

Court File Nos. 19-CV-615862-00CL
19-CV-616077-00CL
19-CV-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

REPLY AFFIDAVIT OF BRUCE W. JOHNSTON
**(in reply to the Responding Factum of the Attorney General of Quebec re Quebec Class
Counsel Fee Approval Motion)**
(sworn January 27, 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 Counsel¹ in the Court-Appointed Mediator’s and Monitors’ CCAA Plans of Compromise and Arrangement

¹ 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.

(collectively the “Plans”) in respect of (i) Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (ii) Rothmans, Benson & Hedges Inc., and (iii) JTI-MacDonald Corp. (collectively, the “Tobacco Companies”).

3. Quebec Class Counsel represent the members of two class-action lawsuits instituted in Quebec in 1998 on behalf of (i) Quebec smokers who developed lung cancer, throat cancer or emphysema as a result of smoking the Tobacco Companies’ cigarettes² and (ii) Quebec smokers who became addicted to the nicotine contained in the cigarettes made by the Tobacco Companies³ (collectively, the “QCAPs” or “class members”).

4. I have knowledge of all of the matters to which I depose herein.

5. All capitalized terms used herein and not otherwise defined have the meanings set forth in the M&M Plan.

6. The purpose of the present affidavit is to reply to certain factual statements the Attorney General of Quebec (“AGQ” or “Quebec”) made in its January 24, 2025 Responding Factum to the Fee Approval Motion of Quebec Class Counsel.

Quebec is not an Amicus

7. Quebec did not oppose the Quebec Class Counsel’s *Motion for the Approval of the Quebec Class Counsel Fee* and chose not to file any evidence in response to it prior to January 16, 2025, which was the deadline for doing so. It nonetheless filed a factum and documentary evidence which it “hopes” will assist this Court in a manner similar to the assistance an amicus could provide.⁴

8. Quebec cannot act in a manner similar to an amicus because it is a Claimant with interests adverse to those of the class members we represent in the CCAA Proceedings.

9. At paragraph 20 of its factum, Quebec recognizes that its interest to comment on our fee motion stems in part from its “*economic interest in the undistributed funds*” the

² *Jean-Yves Blais and the Conseil québécois sur le tabac et la santé v. Imperial Tobacco Canada Ltd., et al.* (500-06-000076-980).

³ *Cecilia Létourneau v. Imperial Tobacco Canada Ltd., et al.* (500-06-000070-983).

⁴ AGQ Factum. para. 2.

Plans attribute to the QCAPs. While this interest may provide the basis for standing, it disqualifies Quebec from speaking as a disinterested friend of the Court.

Lack of standing to speak on behalf of QCAPs

10. Quebec also repeatedly purports to speak in the interests of the class members we have been representing for 26 years.⁵ Quebec has no standing whatsoever to speak on their behalf.

11. Without being permitted to go into details due to the confidential nature of the CCAA mediation, it must be noted that Quebec adopted positions that were detrimental to the interests of class members and it is disingenuous at best for it to now claim to be acting in their interests.

12. Quebec also expresses concern that class members may have to pay all or a portion of the Quebec Class Counsel Fee,⁶ as if that were unusual or unfair in the context of a contingency fee agreement. It is neither.

13. The Plans contemplate that the Quebec Class Counsel Fee would be “*substantial because of the duration and complexity of the litigation*” (schedule N, para 257). The very fact that our class members would have to pay substantial fees explains in part why the Plans provide that our class members will receive more than the PCC claimants suffering from the same diseases.

14. Quebec and all other provinces had been informed of the terms of our contingency fee agreement since at least 2023, and none ever expressed any concern to it being enforced until Quebec did so early in January 2025.

15. What is unusual in my experience, and a measure of the success we have achieved on behalf of class members, is that, based on the number of putative class members who have registered with us after a massive media outreach, it is very unlikely that they will pay the full amount of the fees requested. In fact, based on the actual

⁵ AGQ Factum, paras 2, 4, 20, 66, 68.

