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

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

APPLICANTS

REPLY RECORD OF IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED
(Motion for Sanction Order returnable January 29-31, 2025)

January 27, 2025

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

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

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

APPLICANTS

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ONTARIO
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B E T W E E N:

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

APPLICANTS

AFFIDAVIT OF ERIC THAUVETTE
(sworn January 27, 2025)

I, Eric Thauvette, of the City of Montreal, in the Province of Quebec, the Vice President and Chief Financial Officer of Imperial Tobacco Canada Limited ("**ITCAN**"), MAKE OATH AND SAY:

1. I am the Chief Financial Officer of ITCAN and, in that role, I am responsible for all financial-related aspects of ITCAN's business operations. I am also an officer and director of ITCAN's subsidiary and the other applicant, Imperial Tobacco Company Limited ("**ITCO**", and collectively with ITCAN, the "**Imperial Applicants**"). As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources for information, I have stated the sources of my information and believe them to be true.

2. In preparing this affidavit, I have consulted with other members of the Imperial Applicants' senior management team, legal, financial and other advisors of the Imperial Applicants, and representatives of FTI Consulting Canada Inc. ("**FTI**" or the "**Monitor**"). In addition, I receive frequent updates from the Imperial Applicants' counsel regarding these proceedings.

3. This affidavit is made in reply to the materials filed by the following parties on January 20, 2025, in response to the Monitors' motions, filed on January 15, 2025, each seeking an Order (the "**Sanction Order**"), among other things, approving and sanctioning the First Amended and Restated Plan of Compromise and Arrangement dated December 5, 2024 in respect of each of the Tobacco Companies (defined below) (the "**Plan**"): (a) Rothmans Benson & Hedges Inc. ("**RBH**" and together with JTI Macdonald Corp. ("**JTIM**") and the Imperial Applicants, the "**Tobacco Companies**"); (b) the Canadian Cancer Society ("**CCS**"); and (c) the Heart and Stroke Foundation of Canada ("**HSF**").[1]

A. Response to RBH

4. In its responding materials, RBH argues that it would be required to contribute "far more towards the Global Settlement Amount than would be required under any reasonable allocation of responsibility" and that the CCAA Plan "would effectively force RBH to subsidize Imperial, JTIM and their affiliates by a significant amount compared to what RBH would pay if responsibility were allocated in a reasonable way". For the reasons set out below, I fundamentally disagree with these assertions and the assumptions on which they are based.

(a) RBH's Position Fundamentally Changes the Negotiated Deal

5. As set out in the aide memoire filed by the Imperial Applicants on January 20, 2025, the Plan already contains a prescribed allocation mechanism that was agreed upon following protracted negotiations. This mechanism exists by virtue of the two payment streams contemplated

[1] All capitalized terms not otherwise defined have the meanings given to them in the Plan.

by the Plan – the Upfront Contributions and the Annual Contributions – both of which are based on defined payment obligations by the Tobacco Companies.

6. The "re-allocation" now proposed by RBH in its responding materials fundamentally changes the nature of the deal that was negotiated among all stakeholders – over a five-year period, with the benefit of legal advice, the assistance of the Mediator and the oversight of the Monitors. The Plan is a product of a negotiated commercial resolution that is premised on each Tobacco Company's solvency and capacity to pay, as determined by evolving domestic industry profitability over the Contribution Period. It has always been the Imperial Applicants' understanding and stated intention – as well as the stated intention of the other Tobacco Companies – that contribution to any plan would be based on each Tobacco Company's ability to pay.

7. I have reviewed the Affidavit of Milena Trentadue, sworn January 20, 2025 (the "**Trentadue Affidavit**"), and I disagree with her assertion that "that the Allocation Issue has been a significant issue for RBH throughout these CCAA proceedings", to the extent that she is suggesting that RBH raised this issue of re-allocation with any of the other participants "throughout" the Mediation or the CCAA Proceedings. While I cannot comment on any internal deliberations that may have taken place at RBH, I can confirm that the issue was <u>not</u> raised by RBH or any of its representatives in the context of the CCAA and Mediation process until well after the framework of the current Plan had been jointly established as an industry settlement based on capacity to pay. Although there were preliminary discussions at the outset of the Mediation about the possibility of some equalization of the cash held by each Tobacco Company at the time of the CCAA filings, <u>no</u> agreement in this regard was ever reached by the Tobacco Companies. Moreover, prior to the parties agreeing on – and jointly proposing to creditors – the existing Plan

structure, there were no similar discussions in relation to: (i) cash accumulated by each Tobacco Company during the CCAA, or (ii) any reallocation of the ultimate settlement amount (eventually defined as the Global Settlement Amount).

8. I have been directly involved in the Mediation process and these CCAA proceedings on behalf of the Imperial Applicants from the outset and – without getting into the details of the confidential Mediation process – I can confirm that all of the settlement proposals that were jointly submitted by the Tobacco Companies were expressly premised on an industry-wide, domestic resolution that contemplated payments over time based on the ability of each Tobacco Company to fund such payments. In fact, the Applicants were directed from the outset of the Mediation to co-ordinate on a joint industry proposal. At no point were individual company offers contemplated or discussed, nor did the Tobacco Companies agree to any form of re-distribution or enter into any side-agreements that would commit the Imperial Applicants to anything other than what the terms of the Plan expressly contemplate.

9. Based on my direct involvement in the CCAA process, my understanding is that the Monitors – in an effort to advance matters – ultimately agreed to include Article 5.2 so that a draft Plan could be put forward for a vote without opposition from the Applicants. While Article 5.2 indicates that "the issue of allocation of the Global Settlement Amount" is "unresolved", the only outstanding issue related to allocation concerns the $750 million holdback amount contemplated by Article 5.4 of the Plan. The Imperial Applicants concede that the Plan, on its face, does not contemplate an allocation of this aggregate amount as between the Tobacco Companies. However, contrary to the recent position taken by RBH – suggesting that a broader "re-allocation" of the contribution obligations is somehow appropriate – this holdback amount is the only "unresolved"

allocation issue. All other aspects of the Global Settlement contributions are resolved by the operation of the Plan terms.

