

Court File No. CV-19-615862-00CL
Court File No. CV-19-616077-00CL
Court File No. CV-19-616779-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

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

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

Applicants

FACTUM OF THE QUEBEC CLASS ACTION PLAINTIFFS
(Re: QCAP Notice Protocol Motion – Returnable on December 23, 2024)

December 18, 2024

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Plaintiffs**” or “**QCAPs**”)

TO: THE COMMON SERVICE LIST

TABLE OF CONTENTS

PART I - INTRODUCTION 4

PART II – BACKGROUND AND FACTS 5

PART III – ISSUES, LAW AND ARGUMENT 7

 A. Notices in Connection with Requests for Approval of Class Counsel Fees 7

 B. The QCAP Notice 8

 C. The QCAP Notice Protocol 9

PART IV – RELIEF REQUESTED..... 11

PART I - INTRODUCTION

1. As a result of the success of these CCAA Proceedings¹ and the unanimous approval by creditors of the Court-Appointed Mediator's and Monitors' CCAA Plans, *Blais* Class Members are finally on the brink of receiving significant financial recovery on their long-standing claims against the Tobacco Companies. Quebec Class Counsel, who have been working on a percentage-based contingency fee basis since 1998, will be asking the CCAA Court at the end of the Sanction Hearing to approve their retainer agreement with the representative plaintiff in the *Blais* Class Action, CQTS,² as well as the Quebec Class Counsel Fee established in accordance therewith.

2. By way of their Notice of Motion dated December 13, 2024, the QCAPs are seeking this Honourable Court's approval of (i) the Notice of Hearing and Motion to Approve the Quebec Counsel Fee (the "**QCAP Notice**") attached as Appendix "C" to the Lespérance Affidavit, and (ii) the QCAP Notice Protocol. The QCAP Notice Protocol is intended to provide for sufficient notice to *Blais* Class Members of, *inter alia*, the request for approval of the Quebec Class Counsel Fee and the hearing on the Motion for the Approval of the Quebec Class Counsel Fee (the "**Quebec Class Counsel Fee Motion**").

¹ Capitalized terms not otherwise defined herein have the meanings ascribed to them in the [Affidavit of André Lespérance](#) dated December 12, 2024 (the "**Lespérance Affidavit**").

² Conseil québécois sur le tabac et la santé.

PART II – BACKGROUND AND FACTS

3. Quebec Class Counsel have been representing the *Blais* Class Members and the *Letourneau* Class Members (the “**Quebec Class Members**”) in the Quebec Class Actions since 1998. Due to the contingency fee nature of their mandate, Quebec Class Counsel have not been paid any professional fees for their efforts over that lengthy period of time.³

4. On March 1, 2019, the Court of Appeal of Quebec substantially upheld the Superior Court of Quebec judgment (Justice Brian Riordan, J.S.C.) in the Quebec Class Actions, which condemned the Tobacco Companies to pay the QCAPs in excess of \$13.5 billion.

5. Seven days after the Court of Appeal judgement was issued, JTIM filed for and obtained protection under the CCAA and in the days that followed, similar relief was granted to Imperial and RBH.

6. On April 5, 2019, the CCAA Court appointed the Court-Appointed Mediator to oversee and coordinate comprehensive mediation among the Tobacco Companies and their key stakeholders, which included the QCAPs.

7. After five and a half years of complex mediation, and further to the directions of the CCAA Court issued on October 5, 2023, the Court-Appointed Mediator and Monitors filed CCAA Plans in respect of each of the Tobacco Companies in order to effect a global settlement of all Affected Claims against the Tobacco Companies.

³ Lespérance Affidavit, Appendix C at [3](#).

8. The CCAA Plans provide that an amount of \$4.25 billion will be allocated to the QCAPs, of which \$4.119 billion is to be paid to them in settlement of the *Blais* Class Action and \$131 million is to be contributed by the QCAPs and allocated to the Cy-Près Foundation in settlement of the *Létourneau* Class Action.

9. Further to the Meeting Order on October 31, 2024, Meetings were held on December 12, 2024, at which Affected Creditors voted to approve the CCAA Plans, such that the Sanction Hearing is now scheduled to take place on January 29, 30 and 31, 2025.

