

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

**FACTUM OF THE MOVING PARTY,  
THE ONTARIO FLUE-CURED TOBACCO GROWERS' MARKETING BOARD**  
(Declarations re CCAA Section 19(2))

June 17, 2021

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TO: **COMMON SERVICE LIST**

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## PART I - OVERVIEW

1. In the period 1986 to 1996, the Ontario Flue-Cured Tobacco Growers' Marketing Board ("Tobacco Board") supplied Rothmans, Benson & Hedges Inc. ("Rothmans"), Imperial Tobacco Canada Limited ("Itcan"), and JTI-Macdonald Corp. ("JTIM") (collectively, the "Tobacco Manufacturers") with Ontario tobacco.
2. In that period, there were two prices for the sale of tobacco by the Tobacco Board to the Tobacco Manufacturers. The higher price for tobacco was for the production of domestic cigarettes. The lower price was for the production of cigarettes for export ("DFX").
3. Until 2008, the Tobacco Manufacturers intentionally, fraudulently, and repeatedly represented that they were **not** involved in smuggling of their own exported DFX cigarettes into the Canadian domestic market.
4. In 2008 and thereafter, the Tobacco Manufacturers admitted that they aided persons to smuggle their exported cigarettes into Canada by not packaging and stamping cigarette packages in conformity with the *Excise Act*, R.S.C. 1985, c. E-14, as amended.
5. In essence, the Tobacco Manufacturers misrepresented to the Tobacco Board that they intended and used DFX tobacco for manufacturing cigarettes for export when they knew that much of the exported cigarettes would be smuggled back into Canada.
6. In 2008, Rothmans pleaded guilty to the *Excise Act* charge and paid a \$100 million fine and paid up to \$450 million to the governments (see paragraphs 20-21).

7. The Tobacco Board sued Rothmans on November 5, 2009, Itcan on December 2, 2009, and JTIM on April 23, 2010 alleging fraud (“Actions”). The Tobacco Manufacturers litigated for about a decade throwing up technical defences until their applications under the *Companies’ Creditors Arrangement Act* (“CCAA”).

8. Against each of Rothmans, Itcan and JTIM, the Tobacco Board claim that the debts and liabilities are within CCAA s.19(2)(c), (d) and (e) and these claims cannot be compromised without the consent of the Tobacco Board.

9. The Tobacco Board respectfully requests that the Court rule on whether CCAA s.19(2) applies to its claims.

## **PART II – FACTS RELEVANT TO MOTION**

### **History of the Actions Before the CCAA Order**

10. In the period January 1, 1986 to December 31, 1996, there were tobacco contracts titled Heads of Agreement. The Tobacco Manufacturers breached those contracts by making misrepresentations.<sup>1</sup>

11. The guilty pleas (see paragraphs 15-22) and the Court decisions in the Actions detailed below explained how the Tobacco Board was misled by the Tobacco Manufacturers’ misrepresentations (a) at the time of purchases of DFX tobacco; and (b) at the time of the Tobacco

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<sup>1</sup> Statement of Claim (Rothmans), paras. 3-7, 15-31, Exhibit “A” to Strosberg Affidavit, Tobacco Board Record, Tab 4A, pp. 86-86 and 89-93 and see Statement of claim (Itcan), paras. 3-7, 15-31, Tobacco Board Record, Tab 4B, pp. 110-111 and 113-117 and Statement of claim (JTIM), paras. 3-7 and 16-32, Tobacco Board Record, Tab 4C, pp. 136-137 and 139-143.

Manufacturers' filings of annual audit reports with the Tobacco Board which falsely under-stated the tobacco purchased from the Tobacco Board for export purposes.<sup>2</sup>

12. During the period from January 1, 1986 to December 31, 1996,<sup>3</sup> the Tobacco Manufacturers misrepresented to the Tobacco Board that the tobacco was used for cigarettes sold into the legitimate export markets.

13. The annual Heads of Agreement required the Tobacco Manufacturers to pay more to the Tobacco Board for the tobacco intended for cigarettes in the domestic Canadian market<sup>4</sup> and less for the tobacco cigarettes intended for the export market. Therefore, the Tobacco Manufacturers paid less for the tobacco because the cigarettes were intended for export.

