

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 **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

JOINT FACTUM OF THE IMPERIAL AND RBH MONITORS

Motion for Quebec Cash Security Deposit Orders
(Motion returnable June 18, 2025)

June 11, 2025

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PART I – INTRODUCTION¹

1. The Imperial and RBH Monitors jointly bring this motion for a partial lift of the Stays of Proceedings (as defined below) to facilitate a critical step in the implementation of the CCAA Plans.

2. As this Court is well aware, these CCAA Proceedings were precipitated by the Quebec Superior Court of Justice rendering a \$13.5 billion-plus judgment against the Tobacco Companies on May 27, 2015 in respect of two class actions (the “**Quebec Judgment**”).²

3. In connection with the appeal of the Quebec Judgment, ITCAN and RBH deposited approximately \$758 million and \$226 million, respectively, as security (the “**Cash Security Deposits**”) pursuant to an October 27, 2015 Order of the Quebec Court of Appeal.³

4. The CCAA Plans of all three Tobacco Companies in these coordinated CCAA Proceedings require that (i) the Cash Security Deposits be released from the Quebec Court of Appeal; (ii) the funds form part of the Upfront Contributions of Imperial and RBH; and (iii) the funds be deposited into the Imperial and RBH Global Settlement Trust Accounts prior to or at the

¹ This Factum is jointly filed by (i) FTI Consulting Canada Inc. (“**FTI**”) in its capacity as Court-appointed monitor of Imperial Tobacco Canada Limited (“**ITCAN**”) and Imperial Tobacco Company Limited (together with ITCAN, “**Imperial**”); and (ii) Ernst & Young Inc. (“**EY**”) in its capacity as monitor for Rothmans Benson & Hedges Inc. (“**RBH**”), in the above-captioned coordinated proceedings (the “**Proceedings**”) under the Companies’ Creditors Arrangement Act, R.S.C., 1985, c. C-36, as amended (“**CCAA**”). Deloitte Restructuring Inc. in its capacity as monitor for JTI-Macdonald Corp. (“**JTIM**”) does not join this Factum. JTIM, Imperial and RBH are collectively referred to as the “**Tobacco Companies**” or “**Applicants**”. Capitalized terms not defined herein have the meanings given to them in the Notices of Motion of the Imperial and RBH Monitors dated June 11, 2025 or the third amended and restated plans of compromise or arrangement in respect of Imperial and RBH dated February 27, 2025 (the “**Amended CCAA Plans**”). References to the “CCAA Plans” in this factum refer either to the initial plans of compromise or arrangement in respect of Imperial and RBH dated October 17, 2024 or the Amended CCAA Plans, as the context requires.

² [FTI Pre-Filing Report of the Proposed Monitor](#) dated March 12, 2019 (“**FTI Pre-Filing Report**”) at para. 46; [EY Pre-Filing Report of the Proposed Monitor](#) dated March 22, 2019 at para. 46 (the “**EY Pre-Filing Report**”).

³ [FTI Pre-Filing Report](#) at para. 47; [EY Pre-Filing Report](#) at para 47.

Effective Time on the Plan Implementation Date (after all required conditions have been satisfied or waived and the contemplated transactions are ready to be implemented).

5. The Sanction Orders issued by this Court on March 6, 2025 do not expressly provide for the release of the Cash Security Deposits. Rather, the Imperial and RBH Monitors have concluded that any step related to the return of the Cash Security Deposits is subject to the stays of proceedings in favour of Imperial and RBH that remain in force until the Effective Time (the “**Stays of Proceedings**”).

6. Accordingly, the Imperial and RBH Monitors now move for Quebec Cash Security Deposit Orders to partially lift the Stays of Proceedings solely to the extent required to allow the Imperial and RBH Monitors, together with the support of ITCAN, RBH and the Quebec Class Action Plaintiffs (the “**QCAPs**”), to commence applications in the Quebec Court of Appeal (the “**Quebec Applications**”) to secure the release of the Cash Security Deposits for the purpose of depositing those funds into the Imperial and RBH Global Settlement Trust Accounts in accordance with the terms of the CCAA Plans.

