

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

**AFFIDAVIT OF PHILIPPE H. TRUDEL**  
(sworn January 22, 2025)

I, Philippe H. Trudel, of the City of Montreal, in the Province of Quebec, MAKE OATH AND SAY:

1. I am a founding partner of the law practice of Trudel Johnston & Lespérance (“**TJL**”), which is one of the four law firms designated as Quebec Class Counsel<sup>1</sup> in the Court-Appointed Mediator’s and Monitors’ CCAA Plans of Compromise and Arrangement (each a “**CCAA Plan**” and collectively the “**Plans**”) in respect of (i) Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively “**Imperial**”), (ii) Rothmans, Benson & Hedges Inc. (“**RBH**”), and (iii) JTI-MacDonald Corp. (“**JTIM**”) (collectively, the “**Tobacco Companies**”).

2. Quebec Class Counsel represent the members of two class action lawsuits instituted in Quebec in 1998 (the “**Quebec Class Actions**”) on behalf of (i) Quebec smokers who developed lung cancer, throat cancer or emphysema as a result of smoking

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<sup>1</sup> As defined in the Plans, “**Quebec Class Counsel**” means collectively, the law practices of Trudel Johnston & Lespérance, s.e.n.c., Kugler Kandestin s.e.n.c.r.l., L.L.P., De Grandpré Chait s.e.n.c.r.l., LLP and Fishman Flanz Meland Paquin s.e.n.c.r.l., L.L.P.

the Tobacco Companies' cigarettes and (ii) Quebec smokers who became addicted to the nicotine contained in the cigarettes made by the Tobacco Companies.

3. On January 13, 2025, Quebec Class Counsel filed a Motion Record in respect of their Motion for the Approval of the Quebec Class Counsel Fee, which is returnable at the Sanction Hearing commencing on January 29, 2025 (the "**QCAP Motion Record**"). All capitalized terms used herein that are not otherwise defined have the meanings ascribed to them in the QCAP Motion Record.

4. The purpose of the present affidavit is to provide an update to the Court in respect of the objections we have received from potential *Blais* Class Members and to provide the Court with our preliminary analysis of the number of potential *Blais* Class Members based upon registrations received on the QCAP Website (recourstabac.com).

### **Objections**

5. In my affidavit dated January 12, 2025, which was included as Tab 3 to the QCAP Motion Record, I communicated a chart outlining all outstanding objections received from potential *Blais* Class Members following the publication of the QCAP Notice, as Schedule "C" thereto (the "**Objection Chart**").

6. Following the filing of the QCAP Motion Record and subsequent discussions between the objecting party and Quebec Class Counsel, objection # 3 on the Objection Chart has been withdrawn.

7. In respect of objection # 4 on the Objection Chart, the objector R.M. stated that he would be preparing an argument after reading the QCAP Motion Record.

8. R.M. provided a written objection on January 19, 2025. The original French version, as well as an English translation thereof, are attached hereto as **Exhibit "A"**.

9. As appears from Exhibit "A", R.M. argues that the hourly rates used in my previous affidavit to calculate the straight-line billing value of work performed by Quebec Class Counsel should be reduced from \$1,150 to \$900 for senior lawyers, and from \$550 to \$300 for associates. Based on such revised numbers, he further submits that an

appropriate multiple to apply to arrive at an acceptable class counsel fee should be between 4 and 4.5 times the ascribed billing value, plus the litigation costs.

10. In order to address his concerns, we provided a response to R.M. on January 21, 2025. The original French version of our response, together with an English translation thereof, are attached hereto as **Exhibit "B"**.

11. As appears from Exhibit "B", and for comparative purposes, we provided R.M. with details of the hourly rates charged to the Tobacco Companies by The Law Practice of Wagner & Associates, Inc., the Nova Scotia law firm appointed by the CCAA Court to act as PCC Representative Counsel (on behalf of other Canadian smoking victims). Based on an exchange of emails between André Lespérance and Raymond Wagner on January 20, 2025, attached hereto as **Exhibit "C"**, I can confirm that during the period between December 2019 and December 1, 2024, hourly rates of \$1,250 for Mr. Raymond Wagner (Bar 1980) and \$650 for Ms. Kate Boyle (Bar 2016) were charged to the Tobacco Companies.

12. The QCAP Notice was sent to over 64,500 people on December 23, 2024. The delay for potential *Blais* Class Members to register objections to the Motion for the Approval of the Quebec Class Counsel Fee was January 21, 2025 at 5 pm.

13. Since the filing of the QCAP Motion Record on January 13, 2025, two additional objections were received by Quebec Class Counsel, one from L.C. on January 14, 2025, the original French version of which, together with an English translation thereof, are attached hereto as **Exhibit "D"**, and another from J.B., on January 21, 2025, the original French version of which, together with an English translation thereof, are attached hereto as **Exhibit "E"**.

14. As appears from Exhibit "D", L.C. blames the governments and believes the governments should be supporting the Quebec Class Counsel Fee.

15. As appears from Exhibit "E", J.R. objects on the basis of the potential impact that payment of the Quebec Class Counsel Fee could have on individual recovery and poses

numerous questions relating to how the fee was determined and its justification. J.R. has already been directed to the QCAP Motion Record which answers most of his questions.

16. In the case of both J.R. and L.C., we will make our best efforts to connect with each of them over the next few days in order to answer any outstanding questions they may have and to make an effort to resolve their concerns.

***Registrations on the QCAP Website***

17. Finally, I would like to provide the Court with an update of the number of persons registered on the QCAP Website, as well as our preliminary analysis of the number of putative *Blais* Class Members therein comprised.

18. As at January 21, 2025, there were 75,140 persons registered to receive information about the Quebec Class Actions.

19. Of these individuals, it appears that 43,647 are putative *Blais* Class Members, having asserted that they (or the late Tobacco-Victim in respect of whom their claim would be made) were diagnosed with a compensable disease before March 12, 2012. In this regard:

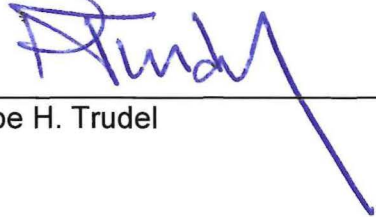
- a. 25,945 have identified themselves (or the late Tobacco-Victim in respect of whom their claim would be made) as having been diagnosed with lung or throat cancer before March 12, 2012; and
- b. 17,704 have identified themselves (or the late Tobacco-Victim in respect of whom their claim would be made) as having been diagnosed with emphysema (including COPD GOLD Grade 3 or 4) before March 12, 2012.

