

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

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

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

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

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

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

Applicants

**FACTUM**

**(PCC Representative Counsel's Motion for Injunctive Relief)**  
**(Returnable on March 26, 2025)**

March 21, 2025

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**THE COMMON SERVICE LIST**

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Applicants

**FACTUM**

**(PCC Representative Counsel's Motion for Injunctive Relief)  
(Returnable on March 26, 2025)**

1. PCC Representative Counsel seeks injunctive relief from this Honourable Court against AIAG, LLC, carrying on business as Attorney Group, and its named incorporator, organizer, and registered agent, Mr. Lyle Foster, and its named principal, Mr. Anthony Johnson (collectively, "Attorney Group"). Specifically, PCC Representative Counsel requests an order:
  - (a) Compelling the immediate removal, and continued inaccessibility of, the webpage <https://claim.attorneygroup.com/canadian-tobacco-lawsuit/>, the Facebook page <https://www.facebook.com/TobaccoClaims/>, and any other websites, social media posts, online advertisements, or public communications whatsoever relating to the Canadian Tobacco Lawsuit, the Tobacco Settlement and the claims and distribution

processes under the CCAA Plans or the Pan-Canadian Claimants Compensation Plan (collectively, the “Attorney Group Solicitations”);

- (b) Prohibiting Attorney Group from soliciting Pan-Canadian Claimants (“PCCs”) in connection with the CCAA Plans and the Pan-Canadian Claimants’ Compensation Plan (“PCC Compensation Plan”);
- (c) Requiring Attorney Group to provide PCC Representative Counsel a list of all persons who signed up or provided information through the Attorney Group Solicitations (“Attorney Group List”);
- (d) Mandating the destruction of all copies of the Attorney Group List; and
- (e) Extending this Order to all persons or entities with knowledge or notice of it, requiring them to:
  - i. Immediately take down and remove any solicitations of PCCs and *Blais* Class Members in connection with the CCAA Plans, the PCC Compensation Plan, the Quebec Administration Plan, or any compensation due thereunder; and
  - ii. Immediately cease and desist from soliciting PCCs and *Blais* Class Members in connection with the CCAA Plans, the PCC Compensation Plan, the Quebec Administration Plan, or any compensation due thereunder.<sup>1</sup>

2. The relief sought in this motion is consistent with the relief granted by this Honourable Court on December 10, 2024, against Actis Law Group and Ms. Andrea Grass, who similarly published a website offering legal representation to Tobacco Victims on a contingency fee basis.<sup>2</sup>
3. However, the present motion seeks an extension of that relief, which was not addressed in the Actis Injunction Order. Since the date of that Order, the Plans of Compromise and

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<sup>1</sup> Motion Record of PCC Representative Counsel filed March 21, 2025, Tab 3, Draft Order for Interlocutory Injunctive Relief.

<sup>2</sup> *Imperial Tobacco Limited*, [2024 ONSC 6890](#) (“**Actis Injunction Endorsement**”); Affidavit of Kate Boyle affirmed March 21, 2025 (“**Boyle Affidavit**”), para 13, Exhibit “C”.

Arrangement for each of the Tobacco Companies have been amended<sup>3</sup> and sanctioned by this Court.<sup>4</sup> The Third Amended and Restated CCAA Plans expressly prohibit solicitation of PCCs under Section 8.4 (“Non-Solicitation Provision”):

#### **8.4 No Solicitation of Pan-Canadian Claimants**

No Persons other than the PCC Representative Counsel, their agent Epiq, the Claims Administrator, or any Person specifically authorized by any of the foregoing Persons or by the CCAA Court, shall solicit Pan-Canadian Claimants in order to assist them with the preparation or submission of their PCC Claim Packages under the PCC Compensation Plan.<sup>5</sup>

4. Given this express prohibition, PCC Representative Counsel now seeks mandatory interlocutory injunctive relief against Attorney Group to enforce this Court’s Sanction Endorsement and Sanction Orders to ensure compliance with Section 8.4 of the CCAA Plans. The injunctive relief sought is intended to remain in effect until the completion of the Claims Process under the PCC Compensation Plan, including the administration and distribution of all funds thereunder to Claimants, or until otherwise ordered by this Court. The sought injunction therefore has a defined end and will not continue permanently.
5. Further, the extension of the Order to all persons and entities with knowledge or notice of the Order is both necessary and warranted. As the Claims Process unfolds and formal notice is disseminated to potential claimants, it is highly likely that additional solicitations of Tobacco Victims will emerge. The significant individual payments available to PCCs and *Blais* Class Members, under the PCC Compensation Plan and Quebec Administration Plan, respectively, make such claims highly attractive to law firms and lawyers seeking to collect contingency fees – often as high as 30% – for nothing more than assisting with the

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<sup>3</sup> Boyle Affidavit, paras 15, 17, 18.

<sup>4</sup> Boyle Affidavit, paras 16, 18, 19.