PART II – SUMMARY OF FACTS

A. The Cash Security Deposits, the CCAA Proceedings and the Stays

7. Shortly after the Quebec Judgment was issued, the QCAPs brought a motion before the Quebec Court of Appeal seeking security to guarantee the payments of the Quebec Judgment and of the appeal costs if the Quebec Judgment were to be upheld.⁴

8. On October 27, 2015, the Quebec Court of Appeal granted the QCAPs’ motion and ordered ITCAN and RBH to make the Cash Security Deposits.⁵ The Cash Security Deposits were

⁴ [FTI Pre-Filing Report](#) at para. 49; [EY Pre-Filing Report](#) at paras. 46-47.

⁵ *Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé*, [2015 QCCA 1737](#) at paras. [49](#), [57](#).

paid into the Quebec Court of Appeal by ITCAN and RBH and remain subject to the October 27, 2015 Order of the Quebec Court of Appeal (the “**Deposit Posting Order**”).⁶

9. The Quebec Judgment was substantially upheld by the Quebec Court of Appeal on March 1, 2019.⁷

10. Shortly thereafter, the Tobacco Companies each applied to this Court for Initial Orders. In March 2019, the Court granted an Initial Order under the CCAA in respect of each Tobacco Company.⁸ The Imperial and RBH Initial Orders granted March 12, 2019 and March 22, 2019, respectively, (i) granted the Stays of Proceedings; and (ii) appointed the Imperial and RBH Monitors, among other things. Those Initial Orders were amended and restated from time to time, with the operative version being the Second Amended and Restated Initial Orders, each dated April 25, 2019.⁹

11. With respect to the Stays of Proceedings, paragraph 18 of the Imperial and RBH Second Amended and Restated Initial Orders each provide in relevant part:

THIS COURT ORDERS that until and including April 11, 2019 [June 28, 2019 in the case of RBH], or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) ... shall be commenced ... affecting ... ***the funds deposited by the Applicant[s] pursuant to the Deposit Posting Order, except with leave of this Court.***¹⁰

⁶ [FTI Pre-Filing Report](#) at para. 49; [EY Pre-Filing Report](#) at para. 20.

⁷ [FTI Pre-Filing Report](#) at para. 50; [EY Pre-Filing Report](#) at para. 46.

⁸ See [Imperial Tobacco Initial Order](#) dated March 12, 2019 at paras. 18, 30; [RBH Initial Order](#) dated March 22, 2019 at paras. 18, 31. [JTIM Initial Order](#) dated March 8, 2019 at paras. 18, 32;

⁹ [Imperial Tobacco Second Amended and Restated Initial Order](#) dated April 25, 2019 (“**Imperial Second A&R Initial Order**”); [RBH Second Amended and Restated Initial Order](#) dated April 25, 2019 (“**RBH Second A&R Initial Order**”).

¹⁰ [Imperial Second A&R Initial Order](#) at para. 18 (emphasis added); [RBH Second A&R Initial Order](#) at para. 18 (emphasis added).

B. The CCAA Plans and the Sanction Orders

12. On March 6, 2025, this Court issued a Sanction Order in each CCAA Proceeding, among other things:

- (a) sanctioning the Amended CCAA Plans;
- (b) authorizing and directing the Monitors to “take all steps and actions, and to do all things, necessary or appropriate to implement the CCAA Plan”;
- (c) authorizing and empowering the Monitors “to apply to any court ... for the assistance in carrying out the terms” of the Sanction Order; and
- (d) extending the Stay Period in each CCAA Proceeding until the Effective Time.¹¹