20. Of the 43,647 putative *Blais* Class Members, 29,665 of them would fall under the category of Succession Claimants, having asserted that the Tobacco-Victim in respect of whom their claim would be made has died.

21. No further analysis has been performed at this time to ascertain how many of the aforesaid putative *Blais* Class Members started smoking before (or after) January 1,


1976, nor how many of them would meet all of the eligibility criteria of the Quebec Class Action Administration Plan.

AND I HAVE SIGNED, THIS 22<sup>nd</sup> DAY OF JANUARY 2025.



Philippe H. Trudel

Solemnly declared before me at Montreal,  
Province of Québec, this 22<sup>nd</sup> day of January, 2025

  
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Commissioner of Oaths for the Province of Québec

## LIST OF EXHIBITS

- “A”** Objection submitted on January 19, 2025 by R.M., together with an English translation thereof
- “B”** Response to R.M. by Class Counsel on January 21, 2025, together with an English translation thereof
- “C”** Exchange of emails between André Lespérance and Raymond Wagner on January 20, 2025
- “D”** Objection submitted by L.C. on January 14, 2025, together with an English translation thereof
- “E”** Objection submitted by J.B. on January 21, 2025, together with an English Translation thereof

**THIS IS EXHIBIT "A"**  
**TO THE AFFIDAVIT OF PHILIPPE H. TRUDEL**  
**SWORN BEFORE ME ON THIS 22<sup>nd</sup> DAY OF JANUARY 2025**



Commission of Oaths for Quebec



Action collective CQTS/Blais  
Opposition à la Demande pour l'approbation  
des honoraires des avocats des groupes au Québec

1. Mon nom est R [REDACTED] M [REDACTED], résidant à Thetford Mines, Province de Québec. Je suis membre de l'Action collective CTQS/Blais, étant l'un des héritiers (et liquidateur) de la succession de feu [REDACTED], (née [REDACTED]) ma mère, laquelle était la seule héritière de son mari et mon père, feu [REDACTED] (dont j'étais aussi le liquidateur), atteint d'un cancer des poumons.
2. Je m'oppose aux honoraires demandés par les avocats des groupes au Québec, tels que présentés dans la demande d'approbation des honoraires des avocats des DRCQ et qui sera introduite lors de l'Audience d'homologation des Plans, conformément à l'article 14.9(f)
3. Je soumetts respectueusement à la Cour que des honoraires variant entre 659 577 219 \$ plus les taxes applicables auxquels s'ajoutent des débours de 12 047 223 \$ non taxables et 738 330 669 \$ plus les taxes applicables auxquels s'ajoutent des débours de 12 047 223 \$ non taxables, me sembleraient justes et équitables.
4. Dans les paragraphes qui suivent, je présente l'argumentaire à l'appui de ma proposition d'honoraires

**Les heures réellement consacrées au recours**

5. Je ne conteste pas le total, à ce jour et à venir, de 211 849 heures consacrées dans les dossiers, par les avocats seniors (156 587 heures) et juristes salariés et juniors (55 262 heures) des quatre cabinets d'avocats.

**Le taux horaire utilisé pour les avocats seniors**

6. Je conteste le taux de 1 150 \$ par heure [par. 78 de l'affidavit de Me Trudel] utilisé dans le calcul de la valeur du travail effectué par les avocats seniors. Je suis d'avis qu'un taux moyen de 900 \$ l'heure serait juste et équitable. Mes arguments sont les suivants :
  - a. Dans le jugement Moushoom c. Procureur général du Canada, Me Sterns, l'avocat principal au dossier, s'attribue un taux de 975 \$ l'heure [par.119];
  - b. Me Sterns est assermenté depuis plus de 25 ans. Selon le site internet de son cabinet, Me Sterns est « (...) considéré comme l'un des avocats les plus réputés en matière de recours collectif au Canada et est classé au premier rang du prestigieux classement annuel de Chambers Canada ».
  - c. En contre-interrogatoire [par.115], Me Sterns admet que son taux horaire de 975 \$ n'est pas celui qu'il facture normalement aux clients
  - d. Le barème actuel de tarif publié par le Barreau de l'Ontario sur son site internet, pour un avocat principal assermenté depuis plus de 20 ans, est de 350 \$ l'heure.
  - e. La juge Aylen (Moushoom c. Procureur général du Canada) déclare que [par.119] « J'ai des réserves quant au nombre d'heures consignées et aux taux horaires ayant servi à calculer les honoraires réels (...) »;
  - f. La juge Aylen déclare aussi que [par.115] (...) « l'utilisation de taux horaires majorés, qui a pour effet d'augmenter artificiellement le montant des honoraires réels, est une autre pratique répréhensible (...). »
  - g. Je comprends que la prime qui sera accordée (soit 2, 3, 4, 5 ....10 fois les honoraires) par la Cour, quand elle statuera sur la demande d'approbation des honoraires des avocats du groupe, doit s'appliquer sur les honoraires réels et non pas sur des honoraires préalablement majorés.
  - h. Dernier argument, le coût de la vie était, en 2012, 13 % moins élevé à Montréal qu'à



Toronto et actuellement il est légèrement plus élevé à Montréal. Nos avocats québécois sont excellents, à preuve les résultats extraordinaires obtenus dans ce recours collectif. En l'occurrence, la comparaison avec les taux des avocats de l'Ontario tient bien la route.

7. En conclusion, je suis d'avis qu'un taux de 900 \$ l'heure pour les avocats seniors, applicable au calcul des honoraires qu'ils réclament, serait juste et équitable.