<sup>5</sup> Boyle Affidavit, para 15; Also see CCAA Plans, Section 7.6 for Non-Solicitation Provision relating to *Blais* Class Members, which states: “No Persons other than the Quebec Class Counsel, their agent Raymond Chabot, the Claims Administrator, or any Person specifically authorized by any of the foregoing Persons or by the CCAA Court, shall solicit *Blais* Class Members in order to assist them with the preparation or submission of their Proofs of Claim under the Quebec Administration Plan.”

completion of Claim Forms, accessing medical documents and commissioner of oaths services, which are provided for free to claimants through the Agent.<sup>6</sup>

6. Without this extended relief, PCC Representative Counsel anticipates an ongoing cycle of unauthorized solicitations, each requiring separate enforcement proceedings, thereby unnecessarily consuming this Court's resources.<sup>7</sup> An Order that applies to any persons or entities with knowledge or notice of it ensures that the Non-Solicitation Provision of the sanctioned CCAA Plans will be enforceable throughout the Claims Process and can effectively prevent or cease solicitations.
7. The sought relief is consistent with the Non-Solicitation Provision of the CCAA Plans. It is necessary to uphold the integrity of the Claims Process, protect vulnerable claimants from unnecessary legal fees, and avoid repeated recourse to the Court to address future violations.

## A. FACTS

### (i) PCC Representative Counsel and the CCAA Proceedings

8. On December 9, 2019, this Court appointed Wagners as PCC Representative Counsel to represent the interests of PCCs in the within the CCAA Proceedings under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as am. ("CCAA").<sup>8</sup> The PCC Representative Counsel Order was amended and restated on November 22, 2024, to outline PCC Representative Counsel's role in representing PCCs post-sanction and throughout the implementation of the CCAA Plans.<sup>9</sup>
9. Since appointment, PCC Representative Counsel has actively represented the interests of PCCs, participating in thousands of hours of mediation with the Court-Appointed Mediator, Monitors, and other claimants and stakeholders.<sup>10</sup> This extensive and complex mediation culminated in the filing of the CCAA Plans on October 17, 2024, which set out

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<sup>6</sup> Boyle Affidavit, paras 28, 29. This reasoning applies equally to the Quebec Administration Plan.

<sup>7</sup> See Boyle Affidavit, paras 57–64, for evidence of other unauthorized solicitations of PCCs determined to date.

<sup>8</sup> Boyle Affidavit, para 6, Exhibit "A".

<sup>9</sup> Boyle Affidavit, para 7, Exhibit "B".

<sup>10</sup> Boyle Affidavit, paras 8, 9.

a global settlement of all affected claims against the Tobacco Companies, including the claims of PCCs.<sup>11</sup>

10. The PCC Compensation Plan, an integral part of the global settlement, allocates \$2.52 billion to compensate individual tobacco harm victims across Canada who meet the eligibility criteria.<sup>12</sup>
11. Between their initial filing and the date of the Sanction Hearing, the CCAA Plans were amended three times.<sup>13</sup>
12. On January 29 to 31, 2025, Chief Justice Morawetz of the CCAA Court presided over the motions seeking, *inter alia*, Sanction Orders relating to the CCAA Plans.<sup>14</sup> On March 6, 2025, the CCAA Court issued its decision, sanctioning the CCAA Plans, including the Non-Solicitation Provision, and the PCC Compensation Plan. The related Sanction Orders, dated March 6, 2025, were also issued.<sup>15</sup>
13. Pursuant to the PCC Representation Counsel appointment Orders, and the CCAA Plans, PCC Representative Counsel has an exclusive and ongoing mandate to represent PCCs throughout the Claims Process.<sup>16</sup>
14. The Claims Process under the PCC Compensation Plan was designed so that it is straightforward for PCC-Claimants to complete the Claim Form and submit the Claim Package for consideration and approval by the Claims Administrator. The PCC Compensation Plan aims to materially eliminate the need for legal representation, thereby streamlining the administration process and maximizing the funds available to PCC-Claimants.<sup>17</sup>
15. As part of the Claim Package, PCC-Claimants must provide proof of diagnosis of one of the PCC Compensable Diseases—Lung Cancer, Throat Cancer, or Emphysema/COPD

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<sup>11</sup> Boyle Affidavit, para 10.

<sup>12</sup> Boyle Affidavit, paras 20, 21.

<sup>13</sup> Boyle Affidavit, paras 11, 15, 17, 18.

<sup>14</sup> Boyle Affidavit, para 16.

<sup>15</sup> Boyle Affidavit, para 19; *Imperial Tobacco Canada Limited*, [2025 ONSC 1358](#) (“**Sanction Endorsement**”).

<sup>16</sup> Boyle Affidavit, para 7, Exhibit “B”; CCAA Plans, Schedule “S” (RBH/JTIM) and “P” (Imperial) (“**PCC Compensation Plan**”).

<sup>17</sup> Boyle Affidavit, paras 22-24, 28.

(GOLD Grade III or IV)—via medical evidence.<sup>18</sup> The medical documents required are outlined in the PCC Compensation Plan, and obtaining such evidence does not require legal representation or advice.

**(ii) Free Assistance for PCCs and the Role of Epiq as Agent**

16. To ensure PCCs receive free, accurate, and legitimate assistance, PCC Representative Counsel retained Epiq Class Action Services Canada Inc. (“Epiq”) as an Agent on September 13, 2024.<sup>19</sup> As Agent, Epiq’s role includes:
- (a) operating a bilingual call centre, official website and registration portal for claimants ([www.TobaccoClaimsCanada.ca](http://www.TobaccoClaimsCanada.ca));
  - (b) assisting PCC-Claimants or their Legal Representatives (e.g. a Power of Attorney or Estate Representative) in preparing Claim Packages, including assisting with obtaining medical records and providing commissioner of oaths services;
  - (c) providing support to PCC-Claimants before and throughout the Claims Process; and
  - (d) reporting to PCC Representative Counsel, the Mediator, and the Monitors.<sup>20</sup>
17. Retaining Epiq as Agent ensures PCCs receive accurate information about the PCC Compensation Plan and Claims Process, and fulsome assistance with their claims – from obtaining medical records to signing their Claim Forms in the presence of a Commissioner of Oaths – at no cost to them. This measure also seeks to protect PCCs from exploitation by lawyers and entities unaffiliated with the CCAA Proceedings attempting to profit from the compensation intended for Tobacco-Victims.<sup>21</sup>

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<sup>18</sup> Boyle Affidavit, para 23.

