

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

**COMPENDIUM FOR QUEBEC CLASS COUNSEL'S ORAL ARGUMENT**

**(Re: Motion for the Approval of the Quebec Class Counsel Fee  
Returnable on February 11, 2025)**

February 10, 2025

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Létourneau (the “**Quebec Class Action  
Plaintiffs**” or “**QCAP**”)

**TO: THE COMMON SERVICE LIST**

Court File No. CV-19-615862-00CL  
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# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Pro-Sys Consultants Ltd. v. Microsoft Corporation*,  
2018 BCSC 2091

Date: 20181127  
Docket: L043175  
Registry: Vancouver

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

Between:

**Pro-Sys Consultants Ltd.  
Neil Godfrey**

Plaintiffs

And

**Microsoft Corporation  
Microsoft Canada Co./Microsoft Canada Cie**

Defendants

Before: The Honourable Mr. Justice Myers

Corrected Reasons: These Reasons for Judgment were corrected  
on the cover page on November 28, 2018

## **Reasons for Judgment: Settlement and Fee Approval**

Counsel for the Plaintiffs:

J.J. Camp, Q.C.  
Reidar Mogerman  
David G.A. Jones  
Naomi J. Kovak

Counsel for the Defendants:

D. Geoffrey Cowper, Q.C.,  
James M. Sullivan, Q.C.  
Robin L. Reinertson  
Alexandra Mitretodis

Place and Date of Hearing:

Vancouver, B.C.  
September 21, 2018

Further written submissions:

November 14, 2018

Place and Date of Judgment:

Vancouver, B.C.  
November 27, 2018

**IV. FEE APPROVAL**

[41] Section 38 of the *Class Proceedings Act* requires the court to approve the fee agreement made between counsel and the representative plaintiff. If the agreement is not approved, the court may set the fees and disbursements. In some cases, this is done in stages as the plaintiff settles with some but not all the defendants. In this case there is in effect one defendant and the case has been settled in its entirety. The minimum (\$312 million) and maximum (\$517 million) recoveries are known.

[42] Class counsel seek approval of fees of \$100,983,828 plus \$6.4 million for disbursements, of which \$3.6 million is for expert fees. These amounts include taxes. As I noted above, the approval of the settlement is not contingent on the approval of the fees.

[43] The fee is an aggregate one for counsel in British, Québec and Ontario. As noted earlier, counsel agreed that the prime battleground would be British Columbia.

[44] Counsel in the respective jurisdictions are:

British Columbia	Camp Fiorante Matthews Mogerman
Ontario	Strosberg Sasso Sutts LLP
Québec	Bouchard Pagé Tremblay

In addition, in Québec, Belleau Lapointe worked on the case. As I will detail below, because the action was fought in B.C., Camp Fiorante Matthews Mogerman did the vast majority of the work. As also set out below, lawyers in the United States had a substantial role in the case. (They are to be compensated out of the fees received by class counsel.)

[45] The retainer agreement with the representative plaintiffs provides for a contingency fee of 33%. In Ontario and Québec, the retainer agreement was for 30%, the maximum allowed in those provinces. The proposed fees would amount to 19% of the maximum settlement and 31% of the estimated minimum settlement value, not including administration and notice costs. However, the estimated

minimum settlement value is based upon the assumption that no class members will file a claim under the Settlement Agreement. That is obviously unduly pessimistic, especially given the number of businesses that are class members, which will have larger incentives to make claims than individuals.

[46] \$15,147,574 of the fee amount is to be held back until 60 days after the claim deadline, which is 10 months from the notice of publication of the settlement approval. After class counsel have reported on notice, claims administration and the take-up rate they can apply for approval for the holdback to be paid out.

[47] The holdback provides incentive to class counsel to see the matter through the claims process, or as Masuhara J. said in *Jardine v. Certainteed Corporation*, 2017 BCSC 364 at para. 14, to ensure that class counsel are aligned with class members. As he noted, an important role of class counsel is to ensure the claims and distribution process is working smoothly so that the maximum amount ends up in the hands of the class members.

[48] Another function of the holdback in this case is that if only the minimum settlement amount is achieved it would allow the court to adjust the fee downward to match the 30% contingency agreements in Ontario and Québec.

[49] In British Columbia, the courts have taken the view that the contingency agreement between counsel and the representative plaintiff is the starting point and the fee ought only to be reduced if there is a principled reason: *Bodnar v. The Cash Store Inc.*, 2010 BCSC 145 at para. 25–6, citing *Endean v. CRCS*, 2000 BCSC 971. As Smith J. (as he then was) said in *Endean*:

[85] In my opinion, to say that the fee is "simply too much" invites a completely arbitrary assessment, one that depends upon the subjective opinions and whims of the particular judge hearing the application. If the proposed fees are to be reduced on the ground that they impair the integrity of the profession, some principled basis must be suggested for doing so. None has been suggested and I cannot agree that the proposed fee should be reduced by an arbitrary amount ostensibly to protect the integrity of the profession.

At para. 53 of *Endean*, Smith J. noted that the value of the settlement was \$1,600,000,000.

[50] This court has been critical of and rejected an approach based on a multiplier of counsel's hourly rates (also referred to as the lodestar method): *Endean*. So has the court in Ontario: *Martin v. Barrett*, [2008] O.J. No. 2105 (Ont. S.C.J.) at paras. 38–39; *Cassano v. Toronto Dominion Bank*, [2009] O.J. No. 2922 (Ont. S.C.J.) at paras. 59–63; *Rosen v. BMO Nesbitt Burns Inc.*, 2016 ONSC 4752 at paras. 22–24.

[51] There is statutory rationale for a fee agreement's primacy: s. 38 of *Class Proceedings Act* refers to the court having to approve the written agreement between class counsel and the representative plaintiff. The *Act* does not set out any criteria according to which the approval should be granted and those used by the courts are primarily judicial constructs, drawing in part from approvals of contingency fees in cases other than class actions.

[52] In the final analysis, the court must be convinced that the fee is reasonable. Although "windfall" has often been used in this context, I do not find it to be helpful. At best, it states the conclusion that a fee is unreasonable; it does not help in the analysis. This is because, amongst other reasons, the courts have recognised that class action fees should encourage – *i.e.*, reward – counsel for taking on difficult and risky cases. That means there is nothing untoward with a case representing a major upside for counsel, when there is also a major downside. That cannot be considered a "windfall". That said, there *may* be situations when it is important to look at the fee in comparison to the work done. I am thinking here of cases that settle quickly and in which the fee agreement does not have a graduated percentage dependant on the stage that the result is obtained. The case at bar settled in mid-trial so this is not one of those situations.

[53] The matter may also be stated in the negative: the court should ensure that counsel have not commenced an action that uses the class action legislation and judicial system to obtain a result in which they are the only or major beneficiaries.

[54] I will not set out a list of factors the courts have looked at in determining whether a fee is reasonable; this has been done frequently in other cases. I will consider the factors that are particularly germane to this case.

[55] I have already alluded to the risk and complexity of this case when dealing with the settlement approval.

[56] In terms of work done, as I said above, both parties' cases-in-chief had been submitted. The settlement was achieved mid-trial and in contrast to cases that settle shortly after certification and appeals from the certification order, most of the heavy-lifting for trial had been done. The complexity and work done to achieve this should not be underestimated. For example, there was five-day hearing just so the sequencing and conduct of the oral hearing (which was what the settlement avoided) could be determined.

[57] I referred above to the volume of documents that had been reviewed and some of the other work that had been completed.

[58] There have been 22 written decisions in Canada, mostly in or arising out of British Columbia, where counsel agreed the action would be initially fought.

[59] This is a convenient time to discuss the role of U.S. counsel. A substantial amount of work was done by consulting counsel in the United States, under an agreement to share the costs of disbursements pending approval, and to share the fees ultimately approved. The agreement preserves the authority and responsibility of Canadian counsel in relation to the prosecution of this action, and provides that the work of U.S. counsel is to be delivered as needed and instructed by class counsel.

[60] The representative plaintiffs were informed of and approved the relationship between class counsel and U.S. counsel, including the fee arrangements.

[61] U.S. counsel successfully argued a number of applications under 28 U.S.C. § 1782 to collect discovery evidence from witnesses in the United States. This

enabled the plaintiffs to conduct depositions of six former Microsoft personnel, including Mr. Ballmer, Microsoft's former CEO.

[62] Further applications in the United States were made concerning the ability to use U.S. evidence from U.S. proceedings in this case. (As I mentioned above, the trial management order allowed for the use of documents and transcripts from certain U.S. proceedings.)

[63] There have been a total of 18 written judicial decisions in the United States.

[64] Canadian counsel depose that the U.S. counsel shared the workload in developing the case for trial. They took an active role in formulating a mediation settlement strategy and attended the mediation, which ultimately resulted in the settlement. In dealing with the settlement approval above, I referred to the risk of the trial judgment. However, there was also a serious risk regarding certification.

[65] At the time this action was commenced, there had not been a successful contested certification of a case founded on breach of the *Competition Act* in Canada. The two contested *Competition Act* cases were denied certification: *Chadha v. Bayer Inc.* (1999), 45 O.R. (3d) 29 (S.C.J.) and *Price v. Panasonic Canada*, [2002] O.J. No. 2362 (Ont. S.C.J.). It was therefore not clear that a claim brought on behalf of a class of indirect purchasers could be certified.

**A. Comparison to hourly rates**

[66] I said that the lodestar method of determining a class counsel fee was not the accepted or preferred method. Nevertheless, counsel have provided the data so I will refer to it. The data has been provided based on the hourly rates at the time the work was done and at the current hourly rates:

Law Firm	Total Docketed Time (without applicable taxes) at Historical Hourly Rates	Total Docketed Time (without applicable taxes) at Current Hourly Rates
CFM	\$9,398,619.00	\$11,060,217.00
Strosberg	\$442,773.50	\$618,862.50
Bouchard	\$136,933.80	\$136,933.80
Belleau	\$115,945.65	\$118,946.15
<b>TOTAL</b>	<b>\$10,094,271.95</b>	<b>\$11,934,959.45</b>

[67] It follows from what I said above regarding the involvement of U.S. counsel that the value of their hourly rates should be considered. It is:

Law Firm	Total Docketed Time (without applicable taxes) at Historical Hourly Rates	Total Docketed Time (without applicable taxes) at Current Hourly Rates
Zelle	US\$2,440,195.50	US\$2,440,195.50 <sup>1</sup>
RMH & Hellmuth	US\$7,468,765.75	US\$8,106,592.75
Hinkle	US\$4,278,332.50	US\$4,636,568.00
Kirby & Gralewski	US\$7,725,562.50	US\$8,956,476.25
Lieff	US\$7,912,204.50	US\$8,279,284.00
<b>TOTAL</b>	<b>US\$29,825,060.75</b>	<b>US\$32,419,116.50</b>
<b>TOTAL IN CANADIAN DOLLARS<sup>2</sup></b>	<b>C\$39,222,937.39</b>	<b>C\$42,634,380.11</b>

[68] Using rounded numbers, the total hourly fee value for all counsel in Canadian dollars, without taxes, at historical rates, is therefore \$49.3 million. The \$100.1 million fee request is therefore an approximate multiple of 2, which cannot be said to be unreasonable.

[69] I conclude, therefore, that the amount of the proposed fees is reasonable.

<sup>1</sup> No change between Zelle's Historical Hourly Rates and Current Hourly Rates

<sup>2</sup> All conversions between Canadian dollars and U.S. dollars are done at the exchange rate of 1.3151, which is the exchange rate as of the date of the Settlement Agreement (July 11, 2018).

## V. DISBURSEMENTS

[70] Turning to disbursements, as mentioned above, counsel seek a total of \$6,206,871 plus taxes. The breakdown by category is:

<b>Disbursements</b>	
Courier	\$9,603.91
Court Registry Fees	\$6,218.47
Court Reporter	\$41,555.44
Document Management	\$1,448,491.70
Meals	\$46,873.39
Experts	\$3,600,760.28
Fax	\$183.03
Long Distance	\$20,193.79
Miscellaneous - Binding, Other	\$12,479.14
Outside Professionals	\$188,400.03
Photocopying	\$146,105.69
Photocopying – External	\$43,591.36
Postage	\$101.20
Process Service	\$4,342.62
Published Notices	\$62,267.03
Registry Agent	\$23,610.39
Search	\$3,715.07
Witness Fee/Deposition	\$0.00
Research	\$103,052.29
Records	\$5.00
Travel	\$445,321.26
<b>Sub-Total</b>	<b>\$6,206,871.10</b>
Taxes	\$199,980.07
<b>Grand Total</b>	<b>\$6,406,851.17</b>

[71] The most costly item is expert fees. I have been given the breakdown by expert. I have read the reports prepared for certification and trial. They were prepared by leading experts in their fields, were complex and all were germane to the issues. I therefore do not have concerns with this item.

[72] The second most costly item is document management. As I said above, all documents were put on a cloud-based system and the memorials and expert reports



were hyperlinked to the documents, which I used extensively. Having seen the detailed listing of the expenses, I also do not have a concern about this item.

[73] With respect to travel, counsel advise:

- (a) Accommodation charges were restricted to rates charged at standard business hotels (Sheraton, Hilton, Marriott) or similarly priced alternatives.
- (b) Meal expenses were restricted to \$20 per person for breakfast, \$25 per person for lunch, and \$50 per person for dinner, plus applicable taxes.
- (c) Air travel was booked as economically as possible, with reimbursements for business class travel only being claimed for flights in excess of three hours unless exception circumstances existed.

[74] I have also seen detailed lists of the other charges. This, of course, amounts to a somewhat cursory review. It is not a taxation; however, in view of my familiarity with the case I do not think one is merited, nor is it or should it be the ordinary practice.

[75] While the materials disclose that the class representatives have no issue with the fee, I do not believe they reviewed the detailed disbursement list, which was recently provided to me. My approval of the disbursements is, therefore, subject, to the class representatives filing an affidavit that they have reviewed the disbursements and have no issue with them.

## **VI. CONCLUSION**

[76] The settlement had been approved at the hearing.

[77] Subject to the proviso in para. 75, the fees and disbursements are approved.

"E.M. MYERS, J."

Parsons et al. v. Canadian Red Cross Society et al.

Kreppner et al. v. Canadian Red Cross Society et al.

[Indexed as: Parsons v. Canadian Red Cross Society]

49 O.R. (3d) 281

[2000] O.J. No. 2374

Court File Nos. 98-CV-141369 and 98-CV-146405

Ontario Superior Court of Justice

Winkler J.

June 22, 2000

Civil procedure -- Class proceedings -- Counsel fee  
-- Premium fee -- Lump sum counsel fee -- Whether fee fair and  
reasonable -- Criteria for determining whether court should  
approve counsel fee in class proceedings -- Class counsel  
applying for court approval of counsel fees after settlement of  
two class proceedings on behalf of individuals infected with  
Hepatitis C from Canadian blood supply -- Lump sum counsel fees  
of \$15 million and \$5 million respectively approved -- Class  
Proceedings Act, 1992, S.O. 1992, c. 6., ss. 32, 33.

Two class proceedings, the "transfused action" and the  
"hemophiliac action", under the Class Proceedings Act, 1992  
("CPA") were brought on behalf on all individuals in Canada,  
except for those in Quebec and British Columbia, who were  
infected with Hepatitis C from the Canadian blood supply during  
the period January 1, 1986 to July 1, 1990. There were  
concurrent class proceedings in Quebec and British Columbia.  
All the actions were settled by a pan-Canadian settlement  
agreement that was approved by the courts in Ontario, Quebec  
and British Columbia and that involved the federal government,  
which was a defendant, and the provinces and territories, which  
intervened for the purposes of joining the settlement. The

all class members; and

- (b) a settlement that benefits one or more class members.

[11] The leading Ontario case on the quantification of appropriate fees in class proceedings is *Gagne v. Silcorp Ltd.* (1998), 41 O.R. (3d) 417, 167 D.L.R. (4th) 325 (C.A.). Goudge J.A., writing for the court, addressed the purpose of awarding premium fees in respect of successful class proceedings. He stated at pp. 422-23:

[A] fundamental objective [of the CPA] is to provide enhanced access to justice to those with claims that would not otherwise be brought because to do so would be prohibitively uneconomic or inefficient. The provision of contingency fees where a multiplier is applied to the base fee is an important means to achieve this objective. The opportunity to achieve a multiple of the base fee if the class action succeeds gives the lawyer the necessary economic incentive to take the case in the first place and to do it well. However, if the Act is to fulfill its promise, that opportunity must not be a false hope.

(Emphasis added)

[12] Although the issue before the Court of Appeal in *Gagne* involved a premium fee in the form of a multiplier of a base fee, it has been held that this is not the only acceptable form of premium fee arrangement in class proceedings conducted under the CPA: see *Nantais v. Telectronics Proprietary (Canada) Ltd.* (1996), 28 O.R. (3d) 523, 134 D.L.R. (4th) 470 (Gen. Div.); *Crown Bay Hotel Ltd. Partnership v. Zurich Indemnity Co. of Canada* (1998), 40 O.R. (3d) 83, 160 D.L.R. (4th) 186 (Gen. Div.).

[13] Notwithstanding the different forms that a premium fee arrangement may take, the principle enunciated by Goudge J.A. regarding the purpose of awarding premium fees in a class proceeding has a general application. If the CPA is to achieve the legislative objective of providing enhanced access to

justice then in large part it will be dependent upon the willingness of counsel to undertake litigation on the understanding that there is a risk that the expenses incurred in time and disbursements may never be recovered. It is in this context that a court, in approving a fee arrangement or in the exercise of fixing fees, must determine the fairness and reasonableness of the counsel fee. Accordingly, the case law that has developed in Ontario holds that the fairness and reasonableness of the fee awarded in respect of class proceedings is to be determined in light of the risk undertaken by the solicitor in conducting the litigation and the degree of success or result achieved: see *Maxwell v. MLG Ventures Ltd.* (1996), 30 O.R. (3d) 304, 3 C.P.C. (4th) 360 (Gen. Div.); *Windisman v. Toronto College Park Ltd.* (1996), 3 C.P.C. (4th) 369 (Ont. Gen. Div.); *Serwaczek v. Medical Engineering Corp.* (1996), 3 C.P.C. (4th) 386 (Ont. Gen. Div.). This approach was approved by Goudge J.A. in *Gagne* where he stated at p. 423:

In my view, [it is correct to focus] on these two considerations. Section 33(7)(b) makes clear the relevance of "the risk incurred in undertaking and continuing the proceeding under an agreement for payment only in the event of success". Section 33(9) invites a consideration of the manner in which the solicitor conducted the proceedings.

#### Analysis

[14] In my view, there are a variety of methods that may be utilized under the CPA to determine an acceptable premium on fees. It is appropriate to utilize this flexibility in fixing the fees in class proceedings where necessary. Here, class counsel seek to have their fees fixed on a lump sum basis pursuant to the retainer agreements with the representative plaintiffs and the provision in the settlement agreement. While this is acceptable in form, in my view, the court must still adhere to the principles discussed in *Gagne* in assessing the fairness and reasonableness of the counsel fee, whether that fee is calculated on a lump sum basis or otherwise.