10. Pursuant to the CCAA Plans, the Quebec Class Counsel Fee is subject to the approval of the CCAA Court, which is to be dealt with at the Sanction Hearing.

11. The QCAPs propose that the QCAP Notice, which is written in plain language in English and French, be provided to known potential *Blais* Class Members in order to notify them of the request for approval of the Quebec Class Counsel Fee and of the hearing on the Quebec Class Counsel Fee Motion.⁴

12. In that connection, the QCAP Notice Protocol foresees sending the QCAP Notice by email or text message directly to persons who have signed up on the QCAP Website, as well as publishing it on the QCAP Website and in the *Quebec Class Action Registry*. It also foresees that the Quebec Class Counsel Fee Motion

⁴ Lespérance Affidavit at para [18](#).

will be served on the Common Service List, published on the QCAP Website and posted in the *Quebec Class Action Registry*.⁵

13. The QCAP Notice Protocol relies on the robust Contact List (comprising more than 66,000 individuals) assembled by Quebec Class Counsel through the QCAP Website which, notably, has grown by more than 35,000 individuals since the release of the CCAA Plans on October 17, 2024,⁶ and the extensive media campaign that followed.⁷ It is also based on the significant ongoing interaction Quebec Class Counsel have had with potential class members before and throughout the CCAA Proceedings.

PART III – ISSUES, LAW AND ARGUMENT

A. Notices in Connection with Requests for Approval of Class Counsel Fees

14. Notice in the context of class actions is most crucial when the opt-out period has not yet passed⁸ and in connection with informing class members of their rights under a settlement.⁹ In the present case, no Quebec Class Members have opted out of the Quebec Class Actions and the matter of class members “approving the settlement” is not applicable. In fact, the Meeting Order empowered Quebec Class Counsel to act as proxy for all Quebec Class Members such that, at the Meetings, they already voted in favour of the approval of the CCAA Plans and the compensation plan set out thereunder for *Blais* Class Members.

⁵ Lespérance Affidavit at para [20](#).

⁶ Lespérance Affidavit at paras [9-10](#) and Appendix [A](#).

⁷ Lespérance Affidavit at para [13](#) and Appendix [B](#).

⁸ *Nashen c Station Mont Tremblant*, 2023 QCCS 1445 at para [16](#) [*Nashen*].

⁹ *Fantl v ivari*, 2018 ONSC 4443 at para [22](#) [*Fantl*].

15. Nevertheless, notice may be appropriate at other stages of a proceeding in order to ensure that class members are aware of their rights and of any procedural steps that may affect such rights. One such circumstance where notice may be appropriate is in connection with a class counsel's request for the approval of its fees. Indeed, notice is customarily given of a class counsel fee approval request, which, in typical cases, is coupled with a request for the court to approve a settlement agreement entered into on behalf of the class.¹⁰

16. In these proceedings, although notice is not technically required, given the quantum of the Quebec Class Counsel Fee requested, it is prudent that a notice be sent to potential *Blais* Class Members to ensure that they are fully aware of the request being made and that they are given an opportunity to raise any concerns they may have with the Quebec Class Counsel Fee.

B. The QCAP Notice

17. The QCAP Notice respects all legal requirements and the criteria established in the jurisprudence with respect to notices given in the class action context.

18. The QCAP Notice is clear and concise, written in plain language in English and French, and contains all of the elements that a class member would require in order to be informed of the issue to be decided at the Sanction Hearing, including

¹⁰ E.g., *The Cash Store Financial Services Inc.* (September 30, 2015), Toronto CV-14-10518-00CL ([Order – Representation and Notice Approval](#)) and *The Trustees of the Labourers' Pension Fund of Central and Eastern Canada v Sino-Forest Corporation (Re)* (June 5, 2014), Toronto CV-12-9667-00CL ([Notice Approval – Horsley Settlement](#)).

the contact information of Quebec Class Counsel and Proactio should they have any questions¹¹ and information as to how to file an objection if they wish to do so.¹²

19. The QCAP Notice is similar in form and content to notices approved by this Honourable Court in other CCAA files¹³ (taking into account the specific purpose of the QCAP Notice in this case).

