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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

RESPONDING FACTUM OF THE ATTORNEY GENERAL OF QUEBEC
(Fee Approval Motion of Quebec Class Counsel)
(returnable January 29, 2025)

January 24, 2025

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PART I - INTRODUCTION

1. The Attorney General of Quebec (“**Quebec**”) requests that this Court consider these submissions when exercising its discretion in determining whether Quebec Class Counsel’s¹ request for approval of over \$900 million in fees is fair and reasonable.

2. The Ontario Court of Appeal has encouraged class counsel to appoint *amicus* for purposes of fee approval motions, especially in mega-fund cases, to assist the court.² In this case, Quebec hopes to provide a similar assistance to this Court.

3. Quebec recognizes and lauds the immense efforts of Quebec Class Counsel in seeking justice for Quebec class members that have suffered from tobacco-related harm. It also acknowledges the efforts made by all parties throughout the mediation process to bring the CCAA proceedings to a close.

4. There is no dispute that Quebec Class Counsel are entitled to receive fees which recognize and reward their efforts. But, given that the fees will be deducted from amounts otherwise available to be distributed to eligible Quebec residents, Quebec has an interest in ensuring the fees are fair to the class members so as to maximize recovery for those victims of tobacco-related harm.³

5. While there is no doubt that Quebec Class Counsel are entitled to a premium on

¹ “**Quebec Class Counsel**” means collectively, the law practices of Trudel Johnston & Lespérance s.e.n.c. (“**TJL**”), Kugler Kandestin s.e.n.c.r.l., L.L.P. (“**Kugler Kandestin**”), De Grandpré Chait s.e.n.c.r.l., L.L.P. (“**De Grandpré**”), and Fishman Flanz Meland Paquin s.e.n.c.r.l., L.L.P. (“**FFMP**”).

² *Fresco v Canadian Imperial Bank of Commerce*, 2024 ONCA 628 at [para 103](#) [*Fresco ONCA*].

³ This is particularly so given that the fee approval hearing is being conducted in English before an Ontario Court, which may impact the ability of the class members to participate in the hearing.

their actual fees, the issue before this Court is the reasonability of the fees on which Quebec Class Counsel are basing that premium and the appropriate premium to be applied. It's for this Court to determine at what point, even in 26 year long high-risk case, could counsel fees become unreasonable. Particularly, when those counsel fees operate to reduce class compensation.

6. Despite the submissions of Quebec Class Counsel to the contrary, the reasonability of this fee request must be assessed in light of mega-fund case jurisprudence.⁴ That jurisprudence makes it clear that class counsel fees must be decided on a case-by-case basis while accounting for risks incurred, the results achieved and the need to maintain the integrity of the profession. It also shows that Quebec Class Counsel's request is about 9 times the highest fees approved in mega-fund cases listed in Appendix "B" hereto.

7. Ultimately, it is within this Court's discretion to determine what is fair and reasonable. For the Court's consideration, these submissions highlight the following:

- (a) presumed validity approach for contingency agreements does not apply in mega-fund settlements. The focus is on the total dollar amount, which cannot be so large as to impact the integrity of the legal profession;
- (b) the lack of details and support for Quebec Class Counsel's hours and rates in the calculation of their claimed fees of \$214,653,500;
- (c) the lack of support for disbursements in the amount of \$46,598,926;

⁴ Recovery of over \$100 million.

(d) a canvas of mega-fund settlement jurisprudence shows Canadian courts having approved legal fees ranging from \$20 million to \$100 million in mega fund cases ranging from \$100 million to over \$23 billion; and

(e) reasonable class counsel fees should seek to achieve a proportional balance between class counsel fees and amount available for class members.

PART II - THE FACTS

A. The Quebec Class Actions

8. Quebec Class Counsel's evidence in support of their motion provides a history of the two class actions against the tobacco companies: *Conseil québécois sur le tabac et la santé et al. v JTI-Macdonald Corp. et al.* ("**Blais**") and *Cecilia Létourneau et al. v Imperial Tobacco Canada Ltd., et al.* ("**Létourneau**") (collectively, the "**Quebec Class Actions**"). These submissions do not intend to repeat that history.

9. On March 1, 2019, the Quebec Court of Appeal upheld the lower court's judgment awarding over \$13.5 billion, including interest, in compensation in the Quebec Class Actions.⁵

10. Later in March 2019, Rothmans, Benson & Hedges Inc. ("**RBH**"), Imperial Tobacco Canada Limited, Imperial Tobacco Company Limited (collectively ("**Imperial**") and JTI-Macdonald Corp. ("**JTIM**"), together with RBH and Imperial, the "**Tobacco Companies**") sought and were granted protection under the *Companies' Creditors*

⁵ *Imperial Tobacco Canada ltée c. Conseil québécois sur le tabac et la santé*, [2019 QCCA 358](#).

Arrangement Act (collectively, the “**CCAA Proceedings**”).⁶

B. Mediation and the CCAA Plans

11. This Court appointed, the Honourable Warren K. Winkler, K.C. as a mediator (the “**Mediator**”) to oversee a confidential mediation among the Tobacco Companies and the various claimants, including the plaintiffs in the Quebec Class Actions (the “**QCAPs**”), in the CCAA Proceedings.⁷

12. The affected creditors, including Quebec and the QCAPs, voted during meetings of creditors on the first amended and restated court-appointed Mediator’s and monitors’ CCAA plans for each of the Tobacco Companies (the “**CCAA Plans**”). The number of votes allocated to the QCAPs for voting purposes was 99,958, as an estimate of the class size.

C. Quebec Class Counsel Fee Request and Class Member Objections

13. Quebec Class Counsel are seeking compensation of \$906,180,000⁸ on legal fees in the amount of \$214,653,500 and disbursements of \$46,598,926. That is, a premium of \$644,927,574 on their fees.⁹

14. If Quebec Class Counsel’s request is approved, the settlement amount left for

⁶ Twenty-Fourth Report of the Monitor, Ernst & Young Inc. dated January 22, 2025 at para 1; Twenty-Third Report of the Monitor, Deloitte Restructuring Inc. dated January 22, 2025 at para 1; Twenty-Sixth Report of the Monitor, FTI Consulting dated January 22, 2025 (“**FTI 26th Report**”) at para 4.

⁷ FTI 26th Report at Appendix “A” (“Court-Appointed Mediator”).

⁸ Plus taxes.

⁹ The motion seeks approval of \$901,177,915, plus taxes, given a prior payment of \$5,002,085 from insurance settlements. QCAP Notice of Motion, QCAP Motion Record dated January 13, 2025 (“**QCAP MR**”), Tab 1 at para 6, footnote 1 and para 14.

direct distribution to class members will be less than \$3.2 billion.