<sup>19</sup> Boyle Affidavit, para 26, Exhibit “D”.

<sup>20</sup> Boyle Affidavit, paras 27, 30-32.

<sup>21</sup> Boyle Affidavit, para 28; Also see Sanction Endorsement, para [89](#).

18. Importantly, all fees, costs, disbursements, and expenses incurred by PCC Representative Counsel, including the services of Epiq as Agent, will be paid directly by the Tobacco Companies, and will not be deducted from any compensation awarded to PCC-Claimants.<sup>22</sup>
19. In the Sanction Endorsement, this Court acknowledged the “innovative” use of an agent in the Quebec Administration Plan and PCC Compensation Plan to assist claimants with completing and submitting claims.<sup>23</sup>
20. The CCAA Court also sanctioned Epiq’s dual role – not only as Agent for PCC Representative Counsel, but also as the neutral Claims Administrator responsible for processing and approving claims under the PCC Compensation Plan and Quebec Administration Plan.<sup>24</sup>
21. Since mid-October of 2024, 9,358 individuals have registered with Epiq to receive updates regarding the CCAA Proceedings and the PCC Compensation Plan specifically. This figure excludes an additional 14,949 contacts transferred from Proactio, the Agent for the Quebec Administration Plan, bringing the total to over 24,000 individuals awaiting information about the PCC Compensation Plan.<sup>25</sup>
22. The number of individuals seeking information about the compensation available to claimants under the CCAA Plans is expected to increase significantly once the notices are published and the official notice plans are underway.<sup>26</sup>

**(iii) Prior Injunctive Relief Granted by this Honourable Court**

23. On December 9, 2024, Chief Justice Morawetz heard parallel motions brought by PCC Representative Counsel and Quebec Class Counsel seeking an interlocutory injunction against Actis Law Group and its principal, Ms. Andrea Grass, who had published a website

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<sup>22</sup> Boyle Affidavit, para 29.

<sup>23</sup> Sanction Endorsement, para [24](#).

<sup>24</sup> *Ibid*, para [112](#).

<sup>25</sup> Boyle Affidavit, paras 33, 34.

<sup>26</sup> Boyle Affidavit, para 35.

purporting to offer representation to tobacco victims in the Canadian Tobacco Class Action Settlement.<sup>27</sup>

24. On December 10, 2024, Chief Justice Morawetz granted the injunction, issuing an Endorsement outlining the reasons for relief. Related injunction orders were also issued against Actis Law Group in each of the Applicants' proceedings.<sup>28</sup>
25. To protect PCCs and prevent unauthorized solicitation, the Second Amended and Restated CCAA Plans filed by the Court-Appointed Mediator and Monitors on January 27, 2025, introduced the Non-Solicitation Provision at Section 8.4, expressly prohibiting solicitation of PCCs. A parallel provision was added in relation to solicitation of *Blais* Class Members as Section 7.6. These provisions are incorporated into the Third Amended and Restated CCAA Plans sanctioned by this Court.<sup>29</sup>

**(iv) Unauthorized Solicitation of PCCs Through the Attorney Group Solicitations**

26. On March 6, 2025, PCC Representative Counsel became aware of solicitations of PCCs through a website and related Facebook advertisements hosted by Attorney Group, purporting to provide settlement representation for the "Tobacco Settlement Canada" (the "**Attorney Group Solicitations**").<sup>30</sup>
27. The Attorney Group Solicitations make several false and misleading representations including that they:
  - (a) advertise a "32.5 Billion Dollar Tobacco Settlement" from the "Canadian Tobacco Lawsuit", falsely implying that this entire amount is available for claimants, when, in reality, the compensation available for direct compensation to claimants under the PCC Compensation Plan is \$2.52 billion;<sup>31</sup>

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<sup>27</sup> Boyle Affidavit, para 12.

<sup>28</sup> Boyle Affidavit, paras 12, 13, Exhibit "C"; *Imperial Tobacco Limited*, [2024 ONSC 6890](#) ("**Actis Injunction Endorsement**").

<sup>29</sup> Boyle Affidavit, paras 15, 17-19.

<sup>30</sup> Boyle Affidavit, paras 36-38, Exhibits "E", "F".

<sup>31</sup> Boyle Affidavit, Exhibit "F".