10. Although the Trentadue Affidavit does not articulate a specific re-allocation proposal, the RBH factum delivered on January 24, 2025 articulated – for the first time in this protracted CCAA process – a proposed re-allocation. RBH now contends that, based on various historical market data and findings in prior unrelated civil proceedings, the current contribution mechanisms under the Plan should be materially adjusted in their favour. This proposal would effectively require the Imperial Applicants to pay 85% of their profits to the settlement fund, and then its remaining profits to RBH. Moreover, RBH requests an order prohibiting the Imperial Applicants from releasing any funds or paying any dividends to its affiliated entities until such time as RBH has received all of this "additional" funding, notwithstanding the fact that BAT will be supporting the Imperial Applicants through the provision of ongoing operational support.

11. I fundamentally disagree with the assertion contained in the RBH factum that this re-distribution does not adversely impact the creditors. By effectively requiring the Imperial Applicants (and JTIM) to distribute the entirety of its profits for the foreseeable future, the re-allocation proposed by RBH creates heightened solvency risks which could materially impair the creditors' recoverability. Moreover, it puts RBH in a privileged position in a highly competitive marketplace. This fact alone creates risk for the creditors, insofar as RBH will be in a position to engage in strategic market activity that could adversely impact the other Tobacco Companies and, by extension, the timing and certainty of payment of the Global Settlement Amount.

12. Moreover, the re-allocation proposal from RBH would effectively force the Imperial Applicants and the BAT Group to carry on business in Canada without any prospect financial gain

– at least in the coming years. Among other things, this proposal completely undermines the other Tobacco Companies' profitability incentives, which would have the effect of impairing the Global Settlement payments.

13. The Imperial Applicants cannot support a plan which contains financial terms that materially differ from those that have been agreed to in the context of the Mediation and these CCAA proceedings to date. They would not have agreed to the financial terms prescribed by the Plan had there been a risk that their financial commitments could be materially changed in the future, through re-allocation or otherwise. To the contrary, the Imperial Applicants' willingness to agree to the financial commitments set out in the Plan has at all times been premised on the clear understanding that the Plan terms reflected the full extent of their financial obligations.

14. I have also been advised, and believe, that the BAT Group will similarly not provide the support required by the Plan if the deal is re-allocated. The Imperial Applicants benefit from a wide range of manufacturing, financing and other services, licenses and rights provided by certain entities in the BAT Group. These service relationships, licenses and rights together with the manufacturing and financing services provided by the BAT Group are collectively vital for preserving the value of the underlying business of the Imperial Applicants. As set out in greater detail in the letter from James Barrett (Director, Business Development for British American Tobacco) to myself dated January 27, 2025 (attached hereto as **Exhibit "A"**), the BAT Group has advised that if the Imperial Applicants' payment obligations under the Plan are altered – or there is a risk of some future re-allocation – the BAT Group will no longer support the Plan and will take all steps necessary to discontinue such operational support once they are entitled to do so. This operational support – which is assured under the current terms of the Plan only by virtue of

the BAT Group's voluntary covenant to provide continued services – is essential to the economic feasibility of the Plan and the Imperial Applicants' ability to generate profit (and, in turn, contribute to the Global Settlement).

15. If the prescribed contribution formula set out in the Plan were to be adjusted at this late stage, after the creditors have already voted unanimously in favour of the Plan, the economics of the Plan would be undermined. Moreover, the self–levelling nature of the payments under the Plan, which formed the foundation of the Plan from the outset of the negotiation process, would be materially compromised.

(b) The Current Allocation Mechanism is not "Unfair"

16. Broadly speaking, the Plan provides that net after-tax income, calculated in accordance with the Metric, shall be used to determine the Annual Contributions – with each Tobacco Company contributing the same percentage of its calculated "Metric" every year until the Global Settlement is fully funded. This methodology provides for both equitable treatment of the Tobacco Companies and payment assurance for the creditors by assessing each Tobacco Company's Annual Contributions relative to their respective profits at the time of payment.

17. RBH now asserts that the contribution obligations under the Plan should be tied to some form of notional "responsibility" based on various extraneous reference points, including the parties' market shares over a defined historical period or on the basis of the civil judgment that was rendered by the Quebec Superior Court in the context of a class action proceeding relating to certain tobacco-related injuries. Neither of these reference points has formed any part of the CCAA Mediation, nor are these metrics in any way relevant to the Tobacco Companies' ability to pay the

Global Settlement Amount over the Contribution Period. Moreover, the use of these extraneous reference points would completely undermine the self-leveling Metric.

18. The Trentadue Affidavit attaches a Schedule "A", which sets out certain illustrative calculations based on various assumptions. Without conducting a detailed analysis of the calculations that are offered by RBH, I would simply note that all of these calculations are based on various assumptions which may or may not hold true over the expansive Contribution Period. The Tobacco Companies' market shares, profitability and relative financial positions may well change over this period. By way of example, ITCAN's cash reserves have materially increased as compared to those of RBH since the CCAA filing, which suggests that ITCAN's profitability, which has increased over the last five years, has surpassed that of RBH. Accordingly, on a current-year metric, ITCAN will be making higher annual payments than RBH. Conversely, JTIM's market share has materially increased over the last 5 years while ITCAN's has declined over the same period. All of these metrics are obviously subject to change over time.