14. The Tobacco Manufacturers filed false audit reports with the Tobacco Board on their legitimate export sales. The purpose was to cover up their involvement in illegal tobacco smuggling and to avoid the contractual make-up payments to the Tobacco Board<sup>5</sup> for cigarettes that were smuggled into Canada. Simply put, the audits did not include the cigarettes smuggled back into Canada. The Actions assert this fraudulent conduct by the Tobacco Manufacturers.

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<sup>2</sup> Statement of Claim (Rothmans), paras. 15-31, Exhibit "A" to Strosberg Affidavit, Tobacco Board Record, Tab 4A, pp. 89-93 and see Statement of claim (Itcan), paras. 15-31, Tobacco Board Record, Tab 4B, pp. 113-117 and Statement of claim (JTIM), paras. 16-32, Tobacco Board Record, Tab 4C, pp. 139-143.

<sup>3</sup> (1) Statement of Claim (Rothmans), paras. 25-27, Exhibit "A" to Strosberg Affidavit, Tobacco Board Record, Tab 4A, pp. 91-92 and see Statement of claim (Itcan), paras. 25-27, Tobacco Board Record, Tab 4B, pp. 115-116 and Statement of claim (JTIM), paras. 26-28, Tobacco Board Record, Tab 4C, p. 142; (2) Affidavit of Fred Neukamm sworn Mar-17-2021 ("**Neukamm Affidavit**"), paras. 20-27, Tobacco Board Record, Tab 2, pp. 18-19; (3) Apr-29-1993 Heads of Agreement, Exhibit "A" to Neukamm Affidavit, Tobacco Board Record, Tab 2A, pp. 28-36.

<sup>4</sup> Statement of Claim (Rothmans), paras. 15-21, Exhibit "A" to Strosberg Affidavit, Tobacco Board Record, Tab 4A, pp. 89-90 and see Statement of claim (Itcan), paras. 15-21, Tobacco Board Record, Tab 4B, pp. 113-114 and Statement of claim (JTIM), paras. 16-22, Tobacco Board Record, Tab 4C, pp. 139-140.

<sup>5</sup> Statement of Claim (Rothmans), paras. 22-27 and 29-31, Tobacco Board Record, Tab 4A, pp. 90-93 and see Statement of claim (Itcan), paras. 22-27 and 29-31, Tobacco Board Record, Tab 4B, pp. 114-117 and Statement of claim (JTIM), paras. 23-28 and 30-32, Tobacco Board Record, Tab 4C, pp. 141-143.

## Manufacturers' Guilty Pleas and the Comprehensive Agreements

15. Following years of vigorous denial of any involvement in illegal smuggling of cigarettes, in 2008, Rothmans first admitted its involvement in the smuggling of cigarettes and other tobacco products back into Canada. These disclosures were made in Rothmans' admissions to charges brought under the *Excise Act*.<sup>6</sup>

16. On July 31, 2008, Rothmans pleaded guilty to the charge that, contrary to section 240(1)(a) of the *Excise Act*, between January 1, 1989 and February 28, 1994 Rothmans aided persons to sell and be in possession of tobacco manufactured in Canada that was not packaged and was not stamped in conformity with the *Excise Act*.<sup>7</sup>

17. Rothmans did not package and stamp its products in conformity with the *Excise Act* because Rothmans wished to maintain its "share of the Canadian tobacco market." The Rothmans' Agreed Statement of Facts on its guilty plea includes the following:

2. Between the 1st day of January 1989, and the 18th day of February, 1994, Rothmans, Benson & Hedges aided persons to sell and to be in possession of tobacco manufactured in Canada that was not packaged and that was not stamped in conformity with the *Excise Act* and its amendments and the ministerial regulations, contrary to s. 240(1)(a) of the *Excise Act*.

8. ... Almost the entire contraband market for tobacco products involved certain of the First Nations reservations straddling the Canadian-American border in the provinces of Ontario and Quebec and, in particular, the St. Regis reservation/Akwesasne reserve.