13. The Effective Time is defined under the CCAA Plans as a time on the Plan Implementation Date designated by the Court-Appointed Mediator and the Monitors after the Plan Implementation Conditions and the conditions to other Definitive Documents have been satisfied or waived and all transactions contemplated by the CCAA Plans, the Sanction Orders and the Definitive Documents are ready to be implemented.¹²

C. The CCAA Plans Require the Release of the Cash Security Deposits

14. The CCAA Plans achieve “a global settlement of all Tobacco Claims against [the] Tobacco Companies”.¹³ The CCAA Plans require the Tobacco Companies to pay an aggregate Global Settlement Amount of \$32.5 billion into three separate Global Settlement Trust Accounts over

¹¹ [Imperial Tobacco Sanction Order](#) dated March 6, 2025 (“**Imperial Sanction Order**”) at paras. 10, 15(a), 54, 64; [RBH Sanction Order](#) dated March 6, 2025 (“**RBH Sanction Order**”) at paras. 10, 15(a), 54, 64.

¹² [Imperial Tobacco Third Amended and Restated CCAA Plan of Compromise and Arrangement](#) dated February 27, 2025 (“**Imperial CCAA Plan**”) at p. 10; [RBH Third Amended and Restated CCAA Plan of Compromise and Arrangement](#) dated February 27, 2025 (“**RBH CCAA Plan**”) at p. 11.

¹³ *Imperial Tobacco Canada Limited*, [2025 ONSC 1358](#) at para. [16](#).

multiple years.¹⁴ As part of the Global Settlement Amount, each Tobacco Company is required to make an Upfront Contribution on or before the Plan Implementation Date that consists of each Tobacco Company's cash and cash equivalents plus the Cash Security Deposits, less the RBH Retained Amount.¹⁵

15. The CCAA Plans expressly require that the Cash Security Deposits be released from suretyship and deposited into the Imperial and RBH Global Settlement Trust Accounts as part of their respective Upfront Contributions prior to or at the Effective Time. This is a condition precedent to the implementation of the CCAA Plans.

16. The relevant provisions of the CCAA Plans that address the Cash Security Deposits are as follows:

- (a) Section 5.4 provides that the Upfront Contributions shall equal the aggregate of each Tobacco Company's cash and cash equivalents generated from all sources by each Tobacco Company as at the month end prior to the Plan Implementation Date, including all amounts pledged by the Tobacco Companies to cash collateralize any outstanding letters of credit, surety or bonding obligations to the issuers thereof, plus the Cash Security Deposits, less the sum of \$750 million which shall be deducted from the aggregate amount and retained by RBH;
- (b) Section 7.3 provides that the Cash Security Deposits, which form part of the Upfront Contributions, shall be released from suretyship prior to the Plan Implementation Date and shall be deposited into the Global Settlement Trust Account; and

¹⁴ [Imperial CCAA Plan](#) at ss. 5.1 to 5.3; [RBH CCAA Plan](#) at ss. 5.1 to 5.3.

¹⁵ [Imperial CCAA Plan](#) at s. 5.4; [RBH CCAA Plan](#) at s. 5.4. The Upfront Contributions are less \$750 million that will be retained by RBH from the aggregate amount (the "**RBH Retained Amount**").

- (c) Section 19.3(n) provides that the implementation of the CCAA Plans shall be conditional upon the satisfaction, prior to or at the Effective Time, of the condition precedent that ITCAN's and RBH's Cash Security Deposits will have been released from suretyship and deposited into the Global Settlement Trust Account.

17. A partial lift of the Stays of Proceedings is required to allow the Imperial and RBH Monitors, with the support of ITCAN, RBH and the QCAPs, to commence the Quebec Applications in order to comply with the terms of the CCAA Plans set out above. The Sanction Orders do not expressly authorize the release of the Cash Security Deposits. Without a further Order of this Court, any steps with respect to the Cash Security Deposits, including the Quebec Applications, are subject to the Stays of Proceedings.

