



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-19-00616077-00CL  
CV-19-00616779-00CL  
CV-19-00615862-00CL

DATE: August 07, 2026

NO. ON LIST: 1, 2, 3

**TITLE OF PROCEEDINGS:**

**IMPERIAL TOBACCO CANADA LIMITED et al v. JTI-MACDONALD CORP. et al**

**ROTHMANS, BENSON & HEDGES INC. v. IMPERIAL TOBACCO CANADA LIMITED et al**

**JTI-MACDONALD CORP. et al v. BENSON & HEDGES INC. et al**

**BEFORE: JUSTICE Jessica Kimmel**

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

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**For Defendant, Respondent, Responding Party:**

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| Name of Person Appearing     | Name of Party                                                                                                                            | Contact Info                                                                                                                                                             |
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## **ENDORSEMENT OF JUSTICE KIMMEL:**

- [1] The Court-Appointed Mediator and the Monitors and CCAA Plan Administrators have identified proposed amendments to Article 9 and certain related provisions (the "Amendments") to the Fourth Amended and Restated Court-Appointed Mediator's and Monitors' Plans of Compromise or Arrangement in respect of each Applicant dated August 27, 2025 (the "Fourth A&R CCAA Plans", approved on August 27, 2025 and implemented on August 29, 2025) that govern the establishment and administration of the Cy-près Foundation. These proposed Amendments address certain deferred matters related to the Cy-près Foundation not specifically addressed in the Fourth A&R CCAA Plans or Sanction Orders.
- [2] Capitalized terms not defined herein have the meanings given to them in the Fourth A&R CCAA Plans, as amended by the Amendments. References to the "CCAA Plans" refer either to the initial plans of compromise or arrangement in respect of each Applicant dated October 17, 2024 or the Fourth A&R CCAA Plans, as the context requires.
- [3] In summary, the proposed Amendments:
- (a) address administrative matters;
  - (b) provide for the establishment of the Cy-près Foundation management team (the "Foundation Management Team");
  - (c) establish an independent executive search process to identify candidates for the Foundation Directors (including the Cy-près Foundation Chair) and the Foundation Management Team;
  - (d) establish the process for selecting the proposals that will receive grants from the Cy-près Fund;
  - (e) address the Cy-près Foundation Chair proposed in the Fourth A&R CCAA Plans; and
  - (f) set out the use of capital and income of the Cy-près Fund.
- [4] The specifics of each of these proposed Amendments are detailed in paragraphs 12 -23 of the Joint Factum of the Monitors and CCAA Plan Administrators dated July 31, 2026 filed in support of this motion, and are more fully described in:
- (a) the July 28, 2026 thirty-fourth Report of FTI Consulting Canada Inc.'s as Monitor and CCAA Plan Administrator of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited in CV-19-616077-00CL (the "FTI 34<sup>th</sup> Report");
  - (b) the July 28, 2026 thirty-second Report of Ernst & Young Inc. as Monitor and CCAA Plan Administrator of Rothmans, Benson & Hedges appointed in CV-19-616779-00CL (the "EY 32<sup>nd</sup> Report"); and
  - (c) the July 28, 2026 thirty-second Report of Deloitte Restructuring Inc. as Monitor and CCAA Plan Administrator of JTI-Macdonald Corp. appointed in CV-19-615862-00CL (the "Deloitte 32<sup>nd</sup> Report");
- collectively, the "Reports".

- [5] The Monitors and CCAA Plan Administrators now move for an Order in each of the CCAA Proceedings (the "CCAA Plan Amendment Orders") to approve the Amendments, pursuant to section 20.4(a) of the Fourth A&R CCAA Plans. Section 20.4(a) permits the Court-Appointed Mediator and the Monitors to make amendments, restatements, modifications, or supplementations to the CCAA Plans following the Meeting Order (issued on October 31, 2024) on notice to the Affected Creditors (as defined in the CCAA Plans to include creditors with claims affected by the CCAA Plans) and the Tobacco Companies, subject to the approval of this Court. Section 20.4(a) was included in the CCAA Plans that were approved unanimously by Affected Creditors, voting in person or by proxy on the applicable CCAA Plan.
- [6] All stakeholders were aware at the time of the Sanction Hearing that the Monitors would need to seek further Orders to address these deferred matters. All stakeholders on the Common Service List have all been served and none are opposing the proposed Amendments. The Monitors and CCAA Plan Administrators each provided notice to the Common Service List, including the Affected Creditors and the Tobacco Companies, on July 28, 2026 by serving a Report, in each case attaching the Amendments and a blackline of the Amendments as against the relevant provisions of the applicable Fourth A&R CCAA Plan as appendices thereto.
- [7] The record before the court demonstrates that the proposed Amendments are intended to provide a comprehensive framework for the establishment, governance, and operation of the Cy-près Foundation as was contemplated by each of the CCAA Plans at the time of Plan Sanction. As the Monitors and CCAA Plan Administrators explain in their respective Reports, the Amendments are required to implement the Fourth A&R CCAA Plans. They are also consistent with the compromise and settlement contemplated in the Fourth A&R CCAA Plans, as approved by the voting creditors and sanctioned by this CCAA Court. The Monitors and Plan Administrators each recommend that the court approve the proposed Amendments.
- [8] In addition to the express contemplation under s. 20.4 (a) of the CCAA Plans that this Court would retain the jurisdiction and authority to approve amendments to the CCAA Plans, s. 7 of the CCAA provides this Court with specific authority to alter or modify the terms of an approved and court sanctioned plan: see *Ontario v. Canadian Airlines Corp.*, 2001 ABQB 983 at para. 56; *Algoma Steel Corp. v. Royal Bank of Canada*, 1992 CanLII 7413 (ONCA); *Ball Machinery Sales Ltd., Re*, 2002 CarswellOnt 2742.
- [9] When amendments are proposed after a creditors' meeting, ss. 7 and 11 of the CCAA give this Court the discretion to sanction an amended plan without convening an additional creditors' meeting if the Court is satisfied that the creditors or shareholders are not adversely affected by the Amendments: see *Canadian Airlines Corp.*, at para. 56.
- [10] In the view of the Monitors and CCAA Plan Administrators, no Affected Creditor will be prejudiced by the Amendments. No Affected Creditor has come forward to raise any objections or concerns in respect of the proposed Amendments, which reinforces the view of the Monitors and CCAA Plan Administrators that none are adversely affected by the Amendments.
- [11] Certain changes to s. 9.3 of the proposed Amendments were requested by the Canadian Cancer Society, and have been made in the final form of orders presented for court approval today. With those changes having been made, that organization (That describes itself as a social stakeholder in these CCAA proceedings) has not raised any other concerns about, and does not oppose, the proposed Amendments.
- [12] I am satisfied that it is reasonable and appropriate for the court's discretion to be exercised to grant the CCAA Plan Amendment Orders in the circumstances of these complex and coordinated CCAA Proceedings. The intended work of the Cy-près Foundation is an important cornerstone of these CCAA Plans and these Amendments represent a significant and important step forward in these continuing CCAA proceedings. They provide a comprehensive framework for the establishment, governance, administration and operation of the Cy-près Foundation that will pave the way for it to begin its important work.

[13] The Court recognizes that a lot of work went into the drafting and negotiation of the Amendments. All contributors to that process are commended for their efforts to bring these forward for approval.

[14] I have, accordingly, signed the three orders dated August 7, 2026, with immediate effect.

Date: Aug 07, 2026

A handwritten signature in cursive script, reading "Kimmel J.", enclosed within a rectangular box.

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Jessica Kimmel