#### **Le taux horaire utilisé pour les juristes salariés**

8. Je conteste le taux de 550 \$ l'heure [par. 79 de l'affidavit de Me Trudel], utilisé dans le calcul de la valeur du travail effectué par les juristes salariés. Je suis d'avis qu'un taux moyen de 300 \$ l'heure serait juste et équitable. Mes arguments sont les suivants :
  - a. Me Trudel déclare dans son affidavit [par.129] que « Le salaire de base chez TJJL en 2024 était d'environ 70 000 \$. Chaque avocat touche ce montant de base, qu'il s'agisse d'un associé comptant 15 ans d'expérience ou d'un juriste salarié qui vient de se joindre au bureau. »
  - b. Aux termes de la politique du TJJL, des primes de 3 539 233 \$ [par.131] se sont accumulés et sont payables à 10 avocats salariés.
  - c. Afin de tenter de déterminer le taux facturable des avocats juniors dans ce dossier, il n'est pas incohérent, sans autre documentation, de poser certaines hypothèses de travail :
    - i. À partir d'un salaire annuel de 70 000 \$, et sur une base de 2 000 heures facturables par année, les salariés ont touché une rémunération horaire de 35 \$;
    - ii. Si l'on accepte que toutes les heures de travail des juristes salariés chez TJJL, soit 21 401 heures, dans le cadre de ce recours collectif, l'ont été à titre de salariés, la rémunération totale, de base, pour toute la période et à ce jour, s'élève à 749 035 \$ (21 401 heures x 35 \$/h);
    - iii. À ce montant de 749 035 \$, il faut ajouter les primes accumulées de 3 539 233 \$, pour un total de 4 288 268 \$
    - iv. Le taux horaire réel qui est payé aux juristes salariés, chez TJJL, serait de 200\$ (4 288 268 \$ / 21 401 heures).
    - v. Ce taux horaire « salariale » n'est évidemment pas celui facturé habituellement aux clients.
9. En conclusion, je suis d'avis qu'un taux facturable de 300 \$ l'heure pour les juristes salariés et les avocats juniors, applicable au calcul des honoraires pour l'ensemble des heures réclamées dans ce recours collectif, serait juste et équitable. Le taux proposé représente 1/3 de celui proposé pour les avocats seniors, ce qui me semble raisonnable.

#### **La valeur actuelle des heures travaillées et à venir**

10. Sur la base de ce qui précède, la valeur actuelle des 211 849 heures travaillées et qui devront encore être consacrées au dossier par les Avocats des groupes du Québec s'élève à 157 506 900\$.
11. À partir des honoraires fixés au point précédent, on peut calculer un taux moyen de 743 \$ l'heure.
12. Dans l'affaire Moushoom c. Procureur général du Canada, un simple calcul nous révèle un taux moyen, pour les avocats de ce recours collectif, de 733 \$ l'heure (honoraires réels de 17,591 millions de dollars divisés par 24 000 heures de travail total au dossier).
13. Dans les circonstances, les taux que je propose me semblent raisonnables.

### **Les frais ou débours passés et futurs**

14. Je conteste le montant de 46 598 926 \$ réclamé par les avocats des groupes du Québec au titre des frais ou débours, passés ou futurs.
15. Je conteste aussi la façon dont le montant indiqué au point précédent est réclamé. Mes arguments sont les suivants :
- a. Le montant de 46 598 926 \$ se divise essentiellement en 2 groupes.
    - i. Frais taxables : 34 551 703 \$ pour Proactio;
      1. Le montant réclamé pour le travail de Proactio qui consiste à valider les membres du groupe et à distribuer les montants à chacun de ceux-ci, sur la base de 50 000 membres, représente un taux, par membre de 691 \$;
      2. Je comprends que Proactio, dans bien des cas, devra faire un travail considérable afin de déterminer l'appartenance ou non d'une personne au groupe. Mais il y aura aussi bien des cas, comme le mien, où d'une part, le cancer de mon père est bien documenté dans une base de données gouvernementale accessible et, d'autre part, prouver que moi et ma sœur sommes les seuls héritiers ayant droit d'être dédommagés sera facile et rapide, puisque j'ai en main les testaments homologués par la cour de mon père et de ma mère;
      3. D'une part, l'ampleur du montant dépassant les 34 millions de dollars ou près de 700 \$ par dossier n'a rien de banal et d'autre part, je n'ai relevé dans le document déposé rien justifiant ce montant.
      4. Je m'interroge sur l'ampleur du montant réclamé. Au surplus, je pense que la Cour pourrait demander des comptes sur ce montant.
    - ii. Frais déjà taxés : 12 047 223 \$. Rien n'indique dans l'affidavit de Me Trudel que les taxes applicables ne sont pas déjà incluses dans le montant réclamé.
  - b. Les avocats des groupes du Québec réclament uniquement des honoraires, qui comprennent tous les frais et débours, de 46 498 926 \$, le tout taxable.
  - c. Mais comme dans le montant indiqué en 15b), il y a des frais et débours de 12 047 223 \$ déjà taxés, est-il justifié de les taxer à nouveau en les incluant avec les honoraires taxables?

### **La prime à l'égard des honoraires des avocats des groupes**

15. À la lecture des affidavits de Me Jonhston, Me Trudel et Dr Dandavino, j'ai pu prendre la mesure de l'incroyable travail réalisé par nos avocats, sans avoir pris connaissance, toutefois, du travail accompli de 2019 à aujourd'hui. Je ne suis qu'un profane et à ce titre, bien des subtilités auxquelles je n'ai rien compris n'échapperont certainement pas à la Cour.
16. Je pense que, dans les affaires d'action collective débouchant sur des mégafonds, l'analyse de la douzaine de critères habituellement retenus par les tribunaux visant à établir la valeur du travail accompli (et donc la prime à accorder) démontrera que chacun de ces critères se situe passablement au-dessus de la moyenne.
17. Dans son affidavit, Me Trudel réclame des honoraires majorés de 854 578 989 \$ sur des honoraires réels de 214 653 500 \$, ce qui représente une prime de 3,981.
18. Dans l'affaire Moushoom c. Procureur général du Canada, la juge Aylen écrivait :
- [143] « Je souscris également aux commentaires formulés par d'autres cours selon lesquels les honoraires d'avocat devraient être proportionnels aux sommes recouvrées lorsque celles-ci sont importantes, même dans le contexte de règlements associés à des mégafonds [voir MacDonald et al v BMO Trust Company et al, 2021 ONSC 3726 [MacDonald] au para 47]. Cela dit, comme je l'ai mentionné, il arrive un moment où

l'octroi d'honoraires d'avocat additionnels devient déraisonnable et disproportionné, quelle que soit la somme recouvrée. Il n'est pas nécessaire que je « plante un drapeau » et que j'établisse le plafond qui devrait s'appliquer au recouvrement, mais c'est certainement une considération pertinente qui influe sur le poids à accorder aux résultats obtenus. »

19. Je suis d'accord pour qu'une prime comprise entre 4 et 4,5 fois des honoraires réels encourus par les avocats du groupe, donc des honoraires majorés allant de 630 027 600 \$ à 708 781 050 \$. Par rapport au résultat obtenu de 4,119 milliards de dollars, le pourcentage des honoraires majorés varie de 15,30% à 17,21%.