- (b) state “No upfront costs – pay nothing unless we win your case”, implying that claimants will be required to sign a contingency fee agreement if Attorney Group assists them filing their claim, and also that there is a “case” to be won, rather than a simple Claim Form to fill out;<sup>32</sup>
- (c) create a false sense of urgency for claimants by declaring that the “Deadline approaching! Don’t miss this chance to claim what’s rightfully yours. Click Learn More today!”, when, in fact, the PCC Claims Process has not yet begun, and the PCC Claims Application Deadline has not yet been determined;<sup>33</sup>
- (d) advertise that “Tobacco Settlement Could Pay Canadians up to \$100K,” while mentioning the PCC Eligibility Criteria, in which the maximum compensation available to claimants is \$60,000;<sup>34</sup>
- (e) purport to determine if PCC-Claimants are eligible for compensation, despite having no role in the administration of claims;<sup>35</sup>
- (f) state “The time you have to pursue a claim is limited. Contact us today”, when, in fact, the PCC Claims Process has not yet begun, and the PCC Claims Application Deadline has not yet been determined;<sup>36</sup>
- (g) claim “There is no cost or obligation to speak with us,” yet fails to disclose that claimants will be required to sign a contingency fee agreement if Attorney Group assists them with submitting their claim;<sup>37</sup>
- (h) specifically target First Nations claimants by emphasizing higher smoking rates within First Nations communities, exploiting vulnerable groups and reinforcing the misleading impression that PCCs must engage Attorney Group to secure compensation;<sup>38</sup>

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<sup>32</sup> Boyle Affidavit, Exhibit “F”.

<sup>33</sup> Boyle Affidavit, Exhibit “F”.

<sup>34</sup> Boyle Affidavit, Exhibit “F”.

<sup>35</sup> Boyle Affidavit, Exhibit “E”.

<sup>36</sup> Boyle Affidavit, Exhibit “E”.

<sup>37</sup> Boyle Affidavit, Exhibits “E”, “G”.

<sup>38</sup> Boyle Affidavit, Exhibit “E”.

- (i) provide incomplete eligibility criteria, omitting key requirements including the Twelve-Pack Year smoking requirement, and the requirement that COPD diagnosis must be Grade III or IV; and
  - (j) do not mention Epiq's role as Agent for PCC Representative Counsel, which provides claimants assistance at no cost.<sup>39</sup>
22. The Terms of Use on the Attorney Group Website disclaim responsibility for accuracy, confidentiality, and completeness of the information provided on its website. The Terms explicitly state that "The Companies do not undertake to update material on this website to reflect subsequent legal or other developments," and that the material may contain technical or typographical errors, and "The Companies do not guarantee its accuracy, completeness or suitability."<sup>40</sup>
23. The Terms of Use on the Attorney Group Website also confirm that contingency fee agreements are the standard model for representation. The Terms of Use states that while initial consultations are free, any formal representation requires a contract for legal services, which outlines the fees, terms, and potential involvement of affiliated attorneys or law firms. It further specifies that personal injury matters are handled on a contingency basis.<sup>41</sup> This supports that PCC-Claimants would be required to enter a financial arrangement by engaging with Attorney Group.
24. These Terms underscore the unreliability and inaccuracy of Attorney Group's representations about the PCC Compensation Plan and the serious risk of misinformation to PCCs. Claimants relying on the Attorney Group Website may be misled about their rights, the applicable deadlines for submitting a claim, the need for legal representation to make a claim, and the financial implications of engaging Attorney Group, resulting in financial decisions that cause them irreparable harm.<sup>42</sup>

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<sup>39</sup> Boyle Affidavit, Exhibits "E", "F".

<sup>40</sup> Boyle Affidavit, para 39, Exhibit "G".

<sup>41</sup> Boyle Affidavit, para 40; Exhibit "G".

<sup>42</sup> Boyle Affidavit, para 41.

25. Accordingly, Attorney Group’s actions constitute a clear breach of Section 8.4 of the CCAA Plans. They were not involved in the resolution for PCCs, nor were they authorized by PCC Representative Counsel, Epiq, or the Claims Administrator to solicit claimants.

**(v) Request that Attorney Group Cease Unauthorized Solicitation of PCCs**

26. On March 7, 2025, PCC Representative Counsel sent a demand to Mr. Anthony Johnson, the named principal of Attorney Group, requesting the immediate removal of the Attorney Group Solicitations. The letter provided a deadline of March 10, 2025, at 12:00 p.m. EST, for compliance.<sup>43</sup>

27. Despite this demand, the Attorney Group Solicitations remained active past the deadline.<sup>44</sup>

28. Further investigation revealed that Mr. Lyle D. Foster, of the law firm Hyden, Miron & Foster, PLLC, was listed as the registered agent for Attorney Group.<sup>45</sup> Accordingly, on March 10, 2025, PCC Representative Counsel sent the same demand to Mr. Foster, copying Mr. Johnson, reiterating the requirement to cease all unauthorized solicitations.<sup>46</sup> That same day, telephone calls were made to both Mr. Johnson and Mr. Foster, but no response was received.<sup>47</sup>

29. On March 11, 2025, Mr. Johnson responded by email stating that “the pages have been taken down.” However, the other unauthorized solicitations, including the Facebook page and advertisements, remained active.<sup>48</sup>

30. On March 18, 2025, PCC Representative Counsel determined the Facebook page had been taken down. However, the remaining Attorney Group Solicitations consisting of Facebook advertisements remained active.<sup>49</sup>

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<sup>43</sup> Boyle Affidavit, para 42, Exhibit “H”.

<sup>44</sup> Boyle Affidavit, para 43.

<sup>45</sup> Boyle Affidavit, para 44, Exhibit “I”.

<sup>46</sup> Boyle Affidavit, para 45, Exhibit “J”.

<sup>47</sup> Boyle Affidavit, paras 46, 47.

<sup>48</sup> Boyle Affidavit, paras 48-50; Exhibits “K”, “L”.

<sup>49</sup> Boyle Affidavit, para 51.

