

Court File No. CV-19-615862-OOCL  
Court File No. CV-19-616077-OOCL  
Court File No. CV-19-616779-OOCL

**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.**

**MOTION RECORD OF  
THE ONTARIO FLUE-CURED TOBACCO GROWERS' MARKETING BOARD**

April 30, 2026

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**TO: SERVICE LIST**

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**NOTICE OF MOTION OF  
THE ONTARIO FLUE-CURED TOBACCO  
GROWERS' MARKETING BOARD  
(In Writing)**

**TAKE NOTICE** that Strosberg Wingfield Sasso LLP, counsel for The Ontario Flue-Cured Tobacco Growers' Marketing Board (the "**Tobacco Board**"), makes a motion in writing before the Honourable Chief Justice Geoffrey B. Morawetz presiding over the Ontario Superior Court of Justice (Commercial List) ("**CCAA Court**") seeking affirmation and authorization for the Tobacco Board to amend the definition of "**Tobacco Producers**" in the CCAA Plans hereafter defined to address the issue regarding the time period for distribution purposes as follows:

- (f) "**Tobacco Producers**" means, collectively, the Ontario Flue-Cured Tobacco Growers' Marketing Board, Andy J. Jacko, Brian Baswick,

Ron Kichler, Arpad Dobentey and all other tobacco growers and producers, including any successors or assigns, who sold their tobacco through the Ontario Flue-Cured Tobacco Growers' Marketing Board pursuant to the annual Heads of Agreement made with ITCAN, RBH and JTIM from ~~January 1, 1986 to December 31, 1996~~ January 1, 1990 to December 31, 1995 and "**Tobacco Producer**" means any one of them.

to align the definition of Tobacco Producers with the proper basis on which damages were sought by the Tobacco Board pursuant to its uncertified class proceedings initiated against ITCAN, RBJ and JTIM (collectively, the "**Tobacco Manufacturers**").

**THE MOTION IS BROUGHT** pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") and in accordance with the Plans of Compromise and Arrangement of JTI-Macdonald Corp. ("**JTIM**"), Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (together, "**Imperial**"), and Rothmans, Benson & Hedges Inc. ("**RBH**") (collectively, the "**CCAA Plans**"), approved by Order of the Court dated March 6, 2025.

**PROPOSED METHOD OF HEARING:** The motion is to be conducted in writing.

**THE GROUNDS OF THE MOTION ARE:**

1. The CCAA Court has jurisdiction under the CCAA Plans to hear and determine matters relating to the interpretation, administration and ongoing supervision of the CCAA Plans.

2. The Tobacco Board and other representative plaintiffs initiated the following class proceedings against the Tobacco Manufacturers:
  - (a) Statement of Claim issued November 5, 2009 in Ontario Superior Court of Justice Court File No. 64462CP commenced at London against RBH;
  - (b) Statement of Claim issued December 2, 2009 in Ontario Superior Court of Justice Court File No. 64757CP commenced at London against ITCAN; and
  - (c) Statement of Claim issued April 23, 2010 in Ontario Superior Court of Justice Court File No. 1056/10CP commenced at London against JTIM.
  
3. For the purposes of those statements of claim “Tobacco Producers” was broadly defined as Tobacco Producers that had marketed tobacco through the Tobacco Board pursuant to the annual Heads of Agreement made with ITCAN, RBH and JTIM from January 1, 1986 to December 31, 1996.
  
4. During the conduct of the class proceedings, the Tobacco Board and its accountants determined that it had probative evidence supporting claims for damages in relation to marketings and sales of tobacco by the Tobacco Producers through the Tobacco Board to the Tobacco Manufacturers during the more limited period from January 1, 1990 to December 31, 1995 due primarily to changes in reporting requirements under the Heads of Agreement that permitted the Tobacco Board to better calculate the amount of discount-priced tobacco for export that had been smuggled back into Canada for domestic sales.