20. Toujours dans l'affaire Moushoom c. Procureur général du Canada, la juge Aylen écrivait en fin d'analyse:

a. [162] « Maintenant que j'ai déterminé la prime appropriée, j'aimerais revenir un moment sur le concept du coefficient. Le coefficient convenu par les parties qui soutient la demande d'honoraires de 50 millions de dollars est de 2,843. Le coefficient sur lequel j'ai fondé ma décision quant au montant des honoraires est de 2,273. L'écart entre les deux coefficients est de 0,57. Cependant, ce petit écart représente un montant d'honoraires de 10 millions de dollars, ce qui démontre qu'il est inutile de mettre l'accent sur le coefficient approprié plutôt que sur la valeur réelle en dollars des honoraires » (mon souligné)

### **Honoraires des avocats des groupes au Québec**

21. En résumé, je suis d'avis que les avocats ont droit aux honoraires et débours suivants:

- a. Si on retient un taux de majoration de 4 : honoraires de 659 577 219 \$ plus les taxes applicables, à cela s'ajoutent des débours de 12 047 223\$ non taxables;
- b. Si on retient un taux de majoration de 4,5 : honoraires de 738 330 669 \$ plus les taxes applicables, à cela s'ajoutent des débours de 12 047 223\$ non taxables.

	A Honoraires réels majorés (taxables) (\$)	B Frais remboursés au FAAC (\$)	C Débours / Proactio (taxables) (\$)	D Honoraires (auxquels il faut ajouter les taxes applicables) (\$) A-B+C	E Autres débours (non taxables) (\$)
Majoration de 15,30 %, soit un taux de 4	630 027 600	5 002 085	34 551 704	659 577 219	12 047 223
Majoration de 17,21 %, soit un taux de 4,5	708 781 050	5 002 085	34 551 704	738 330 669	12 047 223

R ■■■ M ■■■

Fait à Thetford Mines, le 19 janvier 2025

## CQTS/Blais collective action

### Opposition to the Application for Approval

#### Lawyers' fees in Quebec

1. My name is R [REDACTED] M [REDACTED], residing in Thetford Mines, Province of Quebec. I am a member of the Action collective CTQS/Blais, being one of the heirs (and liquidator) of the estate of the late [REDACTED], (born [REDACTED]) my mother, who was the sole heir of her husband and my father, the late [REDACTED] (of whom I was also the liquidator), who suffered from lung cancer.

2. I object to the fees requested by the groups' attorneys in Quebec, as presented in the request for approval of the fees of the QCAP's attorneys, which will be introduced at the Sanction Hearing of the Plans, in accordance with section 14.9(f).

3. I respectfully submit to the Court that fees varying between \$659,577,219 plus applicable taxes plus disbursements of \$12,047,223 non-taxable and \$738,330,669 plus applicable taxes plus disbursements of \$12,047,223 non-taxable, would appear to me to be fair and equitable.

4. In the following paragraphs, I present the arguments in support of my fee proposal

#### Hours actually spent on the case

5. I do not dispute the total, to date and in the future, of 211,849 hours devoted to the cases by the senior lawyers (156,587 hours) and employees and junior lawyers (55,262 hours) of the four law firms.

#### The hourly rate used for senior lawyers

6. I dispute the rate of \$1,150 per hour [par. 78 of Me Trudel's affidavit] used in the calculation of the value of the work performed by the senior lawyers. I am of the opinion that an average rate of \$900 per hour would be fair and equitable. My arguments are as follows :

. In *Moushoom v. Attorney General of Canada*, Mr. Sterns, the lead counsel on the case, awarded himself a rate of \$975 per hour [par.119];

. Mr. Sterns has been a lawyer for over 25 years. According to his firm's website, Mr. Sterns is "(...) considered to be one of the most highly regarded class action lawyers in Canada and is ranked number one in Chambers Canada's prestigious annual rankings".

. In cross-examination [par.115], Mr. Sterns admits that his hourly rate of \$975 is not what he normally charges clients

. The current fee schedule published by the Ontario Bar Association on its website, for a senior lawyer sworn in for over 20 years, is \$350 per hour.

. Justice Aylen (Moushoom v. Attorney General of Canada) states that [par.119] "I have reservations about the number of hours recorded and the hourly rates used to calculate the actual fees (...)"

. Justice Aylen also states that [par.115] (...) "the use of inflated hourly rates, which has the effect of artificially increasing the amount of actual fees, is another reprehensible practice (...)"

. I understand that the premium that will be awarded (i.e. 2, 3, 4, 5 ....10 times the fees) by the Court, when it rules on the application for approval of the fees of the lawyers in the group, must be applied to the actual fees and not to fees previously increased.

. Lastly, in 2012, the cost of living was 13% lower in Montreal than in Toronto, and it is currently slightly higher in Montreal. Our Quebec lawyers are excellent, as evidenced by the extraordinary results obtained in this class action. In this case, the comparison with Ontario lawyers' rates holds up well.

7. In conclusion, I am of the opinion that a rate of \$900 per hour for senior lawyers, applicable to the calculation of the fees they claim, would be fair and equitable.

#### **The hourly rate used for salaried lawyers**

8. I contest the rate of \$550 per hour [par. 79 of Me Trudel's affidavit], used in calculating the value of work performed by salaried lawyers. I believe that an average rate of \$300 per hour would be fair and equitable. My arguments are as follows :

. Me Trudel states in his affidavit [par.129] that "The base salary at TJL in 2024 was approximately \$70,000. Every lawyer earns this base amount, whether they are a partner with 15 years' experience or a staff lawyer who has just joined the office."