19. More generally, I disagree with the statements in the Trentadue Affidavit which tie profitability to marketing activities (or the lack thereof). The Tobacco Companies' profitability is driven primarily by product placement and pricing – not marketing – which decisions are entirely within the control of the respective Tobacco Companies. Accordingly, it is unreasonable to assume that their current relative profitability will simply remain completely static over the Contribution Period.

20. In its factum of January 24, 2025, RBH now proposes a modified form of "financial modeling" that is seemingly grounded in the 5-year forecasts that have been submitted by the respective Tobacco Companies. Notably, each of these forecasts is merely an estimated projection

of future performance, and each is premised on a materially different set of assumptions. By way of example, the Imperial Applicants' forecast was based on an assumed market price adjustment in July 2024, as well as substantial price increases consistent with historic pricing levels in 2025 and beyond. However, the expected market price adjustment did not occur. For this reason (among others), the Imperial Applicants are substantially changing their projections.

21. The financial analysis set out in the RBH factum is therefore based on a speculative 5-year forecast, without regard for actualized past performance (such as the cash generated by the respective Tobacco Companies over the past 3 years) or reasonable changes in future performance.

22. I further note that at least portions of Schedule "A" to the Trentadue Affidavit and the RBH factum are grounded in a review of the Tobacco Companies' respective business models and profit structures. This type of analysis has never formed part of the CCAA negotiations to date. In particular, none of the other parties to the Mediation process has sought to "look behind" the reported numbers of the Tobacco Companies, as the RBH analysis now purports to do. Any such analysis would be a complete departure from the premise of negotiations to date, and may give rise to potential concerns related to Canadian competition law.

B. Response to Other Parties

(a) CCS Proposed Amendments to the Plan

23. CCS has proposed various amendments to the Plan. The Imperial Applicants object to all of these proposed amendments, which represent material changes to the negotiated Plan structure. In particular, the Imperial Applicants adopt the following positions in response:

(a) Cy- près Foundation – The CCS proposes a number of changes to Article 9 of the Plan, which effectively seek to remove and/or loosen the restrictions on the use of the cy-près funds, and seek to remove the oversight of the Plan Administrators and CCAA Court in connection with the distributions from the fund. The Imperial Applicants object to these proposed amendments on the basis that they represent a fundamental departure from the deal that was negotiated amongst all stakeholders, over a five-year period.

(b) Disclosure of Documents – The CCS proposes a new Section 11.5 of the Plan entitled "Public Disclosure of Documents" which would require the provinces of Ontario and New Brunswick to submit to the Industry Documents Library at the University of California all documents obtained in the discovery process in the litigation advancing their respective Provincial HCCR Claims. This request appears to be modeled on the US tobacco settlement, which resulted in the repository being initially set up. I have been advised by Robert Casey, former Assistant General Counsel, Corporate for BAT, and believe, that the structure of the US settlement was very different from the current Plan and – in particular – was not effected within the framework of an insolvency proceeding, but rather was a product of a negotiated litigation settlement. The Imperial Applicants have never agreed to any such terms, in the context of the Mediation or otherwise. Notably, the documents produced in the Ontario and New Brunswick proceedings are subject to confidentiality orders, copies of which are attached hereto as **Exhibits "B"** and **"C"**, respectively. I am advised by Marleigh Dick of Osler, Hoskin & Harcourt

LLP, and believe, that the transmittal of these productions to the US repository would be in violation of these orders.

(c) Promotion – The CCS also proposes a new Section 11.7 to include restrictions on future tobacco promotion (the wording of which is based on section 17 of the Nunavut *Tobacco and Smoking Act*). The Imperial Applicants object to these proposed restrictions. Again, the Imperial Applicants have never agreed to any such terms, in the context of the Mediation or otherwise. Moreover, such relief was never sought in any of the underlying litigation proceedings. If imposed, these measures would materially undermine the Imperial Applicants' business and impede their ability to generate profit, which would – in turn – decrease their Annual Contributions to the Global Settlement Amount.

(b) HSF Proposed Amendments to the Plan

24. HSF has also proposed various amendments to the Plan relating to the use of the cy-près funds. For the reasons set out above, the Imperial Applicants similarly object to any such amendments, which represent material changes to the negotiated Plan structure.

SWORN BEFORE ME over videoconference this 27th day of January, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely. The affiant is located in the City of Montreal, in the Province of Quebec and the commissioner is located in the City of Toronto, in the Province of Ontario.

Commissioner for Taking Affidavits
(or as may be)

MARLEIGH ERYN DICK
LSO# 79390S

ERIC THAUVETTE

This is Exhibit "A" referred to in the Affidavit of Eric Thauvette sworn by Eric Thauvette of the City of Montreal, in the Province of Quebec, before me at the City of Toronto, in the Province of Ontario, on January 27, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

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www.bat.com

Dear Eric,

Re: Imperial Tobacco Canada Limited (and together with Imperial Tobacco Company Limited, "Imperial") proceedings under the *Companies' Creditors Arrangement Act* (Canada) ("CCAA")

As you know, I have been involved on behalf of British American Tobacco p.l.c. ("**BAT**") in the negotiation of the First Amended and Restated Plan of Compromise and Arrangement dated December 5, 2024 in respect of Imperial (the "**CCAA Plan**")[1]. I am writing in connection with the proposed sanction of the CCAA Plan and more particularly, the affidavit sworn by Milena Trentadue on January 20, 2025 and filed in the CCAA proceedings of Rothman, Benson & Hedges ("**RBH**") on the same date and the RBH factum dated January 24, 2025.

