current \$5 million bond (for the “prescribed person” license) for a brief transitional period – most likely a matter of days or weeks – ITCAN is seeking additional relief from the Court by way of an order permitting this temporary extension of additional security.

18. As the two forms of security cannot be separately called upon (given that the moment the new vaping product license is issued, the prior license is immediately cancelled and the corresponding bonding obligations fall away), I do not believe that there is any material risk to creditors arising from this requested relief.

#### **PART IV - STAY EXTENSION**

19. As noted above, the Applicants are seeking to extend the Stay Period up to and including September 30, 2024, or for a further six-month period. The rationale for this extension requires a consideration of the Mediation landscape and associated challenges relating to a Canadian tobacco industry restructuring with multi-party negotiations involving diverse economic interests.

20. The considerations taken into account by the Court relating to Stay Period extension requests have evolved over time. That said, the Applicants have a vested interest in the successful conclusion of the Mediation and have committed throughout to a negotiated global resolution of the Tobacco Claims with the assistance of the Mediator.

21. There has been significant progress in the Mediation. ITCAN affirms its commitment to the Mediation process and its ongoing support of the Mediation objectives. The agenda and timelines for the Mediation are governed by – among other things – the Mediator, the numerous participants (each of whom has unique and often times divergent interests), and the underlying issues in dispute. Accordingly, they are largely beyond the Applicants’ control, and any perceived delays in the process cannot be attributed to ITCAN. To the contrary, the Applicants have acted in good faith, without delay and in accordance with the applicable timelines, throughout the Mediation process. Due to the confidential nature of the Mediation process, however, the Applicants cannot comment further on the nature or extent of the progress to date or what issues remain to be resolved by the parties.

22. The Applicants, with the assistance of the Monitor, have prepared an updated Cash Flow Forecast for the 30-week period commencing the week of March 4, 2024, through the week of October 4, 2024, which reflects that the Applicants are projected to have sufficient funding to continue to operate in the normal course during the proposed extension of the Stay Period. I understand that the Monitor will be attaching the updated Cash Flow Forecast with its report that will be filed with the Court.

23. The Monitor has expressed its support for the extension of the Stay Period to September 30, 2024.

SWORN BEFORE ME over videoconference this 11th day of March, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely. The affiant is located in the City of London, in the Country of England and the commissioner is located in the City of Toronto, in the Province of Ontario.



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Commissioner for Taking Affidavits  
MARLEIGH ERYN DICK  
LSO# 79390S



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ERIC THAUVETTE

**IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36,  
as amended**

Court File No: CV-19-65677-00CL **56**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO  
COMPANY LIMITED**

**APPLICANTS**

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**AFFIDAVIT OF ERIC THAUVETTE**  
(Sworn March 11, 2024)

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Lawyers to the Applicants, Imperial Tobacco Canada  
Limited and Imperial Tobacco Company Limited



# TAB 3

Court File No. CV-19-616077-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	MONDAY, THE 25 <sup>TH</sup> DAY OF
	)	
CHIEF JUSTICE MORAWETZ	)	MARCH, 2024

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 IMPERIAL TOBACCO CANADA  
LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

APPLICANTS

**ORDER**

(Stay Extension to September 30, 2024)

**THIS MOTION**, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an order extending the Stay Period (defined below), was heard March 25, 2024 by judicial video conference in Toronto, Ontario.

**ON READING** the Notice of Motion of the Applicants, the Affidavit of Eric Thauvette sworn March 11, 2024 (the "**Thauvette Affidavit**"), the Seventeenth Report of the Monitor, and on hearing the submissions of respective counsel for the Applicants, the Monitor, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Marleigh Dick sworn March ●, filed:

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable on March 25, 2024, and hereby dispenses with further service thereof.

### **EXTENSION OF THE STAY PERIOD**

2. **THIS COURT ORDERS** that the Stay Period as defined in paragraph 18 of the Second Amended and Restated Initial Order dated March 12, 2019 is hereby extended until and including September 30, 2024.

### **TEMPORARY EXTENSION OF ADDITIONAL SECURITY**

3. **THIS COURT ORDERS** that Imperial Tobacco Canada Limited is authorized to post security or otherwise advance funds for the purposes of obtaining a “vaping product” license as and when Bill C-59 (*Fall Economic Statement Implementation Act, 2023*) comes into force, in an aggregate amount not exceeding \$5 million (the “**New Vaping License Security**”), and to take any steps necessary to otherwise comply with the requirements of the New Vaping License Security, notwithstanding any restrictions that might otherwise arise under the terms of the Initial Order, on the condition that any security previously extended pursuant to paragraph 2 of the Order of Justice McEwen dated July 11, 2022 (*i.e.*, the New Excise Act Security, as defined) is returned, refunded or otherwise extinguished within a reasonable period following the issuance of the “vaping product” license to Imperial Tobacco Canada Limited.

### **GENERAL**

4. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

5. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

---

**IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36,  
as amended**

Court File No: CV-19-616077-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO  
COMPANY LIMITED**

**APPLICANTS**

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

Proceeding Commenced at Toronto

**ORDER**  
**(Stay Extension to September 30, 2024)**

**OSLER, HOSKIN & HARCOURT LLP**  
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**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 IMPERIAL  
TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED**

Court File No: CV-19-616077-00CL

**APPLICANTS**

***Ontario***  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD OF IMPERIAL TOBACCO  
CANADA LIMITED AND IMPERIAL TOBACCO  
COMPANY LIMITED**  
**(Motion for Stay Extension returnable March 25, 2024)**

**OSLER, HOSKIN & HARCOURT LLP**  
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