. Under the TJL policy, bonuses of \$3,539,233 [par.131] have accrued and are payable to 10 staff lawyers.

. In an attempt to determine the billable rate of the junior lawyers in this case, it is not unreasonable, without further documentation, to make certain working assumptions :

. Starting from an annual salary of \$70,000, and on the basis of 2,000 billable hours per year, the salaried employees received an hourly remuneration of \$35;

. If we accept that all of the 21,401 hours worked by TJL's salaried lawyers in this class action were as employees, the total basic remuneration for the entire period and to date amounts to \$749,035 (21,401 hours x \$35/hr);

. To this amount of \$749,035 must be added as accrued bonuses of \$3,539,233, for a total of \$4,288,268.

. The actual hourly rate paid to salaried lawyers at TJL would be \$200 (\$4,288,268 / 21,401 hours).

. This " wage " hourly rate is obviously not the one usually billed to clients.

9. In conclusion, I am of the opinion that a billable rate of \$300 per hour for salaried lawyers and junior associates, applicable to the calculation of fees for all hours claimed in this class action, would be fair and equitable. The proposed rate is 1/3 of that proposed for senior lawyers, which seems reasonable to me.

#### **Current value of hours worked and to come**

10. On the basis of the foregoing, the present value of the 211,849 hours worked and yet to be worked on the case by Quebec Class Counsel amounts to \$157,506,900.

11. Based on the fees set out in the previous point, an average rate of \$743 per hour can be calculated.

12. In *Moushoom v. Attorney General of Canada*, a simple calculation reveals an average rate for class counsel of \$733 per hour (actual fees of \$17.591 million divided by 24,000 hours of total work on the case).

13. In the circumstances, the rates I propose seem reasonable.

#### **Past and future fees and disbursements**

14. I contest the amount of \$46,598,926 claimed by the Quebec Class Counsel for past and future fees and disbursements.

15. I also contest the manner in which the amount indicated in the preceding point is claimed. My arguments are as follows :

. The amount of \$46,598,926 is essentially divided into 2 groups.

. Taxable expenses: \$34,551,703 for Proactio;

. The amount claimed for Proactio's work in validating group members and distributing the amounts to each of them, on the basis of 50,000 members, represents a per-member rate of \$691;

. I understand that, in many cases, Proactio will have to do a considerable amount of work to determine whether or not a person belongs to the group. But there will also be many cases, like mine, where, on the one hand, my father's cancer is well documented in an accessible government database and, on the other hand, proving that I and my sister are the only heirs entitled to compensation will be quick and easy, since I have my father's and mother's court-probated wills;

. On the one hand, the magnitude of the amount exceeding \$34 million, or nearly \$700 per file, is far from trivial, and on the other hand, I have found nothing in the document filed to justify this amount.

. I wonder about the magnitude of the amount claimed. Moreover, I think the Court could question this amount.

. Costs (including taxes): \$12,047,223. There is no indication in Me Trudel's affidavit that applicable taxes are not already included in the amount claimed.

. Lawyers for the Quebec groups claim only fees, which include all fees and disbursements, of \$46,498,926, all taxable.

. But since the amount indicated in 15b) includes \$12,047,223 in fees and disbursements that have already been taxed, is it justified to tax them again by including them with the taxable fees?

### **Premium for group lawyers' fees**

15. In reading the affidavits of Me Jonhston, Me Trudel and Dr. Dandavino, I was able to appreciate the incredible work done by our lawyers, although I was not aware of the work accomplished from 2019 to today. I am only a layman, and as such, many subtleties that I did not understand will certainly not escape the Court.

16. I believe that, in collective action cases resulting in megafunds, an analysis of the dozen or so criteria usually used by the courts to establish the value of work accomplished (and therefore the premium to be awarded) will show that each of these criteria is quite a bit above average.

17. In his affidavit, Me Trudel claims increased fees of \$854,578,989 on actual fees of \$214,653,500, representing a premium of 3.981.

18. In *Moushoom v. Attorney General of Canada*, Justice Aylen wrote:

[143] "I also agree with the comments made by other courts that solicitors' fees should be proportionate to the sums recovered where these are large, even in the context of settlements associated with megafunds [see *MacDonald et al v BMO Trust Company et al*, 2021 ONSC 3726 [MacDonald] at para 47]. That said, as I mentioned, there comes a point at which an award of additional legal fees becomes unreasonable and disproportionate, regardless of the amount recovered. It is not necessary for me to 'plant a flag' and establish the ceiling that should apply to recovery, but it is certainly a relevant consideration that affects the weight to be given to the results obtained."

19. I agree that a premium of between 4 and 4.5 times the actual fees incurred by the lawyers in the group, i.e. grossed-up fees ranging from \$630,027,600 to \$708,781,050. In relation to the result obtained of \$4.119 billion, the percentage of gross fees varies from 15.30% to 17.21%.

20. Also in *Moushoom v. Attorney General of Canada*, Justice Aylen wrote at the end of her analysis:

. [162] "Now that I have determined the appropriate premium, I would like to return for a moment to the concept of the coefficient. The coefficient agreed by the parties underlying the \$50 million fee request is 2.843. The coefficient on which I based my decision as to the amount of the fee is 2.273. The difference between the two coefficients is 0.57. However, this small difference represents a fee of \$10 million,

demonstrating that it is unnecessary to focus on the appropriate coefficient rather than on the actual dollar value of the fee" (my emphasis).

**Group lawyers' fees in Quebec**

21. In summary, I am of the opinion that the lawyers are entitled to the following fees and disbursements:

. If a mark-up rate of 4 is used: fees of \$659,577,219 plus applicable taxes, plus disbursements of \$12,047,223 non-taxable;

. If a mark-up rate of 4.5 is applied: fees of \$738,330,669 plus applicable taxes, plus disbursements of \$12,047,223 non-taxable.