BAT is generally supportive of the CCAA Plan as it has been presented to the Court. However, BAT does not – and cannot – support any material modification of the CCAA Plan which results in a re-allocation of any aspect of the Global Settlement Amount. BAT's agreement to the CCAA Plan and the commitments contained therein has, at all times, been informed by the financial obligations that are prescribed by the CCAA Plan terms. The Upfront Contribution is known (subject to the minor point of allocating the $750 million working capital carve out, which is resolvable) and the Annual Contributions are based on a fixed percentage of annual Net After-Tax Income, which will be determined from audited financial statements. This is the agreed-upon allocation that was negotiated by the industry over almost six years.

In our view, any material changes to these fundamental economic terms would be entirely unacceptable and impair Imperial's ability to compete fairly in the Canadian market, which would then preclude BAT's ability to continue its support of the CCAA Plan. Among other things, it would not be economically viable, in the best interest of BAT or consistent with the negotiations for BAT to continue to commit resources to Imperial in these circumstances. In the event that a sanctioned Plan includes any such financial re-allocation, BAT intends to

[1] All capitalized terms used but not defined herein shall have the meanings ascribed to them in the CCAA Plan.

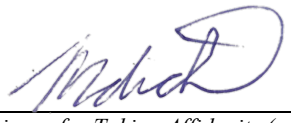
take all steps necessary to discontinue all such services and operational support as soon as they are entitled to do so.

Kind regards,

James Barrett

Director, Business Development

This is Exhibit "B" referred to in the Affidavit of Eric Thauvette sworn by Eric Thauvette of the City of Montreal, in the Province of Quebec, before me at the City of Toronto, in the Province of Ontario, on January 27, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

MARLEIGH ERYN DICK
LSO# 79390S

Court File No.: CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE	)	TUESDAY, THE 12TH DAY
JUSTICE BARBARA A. CONWAY	)	OF DECEMBER, 2017
	)	

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

- and -

ROTHMANS INC., ROTHMANS, BENSON & HEDGES INC., CARRERAS ROTHMANS LIMITED, ALTRIA GROUP, INC., PHILIP MORRIS U.S.A. INC., PHILIP MORRIS INTERNATIONAL, INC., JTI-MACDONALD CORP., R.J. REYNOLDS TOBACCO COMPANY, R.J. REYNOLDS TOBACCO INTERNATIONAL INC., IMPERIAL TOBACCO CANADA LIMITED, BRITISH AMERICAN TOBACCO P.L.C., B.A.T INDUSTRIES P.L.C., BRITISH AMERICAN TOBACCO (INVESTMENTS) LIMITED, and CANADIAN TOBACCO MANUFACTURERS' COUNCIL

Defendants

ORDER

(DEFENDANTS' CONFIDENTIALITY MOTION)

THIS MOTION made by the defendants for a confidentiality Order and other relief was heard this day at the Court House, 330 University Avenue, Toronto.

ON BEING ADVISED of the Consent of the parties:

1. **THIS COURT ORDERS** that other than the case where a Party is filing its own documents, if a Party (the "Filing Party") intends to file into evidence on application or proceeding before the Court (the "Original Application") any material that includes a document, any portion of same or information produced by another party (the "Producing Party") (including, without limitation, any interrogatory, transcript, affidavit, pleading or other document attaching, quoting or paraphrasing any such document or information) (the "Material"), the Filing Party shall serve the Material on the Producing Party at least 10 days prior to filing such Material. The Producing Party shall notify the Filing Party within 7 days if it intends to seal the Material or any portion of the Material in which case:

i) the Producing Party shall forthwith bring an application to seal the Material (the "Sealing Application") returnable prior to and no later than the return of the Original Application; and

ii) the Filing Party shall file the Material or the applicable portion thereof under seal and such sealing will remain in effect until the Sealing Application is:

(a) withdrawn; or

(b) determined by the Court.

2. **THIS COURT ORDERS** that nothing in paragraph 1 hereof precludes the parties from consenting to the removal of the Material from the Court file.

3. **THIS COURT ORDERS** that where the plaintiff's lawyers of record provide a document produced by a defendant in the Action (a "Document") to anyone employed by the plaintiff within the Ontario Public Service but outside the Ministry of the Attorney General (the "Recipient"), they will provide the Recipient with a copy of this Order together with written confirmation that:

(a) the following deemed undertaking rule set out in Rule 30.1.01(3) of the *Rules of Civil Procedure*, RRO 1990, Reg. 194 applies to the Recipient:

All parties and their lawyers are deemed to undertake not to use evidence or information to which this Rule applies for any purposes other than those of the proceeding in which the evidence was obtained;

(b) the Recipient is subject to the following oath of office prescribed by ss. 6 and 8(1)(c) of the *Public Service of Ontario Act*, 2006, SO 2006, c. 35, Sched. A and s. 3(1) of O. Reg. 373/07:

"I swear (or solemnly affirm) that I will faithfully discharge my duties as a public servant; I will respect the laws of Canada and Ontario, including the recognition and affirmation of the aboriginal and treaty rights of Indigenous peoples in the Constitution; and, except as I may be legally authorized or required, I will not disclose or give to any person any information or document that comes to my knowledge or possession by reason of my being a public servant. So help me God. (Omit this phrase in an affirmation.);" and

(c) the Document may, in the future, be found by this Court to be confidential and/or made subject to a sealing order.

Freedom of Information and Protection of Privacy Act

4. THIS COURT ORDERS that the Documents shall not constitute records in the plaintiff's custody or control under the *Freedom of Information and Protection of Privacy Act*, RSO 1990, c. F.31.

Resolution of the Action

5. THIS COURT ORDERS that in the event the Action is dismissed, discontinued or otherwise finally determined, including the final determination of all appeals, or the expiration of time to appeal or to seek leave to appeal, all of the Parties shall,

within 15 days of the final disposition of the Action, notify every person to whom they have provided copies of any of the other Parties' documents, or portions thereof, that they must destroy or return within 30 days all copies of such documents and portions thereof and notes thereon (collectively, the "Data") to that Party for destruction in accordance with this Order (the "Resolution Notice").

