

Tobacco Litigation

Presiding Judge – Court-Appointed Mediator Communication and Confidentiality Protocol

WHEREAS Mr. Justice Thomas McEwen is the presiding judge over three Tobacco CCAA proceedings pending on the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) bearing court file nos. CV-19-616077-OOCL, CV-19-616779-00CL and CV-19-615862-00CL (the “**CCAA Proceedings**”);

AND WHEREAS The Honourable Warren Winkler, Q.C., former Chief Justice of Ontario, has been appointed as a neutral third party (the “**Court-Appointed Mediator**”) to mediate a global settlement of the Tobacco Claims as defined in each of the Initial Orders as amended in the CCAA Proceedings (the “**Initial Orders**”) in each such CCAA Proceeding (the “**Mediation Process**”);

AND WHEREAS a line of communication between the presiding judge and the Court-Appointed Mediator is desirable to facilitate the efficient resolution through due process of the outstanding issues in dispute through the CCAA Proceedings and/or mediation;

1. It is hereby directed that the presiding judge and the Court-Appointed Mediator may communicate between one another directly to discuss on an on-going basis the conduct of the Mediation Process and the manner in which it will be coordinated with the CCAA Proceedings, including but not limited to individual matters referred specifically by the presiding judge to the Court-Appointed Mediator for resolution.
2. It is understood that in doing so the presiding judge will not disclose to the Court-Appointed Mediator how he will decide any matter which may come before him for determination. The Court-Appointed Mediator will not disclose to the presiding judge the negotiating positions or confidential information of any of the parties in the Mediation Process.
3. All statements, discussions, offers made and documents produced by any of the parties in the course of the Mediation Process shall not be subject to disclosure through discovery or any other process; shall be confidential; shall not be referred to in Court and shall not be admissible into evidence for any purpose, including impeaching credibility or to establish the meaning and/or validity of any settlement or alleged settlement arising from the Mediation Process.
4. Any notes, records, statements made, discussions had and recollections of the Court-Appointed Mediator and/or his legal counsel, Lax O’Sullivan Lisus Gottlieb LLP, in conducting the Mediation Process shall be confidential and without prejudice and protected from disclosure for all purposes in accordance with paragraph (3) above.
5. The Court-Appointed Mediator shall not be liable to any party or participant for any act or omission in connection with the Mediation Process and shall have the immunity of a Judge of a Superior Court in Canada.