15. Depending on the disease, eligible Blais class members are entitled to the following compensation:¹⁰

	Started smoking before 1976	Started smoking on or after 1976
Emphysema/COPD (GOLD Grade III or IV)	Up to \$30,000	Up to \$24,000
Lung Cancer	Up to \$100,000	Up to \$80,000
Throat Cancer	Up to \$100,000	Up to \$80,000

16. According to Quebec Class Counsel, 25,945 victims with lung/throat cancer and 17,704 victims with emphysema have already registered.¹¹ The eligible class members will receive prorated compensation if the remaining QCAP settlement left for distribution is not sufficient to fully compensate all eligible class members.¹²

17. After receiving notice of Quebec Class Counsel's fee request in December 2024, class members have expressed concerns regarding the quantum.¹³

18. According to Quebec Class Counsel, as of January 22, 2025, there are seven remaining unresolved objections.¹⁴ The concerns of the objectors include:

¹⁰ Amended and Restated Plan of Compromise of RBH ("**RBH Plan**"), Schedule N at s. 41.1.3; Amended and Restated Plan of Compromise of Imperial ("**Imperial Plan**"), Schedule K at s. 41.1.3; Amended and Restated Plan of Compromise of JTIM ("**JTIM Plan**"), Schedule N at s. 41.1.3.

¹¹ Affidavit of Philippe H. Trudel sworn January 22, 2025 ("**Second Trudel Affidavit**") at para 19; Quebec Class Action Administration Plan indicates approximately 100,000 Blais class members (RBH Plan, Schedule N at Appendix "A"; Imperial Plan, Schedule K at Appendix "A"; JTIM Plan, Schedule N at Appendix "A".)

¹² RBH Plan, Schedule N at s. 41.1.3; Imperial Plan, Schedule K at s. 41.1.3; JTIM Plan, Schedule N at s. 41.1.3.

¹³ Affidavit of Philippe H. Trudel sworn January 12, 2025, QCAP MR, Tab 3 ("**Trudel Affidavit**") at para 131. Mr. Trudel states that Quebec Class Counsel received a "few emails...expressing their concerns or questions regarding the amount of the fees requested".

¹⁴ Trudel Affidavit at para 132 and Schedule C; Second Trudel Affidavit at paras 6 and 13.

- (a) the hourly rate used to determine the straight-line billing value of the work;¹⁵
- (b) the \$46 million sought as disbursements, including \$34 million plus taxes for the claims administrator with “nothing in the document filed to justify this amount”;¹⁶
- (c) the “significant[] reduc[tion]” in the funds available for distribution;¹⁷ and
- (d) \$906 million “seem[ing] considerably high compared to the individual compensation that each member will receive”.¹⁸

PART III - ISSUES AND THE LAW

19. The issue before this Court is to determine a fair and reasonable fee for Quebec Class Counsel.

A. Assessing Quebec Class Counsel’s Request for Over \$900 million in Fees

i. Introduction

20. Quebec’s interest in this fee approval motion is two-fold. First, maximizing funds available for direct compensation to class members of the Quebec Class Actions. Second, it has an economic interest in the undistributed funds from the QCAP settlement.¹⁹ This

¹⁵ Second Trudel Affidavit at Exhibit A (paras 5 to 13).

¹⁶ Second Trudel Affidavit at Exhibit A (paras 14 to 15) and Exhibit E (“Can you give details...in particular the share allocated to future costs, including those relating to Proactio?”)

¹⁷ Second Trudel Affidavit at Exhibit E.

¹⁸ Second Trudel Affidavit at Exhibit E.

¹⁹ The value of the Quebec’s claim against the Tobacco Companies under its *Tobacco-related Damages and Health Care Costs Recovery Act* is over \$253 billion. Quebec is allocated a total amount of \$6.632 billion from the global settlement amount, with \$1.6 billion paid upfront and the remaining paid overtime. The

motion impacts those interests.

21. The fundamental principle underlying approval of Quebec Class Counsel Fee is that it must be fair and reasonable.²⁰ Courts apply a multi-factor approach in determining fair and reasonable compensation.²¹

22. As explained below, in mega-fund settlements, which are settlements above \$100 million,²² courts have adopted a case-by-case approach to determine fair and reasonable legal fees.²³ It's not the percentages or premiums in fee agreements but the actual dollar amount of approved legal fee that is the focus. While acknowledging the 26-year litigation period of the Quebec Class Actions, the risks incurred and the outcome, the mega-fund jurisprudence shows that the fee request is several orders of magnitude larger than amounts the courts have historically approved in other billion-dollar cases.

23. Quebec Class Counsel emphasize the “uniqueness” of the Quebec Class Actions. Uniqueness does not oust this Court’s role in ensuring that the approved fees are fair and reasonable in light of the existing jurisprudence. Fees ought to still be principled. This is not to say that fees of Quebec Class Counsel should not stretch the boundaries of fee approval jurisprudence in the context of this case, it is just a matter of how far that

settlement amount is approximately 3% of the total value of its claim. (RBH Plan at article 1.1 “Negative Notice Claim”; Imperial Plan at article 1.1 “Negative Notice Claim”; JTIM Plan at article 1.1 “Negative Notice Claim”).

²⁰ See for example, *The Cash Store Financial Services Inc., Re*, 2015 ONSC 7535 at [para 8](#); *Fresco v Canadian Imperial Bank of Commerce*, 2023 ONSC 3335 at [para 52](#) [*Fresco*], affirmed in *Fresco ONCA*; *A.B. v. Clercs de Saint-Viateur du Canada*, 2023 QCCA 527 [*A.B.*] at [paras 51 to 52](#).

²¹ *Fresco* at [para 54](#); *A.B.* at [paras 52 to 53](#).

²² *Brown v Canada (Attorney General)*, 2018 ONSC 3429 at [paras 51](#) and [56](#) [Brown]; *MacDonald et al v BMO Trust Company et al*, 2021 ONSC 3726 at [para 21](#) [*MacDonald*]; *Moushoom v Canada (Attorney General)*, 2023 FC 1739 at [para 4](#) [*Moushoom*].

²³ *Fresco ONCA* at [paras 23](#) and [89](#).

jurisprudence should be stretched.

ii. General Principles in Fee Approval Motions

24. The overarching test applicable to class counsel fees is that they are fair and reasonable in all the circumstances of the case.²⁴ The non-exhaustive list of factors that courts consider when assessing the reasonableness of the fees include:²⁵

- (a) the time spent and work done;
- (b) the factual and legal complexities of the matters dealt with;
- (c) the risk undertaken, including the risk that the matter might not be certified;
- (d) the monetary value of the matters in issue;
- (e) the degree of skill and competence demonstrated by class counsel;
- (f) the results achieved;
- (g) the expectations of the class as to the amount of the fees; and
- (h) the opportunity cost to class counsel in the expenditure of time in pursuit of the litigation and settlement.

25. Consideration of these factors is a matter of judicial discretion.²⁶ Discretion must be exercised after considering all the circumstances of the case.²⁷

²⁴ *Fresco* at [paras 52](#) and [73](#).

²⁵ *Brown* at [para 40](#); *Fresco* at [para 54](#).

²⁶ *Fresco ONCA* at [para 29](#).