6. **THIS COURT ORDERS** that every person receiving the Resolution Notice who opts to destroy the Data shall confirm, in writing, within 30 days to the party who issued the Resolution Notice (the "Issuing Party") that they have in fact made all reasonable efforts to destroy all such Data and the Issuing Party shall maintain a record of such confirmation.

7. **THIS COURT ORDERS** that every person receiving the Resolution Notice who opts to return all Data to the Issuing Party shall do so within 30 days, and the Issuing Party shall then, at its election, promptly destroy or return all such Data to the Producing Party. For clarity, all Parties shall make all reasonable efforts to ensure that all documents in any form, including electronic, and all copies thereof shall either be destroyed or returned to the Producing Party to ensure confidentiality.

Conway J.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

DEC 12 2017

PER / PAR:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
Plaintiff/Responding Party

- and -

Court File No. CV-09-387984
ROTHMANS INC., et al
Defendants/Moving Parties

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

CONFIDENTIALITY ORDER

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Lawyers for the Defendants,
JTI-Macdonald Corp., R.J. Reynolds Tobacco Company,
and R.J. Reynolds Tobacco International Inc.

This is Exhibit "C" referred to in the Affidavit of Eric Thauvette sworn by Eric Thauvette of the City of Montreal, in the Province of Quebec, before me at the City of Toronto, in the Province of Ontario, on January 27, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

MARLEIGH ERYN DICK
LSO# 79390S

Court File No.: F/C/88/08

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
TRIAL DIVISION
JUDICIAL DISTRICT OF FREDERICTON
BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK,

Plaintiff,

- and -

ROTHMANS INC., ROTHMANS, BENSON & HEDGES INC., CARRERAS ROTHMANS LIMITED, ALTRIA GROUP, INC., PHILIP MORRIS USA INC., PHILIP MORRIS INTERNATIONAL, INC., JTI-MACDONALD CORP., R.J. REYNOLDS TOBACCO COMPANY, R.J. REYNOLDS TOBACCO INTERNATIONAL INC., IMPERIAL TOBACCO CANADA LIMITED, BRITISH AMERICAN TOBACCO P.L.C., B.A.T. INDUSTRIES P.L.C., BRITISH AMERICAN TOBACCO (INVESTMENTS) LIMITED, and CANADIAN TOBACCO MANUFACTURERS' COUNCIL,

Defendants,

CONSENT ORDER

WHEREAS the Defendant, Imperial Tobacco Canada Limited, wishes to obtain:

(a) an order protecting the confidentiality of documents required to be disclosed and produced pursuant to Rule 31.02 in this action (the "Action"); and,

(b) an order setting forth the procedure to be followed in the event of the inadvertent disclosure of privileged documents by any of the parties to the Action (each a "Party" and collectively, the "Parties"),

J.C.
10-2012
C.B.R.-B.R.-S.C.

UPON the written consent of the parties, as evidenced below, **IT IS HEREBY ORDERED THAT:**

Scope

1. **THIS COURT ORDERS** that all documents of the Parties to the Action produced pursuant to Rule 31.02, including any lists of such documents (collectively, the "Documents") and the information contained therein (the "Information") shall be subject to the conditions set out herein.

2. **THIS COURT ORDERS** that the obligations set out herein are in addition to the obligations of the Parties and their counsel under the implied undertaking rule at common law.

3. **THIS COURT ORDERS,** for greater certainty, any document or information contained therein obtained by a Party, other than by production by another Party in the Action under Rule 31.02, is not subject to the terms of this Order. Notwithstanding the foregoing, nothing herein affects the Parties' obligations at common law with respect to privileged documents obtained otherwise than by production by a Party in the Action.

All Documents and Lists of Documents

4. **THIS COURT ORDERS** that the Documents produced in the Action and the Information shall be kept in confidence by the Parties and used solely for the purposes of the Action.

5. **THIS COURT ORDERS** that except with the prior written consent of the Party who has produced a Document in the Action, or as otherwise provided herein or in a subsequent Order of this Court, no such Document, no portion thereof, and no Information contained therein shall be disclosed to anyone other than the solicitors of record in the Action, their partners and associates, secretarial and paralegal assistants, and law students and other employees, to the extent reasonably necessary to render professional services in the Action.

6. **THIS COURT ORDERS** that notwithstanding paragraph 5 above, a Party's Document, or portion thereof, or Information may be disclosed to:

(a) persons not employed by the solicitors of record who are involved in one or more aspects of court reporting, translating, organizing, filing, coding, converting, storing, retrieving, scanning or copying the Documents, or designing programs for processing the Documents or data contained in such Documents;

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J.C.Q.B.

(b) factual witnesses who are working with solicitors of record in the Action, or who may be called as witnesses at trial;

(c) in-house counsel for the Parties;

(d) counsel retained by the Parties;

(e) expert witnesses retained by the Parties, (other than persons or entities retained by Her Majesty the Queen in Right of the Province of New Brunswick ("New Brunswick") that have previously been retained or employed by tobacco companies); and

provided that such persons first duly execute and deposit the undertaking attached to this Order as Schedule "A" evidencing their agreement to be bound by the terms of this Order and subject to the jurisdiction of this Court (the "Undertaking"), with the solicitors of record for the Party who have provided access to the Documents or Information to such persons.

7. **THIS COURT ORDERS** that for greater certainty, and notwithstanding anything in paragraph 6 above, New Brunswick shall not disclose any Document or portions thereof or Information produced or disclosed by one defendant (each, a "Defendant") to another Defendant (other than to the Defendants' respective solicitors of record), absent a further order of this Court, or upon the written consent of the Defendant who produced or disclosed same.