31. On March 19, 2025, PCC Representative Counsel again emailed Mr. Johnson and Mr. Foster, again demanding the removal of all Attorney Group Solicitations along with other specified conditions. The email provided a deadline of 1:30 p.m. EST, for compliance.<sup>50</sup>
32. Despite this demand, the Attorney Group Solicitations remained active past the deadline.<sup>51</sup>
33. In the evening of March 19, 2025, Mr. Johnson responded by email stating that “Meta ads have been down since last email and status has not changed.” The other specified conditions outlined in PCC Representative Counsel’s email were not acknowledged or addressed.<sup>52</sup>
34. On March 20, 2025, PCC Representative Counsel determined that the remainder of the Attorney Group Solicitations – three Facebook advertisements – remain active and publicly accessible.<sup>53</sup>

**(vi) Other Known Unauthorized Solicitation of PCCs**

35. The unauthorized solicitation of PCCs by unapproved third parties is not an isolated occurrence. In addition to the Attorney Group and Actis, PCC Representative Counsel has identified similar activities by other entities soliciting PCCs.<sup>54</sup>
36. For example, a third party recently operated a website with a domain name almost identical to the official claims website, purporting to provide legal assistance for the PCC Compensation Plan. The website suggested that legal representation was necessary to file a claim and contained misleading statements regarding eligibility requirements and the scope of assistance available to PCCs.<sup>55</sup>
37. PCC Representative Counsel identified the entity responsible for the website and sent a letter demanding its removal, among other conditions. After further correspondence, the

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<sup>50</sup> Boyle Affidavit, para 52, Exhibit “M”.

<sup>51</sup> Boyle Affidavit, para 53.

<sup>52</sup> Boyle Affidavit, para 54, Exhibit “N”.

<sup>53</sup> Boyle Affidavit, paras 55, 56; [Exhibit “O”](#).

<sup>54</sup> Boyle Affidavit, para 57.

<sup>55</sup> Boyle Affidavit, paras 58, 59.

third party confirmed on March 7, 2025, that the website had been taken down, and that the other requests had been complied with.<sup>56</sup>

38. The existence of unauthorized solicitations by various unrelated entities highlights the ongoing risk that additional third parties will likely engage in similar conduct to solicit PCCs and *Blais* Class Members in order to lure them into unnecessary representation and contingency fee agreements, particularly as formal notice is disseminated and the Claims Process begins.<sup>57</sup>

## **B. ISSUE**

- Q1. Should the Court grant an interlocutory injunction against Attorney Group and extend the terms of the injunction Order to prevent future unauthorized solicitations of PCCs and *Blais* Class Members, on the terms stated in the draft Order?

For the reasons set out below, the answer is “Yes”. An injunction is necessary not only to restrain the Attorney Group from ongoing violations of the Non-Solicitation Provision in the Court-approved CCAA Plans, but also to ensure that future unauthorized solicitations do not compromise the integrity of the Claims Process. Given the financial incentives for third parties to solicit Tobacco Victims, broader relief is warranted to deter and stop further violations, protect PCCs and *Blais* Class Members from misleading solicitations, and avoid the need for repeated enforcement proceedings before this Court.

## **C. LAW & ARGUMENT**

### **(a) Abridgement of Time Period for Service**

39. This Court has jurisdiction to dispense with procedural requirements and grant timely injunctive relief where necessary in the interests of justice.<sup>58</sup>
40. It is both just and in the interests of justice that the Claims Process and Administration of the compensation plans under the CCAA Plans sanctioned by this Court, including the PCC Compensation Plan, proceed towards implementation without the false and misleading

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<sup>56</sup> Boyle Affidavit, paras 60-63; Exhibits “P”, “Q”.

<sup>57</sup> Boyle Affidavit, para 64.

<sup>58</sup> Rules of Civil Procedure, Ont. Reg. 194, s 2.03.

representations of Attorney Group proliferating, causing confusion, misinformation, and likely irreparable harm by inducing PCCs into unnecessary, detrimental and financially punitive contingency fee agreements.

41. Intervention is therefore necessary to prevent further confusion and harm, ensure that accurate information prevails, and protect PCCs and *Blais* Class Members from exploitation.
42. Attorney Group has been aware that it is infringing the Non-Solicitation Provision since March 7, 2025, and that its continued solicitation would require PCC Representative Counsel to seek injunctive relief to protect the integrity of the Claims Process.<sup>59</sup>
43. While Attorney Group removed the Attorney Group Website on March 11, 2025,<sup>60</sup> it has not removed all Attorney Group Solicitations.

**(b) Jurisdiction to Grant an Injunction**

44. This Honourable Court has the jurisdiction to grant a mandatory interlocutory injunction under Section 101 of the *Courts of Justice Act*<sup>61</sup> and Section 40.01 of the Rules of Civil Procedure.<sup>62</sup>

**Courts of Justice Act, Section 101**

101(1) Injunctions and receivers

In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

101(2) Terms

An order under subsection (1) may include such terms as are considered just.

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<sup>59</sup> Boyle Affidavit, para 42, Exhibit “H”.

<sup>60</sup> Boyle Affidavit, paras 48, 49; Exhibit “K”.

<sup>61</sup> *Courts of Justice Act*, R.S.O. 1990, c. C.43, s 101; Actis Injunction Endorsement, para [11](#).

<sup>62</sup> Rules of Civil Procedure, Ont. Reg. 194, s 40.

## Rules of Civil Procedure, Section 40

40.01. An interlocutory injunction or mandatory order under section 101 or 102 of the *Courts of Justice Act* may be obtained on motion to a judge by a party to a pending or intended proceeding.