²⁷ *Moushoom* at [para 108](#); *Fresco ONCA* at [para 50](#).²⁸ *Fresco ONCA* at [para 89](#); *Moushoom* at [paras 110](#) and [152](#).

iii. Fee Approvals in Mega-Fund Cases to Be Determined on a Case-By-Case Basis

26. Courts have emphasized that each mega-fund case turns on its own facts.²⁸ Similar to non-mega fund cases, courts take into account risks incurred and results achieved.²⁹ In particular, the concern about maintaining the integrity of the profession underlies the judicial approval of premium legal fees in mega-fund cases.³⁰

27. Courts have also questioned the use of multipliers for mega-fund cases.³¹ While there are reliability concerns, Courts have used them for limited cross-check purposes.³² In the end, the late Justice Belobaba observed in *MacDonald et al v BMO Trust Company et al*:³³

[32] The lesson from legal fee approvals in the billion-dollar settlements — one that also applies to this \$100 million settlement — is two-fold: (i) keep an eye on the actual dollar amount; and (ii) explain and justify the approved legal fee in a principled fashion that is consistent with comparable caselaw.

28. Quebec Class Counsel argue that mega-fund cases “are not applicable to the case at bar”, but provide little justification.³⁴ A case is considered “mega-fund” simply based on the amount recovered. If the recovery is over \$100 million, Canadian courts have

²⁸ *Fresco ONCA* at [para 89](#); *Moushoom* at [paras 110](#) and [152](#).

²⁹ *MacDonald* at [para 26](#).

³⁰ *MacDonald* at [paras 26 to 28](#); *Fresco ONCA* at [para 50](#).

³¹ *MacDonald* at [para 37](#); *Fresco* at [para 136](#); *Moushoom* at [para 102](#) referencing *Fresco ONCA* at [para 89](#).

³² *MacDonald* at [para 31](#).

³³ *MacDonald* at [para 32](#).

³⁴ Quebec Class Counsel Factum at para 27.

characterized it as a “mega-fund” case.³⁵ No other analysis is required to determine whether it’s a mega-fund case. In cases like this one, courts have relied on mega-fund jurisprudence.

29. In any event, the “reasons” that Quebec Class Counsel have provided do not support ousting the application of mega-fund cases.³⁶ A mega-fund case is “where the *judgment* or settlement amount is very large, that is, more than \$100 million”,³⁷ not just where there has been no determination on the merits. Quebec Class Counsel relies on *MacDonald* to assert that mega-fund cases often piggy-back on other settlements. In *MacDonald*, a case where Justice Belobaba relied on mega-fund jurisprudence, the plaintiff “did not piggy-back on parallel U.S. proceedings”.³⁸ Instead, it discovered a problem and class counsel “embarked on a hard-fought 15-year litigation that involved a difficult summary judgment motion.”³⁹

30. Undoubtedly, Quebec Class Counsel incurred risks and achieved great results for Quebec class members. At the same time, this Court ought to be careful in accepting the claimed recorded legal fees, approving their contingency fee agreements and applying the percentage therein.

³⁵ In *Moushoom*, Justice Aylen described “mega-fund settlement” as a “term used to describe class settlements where the amount of recovery is in excess of \$100 million.” ([para 4](#)); Also see, *MacDonald* at [paras 2](#) and [21](#), *Fresco ONCA* at [para 23](#) and *Brown* at [para 47](#).

³⁶ Quebec Class Counsel’s four reasons include: (i) “virtually all mega-fund cases settle before a trial on the merits”; (ii) “it is impossible to know how well the plaintiff would have fared had the proceedings been adjudicated on the merits”; (iii) court’s lack of information as to class representative’s ability to determine reasonableness of the fee when the retainer was signed; and (iv) mega-fund cases are often piggy-backed on other actions” (Quebec Class Counsel Factum at para 27)

³⁷ *Brown* at [para 47](#). [emphasis added]

³⁸ *MacDonald* at [para 20](#).

³⁹ *MacDonald* at [para 20](#).

(1) Integrity of the Profession and Contingency Fees Agreement

31. Courts, especially in mega-fund cases, do not simply rely on the percentage provided in the contingency agreement. They scrutinize the legal fees sought to maintain the integrity of the profession. The Ontario Court of Appeal in *Fresco v Canadian Imperial Bank of Commerce* affirmed that class counsel fees in mega-fund cases should not necessarily be awarded on the basis of contingency percentage.⁴⁰ The total dollar amount or premium cannot be so large such that it impacts the integrity of the legal profession.⁴¹ It upheld Justice Perell’s decision to reduce the requested fees from \$44 million to \$25 million in a 16-year litigation.⁴²

32. Quebec Class Counsel are asking this Court to apply the presumptive validity approach to contingency fee agreements.⁴³ However, the law is clear that the presumptive validity approach used in cases like “*Cannon* should *never* be used in the mega-fund case”⁴⁴ as the percentage-based fee is likely to result in inappropriate windfall to counsel.⁴⁵ As Justice Perell noted in *Fresco*, caselaw shows that the “percentage spelled out in the contingency fee agreement can lose its relevancy as the...settlement fund...increases.”⁴⁶

33. Quebec Class Counsel rely on the *New Brunswick v Rothmans Inc*⁴⁷ case in support

⁴⁰ *Fresco ONCA* at [para 23](#).

⁴¹ *Fresco ONCA* at [para 23](#).

⁴² *Fresco* at [paras 5 to 7](#).

⁴³ Quebec Class Counsel Factum at paras 10, 21 and 22.

⁴⁴ *Brown* at [para 56](#) and [46](#) [emphasis added]; see also *Moushoom* at [para 91](#); *MacDonald* at [para 21](#); *Fresco* at [para 117](#); *Fresco ONCA* at [para 91](#).

⁴⁵ *Moushoom* at [para 97](#); *Fresco* at [para 117](#) citing *MacDonald* at [para 22](#).

⁴⁶ *Fresco* at [para 116](#), affirmed in *Fresco ONCA* at [para 91](#).

⁴⁷ [2009 NBQB 198](#) [*New Brunswick*].

of their argument that their retainer agreement is presumed to be valid. The *New Brunswick* decision, which is not a class action case nor is it a fee approval case, does not change the law created by the line of jurisprudence that there is no presumed validity for retainer agreements in mega-fund cases. Furthermore, the overarching issue in the *New Brunswick* case was whether the New Brunswick government could enter into a contingent fee agreement, which was entered into after an RFP process. The agreement was in connection with the government's claim against the Tobacco companies for healthcare costs recovery. The defendants in that case challenged the constitutionality, legality, and ethical integrity of the retainer.⁴⁸ None of these issues are at all relevant here.

34. Instead of contingency fees agreements, the focus in this case should be on actual fees incurred to determine whether they are reasonable. Once the appropriate amount of actual fees is established, the Court retains the discretion to adjust the fees by approving a premium that incentivizes class counsel to take on risks actions and to achieve good results but that is fair and reasonable while maintaining the integrity of the profession.⁴⁹

(2) Concerns Regarding the Actual Fees of Over \$200 Million

35. Time spent and work done is one of the factors courts consider in approving legal fees.⁵⁰ The onus is on class counsel to establish reasonableness of their actual fees, including hours.⁵¹

36. The Federal Court aptly cautioned in *Moushoom* that “[t]o accept at face value the

⁴⁸ *New Brunswick* at [paras 2](#) and [121](#).

⁴⁹ *Moushoom* at [para 104](#).

⁵⁰ *Brown* at [para 40](#); *A.B.* at [para 52](#).

