

**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.**

**UNOFFICIAL TRANSCRIPT OF ENDORSEMENT  
OF JUSTICE MCEWEN  
Released October 18, 2019**

On October 2, 2019, I dealt with three motions and shortly thereafter released decisions with Reasons to follow.

I am now providing those Reasons:

**1. ITCAN Payments to BAT Mexico**

QCAP seeks an order that all payments to BAT Mexico referred to in the Thauvette Affidavit be prohibited during the Stay Period.

This issue was resolved on the basis that it will be deferred until the Monitor has had an opportunity to review the matter and report. If the parties cannot resolve this dispute it will return to the Court. Pending a return to the Court<sup>1</sup>, ITCAN has undertaken not to make the payments.

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<sup>1</sup> Or resolution between the parties.

The Supply Agreement will be produced to QCAP on a confidential basis. It is otherwise available in the Data Room and available to those parties who have executed the NDAs.

**2. Extension of the Stay Period**

By Order dated October 3, 2019, I extended the Stay Period to March 12, 2020.

The Applicants, supported by the Consortium, sought to extend the Stay Period to March 6, 2020 (a date on which I am not available).

QCAP submitted that the Stay Period should be extended only to January 15, 2020. In my view, this timeline is unrealistically short. As I advised counsel at the last stay extension hearing and reminded them again at this motion, I thought that the October 2, 2019 date was overly ambitious. To, again, set a short extension period would distract the stakeholders from the court-ordered mediation process.

Further, much has been accomplished when one considers the enormous complexity of these three significant CCAA proceedings.

Since the last stay extension, a number of positive steps have been taken. Chief among them is the progress in the court-ordered mediation.

The Hon. Mr. Winkler conducted extensive meetings with the necessary stakeholders and, by the time these reasons are released, will have conducted a plenary session of approximately 80 participants.

Additionally, amongst other things, the Data Room has been set up and many NDAs completed.

Further, all three Applicants have sufficient liquidity to operate within the Stay Period.

I specifically do not accept QCAP's submission that there is not "at least a kernel of a plan".

This submission is contradicted by the record which demonstrates that meaningful progress has been made. It further ignores the considerable efforts expended by the Hon. Mr. Winkler and the stakeholders involved in the court-ordered mediation process.

I also pause here to note that I was surprised, and upon reflection very concerned, to hear QCAP's submission that QCAP has not asked to be part of the data room and that QCAP considers it "a colossal waste of time".

Any resolution must be based on evidence and facts. I cannot see how QCAP, or for that matter, any stakeholder can meaningfully assess its own position if it does not have an understanding of the Applicants' financial situation and the positions of the other stakeholders. Anything less impedes the court-ordered mediation and is not in the best interests of all stakeholders. It is also unacceptable to this Court. All stakeholders must be fully engaged in the process which is one of the most complicated legal undertakings in Canadian history.

I also wish to note that in addition to the ITCAN payments to BAT Mexico, an issue surrounding certain restructuring within JTIM arose. As noted above, the issue concerning ITCAN is being deferred and the JTIM restructuring appears to be modest in nature.

I do wish, however, to remind the Applicants that they have an obligation to advise the Court, the mediator and the stakeholders of any material change to their operations which directly or indirectly affect these proceedings.

I should further acknowledge QCAP's submission wherein it seeks leave to return to Court prior to March 12, 2020 if it considers that the progress being made in the court-ordered mediation is insufficient.

I am not prepared to grant QCAP or any other stakeholder this right. To do so would tilt the playing field in favour of the stakeholder wielding this power.

In conclusion, I reiterate that extending the Stay Period to March 12, 2020 is reasonable and allows for achievable progress to be made. The necessary provisions of ss. 11.02 and 11.03 of the CCAA have been met.

### **3. The Motion of the Canadian Cancer Society**

The Canadian Cancer Society ("CCS") seeks orders allowing it to continue to participate in these CCAA proceedings before the Court and to also participate in the court-ordered mediation.

As I set out in my October 3, 2019 endorsement, I am prepared to allow CCS limited participation in the Court proceedings. I am not, however, allowing it to participate in the mediation at this time.

First, with respect to the Court proceedings, no one objects to CCS participating. CCS is on the service list and receives filings. Thus far, I have not restricted its ability to make submissions. In this regard, I accept that CCS is a social stakeholder. I am not convinced, however, that CCS has a direct financial interest in these CCAA proceedings. It is neither a creditor nor a debtor. CCS, like many other persons, may be indirectly impacted by a settlement.

Given CCS's goals and its experience, I believe it is reasonable to allow it to participate in the Court proceedings subject to this Court's discretion.

Going forward, CCS is free to file materials in response to filings made by other stakeholders. I will then determine the extent to which CCS can make submissions.

CCS will require leave if it wishes to initiate its own motion. Leave can be requested in writing, on notice.

Second, with respect to mediation, I am not prepared to allow CCS to participate at this time. As noted, it is neither a creditor nor a debtor. I accept that CCS has extensive experience as a health charity and it is open to CCS to liaise with the government and other stakeholders outside the mediation process if it deems it desirable to do so.

Further, I have given the Hon. Mr. Winkler broad discretion to conduct the mediation process. This includes broad discretion to consult with a wide variety of persons as he considers appropriate.

I see no reason, at this time, to vary that order. It is important to allow the Hon. Mr. Winkler, who has vast experience in this area, the ability to carry on with the flexibility outlined in my Orders in these very complicated and significant matters.

“McEwen, J.”