9. It was common knowledge to Rothmans, Benson & Hedges and many others that the majority of the Canadian tobacco products exported and sold in the United States were smuggled back into the provinces of Ontario and Quebec to be sold and consumed by persons in those provinces.

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<sup>6</sup> (1) Strosberg Affidavit, para. 18, Tobacco Board Record, Tab 4, p. 61 and (2) Neukamm Affidavit, paras. 31-35, Tobacco Board Record, Tab 2, pp. 20-21.

<sup>7</sup> (1) Strosberg Affidavit, para. 18, Tobacco Board Record, Tab 4, p. 61.

10. Rothmans, Benson & Hedges was aware of the existence of distribution channels through which tobacco products were being smuggled back into Canada contrary to s. 240(1)(a) of the *Excise Act*.

11. Rothmans, Benson & Hedges used these distribution channels to enable persons to possess and sell tobacco products in Canada at prices which did not include duties and taxes. This was done with the intention of maintaining Rothman, Benson & Hedges' share of the Canadian tobacco market. [Emphasis added]<sup>8</sup>

18. Rothmans was fined \$100 million for its admitted criminal activity. The fine was based on Rothmans' admission that it was involved in the avoidance of \$50 million in excise duties from December 12, 1989 to June 9, 1993, and excise duties and excise taxes from June 10, 1993 until February 28, 1994.<sup>9</sup>

19. In order to compensate the Federal and Provincial Governments for lost duties, taxes and interest during the periods relating to the *Excise Act* charges, Rothmans agreed with Canada and each of the Provinces to a civil settlement (the "**Comprehensive Agreement**") which took effect upon the Court's acceptance of its guilty plea.<sup>10</sup>

20. The Comprehensive Agreement required Rothmans to pay \$450,000,000 over 10 years to the Federal and Provincial Governments to settle claims arising from Rothmans' role in tobacco smuggling.<sup>11</sup>

21. Similar guilty pleas, admissions, fines and Comprehensive Agreements were made by Itcan and JTIM.<sup>12</sup>

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<sup>8</sup> Strosberg Affidavit, para. 19, Tobacco Board Record, Tab 4, pp. 61-62; (2) Jul-4-2016 Div. Ct. Reasons for Judgment *Ontario Flue-Cured Tobacco Growers Marketing Board v Rothmans, Benson & Hedges, Inc.*, [2016 ONSC 3939](#), para. 63, Exhibit "H" to Strosberg Affidavit, Tobacco Board Record, Tab 4H, p. 268.

<sup>9</sup> Strosberg Affidavit, para. 20, Tobacco Board Record, Tab 4, p. 62.

<sup>10</sup> Strosberg Affidavit, para. 21, Tobacco Board Record, Tab 4, p. 62.

<sup>11</sup> Strosberg Affidavit, para. 22, Tobacco Board Record, Tab 4, p. 62.

<sup>12</sup> Strosberg Affidavit, para. 24, Tobacco Board Record, Tab 4, p. 63.

22. The claims of the Tobacco Board and the Tobacco Manufacturers' various technical defences are dealt with at length by the Court in the decisions in the Actions, including:

- (a) *Ontario v. Imperial Tobacco Company Limited*, [2011 ONCA 525](#) (Goudge, Gillese and Jurianz, JJ.A., July 20, 2011);
- (b) *R. v. Imperial Tobacco Canada*, [2012 ONSC 6027](#) (Rady J., January 2, 2013);
- (c) *Ontario v. Imperial Tobacco Canada Limited*, [2013 ONCA 481](#) (Hoy A.C.J.O., Feldman and Simmons JJ.A., July 16, 2013);
- (d) *The Ontario Flue-Cured Tobacco Growers' Marketing Board v. Rothmans, Benson & Hedges Inc.*, [2014 ONSC 3469](#) (Rady J., June 30, 2014);
- (e) *Ontario Flue-Cured Tobacco Growers' Marketing Board v. Rothmans, Benson & Hedges*, [2016 ONSC 3939](#) (Divisional Court – Sachs, Horkins and Patillo JJ., July 4, 2016); and
- (f) The application for leave to appeal the Divisional Court decision 2016 ONSC 3939 was dismissed by the Court of Appeal (Blair, Epstein and Huscroft JJ.A.) on November 4, 2016.<sup>13</sup>