⁵¹ *Moushoom* at [para 118](#); Also see *Brown* at [para 57](#).

amount of recorded hours, as well as hourly rates, without any level of scrutiny would be to abdicate the Court's supervisory jurisdiction."⁵²

37. Ontario Judges have similarly emphasized the importance of evidence in support of invested time and money. Justice Belobaba in *Brown*, while analyzing risks incurred, indicated that "class counsel will be required to produce evidence of the time and money invested - with the court making appropriate adjustments in the docketed time for over-lawyering, higher than reasonable hourly rates, duplication, and docket-padding."⁵³ As Justice Raikes observed in *Allott v Panasonic Corporation*⁵⁴ "[i]t is helpful for the court to see a fair statement of the time expended and the value of that time to measure the extent to which there is any premium paid".⁵⁵

38. This does not mean this Court should conduct a forensic analysis of the professional fees incurred. However, this Court has an obligation to determine that the fees are reasonable.

39. In *Moushoom*, Justice Aylen expressed concerns regarding the number of recorded hours, which were driven by lack of detail provided by class counsel regarding the breakdown of their 24,000 hours.⁵⁶ Although the Judge ultimately accepted the hours, Her Honour cautioned that the Court expects a "great rigour to be applied by Class Counsel" in establishing reasonableness.⁵⁷ Justice Aylen further noted that "[c]lass actions cannot be an open-ended invitation for class counsel to docket their time" given that there is no

⁵² *Moushoom* at [para 117](#).

⁵³ *Brown* at [para 57](#).

⁵⁴ [2022 ONSC 193](#) [*Allott*]

⁵⁵ *Allott* at [para 7](#). In *Allott*, Justice Raikes found that the hourly rates used by counsel were grossly excessive.

⁵⁶ *Moushoom* at [para 119](#).

⁵⁷ *Moushoom* at [para 120](#).

client “who will scrutinize their dockets in the same manner than a traditional paying client would do.”⁵⁸

40. Quebec Class Counsel submit that they devoted 211,849 hours with a straight-line billing value of \$214,653,500. They have the burden of proof to establish reasonableness.

a. Quebec Class Counsel’s Claimed Hours

41. Quebec Class Counsel claim 203,849 hours were devoted up to January 10, 2025.⁵⁹ They expect to further record 8,000 hours, with 3,000 hours recorded between January 10, 2025 and plan implementation date and remaining 5,000 hours to assist with claims administration.⁶⁰ Accordingly, Quebec Class Counsel claim total numbers of hours recorded and expected to record in the amount of 211,849.

42. Quebec Class Counsel submit that “over 140 legal professionals” recorded their time on the Quebec Class Actions.⁶¹ For the over 140 legal professionals, the Quebec Counsel are seeking approximately \$6 million per capita in fees.⁶²

⁵⁸ *Moushoom* at [para 120](#). This concern is reflected in Philippe H. Trudel’s statement that “[t]here is no incentive to work unnecessary hours and strong reasons to solve problems efficiently. At the same time, we regularly and unapologetically invest vastly more time in cases than could ever be justified on a billable-hours model because that is what it takes to win.” (Trudel Affidavit at para 58) Like *Moushoom*, in *Fresco*, Justice Belobaba’s (who approved the settlement) inquiry into the reported fees resulted in class counsel undertaking a “detailed ‘sharp pencil’ review of their dockets and prepared additions submission in support of their fees.” ([para 42](#)) Class counsel reported expending \$16.52 million in straight time over the 16-year period with a further \$1 million expected in future expense to see the case through. While Justice Perell was sceptical about the devoted fees, he accepted \$16.5 million for purposes of fee approval and reduced the requested fees by close to 50% from the \$44 million requested to \$25 million.

⁵⁹ Trudel Affidavit at para 65.

⁶⁰ Trudel Affidavit at paras 67 to 68.

⁶¹ Affidavit of Bruce W. Johnston sworn January 13, 2025, QCAP MR, Tab 2 (“**Johnston Affidavit**”) at para 63; Out of the “over 140 legal professionals”, Quebec Class Counsel identify by name 140 of these professionals and the years of call for 132 of them.

⁶² The total fees request of \$906,180,000 net of \$46,598,926 to cover for past and future expenses resulting in \$859,581,074 for legal fees. \$859,581,074 spread across 140 legal professionals is \$6,139,864.81 per professional.

43. Other than showing the allocation of cumulative hours of 203,849 by each firm,⁶³ Quebec Class Counsel's evidence lacks details.⁶⁴ Specifically, the evidence:

- (a) does not provide the total value of hours allocated to each firm;
- (b) does not provide breakdown of the hours allocated to each firm by time period;
- (c) does not provide the hours recorded by each lawyer, on a cumulative or any other basis;⁶⁵
- (d) no general description or summary of the work undertaken by each legal professional is included;⁶⁶ and
- (e) no particulars regarding length of each lawyer's involvement.

44. With respect to the expected 8000 hours, there is no breakdown of the hours or particulars of the work to be done. This request is made in parallel with claiming over \$34 million, plus taxes, as expenses for services of Proactio, a division of Raymond Chabot Administrateur Provisoire Inc. ("**Proactio**") in respect of claims administration process to be completed within 12 months.⁶⁷

b. No Evidence of Hourly Rates

45. Quebec Class Counsel's evidence in support of their hourly rates is effectively

⁶³ Trudel Affidavit at para 65.

⁶⁴ The evidence before this Court is that the three primary lawyers from Quebec Class Counsel "never recorded [their] time with much detail in this particular case". (Trudel Affidavit at para 60)

⁶⁵ Quebec Class Counsel provide total hours information for some of the lawyers.

⁶⁶ Quebec Class Counsel provide overall summary of work undertaken by some of the over 140 legal professionals who worked on the Quebec Class Actions.

⁶⁷ Trudel Affidavit at para 106; Affidavit of Andre-H. Dandavino dated January 9, 2025, QCAP MR, Tab 4 ("**Dandavino Affidavit**") at para 52.

non-existent.⁶⁸ The straight-line billing value in the amount of \$214,653,500⁶⁹ is based on applying what Quebec Class Counsel describes as a reasonable rate of \$1,150 per hour as the “Senior Lawyer Rate” and \$550 per hour as the “Associate Rate” for all hours recorded since 1998.⁷⁰ In particular, Quebec Class Counsel’s evidence includes:

- (a) no description of who is considered the “Senior Lawyer” and the average experience of the “Associate”;
- (b) no basis provided for \$1,150 per hour other than in Mr. Trudel’s experience “**since the 1990s**, highly regarded senior litigators in Montreal acting in significant litigation and/or complex insolvency mandates charged between \$1,150 and \$1,500 per hour”;⁷¹
- (c) no basis for the blended rate of \$550 for the Associate other than Mr. Trudel’s statement that the rate “represents a fair and reasonable proxy for the billing value of the time devoted and yet to be devoted”;⁷² and
- (d) no particulars of the hourly rates charged by the “over 140 professionals” over the years and in fact, none of the lawyers who swore affidavits in support of the motion have given any evidence on their own hourly rates.⁷³

46. In response to a class member opposing the hourly rates used to determine the

⁶⁸ As explained below, despite Quebec’s request, Quebec Class Counsel have declined to share requested information in support of their claimed hours and fees.