	A Marked up current fees (taxable) (\$)	B Fees reimbursed to FAAC (\$)	C Disbursement / Proactio (taxable) (\$)	D Fees (plus applicable taxes) (\$) A-B+C	E Other disbursements (non taxable) (\$)
Increase of 15,30 %, i.e. a rate of 4	630 027 600	5 002 085	34 551 704	659 577 219	12 047 223
Increase of 17,21 %, i.e. a rate of 4,5	708 781 050	5 002 085	34 551 704	738 330 669	12 047 223

R ■■■ M ■■■

Thetford Mines, le 19 janvier 2025



**THIS IS EXHIBIT "B"**  
**TO THE AFFIDAVIT OF PHILIPPE H. TRUDEL**  
**SWORN BEFORE ME ON THIS 22<sup>nd</sup> DAY OF JANUARY 2025**



---

Commission of Oaths for Quebec



From: **André Lespérance** andre@tjl quebec

Date Tue, Jan 21, 2025, 12 53 PM

Subject **Rétroaction à votre opposition**

To [REDACTED]

Cher monsieur M [REDACTED],

Je vous remercie d'avoir pris le temps de nous expliquer aussi clairement et en détails les raisons de votre opposition. Elle sera traduite en anglais et présentée à la Cour (une copie de la traduction vous sera envoyée dès qu'elle sera finalisée).

Vous m'avez demandé une rétroaction sur votre opposition. Je l'ai fait au téléphone avec vous lundi matin et je reprends ici des éléments de notre discussion. Notre réponse plus détaillée sera aussi formulée dans notre mémoire qui vous sera transmis lorsque finalisé. Il fera état des éléments suivants:

1. Le risque que nous avons assumé devrait être d'abord considéré de façon qualitative plutôt que quantitative. Les taux horaires, les heures et le multiplicateur sont des outils que l'on peut utiliser pour déterminer la raisonnable du pourcentage mais la jurisprudence indique aussi qu'il sont sujets à critiques. Le temps investi ne reflète en effet souvent pas la valeur ajoutée au dossier. Considérant les risques et les résultats, il est manifeste selon nous que 22% est raisonnable. Si je vous avais dit en 1998 que je prendrais le dossier d'un membre de votre famille, que vous n'auriez rien à payer sauf 22% de ce que j'obtiendrais pour vous, que je prendrais tous les risques, je crois que vous auriez considéré que c'était juste.
2. Notre pratique n'est pas fondée sur la facturation d'heures à taux horaire et l'envoi de factures payables dans les 30 jours. Ainsi, le meilleur indicateur pour estimer la valeur des heures que nous avons investies devrait selon nous prendre comme base les taux chargés par des avocats d'expérience comparable travaillant dans des dossiers comparables. À cet égard, les taux que nous avons utilisés sont inférieurs aux taux des avocats des compagnies de tabac contre lesquels nous nous sommes battus pendant 26 ans. De même, les taux du cabinet représentant les victimes canadiennes du tabac dans le cadre de la médiation sont de \$1250 pour les avocats seniors et \$650 pour les avocats juniors.
3. Si on calcule le multiplicateur sur la base de votre estimation de la valeur du temps investi, on arrive à un multiple de 5,43 (854 578 989 / 157 506 900). Même ce multiplicateur est à l'intérieur de la plage que les tribunaux considèrent raisonnable pour compenser le risque dans un dossier comme le nôtre. Il est comparable au multiplicateur de 5,2 à 5,5 retenu par la Cour fédérale dans l'affaire McLean, où le risque était incomparablement moindre que le nôtre puisqu'il s'agissait d'un règlement à l'autorisation.

[:https://www.canlii.org/en/ca/fct/doc/2019/2019fc1077/2019fc1077.html?resultId=4303093c13a54daa9038a0876a982cd1&searchId=2024-11-26T09:04:34:567/d4048b384244458f986deaaff8623ee7&searchUrlHash=AAAAAQOJjIwMTkgRkMgMTA3NyIAAAAAAQ](https://www.canlii.org/en/ca/fct/doc/2019/2019fc1077/2019fc1077.html?resultId=4303093c13a54daa9038a0876a982cd1&searchId=2024-11-26T09:04:34:567/d4048b384244458f986deaaff8623ee7&searchUrlHash=AAAAAQOJjIwMTkgRkMgMTA3NyIAAAAAAQ).

Nous vous remercions en terminant pour vos bons mots et pour le temps que vous avez pris pour communiquer votre point de vue.

Cordiales salutations

Dear Mr M [REDACTED],

Thank you for taking the time to explain the reasons for your objection so clearly and in such detail. It will be translated into English and presented to the Court (a copy of the translation will be sent to you as soon as it is finalised).

You asked me for feedback on your objection. I gave it to you on the telephone on Monday morning and I have reproduced here some elements of our discussion. Our more detailed response will also be set out in our brief, which will be sent to you when finalized. It will set out the following points:

1. The risk we have assumed should be considered qualitatively rather than quantitatively. Hourly rates, hours and the multiplier are tools that can be used to determine the reasonableness of the percentage, but case law also indicates that they are open to criticism. The time invested often does not reflect the value added to the case. Considering the risks and the results, it is clear to us that 22% is reasonable. If I had told you in 1998 that I would take on the case of a member of your family, that you would have nothing to pay except 22% of what I would obtain for you, and that I would take all the risks, I think you would have considered that fair.
2. Our practice is not based on billing hours at an hourly rate and sending invoices payable within 30 days. The best indicator for estimating the value of the hours we have invested should, in our view, therefore be based on the rates charged by lawyers of comparable experience working on comparable files. In this respect, the rates we used are lower than the rates charged by the lawyers for the tobacco companies we fought against for 26 years. Similarly, the rates of the firm representing Canadian tobacco victims in the mediation are \$1250 for senior lawyers and \$650 for junior lawyers.
3. If we calculate the multiplier on the basis of your estimate of the value of the time invested (with which we disagree), we arrive at a multiple of 5.43 (854,578,989 / 157,506,900). Even this multiplier is within the range that the courts consider reasonable to compensate for the risks in a case such as ours. It is comparable to the multiplier of 5.2 to 5.5 used by the Federal Court in the McLean case, where the risk was incomparably less than ours since it involved a settlement at authorization.