##### A. Result achieved in the litigation

**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 CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS  
(OSOYOOS) INC. AND ELMCLIFFE INVESTMENTS INC., Applicants

(Motions for Approval of CCAA Canadian Representative Counsel's Fees and of  
Additional RSAs, Notice and the Claims Administrator)

**Before:** Penny J.

**Heard (by videoconference in Toronto):** December 17, 2021

**Endorsement**

On December 17, 2021, I granted orders in this CCAA proceeding with brief reasons to follow. These are the reasons.

There are two motions before the Court in this proceeding. There is no opposition.

The first motion seeks to implement approvals granted in Pattillo J.'s July 16, 2021, Sanction Order approving CannTrust Holdings' CCAA Plan.

I am satisfied that the approvals sought are consistent with and appropriately implement the Sanction Order.

The sealing order is necessary for the brief period until Plan closing to preserve the parties' ability to maximize returns and complete the Plan as approved.

The second motion involves the approval of Canadian and US counsels' fees. The fees for which approval is sought are fully consistent with counsel's retainers with the representative plaintiffs, the terms of which the jurisprudence treats as presumptively valid and fair. In addition, the result achieved on this settlement

appears to be excellent, considering the damages sustained by the securities claimants, the legal and factual impediments to recovery and CannTrust's financial position. This is one of the largest recoveries in a Canadian securities class action. Counsel took on significant risk in asserting claims against these defendants because of the multiple factual and legal impediments to establishing liability and damages and, with respect to some of the defendants, enforcing a judgment. These risks included the risk of having no success and/or minimal recovery while devoting massive resources to the prosecution of this action. Finally, the requested fees are within the range of percentages that Ontario courts have approved (between 20% to 33% are typical in class proceedings). This was not an easy case and the settlement process was long, complex and involved. Canadian representative counsel committed over 2,460 lawyer hours (with a time value of over \$4.5 million) and out-of-pocket disbursements exceeding \$360,000. The implied multiplier is also well within the bounds of multipliers considered appropriate by the court in similar cases.

The representatives who retained Canadian and US counsel are supportive of the fees proposed.

For these reasons, the fees are approved.

A handwritten signature in blue ink, appearing to read "Penny J." with a period at the end.

Penny J.

## COURT OF APPEAL

CANADA  
PROVINCE OF QUEBEC  
REGISTRY OF MONTREAL

No.: 500-09-030160-220  
(500-06-000890-174)

DATE: April 24, 2023

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**CORAM: THE HONOURABLE MARK SCHRAGER, J.A.  
PATRICK HEALY, J.A.  
CHRISTINE BAUDOIN, J.A.**

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**B.F.**  
APPELLANT – plaintiff/representative  
v.

**LES CLERCS DE SAINT-VIATEUR DU CANADA**  
RESPONDENT - defendant/plaintiff in warranty  
and  
**COLLÈGE BOURGET**  
**FONDS D'ENTRAIDE DE L'ANCIEN SÉMINAIRE DE JOLIETTE**  
**CENTRE INTÉGRÉ UNIVERSITAIRE DE SANTÉ ET DE SERVICES SOCIAUX DE LA**  
**CAPITALE-NATIONALE**  
RESPONDENTS – defendants  
and  
**LES MISSIONS SAINT-VIATEUR**  
**FONDS LOUIS-QUERBES**  
RESPONDENTS – impleaded parties  
and  
**INTACT INSURANCE COMPANY**  
RESPONDENT – third party intervenor/defendant in warranty  
and  
**TRAVELERS CANADA**  
**ROYAL AND SUN ALLIANCE**  
IMPLEADED PARTIES – defendants in warranty  
and

norm. However, he rejects the appellant's contention that the reasonableness of the fees should be assessed based on the amount of fees each class member is required to pay out of his or her indemnity. What matters, in his view, is the reasonableness of the fees to be paid collectively.

[49] In this case, the *amicus curiae* is of the view that the judge was correct in using the multiplier method to control the reasonableness of the professional fees. In his opinion, however, the judge erred in suggesting that a multiplier of 4.64 was in itself excessive. Such a multiplier is not in itself unreasonable, especially in the context of a class action such as this one, where the victims will benefit from a generous claims procedure and where the lawyers assumed a tremendous risk, showed great dedication, and did remarkable work. The *amicus curiae*, however, is of the view that the applicable multiplier in this case is not actually 4.64. As the judge noted, the hourly rates disclosed by class members' counsel appear to have been established based on the file. This is particularly true for Mtre Dufresne-Lemire, who is claiming an hourly rate of \$400 in this file, whereas her usual hourly rate is \$200, and the fee agreement provides for an hourly rate of \$250 if the mandate is revoked. The *amicus curiae* shares the judge's concerns on this matter and considers that the appellant was mistaken in asserting that the hourly rates billed to other clients in different files are irrelevant. According to him, the hourly rate applied using the multiplier method should not be reserved for class action files, otherwise the calculation and the very notion of a multiplier are distorted. Indeed, it would be tantamount to the risk involved being recognized twice (once in the hourly rate and again in the multiplier). The "usual" hourly rate of the lawyer should be the basis for the calculation as it allows the lawyer's actual opportunity cost to be taken into account and is determined by market considerations. In this case, the application of a multiplier of 4.64 to Mtre Dufresne-Lemire's hourly rate of \$400 equates to a factor of 7.4 with respect to an hourly rate of \$250 and of 9.3 with respect to an hourly rate of \$200. If the Court assumes that the hourly rates of the other lawyers were also increased based on the file, [TRANSLATION] "it must conclude that the professional fees claimed on appeal (20% rather than 25%) yield a multiplier of between 5.9 and 7.4." The Court can make that presumption because class members' counsel did not indicate if Mtre Dufresne-Lemire's hourly rate was the only one to have been increased, even though it was incumbent upon them to [TRANSLATION] "be transparent on this issue". In the circumstances, the *amicus curiae* suggests that the Court apply a multiplier of 4.64 to the professional fees of \$754,843, for a total amount of \$3,502,472. Another option would be to apply that multiplier to an hourly rate of \$250 for each lawyer's time (\$889,991.50) and an hourly rate of \$75 for the other employees (\$77,049) for a total of \$4,129,560.56.

### Analysis

[50] The fee agreement reached by the representative binds the members of the class action. Its enforcement, however, remains subject to court approval.<sup>32</sup> Pursuant to

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<sup>32</sup> *Pellemans*, *supra* note 26 at para. 48.



the second paragraph of art. 593 CCP, the judge is indeed entrusted with the role of ensuring that the fee charged is reasonable, and if not, it authorizes the judge to “determine it”.

[51] The professional fee agreement benefits from a presumption of validity and can be set aside only if applying it would not be fair and reasonable for the class members [TRANSLATION] “in the context of the transaction being reviewed”.<sup>33</sup> However, pursuant to art. 593 CCP, no professional fee agreement binds the judge.<sup>34</sup> Thus, although it is true that the judge must give certain weight to the parties’ expressed will, he or she must nevertheless ensure that the professional fees claimed are actually fair and reasonable.<sup>35</sup> Thus, the judge must not hesitate, if necessary, to [TRANSLATION] “revise the amount of these fees to reflect their true value, arbitrate them, and reduce them when they are pointless, exaggerated, or disproportionate to the gain expected by the group from the action”. The judge has a complex task because he or she must [TRANSLATION] “find the ideal equilibrium in the remuneration by giving the lawyers the necessary and sufficient amount to encourage them to take on the next case, while bearing in mind that the class members must be the first to benefit from the amounts paid by the defendants”.<sup>36</sup>

[52] The *Code of Civil Procedure* does not identify criteria for determining the fairness or reasonableness of professional fees. Section 102 of the *Code of Professional Conduct* provides useful guidelines in this respect. It states:<sup>37</sup>

**102.** The fees are fair and reasonable if they are warranted by the circumstances and proportionate to the professional services rendered. In determining his fees, the lawyer must in particular take the following factors into account:

- (1) experience;
- (2) the time and effort required and devoted to the matter;
- (3) the difficulty of the matter;
- (4) the importance of the matter to the client;

**102.** Les honoraires sont justes et raisonnables s’ils sont justifiés par les circonstances et proportionnés aux services professionnels rendus. L’avocat tient notamment compte des facteurs suivants pour la fixation de ses honoraires:

- 1° l’expérience;
- 2° le temps et l’effort requis et consacrés à l’affaire;
- 3° la difficulté de l’affaire;
- 4° l’importance de l’affaire pour le client;

<sup>33</sup> *Banque Amex*, supra note 24 at para. 66.

<sup>34</sup> *Ibid.* at para. 67, citing *Skarstedt c. Corporation Nortel Networks*, 2011 QCCA 767 [Skarstedt].

<sup>35</sup> *Ibid.* at para. 62, citing *Apple Canada Inc. c. St-Germain*, 2010 QCCA 1376 at para. 36.

<sup>36</sup> Catherine Piché, *L’action collective : ses succès et ses défis*, (Montreal: Thémis, 2019) at 227.

<sup>37</sup> See also art. 2134 CCQ; *Act respecting the Barreau du Québec*, CQLR c. B-1, s. 126.

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|---|---|
| (5) the responsibility assumed;   | 5° la responsabilité assumée;   |
| (6) the performance of unusual professional services or professional services requiring special skills or exceptional speed;  | 6° la prestation de services professionnels inhabituels ou exigeant une compétence particulière ou une célérité exceptionnelle;   |
| (7) the result obtained;  | 7° le résultat obtenu;  |
| (8) the fees prescribed by statute or regulation; and   | 8° les honoraires prévus par la loi ou les règlements;  |
| (9) the disbursements, fees, commissions, rebates, costs or other benefits that are or will be paid by a third party with respect to the mandate the client gave him. | 9° les débours, honoraires, commissions, ristournes, frais ou autres avantages qui sont ou seront payés par un tiers relativement au mandat que lui a confié le client. |

[53] This Court’s case law confirms that these factors are relevant to the analysis required by art. 593 CCP.<sup>38</sup> Clearly, the respective weight given them may vary according to the circumstances. It is also understood that this list of factors is not exhaustive, as indicated by the use of the term “in particular” (“*notamment*”) in s. 102 of the *Code of Professional Conduct*.

[54] It is generally accepted that an assessment of the fairness and reasonableness of the professional fees requires the judge to also consider the risk incurred by the lawyers. In the context of a percentage fee agreement, the Superior Court has recognized that this factor could even take precedence over the amount of time counsel devoted to a file.<sup>39</sup> In every case, the risk must be assessed at the time counsel received the mandate from the representative, not at the time of the application for approval.<sup>40</sup>

[55] The judge ruling on an application for the approval of professional fees must also consider the effect of the agreement on the image of the profession. He or she must ensure that the agreement is not “likely to give to the profession a profit-seeking or commercial character” (*Code of Professional Conduct*, s. 7).<sup>41</sup> The objectives of the class action must also be taken into account. As Professor Pierre-Claude Lafond noted, [TRANSLATION] “[t]he contribution to access to justice and the deterrence of reprehensible

<sup>38</sup> *Banque Amex*, *supra* note 24 at para. 66.

<sup>39</sup> *Pellemans*, *supra* note 26 at para. 76.

<sup>40</sup> *Skarstedt*, *supra* note 34 at para. 16; *Pellemans*, *supra* note 26 at para. 52.

<sup>41</sup> *Francoeur c. Belzil*, 2004 CanLII 76585 at para. 33 (C.A.).

behaviour can justify substantial fees insofar as this type of action generates benefits for citizens that would otherwise be unattainable”.<sup>42</sup> That said, the judge must:

[TRANSLATION]

... “take steps to preserve the integrity and credibility of class actions, in the eyes of the class members and in the eyes of public observers”. ...Class actions must not become [TRANSLATION] “merely a source of enrichment for class counsel”.<sup>43</sup>

[References omitted.]

[56] I would add, however, that judges should resist the temptation to always seek to reduce the amount of professional fees provided for in fee agreements, at the risk of provoking a practice among lawyers of asking for more, knowing that the court will certainly reduce the agreed amount.

[57] Percentage agreements are very common in class actions. This type of agreement has considerable advantages, namely in that it promotes [TRANSLATION] “access to justice for citizens who would not otherwise be able to afford it”.<sup>44</sup> There is no question here of reviewing the validity and usefulness of this method of remuneration. Lawyers must be encouraged to accept class action mandates with the knowledge that any risk they accept will be compensated. In this regard, lawyers are entitled to expect that their fee agreements will be respected.

[58] The appellant and the *amicus curiae* are also correct in asserting that the “range” of percentages deemed reasonable by the courts is normally between 15% and 33% (or even 20% to 33.33%) of the settlement fund.<sup>45</sup> However, that is not automatic. As the Court noted in *Skarstedt*, [TRANSLATION] “a judge must determine the reasonableness of the fees in each claim in order to approve them”.<sup>46</sup> Thus, judges have decreased the percentage set by the parties when it appeared exaggerated in relation to the work performed by the lawyers, the relatively modest settlement amount of the dispute, and the professional fees that would have been charged under the hourly rate model.<sup>47</sup> The possibility of providing for progressive percentages that increase as the file progresses may be fair depending on the work devoted to the file. However, such a formula can deter lawyers from settling early in the process, even when a quick settlement is in the best interests of class members. Percentages can also be regressive once a certain

<sup>42</sup> Pierre-Claude Lafond, *Libres propos sur la pratique de l'action collective*, (Montreal: Yvon Blais, 2020) at 274.

<sup>43</sup> *Option Consommateurs c. Meubles Léon Itée*, 2022 QCCS 193 at para. 88 [*Meubles Léon*].

<sup>44</sup> *Marcotte c. Banque de Montréal*, 2015 QCCS 1915 at para. 5.

<sup>45</sup> See e.g., *Normandin c. Bureau en Gros (Staples Canada)*, 2022 QCCS 3367 at para. 35; *Association des jeunes victimes de l'église c. Harvey*, 2022 QCCS 1956 at para. 56; *Meubles Léon*, *supra* note 43 at para. 93; *Bouchard c. Audi Canada inc.*, 2021 QCCS 10 at para. 44; *Salazar Pasaje c. BMW Canada inc.*, 2021 QCCS 2512 at para. 58, leave to appeal refused, 2021 QCCA 1107 (8 July 2021); *Pellemans*, *supra* note 26 at paras. 53 and 57.

<sup>46</sup> *Skarstedt*, *supra* note 34 at para. 31.

<sup>47</sup> *Volkswagen*, *supra* note 25 at paras. 95–101.

settlement amount has been reached, but this too can have a deterrent effect on lawyers' efforts. In short, every case is different. There is no magic formula that will guarantee in every situation that the fee will ultimately be reasonable. Above all, the analysis must not be limited to verifying that the professional fee agreement provides for a percentage below a generally applied range.<sup>48</sup>

[59] The lodestar method or multiplier method consists of calculating the number of hours worked, multiplying that by the hourly rate and a multiplier that takes into account the risk run by the lawyers.<sup>49</sup> It is a method of remuneration, but also a means of controlling the reasonableness of the professional fees often applied in class actions.

[60] The multiplier method has certain inconveniences and its share of detractors. In *Pellemans*, Prévost J.S.C. noted that it:

[TRANSLATION]

does little to promote the efficiency of counsel's work because the multiplier only increases the value of the time indicated by counsel for the case. In addition, since the multiplier applicable to a case is assessed at the time of the settlement or judgment, it is more likely to underestimate the "risk" assumed by counsel at the time the mandate is received.<sup>50</sup>

This was also what the appellant argues in his written submissions.

[61] The Court had the following to say about the multiplier:

[TRANSLATION]

[66] The general principles and analytical framework relevant to whether professional fees are fair and reasonable flows from the consideration of these factors. In this context, fee agreements enjoy a presumption of validity and will only be set aside if applying them would not be fair and reasonable for the class members in the context of the transaction being reviewed. As for the multiplier model, it is a tool for evaluating whether fees are reasonable.<sup>51</sup>

[Emphasis added; references omitted.]

[62] The use of the multiplier to analyze the reasonableness of the professional fees appears to be well established in the case law of the Superior Court. However, I agree with the submissions of the appellant and the *amicus curiae* that a mechanical application of this method and the use of rigid [TRANSLATION] "upper limits" should be

<sup>48</sup> *Rahmani c. Groupe Adonis inc.*, 2021 QCCS 2616 at paras. 60–61.

<sup>49</sup> Piché, *supra* note 36 at 236.

<sup>50</sup> *Pellemans*, *supra* note 26 at para. 65. See also Lafond, *supra* note 42 at 288–289.

<sup>51</sup> *Banque Amex*, *supra* note 24 at para. 66.

avoided. The assessment of the reasonableness of the professional fees should not be reduced to a simple mathematical operation. Thus, although the norm adopted by the Superior Court for multipliers varies between 2 and 3, that does not mean that a multiplier superior to that norm necessarily requires a reduction of the fee.<sup>52</sup> For example, in *Pellemans, Prévost J.S.C.* approved a percentage agreement corresponding to a multiplier of 4.58.

[63] The way the multiplier is applied must be closely examined. In this case, I question the way the judge applied this method because he seemed to place undue importance on the time the lawyers devoted to the case, despite the other factors that come into play when assessing the reasonableness of professional fees. The value of the services rendered is not the same as the time devoted to the file.

[64] As mentioned above, a fee agreement benefits from a presumption of validity. Such a presumption implies that the analysis of the reasonableness of the fees determined in a percentage agreement should start with the application of criteria other than the time devoted to the matter by the lawyers. Experience teaches us that the amount of professional fees payable pursuant to a percentage agreement will often, if not always, exceed the amount of professional fees calculated based on the time spent on the matter multiplied by the applicable hourly rate(s). As a result, if the analysis is based on the hours worked, there is always a risk that the amount of professional fees to be paid will appear excessive or unreasonable. Thus, to start the analysis by considering the factors of time and hourly rate is circular or tautological reasoning. If the agreement to calculate the professional fees on a percentage basis rather than according to the time spent on the file is set aside, the conclusion that the professional fees are unreasonable is almost inevitable. To avoid this pitfall, the analysis should start with an assessment of all the other criteria set out in the *Code of Professional Conduct* and of the risk assumed by counsel. If the conclusion is reached that the amount (not the percentage) of fees payable is reasonable, the analysis can stop at the judge's discretion. However, if the amount of professional fees seems unreasonable, it is then appropriate to consider the hours spent on the case and apply a multiplier to adjust it so that it becomes reasonable.