PART III – STATEMENT OF ISSUES, LAW & ARGUMENT

18. The sole issue on these motions is whether this Court should grant the Quebec Cash Security Deposit Orders to partially lift the Stays of Proceedings to allow the Imperial and RBH Monitors, with the support of ITCAN, RBH and the QCAPs, to commence the Quebec Applications in accordance with the terms of the CCAA Plans. The answer is “yes”.

A. The Court Should Exercise its Discretion to Partially Lift the Stays

(i) The Purpose of the Stay and the Test For Lifting One

19. The purpose of a stay of proceedings under s. 11.02 of the CCAA is to preserve “the status quo to assist the company in its restructuring or arrangement” and to prevent “any particular stakeholder from obtaining an advantage over the other stakeholders during the restructuring process.”¹⁶

¹⁶ CCAA, s. [11.02](#); *Canwest Global Communications Corp.*, [2011 ONSC 2215](#) [*Canwest*] at para. [25](#); see also *Canadian Airlines Corp. (Re)*, [2000 CanLII 28202](#) (ABKB) at para. [19](#).

20. The well-established principles that govern lifting a stay are as follows:

- (a) the lifting of a stay is discretionary¹⁷;
- (b) there are no statutory guidelines contained in the CCAA¹⁸;
- (c) the party seeking to lift the stay faces a “very heavy onus”¹⁹, as “the practical effect of lifting a stay is to create a scenario where one stakeholder is placed in a better position than other stakeholders”²⁰;
- (d) there are no set circumstances where a stay will or will not be lifted²¹; and
- (e) relevant factors include the status of the CCAA proceedings, what impact the lifting of the stay will have on the proceedings, as well as the balance of convenience, the relative prejudice to parties, and where relevant, the merits of the proposed action.²²

21. The broad discretion under s. 11.02 is grounded in section 11, described by the Ontario Court of Appeal as “the engine that drives this broad and flexible statutory scheme”²³ and enables the Court to “make any order that it considers appropriate in the circumstances”.²⁴ As the Supreme Court has explained, the “vast” power conferred by section 11 “is constrained only by

¹⁷ *Canwest*, *supra* at para. [27](#).

¹⁸ *Canwest Global Communications Corp. (Re)*, [2009 CanLII 70508](#) (ONSC) [**Canwest 2009**], at para. [32](#); *Canwest*, *supra* at para. [27](#).

¹⁹ *Canwest 2009* at para. [32](#); *Canwest*, *supra* at para. [27](#); *Timminco Limited (Re)*, [2012 ONSC 2515](#) [**Timminco**] at para. [17](#).

²⁰ *Timminco*, *supra* at para. [16](#).

²¹ *Canwest 2009*, *supra* at para. [32](#).

²² *Canwest 2009*, *supra* at para. [32](#); *Canwest*, [2011 ONSC 2215](#) at para. [27](#); *Timminco*, *supra* at para. [17](#).

²³ *Stelco Inc. (Bankruptcy), Re*, [2005 CanLII 8671](#) (ONCA) at para. [36](#); *Sproule v. Nortel Networks Corporation*, [2009 ONCA 833](#) at para. [33](#); *Canwest*, *supra* at para. [24](#).

²⁴ CCAA, [s. 11](#).

restrictions set out in the CCAA itself, and the requirement that the order made be ‘appropriate in the circumstances’.”²⁵ The appropriateness of a section 11 order is also assessed in relation to its grounding in the well-established remedial objectives of the CCAA.

(ii) The Imperial and RBH Monitors Meet the Test for Lifting the Stays

22. The Imperial and RBH Monitors move pursuant to sections 15(a) and 64 of the Imperial and RBH Sanction Orders for the Quebec Cash Security Deposit Orders on the basis that the Orders sought are necessary to implement the terms of the CCAA Plans and the Sanction Order.

23. Having regard to the unique purpose of the proposed partial lift of the Stays—to secure funds for the Global Settlement Amount in furtherance of the CCAA Plans—the Imperial and RBH Monitors meet their onus to establish that this Court should exercise its discretion to grant the Quebec Cash Security Deposit Orders.

