

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

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

Court File No. CV-19-616779-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**

**AFFIDAVIT OF PHILIPPE TRUDEL
(sworn September 14, 2023)**

I, Philippe TRUDEL, of the City of Montreal, in the Province of Quebec, MAKE OATH
AND SAY:

1. I am one of the attorneys representing the Conseil Québécois sur le Tabac et la Santé and Cécilia Létourneau (the "**QCAPs**") since April 1998 and swear the present Affidavit in response to the Motions for Stay Extension returnable September 27, 2023 (the "**Extension Motions**") filed by JTI-Macdonald Corp. ("**JTIM**"), Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited ("**ITCAN**"), and Rothmans, Benson & Hedges Inc. ("**RBH**") (each an "**Applicant**" and collectively, the "**Applicants**") seeking to extend the stay of proceedings (the "**Stay Period**") in the present CCAA proceedings (the "**CCAA Proceedings**") until March 29, 2024.
2. The QCAPs have diligently, proactively and in good faith participated in every aspect of the Mediation in these CCAA Proceedings and, since the beginning of that

process, have willingly and fully cooperated with the Mediator and other stakeholders with a view to achieving a global settlement. The QCAPs' counsel have constructively participated in all of the countless Mediation sessions to which they were invited, have worked extensively on Mediation-related documents and issues and have devoted many thousands of hours over the past four and a half years in connection with that process.

3. The present Extension Motions constitute the tenth occasion that the Applicants are seeking to extend the Stay Period in these proceedings.
4. The QCAPs do not challenge the Applicants' assertions that they participated in good faith in the Mediation process.
5. For the reasons herein described, the QCAPs have reluctantly decided not to oppose the relief currently sought but wish to reiterate their position that the excessive delays to date are causing severe prejudice to the members of the Quebec Class Actions (the "**Quebec Members**"), to explain to the Court why a global resolution is no longer in sight, despite the optimism expressed by certain stakeholders and by the Court at previous hearings, and to provide an opportunity to arrive at successful plans of arrangement during the next six months.
6. At the last two extension hearings, Justice McEwen expressed reluctance to allow a six-month extension and, in his decision dated March 30, 2023, he stated:

Again, no one questions the bona fides of the Applicants' participation in the mediation. I accept that good progress continues to be made based on the Monitors' Reports and my discussions with the Honourable Mr. Winkler – which were confirmed by his counsel at the hearing.

There is now optimism that a successful resolution is in sight.

(...)

Keeping QCAP's submissions in mind however, as I stated at the hearing, I fully expect all parties to the mediation to fully engage in the process and provide the Honourable Mr. Winkler and the Monitors with their full and timely co-operation. Even though 6 months have been

granted, it does not mean that negotiations should not be approached without some sense of urgency.

7. Most recently, on June 23, 2023¹, Justice McEwen reaffirmed the same observation and stated, in reference to the last six-month Stay Period extension to September 29, 2023: “... **the Mediation continues to progress and the Applicants and stakeholders are optimistic that a resolution of these extremely significant and complicated Proceedings is in sight.**” [Emphasis added]
8. Based on developments over the past six months, I can affirm without any hesitation that a global settlement is not currently in sight.
9. Unfortunately, due to the confidential nature of the Mediation, the QCAPs are unable at this time to provide the Court with more fulsome details of these recent setbacks.
10. At a general level, however, I can disclose that since the last extension was granted, the Mediation process has been severely undermined by certain Claimants who have reneged on prior positions and failed to act in an acceptable or appropriate manner.
11. The QCAPs submit that we are well past the time that the Quebec Class Members, who have been waiting 25 years for justice to be served, should have received the court-ordered compensation to which they are rightfully entitled.

QUEBEC JUDGMENTS

12. To put the QCAPs’ position into context, these CCAA Proceedings were commenced by the Applicants because of the remarkable and unprecedented success achieved by the QCAPs in arduous litigation initiated in 1998, which included more than 30 trips to the Quebec Court of Appeal on interlocutory matters and a 251-day trial before Justice Brian Riordan J.S.C.
13. On May 27, 2015, the landmark judgment was released (the “**Riordan Judgment**”) wherein the tobacco companies were held liable for compensatory and punitive damages for the harm caused to Quebec smokers whose smoking-related diseases,

¹ In this decision, the Court dismissed a motion brought by the Heart and Stroke Foundation.

lung cancer, throat cancer and emphysema, were the result of the Applicants' wrongdoing. The award of damages, as at that date, amounted to approximately \$15.6 billion.

14. On March 1, 2019, five judges of the Quebec Court of Appeal substantially upheld the Riordan Judgment (the "**Quebec CA Judgment**"). Within days of such judgment, the Applicants sought and were granted protection under the CCAA on an *ex parte* basis.