[65] Simply counting the number of hours spent on the case multiplied by the applicable hourly rates and applying a multiplier of 2, 3, 4, or even 5 is, in my opinion, arbitrary, at least to some degree. The risk assumed at the outset of the case is not neatly translated into a number, namely the multiplier. The factors do not take into account the interest rates a lawyer may have to pay while financing the class action. Although the method measures opportunity cost, it does not assess the risk the lawyer accepts in other class actions paid on a percentage basis. In other words, sound risk management means accepting several mandates knowing that some cases will probably be lost, leaving the lawyer without any remuneration. Moreover, the time

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<sup>52</sup> *Pellemans, supra* note 26 (professional fees of \$11,000,000 approved versus professional fees of \$2,400,000 using the hourly rate formula).

devoted to the case in these types of matters is often secondary in the analysis of the reasonableness of professional fees.<sup>53</sup> The risk assumed and the result obtained should normally take precedence, bearing in mind that the weight to be given to each factor may vary from case to case, depending on the circumstances.

[66] My opinion should not be interpreted as condoning the payment of substantial professional fees resulting from a percentage agreement where the work of counsel consisted mainly of copying and pasting a class action instituted in another jurisdiction, filing an application for authorization, and simply waiting for the outcome of the dispute in the other jurisdiction. In such a scenario, the application of the *Code of Professional Conduct* factors should indicate that a large fee statement is unreasonable. The application of the multiplier thereafter to indicate what can be considered reasonable in the circumstances would be a proper exercise of the court's discretion.

[67] Furthermore, an analysis based on the multiplier favours counsel who have a relatively high hourly rate and disfavors a lawyer who helps the disadvantaged by charging a lower hourly rate, which seems to be the case for the appellant's counsel. As stated by the appellant and recognized by some judges:

[TRANSLATION]

[163] The multiplier approach to assessing professional fees has its limitations, however.

...

[168] As the Court previously stated in *Servites de Marie*, applied without discernment, an analysis using a multiplier can lead to rewarding inefficiency, inexperience or, even worse, incompetence. Poorly drafted procedures, administrative inefficiencies, or ignorance of the law can in themselves lead to challenges by defendants. In the case at bar, we need only think of the delays and costs that would have been incurred if the school service centers and the AGQ's actions in warranty in the F. case had not been separated, if all class members B to G or #1 to #5 had had to provide all the required medical records, or if more class members had been examined for discovery. Yet, the higher the number of hours, the lower the multiplier.

[169] In addition, the rapid resolution of a case will benefit class members but will necessarily increase the multiplier. In a case like this one, where many class members are in their sixties, any delay in the settlement is devastating.<sup>54</sup>

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<sup>53</sup> *Pellemans*, *supra* note 26 at para. 76.

<sup>54</sup> *F. c. Frères du Sacré-Coeur*, 2021 QCCS 3621 at paras.163, 168 and 169; see also *Pellemans*, *supra* note 26 at para. 65.

**500-09-030160-220**  
**COUR D'APPEL DU QUÉBEC**

(Montréal)

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En appel d'un jugement de la Cour supérieure, district de Montréal, rendu le 4 juillet 2022 par l'honorable juge Thomas M. Davis.

N° 500-06-000890-174 C.S.M.

**BRIAN FORD**

**APPELANT**  
(demandeur /  
représentant)

c.

**LES CLERCS DE SAINT-VIATEUR DU CANADA**

**INTIMÉ**  
(défendeur /  
demandeur en garantie)

- et -

**COLLÈGE BOURGET**  
**FONDS D'ENTRAIDE DE L'ANCIEN SÉMINAIRE DE JOLIETTE**  
**CENTRE INTÉGRÉ UNIVERSITAIRE DE SANTÉ**  
**ET DE SERVICES SOCIAUX DE LA CAPITALE-NATIONALE**

**INTIMÉS**  
(défendeurs)

- et -

**LES MISSIONS SAINT-VIATEUR**  
**FONDS LOUIS-QUERBES**

**INTIMÉS**  
(mis en cause)

(Suite de l'intitulé en page intérieure)

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**EXPOSÉ DE L'AMICUS CURIAE**

En date du 8 décembre 2022

- 2 -

- et -

**INTACT COMPAGNIE D'ASSURANCE**

**INTIMÉE**

(tierce intervenante /  
défenderesse en garantie)

- et -

**TRAVELERS CANADA**

**ROYAL AND SUN ALLIANCE**

**MISES EN CAUSE**

(défenderesses en garantie)

- et -

**FONDS D'AIDE AUX ACTIONS COLLECTIVES**

**MIS EN CAUSE**

(mis en cause)

- et -

**M<sup>e</sup> JEAN-PHILIPPE GROLEAU**

***AMICUS CURIAE***

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**M<sup>e</sup> Jean-Philippe Groleau, *amicus curiae*  
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*source d'enrichissement pour les avocats en demande* »<sup>30</sup>. Certains dossiers dans lesquels des sommes modiques sont accordées aux membres pour des violations techniques de la loi viennent à l'esprit.

24. Ces dossiers ne sont toutefois pas la règle. En l'instance, par exemple, les victimes d'agressions sexuelles retireront des avantages substantiels de l'Entente de règlement, tel que le premier juge l'a reconnu. Le dénouement du dossier démontre nettement qu'il ne s'agit pas *que* d'une source d'enrichissement pour les avocats.
25. Si on devait établir une règle générale, c'est donc qu'un facteur multiplicateur supérieur à 2 sera *généralement* nécessaire pour créer un véritable incitatif à entreprendre des actions collectives, compte tenu de l'ensemble des risques assumés. Selon cette logique, un facteur multiplicateur de 2,5 ou 3 devrait plutôt se rapprocher de la norme voire d'un plancher dans plusieurs dossiers.
26. Un multiplicateur plus élevé, parfois substantiellement, pourrait aussi être justifié dans certains cas. Par exemple, lorsque l'avocat obtient un résultat extraordinaire et rapide dans un dossier qui, contrairement à ceux mentionnés au paragraphe 23 ci-dessus, s'annonçait long, complexe et hautement contesté : « [a] *percentage-based fee rewards "one imaginative, brilliant hour" rather than "one thousand plodding hours"* »<sup>31</sup>. Un multiplicateur élevé pourrait aussi être justifié dans les dossiers-fleuves, alors que les risques assumés, les sacrifices effectués et les coûts d'opportunité encourus sont exceptionnels. Le dossier du tabac vient à l'esprit.

#### **D. APPLICATION AUX FAITS DE L'ESPÈCE**

27. D'abord, une convention d'honoraires à pourcentage de 25 % n'est pas déraisonnable. Au contraire, il s'agit d'une norme bien établie<sup>32</sup>. Par contre, nous ne pouvons souscrire à la thèse de l'Appelant qui suggère que la raisonnable des

<sup>30</sup> Solkin, *supra* note 22, para. 71.

<sup>31</sup> Cannon, *supra* note 15, para. 5.

<sup>32</sup> Pellemans, *supra* note 15, para. 57. Le même constat a été fait par le juge Sheehan dans l'affaire Solkin, *supra* note 22, para. 76, et par l'honorable Carl Lachance, j.c.s. dans l'affaire *Regroupement des citoyens du quartier Saint-Georges inc. c. Alcoa Canada Itée*, 2022 QCCS 2071, para. 101.

**Our translation of paragraph 26 of the *Exposé de l'Amicus Curiae*, dated December 8, 2022:**

26. A higher multiplier, sometimes substantially, could be justified in certain cases. For example, when the lawyer achieves an extraordinary and rapid result in a case which, unlike those mentioned in paragraph 23 above, promised to be long, complex and highly contested: “[a] percentage-based fee awards ‘one imaginative, brilliant hour’ rather than ‘one thousand plodding hours’”. A high multiplier could also be justified in extremely long cases [in the amicus brief «dossiers fleuves»] where the risks assumed, sacrifices made and opportunity costs incurred are exceptional. The tobacco file comes to mind.

Table of Fee Approval Decisions in Select Mega-Fund Cases

#	Case	Recovery	Litigation Length (years)	Stage of Proceeding as at Recovery	Docketed Time, if available excluding add. work	Value of Docketed Time, if available	Multiplier	Approved Fees and Disbursements	Retainer Applied (Y/N & %)	% on Recovery
<b>A. Table of mega-funds cases where the retainer agreement was enforced</b>										
1.	<i>Pro-Sys Consultants Ltd. v Microsoft Corporation</i> , <a href="#">2018 BCSC 2091</a>  (Anti-competitive wrongs)	\$312,000,000 - \$517,000,000 (para. 17)	13 years	The <b>matter was mid-trial</b> when the parties settled the case (paras. 9-10).	unstated	\$49.3 million (paras. 66-68)	2 (para. 68)	Fees for BC, QC Ont. and U.S. counsel: \$100,983,828 (paras. 43-44)  Disb.: \$6,206,871 (para. 70)	Y – between 31% and 19% (para. 45)	between 31% and 19% of the settlement range (para. 69)
2.	<i>Manuge v. Canada</i> , <a href="#">2024 FC 68</a>  (Miscalculation of disability benefits)	\$817,300,000	4 years	The <b>matter was about to go to a summary judgement trial</b> when the parties settled the case (para. 24).	unstated	\$8 million (para. 80)	Up to 15.5 (estimate)	Fees: Between \$66.4 million and \$124.6 million (para. 95)  Disb.: \$580,000 and \$420,000 (anticipated) (para. 80)	Y - 15.24% (paras. 83-84)	15.24% (paras. 95-96)
3.	<i>Green v CIBC</i> , <a href="#">2022 ONSC 373</a>  (2007 market failure)	\$125,000,000	14 years (para. 2)	The <b>matter was about to go to trial</b> when the parties settled the case (paras. 11-13).	21,000 hours (para. 86)	\$14.8 million (para. 86)	2.5 (para. 88)	Fees: \$37.5 million  Disb.: \$7.2 million (para. 95)	Y: 30% (paras. 91, 93)	30% (paras. 91, 93)
4.	<i>CannTrust Holdings Inc. et al. (Re)</i> , <a href="#">(No. CV-20-00638930-00CL (Dec. 17, 2021))</a> (unreported) Canadian counsel	\$126,292,570, divided equally between the Canadian and U.S. Claimants (para. 4 of <a href="#">U.S. counsel factum</a> )	2 years	Settlement <b>before certification</b> and within the CCAA.	2,460 hours (p. 2)	\$4.5 million (p. 2)	2.68 ( <a href="#">Factum</a> , para. 36) (p. 2)	Fees: \$12,314,628.50  Disb.: Over \$360,000 ( <a href="#">Factum</a> , p. 2)	Y – 19.5% ( <a href="#">Factum</a> , para. 22 & footnote 19)	19.5% (p. 2)
	<a href="#">Order</a> for the US CCAA Counsel, Dec. 17, 2021(unreported) US counsel  (Misrepresentations of value of shares)				5,726 hours (para.350 of <a href="#">U.S. counsel factum</a> )	\$3,880,864.25 (para. 35 of <a href="#">U.S. counsel factum</a> )	4 (para. 35 of <a href="#">U.S. counsel factum</a> )	Fees: \$15,786,571.25  Disb.: USD \$302,000.62 (para. 3)	Y – 25% (para. 4 of <a href="#">U.S. counsel factum</a> )	25% (para. 3)

#	Case	Recovery	Litigation Length (years)	Stage of Proceeding as at Recovery	Docketed Time, if available excluding add. work	Value of Docketed Time, if available	Multiplier	Approved Fees and Disbursements	Retainer Applied (Y/N & %)	% on Recovery
5.	<i>Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation</i> , <a href="#">2014 ONSC 62</a>  (Auditor's Negligence)	\$117,000,000, split between Canadian and U.S. claimants (para. 51)	Less than 2 years	Settlement <b>before certification</b> and within the CCAA.	23,000 hours (para. 40)	\$8.6 million (para. 40)	2.07 (para. 40)	Canadian counsel fees: \$17,846,250  Disb.: \$1,737,650.84 (para. 40)	Y – 16.9% (para. 38)	16.9% (paras. 44, 49)
					unstated	US\$1.3 million (para. 5 of <a href="#">U.S. counsel factum</a> )	1.67 (para. 5 of <a href="#">U.S. counsel factum</a> )	US counsel fees: \$2,344,000  Disb.: US \$151,611.15 (para. 50)	Y – 20% (para. 4 of <a href="#">U.S. counsel factum</a> )	20% (para. 52)
6.	<i>Drywall Acoustic Lathing and Insulation Local 675 Pension Fund (Trustees of) SNC-Lavalin Group Inc.</i> , <a href="#">2018 ONSC 6447</a>  (Secondary Market Misrepresentation)	\$110,000,000	6 years (paras. 58, 59)	Settlement <b>after certification</b> but before judgment on the merits (paras. 21, 37).	15,655 hours (para. 61) and 7,741 hours (estimated) (paras. 60-62)	\$9.1 million (para. 60)  + additional time of \$150,000 (paras. 60-63)	2.54 (para. 64)	Fees: \$25.25 million (para. 64)  Disb.: \$2,393,423.69 (para. 60)	Y – 22.95% (para. 59 (d))	22.95% (para. 64)
7.	<i>Pellemans c. Lacroix</i> , <a href="#">2011 QCCS 1345</a>  (Norboung Fraud)	\$55,000,000	5 years	Class actions instituted in 2005/2006 and joined in 2007. In 2011, just before the <b>matter was about to go to trial</b> , the parties settled the case (paras. 9-10).	Over 7,500 hours (para. 77)	\$2.4 million (para. 77)	4.5 (paras. 121, 155-156)	Fees: \$11 million, incl. disb. (\$300,000 received from defendants) (para. 36)	Y – 20% (para. 67)	20% (paras. 121-122, 155)

#	Case	Recovery	Litigation Length (years)	Stage of Proceeding as at Recovery	Docketed Time, if available excluding add. work	Value of Docketed Time, if available	Multiplier	Approved Fees and Disbursements	Retainer Applied (Y/N & %)	% on Recovery
<b>B. Table of mega-funds cases where retainer agreement was waived</b>										
8.	<i>Endean v. Canadian Red Cross Society</i> , <a href="#">2000 BCSC 971</a>  (Hepatitis C)	\$1.5 billion for all related cases	4 years	Instituted in December 1996 in BC and certified in May 1997. On March 27, 1998, the FPT Ministers of Health, the Honourable Allan Rock, announced a financial assistance package to persons infected with Hepatitis C virus (HCV) between 1986 to 1990 for up to <b>\$1.1 billion</b> ( <a href="#">2000 CanLII 22386 (ON SC)</a> , para. 19).	unstated	\$4 million for transfused action and (para. 74) + \$90,000 for hemophiliac action (para. 100)	3.75 in the transfused action and (paras. 74, 76)  5.5 in the hemophiliac action (para.100)	Fees: \$15 million in the transfused action and + \$500,000 in the hemophiliac action.  Disb.: \$75,376 (para. 102)	N – Not requested ( <i>Parsons</i> para. 52)	3.033% for transfused and hemophiliac actions
	<i>Honhon c. Canada (PG)</i> , <a href="#">2000 CanLII 19368 (QC CS)</a>  (Hepatitis C)		4 years	Instituted in June 1996 in QC and certified in February 1998 ( <a href="#">2000 CanLII 22386 (ON SC)</a> , para. 19).	12,353 hours (para. 34)	\$3,320,671 (paras. 35, 69)	3 (para. 97)	Fees: \$9,962 013 (para. 99)  Disb.: Unstated (paras. 2, 88)		
	<i>Parsons v. Canadian Red Cross Society</i> , <a href="#">2000 CanLII 22386 (ON SC)</a>  (Hepatitis C)		Less than 2 years	The Ontario transfused and hemophiliac actions were certified in June 1998 and May 1999, respectively ([1999] O.J. No. 3572, para. 1), i.e., after the related actions in BC and Quebec had been certified and after the announcement of global settlement by the Ministers of Health in March 1998.	unstated	\$4.2 million (estimate) for transfused action and \$1.2 million (estimate) for hemophiliac action (para. 66)	3.57 in the transfused action and 4.29 in the hemophiliac action (para. 66)	Fees: \$15 million in the transfused action + \$5 million in the hemophiliac action (paras. 59, 76)  Disb. and future work are to be determined in a separate judgment (para. 76)		
9.	<i>Tataskweyak Cree Nation v. Canada (Attorney General)</i> , <a href="#">2021 FC 1442</a>  (Drinking Water)	\$7,800,000,000	2 years	Settled in December 2021, shortly after being certified in June 2021 (para. 2 of <a href="#">2021 FC 1415</a> )	unstated	\$6.5 M (para. 25)	Estimate 9  Judge estimated in error 5.5 (para. 43)	Fees: \$53 million + \$5 million (for future work)  Including disb. of \$208,159 (para. 25)	N- Not requested (para. 37)	0.68% (estimate)

#	Case	Recovery	Litigation Length (years)	Stage of Proceeding as at Recovery	Docketed Time, if available excluding add. work	Value of Docketed Time, if available	Multiplier	Approved Fees and Disbursements	Retainer Applied (Y/N & %)	% on Recovery
10.	<i>McLean v. Canada (Attorney General)</i> , <a href="#">2019 FC 1077</a>  (Indian Day Schools)	\$2,000,000,000	Less than 2 years	Certified in June 2018 and in November 2018, settlement agreement in principle and finalized in March/May 2019 and approved by the Federal Court in August 2019 ( <a href="#">2019 FC 1074</a> ).	unstated	\$8 million ( <a href="#">para. 34</a> ) + about \$2.5 million for future work ( <a href="#">paras. 34-36</a> )	5 excluding additional future work ( <a href="#">para. 36</a> )	Fees: \$55 million including disb. of \$470,000 ( <a href="#">para. 34</a> ) + \$7 million (for future work)	N- Not requested ( <a href="#">para. 13</a> )	3% ( <a href="#">paras. 47, 54</a> )
11.	<i>Moushoom v. Canada (Attorney General)</i> , <a href="#">2023 FC 1739</a>  (Discriminatory conduct towards First Nations)	\$23,343,940,000 ( <a href="#">para. 30</a> )	4 years	On March 4, 2019, three years after the Human Rights Tribunal's decision on the merits, Xavier Moushoom commenced a proposed class action proceeding ( <a href="#">para. 30</a> ).  Mediation started in July 2020 and on April 19, 2023, final settlement agreement was reached, which was approved in June 2023 ( <a href="#">paras. 53-58</a> ).	24,000 hours ( <a href="#">para. 119</a> )	Around \$17.591 million ( <a href="#">para. 120</a> )	2.273 ( <a href="#">para. 162</a> )	Fees: \$40 million + \$5 million (for future work)  Disb.: \$642,000.00 ( <a href="#">para. 163</a> )	N- Not requested ( <a href="#">para. 70</a> )	0.1928% (estimate) ( <a href="#">paras. 161, 164</a> )
12.	<i>Manuge v. Canada</i> , <a href="#">2013 FC 341</a>  (Veterans' Pension)	\$887,000,000	6 years ( <a href="#">paras. 1-3</a> )	Settlement after summary judgment ( <a href="#">para. 2</a> ).	8,500 hours ( <a href="#">para. 39</a> )	\$3.2 million ( <a href="#">para. 39</a> )	around 11 (estimate)	Fees: \$35.5 million  Disb.: about \$260,000 ( <a href="#">paras. 39</a> )	N- Not requested ( <a href="#">para. 45</a> )	4% ( <a href="#">para. 51</a> )

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

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

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

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

APPLICANTS

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**SECOND AMENDED AND RESTATED  
COURT-APPOINTED MEDIATOR'S AND MONITOR'S  
CCAA PLAN OF COMPROMISE AND ARRANGEMENT**

---

**PURSUANT TO THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT***

**concerning, affecting and involving**

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

**JANUARY 27, 2025**

management personnel who will be assigned to the administration of the Quebec Administration Plan and the PCC Compensation Plan.