### **The Tobacco Board's Claims are Based on the Tobacco Manufacturers' Fraudulent Conduct**

23. The Actions arise from the Tobacco Manufacturers' cover up of their involvement in illegal smuggling. The Tobacco Board and the farmers/producers represented by the Tobacco Board assert that they suffered financial loss and damages as the result of the Tobacco Manufacturers' intentional breaches and intentional misrepresentations including their false audit statements confirming that the DFX tobacco purchased was used only for export production.<sup>14</sup>

24. When the Tobacco Manufacturers made these misrepresentations to the Tobacco Board about production of cigarettes for export, they knew that the cigarettes manufactured for export

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<sup>13</sup> Strosberg Affidavit, paras. 41-91, Tobacco Board Record, Tab 4, pp. 67-80 and Exhibits "D" to "H" to Strosberg Affidavit, Tobacco Board Record, Tabs 4D to 4H, pp. 159-276.

<sup>14</sup> (1) Strosberg Affidavit, paras. 12-16, Tobacco Board Record, Tab 4, pp. 16-61 and (2) Statement of claim (Rothmans), para. 7, Tobacco Board Record, Tab 4A, p. 87, and see Statement of claim (Itcan), para. 7, Tobacco Board Record, Tab 4B, p. 111 and Statement of claim (JTIM), para. 7, Tobacco Board Record, Tab 4C, p. 137.



were intended to be smuggled back into Canada and sold illegally into the domestic market. The Tobacco Manufacturers did not package or stamp cigarettes and other tobacco products in conformity with the *Excise Act* to aid persons in their smuggling activities.<sup>15</sup>

25. In reality, the Tobacco Manufacturers cheated the government of Canada and the Provinces out of duties, revenue, taxes and interest. The Tobacco Manufacturers also cheated the Tobacco Board and the growers out of revenue and interest. The Tobacco Manufacturers settled with and paid the government of Canada and the provinces. But, the Tobacco Manufacturers have not yet settled with and paid the Tobacco Board and the growers.

### **PART III – STATEMENT OF ISSUES AND THE LAW**

26. The issues are:

- (a) Are the Tobacco Board's claims against the Tobacco Manufacturers debts or liabilities arising out of fraud, or from obtaining property or services by false pretences or fraudulent misrepresentation under CCAA s.19(2)(c) and (d)?
- (b) Does the Tobacco Board's claim against the Tobacco Manufacturers include interest upon debts or liabilities referred to in CCAA s.19(e)?
- (c) Will the Tobacco Manufacturers produce a witness/affiant who will swear that the Tobacco Manufacturers acted bona fides in dealing with the Tobacco Board dealing with export tobacco purchases in the period 1986 to 1996?

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<sup>15</sup> Strosberg Affidavit, paras. 17-28, Tobacco Board Record, Tab 4, pp. 61-64.

## The Tobacco Board is a CCAA s.19(2) Creditor

27. CCAA s.19(2) provides that certain types of claims cannot be compromised without the consent of that creditor. The subsection reads in part:

(2) A compromise or arrangement in respect of a debtor company may not deal with any claim that relates to any of the following debts or liabilities unless the compromise or arrangement explicitly provides for the claim's compromise and the creditor in relation to that debt has voted for the acceptance of the compromise or arrangement:....

(c) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in Quebec, as a trustee or an administrator of the property of others;

(d) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability of the company that arises from an equity claim; or

(e) any debt for interest owed in relation to an amount referred to in any of paragraphs (a) to (d).

28. In *Arrangement relatif a Consultants SM inc.*<sup>16</sup>(“*Consultants SM inc.*”), the Quebec Court of Appeal concluded that the language found in CCAA s.19(2)(d) and (e) was practically identical to the language found in s.178(1)(e) of the *Bankruptcy and Insolvency Act* (“BIA”). The BIA specifies that these types of debts cannot be released and the Quebec Court of Appeal remarked that the scope of this BIA provision was useful in interpreting CCAA s.19(2).