⁶⁹ Trudel Affidavit at para 74.

⁷⁰ Trudel Affidavit at paras 72 to 74. Quebec Class Counsel applied the Senior Lawyer Rate of \$1,150 to 75% of the total hours of work from 1998 up to January 11, 2025. The trial before the Quebec Superior Court commenced in 2012.

⁷¹ Trudel Affidavit at para 72. [emphasis added]

⁷² Trudel Affidavit at para 73.

⁷³ In recent Quebec Superior Court decisions, class counsel has provided evidence on their hourly rates. For example, in *Consumer Option c. Minebea Mitsumi inc.*, 2022 QCCS 1792 at [para 101](#) and *Simard c. Apple Canada Inc.*, 2023 QCCS 4464 at [para 49](#).

straight-line billing value,⁷⁴ Quebec Class Counsel submitted double hearsay evidence regarding the hourly rate claimed by representative counsel for the Pan-Canadian Claimants (the “PCCs”), Raymond Wagner⁷⁵ rather than direct evidence as to Quebec Class Counsel’s actual rates.

47. The rates purportedly charged by PCC representative counsel have not been subjected to any scrutiny and are not a proxy for the hourly rates that Quebec Class Counsel have used for litigation commenced in 1998. Moreover, Quebec fee approval decisions involving Quebec Class Counsel firms such as TJJ and Kugler Kandestin suggest much lower hourly rates than the ones used in this case:

(a) In the 2024 case of *Carriere*, Kugler Kandestin spent 2,050 hours with a value of \$1,127,000.⁷⁶ This suggests an average hourly rate of approximately \$550.

(b) In the 2020 case of *Gallone*,⁷⁷ André Lespérance (called to the bar 1983), Clara Poissant- Lespérance (called to the bar in 2015)⁷⁸ and Marianne Lespérance (called to the bar in 2019)⁷⁹ appeared on behalf of TJJ to obtain approval of their fees. TJJ had devoted 4,000 for a value of more than \$1.9 million⁸⁰ suggesting average hourly rate of \$475. All of the three lawyers who appeared in this case have devoted hours to the Quebec Class Actions.

⁷⁴ Second Trudel Affidavit at Exhibit A (paras 5 to 13).

⁷⁵ Second Trudel Affidavit at Exhibit C; RBH Plan, s. 1.1 “PCC Representative Counsel”.

⁷⁶ *Carriere c. Gen Digital Inc. (Symantec Corporation)*, 2024 QCCS 819 at [para 47](#) [*Carriere*].

⁷⁷ *Gallone c. Attorney General of Canada*, [2020 QCCS 5106](#) [*Gallone*].

⁷⁸ Trudel Affidavit at para 51.

⁷⁹ Trudel Affidavit at para 51.

⁸⁰ *Gallone* at [para 10](#).

48. In their factum, Quebec Class Counsel submit that “[a]s appears from the Trudel Affidavit, most of the hours devoted by Quebec Class Counsel were firms that do not use the hourly-rate model nor charge their clients hourly rates for the work of their lawyers”.⁸¹ TJJ, at least in the early years, took on commercial and civil litigation work and even in the mid-2000s they were billing by the hour.⁸² FFMP’s business model does not include acting on contingency.⁸³ Kugler Kandestin has lawyers that work on “both hourly and contingency basis”.⁸⁴

c. Difficulty in Assessing Reasonableness Due to Lack of Details

49. The lack of details makes it difficult to assess the reasonableness of the information included in Quebec Class Counsel’s evidence. This is reflected in, for example, when considering the fees information about the insolvency firms, as explained below.

50. Mr. Dandavino stated in his affidavit that “professional fees incurred to date and to be incurred by firms specializing in bankruptcy, insolvency and arrangements under the CCAA exceed \$90 million.”⁸⁵

51. The two insolvency firms are FFMP and Chaitons. On Mr. Dandavino’s evidence, the fees allocated among the two firms is over \$90 million. Chaitons is owed \$1,843,539.10 as of September 2024.⁸⁶ This leaves \$88,156,460.9 million allocated to

⁸¹ Quebec Class Counsel Factum at footnote 19.

⁸² Trudel Affidavit at para 38.

⁸³ Johnston Affidavit at para 282.

⁸⁴ Affidavit of Gordon Kugler sworn January 10, 2025, QCAP MR, Tab 7 (“**Kugler Affidavit**”) at para 17

⁸⁵ Dandavino Affidavit at para 74. The contingency fee agreement in this case was amended in 2017 to increase the percentage from 20% to 22%. The 2% increase were “solely for the services of firms specializing in bankruptcy, insolvency and arrangements under the CCAA” (Dandavino Affidavit at Schedule C, p. 3).

⁸⁶ Trudel Affidavit at para 99.

FFMP. Avram Fishman from FFMP has submitted, without any particulars, that FFMP has around \$90,000 in disbursements.⁸⁷ This implies that the legal fees for FFMP is \$88,066,460.9.

52. Mr. Trudel suggests that the \$90 million for “professional fees incurred to date and to be incurred by firms specializing in bankruptcy, insolvency and arrangements” includes Proactio’s fees of \$34,551,703.⁸⁸ For this analysis, it is assumed that fees for Proactio, a class action claims administration firm, is a firm “specializing in bankruptcy, insolvency and arrangements”. Consequently, legal fees for FFMP are approximately \$53,514,757.90.

53. Mr. Fishman’s evidence is that FFMP has played a role as Quebec Class Counsel team for over a decade.⁸⁹ Prior to the commencement of the CCAA Proceedings around 6 years ago, FFMP’s involvement was as follows:

- (a) in late 2013 FFMP provided an opinion on judgment rendered on a motion in the Quebec Class Actions to prohibit JTIM from making certain payments;⁹⁰
- (b) in 2014, FFMP was asked to provide an opinion on the hypothetical question as to whether the Tobacco Companies could file for insolvency protection;⁹¹
- (c) Just before the release of the Quebec court decision in 2015, FFMP was

⁸⁷ Affidavit of Avram Fishman sworn January 12, 2025, QCAP MR, Tab 8 (“**Fishman Affidavit**”) at para 25.

⁸⁸ Trudel Affidavit at paras 79 and 106.

⁸⁹ Fishman Affidavit at para 9.

⁹⁰ Fishman Affidavit at para 26.

⁹¹ Fishman Affidavit at para 28.

provided a draft of the judgment, which they reviewed, and provided opinions on “insolvency-related questions”;⁹² and

(d) After issuance of the 2015 judgment, FFMP filed certain proofs of claim on behalf of the QCAPs in proceedings of Tobacco Companies’ insurers and participated in negotiations with certain insurers.⁹³

54. The above suggests that the large portion of the over \$53 million in legal fees were likely incurred after the commencement of the CCAA Proceedings. Assuming that 25% of FFMP’s work pre-dates the insolvency proceeding in March 2019, Quebec Class Counsel’s evidence would suggest that over the last 6 years FFMP has recorded more than \$6.6 million per year in fees.