The Court-Appointed Mediator and the Monitors recommend that Daniel Shapiro, K.C. be approved for appointment as the Administrative Coordinator in respect of the administration of both the Quebec Administration Plan and the PCC Compensation Plan. Mr. Shapiro's curriculum vitae is attached to the CCAA Plan as Schedule "M".

The following table summarizes the compensation available to Eligible *Blais* Class Members under the Quebec Administration Plan:

<b>Quebec Class Action Administration Plan</b>		
<b>Column 1 Compensable Disease</b>	<b>Compensation Payment</b> (or such lesser amount as may be determined by the Claims Administrator to be available for the subclass of claimants; quantum will vary based upon the actual take-up rate and other factors and shall not exceed the maximum amounts specified in this table)	
	<b>Column 2 Compensation Payment for Eligible <i>Blais</i> Class Members who started to smoke before January 1, 1976</b>	<b>Column 3 Compensation Payment for Eligible <i>Blais</i> Class Members who started to smoke on or after January 1, 1976 (80% of Column 2)</b>
Lung Cancer	\$100,000	\$80,000
Throat Cancer	\$100,000	\$80,000
Emphysema/COPD (GOLD Grade III or IV)	\$30,000	\$24,000

## 7.2 Quebec Administration Plan is subject to the Approval of the CCAA Court

The CCAA Court shall hear and determine the proceedings relating to the approval of the Quebec Administration Plan, including the approval of the retainer agreement respecting fees and disbursements between the Quebec Class Counsel and the representative plaintiffs in the Quebec Class Actions, and the approval of the Quebec Class Counsel Fee.

Matters relating to the ongoing supervision of the Quebec Administration Plan shall be heard and determined jointly by the CCAA Court and the Quebec Superior Court. In performing this function, the CCAA Court and the Quebec Superior Court may communicate with one another in accordance with a protocol to be worked out and established by them.



Notwithstanding the foregoing, in the performance of their duties and responsibilities under the CCAA Plan, the CCAA Plan Administrators may, in their discretion, communicate with any individuals as necessary or desirable.

#### **14.6 Distributions to Claimants from Global Settlement Trust Account**

The CCAA Plan Administrators shall, subject to the approval of the CCAA Court, administer the Global Settlement Trust Account and, from time to time, shall authorize the payment from the Global Settlement Trust Account of distributions in accordance with Article 16, Sections 16.1, 16.2 and 16.3 herein, which will be paid to the:

- (a) Quebec Class Action Plaintiffs;
- (b) Pan-Canadian Claimants;
- (c) Provinces and Territories;
- (d) Cy-près Foundation;
- (e) Tobacco Producers; and
- (f) *Knight* Class Action Plaintiffs.

#### **14.7 Advisors to CCAA Plan Administrator**

The CCAA Plan Administrator, in its discretion, may retain any advisors, including legal, financial, investment or other advisors, to advise and assist it to carry out its duties in relation to the administration of the CCAA Plan.

#### **14.8 Role of Court-Appointed Mediator after Sanction Order**

The Court-Appointed Mediator may provide any services after the date of the Sanction Order, as requested by either the CCAA Plan Administrators or the CCAA Court, and approved by the CCAA Court.

#### **14.9 Payment of Costs**

The professional fees, other fees, costs, disbursements, expenses, court costs and other expenditures, and all applicable Sales and Excise Taxes thereon (collectively, “Costs”), charged and incurred in relation to the settlement of the Tobacco Claims and the implementation and administration of the CCAA Plan shall be paid as follows:

- (a) All Costs incurred in respect of:
  - (i) All services which the CCAA Plan Administrator provides in relation to the implementation and administration of the CCAA Plan, including the fulfillment of its duties and responsibilities enumerated in Article 14, Section 14.4 herein, and

- (ii) All services provided by all legal, financial, investment or other advisors engaged by the CCAA Plan Administrator,
- shall be paid biweekly by Imperial. From time to time, the CCAA Plan Administrator shall pass its accounts in the CCAA Court at intervals as the CCAA Court directs;
- (b) All Costs for the services of the Court-Appointed Mediator provided after the date of the Sanction Order, including for the services of any of his legal or other advisors, shall be paid equally by the Tobacco Companies;
- (c) All Costs for the services of the Claims Administrator, including for the services of any of its legal or other advisors, incurred in respect of the administration of the PCC Compensation Plan shall be paid equally by the Tobacco Companies;
- (d) All Costs for the services provided by the Administrative Coordinator, including for the services of any legal or other advisors to the Administrative Coordinator, shall be paid equally by the Tobacco Companies;
- (e) All Costs incurred in respect of the administration of the Cy-près Foundation shall be paid from the Cy-près Fund;
- (f) The Quebec Class Counsel Fee shall be paid out of and deducted from the QCAP Settlement Amount. The Quebec Class Counsel Fee and the retainer agreement respecting fees and disbursements between the Quebec Class Counsel and the representative plaintiffs in the Quebec Class Actions are subject to the approval of the CCAA Court and shall be dealt with at the Sanction Hearing;
- (g) All Costs incurred in respect of the services provided by Raymond Chabot (as agent for the Quebec Class Counsel on behalf of the QCAPs) in relation to the Quebec Administration Plan both before and after the Plan Implementation Date shall be paid by the Quebec Class Counsel out of the Quebec Class Counsel Fee;
- (h) All Costs for the services of the Claims Administrator, including for the services of any of its legal or other advisors, incurred in respect of the administration of the Quebec Administration Plan shall be paid from the balance of the QCAP Settlement Amount net of the Quebec Class Counsel Fee;
- (i) All Costs for the services which the PCC Representative Counsel, including their advisors, provide in connection with the performance of their duties under the CCAA Plan, including the PCC Compensation Plan, and in the CCAA Proceeding shall be paid equally by the Tobacco Companies;
- (j) The Counsel for the Tobacco Producers' Fee shall be paid out of and deducted from the Tobacco Producers Settlement Amount. The Counsel for the Tobacco Producers' Fee and the retainer agreement respecting fees and disbursements between the Counsel for the Tobacco Producers and the representative plaintiffs in the Tobacco Producers' Actions are subject to the approval of the CCAA Court;

## ARTICLE 16. CLAIMANT ALLOCATION

### 16.1 Claimant Allocation

The Global Settlement Amount shall be allocated among the Claimants and the Cy-près Foundation (“**Claimant Allocation**”) as follows:

All amounts in CAD, billions

Provinces and Territories Settlement Amount:	24.725
QCAP Settlement Amount (\$4.250 minus \$0.131 allocated to Cy-près Foundation):	4.119
PCC Compensation Plan Amount:	2.521
Cy-près Fund (inclusive of \$0.131 QCAP Cy-près Contribution):	1.000
Tobacco Producers Settlement Amount:	0.015
<i>Knight</i> Class Action Plaintiffs Settlement Amount:	0.015
Miscellaneous Claims Amount (may be increased to \$0.060 if the Tobacco Companies make an election pursuant to Section 18.2.1):	0.025
CCAA Plan Administration Reserve	0.075
PCC Compensation Plan Reserve	<u>0.005</u>
Total:	32.500

[Remainder of page intentionally left blank]

**Estimated Upfront Contributions Available:** 12,456 <sup>See calculation below, 2</sup>

Period <sup>4</sup>	Upfront Contribution	Annual Contributions					Remainder to end of Contribution Period	Total
		Year 1 (2025)	Year 2 ('26)	Year 3 ('27)	Year 4 ('28)	Year 5 ('29)		
Amount Available <sup>3</sup>	12.456	1.111	1.078	1.067	1.037	1.037	14.714	32.500
Provinces & Territories	6.202	0.361	0.682	0.942	0.912	0.912	14.714	24.725
QCAPs <sup>5, 6, 7, 8</sup>	3.869	0.250						4.119
PCCs <sup>6, 7, 8</sup>	1.750	0.500	0.271					2.521
Cy-près Foundation <sup>5, 6</sup>	0.500		0.125	0.125	0.125	0.125		1.000
Tobacco Producers <sup>8</sup>	0.015							0.015
<i>Knight</i> Class Action Plaintiffs <sup>8</sup>	0.015							0.015
Miscellaneous Claims Fund <sup>7</sup>	0.025							0.025
CCAA Plan Administration Reserve <sup>7</sup>	0.075							0.075
PCC Compensation Plan Reserve <sup>7</sup>	0.005							0.005
<b>Total allocated</b>	<b>12.456</b>	<b>1.111</b>	<b>1.078</b>	<b>1.067</b>	<b>1.037</b>	<b>1.037</b>	<b>14.714</b>	<b>32.500</b>

## 16.2 Explanatory Notes

1. In preparing the Claimant Allocation, the Court-Appointed Mediator and Monitors have been provided with, and have relied upon, unaudited financial information prepared by the Tobacco Companies. The Monitors have reviewed this financial information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitors have not audited, or otherwise attempted to verify the accuracy or completeness of such information in a manner that would wholly or partially comply with GAAS pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Monitors express no opinion or other form of assurance contemplated under GAAS in respect of the financial information. For clarity, the Court-Appointed Mediator has not reviewed the aforementioned financial information.

This financial information consists of forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the Chartered Professional

Accountants of Canada Handbook, has not been performed. The financial information was prepared based on the Tobacco Companies' estimates and assumptions.

Readers are cautioned that since projections are based on assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

2. In the table below, the Upfront Contributions are as estimated as at December 31, 2024 and calculated as estimated in the Spring 2024 5-year forecasts prepared by the Tobacco Companies. The Upfront Contributions will be as noted herein for all Claimants except the Provinces and Territories. The Upfront Contributions for the Provinces and Territories will be equal to the total Upfront Contributions less the Upfront Contributions being paid to the other Claimants, the Miscellaneous Claims Amount, the CCAA Plan Administration Reserve and the PCC Compensation Plan Reserve.

All amounts in CAD, billions

**Projected Upfront Contributions as at December 31, 2024:**

JTIM:	1.581
ITCAN:	4.849
RBH:	5.792
Cash Security Deposits:	0.984
<hr/>	
Total:	13.206
Less: Working Capital	(0.750)
<hr/>	
<b>Projected Available Upfront Contributions:</b>	<b>12.456</b>
<hr/> <hr/>	

3. The Annual Contribution percentage of Net After-Tax Income is calculated as set out in the CCAA Plan. The Claimant Allocation is based on 85% of estimated Net After-Tax Income received from the Tobacco Companies (the percentage of Net After-Tax Income to be reduced in 5.0% increments every five years pursuant to Article 5, Section 5.6 herein). The "Amount Available" is based on the 5-year financial projections provided by the Tobacco Companies in spring 2024. The projection assumes that the 2028 results are replicated thereafter. The Claimant Allocation does not include any Tax Refunds that may be available during the Contribution Period.
4. Payment is contemplated to be made within 182 days following the end of the period noted. For example, the "Year 1 (2025)" payment would be made in mid 2026.

5. The Cy-près Fund includes \$131 million of the QCAP Settlement Amount funded to the Cy-près Fund (in addition to the \$869 million specifically allocated to the Cy-près Fund).
6. The Year 1 and Year 2 payments to the QCAPs and the PCCs and the Year 2 payment to the Cy-près Foundation will be made in priority to those being made to the Provinces and Territories in the event of a shortfall relative to the estimated Annual Contributions available.
7. If there are any funds remaining in the QCAP Settlement Amount, the PCC Compensation Plan Amount, the CCAA Plan Administration Reserve, the PCC Compensation Plan Reserve and/or the Miscellaneous Claims Fund, such funds shall be paid to the Provinces and Territories (in accordance with the percentages set out in the table in Article 16, Section 16.3), as the foregoing is more particularly defined in paragraph 55 of the Quebec Administration Plan, paragraph 54 of the PCC Compensation Plan, Article 15, Sections 15.1 and 15.2 herein, and Article 18, Section 18.2.5 herein.
8. The Quebec Class Counsel Fee, Counsel for the Tobacco Producers' Fee and *Knight* Class Counsel Fee are subject to approval by the CCAA Court. Subject to such approval, these fees will be paid in full at the time of plan implementation.

### 16.3 Provincial and Territorial Allocation

The Provinces and Territories have agreed that the Provinces and Territories Settlement Amount shall be apportioned among the Provinces and Territories in accordance with the percentages set out in the table below:

Province/Territory	Percentage Share of Provinces and Territories Settlement Amount
British Columbia	14.4710%
Alberta	12.6272%
Saskatchewan	2.8787%
Manitoba	4.5252%
Ontario	28.7761%
Québec	26.8248%
New Brunswick	2.4117%
Nova Scotia	3.1740%

**SCHEDULE “N”**

**PAN-CANADIAN CLAIMANTS’ COMPENSATION PLAN:  
METHODOLOGY AND ANALYSIS**

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

**PAN-CANADIAN CLAIMANTS' COMPENSATION PLAN:  
METHODOLOGY AND ANALYSIS**



**(vi) Other Class Actions**

254. The Ontario Law Reform Commission conducted comprehensive research and analysis of take-up rates across Canada for its 2019 report on class action reform.<sup>178</sup> Despite a paucity of data on take-up rates, due to there being no standard reporting requirements, some general observations were made. Higher take-up rates were noted when a series of favourable factors were present. Factors which positively influence take-up rates include class members being already identified or being readily identifiable such that they can be traced and notified, as well as claims procedures that are easy to follow.

**(vii) Conclusion regarding PCC Take-up Rate**

255. Balancing the factors which influence the take-up rate positively and negatively, and considering take-up rates in comparable personal injury class action settlements, the PCC Compensation Plan estimated take-up rate of 50% is fair and reasonable. It exceeds that of comparable cases and is soundly based on a consideration of relevant factors.

**R. COMPARISON OF QUANTA OF COMPENSATION PROVIDED TO QCAPS VERSUS COMPENSATION PROVIDED TO PCCs**

256. Discussed in subsections (i) to (iii) below are the three principal reasons which explain why it is reasonable and appropriate for the PCCs to be paid 60% of the damages awarded to the QCAPs.

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<sup>178</sup> Law Commission of Ontario, *Class Actions: Objectives, Experiences and Reforms: Final Report*, (Toronto, July 2019).

**(i) QCAPs' Compensation is subject to Legal Fees whereas PCCs will not pay Legal Fees**

257. The maximum damages to which *Blais* class members will be entitled for a QCAP Compensable Disease is \$100,000. This amount is the judgment award, not including interest and additional indemnity, for lung cancer and throat cancer before any reduction for contributory negligence. However, this damages award likely does not represent the net amount that would be received, given that legal fees must also be deducted from the QCAPs' share of the Global Settlement Amount. The QCAPs' legal fees appropriately are substantial because of the duration and complexity of the litigation. The fees are contingent on the outcome, and contingent fees usually are a significant percentage of a plaintiff's recovery of damages.

258. In contrast, the PCCs will not be required to pay substantial legal fees. They have not actively litigated their claims. Their interests have been protected under the auspices of the mediation ordered to be conducted in the Applicants' CCAA proceedings which has resulted in the development of the PCC Compensation Plan. Their recovery of damages, unlike the QCAPs' recovery, will not be further significantly reduced by payment of class counsel legal fees (although they may possibly incur modest costs to obtain professional assistance in submitting their claims). A PCC's maximum damages amounting to 60% (\$60,000 for the PCC compensable cancers) of a QCAP's damages award will be a net recovery. As stated above, this recovery is fair and reasonable considering not only the absence of a deduction for legal fees, but also all the additional factors discussed in previous sections which would decrease the PCCs' likelihood of success if they pursued either individual actions or class actions.

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*,  
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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 QUEBEC CLASS COUNSEL**

**(Re: Motion for the Approval of the Quebec Class Counsel Fee  
Returnable on January 29, 2025)**

January 22, 2025

**FISHMAN FLANZ MELAND PAQUIN LLP**  
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**Justice Marie-France Bich (English translation - extract from a Quebec Court of Appeal decision on an interlocutory matter, 2012 QCCA 622):**

*[5] First of all, it must be acknowledged that the litigation in which the parties are engaged is of uncommon complexity, particularly from a procedural point of view. (...) Riordan J. uses the qualifier “gargantuan”, and even that seems an understatement.*

**Justice Brian Riordan (extracts from the Trial Judgment, 2015 QCCS 2382):**

*[1200] Besides the simple, common-sense notion that it is high time that the Companies started to pay for their sins, it is also high time that the Plaintiffs, and their lawyers, receive some relief from the gargantuan financial burden of bringing them to justice after so many years.*

**Justice Mark Schragger (extracts from the Court of Appeal judgment ordering the furnishing of security, 2015 QCCA 1737):**

*[44] (...) I am faced with a situation where on balance I conclude that the Respondents [QCAPs] are in jeopardy of not obtaining satisfaction of any substantial amount confirmed in appeal. (...)*

**Quebec Court of Appeal (Unofficial English translation - extract from the Appeal Judgment on the merits, 2019 QCCA 358):**

*[1123] Given the extreme gravity of the appellants’ faults, their duration, their persistence, the need to prevent and denounce the occurrence of similar behaviour in the future, the advisability of depriving a legal person of profits acquired while flouting the law and the wealth of the appellants, the amounts granted in this case have a genuine rational connection to the objectives of exemplarity, deterrence and denunciation. (...)*

**Chief Justice Geoffrey Morawetz (extract from Endorsement, 2024 ONSC 6061):**

*[14] (...) these CCAA proceedings are among the most complex insolvency proceedings in Canadian history (...).*

**PART I – INTRODUCTION**

1. The Global Settlement Amount<sup>1</sup> of \$32.5 billion memorialized in the CCAA Plans is pan-Canadian in scope and is by far the largest of its kind in Canadian history. This result would not have been possible without the enormous risk assumed, the staggering amount of time and effort devoted, and the extraordinary commitment of Quebec Class

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<sup>1</sup> Where not defined herein, defined terms have the meanings ascribed to them in the CCAA Plans.

in first instance and nonetheless considered the amended fee percentage to be fair and reasonable.<sup>14</sup> The CQTS<sup>15</sup> and Lise Blais,<sup>16</sup> the wife and heir of the designated class member, the late Jean-Yves Blais, both support the present Motion.