### (c) The Test for an Interlocutory Injunction

45. Chief Justice Morawetz’s December 10, 2024, Endorsement in *Imperial Tobacco Limited* (“Actis Injunction Endorsement”) reaffirmed the well-established test for an interlocutory injunction, as set out by the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada (Attorney-General)*:

12 The test for an interlocutory injunction is set out by the Supreme Court of Canada in *RJR MacDonald Inc. v. Canada (Attorney-General)*, at 334. The test requires the moving party to demonstrate that:

- (a) there is a serious issue to be tried;
- (b) irreparable harm will result if the relief is not granted; and
- (c) the balance of convenience favours the moving party.

13 This analysis must be contextualized by the ongoing CCAA proceeding. The CCAA creates a single proceeding model to promote the “equitable and orderly resolution of insolvency disputes”. This approach is “intended to mitigate the inefficiency and chaos that would result if each stakeholder in an insolvency initiated a separate claim to enforce its rights”: *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41, 475 D.L.R. (4th) 1, at paras. 54-55.

14 To this end, this Court is empowered under s. 11 of the CCAA to “make any order it considers appropriate in the circumstances”.<sup>63</sup>

46. As acknowledged in the Actis Injunction Endorsement, the Court has broad discretion under section 11 of the CCAA to grant orders that preserve the integrity of the insolvency process and prevent unauthorized interference with implementation of the CCAA Plans.

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<sup>63</sup> Actis Injunction Endorsement, *supra* at paras 12-14, citing, *inter alia*, *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311; 1994 CarswellQue 120 (SCC), para 43.

**(e) Precedent Exists for Granting the Requested Relief**

47. Under similar circumstances, this Honourable Court granted interlocutory injunctive relief against Actis Law Group and its principal, Ms. Andrea Grass, who published a website purporting to offer representation in the “Canadian Tobacco Class Action Settlement” and encouraged individuals to submit their information to participate in the settlement. The Actis Website stated that Actis offers its services on a contingency fee basis.<sup>64</sup>
48. The Actis Injunction took place before the introduction of the Non-Solicitation Provision, and sanctioning of the CCAA Plans.<sup>65</sup>
49. In applying the legal test for an interlocutory injunction in the [Actis Injunction Endorsement](#), this Court held there was a serious issue to be tried:

17 The interests of the PCC are represented in this proceeding by the court-appointed class counsel. If the CCAA plan is approved by the creditors and sanctioned by the Court, the PCC will require no additional legal representation. They will be entitled to assert their claims under the PCC Compensation Plan with the support of Wagners and its agents.

18 By advertising legal services and soliciting retainers, Actis stands to interfere with the equitable and orderly resolution of the CCAA proceedings. It risks confusing the claimants and interfering with their representation by the court-appointed class counsel at a critical point in the proceedings. Claimants may be led to mistakenly believe that they must sign up for Actis’s services to obtain their entitlements. They may also fail to sign up to receive information from the court-appointed class counsel on the mistaken belief that they have taken the necessary steps to receive such information.<sup>66</sup>

50. In assessing irreparable harm, Chief Justice Morawetz found that unauthorized solicitation of claimants posed a risk of irreparable harm by disrupting PCC Representative Counsel’s ability to effectively communicate with PCCs and introducing confusion that could undermine the orderly conduct of the CCAA proceedings.<sup>67</sup>

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<sup>64</sup> Actis Injunction Endorsement, *supra* at para 8; Boyle Affidavit, para 13, Exhibit “C”.

<sup>65</sup> Boyle Affidavit, paras 15, 19.

<sup>66</sup> Actis Injunction Endorsement, *supra* at paras 17, 18.

<sup>67</sup> *Ibid*, at para 20.

51. At the time of the Actis Injunction Motion, the CCAA Plans were at a critical stage – just prior to the creditors’ meetings to be held on December 12, 2024. The Court held that allowing third-party solicitation at that stage “is not desirable in this case,”<sup>68</sup> emphasizing:

25 The claimants in this matter are vulnerable, and some have waited over 26 years to realize their claims. The PCC Compensation Plan is specially crafted to meet these unique circumstances and to reduce any further hardship for the claimants. It is specifically designed to eliminate any need for the services Actis proposes to offer. Wagners has procured an agent to manage its communications with potential claimants and to support them in making their claims. Offering such services for a fee, when the PCC are entitled to receive them at no cost, would undermine the very purpose of important aspects of the CCAA Plans.

26 In the context of these CCAA proceedings, which are uniquely complex and span over five years, such harms cannot be remedied once inflicted.<sup>69</sup>

52. The current stage of the proceedings is even more critical than at the time of the Actis Injunction Motion. With the sanctioning of the CCAA Plans, court-approved notices will be widely disseminated, including information about the PCC Compensation Plan, the Agent’s role and Claims Process. This phase will attract significant public attention and media coverage, increasing the likelihood that PCCs will actively seek information about their rights and next steps.<sup>70</sup>

53. It is therefore essential that PCCs receive accurate and reliable information regarding the status of the Claims Process, eligibility criteria and the PCC Claims Application Deadline. The factors that justified injunctive relief in *Actis* also apply at this stage:

- a. PCCs continue to be highly vulnerable, and many have waited decades for compensation;

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<sup>68</sup> *Ibid*, at para 24.

<sup>69</sup> *Ibid*, at paras 25, 26.

<sup>70</sup> Boyle Affidavit, para 35.