55. Mr. Fishman provides that FFMP has devoted 23,787 hours of professional time.⁹⁴ Although Mr. Fishman does not provide a breakdown of hours for each of the 18 current and former lawyers that he says were involved, he does provide hours for himself and two other members of FFMP who were responsible for the QCAP mandate.⁹⁵ Among the 3 of them, they were responsible for over 75% of the hours.⁹⁶ Roughly, 75% of over \$6.6 million is over \$5 million per year in the last 6 years allocated to three Montreal based lawyers on one mandate.

56. Finally, Quebec Class Counsel’s claim for “past and future costs or disbursements”

⁹² Fishman Affidavit at para 29.

⁹³ Fishman Affidavit at paras 42 and 47.

⁹⁴ Fishman Affidavit at para 22.

⁹⁵ Fishman Affidavit at paras 23 to 24.

⁹⁶ The total hours are 23,787, with 17,909 hours allocated to three lawyers.

is the amount of \$46,598,926.⁹⁷ The \$46 million includes \$34,551,704, plus taxes in connection with services of Proactio in respect of claims administration, that will take 12 months to complete.⁹⁸ There are no supporting documents for any of the disbursements claimed, including no estimates, invoices or agreements.⁹⁹

57. In order to properly assess Quebec Class Counsel's fee, counsel for Quebec requested a summary of hours and rates of each fee biller on an annualized basis and a breakdown of the over \$46 million in expenses, including copies of any invoices. Quebec Class Counsel declined to provide this information on the basis that they are "not required to prepare, nor to provide [Quebec] additional documentation". Quebec Class Counsel indicated that the requisite materials have been provided to Chief Justice Morawetz to determine fairness and reasonableness.¹⁰⁰

58. As described above, Quebec Class Counsel's evidence lacks sufficient details to allow this Court to assess reasonability and fairness of their requested fees.

(3) Range of Fees Approved in Other Mega-Fund Cases

59. Ultimately, the focus of this Court should be whether legal fees in the amount of over \$900 million should be approved in this mega-fund case. Justice Belobaba emphasized in *MacDonald* that the primary focus in mega-fund settlements is the actual dollar amount of the approved legal fee, not percentages or multipliers.¹⁰¹ His Honour

⁹⁷ Johnston Affidavit at para 33; Trudel Affidavit at para 110.

⁹⁸ Dandavino Affidavit at para 52.

⁹⁹ Class members have expressed similar concerns. Second Trudel Affidavit at Exhibit A (paras 14 to 15) and Exhibit E ("Can you give details...in particular the share allocated to future costs, including those relating to Proactio?")

¹⁰⁰ See **Appendix "A"** for a copy of the correspondence.

¹⁰¹ *MacDonald* at [para 28](#).

further observed:¹⁰²

[29] It is evident from a survey of the mega-settlement decisions that the judge's approval of class counsel's legal fees, although certainly driven by an analysis of risks and results, is ultimately determined with an eye on the final dollar amount. The approved dollar amount is kept within appropriate bounds by using multipliers and fee/recovery ratios or percentages as cross-checks and guard-rails.

60. While recognizing that each case turns on its own facts, Canadian courts have approved legal fees ranging from \$20 million to \$100 million in mega fund cases ranging from \$100 million to over \$23 billion, as summarized in **Appendix “B”**.¹⁰³ Quebec Class Counsel Fee request of over \$900 million is about 9 times the highest fees approved in the cases mentioned below.

61. In *MacDonald*, while reviewing billion-dollar settlements, Justice Belobaba observed the consistency judges had achieved in using fee/recovery ratio and concluding that a 3 to 5 percentage was acceptable.¹⁰⁴

(4) The Risk Factor and Financial Impact

62. There is no doubt that Quebec Class Counsel assumed immense risk in commencing and successfully prosecuting the Quebec Class Actions, including the risk of non-payment. In assessing risks, Justice Belobaba in *MacDonald* explained that for risk incurred to be a meaningful analytical tool, “judges must go beyond a formulaic recitation of the well-known catalogue of ‘risks’ (such as, for example, risk of losing the certification motion) and assess the nature and extent of the actual financial impact on the particular

¹⁰² *MacDonald* at [para 29](#).

¹⁰³ Some of the cases in Appendix B are referred to in *MacDonald* at [paras 30](#) and [34](#).

¹⁰⁴ *McDonald* at [para 33](#).

class counsel firm.”¹⁰⁵

63. In *MacDonald*, class counsel had not presented any hard evidence on actual financial impact on the firm.¹⁰⁶ In this case, Quebec highlights the following for this Court’s consideration:

- (a) although not a relatively significant amount, the FAAC provided almost \$7 million in financing, which impacts the risk incurred;
- (b) it is unclear whether its TJL’s business model or from the impact of the Quebec Class Actions that TJL’s \$2.5 million line of credit has been at limit several times over the last three years; and
- (c) there is abundant evidence of TJL’s approach of taking difficult cases and getting results in those cases. Mr. Trudel highlights some of the successes of his firm, including class action judgments in the amount of \$13 million, over \$200 million, \$220 million and settlements of \$24 million and over \$54 million.¹⁰⁷ That is, while TJL was litigating the high-risk Quebec Class Actions, they were also winning other class actions and receiving costs and disbursements awards.¹⁰⁸ These commendable successes also highlight Justice Perell’s following observation in *Fresco*:¹⁰⁹

[113] The metaphor of "betting the farm" was a notion developed in the early days of class proceedings when it was accepted that law firms could or would fold if they lost a high risk class action. This

¹⁰⁵ *MacDonald* at [para 41](#).

¹⁰⁶ *MacDonald* at [para 42](#).

¹⁰⁷ Johnston Affidavit at para 327.

¹⁰⁸ Justice Perell made a similar observation in *Fresco* at [para 114](#).

¹⁰⁹ *Fresco* at [para 113](#).

plight may have been true thirty years ago, but since then the high majority of class actions are certified, and since then by careful selection of their high risk cases, class action firms have won more farms than they have lost.

(5) The Results Achieved and Class Member Recovery

64. There is no disputing Quebec Class Counsel's success before the Quebec Superior Court and the Quebec Court of Appeal in the Quebec Class Actions.

65. While acknowledging the success, the nature of this settlement is such that the size of class counsel fee operates to reduce the funds available for class members. The Ontario Court of Appeal in *Fresco ONCA* held that Justice Perell's decision of approving \$25 million in fees instead of the requested \$44 million achieved proportionality between fees and class member recovery, a particularly important principle in mega-fund cases:¹¹⁰

[72] Importantly, the motion judge's finding also achieved a fair and proportional balance between class counsel fees and the class settlement fund. Such proportionality serves to protect the integrity of the profession in the face of a request by class counsel that, by its nature, operates to reduce the funds available for class members. This is a particularly important principle in the context of mega-fund settlements and supports the objectives that animate the *Class Proceedings Act*.

66. Here, if Quebec Class Counsel's compensation of \$906,180,000 is approved, the amount available for direct distribution to class will be reduced to less than \$3.2 billion. In that case, the premium on Quebec Class Counsel's claimed fees of \$214,653,500 will be \$644,927,574 after excluding past and future expenses in the amount of \$46,598,926. On the other hand, over 75 thousand persons are already registered to receive information

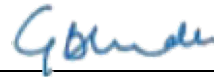
¹¹⁰ *Fresco ONCA* at [para 72](#).

about the Quebec Class Actions, with close to 44 thousand appearing to be putative Blais class members.¹¹¹ The reduction in funds available for distribution could have a meaningful impact on victim compensation.