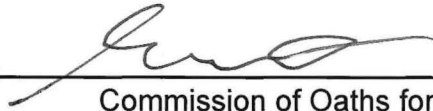
[:https://www.canlii.org/en/ca/fct/doc/2019/2019fc1077/2019fc1077.html?resultId=4303093c13a54daa9038a0876a982cd1&searchId=2024-11-26T09:04:34:567/d4048b384244458f986deaaff8623ee7&searchUrlHash=AAAAAQAOIjIwMTkgRkMgMTA3NyIAAAAAAQ](https://www.canlii.org/en/ca/fct/doc/2019/2019fc1077/2019fc1077.html?resultId=4303093c13a54daa9038a0876a982cd1&searchId=2024-11-26T09:04:34:567/d4048b384244458f986deaaff8623ee7&searchUrlHash=AAAAAQAOIjIwMTkgRkMgMTA3NyIAAAAAAQ).

In closing, we would like to thank you for your kind words and for taking the time to share your point of view.

Yours sincerely,

André Lespérance

**THIS IS EXHIBIT "C"  
TO THE AFFIDAVIT OF PHILIPPE H. TRUDEL  
SWORN BEFORE ME ON THIS 22<sup>nd</sup> DAY OF JANUARY 2025**



Commission of Oaths for Quebec



De : Ray Wagner <[raywagner@wagners.co](mailto:raywagner@wagners.co)>  
Envoyé : Monday, January 20, 2025 6:13:56 PM  
À : André Lespérance <[andre@tjl.quebec](mailto:andre@tjl.quebec)>  
Objet : Re: Mr. M [REDACTED] t opposition

**\*\*Courriel de l'externe\*\***

André:  
I confirm the factual statements about our hourly rates for the period for the 5 years from December 2019 to December 2024, that is:  
Ray Wagner. \$1250.00  
Kate Boyle. \$650.00  
Rates are per hour worked on the Tobacco file.  
Ray Wagner  
Sent from my iPhone



WAGNERS  
EST. 1982



Ray Wagner, K.C.  
Partner  
[raywagner@wagners.co](mailto:raywagner@wagners.co)

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On Jan 20, 2025, at 3:29 PM, André Lespérance <[andre@tjl.quebec](mailto:andre@tjl.quebec)> wrote:

Hello Ray

We just received from a potential *Blais* Class Member, Mr. M [REDACTED], an opposition to the Motion for Approval of the Quebec Class Counsel Fee (the "Opposition"). In his Opposition, he asserts *inter alia* that the hourly rates utilized by Quebec Class Counsel to provide an indicative billing value of the time devoted by them to the files should be reduced to \$900 for senior lawyers and \$300 for associates, instead of the respective \$1150 and \$550 rates utilized in our Notice of Motion.

In our telephone conversation today, you confirmed to me that during the entirety of your involvement in the CCAA Proceedings from 2019 until December 1, 2024, The Law Practice of Wagner & Associates, Inc., in its capacity as PCC Representative Counsel, has billed and been paid by the Applicants on the basis of the following hourly rates, which take into account the complexity of the tobacco file and the extensive demands of the mediation process:

Raymond Wagner: \$1250

Kate Boyle: \$ 650

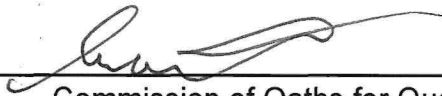
I intend to respond to Mr. M [REDACTED] and inform him, firstly, that I will translate his Opposition into English and present it to the Court objectively and, secondly, to advise him that the hourly rates we have utilized, to the extent this issue becomes relevant, are below the hourly rates paid to the lawyers representing the PCCs since 2019.

Would you please respond to this email and confirm that the information referencing your rates is accurate.

Best regards

André

**THIS IS EXHIBIT "D"**  
**TO THE AFFIDAVIT OF PHILIPPE H. TRUDEL**  
**SWORN BEFORE ME ON THIS 22<sup>nd</sup> DAY OF JANUARY 2025**



Commission of Oaths for Quebec



**Objection received from L.C. on January 14, 2025:**

je ne crois pas que ce sont les victimes de ce fléau qui devraient avoir à payer encore une fois pour des crimes commis par ce gouvernement corrompu mais qu'ils devraient plutôt y avoir un fond du gouvernement pour payer ces honoraires d'avocats vu qu'ils sont retenus coupables de ce crime

**Unofficial English translation of the Objection received from L.C. on January 14, 2025:**

I don't believe that it is the victims of this plague who should have to pay once again for crimes committed by these corrupt governments, but rather that there should be a government fund to pay these lawyers' fees since they are held guilty of this crime.

THIS IS EXHIBIT "E"  
TO THE AFFIDAVIT OF PHILIPPE H. TRUDEL  
SWORN BEFORE ME ON THIS 22<sup>nd</sup> DAY OF JANUARY 2025



Commission of Oaths for Quebec





## **Objection received from J.B. on January 21, 2025:**

Bonjour,

Je tiens tout d'abord à vous remercier pour le travail accompli depuis le début de cette démarche. Je comprends et je reconnais les efforts fournis pour obtenir les résultats que nous avons aujourd'hui. Toutefois, après avoir pris le temps d'examiner la répartition des indemnités j'ai constaté qu'une grande partie des fonds alloués à l'indemnisation allait être absorbée par les frais d'avocats.

Je suis bien conscient des démarches juridiques entreprises et des responsabilités assumées pour arriver à ce stade. Cependant, je ne peux m'empêcher d'être contrarié par le fait que la somme qui m'était initialement due dans le cadre de cette affaire sera largement réduite en raison de ces frais. Cela me touche particulièrement étant donné les circonstances personnelles qui m'ont conduit à participer à cette action.

En effet, j'ai perdu ma mère à l'âge de 15 ans des suites d'un cancer lié au tabagisme. Cette perte a eu un impact profond sur ma vie et continue d'en avoir aujourd'hui dans ma vie quotidienne. J'ai dû grandir sans ma mère et apprendre à devenir autonome du jour au lendemain. Ce fut une épreuve difficile pour un jeune de mon âge. Bien que l'argent ne puisse en aucun cas remplacer un être cher, la somme qui m'était promise dans ce litige – environ 100 000 dollars – représentait pour moi une opportunité de pouvoir enfin vivre dans des conditions plus stables et d'améliorer ma situation. D'une certaine manière j'allai recevoir le soutien que je n'avait jamais eu provenant d'une mère.