5. Other indicators were used to enable the Tobacco Board and its accountants to calculate what was underpaid by the Tobacco Manufacturers in respect of tobacco purchasers during this more truncated period from January 1, 1990 to December 31, 1995.
6. The claims advanced by the Tobacco Board on behalf of the Tobacco Producers in the Mediation in the Tobacco CCAA Proceedings that led to the settlements evidenced by the CCAA Plans were based on the more truncated period in respect of which the amounts claimed could be provable, namely from January 1, 1990 to December 31, 1995.
7. The Tobacco Board is seeking an amendment to the definition of Tobacco Producers for distribution purposes so that the definition is more properly aligned with the evidentiary basis upon which the claims were made and settled with the Tobacco Manufacturers.
8. The requested amendment, restatement and/or modification to the CCAA Plans sought by the Tobacco Board (i) concern matters that are of an administrative nature required to give better effect to the CCAA Plans, (ii) cure any perceived ambiguities in the CCAA Plans, and (iii) do not have any materially adverse effect on the financial or economic interests of the Applicants, the Affected Creditors or Unaffected Creditors under the CCAA Plans.

**THE FOLLOWING** will be used in support of the Motion:

1. The Written Submissions of counsel for the Tobacco Board;
2. The CCAA Plans; and
3. Such further and other materials as counsel may advise and this Honourable Court permit.

**DATED:** April 30, 2026

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LIMITED**

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

**WRITTEN SUBMISSIONS OF  
THE ONTARIO FLUE-CURED TOBACCO GROWERS' MARKETING BOARD**

April 30, 2026

**STROSBERG WINGFIELD SASSO LLP**  
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## Overview

1. **“Tobacco Producers”** were defined in the CCAA Plans sanctioned by Chief Justice Morawetz on March 6, 2025 to mean, collectively, the Ontario Flue-Cured Tobacco Growers’ Marketing Board, Andy J. Jacko, Brian Baswick, Ron Kichler, Arpad Dobentey and all other tobacco growers and producers, including any successors or assigns, who sold their tobacco through the Ontario Flue-Cured Tobacco Growers’ Marketing Board pursuant to the annual Heads of Agreement made with ITCAN, RBH and JTIM from January 1, 1986 to December 31, 1996 and Tobacco Producer means any one of them.<sup>1</sup>
2. The foregoing description of the class of Tobacco Producers was used in the original pleadings that commenced the class proceedings in late 2009 and early 2010.<sup>2</sup>
3. The class proceedings were based on breach of contract. The contracts were the annual Heads of Agreement made by the Tobacco Board with ITCAN, RBH and JTIM (collectively, the **“Tobacco Manufacturers”**) that required the Tobacco Manufacturers to pay, under a make-up payment, the higher annual domestic prices for tobacco used for cigarettes and other tobacco products sold in the domestic Canadian market that had been purchased during the year by the Tobacco Manufacturers at the Tobacco Board’s auctions at lower prices for duty free and export (**“DFX”**) purposes.

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<sup>1</sup> Unless otherwise stated or the context otherwise requires, Capitalized terms are as defined in the CCAA Plans

<sup>2</sup> (a) Statement of Claim issued November 5, 2009 in Ontario Superior Court of Justice Court File No. 64462CP commenced at London, Ontario against the defendant, Rothmans, Benson & Hedges, Inc.;

(b) Statement of Claim issued December 2, 2009 in Ontario Superior Court of Justice Court File No. 64757 commenced at London, Ontario against the defendant, Imperial Tobacco Canada Limited; and

(c) Statement of Claim issued April 23, 2010 in Ontario Superior Court of Justice Court File No. 1056/10CP commenced at London, Ontario against the defendant, JTI-MacDonald Corp.