PRIOR EXTENSION REQUESTS

15. In June 2019, at the time of the Applicants' second extension request, the QCAPs wrote the following in their Motion materials: "...it is respectfully submitted that this Court should not be satisfied with the Applicants' hope to simply "make meaningful progress" over the next six months of the mediation process. Meaningful progress should have already been made over the past four months. Unfortunately, that is not the case."
16. Looking back at that time in 2019, despite the complexity of the issues, the amounts of money involved and the number of parties, I could not possibly have imagined that more than four years later the Mediation process would still be ongoing with no plans of arrangement submitted and no timeline for plan implementation in place.
17. On September 25, 2019, the QCAPs filed a Responding Motion Record opposing the Applicants' third extension request and asked the Court to limit the extension of the Stay Period to January 15, 2020. By Order dated October 3, 2019, Justice McEwen extended the Stay Period to March 12, 2020 (then the one-year anniversary of the proceedings) and stated in his reasons that to "**set a short extension period would distract the stakeholders from the court-ordered mediation process.**" [Emphasis added]
18. In September 2022, the Applicants made their eighth extension request and sought an order that the Stay Period be extended for another six months until March 31, 2023, (then the four-year anniversary of the proceedings). The QCAPs contested and, once again, provided evidence of the severe prejudice caused by further delay

and proposed a shorter delay to incentivize the parties to end this unduly prolonged process.

19. In granting the Applicants' request, Justice McEwen wrote in his Endorsement dated September 29, 2022:

*Over the objections of QCAP (supported by the Canadian Cancer Society) **I have, somewhat reluctantly, come to the conclusion that the six month stay period proposed by the Applicants is preferable to the three month period proposed by QCAP, and is fair and reasonable in the current circumstance of the Court-ordered mediation.***
[Emphasis added]

20. Justice McEwen also urged "*all parties to remain completely focused on resolution and provide the Honourable Mr. Winkler and the Monitors with their **full cooperation** over the next six months.*" [Emphasis added]
21. Despite the assurances made to Justice McEwen that progress was being made in the Mediation, in March 2023, the Applicants made their ninth extension request for another six months. These requests were again opposed by the QCAPs, who asked that the extension be limited to three months.
22. In his Endorsement dated March 30, 2023, Justice McEwen summarized the QCAPs' position and stated that he found their submissions compelling. Nonetheless, he concluded that another six-month extension was preferable for stakeholders but wrote that: "*[K]eeping these submissions in mind however, as I stated at the hearing, I fully expect all parties to the mediation to fully engage in the process (...) **it does not mean that negotiations should not be approached without some sense of urgency.***" [Emphasis added]
23. Notwithstanding the Court's admonition, certain claimants have not provided the Mediator and Monitors with their full cooperation and have not fully engaged in negotiations with any sense of urgency; in fact, certain Claimants appear to view delay as a tactical advantage rather than a concern.

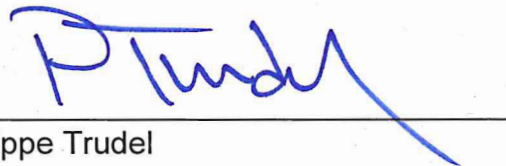
THE DEVASTATING IMPACT OF DELAY ON THE QUEBEC CLASS MEMBERS

24. Sadly, the Quebec Class Members continue to lose all faith that justice will be served in their regard. They fear that due to the seemingly endless delays, there will be few, if any, victims left alive to receive their rightful compensation from the tobacco companies.
25. In fact, during the timeframe of the CCAA Proceedings alone, approximately 700 Quebec Class Members have unfortunately succumbed to their tobacco-related illnesses and died and many more are becoming increasingly frail. Certain Quebec Class Members could wait no longer and have opted to end their lives by assisted suicide.

THE QCAPS' POSITION AND CONCLUSIONS SOUGHT

26. As these CCAA Proceedings are now approaching their five-year anniversary, the next six months should be viewed as a critical attempt to arrive at a resolution to these proceedings and all parties to the Mediation must comport themselves in the utmost of good faith and with a heightened sense of urgency during that period.
27. The QCAPs have reluctantly decided not to oppose this six-month extension request to allow the Mediator and the Monitors an opportunity to seek and put in motion alternative solutions, leading to successful plans of arrangement during the next six months.

AND I HAVE SIGNED



Philippe Trudel

Solemnly declared before me at Montreal,
Province of Quebec, this 14th day of September 2023



Commissioner of Oaths for Quebec



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AFFIDAVIT OF PHILIPPE TRUDEL
(sworn September 14, 2023)

FISHMAN FLANZ MELAND PAQUIN LLP

Avram Fishman / Mark E. Meland

4100-1250 René-Lévesque Blvd. West

Montreal QC H3B 4W8

Tel: 514-932-4100

TRUDEL JOHNSTON & LESPÉRANCE

Philippe H. Trudel / Bruce W. Johnston / André Lespérance

750 Côte e la Place d'Armes, Bureau 90

Montréal, Québec H2Y 2X8

Tel: 514-871-8385

CHAITONS LLP

Harvey Chaiton

5000 Yonge Street, 10th Floor

Toronto, ON M2N 7E9

Tel: (416) 218-1129

Attorneys for Conseil Québécois sur le tabac et la santé and

Cécilia Létourneau

(Québec Class Action Plaintiffs)