### **Overview of the Evidence in Support of the QCAP Fee Motion**

9. It is impossible in this factum to do justice to the challenges undertaken and overcome by Quebec Class Counsel in their prosecution of the Quebec Class Actions and in the subsequent CCAA Proceedings, as well as the enormous impact of their success on the Quebec Class Members, the other Claimants and Canadian society at large.<sup>17</sup> The extensive Quebec judgments constitute irrefutable evidence of the quality of this work, the risks and challenges faced, and the outcome achieved. Some of the key factual elements germane to this Court's assessment of the fairness and reasonableness of the requested Quebec Class Counsel Fee are set forth below:

- a. The fees sought have been earned over a period of 26 years. Many of the lawyers involved have dedicated the majority of their careers to this file in which they knew they could not prevail without going through trial, appeal(s) and beyond. They faced and overcame every risk originally contemplated.
- b. As at January 10, 2025, Quebec Class Counsel have devoted at least 203,849 hours of professional time to this file without receiving any payment on account thereof. Almost every one of those hours was invested under the pressure of being constantly

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<sup>14</sup> Dandavino Affidavit, paras. [58-69](#), QCAP Fee Motion Record, Tab 4.

<sup>15</sup> Dandavino Affidavit, para. [76](#), QCAP Fee Motion Record, Tab 4.

<sup>16</sup> Affidavit of Lise Boyer Blais sworn January 13, 2025, paras. [21-23](#), QCAP Fee Motion Record, Tab 5.

<sup>17</sup> Dandavino Affidavit, para. [62](#), QCAP Fee Motion Record, Tab 4: referring to the statement by a lawyer representing Canadian victims outside of Quebec about the "historic" Plans adding that but for the Quebec legal team's efforts, victims outside of the province would never have been entitled to compensation.

outnumbered by teams of top-tier lawyers, and knowing that they would have to answer in court for every move and decision they made.<sup>18</sup>

- c. It is also anticipated that an additional 8,000 hours will be devoted to the file by the end of the Quebec Class Action Administration Plan, such that the total time of Quebec Class Counsel in this matter will be at least 211,849 hours with an estimated straight-line billing value of at least \$214,653,500.<sup>19</sup>
  - d. Included in the Quebec Class Counsel Fee is an amount of at least \$46,598,926 which must be reimbursed or paid to third parties to cover litigation and related costs, including the past and future fees of Proactio, a division of Raymond Chabot, plus all disbursements paid by Quebec Class Counsel over the years from their own funds.<sup>20</sup>
  - e. Of the Quebec Class Counsel firms, TJJ in particular were forced to rely on a patchwork combination of revenue generated from other files, regular bank financing, high-interest loans, personal debts, debts secured against personal assets, litigation financing, deferred payment agreements and contingency-based deals.<sup>21</sup>
- Furthermore, as appears from the affidavits of senior counsel from the four firms, all

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<sup>18</sup> Johnston Affidavit, para. [60](#), QCAP Fee Motion Record, Tab 2.

<sup>19</sup> Trudel Affidavit, paras. [58](#), [65-69](#), [72-74](#), QCAP Fee Motion Record, Tab 3. As appears from the Trudel Affidavit, most of the hours devoted by Quebec Class Counsel were by firms that do not use the hourly-rate model nor charge clients hourly rates for the work of their lawyers. For purposes of this analysis, Quebec Class Counsel used blended hourly rates of \$1,150 for senior lawyers and \$550 for associates. Notably, these indicative hourly rates are lower than the hourly rates over the period of 2019 to December 1, 2024 paid by the Applicants to PCC Representative Counsel (\$1,250 for Raymond Wagner and \$650 for Kate Boyle) as well as the hourly rates charged by counsel to the Applicants. The actual professional time devoted by Quebec Class Counsel was greater than the numbers referenced, which underestimate their actual time spent.

<sup>20</sup> Trudel Affidavit, paras. [101](#), [106](#), [109-110](#), QCAP Fee Motion Record, Tab 3. The third-party professionals to whom litigation and related costs must be paid from the Quebec Class Counsel Fee have all agreed to work on a contingency basis and will only issue invoices at the time of payment since sales taxes must be remitted upon such issuance.

<sup>21</sup> Trudel Affidavit, paras. [84](#), [112](#), [114-121](#), QCAP Fee Motion Record, Tab 3.

of them were called upon to make meaningful sacrifices and to incur significant opportunity costs as a result of their involvement in this matter.

- f. The Tobacco Companies had delivered a knockout blow to a significant tobacco class action in Ontario just months prior to the authorization hearing, which exponentially increased the risk to Quebec Class Counsel at a critical moment that the Quebec Class Actions would not be authorized.<sup>22</sup>
- g. After a lengthy battle to have the Quebec Class Actions authorized, including a battery of grueling depositions and complex preliminary motions and an unprecedented 14-day authorization hearing, it took seven more years of intensely contested litigation as well as more than 85 case management conferences to get the case to trial, at which point the Quebec Class Actions had already resulted in 49 judgments of the Quebec Superior Court and 17 judgments of the Quebec Court of Appeal on interlocutory matters.<sup>23</sup> Many of the interlocutory appeals, if granted, would have sounded the death knell to the Quebec Class Actions.<sup>24</sup>
- h. The Tobacco Companies insisted upon obtaining before discovery the medical records of Ms. Létourneau and Mr. Blais, which took a year to assemble. Ms. Létourneau, Mr. Blais and Dr. Boulanger (then President of the CQTS) were examined on discovery for 20 days in total.<sup>25</sup>

<sup>22</sup> Johnston Affidavit, paras. [165-166](#), QCAP Fee Motion Record, Tab 2.

<sup>23</sup> Johnston Affidavit, paras. [37-39](#), [146](#), [168](#); Beauchemin Affidavit, para. [68](#), QCAP Fee Motion Record, Tab 2 and Tab 6, respectively.

<sup>24</sup> Beauchemin Affidavit, paras. [29](#), [31](#) (suspension of the CQTS/Blais case), paras. [44](#), [54-55](#) (standing), paras. [56-62](#) (examination of class members/communication medical records), paras. [64-65](#) (destruction of evidence), paras. [78-82](#) (postponement of the trial), para. [87](#) (documentary evidence rules); Affidavit of Gordon Kugler sworn January 10, 2025 (the “**Kugler Affidavit**”), paras. [61-62](#), QCAP Fee Motion Record, Tab 4 and Tab 7, respectively.

<sup>25</sup> Johnston Affidavit, paras. [154-156](#), [185](#), QCAP Fee Motion Record, Tab 2.

- i. In the context of seeking disclosure of the medical records of 150 class members, the Tobacco Companies claimed before the Quebec Court of Appeal that they intended to examine class members at trial. This forced Quebec Class Counsel to prepare these individuals to testify at trial, while the trial was ongoing. In the end, the Tobacco Companies did not call a single one of them.<sup>26</sup>
- j. The trial spanned 253 judicial days over the course of almost three years, involving the filing of thousands of exhibits (the admissibility of many of which were forcefully contested by the Tobacco Companies), as well as the examination and cross-examination of 76 witnesses, including 26 experts, resulting in over 60,000 pages of trial transcripts.<sup>27</sup>
- k. The complexity of the questions of fact and evidence was extraordinary, involving the disclosure and review of hundreds of thousands of documents (representing many millions of pages of materials) prior to trial, and the production of over two dozen expert reports by the parties in highly specialized and complex areas, including addiction, oncology, pneumology, epidemiology, pathology, toxicology, chemistry, psychiatry, history, marketing, public opinion, political economics and econometrics.<sup>28</sup>
- l. During the trial, the Tobacco Companies brought interlocutory appeals to the Quebec Court of Appeal, sometimes at a rate of one every few weeks, resulting in 30 additional Quebec Court of Appeal judgments.<sup>29</sup>

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<sup>26</sup> Johnston Affidavit, para. [216](#), QCAP Fee Motion Record, Tab 2.

<sup>27</sup> Johnston Affidavit, paras. [22](#), [42](#), [263](#), QCAP Fee Motion Record, Tab 2.

<sup>28</sup> Johnston Affidavit, paras. [41](#), [247](#), QCAP Fee Motion Record, Tab 2.

<sup>29</sup> Johnston Affidavit, para. [43](#), QCAP Fee Motion Record, Tab 2.



- m. The Tobacco Companies had every advantage of size, virtually unlimited resources to devote to their vigorous no-compromise defense strategy,<sup>30</sup> and were represented by forceful and well-respected lawyers from three top-tier national firms. Two of their counsel are now judges on the Supreme Court of Canada.<sup>31</sup> The Defendants' experts were highly qualified, including, among other leaders in their fields, a Nobel Prize-winning economist.<sup>32</sup>
- n. The historic trial judgment (over 1250 paragraphs long) was confirmed on appeal in a further historic judgment (over 1280 paragraphs long) by an expanded bench of five members after an appeal hearing lasting an exceptional seven days.<sup>33</sup>
- o. Due to the enormity of the more than \$13.5 billion damages awarded in the Quebec Class Actions and the risk that the judgment debt would never be satisfied, the Quebec Court of Appeal ordered the furnishing of security (suretyship) as a condition of the appeals in the unprecedented aggregate amount of approximately \$1 billion, an amount that dwarfs the next largest such award ever granted in Quebec by a factor of 58 times.<sup>34</sup>
- p. Although the table of contents for the materials filed with the Quebec Court of Appeal in respect of the appeal of the Riordan Judgment is an astounding 1,168 pages long, and the appeal record totals 267,000 pages comprising 688 volumes, this still excludes much of the procedural history of the Quebec Class Actions.<sup>35</sup> Indeed, Quebec Class Counsel appeared before the Superior Court of Quebec on at least

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<sup>30</sup> Trudel Affidavit, paras. [82](#), [97](#), QCAP Fee Motion Record, Tab 3.

<sup>31</sup> Johnston Affidavit, para. [59](#), QCAP Fee Motion Record, Tab 2.

<sup>32</sup> Johnston Affidavit, paras. [249](#), [276](#), QCAP Fee Motion Record, Tab 2.

<sup>33</sup> Johnston Affidavit, paras. [22](#), [44](#), [46](#), [291](#), QCAP Fee Motion Record, Tab 2.

<sup>34</sup> Fishman Affidavit, para. [38](#), QCAP Fee Motion Record, Tab 8.

<sup>35</sup> Johnston Affidavit, paras. [78-81](#), [289](#), QCAP Fee Motion Record, Tab 2.

357 judicial days and before the Quebec Court of Appeal on at least 45 days,<sup>36</sup> an exceptional dedication of time and effort that far exceeds what has ever been demanded of any other class counsel in any other Canadian class action to date. There are at least 119 reported judgments that resulted from the Quebec Class Actions.

- q. The Quebec Court of Appeal's decision is the definitive statement on the law in Quebec on numerous complex and controversial issues in the areas of civil liability, civil procedure, human-rights law and consumer protection, among others. The doctrinal and jurisprudential impact of the judgment, which has been cited hundreds of times, speaks to the extraordinary level of legal indeterminacy faced by Quebec Class Counsel over the decades. No appeal judgment in Canadian legal history has ever awarded such a significant amount.<sup>37</sup>
- r. Because of the success of Quebec Class Counsel in obtaining the Quebec Judgments, the Tobacco Companies filed for CCAA protection.<sup>38</sup> Since mid-2019, Quebec Class Counsel have actively participated in numerous CCAA Court hearings and hundreds of confidential mediation sessions. They have played a pivotal role in the process which culminated with the filing of the CCAA Plans.<sup>39</sup>
- s. The CCAA Plans contemplate that *Blais* Class Members should receive the capital amounts awarded to them in the Quebec judgments (the basis of which was also

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<sup>36</sup> Johnston Affidavit, paras. [39](#), [81](#) and Schedules "A" and "B", QCAP Fee Motion Record, Tab 2. In addition to these more than 400 judicial days, there were dozens upon dozens of case management hearings before the Quebec Superior Court where no judgments were rendered on such days.

<sup>37</sup> Johnston Affidavit, para. [22](#), QCAP Fee Motion Record, Tab 2.

<sup>38</sup> Johnston Affidavit, para. [294](#), QCAP Fee Motion Record, Tab 2.

<sup>39</sup> Fishman Affidavit, para. [78](#), QCAP Fee Motion Record, Tab 8; Johnston Affidavit, para. [301](#), QCAP Fee Motion Record, Tab 2.

used to model compensation to eligible PCCs) by way of a novel claims process designed to be simple, non-adversarial and cost-free to class members.

### **PART III – ISSUES, LAW AND ARGUMENT**

#### **Overview**

10. While the precise statutory schemes differ, all courts across Canada consider essentially the same factors in approving class counsel retainer agreements, fees and disbursements. In both Ontario and Quebec, contingency fee agreements in the class-action context are presumptively valid legal contracts, subject to judicial oversight and approval. In evaluating whether class counsel fees are fair and reasonable, courts consider the risks undertaken by counsel; the time, efforts and resources deployed in bringing the case to its conclusion; and the ultimate results obtained for class members and the public. These factors are all evaluated in light of the overarching objectives of class action litigation — access to justice, behaviour modification, and judicial economy — as well as with sensitivity for the public policy implications and market incentives that follow from a decision to approve or modify the fees sought by class counsel in a given case.

#### **Uniqueness of the Quebec Class Actions**

11. The judicial precedents used to provide guidance to courts in the exercise of their judicial control over class counsel fees, which almost always involve cases that settled before trial, are of marginal assistance in the context of the Quebec tobacco litigation which, as stated, is unprecedented and unique in virtually every way.

12. In 1998, Quebec Class Counsel were well aware of the already infamous litigation strategy consistently deployed by *Big Tobacco* and, prior to instituting proceedings, had

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**AMENDMENT AND UPDATE OF THE PROFESSIONAL MANDATE AND  
AGREEMENT ON FEES DATED OCTOBER 30, 1998**

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CONSIDERING the professional mandate and agreement on extrajudicial fees entered into on October 30, 1998, between the Conseil québécois sur le tabac et la santé [Quebec council on tobacco and health], hereinafter the “CQTS”, and the firm Lauzon Bélanger for the institution of the class action bearing Superior Court number 500-06-000076-980;

CONSIDERING that the firm Lauzon Bélanger was dissolved in May 2015 and the firm Trudel Johnston & Lespérance, hereinafter “TJL”, is now acting on behalf of the CQTS;

CONSIDERING the judgment rendered on May 27, 2015, in favour of the CQTS, and the definition of the class covered by the CQTS’ action in said judgment;

CONSIDERING the judgment by the Honourable Mark Schrager, dated October 25, 2015, under which two tobacco companies must post a surety bond totalling approximately 984 million dollars;

CONSIDERING that the case was argued on appeal in fall 2016 and the Court of Appeal is currently in deliberation on the case, and could render its judgment at any time;

CONSIDERING that the tobacco companies have announced their intention to contest the payment of the surety bond for the benefit of the members;

CONSIDERING the scope of the case to be handled by TJL and the defendants’ chosen strategy of continually delaying the proceedings and rendering them more cumbersome and more complex;

CONSIDERING that the defendants have clearly expressed their intention to institute legal proceedings in order to suspend the execution of any judgment that may be rendered against them, in particular proceedings under the *Bankruptcy and Insolvency Act* (hereinafter referred to as the “BIA”) or the *Companies’ Creditors Arrangement Act* (hereinafter referred to as the “CCAA”);

CONSIDERING that TJL believes it to be possible, even likely, that such proceedings will be brought before not only the Superior Court of Québec but also that of Ontario;

CONSIDERING that it is in the interest of the members that TJL retain the services of firms specializing in bankruptcy, insolvency and arrangements under the CCAA in Montréal and in Toronto to protect the rights of the members;

CONSIDERING the significant resources that TJL will have to immediately invest to counter any attempts by the defendants to suspend the effects of a favourable judgment;

CONSIDERING that there is good reason to amend the fee agreement;

THE PARTIES AGREE AS FOLLOWS:

1. The members for whom a mandate is given are described by the definition of the class given by Justice Brian Riordan in his judgment dated May 27, 2015:

“All persons residing in Quebec who meet the following criteria:

- (1) Prior to November 20, 1998, have smoked a minimum of 12 packs/year of cigarettes manufactured by the defendants (the equivalent of a minimum of 87,600 cigarettes, i.e., any combination of the number of cigarettes smoked in one day multiplied by the number of days of consumption such that the total is equal to or greater than 87,600 cigarettes).

For example, 12 packs/year equals:

20 cigarettes per day for 12 years ( $20 \times 365 \times 12 = 87,600$ ) or

30 cigarettes per day for 8 years ( $30 \times 365 \times 8 = 87,600$ ) or

10 cigarettes per day for 24 years ( $10 \times 365 \times 24 = 87,600$ );

- (2) Have been diagnosed before March 12, 2012, with:
  - (a) Lung cancer, or
  - (b) Cancer (squamous cell carcinoma) of the throat, namely of the larynx, the oropharynx or the hypopharynx, or
  - (c) Emphysema.

The class also includes the heirs of persons who died after November 20, 1998, and who meet the criteria described above.

2. Article 1 of the agreement dated October 30, 1998, is amended by adding the following:

- 1.1 In addition to the percentage of twenty percent (20%) mentioned in paragraph 1, the CQTS agrees for additional deductions of a maximum of two percent (2%) to be retained

from the sums or benefits received or the savings realized in connection with this class action, from any source whatsoever, through a settlement or further to a judgment, solely for the services of firms specializing in bankruptcy, insolvency and arrangements under the CCAA;

- 1.2 For greater clarity, the applicable taxes on such professional fees will also be deducted from the benefits received in connection with this class action.

I, the undersigned, André-H. Dandavino, Chair of the CQTS, duly authorized by a resolution of the Board of Directors of the CQTS, held on March 16, 2017, confirm the mandate of TRUDEL JOHNSTON & LESPÉRANCE to pursue the class action bearing Superior Court number 500-06-000076-980 in conjunction with the class action bearing number 500-06-000070-983.

SIGNED in Montréal this [handwritten:] 16<sup>th</sup> day of March 2017.

[signature]

**André-H. Dandavino**

*For the Conseil québécois sur le tabac et la santé*

[signature]

**TRUDEL JOHNSTON & LESPÉRANCE**

[handwritten:] *BRUCE JOHNSTON*

## CLASS ACTION

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### PROFESSIONAL MANDATE AND AGREEMENT ON EXTRAJUDICIAL FEES

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I, the undersigned, **Mr. Marcel Boulanger**, Chair of the **Conseil québécois sur le tabac et la santé** [Quebec council on tobacco and health], hereinafter referred to as the **Council**, duly authorized by a resolution of the executive committee of the **Council**, held on July 15, 1998, hereby mandate LAUZON BÉLANGER, hereinafter referred to as the attorney, to institute a class action on behalf of the **Council**, by designating Mr. Jean-Yves Blais as the designated member for the purposes of the action, on behalf of the members of the class described below.

The class can be described and designated as follows:

*All persons who have or have had lung, larynx or throat cancer after having inhaled cigarette smoke over a prolonged period of time;*

*As well as the beneficiaries and/or heirs of deceased persons who would otherwise have been part of the class;*

*Except for persons who have been exposed over a significant period of time to products or materials containing asbestos, uranium, radon, chromium or arsenic.*

1. I consent to the deduction from the monies or benefits received or the savings realized by my attorney on behalf of the **Council**, the designated member or the members of the class, if any, of extrajudicial fees in an amount equal to twenty percent (20%) of the sum or benefits received or savings realized in connection with this class action, from any source whatsoever, through a settlement or further to a judgment. These extrajudicial fees extend to the sums collected for and on behalf of the entire class covered by this class action, and are in addition to the legal fees which may be awarded to said attorney and paid by the opposing party. These fees are subject to approval by the court.