24. The proposed partial lift of the Stays of Proceedings will not disturb the *status quo*, will allow ITCAN and RBH to comply with the terms of the CCAA Plans, will facilitate the restructuring of Tobacco Companies and will advance the objectives of the CCAA.

25. The Quebec Applications are necessary to ensure the Cash Security Deposits form part of the Imperial and RBH Upfront Contributions and are deposited into their respective Global Settlement Trust Accounts at or prior to the Effective Time in accordance with sections 5.4, 7.3 and 19.3(n) of the CCAA Plans set out above.

26. The practical effect of the proposed partial lift of the Stays of Proceedings will not place any stakeholder in a better position than the other stakeholders. Far from prejudicing any party, the proposed partial lift of the Stays of Proceedings will enable Imperial and RBH to make their

²⁵ *Canada v. Canada North Group Inc.*, [2021 SCC 30](#) at para. [21](#), per Côté J., for the plurality; *9354-9186 Quebec inc. v. Callidus Capital Corp.*, [2020 SCC 10](#) at para. [57](#).

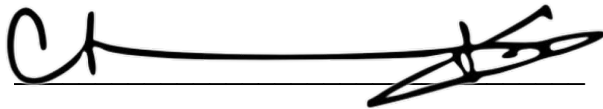
Upfront Contributions for the benefit of the Claimants, the Tobacco Companies and all other stakeholders. The Applicants and QCAPs consent to these motions and the Quebec Applications. Consequently, the Imperial and RBH Monitors do not expect any party will oppose these motions or the Quebec Applications.²⁶

27. For the foregoing reasons, the balance of convenience, the interests of justice and the merits of the Quebec Application favour granting the Quebec Cash Security Deposit Orders. The Imperial and RBH Monitors consider the Quebec Cash Security Deposit Orders appropriate in the circumstances and ask that they be granted by this Court.

PART IV – ORDERS REQUESTED

28. For the above reasons, the Imperial and RBH Monitors respectfully request that this Court grant the Orders sought in the Imperial and RBH CCAA Proceedings, in the forms attached at Tabs 2 and 3 to the Joint Motion Record of the Imperial and RBH Monitors dated June 11, 2025.

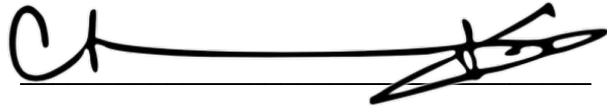
ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11th day of June, 2025.



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²⁶ Twenty-Ninth Report of the Imperial Monitor dated June 11, 2025, para. 17; Twenty-Seventh Report of the RBH Monitor dated June 11, 2025, para. 17.

SCHEDULE “A”

LIST OF AUTHORITIES

1. *9354-9186 Quebec inc. v. Callidus Capital Corp.*, [2020 SCC 10](#).
2. *Canada v. Canada North Group Inc.*, [2021 SCC 30](#).
3. *Canadian Airlines Corp. (Re)*, [2000 CanLII 28202](#) (ABKB).
4. *Canwest Global Communications Corp. (Re)*, [2009 CanLII 70508](#) (ONSC).
5. *Canwest Global Communications Corp.*, [2011 ONSC 2215](#).
6. *Imperial Tobacco Canada Limited*, [2025 ONSC 1358](#).
7. *Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé*, [2015 QCCA 1737](#).
8. *Sproule v. Nortel Networks Corporation*, [2009 ONCA 833](#).
9. *Stelco Inc. (Bankruptcy), Re*, [2005 CanLII 8671](#) (ONCA).
10. *Timminco Limited (Re)*, [2012 ONSC 2515](#).

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY-LAWS

Companies’ Creditors Arrangement Act ([R.S.C., 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.

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the [Bankruptcy and Insolvency Act](#) or the [Winding-up and Restructuring Act](#);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

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