29. The Quebec Court of Appeal determined that to be successful in a claim under CCAA s.19(2), the creditor must establish that:

(a) the debtor made a representation to the creditor;

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<sup>16</sup> *Arrangement relatif a Consultants SM inc.*, [2020 QCCA 438](#), application for leave to appeal to SCC from the judgment granted October 29, 2020 in respect of set off issues raised in the case.

- (b) the representation was false;
- (c) the debtor knew that the representation was false; and
- (d) the false representation was made for the purpose of obtaining a good or service from the creditor.<sup>17</sup>

30. Applied to the Tobacco Board's claims:

- (a) the Tobacco Manufacturers made representations at the time of (i) the purchase of DFX/export tobacco at the Tobacco Board's auctions, and (ii) the audit reports for the years of purchases that the DFX/export tobacco was purchased to manufacture cigarettes and other tobacco products for sale into the export market and the Tobacco Manufacturers had used the tobacco only for export purposes;
- (b) the representations were false;
- (c) the Tobacco Manufacturers knew the representations were false; and
- (d) the false representations were made to obtain tobacco at the lower DFX/export prices from the Tobacco Board and to cover up the Tobacco Manufacturers' involvement in smuggling; and
- (e) Each of the Tobacco Manufacturers wished to preserve and retain its share of the Canadian tobacco market by enabling persons to possess and sell their cigarettes in Canada at prices which did not include duties, taxes and the price of domestic tobacco.

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<sup>17</sup> *Arrangement relatif a Consultants SM inc.*, [2020 QCCA 438](#), paras. 33-35, 74-76, 83, 103-104.

30. The Court in *Consultants SM inc.* expanded on element (c) above, the knowledge that the representation was false. The Court stated that proof of fraudulent intention can rarely be made directly and that it will often be necessary to have recourse to inferences from known facts.

31. The Tobacco Manufacturers admitted in their guilty plea that they cheated the governments and, inferentially, also cheated the Tobacco Board and its growers.

32. The Court in *Consultants SM inc.* added that “once the obligee has proved the falsity of a representation to the obligor, the presumption of good faith is neutralized and it is then incumbent on the latter to justify its conduct.”<sup>18</sup>

33. In the Actions, the Tobacco Manufacturers relied on technical defences. They asserted that the province of Ontario delivered a release that included the Tobacco Board. This technical defence was rejected by the Court. So too was the limitation defence.

34. For evidence of the Tobacco Manufacturers’ fraudulent intentions, the Tobacco Board relies, in part, on the Tobacco Manufacturers’ own admissions in the guilty pleas that the representations to the Tobacco Board concerning the non-domestic use of DFX tobacco were false, and the further admission that they did not package and stamp certain of its cigarettes and tobacco products in conformity with the *Excise Act* to enable sales by the smugglers in the Canadian domestic market.

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<sup>18</sup> *Arrangement relatif a Consultants SM inc.*, [2020 QCCA 438](#), para. 35 and *Dupuis v. Cernato Holdings Inc.*, [2019 QCCA 376](#), para. 38.

**Can I Get a Witness?**<sup>19</sup>

35. Throughout the conduct of the Actions and in the CCAA proceedings, the Tobacco Manufacturers have never produced a witness/affiant who asserted under oath that Rothmans', Itcan's and JTIM's conduct with the Tobacco Board was bona fide in dealing with export tobacco purchases.

36. If there is no such witness/affiant in response to this motion, the Court should draw an adverse inference and conclude that the Tobacco Manufacturers acted fraudulently with the Tobacco Board.

37. It has been about 30 years since the misrepresentations took place in the Tobacco Board Actions. The tobacco growers and producers represented by the Tobacco Board are getting older and some have died<sup>20</sup> without resolution of the claims made on their behalf. The declarations sought by the Tobacco Board must be decided by the Court before a compromise or arrangement is approved by the creditors and the Court. The Tobacco Board asks that the Court set a date and make a decision on this motion now.

