

CITATION: Imperial Tobacco Companies Limited, 2026 ONSC 143
COURT FILE NO.: CV-19-615862-00CL; CV-19-616077-00CL; CV-19-615862-00CL
DATE: 2026-01-07

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 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

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

BEFORE: Chief Justice Geoffrey B. Morawetz

COUNSEL: *Robert Thornton and Rebekah O'Hare*, for JTI-Macdonald Corp.

Trevor Courtis, for Rothmans, Benson & Hedges Inc.

Linc Rogers and Jake Harris, for Deloitte Restructuring Inc., in its capacity as Monitor and Plan Administrator of JTI-Macdonald Corp.

Natasha MacParland, for FTI Consulting Canada Inc., in its capacity as court-appointed Monitor and Plan Administrator of Imperial Tobacco Canada Limited and Imperial Tobacco Companies Limited

Monique Sassi, for Ernst & Young Inc., in its capacity as court-appointed Monitor and Plan Administrator of Rothmans, Benson & Hedges Inc.

Kate Boyle, for the Pan-Canadian Claimants

Scott Bomhof, for JT Canada LLC and TM Receiver

Robert Cunningham, for the Canadian Cancer Society

Jacqueline Wall, for the Province of Ontario

Mark E. Meland, for Conseil québécois sur le tabac et la santé, Jean-Yves Blais and Cécilia Létourneau (Quebec Class Action Plaintiffs)

HEARD and

DETERMINED: December 15, 2025

REASONS: January 7, 2026

ENDORSEMENT

[1] Deloitte Restructuring Inc. (“Deloitte Restructuring”), the CCAA Plan Administrator (in such capacity, the “CCAA Plan Administrator”) and Court-Appointed Monitor (the “Monitor”) in respect of JTI-MacDonald Corp. (“JTIM”) brought this motion for an Order (the “CCAA Plan Administrator Report Order”) to approve the Second Report (the “Second Report”) and supplement to the Second Report (the “Supplemental Report”) of the CCAA Plan Administrator and the activities (the “Activities”) described therein.

[2] At the conclusion of the hearing, the motion was granted with reasons to follow. These are the reasons.

[3] The factual background is set out in the Second Report.

[4] On March 8, 2019, JTIM obtained an Initial Order (the “Initial Order”) under the *Companies’ Creditors Arrangement Act* (Canada) (the “CCAA”). Deloitte Restructuring was appointed as Monitor.

[5] In the fall of 2024, a plan of compromise in respect of JTIM (the “JTIM Plan”), developed by the Court-Appointed Mediator, the Honourable Warren K. Winkler, K.C., and the Monitor, was accepted for filing and was subsequently approved by the requisite majority of voting creditors.

[6] The JTIM Plan was amended and restated on December 5, 2024 and then further amended and restated on January 27, 2025 and February 27, 2025 (such amended and restated version, (the “Third A&R JTIM Plan”) and August 27, 2025 (such amended and restated version, the “Fourth A&R JTIM Plan”).

[7] The JTIM Plan provides that, following the Plan Implementation Date, the Monitor assumes the role of the CCAA Plan Administrator, as an independent court officer to facilitate the coordinated administration of the CCAA Plans.

[8] Under the JTIM Plan, JTIM is required to provide comprehensive and ongoing financial reporting, which the CCAA Plan Administrator is tasked with reviewing.

[9] On March 6, 2025, the Third A&R JTIM Plan was sanctioned (the “Sanction Order”) and Deloitte Restructuring was appointed as the CCAA Plan Administrator pursuant to the CCAA Plan Administrator Appointment Order. The Fourth A&R JTIM Plan was implemented on August 29, 2025.

[10] At the time of its appointment as Monitor in 2019, Deloitte Restructuring was not subject to any statutory restrictions in relation to its appointment. A pre-filing report disclosed material points of contact between the Deloitte Global Network (the “Deloitte Global Network”) and JTIM’s affiliates (the “Global Japan Tobacco Group”). It was noted that Deloitte Touche Tohmatsu LLC (“DTT”) audits Japan Tobacco Inc. (“Japan Tobacco”), JTIM’s ultimate parent. DTT most recently audited Japan Tobacco for fiscal year 2024.

[11] Since JTIM was acquired by Japan Tobacco in 1998, JTIM has not been required to have audited financial statements. However, in order to comply with the financial reporting requirements under the JTIM Plan, JTIM's annual financial statements must now be audited.

[12] The CCAA Plan Administrator reports that JTIM determined that Deloitte LLP ("Deloitte Audit"), a Canadian member firm, was best positioned to perform the required audit function for JTIM because of its familiarity with the global audit practice of DTT.

[13] In anticipation of JTIM's first audit year under the JTIM Plan, JTIM engaged Deloitte Audit in December, 2024 to begin performing work.

[14] The CCAA Plan Administrator confirmed that the engagement of Deloitte Audit was not disclosed to the court in December 2024. There was no disclosure to the court of this engagement until fall 2025. Counsel to the CCAA Plan Administrator acknowledged that the failure to make timely disclosure of Deloitte Audit to the court was a mistake.

[15] In bringing this motion, Deloitte Restructuring is, in essence, addressing this oversight.

[16] There are statutory restrictions relating to the appointment of a monitor which are set out in s. 11.7 of the CCAA:

- (1) 11.7 (1) When an order is made on the initial application in respect of a debtor company, the court shall at the same time appoint a person to monitor the business and financial affairs of the company. The person so appointed must be a trustee, within the meaning of subsection 2 (1) of the *Bankruptcy and Insolvency Act*.
- (2) Except with the permission of the court and on any conditions that the Court may impose, no trustee may be appointed as monitor in relation to a company.
 - (a) if the trustee is or, at any time during the two preceding years was

...