2. I also mandate my attorney to submit an application for financial assistance to the FONDS D'AIDE AUX RECOURS COLLECTIFS [class action assistance fund] for the payment of judicial and extrajudicial disbursements, experts' fees, costs, and part of the extrajudicial fees, and I undertake to collaborate with him for the purposes of this application for financial assistance and any application for additional financial assistance throughout the duration of this class action.
3. It is also agreed that neither the undersigned, nor the **Council** or the class members, will be required, at the end of the class action, to pay any fees, costs or expenses other than those provided for in paragraph 1 of this agreement.
4. In the event that the FONDS D'AIDE AUX RECOURS COLLECTIFS refuses to provide financial assistance at any stage of the class action, the parties may amend this mandate, without the undersigned, the **Council** and the class members being required to pay any money whatsoever.
5. The parties undertake to notify the FONDS D'AIDE AUX RECOURS COLLECTIFS in writing of any amendment to this agreement.

SIGNED IN MONTRÉAL

ON [handwritten:] *October 30* 1998

[signature]

*Marcel Boulanger, Chair*

*For the Conseil québécois sur le tabac et la santé*

[signature]

**LAUZON BÉLANGER**



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 BRUCE W. JOHNSTON**  
(sworn January 13, 2025)

I, Bruce W. Johnston, of the Town of Frelighsburg, in the Province of Quebec,  
MAKE OATH AND SAY:

1. I am a founding partner of the law practice of Trudel Johnston & Lespérance (“**TJL**”), a leading Montreal-based law firm specialized in plaintiff-side class actions and public interest litigation.
2. TJL 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**” or “**the defendants**” in the actions described below).

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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.

treatise and reported decision about class actions in Quebec, and drafted a framework for how to get the case past the authorization stage.

93. On its face, the case didn't actually seem that hard: the tobacco industry was manufacturing the most dangerous and arguably useless consumer product in history. They knew that it was addictive, they knew it was deadly, and they had lied about those facts for decades. We figured that a case like that ought to be winnable.

94. Prior to filing the class action though, Philippe and I had also read everything that we could find regarding the history of litigation against the tobacco industry. In particular, I refer the Court to an academic article published in 1992 in the *Stanford Law Review* by Robert L. Rabin, a law professor at Stanford University, entitled "A Sociolegal History of the Tobacco Tort Litigation".<sup>11</sup>

95. We had read and discussed this article and others<sup>12</sup> at length during the summer of 1998 and I refer to it here because it offers an excellent discussion of the risks we would eventually face as we understood them prior to filing the litigation.

96. The article explores two waves of tort litigation against the tobacco industry in the United States over a roughly thirty-five-year period from the 1950s to the end of the 1980s. In addition to matters of substantive tort law, it examines the situations of the contesting parties and of their respective litigation strategies, including a detailed summary of the tactics adopted by the tobacco industry, based on interviews with the lawyers who had participated on both sides.

97. Professor Rabin explains that by the end of the first wave, "at least eleven judicial opinions were written, and an estimated 100-150 other filings, like *Lowe* [the first case filed], were simply dropped at some point without formal disposition" — not a single one

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<sup>11</sup> Robert L. Rabin, "A Sociolegal History of the Tobacco Tort Litigation," *Stanford Law Review*, vol. 44, no. 4, 1992, pp. 853–78. JSTOR ("**Rabin, a Sociolegal History of the Tobacco Tort Litigation**").

<sup>12</sup> See in particular: William E. Townsley and Dale K. Hanks, "The Trial Court's Responsibility to Make Cigarette Disease Litigation Affordable and Fair," *California Western Law Review*, vol. 2, no. 2, 1989 ("**Townsley and Hanks, 'The Trial Court's Responsibility to Make Cigarette Disease Litigation Affordable and Fair'**").

successful.<sup>13</sup> In other words, we understood that historically, litigation filed against the tobacco industry rarely even made it to trial. This was true in Canada as well in 1998. None of the limited tobacco litigation filed in Canada up to that point had ever resulted in a decision on the merits — with one exception, our client Cécilia Létourneau, whose case is discussed below.

98. In his article, Professor Rabin explains that the tobacco industry maintained a “no compromise” strategy, without exception, and throughout both waves of tobacco litigation. “From the beginning,” he writes, “the cigarette companies decided that they would defend every claim, no matter what the cost, through trial and any possible appeals. Concomitantly, the companies decided that they would, as a first line of defence, spare no cost in exhausting their adversaries’ resources short of the courthouse door.”<sup>14</sup>

99. Rabin notes that this approach was “unique in the annals of tort litigation”.<sup>15</sup> As in Canada, the large majority of mass tort, product liability and private injury claims in the United States settle rather than go to trial. By contrast, he writes, “over a period exceeding thirty-five years, the tobacco industry never offered to settle a single case.”<sup>16</sup>

100. Professor Rabin suggests that this approach stemmed from the immense financial stakes that would arise if the industry signalled any willingness to settle. By the mid-1950s, the industry was aware that its products were responsible for tens of thousands of lung cancer deaths every year. Settlement with any one of these victims could open the floodgates of liability and compromise the future of the companies’ business model.<sup>17</sup> Later, a series of bankruptcies flowing from the asbestos litigation of the late 1980s reinforced the perceived necessity of a no-holds-barred approach. As Rabin summarized: “the industry saw its very existence threatened and responded in an uncompromising fashion”.<sup>18</sup>

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<sup>13</sup> Rabin, a Sociolegal History of the Tobacco Tort Litigation, p. 857.

<sup>14</sup> Rabin, a Sociolegal History of the Tobacco Tort Litigation, p. 857.

<sup>15</sup> Rabin, a Sociolegal History of the Tobacco Tort Litigation, p. 857.

<sup>16</sup> Rabin, a Sociolegal History of the Tobacco Tort Litigation, p. 857-858.

<sup>17</sup> Rabin, a Sociolegal History of the Tobacco Tort Litigation, p. 868.

<sup>18</sup> Rabin, a Sociolegal History of the Tobacco Tort Litigation, p. 858.

101. The companies' refusal to compromise was also informed by an understanding of the business model of plaintiff-side firms — which, like ours, are generally small and financed by cases taken on a contingency-fee basis, which involves endemic cash-flow concerns.<sup>19</sup>

102. As just one example, the need for a multiplicity of experts and counter-experts — not just medical and scientific, but also behavioural, historical, economic, psychological, and in the areas of marketing and addiction — imposes enormous front-end costs on plaintiffs. As explained in the Trudel Affidavit, these kinds of financial pressures played out for our own firm at every level, forcing us to resort to increasingly costly and high-risk options to finance the litigation over the years.

103. Professor Rabin also explains the ways in which the tobacco industry sought to make discovery as complex and lengthy as possible, including by “engaging in seemingly endless pre-trial interrogation” and “a continuing onslaught of pre-trial motions, procedural challenges, and deposition taking”.<sup>20</sup> The singular feature of tobacco litigation is “to press the plaintiffs’ attorneys to their limits”.<sup>21</sup> He describes the “all-out blitz”<sup>22</sup> suffered by litigants, and “the “blizzard of pre-trial motions, depositions, and other procedural moves” they faced.<sup>23</sup>

104. Professor Rabin also notes the extensive collaboration among prestigious defence firms, another challenge that we had understood prior to filing the class action. This coordination between defendant companies (which are normally direct competitors), their multinational parent companies and their respective high-powered law firms meant that the knowledge, resources and the experience of an entire industry could be brought to bear on a single lawsuit.<sup>24</sup>

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<sup>19</sup> Rabin, a Sociolegal History of the Tobacco Tort Litigation, p. 858.

<sup>20</sup> Rabin, a Sociolegal History of the Tobacco Tort Litigation, p. 859.

<sup>21</sup> Rabin, a Sociolegal History of the Tobacco Tort Litigation, p. 867.

<sup>22</sup> Rabin, a Sociolegal History of the Tobacco Tort Litigation, p. 865.

<sup>23</sup> Rabin, a Sociolegal History of the Tobacco Tort Litigation, p. 866.

<sup>24</sup> See Townsley and Hanks, “The Trial Court’s Responsibility to Make Cigarette Disease Litigation Affordable and Fair”, p. 280.

**THIS IS SCHEDULE "A"  
TO THE AFFIDAVIT OF BRUCE W. JOHNSTON  
(January 13, 2025)**

**LIST OF REPORTED SUPERIOR COURT JUDGMENTS IN THE QUEBEC CLASS  
ACTIONS**

**SWORN BEFORE ME  
THIS 13<sup>th</sup> DAY OF JANUARY 2025**



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Éléonore Loupforest  
Commissioner of Oaths for Quebec



**LIST OF PUBLICLY REPORTED (CANLII) SUPERIOR COURT JUDGMENTS  
IN FILES 500-06-000076-980 (CQTS/BLAIS) AND 500-06-000070-983 (LÉTOURNEAU)**

Note that as described in the Affidavit of Bruce W. Johnston, these lists are under-inclusive and do not indicate orders rendered in the minutes of case conferences, in the course of trial, or for certain early hearings which may not be available online. Decisions of administrative bodies (e.g., the Tribunal administratif du Québec, decisions of the Fonds d'aide aux actions collectives) are also not included herein.

	<b>Citation and Hyperlink</b>	<b>Hearing Date(s)</b>
1	<a href="#">Fortin c. Imperial Tobacco Ltée, 1999 CanLII 10991(QCCS)</a>	February 9, 1999
2	<a href="#">Fortin c. Imperial Tobacco Ltée, 1999 CanLII 11199 (QCCS)</a>	July 5, 1999
3	<a href="#">Québec (Fonds d'aide aux recours collectifs) c. Létourneau, 2003 CanLII 28680 (QC CS)</a>	March 6, 2003
4	<a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2005 CanLII 4070 (QC CS)</a>	November 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22 and 23, 2004
5	<a href="#">Conseil québécois sur le tabac et la santé c. JTI-Macdonald Corp., 2005 CanLII 12488 (QC CS)</a>	February 21, 2005
6	<a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2006 QCCS 1098 (CanLII)</a>	January 23 to 27, 2006
7	<a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2006 QCCS 7251 (CanLII)</a>	January 22, 23 and 26, 2006
8	<a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2007 QCCS 645</a>	January 22, 23 and 26, 2007
9	<a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2007 QCCS 1869</a>	April 2, 2007
10	<a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2007 QCCS 4503</a>	January 23 to 27, 2006
11	<a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2008 QCCS 500</a>	January 22, 2008
12	<a href="#">Létourneau c. JTI-MacDonald Corp., 2008 QCCS 2188</a>	April 14, 2008
13	<a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2008 QCCS 2481</a>	May 12, 2008
14	<a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2009 QCCS 464</a>	January 27, 2009
15	<a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2009 QCCS 703</a>	
16	<a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2009 QCCS 780</a>	February 24, 2009
17	<a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2009 QCCS 830</a>	February 19, 2009
18	<a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2009 QCCS 2096</a>	April 30, 2009
19	<a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2009 QCCS 4755</a>	September 30, 2009
20	<a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2009 QCCS 5157</a>	October 27, 2009
21	<a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2009 QCCS 5855</a>	November 25, 2009
22	<a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2009 QCCS 5862</a>	October 28 and 29, 2009
23	<a href="#">Conseil québécois sur le tabac et la santé c. JTI-Macdonald Corp., 2009 QCCS 5892</a>	December 16, 2009
24	<a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2010 QCCS 4759</a>	September 29, 2010
25	<a href="#">Létourneau c. JTI-MacDonald Corp., 2011 QCCS 7523</a>	January 19, 2011
26	<a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2011 QCCS 438</a>	September 22, 23, 30, and October 26, 2010

27	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2011 QCCS 436</a></u>	May 20, 21, 25 and October 5, 2010
28	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2011 QCCS 435</a></u>	June 14 to 16, 21 to 22 and November 22 to 24, 2010
29	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2011 QCCS 828</a></u>	
30	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2011 QCCS 1965</a></u>	April 7, 2011
31	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2011 QCCS 2279</a></u>	April 19, 2011
32	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2011 QCCS 2376</a></u>	May 4, 2011
33	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2011 QCCS 2897</a></u>	June 1, 2011
34	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2011 QCCS 4090</a></u>	July 6, 2011
35	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2011 QCCS 4085</a></u>	July 6, 2011
36	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2011 QCCS 4084</a></u>	July 5, 2011
37	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2011 QCCS 4981</a></u>	August 31 and September 1, 2011
38	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2011 QCCS 5880</a></u>	October 18 and 19, 2011
39	<u><a href="#">Conseil québécois sur la tabac et la santé c. JTI-MacDonald Corp., 2011 QCCS 5875</a></u>	October 18, 2011
40	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2011 QCCS 5879</a></u>	October 19, 2011
41	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2011 QCCS 5881</a></u>	October 27 and 31, 2011
42	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2011 QCCS 5876</a></u>	October 31, 2011
43	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2011 QCCS 6790</a></u>	November 24, 2011
44	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2012 QCCS 469</a></u>	February 8, 2012
45	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2012 QCCS 473</a></u>	December 8, 2011
46	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2012 QCCS 474</a></u>	January 11, 12 and February 9, 2012
47	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2012 QCCS 515</a></u>	February 2 and 8, 2012
48	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2012 QCCS 475</a></u>	February 15 and 16, 2012
49	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2012 QCCS 812</a></u>	February 29, 2012
50	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2012 QCCS 1869</a></u>	April 17, 2012
51	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2012 QCCS 1875</a></u>	April 17, 2012
52	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2012 QCCS 1874</a></u>	April 17, 2012
53	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2012 QCCS 1870</a></u>	April 5, 2012
54	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2012 QCCS 2181</a></u>	May 15, 2012
55	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2012 QCCS 2581</a></u>	May 17, 2012
56	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-Macdonald Corp., 2012 QCCS 3566</a></u>	June 21, 2012

57	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-Macdonald Corp., 2012 QCCS 3561</a></u>	June 21, 2012
58	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2012 QCCS 4433</a></u>	September 4, 2012
59	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2012 QCCS 6665</a></u>	November 12, 2012
60	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2013 QCCS 20</a></u>	December 12 and 13, 2012
61	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald, 2013 QCCS 226</a></u>	November 12, 2012
62	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2013 QCCS 4903</a></u>	March 12, 2013
63	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald, 2013 QCCS 1911</a></u>	May 1, 2013
64	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-Macdonald, 2013 QCCS 1924</a></u>	April 29, 30 and May 1, 2013
65	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2013 QCCS 1993</a></u>	April 30, 2013
66	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2013 QCCS 4904</a></u>	May 1 and 16, 2013
67	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2013 QCCS 4863</a></u>	August 26, 2013
68	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2013 QCCS 6085</a></u>	November 11 and 12, 2013
69	<u><a href="#">Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2014 QCCS 2307</a></u>	May 14, 2014
70	<u><a href="#">Létourneau c. JTI-MacDonald Corp., 2015 QCCS 2382</a></u>	253 hearing days: between March 12, 2012, and December 11, 2014
71	<u><a href="#">Conseil québécois sur le tabac et la Santé c. JTI-McDonald Corp., 2019 QCCS 5830</a></u>	April 30, 2019



**THIS IS SCHEDULE "B"  
TO THE AFFIDAVIT OF BRUCE W. JOHNSTON  
(January 13, 2025)**

**LIST OF REPORTED COURT OF APPEAL JUDGMENTS IN THE QUEBEC CLASS  
ACTIONS**

**SWORN BEFORE ME  
THIS 13<sup>th</sup> DAY OF JANUARY 2025**



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Éléonore Loupforest  
Commissioner of Oaths for Quebec

**LIST OF PUBLICLY REPORTED (CANLII) COURT OF APPEAL JUDGMENTS  
IN FILES 500-06-000076-980 (CQTS/BLAIS) AND 500-06-000070-983 (LÉTOURNEAU)**

Note that as described in the Affidavit of Bruce W. Johnston, these lists are under-inclusive and do not indicate orders rendered in the minutes of case conferences, in the course of trial, or for certain early hearings which may not be available online. Decisions of administrative bodies (e.g., the Tribunal administratif du Québec, decisions of the Fonds d'aide aux actions collectives) are also not included herein.