⁶ AGQ Factum, paras 4, 5, 20 and 65.

registrations as detailed in the Affidavit of Philippe Trudel of January 22, 2025, the Class members would pay no legal fees at all.

16. It follows that Quebec is in reality arguing not for class members' interests, but for its own, since a reduction of our fees will likely operate not to increase the class members' compensation, but to increase the undistributed funds that would revert to the provinces and territories.

17. I would also mention that although Quebec claims that our class members will benefit from its observations because they presumably would not understand proceedings in English, we have had all materials relating to our fees translated and made them accessible to class members at our cost. We have provided counsel for Quebec with copies of the translated materials.

The importance of FFMP's involvement

18. At paragraphs 53-55 of its factum, Quebec comments on the value of the legal work that FFMP contributed, concluding that it would represent \$6.6 million per year in fees after the CCAA Proceedings began. This speculative calculation fails to consider the critical fact clearly stated in the Affidavit of Avram Fishman dated January 12, 2025 (Tab 8 of the QCAP Fee Approval Motion Record) that over the past 11 years, FFMP was and still is working on a pure contingency arrangement and has received no payment whatsoever on account of their work over that time.⁷

19. The basis for the contingency agreement was not that they would be paid their straight time if we ultimately prevailed and collected. Rather, it provides that a multiplier would be applied to their billing time.

20. I would also point out that FFMP devoted enormous time and effort to providing advice not only to QCAPs but also to all Claimants, including Quebec. They became trusted advisors to the Mediator and Monitors in the CCAA process and played an

⁷ Affidavit of Avram Fishman, January 12, 2025, para 18.

important role in drafting the Plans. All Claimants, including Quebec, greatly benefitted from their work, which will be paid for out of the Quebec Class Counsel Fee.

The hourly rates used to provide an estimate of the billing value of the investment in time

21. As I thought was clear from the Affidavit of Philippe Trudel of January 12, 2025, our estimate of the billing value of the time we spent on the file was not based on our rates, mainly because the business models of T.J.L., Lauzon Bélanger and Lauzon Bélanger Lespérance (and to a large extent, Kugler Kandestin) are not based on hourly billing. Rather, we attempted to provide an indication of the value of our time based on the hourly rates charged by litigators of comparable experience in important files.

22. Contrary to what Quebec states in paragraph 45b) of its factum, Philippe did not claim that senior litigators acting in significant matters charged between \$1,150 and \$1,500 per hour since the 1990s. Rather, as is clear from paragraph 72 of his Affidavit of January 12, the range provided was the range of hourly rates that senior litigators charge today in Montreal. Our logic is that the billing value of our time should be comparable to that of our toughest opponents, against whom we have had success over the years, including in this very matter. We applied an hourly rate applicable in 2025 to the time throughout the period to account for the fact that none of the time has been paid for. In my experience, this is common practice in class-action fee approval motions and makes perfect sense to take into consideration the time-value of money.

23. In that regard, it is interesting to note that in our initial search for insolvency counsel in Toronto, based on the advice of Max Mendelsohn in Montreal, we had retained Andrew Kent of McMillan LLP in 2017. That relationship ended when Mr. Kent left the firm.

24. At that time in 2017, Mr Kent's hourly rate was \$1,050 per hour. The hourly rate of his main associate Caitlin Fell (Bar 2011) was \$550 and the hourly rate of Tushara Weerasooriya (Bar 2005) was \$640. A Montreal-based lawyer at McMillan with one year experience was charged at \$400 per hour in 2017. These rates, which are nearly 8 years old at this point and clearly below current rates, are comparable to the hourly rates we used to value our own work in this matter in 2025.

AND I HAVE SIGNED



Bruce W. Johnston

Solemnly declared before me at Montreal,
Province of Quebec, this 27th day of January 2025



Commissioner of Oaths for Quebec



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