8. **THIS COURT ORDERS** that the solicitors of record for the Parties shall ensure that all persons set out in paragraphs 5 and 6 above are expressly made aware of the necessity to strictly adhere to the terms of this Order and the Undertaking they execute.

9. **THIS COURT ORDERS** that the solicitors of record for the Parties shall maintain copies of all executed Undertakings as required by this Order, along with a record of all of the Documents and Information that have been provided by them to those persons who have executed an Undertaking.

10. **THIS COURT ORDERS** that if any Party stores any Document, Information, or any portion thereof electronically, that Party will use all reasonable efforts to maintain computer security to prevent anyone who is not expressly authorized by the terms of this Order from gaining access to same.

11. **THIS COURT ORDERS** that any interrogatory, transcript, affidavit, pleading or other document that attaches any Party's Document, or any portion thereof, or quotes or paraphrases any Information therein, will be deemed to be a Document of that Party for the purposes of this Order.

J. C
9-10-2012
J. C Q.B.

12. **THIS COURT ORDERS** that any court reporter involved in the Action (and persons operating video recording or other electronic equipment at examinations of witnesses) shall be given a copy of this Order and shall not disclose any of the Documents, or any portion thereof, or any Information to any person other than a person authorized by this Order to receive such Documents or Information.

13. **THIS COURT ORDERS** that each Party shall ensure that any Document produced by that Party (the "Producing Party") is marked clearly and in a readily apparent manner as having being produced in the Action by the Producing Party and as strictly confidential (the "Marking").

14. **THIS COURT ORDERS** that the Marking shall not obscure or interfere with the legibility or electronic readability of the Document.

Filing of Documents

15. **THIS COURT ORDERS** that other than the case where a Party is filing its own Documents, if a Party (the "Filing Party") intends to file into evidence on application or proceeding before the Court (the "Original Application") any material that includes a Document, any portion of same or Information (including, without limitation, any interrogatory, transcript, affidavit, pleading or other document attaching, quoting or paraphrasing any such Document or Information) (hereinafter the "Material") the Filing Party shall serve the Material at least 15 days prior to filing such Material. If, within the 15 day period, the Producing Party notifies the Filing Party of its intention to seal the Material or any portion of the Material, which application is to be brought forthwith by the Producing Party following such notification (the "Sealing Application"), the Filing Party will file the Material or the applicable portion thereof under seal and such sealing will remain in effect, and the Filing Party will not otherwise use the Material on the Original Application until:

(a) the Sealing Application is withdrawn; or

(b) the Sealing Application is determined by the Court.

16. **THIS COURT ORDERS** that nothing in paragraph 15 above precludes the Parties from consenting to the removal of the Material from the Court file.

J. C.
5-10-2012
J. C. Q.B.

Inadvertently Disclosed Privileged Documents

17. **THIS COURT ORDERS** that disclosure of any privileged Document by one Party to another Party in the Action shall be deemed to be inadvertent, and shall not result in the waiver of any privilege over the Document or related Documents nor any subject matter waiver, unless the Producing Party indicates in writing that it intends to waive such privilege.

18. **THIS COURT ORDERS** that in the event a Party discloses and/or produces a Document that it believes should not have been disclosed and/or produced in whole or in part because the Document is subject to a claim of privilege (an "Inadvertently Disclosed Document"), that Producing Party shall deliver written notice (the "Privilege Notice") of that fact to any Party to which the Inadvertently Disclosed Document was disclosed and/or produced (the "Receiving Party").

19. **THIS COURT ORDERS** that any Privilege Notice provide:

(a) a description of the Inadvertently Disclosed Document in sufficient detail to allow a Receiving Party to identify the Inadvertently Disclosed Document; and

(b) the basis upon which the Inadvertently Disclosed Document is privileged.

20. **THIS COURT ORDERS** that a Receiving Party upon receipt of a Privilege Notice will:

(a) remove, or agree to the removal of, the Inadvertently Disclosed Document that is the subject of the Privilege Notice from any production list on which it is listed in the Action;

(b) if the Inadvertently Disclosed Document that is the subject of the Privilege Notice was received from the Producing Party in hard copy or paper format, segregate and seal in an envelope the Inadvertently Disclosed Document, along with any copies made thereof, and promptly return the Inadvertently Disclosed Document and any copies made thereof to the Producing Party;

(c) if the Inadvertently Disclosed Document that is the subject of the Privilege Notice was received from the Producing Party in electronic format, delete any electronic information associated with the Inadvertently Disclosed Document anywhere in the Receiving Party's possession including but not limited to coded information, OCR (optical character recognition), and electronic images and promptly return any electronic media such as DVDs, CDs or hard drives provided by the Producing Party from which the Inadvertently Disclosed Document and any related electronic information cannot be deleted;

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S.C.J.

(d) if the Inadvertently Disclosed Document that is the subject of the Privilege Notice was received in electronic format and any hard copies were made thereof, follow the procedures set out in both subparagraph (b) and (c) as required;

(e) in the event any work product was created or received by a Receiving Party in respect of an Inadvertently Disclosed Document that is the subject of the Privilege Notice, including lawyers' work product and experts' work product (the "Party's Work Product"), and the Receiving Party does not dispute the privilege claim made by the Producing Party over the Inadvertently Disclosed Document, destroy or delete, as the case may be, the Party's Work Product;

(f) in the event the Receiving Party disputes the claim over the Inadvertently Disclosed Document that is the subject of the Privilege Notice, promptly segregate and seal in an envelope the Party's Work Product (including any media containing electronic copies of same) pending resolution of the issue as contemplated by paragraphs 22 and 23; and