	<b>Citation and Hyperlink</b>	<b>Hearing Date(s)</b>
1	<a href="#"><u>Conseil québécois sur le tabac et la santé c. J.T.I.-MacDonald Corp., 2000 CanLII 28985 (QC CA)</u></a>	February 29, 2000
2	<a href="#"><u>Imperial Tobacco Canada ltée c. Conseil québécois sur le tabac et la santé, 2007 QCCA 694 (CanLII)</u></a>	April 5, 2007
3	<a href="#"><u>Rothmans, Benson &amp; Hedges inc. c. Conseil québécois sur le tabac et la santé, 2007 QCCA 691</u></a>	April 5, 2007
4	<a href="#"><u>JTI-MacDonald Corp. c. Conseil québécois sur le tabac et la santé, 2007 QCCA 692 (CanLII)</u></a>	April 5, 2007
5	<a href="#"><u>Rothmans, Benson &amp; Hedges inc. c. Létourneau, 2007 QCCA 690 (CanLII)</u></a>	April 5, 2007
6	<a href="#"><u>JTI-MacDonald Corp. c. Létourneau, 2007 QCCA 695</u></a>	April 5, 2007
7	<a href="#"><u>Rothmans, Benson &amp; Hedges inc. c. Létourneau, 2009 QCCA 796</u></a>	April 21, 2009
8	<a href="#"><u>JTI-MacDonald Corp. c. Létourneau, 2009 QCCA 795</u></a>	April 21, 2009
9	<a href="#"><u>JTI-MacDonald Corp. c. Conseil québécois sur le tabac et la santé, 2010 QCCA 177</u></a>	January 26, 2010
10	<a href="#"><u>Imperial Tobacco Canada Ltd. c. Létourneau, 2010 QCCA 547</u></a>	March 22, 2010
11	<a href="#"><u>Imperial Tobacco Canada Ltd. c. Létourneau, 2010 QCCA 2312</u></a>	December 14, 2010
12	<a href="#"><u>Rothmans, Benson &amp; Hedges inc. c. Létourneau, 2011 QCCA 705</u></a>	March 30, 2011
13	<a href="#"><u>Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé, 2011 QCCA 1356</u></a>	July 6, 2011
14	<a href="#"><u>Imperial Tobacco Canada Ltd. c. Létourneau, 2011 QCCA 1614</u></a>	September 2, 2011
15	<a href="#"><u>Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé, 2011 QCCA 1714</u></a>	September 20, 2011
16	<a href="#"><u>Rothmans, Benson &amp; Hedges inc. c. Létourneau, 2012 QCCA 73</u></a>	January 4, 2012
17	<a href="#"><u>R.A. c. Conseil québécois sur le tabac et la santé, 2012 QCCA 491</u></a>	March 12, 2012
18	<a href="#"><u>R.A. c. Conseil québécois sur le tabac et la santé, 2012 QCCA 504</u></a>	March 15, 2012
19	<a href="#"><u>Imperial Tobacco Canada ltée c. Létourneau, 2012 QCCA 622</u></a>	March 27, 2012
20	<a href="#"><u>Imperial Tobacco Canada ltée c. Canada (Procureur général), 2012 QCCA 655</u></a>	March 27, 2012
21	<a href="#"><u>Canada (Attorney General) c. Imperial Tobacco Ltd., 2012 QCCA 747</u></a>	April 20, 2012
22	<a href="#"><u>JTI-MacDonald Corp. c. Létourneau, 2012 QCCA 810</u></a>	May 3, 2012
23	<a href="#"><u>Imperial Tobacco Canada ltée c. Létourneau, 2012 QCCA 1015</u></a>	May 11, 2012
24	<a href="#"><u>Imperial Tobacco Canada ltée c. Létourneau, 2012 QCCA 1009</u></a>	May 11, 2012
25	<a href="#"><u>JTI-MacDonald Corp. c. Létourneau, 2012 QCCA 1008</u></a>	May 11, 2012
26	<a href="#"><u>Imperial Tobacco Canada Ltd. c. Létourneau, 2012 QCCA 1477</u></a>	June 27, 2012
27	<a href="#"><u>Imperial Tobacco Canada Ltd. c. Conseil Québécois sur le tabac et la santé, 2012 QCCA 1641</u></a>	January 17, 2012
28	<a href="#"><u>Imperial Tobacco Canada Ltd. c. Létourneau, 2012 QCCA 1756</u></a>	September 28, 2012
29	<a href="#"><u>Imperial Tobacco Canada Ltd. c. Létourneau, 2012 QCCA 2013</u></a>	January 17, 2012
30	<a href="#"><u>Imperial Tobacco Ltd. c. Conseil québécois sur le tabac et la santé, 2012 QCCA 1847</u></a>	August 31, 2012
31	<a href="#"><u>Rothmans, Benson &amp; Hedges inc. c. Conseil québécois sur le tabac et la santé, 2012 QCCA 1848</u></a>	August 31, 2012
32	<a href="#"><u>Imperial Tobacco Canada ltée c. Létourneau, 2012 QCCA 2260</u></a>	December 10 and 14, 2012
33	<a href="#"><u>Canada (Procureur général) c. Imperial Tobacco Ltd., 2012 QCCA 2034</u></a>	August 9, 2012
34	<a href="#"><u>Canada (Attorney General) c. JTI-MacDonald Corp., 2012 QCCA 2017</u></a>	August 31, 2012

35	<a href="#"><u>Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé, 2013 QCCA 545</u></a>	January 10 and 28, 2013
36	<a href="#"><u>Imperial Tobacco Canada Ltd. c. Létourneau, 2013 QCCA 1139</u></a>	June 10, 2013
37	<a href="#"><u>Imperial Tobacco Canada Ltd. c. Létourneau, 2013 QCCA 1887</u></a>	November 4 and 6, 2013
38	<a href="#"><u>Imperial Tobacco Canada Ltd. c. Létourneau, 2014 QCCA 348</u></a>	February 14, 2014
39	<a href="#"><u>Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp., 2014 QCCA 520</u></a>	February 5, 2014
40	<a href="#"><u>Imperial Tobacco Canada Ltd. c. Létourneau, 2014 QCCA 944</u></a>	February 28, 2014
41	<a href="#"><u>Imperial Tobacco Canada Ltée c. Conseil québécois sur le tabac et la santé, 2015 QCCA 1204</u></a>	July 9, 2015
42	<a href="#"><u>Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé, 2015 QCCA 1224</u></a>	July 9, 2015
43	<a href="#"><u>Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé, 2015 QCCA 1737</u></a>	October 6, 2015
44	<a href="#"><u>Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé, 2015 QCCA 1882</u></a>	November 5, 2015
45	<a href="#"><u>Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé, 2015 QCCA 2056</u></a>	December 9, 2015
46	<a href="#"><u>Imperial Tobacco Canada Ltée c. Conseil québécois sur le tabac et la santé, 2019 CanLII 88007 (QCCA)</u></a>	
47	<a href="#"><u>Imperial Tobacco Canada Ltée c. Conseil québécois sur le tabac et la santé, 2019 QCCA 358</u></a>	November 21, 22, 23, 24, 25, 30, 2016 + 1 day
48	<a href="#"><u>Imperial Tobacco Canada Ltée c. Conseil québécois sur le tabac et la Santé, 2019 QCCA 508</u></a>	March 25, 2019

**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 12, 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**”), a leading Montreal-based law firm specialized in plaintiff-side class actions and public interest litigation.
2. TJL 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**” or “**the defendants**” in the actions described below).

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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.

particular case. In the interests of providing the Court with the most accurate information possible, I have therefore spent a significant amount of time working to review and validate, in the most thorough and conservative manner possible, the details of the hours that Bruce, André and I have spent in the litigation over the last 26 years.

61. With the exception of the years 2017 and 2018 while we were waiting for the judgment of the Quebec Court of Appeal, there has never been a year in which Bruce, André or I did not spend at least 400 hours on issues related to the tobacco litigation. For certain years, these class actions were almost the only thing we worked on at all. During the trial for example, it was common for us to be working between 10 and 15 hours a day, 6 or 7 days a week, for weeks at a time. This was also true for the Associates on the file, and in particular for Gabrielle Gagné.

62. While no records are available for the period that Bruce and I worked on the class action prior to founding our own firm, our best estimate is that during that period, we each spent approximately 800 hours working in the litigation up to our departure from our previous firm in 1998. I have included this estimate in the above total of 151,082 hours as part of Trudel & Johnston's time.

63. From this total, 113,049 hours or 74.8 % are attributable to senior lawyers and the balance to Associates.

#### **D. Time and Resources Invested by All Quebec Class Counsel**

64. In this section, I summarize the total time devoted and to be devoted by the four Quebec Class Counsel firms and the billing value of all of such work to the extent that the Court considers such information useful for the approval of the Quebec Class Counsel Fee.

65. As detailed above, as well as in the Kugler Affidavit, the Beauchemin Affidavit and the Fishman Affidavit, the time devoted by all Quebec Class Counsel firms in this matter up to January 10, 2025 is as follows:

Trudel Johnston / Trudel Johnston & Lespérance	89,510 hours
Lauzon Bélanger / Lauzon Bélanger Lespérance	61,572 hours
De Grandpré Chait	11,152 hours
Kugler Kandestin	17,828 hours
Fishman Flanz Meland Paquin	23,787 hours
<b>TOTAL</b>	<b>203,849 hours</b>

66. My review of the Quebec Class Counsel records indicates that the time devoted to this matter by senior lawyers of their firms ranges from 73 to 81% of the total number of hours, with the balance of the work being performed by Associates.

67. In addition, Quebec Class Counsel estimate that they will need to devote at least an additional 3,000 hours (2,700 by senior lawyers and 300 by Associates) between January 10, 2025 and the Plan Implementation Date.

68. We will also continue to act extensively on behalf of class members in connection with the claims and distribution process under the Quebec Class Action Administration Plan, which we estimate will require the team to work at least an additional 5000 hours (1,000 by senior lawyers and 4,000 by Associates).

69. Based on the foregoing, the aggregate time already devoted, and estimated to be required going forward by the four Quebec Class Counsel firms in respect of this matter amounts to a total of at least 211,849 hours.

70. I understand that the case law in Canada sometimes considers whether the requested fees would result in an unacceptable windfall for lawyers and thus risk eroding the reputation or the integrity of the legal profession. In our view, no such issue arises in the present litigation — the *sui generis* nature of the Quebec Class Actions, the extraordinary risks undertaken by our teams, the challenges faced in advancing the litigation over 26 years, and the results obtained for class members speak for themselves



in this regard. That said, for completeness, I wish to provide the Court with my calculation of the billing value of the time devoted to the Quebec Class Actions using a hypothetical non-contingency fee metric.

71. As I indicated above, the vast majority of the time devoted by Quebec Class Counsel in these files has been by senior litigators and partners at the respective law firms. These lawyers have numerous years of experience at the bar and they have represented parties at every level of the courts in some of the most important litigation and/or insolvency files in Quebec and Canada.

72. Based on my experience as an active litigator in Montreal since the 1990s, highly regarded senior litigators in Montreal acting in significant litigation and/or complex insolvency mandates charge between \$1,150 and \$1,500 per hour. These rates are generally billed and paid on a monthly basis and are not subject to any contingency. For the purpose of this exercise, I consider \$1,150 per hour (the “**Senior Lawyer Rate**”) to be a fair and reasonable proxy for the billing value of the time devoted and yet to be devoted in this matter by senior lawyers at the Quebec Class Counsel firms.

73. With respect to the work of the Associates of the respective Quebec Class Counsel firms, I also consider that an average blended rate of \$550 per hour (the “**Associate Rate**”) represents a fair and reasonable proxy for the billing value of the time devoted and yet to be devoted by them in this matter.

74. Based on the foregoing, a current straight-line billing value of the aggregate 211,849 hours worked and yet to be performed by Quebec Class Counsel on behalf of the Quebec Class Members in this matter amounts to at least \$214,653,500, calculated as follows:

- a. In respect of the hours to date, the Senior Lawyer Rate was applied to 75% of the total hours, and the Associate Rate was applied to the remaining 25% of the total hours;
- b. In respect of the work required from January 11, 2025 up to the Plan Implementation Date, the Senior Lawyer Rate was applied to 90% of the

estimated hours, and the Associate Rate was applied to the remaining 10% of the estimated hours; and

- c. For work following Plan Implementation, the Senior Lawyer Rate was applied to 20% of the estimated hours, and the Associate Rate was applied to the remaining 80% of the estimated hours.

75. This billing value obviously does not take into account any contingency fee risk, the pressures of non-payment for decades, or the personal financial risks and opportunity costs assumed by the members of the Quebec Class Counsel team over the course of 26 years.

### ***The 2% Addition in the CQTS Amended Retainer Agreement***

76. As detailed in the affidavit of Dr. André-H Dandavino, the president of the board of directors of the CQTS, the CQTS retainer agreement signed in 1998 was amended in March 2017 (as amended, the “**CQTS Retainer Agreement**”). The amendment took into account the anticipated additional costs and challenges that would arise if the Tobacco Companies sought insolvency protection in the event of a judgment of the Quebec Court of Appeal upholding the Riordan Judgment.

77. When it agreed to the amendment, the CQTS was aware of the amount of damages that had been awarded to class members in the trial judgment but agreed that an additional percentage of up to 2% should be made available to Quebec Class Counsel to allow class members to benefit from the support of firms specialized in insolvency matters in the next phase of the file which was expected to be extremely complex. As detailed in the Fishman Affidavit, the length and complexity of the CCAA Proceedings have been indeed extraordinary, exceeding even what we had foreseen in 2017.

78. FFMP have acted as our primary insolvency lawyers in connection with the recovery efforts on behalf of the QCAPs and are one of the core members of the Quebec Class Counsel team. They have performed extensive work on behalf of the QCAPs since 2013, docketing 23,787 hours as at January 10, 2025, and have received no payments whatsoever during that entire time.



shall request this Honourable Court to deduct this amount from the \$906,180,000, and to order the CCAA Plan Administrators to make payment of a Quebec Class Counsel Fee in the amount of \$901,177,915.

110. From the amount of \$901,177,915, an amount of at least \$46,598,926 will be assumed by Quebec Class Counsel in respect of the past and future costs or disbursements referenced above, namely:

- a. \$1,847,876, which is the balance of financing owed to the FAAC<sup>9</sup>;
- b. \$5,731,275.24, in respect of past services rendered on a contingent basis<sup>10</sup>;
- c. \$4,409,327.88, in respect of costs and disbursements, including experts costs<sup>11</sup>;
- d. \$34,551,704, plus taxes, in connection with the services of Proactio<sup>12</sup>; and
- e. \$58,743.45, in respect of anticipated future costs for public relations and translation services<sup>13</sup>.

As a result of the assumption of these costs, a net amount of \$854,578,989 will remain to be shared by the Quebec Class Counsel firms in accordance with the agreements between them.

## **G. Specific Obligations of TJL**

### ***Amounts owed to TJL Associates and New Partners***

111. Even at the associate level, a choice to work at TJL involves considerable opportunity costs and risks. As detailed in the Johnston Affidavit, the associates and new partners at our firm are some of the most accomplished lawyers in their respective cohort. They have many prestigious options available to them, and it would not be possible to

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<sup>9</sup> Described in paragraph 96 hereof.

<sup>10</sup> Described in paragraph 99 hereof.

<sup>11</sup> Described in paragraph 100 hereof.

<sup>12</sup> Described in paragraph 106 hereof.

<sup>13</sup> Described in paragraph 107 hereof.

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IN THE MATTER OF THE *COMPANIES' CREDITORS  
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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 MARC BEAUCHEMIN  
(sworn January 7, 2025)**

I, Marc Beauchemin, of the City of Montreal, in the Province of Quebec, MAKE OATH AND SAY:

1. I am a partner at the law practice of De Grandpré Chait, a leading Montreal-based law firm focused on corporate and commercial matters.
2. De Grandpré Chait 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**" or "**the defendants**" in the actions described below).

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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.

2870 of the *Civil Code of Quebec*. The issue was critical because our trial strategy depended on our ability to file internal documents from the tobacco industry, some of which we received from the tobacco defendants, but some of which we obtained on public repositories of tobacco documents such as Legacy. The appeal judgment confirmed the Court of Appeal's circumscribed role during the course of a trial.<sup>45</sup>

88. As explained above, the year 2012 alone involved more than a dozen appeals on important issues. This situation was one of the manifestations of the procedural war of attrition that we knew the tobacco industry had promised to anyone who dared to challenge them in court. They conceded almost nothing and appealed almost everything, all while the trial advanced before the Superior Court. The same was true in the years that followed.

89. Once closing arguments were heard, I was heavily involved in drafting the written arguments and authorities, including the sections dealing with the civil law rules governing product liability.

90. In the process of preparing these submissions, I attended several meetings with eminent civil law professors from Quebec's major law faculties, who had been retained to help us to correctly interpret and apply the complex rules arising from the reform of the *Civil Code* — indeed, the class actions were so complex and covered such a long period of time that they required the application of both the *Civil Code of Lower Canada* and the new *Civil Code of Quebec* (which had come into force in 1994).

91. In collaboration with my colleagues, I personally devoted hundreds of hours to this arduous task, which was made all the more difficult by the fact that the new rules governing the assumption of risk were unclear and the case-law was directionless on the issue. We therefore understood that in order to succeed, we would need to break new ground in several fundamental areas of civil law.

### ***Following the Judgment on the Merits and the Appeal***

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<sup>45</sup> *Imperial Tobacco Canada Ltd. c. Létourneau*, 2013 QCCA 1139.

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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 GORDON KUGLER  
(sworn January 10, 2025)**

I, Gordon Kugler, of the City of Montreal, in the Province of Quebec, MAKE OATH  
AND SAY:

1. I am Counsel at the law practice of Kugler Kandestin LLP, a premier Montreal-based boutique law firm.
2. Kugler Kandestin 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**" or "**the defendants**" in the actions described below).

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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.



become protracted and profoundly complex, that the Tobacco Companies would oppose at every step, and that they would never settle.

30. I asked Bruce and Philippe several questions about their litigation strategy, theory of the case, and professional experience. They conceded that they had little evidence to support their claims and that they hoped to make their case essentially through discovery. When I met them, they had only retained one expert (on addiction) and his involvement had been limited due to their lack of resources. They also acknowledged that there had never been a single successful lawsuit anywhere in the world holding tobacco companies liable for an individual smoker's addiction or disease.

31. While I admired their courage and determination, it was clear to me that these young attorneys were facing seemingly insurmountable obstacles to winning the class action. Indeed, at that time it was difficult to imagine that anyone — even the most established and well-funded lawyers in the country — could win a class action of this nature against the tobacco industry.

32. My partners at Kugler Kandestin were initially opposed to Bruce and Philippe's request that our firm act as Counsel in the file. The class action was perceived as a serious potential drain on the firm and perhaps doomed to fail. The risk of losing the case was far too high, especially given the significant and long term investment of resources that would be required and the fact that the firm would not be paid unless we were successful at every step.

33. Despite the fact that my law partners were essentially correct regarding the risks, I was impressed by Bruce and Philippe, who — their youth notwithstanding — were extremely thorough, conscientious, and prepared for a long fight.

34. I also saw this as an opportunity to make a difference: I knew I was well-positioned to help them take on an industry whose products had killed hundreds of thousands of Quebecers and Canadians, and were continuing to do so, year after year. I felt a strong moral and professional obligation to do what I could to contribute to the protection of public health and to hold the Tobacco Companies accountable for their conduct.

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AND **IMPERIAL TOBACCO COMPANY LIMITED**  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**  
Applicants

**AFFIDAVIT OF AVRAM FISHMAN  
(sworn January 12, 2025)**

I, Avram Fishman, of the City of Montreal, in the Province of Quebec, MAKE OATH  
AND SAY:

1. I am the managing partner at Fishman Flanz Meland Paquin LLP ("**FFMP**"), a Montreal-based boutique law firm which is particularly recognized for its expertise in bankruptcy and insolvency matters, as well as in complex commercial litigation.
2. FFMP 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**").

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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.

full advantage. FFMP was honored to have been chosen to collaborate with so many exceptional lawyers over the years who brought the greatest level of personal commitment, integrity, social justice ideals and legal acumen to this epic challenge on behalf of Quebec Tobacco-Victims.

13. In fulfilling our mandate on behalf of the QCAPs, which evolved over the years (the “**FFMP Mandate**”), many lawyers at FFMP dedicated enormous time, energy, devotion and effort, alongside other members of the Quebec Class Counsel team, to ultimately contribute to the achievement of the Mediator and Monitors in arriving at the Global Settlement, which includes the \$4.25 billion QCAP Settlement Amount provided for in the Plans.

14. The principal lawyers at FFMP with responsibility for the FFMP Mandate have been the undersigned Avram Fishman and my partners Mark E. Meland and Tina Silverstein; however, many other lawyers, paralegals and staff at our firm contributed greatly to the groundbreaking results achieved.

15. During the lengthy and complex CCAA mediation process, Mr. Meland was named by the Court-Appointed Mediator, the Honourable Warren K. Winkler, to be a member of the select committees entrusted with the negotiation and drafting of the Plans and related materials and he actively and effectively participated in the extensive and demanding multi-year mediation process which culminated in the completion and filing of the historic Plans.

16. In addition to the high caliber “real-time” litigation and restructuring work performed throughout by FFMP, the FFMP Mandate was characterized by the considerable risks assumed by our firm due to the strict contingency fee nature of our mandate and the ongoing uncertainty as to whether and when any payment on account of our legal fees and disbursements would ever be made. Indeed, since the introduction of FFMP to the tobacco file in late 2013 and then throughout the intensive participation of our firm beginning in May 2015 and up to the present time, FFMP has never received any payment whatsoever on account of professional fees and disbursements. We have completely self-

financed our activities in the Quebec Class Actions and in the subsequent CCAA Proceedings throughout that entire period.