- b. the PCC Compensation Plan was specifically designed to eliminate the need for private legal representation, and an Agent remains in place to assist PCC-Claimants at no cost; and
  - c. unauthorized solicitation still risks misleading and financially harming PCCs.<sup>71</sup>
54. These risks persist and are only heightened at this stage of the process, warranting not only an injunction against Attorney Group’s unauthorized and misleading solicitation but also broader relief to deter future violations and ensure compliance with the Court-approved CCAA Plans and the Non-Solicitation Provision therein.
55. On the third prong of the RJR-MacDonald test, Chief Justice Morawetz held that the balance of convenience strongly favors granting the injunction in the Actis Injunction Endorsement. Without an injunction, unauthorized advertising and solicitation posed a serious risk of confusion among PCCs, which could undermine both their legal representation and the orderly resolution of the CCAA proceedings.<sup>72</sup>
56. While Actis claimed to assist claimants in determining their eligibility, the Court held that this fell squarely within the mandate of PCC Representative Counsel. Given the unique nature of these CCAA proceedings, the Court found that Actis’s interest in providing such services was minimal compared to the significant harm and disruption its actions could cause.<sup>73</sup>
57. In Actis, the interlocutory injunctive relief was to remain in effect until the Sanction Order is rendered or until any such later date if the Order is thereafter extended or made permanent.<sup>74</sup>
58. Now, with the issuance of the Sanction Endorsement and Sanction Orders, the Non-Solicitation Provision under Section 8.4 is operative and will endure throughout the PCC Claims Process. This provides a stronger basis for granting injunctive relief against

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<sup>71</sup> Boyle Affidavit, para 41.

<sup>72</sup> Actis Injunction Endorsement, *supra* at para 28.

<sup>73</sup> *Ibid*, at para 29.

<sup>74</sup> Boyle Affidavit, Exhibit “C”.

Attorney Group, and any other unauthorized solicitations of PCCs, whose actions now constitute a direct breach of a Court-approved prohibition.

59. The injunction sought is proposed to endure until the completion of the Claims Process under the PCC Compensation Plan, including the administration and distribution of all funds thereunder to Claimants, or until otherwise ordered by this Court. This ensures the relief remains time-limited while effectively protecting PCCs from irreparable harm and financial exploitation during the Claims Process.

**(d) The Criteria for Interlocutory Injunctive Relief Are Met**

**(i) Strong *prima facie* case**

60. The Attorney Group Solicitations misrepresent and provide inaccurate information regarding the “Canadian Tobacco Lawsuit” (i.e. the compensation available to Tobacco Victims under the CCAA Plans) representing a predatory attempt to mislead PCCs into believing that legal representation is required to seek compensation, and that they must act with urgency.<sup>75</sup> This is contrary to the PCC Compensation Plan, which is intentionally structured to not require PCC-Claimants to retain third-party counsel to submit a claim for compensation.<sup>76</sup>
61. Inserting unauthorized and uninformed lawyers and law firms into this streamlined Claims Process is both unnecessary and exploitative of PCC-Claimants, many of whom are ill with fatal diseases that underlie their very claims. The interests of PCCs have been considered throughout this proceeding, including by the appointment of PCC Representative Counsel in 2019, the structuring of the Claims Process, and the retention of Epiq as Agent to provide fee assistance to PCC-Claimants.<sup>77</sup>

**(i) Irreparable Harm**

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<sup>75</sup> Boyle Affidavit, paras 36, 38, Exhibits “E”, “F”.

<sup>76</sup> Boyle Affidavit, paras 22, 28.

<sup>77</sup> Boyle Affidavit, paras 6, 7, 22-32.

62. PCCs who submit information to Attorney Group, and/or any other unauthorized entity soliciting PCCs may believe they will receive accurate and timely updates about the CCAA Proceedings and Claims Process, including important deadlines.
63. However, Attorney Group is not party to the CCAA Proceedings and is not authorized by PCC Representative Counsel or Epiq to represent PCCs through the Claims Process. Further, the Attorney Group expressly acknowledges that its content may not reflect current legal developments or be accurate.<sup>78</sup> This creates a serious risk that claimants will miss critical communications about their rights and may suffer a real loss simply by placing their confidence in a law firm that is not informed about or involved in the PCC Compensation Plan.
64. The PCC Compensation Plan is designed so that claimants bear no out-of-pocket legal fees – costs are covered by the Tobacco Companies, not deducted from PCCs' compensation.<sup>79</sup> Yet, if Attorney Group, and/or any other unauthorized entity soliciting PCCs, mislead claimants into signing contingency fee agreements, their compensation will be reduced, potentially substantially, causing them irreparable financial harm.<sup>80</sup>

**(ii) Balance of Convenience**

65. Failing to prevent Attorney Group from continuing with its misleading and predatory practices may encourage others to adopt similar practices, in direct violation of the Sanction Endorsement and Sanction Orders, which approve of the Non-Solicitation Provision under Section 8.4 of the CCAA Plans. Tobacco Victims have the right not to be misled by legal professionals and must be protected from predatory practices that undermine the profession and the Court-approved Claims Process.<sup>81</sup>
66. The balance of convenience weighs heavily in favor of protecting PCCs from financial harm and exploitation, rather than preserving Attorney Group's ability to engage in unauthorized, misleading solicitation. The business interest of Attorney Group – obtaining

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<sup>78</sup> Boyle Affidavit, paras 39, 40; Exhibit "G".

<sup>79</sup> Boyle Affidavit, para 29.

<sup>80</sup> Boyle Affidavit, para 41.