4. During the conduct of the class proceedings, the provable claims were narrowed by the Tobacco Board to consist only of those Tobacco Producers who sold tobacco through the Tobacco Board during the period from January 1, 1990 to December 31, 1995 (the “**Revised Tobacco Producers Claims**”).
5. It was the Revised Tobacco Producers Claims that were advanced by the Tobacco Board in the Submissions for Mediation in the Tobacco CCAA Proceedings that formed the basis for the amounts claimed and settled by the Tobacco Board on behalf of the Tobacco Producers in the CCAA Plans (the “**Tobacco Producers Settlement Amount**”).
6. This motion is being made for administrative purposes relating to the distribution of the Tobacco Producers Settlement Amount to amend the timeframe of the Tobacco Producers Claim as being from **January 1, 1990 to December 31, 1995**, as that was the class that anchored the calculation of the Tobacco Board’s claims in the Tobacco CCAA Proceedings Mediation and was the basis for the quantum of recovery received by the Tobacco Board in the Claimant Allocation being the “Tobacco Producers Settlement Amount” in Article 16 of the CCAA Plans. The Tobacco Board intends to distribute the Tobacco Producers Settlement Amount to the Tobacco Producers falling within this amended timeframe.

### **Background and Context for the Relief Requested**

7. The CCAA Plans define qualifying Tobacco Producers in the precise manner pleaded by the Tobacco Board and certain individual Tobacco Producers when the tobacco class actions were commenced:
  - (a) on November 5, 2009, against Rothmans, Benson & Hedges Inc. (“**RBH**”);
  - (b) on December 2, 2009, against Imperial Tobacco Canada Limited (“**ITCAN**”); and

(c) on April 23, 2010, against JTI-MacDonald Corp. (“**JTIM**”).

RBH, ITCAN and JTIM are referred to in these submissions collectively as the “**Tobacco Manufacturers**”.

8. For purposes of the statements of claim, the class of Tobacco Producers for which the Tobacco Board and certain individual Tobacco Producers were seeking damages on the basis of breach of contract were more broadly defined as being those Tobacco Producers that marketed and sold tobacco to the Tobacco Manufacturers through the Tobacco Board in accordance with the regulatory regime from January 1, 1986 to December 31, 1996 to err on the side of caution and to not eliminate any legitimately qualifying years in which Tobacco Producers exclusively sold their tobacco to the Tobacco Manufacturers through the Tobacco Board and may have suffered damages.
9. Each of the annual Heads of Agreement between the Tobacco Board and the Tobacco Manufacturers had a domestic price of tobacco that was higher than the prices at which DFX tobacco was sold at the Tobacco Board’s auctions. As detailed further below, the Heads of Agreements called for a make-up payment at year end when DFX tobacco was used by the Tobacco Manufacturers for cigarettes and other products sold in the domestic market.
10. As the class proceedings progressed, the Tobacco Board and its accountants were able to more narrowly define the class in a manner that more precisely defined the period of heightened Federal and Provincial taxation of tobacco products and the corresponding

changes in purchasing patterns by the Tobacco Manufacturers of domestic and DFX tobacco.

11. By the time the CCAA proceedings were initiated about a decade after the commencement of the class actions, a more complete examination of the Tobacco Board's supporting documentation had confirmed that the appropriate class of Tobacco Producers as defined by year in respect of which the Tobacco Board could reasonably demonstrate quantifiable damages for breach of the Heads of Agreement consisted of those Tobacco Producers marketing tobacco through the Tobacco Board to the Tobacco Manufacturers during the period from January 1, 1990 to December 31, 1995.
12. The narrower definition of this class was based on the evidence available to support claims being made for the Tobacco Producers. This evidence was available because of the following developments.
13. First, changes in auditing requirements for the Tobacco Manufacturers in relation to purchases of tobacco from the Tobacco Board that had been implemented in 1991.
14. By virtue of these changes, the Tobacco Manufacturers agreed to deliver proof of export to the Tobacco Board's auditors, thereby more accurately disclosing the quantity of tobacco used for the manufacturing of products made with tobacco purchased for export purposes (the "**DFX tobacco**").
15. Second, the Tobacco Board was able to evaluate trends in domestic tobacco purchases by the Tobacco Manufacturers before and after the class period, which demonstrably indicated

declining domestic purchases that coincided with years of heightened Federal and Provincial governments taxation on tobacco products.