C. The QCAP Notice Protocol

20. Notice protocols do not have to be perfect, but must be reasonable in their circumstances.¹⁴

21. As explained by Mr. Lespérance, it is likely that a significant majority of potential *Blais* Class Members have registered via the QCAP Website and are aware of the CCAA Plans and the compensation available to *Blais* Class Members thereunder.¹⁵ The QCAP Notice Protocol will therefore effectively reach the vast majority of *Blais* Class Members through direct communication, which is the preferred method of notice when possible.¹⁶

22. The QCAP Notice Protocol also contains additional means of indirect communication, including the posting of the QCAP Notice and the Quebec Class Counsel Fee Motion, when available, on the QCAP Website and on the *Quebec*

¹¹ Lespérance Affidavit, Appendix C at [5](#).

¹² *Ibid* at [4](#).

¹³ See e.g., *supra* note 10.

¹⁴ *Nashen*, *supra* note 8 at paras [16-20](#) and *Fantl*, *supra* note 9 at para [13](#).

¹⁵ Lespérance Affidavit at para [15](#).

¹⁶ *Supra* note 9.

Class Action Registry, to supplement direct notification.¹⁷ These back-up methods of indirect communication, together with the extensive media attention surrounding this file,¹⁸ will ensure that the vast majority of *Blais* Class Members will be aware of the Quebec Class Counsel Fee to be decided at the end of the Sanction Hearing.

23. Although Quebec Class Counsel will only be serving their Quebec Class Counsel Fee Motion on January 13, 2025, they want to provide such class members with notice well prior to that date to give them additional time to consider the issues raised, allow them to reach out to Quebec Class Counsel or Proactio if they wish to discuss, and to file any notice of objection if they so choose.

24. In that respect, the proposed QCAP Notice Protocol was structured on the basis of the tight CCAA timeline that has been put in place in order to bring these proceedings to a close and to ensure distribution of the proceeds of the CCAA Plans as soon as possible, and this, for the benefit of the *Blais* Class Members who have been waiting so long for compensation. The QCAP Notice specifically states that an additional notice will be issued after the CCAA Plans are approved in order to fully inform them of what they will need to do in order to file claims and obtain compensation pursuant to the Quebec Class Action Administration Plan.¹⁹

¹⁷ Lespérance Affidavit at para [20](#).

¹⁸ Lespérance Affidavit at para [13](#).

¹⁹ Lespérance Affidavit, Appendix C at [4](#).

25. In the circumstances, the QCAP Notice Protocol is the most effective and efficient way to reach as many *Blais* Class Members as possible prior to the Sanction Hearing.

26. Finally, the costs associated with the QCAP Notice Protocol will be assumed by Quebec Class Counsel.

PART IV – RELIEF REQUESTED

27. Accordingly, the QCAPs seek the approval of the QCAP Notice and the QCAP Notice Protocol, as proposed in the draft Order included at Tab 3 of the QCAP Motion Record.

The undersigned lawyers certify that they are satisfied as to the authenticity of every authority cited in this factum, the content of which is respectfully submitted.

Wednesday, December 18, 2024



FISHMAN FLANZ MELAND PAQUIN LLP



TRUDEL JOHNSTON & LESPÉRANCE

Lawyers for the Quebec Class Action Plaintiffs

SCHEDULE “A”

LIST OF AUTHORITIES

1. *Nashen c Station Mont Tremblant*, [2023 QCCS 1445](#).
2. *Fantl v ivari*, [2018 ONSC 4443](#).
3. *The Cash Store Financial Services Inc.* (September 30, 2015), Toronto CV-14-10518-00CL ([Order – Representation and Notice Approval](#)).
4. *The Trustees of the Labourers’ Pension Fund of Central and Eastern Canada v Sino-Forest Corporation (Re)* (June 5, 2014), Toronto CV-12-9667-00CL ([Notice Approval – Horsley Settlement](#)).

SCHEDULE “B”

TEXT OF STATUTES & REGULATIONS

Companies’ Creditors Arrangement Act, RSC 1985 c C-36

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF:

JTI-MACDONALD CORP.

IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

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