17. When FFMP first embarked on its mandate, no one among the Quebec Class Counsel, including ourselves in particular, ever imagined that it would last more than a decade, including nearly six years of CCAA Proceedings. Consequently, no one could truly prepare for the unprecedented scope of the file and the unwavering professional commitment that would be required of all of us.

### **B. *Risks of the Contingency Fee Arrangement***

18. From the outset of our participation in the Quebec Class Actions on behalf of the QCAPs, FFMP agreed that its entitlement to legal fees and disbursements would be on a strictly contingent basis and that we would only receive compensation from the recoveries achieved on behalf of the QCAPs. This arrangement required us to assume enormous risk in that we would be required to devote great effort with no visibility as to if and when we would receive any payment for our work and that the case demanded a total professional commitment at our most senior level in priority to all other matters.

19. There has been a substantial opportunity cost to our firm as a result of the FFMP Mandate since the required work demanded that it be performed on a top-priority urgent basis and left little, if any, time available for several of our lawyers to devote to other clients or matters. In the case of Mark Meland, the exceptional demands on his time have required him over the past two years to virtually suspend the rest of his successful practice to devote all of his time to this file. Because Mr. Meland will be making submissions on behalf of Quebec Class Counsel on the QCAP Fee Motion, he cannot file an affidavit of his own describing his participation in the FFMP Mandate. Consequently, in this affidavit, in addition to describing my own role and participation, I will endeavor to also describe his substantial contribution to the success achieved by the QCAPs over the past eleven years.

20. The lack of any revenue generated in respect of the FFMP Mandate over a period of more than eleven years has put a heavy financial burden on partners of our firm who



112. Once the economics of the Plans appeared to be established, Mr. Meland and Mr. Lespérance acted as the QCAP representatives in the consequential final allocation discussions held with the Mediator, Monitors and other Claimants, which resulted in an amount of \$4.25 billion of the Global Settlement Amount being allocated to the QCAPs and \$131 million of such amount being contributed to the Cy-près Foundation to settle the judgment debt in the *Létourneau* Class Action. This was the culmination of years of discussions with various other Claimants on this most difficult and contentious matter.

113. At the request of the Mediator, Mark Meland and the rest of the FFMP team were also instrumental in contributing to the resolution of many of the discrete and complicated CCAA issues that had to be addressed and resolved throughout the CCAA Proceedings and the mediation. Without breaching confidentiality requirements, I would simply state that these issues were unbelievably challenging and their resolution required an enormous investment of effort and time on our part. I believe that these efforts were greatly helpful to the Mediator and Monitors who had the unenviable task of developing the Plans and trying to bring together stakeholders with wildly different interests and agendas.

114. When it came to the drafting of the Plans, we assumed an outsized role in tackling many of the most difficult and controversial issues and I believe that the Mediator and Monitors greatly appreciated our contribution. Often, at the behest of the Mediator and other Claimant representatives, Mark Meland was asked to take the lead on and find creative solutions to issues which did not even directly affect the interests of the QCAPs but where consensus needed to be found between various stakeholders. He did so in a highly professional and proactive manner with a view to advancing the process and achieving a global resolution for all parties.

115. In all, Mark Meland participated in more than 180 mediation sessions involving the Mediator and the Monitors and other participants. He also had hundreds of telephone and video calls with the Mediator and other mediation participants throughout the mediation process, in addition to the many thousands of emails and other written communications.

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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.

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

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Applicants

**SWORN STATEMENT OF ANDRÉ-H. DANDAVINO  
(January 9, 2025)**

I, the undersigned, André-H. Dandavino, of the city of Saint-Jean-sur-Richelieu, in the province of Quebec, solemnly declare the following:

1. I am a family physician, coroner and Chair of the Conseil québécois sur le tabac et les santé [Quebec Council on Tobacco and Health] (the “**CQTS**”). I am also the President of the Association des coroners du Québec [Quebec Association of Coroners] and member of the Steering Committee of the Université Laval’s Cerebral Palsy Research Chair as a representative of the Association de paralysie cérébrale du Québec [Quebec Cerebral Palsy Association].
2. The CQTS is a non-profit organization whose mission since 1976 has been to make Quebec tobacco free.
3. I joined the CQTS as a director on June 5, 1997, and have been Chair of the CQTS Board of Directors since June 15, 2011. My current role is to ensure the sound



the CQTS took a particularly proactive approach to maintaining a sense of urgency in order to expedite the compensation process for the victims. Preventing the interests of victims from being overshadowed by legal complexities and creditor pressures required constant vigilance. Despite the adversity, our lawyers never failed in their commitment to achieve those goals.

38. While our lawyers repeatedly insisted on the fact that the length of the CCAA proceedings was having a devastating impact on class members, the uncertainty around a possible resolution became increasingly challenging to deal with for our organization. We are deeply relieved that this lengthy process is finally coming to an end.

#### **D. The Impact and Significance of the Class Actions and of the Plans**

39. In this section, I describe the outcome of the case and the time, resources and effort we put into it for class members and the public.

40. First, it must be noted that the Quebec Class Counsel team has achieved something unprecedented. When the class action was filed in 1998, no individual smoker had ever been successful against a tobacco company anywhere in the world. Thanks to the efforts of the CQTS and their lawyers, tens of thousands of class members will share billions of dollars in compensation, if the Plans are approved. Nowhere else in the world have the victims of the tobacco industry received direct compensation as a class.

41. If the Plans are approved, the Tobacco Companies will pay their creditors \$32.5 billion.

42. This amount includes \$4.119 billion to directly compensate class members (as well as their successions and the successions of their successions, as the case may be).

43. The Plans will also benefit smokers who are not directly compensated by the Quebec Administration Plan or the Pan-Canadian Claimant Compensation Plan, as they include the creation of a billion-dollar public interest foundation to fund research, initiatives and programs aimed at improving outcomes for people with smoking-related illnesses.



	For victims of tobacco who started smoking before January 1, 1976 (60% of amounts awarded to Quebec Class Action Plaintiffs “QCAPs”)	For victims of tobacco who started smoking on or after January 1, 1976 (60% of amounts awarded to QCAPs)
Lung cancer	Up to \$60,000	Up to \$48,000
Throat cancer	Up to \$60,000	Up to \$48,000
Emphysema or COPD (GOLD Grade 3 or 4)	Up to \$18,000	Up to \$14,400

55. The outcome of the class action has profound moral and social significance for the class members, their families and heirs, as well as for the general public in Quebec and Canada. In addition to the jurisprudence created by the sums awarded, the judgments rendered by the Quebec courts tell the truth about what the tobacco industry has done to class members, their families and society in general in the name of profit. The fact that it was even possible to bring those cases before the courts and that they were won is a huge success for the Quebec and Canadian justice systems, for our legal institutions, and for the rule of law in Canada. It shows that no company is too big or too powerful to be held accountable by our courts.

56. The response of the public, civil society groups and class action members to the Plans has been overwhelmingly positive in recent months.

57. To inform class members of their rights and keep them informed of the next steps, the lawyers retained the services of Public stratégies et conseils, a communications firm that had worked with the CQTS in the past.

58. When the Plans were first publicly announced, on October 18, 2024, the CQTS and its lawyers held a press conference during which CQTS spokesperson Annie



Papageorgiou celebrated the 26 years of fighting for justice, the 26 years of relentless efforts by a dozen lawyers who never gave up, and the 26 years of struggle and suffering endured by our victims.<sup>4</sup> She was astounded that such a story was finally coming to an end. She called it “historic” that victims would finally be compensated by the industry, adding that such a result had never before been seen anywhere in the world, and that she hoped it would set more things in motion.<sup>5</sup>

59. Dominique Claveau, Interim Executive Director of the CQTS, also commented, saying that for more than 50 years, Imperial Tobacco, Rothmans Benson & Hedges and JT MacDonald had consistently lied, hidden the truth and minimized and trivialized the dangers of tobacco. She added that after more than 25 years of legal proceedings, the tobacco companies would finally have to compensate the many victims of tobacco in Quebec and Canada.<sup>6</sup>

60. Public strategies et conseils prepared a detailed summary of the media’s coverage of the Plans after the first announcement was made on October 18, 2024, which can be found in **Schedule “A”** of this statement. I would like to highlight some of the reactions contained in those articles and interviews for the Court.

61. Martin Blais, son of the designated member Jean-Yves Blais, described the announcement of the Plans as a moment of great relief. He explained to the media that it would not bring his father back, but that it did restore some kind of justice and was a balm on their wounds. He added that it was like winning their own Stanley Cup.<sup>7</sup> His mother, Mr. Blais’ widow, said that she had certainly been discouraged at times, but that she had

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<sup>4</sup> [Règlement avec les géants du tabac : une victoire pour les familles](#), Radio Canada, October 18, 2024.

<sup>5</sup> [Géants du tabac: 32,5 milliards aux victimes de la cigarette et aux provinces](#), TVA Nouvelles, October 18, 2024.

<sup>6</sup> [Les victimes du tabac se partageront 6,75 milliards, les provinces 24,8 milliards](#), *La Tribune* (Presse canadienne), October 18, 2024.

<sup>7</sup> [Règlement avec les géants du tabac : une victoire pour les familles](#), Radio Canada, October 18, 2024.



always said that she would see things through, that her husband had suffered tremendously, and that she wished he were still here.<sup>8</sup>

62. Raymond F. Wagner, one of the lawyers representing Canadian victims outside of Quebec, called the Plans “historic,” adding that but for the Quebec legal team’s efforts, victims outside the province would never have been entitled to compensation.<sup>9</sup>

63. Jessica Buckley, President and CEO of the Lung Health Foundation, called the outcome “a meaningful first step in recognizing decades of harm,” even though she believes that financial compensation can never fully make up for the harm caused by the tobacco industry.<sup>10</sup>

64. Even groups that had criticized the Plans or felt that they did not go far enough to end smoking in Canada had very positive responses to the outcome for class members. For example, the groups Smoking & Health, Physicians for a Smoke-Free Canada and the Quebec Coalition for Tobacco Control—who were very critical of the Plans—described the compensation for victims as “the only positive component of this deal.”<sup>11</sup>

65. Academics have also pointed out that the outcome will have positive impacts on consumers and public health in general. For example, Jacob Shelley, co-director of the Health Ethics, Law & Policy Lab at Western University in London, Ontario, said that the case has far-reaching implications for industries other than the tobacco industry that make food or beverages that can cause harm.<sup>12</sup>

<sup>8</sup> [Les victimes du tabac se partageront 6,75 milliards \\$, les provinces 24,8 milliards \\$](#), *L'Actualité*, October 18, 2024.

<sup>9</sup> ['I wish my father was here': Tobacco victims hail bittersweet \\$32.5-billion deal](#), *Times Colonist* (Canadian Press), October 18, 2024.

<sup>10</sup> [“A meaningful first step in acknowledging decades of harm”: Lung Health Foundation Applauds Landmark \\$ 32.5 Billion Legal Settlement Against Tobacco Companies](#), October 18, 2024.

<sup>11</sup> [Tobacco firms to pay \\$23.6bn in proposed Canada settlement](#), *BBC News*, October 18, 2024.

<sup>12</sup> [Les entreprises de tabac seraient peu susceptibles de changer leur modèle d'affaires](#), *L'Hebd* (Presse canadienne), October 18, 2024.





Companies to pay up to \$13.4 billion, it became clear that the Tobacco Companies might well resort to insolvency proceedings. As such, there was a risk that even if the lawyers were successful on the merits, there would be no assets left with which to compensate the class members. It became obvious that if the Tobacco Companies decided to go that route, it would be extremely costly and complex to continue to represent the class members, and the result would be years of additional time to achieve an outcome.

71. On March 16, 2017, the CQTS and the lawyers representing the members agreed to amend the original fee agreement (Schedule “B”) to increase the above-mentioned 20% fee.

72. The amendment was intended in particular to account for the complexity and slow pace of the case, as well as the possibility that the lawyers representing the members would have to hire firms specializing in insolvency, given the real possibility that the Tobacco Companies would file proceedings under the CCAA. A copy of the amended agreement is filed as **Schedule “C”** to this affidavit.

73. The amendment specifically stipulates:

[Translation] In addition to the percentage of twenty percent (20%) mentioned in paragraph 1, the CQTS agrees for additional deductions of a maximum of two percent (2%) to be retained from the sums or benefits received or the savings realized in connection with this class action, from any source whatsoever, through a settlement or further to a judgment, solely for the services of firms specializing in bankruptcy, insolvency and arrangements under the CCAA;

74. I believe it appropriate to quote the preamble to the amendment dated March 16, 2017:

[Translation] CONSIDERING the scope of the case to be handled by TJL and the defendants’ chosen strategy of continually delaying the proceedings and rendering them more cumbersome and more complex;

CONSIDERING that the defendants have clearly expressed their intention to institute legal proceedings in order to suspend the execution of any judgment that may be rendered against them, in particular proceedings under the



*Bankruptcy and Insolvency Act* (hereinafter referred to as the “BIA”) or the *Companies’ Creditors Arrangement Act* (hereinafter referred to as the “CCAA”);

CONSIDERING that TJL believes it to be possible, even likely, that such proceedings will be brought before not only the Superior Court of Québec but also that of Ontario;

CONSIDERING that it is in the interest of the members that TJL retain the services of firms specializing in bankruptcy, insolvency and arrangements under the CCAA in Montréal and in Toronto to protect the rights of the members;

CONSIDERING the significant resources that TJL will have to immediately invest to counter any attempts by the defendants to suspend the effects of a favourable judgment;

CONSIDERING that there is good reason to amend the fee agreement;

The professional fees incurred to date and to be incurred by firms specializing in bankruptcy, insolvency and arrangements under the CCAA exceed \$90 million, i.e., approximately 2.18% of the sum of \$4.119 billion, as described in other sworn statements made in support of the Motion. \$4.119 billion is the sum collected for the members of the *CQTS/Blais* class action as part of the Plans of Arrangement under the CCAA, in accordance with the current agreement (Schedule “B”).

75. It is therefore the case that all of the additional 2% agreed to in 2017 will have been required in order to ensure that the members benefit from the assistance of firms specializing in bankruptcy and insolvency during the critical phase which began in 2019, when the Companies put themselves under CCAA protection

76. The CQTS therefore supports the Motion of the lawyers for the *CQTS/Blais* class action and consents, for the benefit of the class members, that the CCAA Court approve the fee agreement concluded in 1998 and amended in 2017.

77. In the 26 years of the class action, the CQTS and its directors never received any funding or benefit whatsoever to support their efforts at any stage in the process. CQTS



**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 LISE BOYER BLAIS  
(sworn January 13, 2025)**

I, Lise Boyer Blais, of the City of Brossard, in the Province of Quebec, MAKE OATH  
AND SAY:

1. I am the widow and heir of the late Jean-Yves Blais, who, until his death in August 2012, was the designated class member in the *CQTS/Blais* class action,<sup>1</sup> a case advanced on behalf of Quebec smokers who developed lung cancer, throat cancer or emphysema as a result of smoking cigarettes made by Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively "**Imperial**"), Rothmans, Benson & Hedges Inc. ("**RBH**"), and JTI-MacDonald Corp. ("**JTIM**") (collectively, the "**Tobacco Companies**" or "**the defendants**" in the actions described below).

2. I swear this affidavit in support of the Quebec Class Counsel's *Motion for the Approval of the Quebec Class Counsel Fee* (the "**QCAP Fee Motion**").<sup>2</sup> Pursuant to

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<sup>1</sup> *Jean-Yves Blais and the Conseil québécois sur le tabac et la santé v. Imperial Tobacco Canada Ltd., et al.* (500-06-000076-980).

<sup>2</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.

12. In the early 2000s, he was examined on discovery for many days by the tobacco companies' lawyers, both prior to and after the authorization of the class action. They obtained all of his medical records.

13. He agreed to undergo an extensive medical examination and to make his life and health status part of the public record in support of the class action.

14. He attended many days of the hearing on the authorization of the class action in 2004, and despite his illness he attended a few days of the trial that began on March 12, 2012.

15. He died a few months later, before either of the judgments of the Quebec Superior Court or the Quebec Court of Appeal ruling in his favour were rendered. He would have very much liked to know the outcome of his long battle.

16. I had the opportunity to follow my husband's journey as the designated class member closely. He was proud of the important role he had agreed to take on. Along with my son Martin Blais, we often talked about it as a family. We all closely followed the case, including the work of the Quebec Class Counsel and the Conseil québécois sur le tabac et la santé ("**CQTS**"), with whom my husband was frequently in contact.

17. After his death, I agreed to continue his fight until the end, despite my own advanced age and health challenges. Since 2012, I have often acted as a spokesperson for victims and their families, including at many press conferences. My son has supported me throughout this process.

18. Having experienced the work and efforts by the Quebec Class Counsel and the CQTS firsthand and as part of a close community of victims and their families, I consider myself well-positioned to assess their involvement over the last quarter-century.

19. When the Plans were publicly released, I participated in a press conference on October 18, 2024 and explained the litigation journey that my late husband had been a part of for so many years. My son and I also expressed our personal gratitude to the Quebec Class Counsel team for their unwavering efforts to achieve this result, and our

satisfaction that the class members were close to finally receiving compensation after all these years.

20. The work of the Quebec Class Counsel is accurately summarized and presented in the QCAP Fee Motion and in the affidavits filed by the Quebec Class Counsel with the Court to the best of my knowledge.


21. Having in mind the consistency of their involvement, the countless challenges they have faced, and the time they have invested, of which I have been partly a direct witness, I have no difficulty in confirming the extent of their total commitment to this matter as described in the Motion.

22. It also appears clear to me that without them and without their unwavering commitment and dedication to the file, we would not have achieved a favorable outcome, and the victims would never have been compensated.

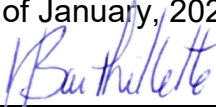
23. Consequently, it is without hesitation that I support the QCAP Fee Motion and ask that the amounts that Quebec Class Counsel are requesting in accordance with the terms of their agreement with the CQTS be approved by the CCAA Court.

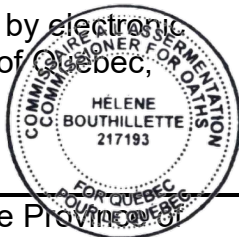
AND I HAVE SIGNED, THIS 13<sup>th</sup> DAY OF JANUARY, 2025

**AND I HAVE SIGNED**

  
\_\_\_\_\_  
Lise Boyer Blais

Solemnly declared before me by electronic means at Montréal, Province of Québec, this 13<sup>th</sup> day of January, 2025

  
\_\_\_\_\_  
Commissioner of Oaths for the Province of Québec



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

**COMPENDIUM FOR QUEBEC CLASS COUNSEL'S ORAL ARGUMENT**  
**(Re: Motion for the Approval of the Quebec Class Counsel Fee)**  
**(Returnable February 11, 2025)**

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**(Québec Class Action Plaintiffs)**