(g) provide a list of the names of individuals who, to the knowledge of the Receiving Party, have viewed the Inadvertently Disclosed Document that is the subject of the Privilege Notice, including any of the third parties referenced in paragraph 6 above;

(h) in the event any of those persons referenced in paragraph 6 above has a hard copy, electronic copy, coded information, OCR, and/or images of the Inadvertently Disclosed Document that is the subject of the Privilege Notice by virtue of the fact that the Receiving Party made disclosure of same to such a third party, the Receiving Party will make best efforts to ensure that the third party complies with subparagraphs (b) to (d) as the case may be and in the event such third party has created any work product in respect of such an Inadvertently Disclosed Document (the "Third Party Work Product"):

(i) where the Receiving Party does not dispute the privilege claim made by the Producing Party over the Inadvertently Disclosed Document, the Receiving Party shall instruct the third party to destroy or delete the Third Party Work Product;

(ii) in the event the Receiving Party disputes the claim over the Inadvertently Disclosed Document that is the subject of the Privilege Notice, the Receiving Party shall instruct the third party to promptly segregate and seal in an envelope the Third Party Work Product (including any media containing electronic copies

T. C.
9-10-2012
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of same), and deliver the sealed envelope to the Receiving Party, pending resolution of the issue as contemplated by paragraphs 21 and 22; and

(i) provide written confirmation to the Producing Party that the above steps, as applicable, have been completed within 30 days of the delivery of the Privilege Notice.

21. **THIS COURT ORDERS** that if a Receiving Party disputes a claim of privilege over a Document that is the subject of a Privilege Notice, the Receiving Party shall notify the Producing Party of this dispute in writing within 15 days of the delivery of the Privilege Notice (a "Written Dispute"). If the Receiving Party fails to provide the Producing Party with a Written Dispute within 15 days of the delivery of a Privilege Notice, the Receiving Party will be deemed to have accepted that any Inadvertently Disclosed Document(s) set out within a Privilege Notice are privileged and will comply with the provisions of paragraph 20 in respect of such Document or Documents, as applicable.

22. **THIS COURT ORDERS** that if a Receiving Party provides a Written Dispute to a Producing Party within 15 days of delivery of a Privilege Notice, the Receiving Party may apply to the Court for directions within 15 days of delivery of the Written Dispute, in which case the Parties shall consent to the filing by the Producing Party under seal for review by the Court of any Inadvertently Disclosed Document that is the subject of the Written Dispute. If the Receiving Party fails to apply to the Court for directions within 15 days of delivery of the Written Dispute the Receiving Party will be deemed to have accepted that any Inadvertently Disclosed Document(s) that are the subject of the Written Dispute are protected by privilege.

23. **THIS COURT ORDERS** that at no point subsequent to receiving a Privilege Notice shall a Receiving Party read the content of a Document that is the subject of the Privilege Notice unless upon giving its directions as contemplated under paragraph 22 the Court orders its production to the Receiving Party.

24. **THIS COURT ORDERS** that a Receiving Party shall comply with paragraph 20 in the event it receives a Privilege Notice regardless of whether the Receiving Party disputes the claim of privilege over any document that is the subject of the Privilege Notice, has delivered a Written Dispute in respect of any document that is the subject of the Notice or has applied to a court of competent jurisdiction for directions in respect of any document that is the subject of the Notice.

25. **THIS COURT ORDERS** that should a Receiving Party identify a privileged document that has been disclosed to it by a Producing Party during the course of the Action, that Party must forthwith notify the Producing Party that it has possession of the privileged document and that it will

T. C.
9-10-2012
J. C.G.B.

follow the steps set out in paragraph 20 as applicable, unless the Producing Party notifies such Receiving Party within 15 days of receiving the notification that it waives privilege over the document.

26. **THIS COURT ORDERS** that in the event a Producing Party becomes aware of an Inadvertently Disclosed Document as a result of the filing of same by a Receiving Party with the Court, the Producing Party shall forthwith notify the Receiving Party of its objections to the filing of the Inadvertently Disclosed Document and any other materials filed with same that refer to the Inadvertently Disclosed Document or portions thereof that are claimed by the Producing Party to be privileged (collectively, the "Claimed Privileged Documents"). Upon receiving such notification (the "Claimed Privilege Notification") the Receiving Party will forthwith consent to the removal from the court file of the Claimed Privileged Documents and will comply with paragraph 20. If, however, the Receiving Party disputes that the Claimed Privileged Documents are subject to privilege, the Receiving Party shall nonetheless forthwith consent to the removal from the court file the Claimed Privileged Documents and may apply to the Court and seek directions as contemplated in paragraph 22 within 15 days of delivery of the claimed Privilege Notification, failing which the Receiving Party will be deemed to have accepted that the Claimed Privileged Documents are protected by privilege.

Resolution of the Action

27. **THIS COURT ORDERS** that in the event the Action is dismissed, discontinued or otherwise finally determined, including the final determination of all appeals or the expiration of time to appeal or to seek leave to appeal, all of the Parties shall, within 15 days of the final disposition of the Action, notify every person to whom they have provided copies of any of the other Parties' Documents, or portions thereof, that they must either destroy or return within 30 days all copies of such Documents and portions thereof and notes thereon (collectively, the "Data") to that Party for destruction in accordance with this Order (the "Resolution Notice").

28. **THIS COURT ORDERS** that every person receiving the Resolution Notice who opts to destroy the Data shall confirm, in writing, within 30 days to the party who issued the Resolution Notice (the "Issuing Party") that they have in fact destroyed all such Data and the Issuing Party shall maintain a record of such confirmation.

29. **THIS COURT ORDERS** that every person receiving the Resolution Notice who opts to return all Data to the Issuing Party shall do so within 30 days, and the Issuing Party shall then, at its election, promptly destroy or return all such Data to the Producing Party. For clarity, all Parties shall make all reasonable efforts to ensure that all Documents in any form, including electronic, and all copies thereof shall be either destroyed or returned to the Producing Party to ensure confidentiality.