<sup>81</sup> Boyle Affidavit, paras 64, 65.

clients through deceptive means to fill out simple Claim Forms – carries no legitimate weight compared to the risk of harm faced by claimants.

67. This argument equally applies to any other unauthorized entity soliciting PCCs or *Blais* Class Members to assist them with the preparation of submission of Claim Forms under the sanctioned compensation programs approved by this Court.
68. As there are parallel claims processes for Tobacco-Victims under the CCAA Plans – the PCC Compensation Plan and the Quebec Administration Plan – the risk of misinformation and financial detriment associated with entering into unnecessary contingency fee agreements is not limited to PCCs. Unauthorized solicitations pose a threat to PCCs and *Blais* Class Members, as misleading representations about eligibility, legal requirements under the respective compensation plans, and compensation entitlements may cause claimants to incur unnecessary legal fees or fail to access the compensation to which they are entitled.
69. Given the substantial risk of financial loss and exploitation faced by PCCs and *Blais* Class Members, the balance of convenience overwhelmingly favors protecting claimants and enforcing the Sanction Endorsement and Sanction Orders over any purported right of Attorney Group and/or any other unauthorized entity soliciting PCCs and/or *Blais* Class Members to engage in misleading solicitation, in violation of the CCAA Plans.

**D. The Court Should Dispense the PCC Representative Counsel from Providing an Undertaking as to Damages**

70. Given the unique circumstances of this case, including the strength of the PCCs’ position and the critical role of PCC Representative Counsel to these CCAA Proceedings, an undertaking as to damages should not be required.<sup>82</sup>
71. As Chief Justice Morawetz held in the [Actis Injunction Endorsement](#):

33 The court retains discretion to waive this requirement where appropriate, for instance where the motion is brought by a representative on behalf of a class: [Li et al. v. Barber et. al., 2022 ONSC 1176, at para. 38](#). I am satisfied that it is appropriate to waive the requirement for an undertaking in these circumstances. If

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<sup>82</sup> Boyle Affidavit, paras 66, 67; *Rules of Civil Procedure*, Ont. Reg. 194, s 40.03.

compensation is owed to Actis, I am satisfied that it can be adequately addressed when this Court makes a decision regarding any sanction orders.<sup>83</sup>

72. In this instance, PCC Representative Counsel has been appointed to act on behalf of a large nation-wide group of individuals harmed by tobacco, and in the public interest to protect the rights and compensation of PCCs. Accordingly, PCC Representative Counsel respectfully requests to be relieved of the requirement to provide an undertaking as to damages pursuant to Rule 40.03 of the Rules of Civil Procedure.

**E. Relief**

73. PCC Representative Counsel asks this Honourable Court to grant the relief sought as proposed in the draft Order filed with this motion.

All of which is respectfully submitted.

March 21, 2025




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<sup>83</sup> Actis Injunction Endorsement, para [33](#).



**SCHEDULE “A”**  
**LIST OF AUTHORITIES**

1. *Imperial Tobacco Canada Limited*, [2025 ONSC 1358](#)
2. *Imperial Tobacco Limited*, [2024 ONSC 6890](#)
3. *RJR-MacDonald Inc. v. Canada (Attorney General)*, [\[1994\] 1 S.C.R. 311](#); 1994 CarswellQue 120 (SCC)

## SCHEDULE “B”

### TEXT OF STATUTES AND REGULATIONS

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

##### **General power of court**

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

#### **Courts of Justice Act, RSO 1990, c C.43**

##### **Injunctions and receivers**

**101** (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

##### **Terms**

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

#### **Rules of Civil Procedure, RRO 1990, Reg 194**

### **RULE 40 INTERLOCUTORY INJUNCTION OR MANDATORY ORDER**

#### **How Obtained**

**40.01** An interlocutory injunction or mandatory order under [section 101](#) or [102](#) of the *Courts of Justice Act* may be obtained on motion to a judge by a party to a pending or intended proceeding. R.R.O. 1990, Reg. 194, r. 40.01.

#### **Where Motion Made without Notice**

##### ***Maximum Duration***

**40.02** (1) An interlocutory injunction or mandatory order may be granted on motion without notice for a period not exceeding ten days. R.R.O. 1990, Reg. 194, r. 40.02 [\(1\)](#).

***Extension***

(2) Where an interlocutory injunction or mandatory order is granted on a motion without notice, a motion to extend the injunction or mandatory order may be made only on notice to every party affected by the order, unless the judge is satisfied that because a party has been evading service or because there are other exceptional circumstances, the injunction or mandatory order ought to be extended without notice to the party. R.R.O. 1990, Reg. 194, r. 40.02 [\(2\)](#).

(3) An extension may be granted on a motion without notice for a further period not exceeding ten days. R.R.O. 1990, Reg. 194, r. 40.02 [\(3\)](#).

***Labour Injunctions Excepted***

(4) Subrules (1) to (3) do not apply to a motion for an injunction in a labour dispute under [section 102](#) of the *Courts of Justice Act*. R.R.O. 1990, Reg. 194, r. 40.02 [\(4\)](#).

**Undertaking**

**40.03** On a motion for an interlocutory injunction or mandatory order, the moving party shall, unless the court orders otherwise, undertake to abide by any order concerning damages that the court may make if it ultimately appears that the granting of the order has caused damage to the responding party for which the moving party ought to compensate the responding party. R.R.O. 1990, Reg. 194, r. 40.03.

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

**MOTION RECORD**  
**PCC Representative Counsel's Motion for Injunctive Relief  
(Returnable March 26, 2025)**

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