67. The class members that have objected to the quantum have raised proportionality concerns noting that the requested fee will result in “significant[] reduc[tion]” in the funds available for distribution;¹¹² and \$906 million is “considerably high compared to the individual compensation that each member will receive”.¹¹³

68. Based on the jurisprudence discussed above, this Court’s finding on the fair and reasonable class counsel fee amount should strike to achieve a proportional balance between class counsel fees and amount available for class members. This will serve to protect the integrity of the profession.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of January, 2025.



Brett Harrison/Tushara
Weerasooriya/Guneev Bhinder
McMillan LLP

Lawyer for the Attorney General of Quebec

¹¹¹ Second Trudel Affidavit at paras 18 to 19.

¹¹² Second Trudel Affidavit at Exhibit E.

¹¹³ Second Trudel Affidavit at Exhibit E.

SCHEDULE “A”
LIST OF AUTHORITIES

1. *Fresco v Canadian Imperial Bank of Commerce*, [2024 ONCA 628](#)
2. *Imperial Tobacco Canada ltée c. Conseil québécois sur le tabac et la santé*, [2019 QCCA 358](#)
3. *The Cash Store Financial Services Inc., Re*, [2015 ONSC 7535](#)
4. *Fresco v Canadian Imperial Bank of Commerce*, [2023 ONSC 3335](#)
5. *A.B. v. Clercs de Saint-Viateur du Canada*, [2023 QCCA 527](#)
6. *Brown v Canada (Attorney General)*, [2018 ONSC 3429](#)
7. *MacDonald et al v BMO Trust Company et al*, [2021 ONSC 3726](#)
8. *Moushoom v Canada (Attorney General)*, [2023 FC 1739](#)
9. *New Brunswick v. Rothmans Inc.*, [2009 NBQB 198](#)
10. *Allott v. Panasonic Corporation*, [2022 ONSC 193](#)
11. *Consumer Option c. Minebea Mitsumi Inc.*, [2022 QCCS 1792](#)
12. *Simard c. Apple Canada Inc.*, [2023 QCCS 4464](#)
13. *Carriere c. Gen Digital Inc. (Symantec Corporation)*, [2024 QCCS 819](#)
14. *Gallone c. Attorney General of Canada*, [2020 QCCS 5106](#)
15. *Tataskweyak Cree Nation v. Canada (Attorney General)*, [2021 FC 1442](#)
16. *Tk'emlúps te Secwépemc First Nation v. Canada*, [2023 FC 357](#)
17. *Quenneville v. Volkswagen*, [2017 ONSC 3594](#)
18. *McLean v. Canada (Attorney General)*, [2019 FC 1077](#)
19. *Percival v. Canada*, [2024 FC 2098](#)
20. *Baxter v. Canada (Attorney General)*, [2006 CanLII 41673 \(ON SC\)](#)
21. *Endean v. Canadian Red Cross Society*, [2000 BCSC 971](#)
22. *Adrian v. Canada (Minister of Health)*, [2007 ABQB 377](#)

23. *Manuge v. Canada*, [2013 FC 341](#)
24. *Pro-Sys Consultants Ltd. v Microsoft Corporation*, [2018 BCSC 2091](#)
25. *Green v CIBC*, [2022 ONSC 373](#)
26. *CIBC v. Deloitte & Touche*, [2017 ONSC 5000](#)
27. *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation*, [2014 ONSC 62](#)
28. *Drywall Acoustic Lathing and Insulation Local 675 Pension Fund (Trustees of) SNC-Lavalin Group Inc.*, [2018 ONSC 6447](#)

APPENDIX – “A”
EMAIL CORRESPONDENCE BETWEEN COUNSEL

From: Mark Meland <mmeland@ffmp.ca>
Sent: Wednesday, January 15, 2025 3:46 PM
To: Brett Harrison
Cc: Tina Silverstein; André Lespérance; Éric Cantin (eric.cantin@justice.gouv.qc.ca); Tushara Weerasooriya; Guneev Bhinder
Subject: Re: In the Matter of the Plans of Compromise or Arrangement of JTI-Macdonald Corp., Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited, and Rothmans, Benson & Hedges Inc.

[EXTERNAL/EXTERNE]

Mr. Harrison

We acknowledge receipt of your email dated January 14, 2025 at 4:53 pm.

We have provided Chief Justice Morawetz with the requisite materials to enable him to determine the fairness and reasonableness of the legal fees which he is being asked to approve in conformity with the CQTS Retainer Agreement. In that connection, affidavits of senior lawyers from each of the four Quebec Class Counsel firms have been provided.

We are not required to prepare, nor to provide you with, additional documentation and we respectfully decline to do so.

Yours truly,

Mark E. Meland

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E: mmeland@ffmp.ca



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On Tue, Jan 14, 2025 at 4:53 PM Brett Harrison <Brett.Harrison@mcmillan.ca> wrote:

Ms. Silverstein,

We act for the Province of Quebec and write in respect of the Motion for Approval of the Quebec Class Counsel Fee, returnable on January 29, 2025. In your Notice of Motion you state the following facts as grounds for your motion:

- a. As of January 10, 2025 Quebec Class Counsel (through the involvement of about 140 lawyers and paralegals) have devoted 203, 849 hours of professional time (para. 12).
- b. Quebec Class Counsel will devote at least an additional 8,000 hours between January 10, 2025 and the end of the Quebec Class Action Administration Plan (para. 12).
- c. The straight-line billing value of the total past and future estimated hours, or 211,849 hours, amounts to at least \$214,653,500 (para. 13).
- d. The aggregate litigation costs paid by the Quebec Class Counsel as well as contingent and future expenses total at least \$46,598,926 (para. 14).

In order to properly analyze and respond to your motion we would ask that you provide the following information:

- a. A summary of the hours and rates of each fee biller on an annualized basis for the 203,849 hours claimed, in a form similar to the below.

2010		
Lawyer Name (year of call)	Hourly Rate	Hours Billed
Lawyer A (19##)	\$#	#
Lawyer B (20##)	\$#	#
2011		
Lawyer Name (year of call)	Hourly Rate	Hours Billed
Lawyer A (19##)	\$#	#
Lawyer B (20##)	\$#	#

- b. A similar breakdown of the additional 8,000 hours estimated to the end of the Quebec Class Action Administration Plan.
- c. A detailed breakdown of the \$46,598,926 in litigation costs, including copies of any invoices for such costs.

In order to respond in the time provided in the litigation timetable approved by the court we require this information by no later than 5 pm on January 15, 2024.

Please let us know if you have any questions regarding the above.



Brett Harrison

Partner

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From: Tina Silverstein <tsilverstein@ffmp.ca>

Sent: Monday, January 13, 2025 3:53 PM

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Subject: In the Matter of the Plans of Compromise or Arrangement of JTI-Macdonald Corp., Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited, and Rothmans, Benson & Hedges Inc.