16. Third, for the period from 1990 to 1995 domestic purchases by the Tobacco Manufacturers dropped significantly whereas, over a similar period, purchases of DFX tobacco for export rose dramatically.
17. Historically, exported manufactured tobacco products had represented three percent (3%) of the total Canadian production of Canadian-style tobacco products. After allowing for that percentage of legitimate exports, the Tobacco Board could calculate and articulate estimated volumes on which to base the claims for contract damages.
18. Fourth, the Tobacco Board had the benefit of a before-and-after evaluation. It could compare tobacco sales during the period of heightened tobacco taxation and associated smuggling to subsequent years, when tax reductions were implemented. As a result, the restoration of a more normal market for domestic cigarette sales in Canada and sale of DFX tobacco could be contrasted to sales in the period 1990 to 1995. The shift of billing of cigarettes from DFX to domestic led to the irresistible conclusion that tobacco sold for DFX in 1990 to 1995 was being used for domestic consumption.
19. In summary, based on additional information available beginning for the 1990 year, the Tobacco Board and its accountants were able to reasonably determine volumes of DFX tobacco purchased at the discounted (relative to the domestic price) price for export which was then smuggled back into the domestic market for domestic consumption, with the

discrepancy between prices being the basis for the damages claim made in the class proceedings.

### **The Domestic Make-up**

20. In further particular, the cause of action was based on contract, with the Tobacco Board being the exclusive marketer of tobacco to the Tobacco Manufacturers during the class period.
21. Under the regulatory scheme, on an annual (crop) basis, the Tobacco Board and the Tobacco Manufacturers agreed on tobacco supply contracts, Heads of Agreement, including pricing based on usage (destination).
22. Under the *Farm Products Marketing Act*, only the Tobacco Board could market tobacco within Ontario on behalf of its individual Tobacco Producers who were themselves obliged by regulation to market tobacco through the Tobacco Board.
23. The Tobacco Manufacturers paid higher prices for tobacco purchased for domestic purposes than DFX tobacco purchased for export.
24. Make-up payments were required on the part of the Tobacco Manufacturers when tobacco purchased for export was used by them for the manufacture of domestic product. The Tobacco Board would then distribute these net proceeds of the make-up payments to those Tobacco Producers whose tobacco was sold through the Tobacco Board to the Tobacco Manufacturers.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of April, 2026.

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William V. Sasso

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )  
 )  
CHIEF JUSTICE GEOFFREY B. MORAWETZ ) DAY OF , 2026

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

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

**ORDER**

**THIS MOTION**, made by counsel for The Ontario Flue-Cured Tobacco Growers' Marketing Board pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") proceeded in writing.

**ON READING** the Written Submissions of counsel for The Ontario Flue-Cured Tobacco Growers' Marketing Board, and such other parties that made written submissions:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that, unless otherwise stated herein, all capitalized terms used herein shall have the meanings ascribed to them in the Fourth Amended and Restated Court-Appointed Mediator's and Monitor's CCAA Plan of Compromise and Arrangement dated August 27, 2025 in respect of each of Imperial, RBH and JTIM in these CCAA Proceedings (collectively, the "**CCAA Plans**").

3. **THIS COURT ORDERS AND DIRECTS** that for the purposes of distributing monies paid to the Tobacco Board pursuant to the CCAA Plans:

**"Tobacco Producers"** means, collectively, the Ontario Flue-Cured Tobacco Growers' Marketing Board, Andy J. Jacko, Brian Baswick, Ron Kichler, Arpad Dobentey and all other tobacco growers and producers, including any successors or assigns, who sold their tobacco through the Ontario Flue-Cured Tobacco Growers' Marketing Board pursuant to the annual Heads of Agreement made with ITCAN, RBH and JTIM from January 1, 1990 to December 31, 1995 and **"Tobacco Producer"** means any one of them.

4. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada, outside Canada and against all Persons against whom it may be enforceable.

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Chief Justice Geoffrey B. Morawetz

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

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

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
Proceeding commenced at Toronto

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**MOTION RECORD**

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