- (3) The **auditor**, accountant or legal counsel, or partner or an employee of the auditor, accountant or legal counsel, **of the company**, or...

[emphasis added]

[17] The sequencing of the engagement of Deloitte Audit does not give rise to a violation of s.11.7 of the CCAA. At the time of its appointment as Monitor, Deloitte Audit was not the auditor of the debtor company.

[18] However, although section 11.7 does not determine the issue – it does provide the insight for the policy rationale.

[19] In CCAA proceedings, the court must be satisfied that the appointment of a monitor not only satisfies the statutory requirements, but also reflects that the monitor be independent and not be in a position of real or perceived conflict. By analogy, in these proceedings, the appointment of the CCAA Plan Administrator should also, in my view, reflect the same standard.

[20] In these proceedings, the CCAA Plan Administrator is an independent court officer. Its role, among other things, is to facilitate the coordinated administration of the CCAA Plans. In fulfilling its obligations, the CCAA Plan Administrator – like the Monitor – must be independent and not be in a position of real or perceived conflict.

[21] The policy issue addressed by s.11.7 of the CCAA is straightforward. It is to ensure that the monitor is free of any real or perceived conflicts of interest. A conflict, or a perceived conflict, could arise, for example, if a monitor is required to review the work of a related auditor.

[22] Following the Plan Implementation Date, the Monitor assumed the role of the CCAA Plan Administrator. The title for Deloitte Restructuring changed, but the necessity of maintaining independence as a court officer did not change.

[23] In order to overcome any conflict, or perceived conflict issues, the CCAA Plan Administrator reports that a number of safeguards have been put in place.

[24] The duties and responsibilities of the CCAA Plan Administrator are set out in section 14.4 of the JTIM Plan.

[25] The CCAA Plan Administrator reports that the roles of Deloitte Restructuring as CCAA Plan Administrator and Deloitte Audit as JTIM's auditor will be separate and distinct. The CCAA Plan Administrator does not verify the work of the Auditor.

[26] Upon learning of JTIM's intention to formally engage Deloitte Audit, the CCAA Plan Administrator advises that it considered potential concerns under the CCAA, the JTIM Plan and/or the Plan Administrator Appointment order. The CCAA Plan Administrator determined Deloitte Audit could perform the requested preliminary work and accept a future appointment as auditor, with appropriate safeguards.

[27] An ethical wall was established to maintain the confidentiality and objectivity of both engagements, including preventing unauthorized sharing of information between the personnel involved in the administration of the JTIM Plan and the personnel involved in the preliminary audit work.

[28] Further, independent of the requirements of the ethical wall, the CCAA Plan Administrator team members will not discuss or otherwise communicate about the Plan administration and any other related sensitive and confidential information with any practitioners from Deloitte Audit. In addition, the CCAA Plan Administrator advises that the audit will not encroach on any of the confidentiality protections, (including relating to fees and disbursements), afforded to the Monitors, CCAA Plan Administrators and the Court-Appointed Mediator and their respective

counsel by the endorsement dated May 24, 2019 and all subsequent court orders, including the Direction dated June 26, 2025.

[29] In addition, prior to Deloitte Audit accepting the appointment as Auditor, the views of all claimants were solicited and none of the representatives for any claimants communicated any objections or concerns with the Deloitte Auditor being the auditor of JTIM.

[30] The CCAA Plan Administrator now seeks the Court's approval of the activities as described in the Second Report, including its implementation of safeguards to preserve independence between the CCAA Plan Administrator and the applicable Deloitte Audit team members.

[31] The timing of this request of the Court is regrettable. The issues before the Court today should have been brought forward in December 2024.

[32] Having reviewed the record and hearing submissions, I am satisfied that the safeguards that have been put in place, together with the following conditions, are sufficient to preserve the integrity of the process. (These conditions are intended to reflect the intention of s.11.7(2) of the CCAA.)

[33] It is necessary for Deloitte Restructuring and Deloitte Audit to acknowledge that, throughout these proceedings, the three Monitors and the three CCAA Plan Administrators have been involved in ongoing confidential discussions with the Court-Appointed Mediator. Periodically, the fees and disbursements of these court-appointed officers are approved by the Court. To be clear, this fee approval process is beyond the review of the JTIM Audit, including, without limitation, the reporting of expenses incurred by JTIM on an individual entity basis. In other words, the accounts of the court officers will not be itemized on an individual basis.

[34] In order to provide certainty on this issue, Mr. Phil Reynolds of Deloitte Restructuring was asked to provide confirmation on how professional fees paid by JTIM would be presented and whether it would be on individual firm basis or a global amount. Mr. Reynolds subsequently advised that the audited financial statements would only disclose the professional fees on an aggregate global basis and the professional fees would not be presented on a firm-by-firm basis.

[35] To state the obvious, these CCAA Proceedings have been extremely complex and they will continue to be for a number of years until the required contributions have been made by the Tobacco Companies. It is important for the Tobacco Companies and all claimants to recognize the independent roles played by the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Agent (Epiq). All of these entities have been designated by court order to carry out functions that will result in ongoing distributions being made to claimants under the CCAA Plans. If disputes arise, resort can be had to the court.

[36] Based on the lack of any opposition to the engagement of Deloitte Audit as auditor of JTIM and taking into account the safeguards that have been put in place as well as the foregoing conditions, I am satisfied that it is appropriate to approve the Second Report and the Supplemental Report, which fully describes the circumstances behind the engagement of Deloitte Audit.



Chief Justice Geoffrey B. Morawetz

Date: January 7, 2026