**PART IV – ORDER SOUGHT**

38. The Tobacco Board claims against each of the Tobacco Manufacturers this Court's declarations that:

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<sup>19</sup> Song "Can I Get A Witness" by Marvin Gaye, 1965, from the Album titled "How Sweet it is To be Loved By You"


<sup>20</sup> Neukamm Affidavit, paras. 36-42, Tobacco Board Record, Tab 2, pp. 21-23; (2) Affidavit of Andy Jacko sworn Mar-17-2021, paras. 7-8, Tobacco Board Record, Tab 3, p. 54.

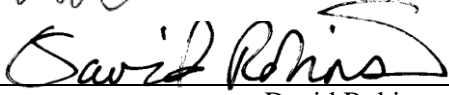
- (a) the Tobacco Board's claims are debts or liabilities arising out of fraud, or debts or liabilities resulting from obtaining property or services by false pretences or fraudulent misrepresentation that, under CCAA s.19(2)(c) and (d);
- (b) the Tobacco Board's claims include a debt for interest owed in relation to the amounts referred to in CCAA s.19(2)(c) and (d) that, under CCAA subsection 19(2)(e), cannot be compromised without the consent of the Tobacco Board;
- (c) the Tobacco Manufacturers cannot compromise the debt owed to the Tobacco Board without the Tobacco Board's consent;
- (d) costs of this motion; and
- (e) such further and other advice and directions as this Court deems fit and proper.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

June 17, 2021

Per: STROSBURG SASSO SUTTS LLP

  
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William V. Sasso

  
\_\_\_\_\_  
David Robins

Lawyers for The Ontario Flue-Cured Tobacco Growers'  
Marketing Board, Moving Party/Claimant

**SCHEDULE “A” – LIST OF AUTHORITIES**

1. *Arrangement relatif a Consultants SM inc.*, [2020 QCCA 438](#)
2. *Dupuis v. Cernato Holdings Inc.*, [2019 QCCA 376](#)
3. *Sovereign Life Assur. Co. v. Dodd*, [1892] 2 Q.B. 573, 41 W.R. 4, 36 Sol. Jo. 644, 4 R 17 (C.A.)

## SCHEDULE “B” – STATUTORY REFERENCES

*Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36

### Claims

#### **Claims that may be dealt with by a compromise or arrangement**

**19 (1)** Subject to subsection (2), the only claims that may be dealt with by a compromise or arrangement in respect of a debtor company are

(a) claims that relate to debts or liabilities, present or future, to which the company is subject on the earlier of

- (i) the day on which proceedings commenced under this Act, and
- (ii) if the company filed a notice of intention under section 50.4 of the *Bankruptcy and Insolvency Act* or commenced proceedings under this Act with the consent of inspectors referred to in section 116 of the *Bankruptcy and Insolvency Act*, the date of the initial bankruptcy event within the meaning of section 2 of that Act; and

(b) claims that relate to debts or liabilities, present or future, to which the company may become subject before the compromise or arrangement is sanctioned by reason of any obligation incurred by the company before the earlier of the days referred to in subparagraphs (a)(i) and (ii).

#### **Exception**

**(2)** A compromise or arrangement in respect of a debtor company may not deal with any claim that relates to any of the following debts or liabilities unless the compromise or arrangement explicitly provides for the claim’s compromise and the creditor in relation to that debt has voted for the acceptance of the compromise or arrangement:

(a) any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a court in respect of an offence;

(b) any award of damages by a court in civil proceedings in respect of

- (i) bodily harm intentionally inflicted, or sexual assault, or
- (ii) wrongful death resulting from an act referred to in subparagraph (i);

(c) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in Quebec, as a trustee or an administrator of the property of others;

(d) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability of the company that arises from an equity claim; or

(e) any debt for interest owed in relation to an amount referred to in any of paragraphs (a) to (d).



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AND IN THE MATTER OF A PLAN OF COMPROMIS OR ARRANGEMENT OF **IMPERIAL TOBACCO CANADA LIMITED**  
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**FACTUM OF THE MOVING PARTY,**  
**THE ONTARIO FLUE-CURED TOBACCO**  
**GROWERS' MARKETING BOARD**  
**(MOTION FOR DECLARATIONS)**

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