[EXTERNAL/EXTERNE]

To the Common Service List:

Please find attached the Motion Record in respect of the Motion for Approval of the Quebec Class Counsel Fee, returnable on January 29, 2025, which is hereby served upon you pursuant to the *Rules of Civil Procedure*, the E-Service Guide of the Commercial List, and the Common Service Protocol approved in this matter by Endorsement of Justice McEwen dated June 26, 2019.

Yours truly,

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**APPENDIX – “B”
CHART CANVASSING MEGA-FUND FEE APPROVALS¹¹⁴**

Case	Recovery	Court Approved Fees	Fees as % of Recovery	Length of Litigation	Disbursements¹¹⁵
<i>Moushoom v. Canada (Attorney General)</i> , 2023 FC 1739	\$23,343,940,000	\$40,000,000 ¹¹⁶	0.171%	17 years	Excluded (\$642,000.00)
<i>Tataskweyak Cree Nation v. Canada (Attorney General)</i> , 2021 FC 1442	\$7,800,000,000 ¹¹⁷	\$58,000,000 ¹¹⁸	4.03%	2 years	Included
<i>Tk'emlúps te Secwépemc First Nation v. Canada</i> , 2023 FC 357	\$2,800,000,000	\$20,000,000 ¹¹⁹	0.714%	13 years	Included
<i>Quenneville v. Volkswagen</i> , 2017 ONSC 3594	\$2,100,000,000	\$31,200,000 ¹²⁰	1.49%	2 years	Included (just under \$1 million)
<i>McLean v. Canada (Attorney General)</i> , 2019 FC 1077	\$2,000,000,000	\$62,000,000 ¹²¹	2.75%	3 years	Included

¹¹⁴ This table does not include the Federal Court decision in *Manuge v Canada*, [2024 FC 68](#) as the settlement structure in that case is not analogous to the one at hand. The settlement amount was for up to \$817.3 million. The class comprised of approximately 333,711 members. The class members fell into two groups. For one group, the defendants made automatic payments and the class counsel fee was deducted on a pro rata basis from each claimant. For that group, the total fee estimate was \$66.4 million to be paid as class members were paid. For the second group, the class counsel had to locate claimants who had to proactively make a claim. Their fee would then be deducted from each paid claim.

¹¹⁵ This column reflects whether disbursements were included in the amount listed in “Court Approved Fees” column or approved in addition to the Court Approved Fees.

¹¹⁶ To be paid by the defendant and not deducted from the settlement fund.

¹¹⁷ This amount represents a \$1.438 billion dollar Trust Fund for the Class, a \$50 million Specified Injuries Compensation Fund for injuries suffered by the Class, a \$400 million First Nations Economic and Cultural Restoration Fund, and \$6 billion in prospective relief.

¹¹⁸ This amount includes \$5,000,000 for ongoing fees. To be paid by the defendant and not deducted from the settlement fund.

¹¹⁹ To be paid by the defendant and not deducted from the settlement fund.

¹²⁰ To be paid by the defendant and not deducted from the settlement fund.

¹²¹ Fee approved in the amount of \$55 million plus \$7 million for future legal fees. Any remaining balance from the \$7 million to be paid over to the Legacy Fund.

Case	Recovery	Court Approved Fees	Fees as % of Recovery	Length of Litigation	Disbursements ¹¹⁵
<i>Percival v. Canada</i> , 2024 FC 2098	\$1,900,000,000	\$32,500,000 ¹²²	1.71%	6 years	Excluded (\$174,818.39)
<i>Baxter v. Canada (Attorney General)</i> , 2006 CanLII 41673 (ON SC)	\$1,900,000,000	\$40,000,000 ¹²³	2.11%	6 years	Excluded (\$2,402,173.56)
<i>Endean v. Canadian Red Cross Society</i> , 2000 BCSC 971	\$1,600,000,000	\$52,500,000 ¹²⁴	3.28%	4 years	Excluded (\$75,376)
<i>Adrian v. Canada (Minister of Health)</i> , 2007 ABQB 377	\$982,000,000	\$7,645,000 ¹²⁵	3.88%	8 years	Included
<i>Manuge v. Canada</i> , 2013 FC 341	\$887,000,000	\$35,500,000	4%	6 years	Excluded
<i>Brown v. Canada (Attorney General)</i> , 2018 ONSC 5456	\$800,000,000	\$37,500,000 ¹²⁶	4.69%	9 years	Included
<i>Pro-Sys Consultants Ltd. v Microsoft Corporation</i> , 2018 BCSC 2091	Up to \$517,000,000	\$100,983,828 ¹²⁷	19.53%	13 years	Excluded (\$6.4 million)

¹²² To be paid by the defendant and not deducted from the settlement fund.

¹²³ For the national consortium. To be paid by the defendant and not deducted from the settlement fund.

¹²⁴ This was a national settlement. The fee approved was on an aggregate basis for counsel in BC, Quebec, and Ontario.

¹²⁵ This represents the amount approved for Alberta counsel. The aggregate amount of class counsel fees requested was \$37.29 million for counsel in Alberta, Quebec, BC, and Ontario. The settlement agreement stated that each group of class counsel would seek approval of its share of fees from the court in its jurisdiction. Fees to be paid by the defendant and not deducted from the settlement fund.

¹²⁶ To be paid by the defendant and not deducted from the settlement fund.

¹²⁷ This was a national settlement. The fee approved was on an aggregate basis for counsel in BC, Quebec and Ontario. The US lawyers were also compensated from the approved fee. The total hourly fees were \$49.3 million: over \$10 million for Canadian lawyers and over \$39 million for US lawyers. The approved fees represented an approximate multiple of 2.

Case	Recovery	Court Approved Fees	Fees as % of Recovery	Length of Litigation	Disbursements ¹¹⁵
<i>Fresco v. Canadian Imperial Bank of Commerce</i> , 2023 ONSC 3335 ¹²⁸	\$153,000,000	\$25,000,000	16.34%	16 years	Excluded (\$6,000,000)
<i>Green v CIBC</i> , 2022 ONSC 373	\$125,000,000	\$37,500,000	30%	14 years	Excluded (\$7,800,000 plus \$7,400,000 in CPF levy)
<i>CIBC v. Deloitte & Touche</i> , 2017 ONSC 5000	\$121,896,000	\$21,930,439.45	18.02%	17 years	Included (\$147,758.02)
<i>Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation</i> , 2014 ONSC 62	\$117,000,000	\$17,846,250 ¹²⁹	15.27%	3 years	Excluded (\$1,737,651)
<i>Drywall Acoustic Lathing and Insulation Local 675 Pension Fund (Trustees of) SNC-Lavalin Group Inc.</i> , 2018 ONSC 6447	\$110,000,000	\$25,250,000	21.14%	6 years	Included (\$2,000,000)
<i>MacDonald et al v. BMO Trust Company et al</i> , 2021 ONSC 3726	\$100,000,000	\$20,000,000	20%	15 years	Excluded (\$900,000)

¹²⁸ Affirmed in [Fresco ONCA](#).

¹²⁹ This was the approved amount for Canadian class counsel *and* insolvency counsel. The Court also approved CDN \$2,344,000 in fees and USD \$151,611.15 in disbursements for U.S. counsel.

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

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(returnable January 29, 2025)

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