J.C.
9-10-2012
J.C.Q.B.

30. **THIS COURT ORDERS** that the discontinuance of the Action or its dismissal or other final determination as described in paragraph 27 herein shall not relieve the Parties or anyone else who has obtained the Documents, or portions thereof, or the Information, from the terms of this Order.

Order to Apply

31. **THIS COURT ORDERS** that subject to the further order of this Court, this Order shall govern the conduct of the Parties and all persons who have access to any of the Documents or portion thereof or Information from the date of pronouncement of this Order.

32. **THIS COURT ORDERS** that any of the Parties shall have liberty to apply to vary, supplement, vacate or enforce the terms of this Order, including:

(a) the right to apply for production of any Undertaking or record required to be kept under this Order;

(b) the right to seek directions concerning any of the Parties' conduct under this Order;

(c) the right to seek additional protection for specified categories of Documents; or

(d) an Order further protecting the confidential or proprietary nature of the Party's Documents or portion thereof or Information at trial.

This liberty to apply, and any other provision of this Order, does not determine or waive any Parties' rights on such application, including any Party's right to maintain solicitor/client or litigation privilege.

DATED at Edmundston, N.B. this 9TH day of OCTOBER 2012.

J.C.Q.B.

WE HEREBY CONSENT AND AGREE TO THE ABOVE.

WE FURTHER AGREE that this Consent Order may be executed by the parties in counterparts and when all parties have executed at least as many counterparts as there are parties, all such counterparts shall be deemed to be originals and all such counterparts taken together shall constitute one and the same Consent Order.

Philippe J. Eddie, Q.C.
Philippe J. Eddie Professional Corporation
Solicitors for the Plaintiff,
Her Majesty the Queen in Right of the Province of New Brunswick

David T. Hashey, Q.C. Charles D. Wheby, Q.C.
Cox & Palmer
Solicitors for the Defendants,
Rothmans Inc. and Rothmans, Benson & Hedges Inc.

J. Charles Foster, Q.C.
Foster & Company
Solicitors for the Defendants,
Altria Group, Inc. and Philipp Morris USA Inc.

for Robert Basque, Q.C.
Forbes Roth Basque
Solicitors for the Defendant,
Philip Morris International Inc.

Michael D. Brenton
Barry Spalding
Solicitors for the Defendants,
JTI-Macdonald Corp., R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International Inc.

Thomas G. O'Neil, Q.C.
McInnes Cooper
Solicitors for the Defendant,
Imperial Tobacco Canada Limited

Edwin G. Ehrhardt, Q.C.
Bingham Law
-and-
David R. Byers
Stikeman Elliott LLP
Solicitors for the Defendant,
British American Tobacco p.l.c.

for William L. Ryan, Q.C.
Stewart McKelvey
Solicitors for the Defendant,
B.A.T. Industries p.l.c.

Mark A. Canty Q.C.
Canty, Lutz, Delaquis, Grant
Solicitors for the Defendant,
Canadian Tobacco Manufacturers' Council

Christopher M. Rusnak
Harper Grey LLP
Solicitors for the Defendant,
Carreras Rothmans Limited

Craig Dennis
Fraser Milner Casgrain LLP
Solicitors for the Defendant,
British American Tobacco (Investments) Limited

J.C.
9-10-2017
J.C.Q.B.

SCHEDULE "A"

Undertaking

I, _____ reside in the City of _____, in the county of _____, in the province/state of _____, in the country of _____.

Counsel for _____, has explained the terms of the order dated _____ in *Her Majesty The Queen In Right Of The Province Of New Brunswick v. Rothmans Inc., et al., Attorney General of Canada et al., third parties*, Court File No. F/C/88/08 ("the Order"), a copy of which is attached to this Undertaking.

1. I have read and understand the Order.

2. I agree to comply with and be bound by the provisions of the Order, and in particular:

   (a) agree to attorn to the jurisdiction of the Court of Queen's Bench of New Brunswick in respect thereof;

   (b) agree not to disclose to any person other than those specifically authorized by the Order any of the "Documents" or the "Information" (each as defined in the Order) or any portions thereof;

   (c) understand that any unauthorized disclosure of the Documents or Information, or any portion thereof, constitutes contempt of court; and

   (d) will destroy or return to the solicitors of record for the "Issuing Party" (as defined in the Order) any of the Documents or documents containing the Information, including any notes taken on the content of the Documents or Information or other work product in respect of the Documents or Information, or copies of the foregoing, upon being requested to do so in writing in accordance with the Order.

Date:

_____ _____

(witness) (signature)

J. C.
9-10-2012
J. C. Q.B.

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

Court File No: CV-19-6[illegible]77-00CL

APPLICANTS

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

AFFIDAVIT OF ERIC THAUVETTE
(sworn January 27, 2025)

OSLER, HOSKIN & HARCOURT LLP
1 First Canadian Place, P.O. Box 50
Toronto, ON M5X 1B8

Deborah Glendinning (LSO# 31070N)
Marc Wasserman (LSO# 44066M)
Craig Lockwood (LSO# 46668M)
Martino Calvaruso (LSO# 57359Q)
Marleigh Dick (LSO# 79390S)

Tel: 416.362.2111
Fax: 416.862.6666

Lawyers to the Applicants, Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited

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

APPLICANTS

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

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

REPLY RECORD OF IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

(Motion for Sanction Order returnable January 29-31, 2025)

OSLER, HOSKIN & HARCOURT LLP
1 First Canadian Place, P.O. Box 50
Toronto, ON M5X 1B8

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Marc Wasserman (LSO# 44066M)
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