

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

**STATEMENT OF POSITION OF HER MAJESTY THE QUEEN
IN RIGHT OF ALBERTA and NEWFOUNDLAND AND LABRADOR**

April 3, 2019

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TO: THE SERVICE LISTS

1. Trust is an essential commodity in business. Unfortunately, given the bare-knuckled manner in which Tobacco litigation has been conducted over the course of decades, there is precious little if any trust available to the debtors in these cases, and that is plainly one of the hurdles to be overcome in these proceedings. At the same time, the debtors are insolvent, value will be realized by someone, and overtures to settlement cannot be responsibly ignored—the *bona fides* of those overtures must be assessed in a fair and timely way.

2. The interests of Her Majesty the Queen in right of Alberta (“Alberta”) and Her Majesty the Queen in right of Newfoundland and Labrador (“Newfoundland”) in these proceedings stem from their respective civil claims against, among others, JTIM, ITCAN and RHB (collectively, the “Debtors”) to recover the costs of health services caused or contributed to by the Applicants’ alleged breaches of common law, equitable and statutory duties, and obligations owed to persons in the provinces of Alberta and Newfoundland who have been, or might become exposed to tobacco products.

3. Each of the ten provinces have filed similar lawsuits against the Debtors and certain of their foreign affiliates and/or predecessors in interest pursuant to legislation passed in each of the provinces in respect of the recovery of health care costs associated with “tobacco related wrongs” (collectively, the “HCCR Actions”). The total potential damages in the HCCR Actions remain to be determined. JTIM has advised the Court that the five provinces that have particularized the amount of their claims are seeking damages in excess of \$500 billion.

4. The Alberta HCCR Action was commenced on June 8, 2012, pursuant to the statutory cause of action created by s. 42 of the *Crown's Right of Recovery Act*, S.A. 2009, c. C-35. The Newfoundland HCCR Action was commenced on February 8, 2011 pursuant to s. 4 of the *Tobacco Health Care Costs Recovery Act*, S.N.L. 2001, c. T-4.2. At this time, Alberta and Newfoundland are still in the process of quantifying their damage claims. No doubt it will be a number of years before any of the HCCR Actions are finally resolved, and then enforcement will become the issue.

5. In these circumstances, Alberta and Newfoundland are prepared to invest some resources in determining the sincerity and extent of Tobacco's interest in settling the outstanding litigation. This cannot be determined simply on the basis of the Debtors' stated intent, or by a summary determination of rights. It can only be established in discussion and, most importantly, by course of conduct. For example, by a commitment to transparency, access to information and active participation by the Debtors, of course, but also by all of the other defendants to the HCCR Actions.

6. In the event that the proceedings do not result in a global resolution, Alberta and Newfoundland anticipate that these proceedings will nonetheless ensure that the Debtors' businesses are restructured and/or realized upon in a manner that is consistent with the interests of creditors and societal interests while the HCCR Actions continue against the Debtors' affiliates.

7. In keeping with the foregoing, Alberta and Newfoundland have raised a number of issues with the Debtors and Monitors, and look forward to a series of informed discussions with the Debtors, the Monitors, and with other stakeholders; all the while

reserving their right, pursuant to the come-back provisions of the Initial Orders, to return to this court to revisit the terms of those orders on a comprehensive evidentiary record, if necessary.

8. A number of stakeholders have brought a number of issues forward to the court for argument on April 4th and 5th. Alberta and Newfoundland take no position in respect of many of these matters, subject to the following.

A. *Ontario Motion Challenging the Scope of the Requested Stay*

9. Alberta and Newfoundland are not opposed the relief requested by Ontario in respect of its HCCR Action. In particular, provided that the relief does not extend to rights of execution or otherwise afford Ontario an unfair recovery advantage over other creditors, Alberta and Newfoundland do not perceive any unfairness to the relief being sought, given the atypical financial circumstances of the Debtors in these cases.

B. *Motions for Leave to Appeal to the SCC*

10. This court, subject to rights of appeal from its decisions, plainly has the jurisdiction under the CCAA to stay proceedings before any forum, including the Supreme Court of Canada, and to grant consequent relief.

11. Section 11 of the CCAA provides as follows:

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. R.S., 1985, c. C-36, s. 11; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 1997, c. 12, s. 124; 2005, c. 47, s. 128.

12. There is nothing in the CCAA that exempts the SCC from the operation of the CCAA stay. If anything, the CCAA acknowledges the SCC's appellate jurisdiction¹ and otherwise requires it to enforce the orders of the supervising judge².

13. In light of the tolling provisions of the Initial Orders, Alberta and Newfoundland do not perceive a need for the Debtors to bring a motion for leave to appeal to the Supreme Court of Canada, at this time, for the purpose of preserving their rights of appeal.

14. What should absolutely NOT happen, in the submission of Alberta and Newfoundland, is for the Supreme Court of Canada appellate process to be allowed to unfold, at this time, in a manner that might permit material amounts of money to be paid into court or escrowed for the benefit of the respondents in those cases, to the prejudice of the Debtors' other creditors.

C. *The Role of the Honourable Warren Winkler, Q.C.*

15. The Imperial Initial Order appoints, and Rothmans now seeks to appoint, the former Chief Justice of Ontario in these proceedings. Alberta and Newfoundland do not

¹ CCAA, s. 15(1): An appeal lies to the Supreme Court of Canada on leave therefor being granted by that Court from the highest court of final resort in or for the province or territory in which the proceeding originated.

² CCAA, s. 17: All courts that have jurisdiction under this Act and the officers of those courts shall act in aid of and be auxiliary to each other in all matters provided for in this Act, and an order of a court seeking aid with a request to another court shall be deemed sufficient to enable the latter court to exercise in regard to the matters directed by the order such jurisdiction as either the court that made the request or the court to which the request is made could exercise in regard to similar matters within their respective jurisdictions.

See also, CCAA, s. 16: Every order made by the court in any province in the exercise of jurisdiction conferred by this Act in respect of any compromise or arrangement shall have full force and effect in all the other provinces and shall be enforced in the court of each of the other provinces in the same manner in all respects as if the order had been made by the court enforcing it.

object to the involvement of the former Chief Justice in these proceedings, but the role should be clearly defined.

16. Importantly, to the extent that he is to play the role of a mediator, he should be, and appear to be, disinterested; his duty should be to all stakeholders, and his interests cannot be seen to have been aligned with any particular stakeholder or group of stakeholders.

17. The formulation of the role proposed by the Quebec Class Action Plaintiffs (“QCAPs”) and, more recently, in Appendix “A” to RBH’s factum, best reflects the role that Alberta and Newfoundland would expect the former Chief Justice to fill in these proceedings.

D. Lift Stay to Permit Approval of Insurance Settlements

18. Alberta and Newfoundland have requested information in respect of the insurance policies at issue in the QCAPs’ motion seeking to lift the stay of proceedings to permit them to seek approval of certain insurance settlements, including the scope of the coverage available under the policies and the law governing entitlements under the policy. Pending receipt of the requested information, Alberta and Newfoundland are unable to take a position on this issue.

19. To the extent that this motion proceeds and relief is granted, Alberta and Newfoundland submit that it should be a condition of the relief that no monies be distributed pursuant to those settlements, pending further order of this court, so as to afford other stakeholders an opportunity to determine whether an application to apportion insurance proceeds is appropriate or warranted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



Of counsel to Alberta and Newfoundland

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TORONTO

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