C'est pourquoi, en tant que membre du groupe je me vois dans l'obligation de vous écrire aujourd'hui pour exprimer ma profonde déception et remettre en question les honoraires demandés par les avocats. Je considère qu'une grande part de ces fonds, destinés aux victimes de l'industrie du tabac va être injustement absorbée par des frais qui auraient pu être ajustés afin de mieux servir ceux d'entre nous qui ont payé un prix terrible pour leur lutte ou leur perte.

Voici donc les questions que je me pose;

-Pourquoi la demande d'honoraires s'élève-t-elle à 22 % du montant recouvré pour les membres du groupe (soit 906 180 000 \$) alors que cette somme semble considérablement élevée par rapport à la compensation individuelle que chaque membre recevra ? Quelles justifications précises sont fournies pour expliquer ce pourcentage relativement élevé ?

-Si les honoraires sont conditionnels à l'obtention d'une compensation pour les membres du groupe, existe-t-il une structure de rémunération qui garantit que ces honoraires ne nuiront pas à l'indemnisation individuelle des membres ?

-Les honoraires demandés comprennent non seulement la rémunération des avocats pour le travail effectué, mais aussi des dizaines de millions de dollars de frais engagés au cours du litige, ainsi que pour les coûts futurs liés à l'administration des réclamations. Pouvez-vous détailler ces coûts spécifiques, et en particulier la part allouée aux frais futurs, notamment ceux liés à Proactio ?

-Il est mentionné que les avocats n'ont reçu aucun honoraire pendant les 26 années de procédure. Cependant, les coûts de fonctionnement doivent avoir été couverts d'une manière ou d'une autre. Comment ces coûts ont-ils été financés pendant cette période ? Les membres du groupe ont-ils été informés de la manière dont les avocats ont couvert leurs frais durant cette longue période sans paiement ?

-Les avocats ont pris des risques importants, mais quels sont précisément les coûts d'opportunité qu'ils ont assumés ? En quoi ces risques justifient-ils la somme totale des honoraires demandés ?

-Quels types de documents et de preuves seront rendus publics pour que les membres du groupe puissent évaluer en toute transparence la répartition des honoraires et des coûts ?

Je suis conscient que vous avez travaillé dur pour arriver à ce résultat, mais je vous demande de bien vouloir reconsidérer cette répartition et de trouver une manière d'alléger les frais, particulièrement pour les familles endeuillées qui, comme la mienne, ont déjà tant perdu. Pour nous, l'indemnisation ne représente pas qu'une simple compensation monétaire, mais une opportunité de reconstruire une partie de ce que la vie nous a pris.

Je vous remercie pour l'attention portée à cette lettre.

**Unofficial English translation of the Objection received from J.B. on January 21, 2025:**

Hello,

First of all I'd like to thank you for all the work you've done since we started this process. I understand and recognise the efforts made to achieve the results we have today. However, after taking the time to examine the breakdown of the compensation, I realised that a large part of the funds allocated to compensation would be absorbed by legal fees.

I am well aware of the legal steps taken and the responsibilities assumed to reach this stage. However, I cannot help but be upset that the sum originally due to me in this case will be significantly reduced as a result of these costs. This is particularly disturbing given the personal circumstances that led me to take part in this action.

I lost my mother at the age of 15 to smoking-related cancer. This loss had a profound impact on my life and continues to do so today in my daily life. I had to grow up without my mother and learn to be independent from one day to the next, which was a difficult ordeal for a young person of my age. Although money can never replace a loved one, the sum promised to me in this dispute - around 100,000 dollars - represented an opportunity for me to finally live in more stable conditions and improve my situation. In a way, I was going to receive the support I'd never had from a mother.

This is why, as a member of the group, I feel obliged to write to you today to express my deep disappointment and to question the fees charged by the lawyers. I consider that a large part of these funds, intended for the victims of the tobacco industry, will be unfairly absorbed by fees that could have been adjusted to better serve those of us who have paid a terrible price for their fight or their loss.

Why does the fee request amount to 22% of the amount recovered for the members of the group (i.e. \$906,180,000) when this sum seems considerably high compared to the individual compensation that each member will receive? What specific justification is provided for this relatively high percentage?

-If the fees are conditional on obtaining compensation for the members of the group, is there a remuneration structure that guarantees that these fees will not adversely affect the individual compensation of the members?

-The fees requested include not only the lawyers' remuneration for the work carried out, but also tens of millions of dollars in costs incurred during the course of the litigation, as well as for future costs relating to the administration of the claims. Can you give details of these specific costs, and in particular the share allocated to future costs, including those relating to Proactio?

-It is stated that the lawyers received no fees during the 26 years of proceedings. However, operating costs must have been covered in some way. How were these costs financed during this period? Have the members of the group been informed of how the lawyers have covered their costs during this long period without payment?

-The lawyers took significant risks, but what precisely were the opportunity costs they assumed? How do these risks justify the total fees charged?

-What types of documents and evidence will be made public so that members of the group can transparently assess the allocation of fees and costs?

I am aware that you have worked hard to achieve this result, but I would ask you to please reconsider this breakdown and find a way of alleviating the costs, particularly for bereaved families who, like mine, have already lost so much. For us, compensation is not just monetary compensation, but an opportunity to rebuild some of what life has taken from us.

Thank you for your attention to this letter.

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.**

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

**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

**AFFIDAVIT OF PHILIPPE H. TRUDEL  
(sworn January 22, 2025)**

**FISHMAN FLANZ MELAND PAQUIN LLP**

**Mark E. Meland / Avram Fishman / Tina Silverstein**

Place du Canada

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Tel: 514-932-4100

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

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Tel: 514-871-8385

**CHAITONS LLP**

**Harvey Chaiton**

5000 Yonge St., 10th floor

Toronto, Ontario M2N 7E9

Tel: 416-218-1129

Attorneys for Conseil Québécois sur le tabac et la santé, Jean-Yves Blais and Cécilia Létourneau  
**(Québec Class Action Plaintiffs)**