



SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST



Cour supérieure du Québec
(Chambre des actions collectives)

Endorsement

COURT FILE NO.: CV-19-616077-00CL
CV-19-616779-00CL
CV-19-615862-00CL

HEARING September 9, 2026
DATE:

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

SUPERIOR COURT OF QUEBEC
N°: 500-06-000076-980

CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ
-and-
JEAN-YVES BLAIS
-and-
JTI-MACDONALD CORP.
-and-
IMPERIAL TOBACCO CANADA LIMITED
-and-
ROTHMANS, BENSON & HEDGES INC.
v.
FTI CONSULTING CANADA INC.
-and-
ERNST & YOUNG INC.
-and-

DELOITTE RESTRUCTURING INC.

ENDORSEMENT OF JUSTICES KIMMEL AND PICHÉ:

- [1] There are two aspects to the relief sought by Epiq Class Action Services Canada, Inc. (“Epiq”), in connection with its roles as: (a) claims administrator under the PCC Compensation Plan and the Québec Administration Plan (collectively, the “Compensation Plans”); and (b) agent for PCC representative counsel under the PCC Compensation Plan. It seeks an order in the three CCAA proceedings before this court and in the class action proceeding before the Superior Court of Québec approving:
- (a) the First Quarterly Global Claims Administration Costs Budget; and
 - (b) the activities and conduct of Epiq in its capacities as claims administrator and PCC Agent.
- [2] The Attorney General of Québec indicated before the joint hearing that it would be seeking an adjournment of this motion, but it did not do so and the hearing proceeded.
- [3] At the joint hearing of the Ontario Superior Court of Justice and the Superior Court of Québec (the “Courts”) on September 9, 2026, the Courts determined that the first aspect of the requested relief for approval of the First Quarterly Global Claims Administration Costs Budget (the “First Quarterly Budget”) would be granted. This endorsement provides the Courts’ joint reasons for the approval of the First Quarterly Budget, in accordance with paragraph 5 (f) of the Court-to-Court Communication Protocol that is Schedule “A” to the October 15, 2025 Joint Direction of the Courts.
- [4] The Courts reserved their decisions on the second aspect of the requested relief for approval of the activities and conduct of Epiq acting in its capacities as claims administrator and PCC Agent. This endorsement provides the Courts’ joint reasons for denial of that latter relief.
- [5] Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in Epiq’s factum filed in support of this motion.

Approval of First Quarterly Global Claims Administration Costs Budget

- [6] Immediately prior to this motion, the CCAA court heard and granted motions brought by the Monitors and CCAA Plan Administrators for Orders (the “Amended and Restated Claims Administrator Orders”) that require Epiq to obtain Court approval of the First Quarterly Budget, covering the period from September 1, 2026 to November 30, 2026 (and to obtain Court approval of subsequent quarterly budgets thereafter).
- [7] The Québec Court has now, upon the oral motion of QCAP, issued an order providing its corresponding approval of the increase in the frequency of the budgets to be submitted by Epiq to both Courts.
- [8] Given that the Monitors and CCAA Plan Administrators (and subsequently, QPAC) were seeking to change the budgeting requirements from an annual budget to quarterly budgets, Epiq did not submit an annual budget for approval. Instead, it delivered and now seeks approval of its First Quarterly Budget under the Amended and Restated Claims Administrator Orders on the basis that it complies with all the requirements prescribed under those orders, including:
- (a) that it be “consistent with the format” of a costs framework that was approved by the CCAA Court in August 2025;
 - (b) that it include the estimates of professional fees and expenses expected to be incurred by Epiq for the period from September 1, 2026 to November 30, 2026; and
 - (c) that it “be informed by” the volume of claims that have been received by Epiq.
- [9] In preparing that costs estimate, Epiq has drawn on its past experience administering other claims processes, as well as its experience to date administering the Compensation Plans in these proceedings (including its

experience with respect to costs actually incurred, as detailed in the various Weekly and Monthly Costs Reports). Nonetheless, the estimates are just that - estimates, with the actual costs incurred being dependent upon variables beyond Epiq's control (such as the timing and characteristics of claims submitted). Epiq has also explained that the estimated costs set out in the First Quarterly Budget do not reflect or consider the over 100,000 new claims that were filed just prior to the expiry of the QPAC claims filing deadline that recently passed.

[10] As was noted in this Court's endorsement granting the Amended and Restated Claims Administrator Orders:

- (a) Section 11 of the CCAA "confers jurisdiction on the court in the broadest of terms" and enables this Court to "make any order that it considers appropriate in the circumstances". This broad power "is constrained only by restrictions set out in the CCAA itself, and the requirement that the order made be appropriate in the circumstances: see *Canada v. Canada North Group Inc.*, 2021 SCC 30, at para. 21; *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10, at para. 67.
- (b) Whether an order is appropriate is assessed in relation to the well-established remedial objectives of the CCAA, including facilitating the reorganization of a debtor company, providing for timely, efficient and impartial resolution of a debtor's insolvency, and ensuring the fair and equitable treatment of the claims against a debtor: see *Canada North*, at para. 21; *Imperial Tobacco Canada Limited*, 2025 ONSC 1358, para 205.

[11] This same jurisdiction and analytical framework can be applied to the relief now sought by Epiq from both Courts on a joint and co-ordinated basis.

[12] The First Quarterly Budget should be assessed in light of the actual experiences to date with the administration of the Compensation Plans and the expected volume of work ahead to bring the program across the finish line and to finally pay compensation to the eligible claimants. The Monitors and CCAA Plan Administrators and QCAP and their counsel have had a full year of experience reviewing the periodic reporting and accounts of Epiq and they support the approval of this First Quarterly Budget. The Courts will also have the benefit of comparisons to past budgets and variances to inform their assessments of future budgets presented for approval.

[13] Because Québec Class Counsel have been working with their own agent, Proactio, over the past twelve months to assist claimants in the preparation, compilation and completion of their claims (and paying Proactio for these services), they are in a particularly unique position to assess whether Epiq's First Quarterly Budget appears to be reasonable in the circumstances and to provide our opinion to the Courts that it is. They have strongly endorsed the Courts' approval of Epiq's First Quarterly Budget, for reasons detailed in their Aide Memoire filed in support of this motion. Without repeating all of those reasons, they have highlighted a number of complexities in the administration that were not fully appreciated at the time the Framework was prepared, and which may explain why the costs reflected in the First Quarterly Budget are higher than those contemplated by the Framework for Year 2.

[14] Having considered all the written and oral submissions presented in support of the approval of the First Quarterly Budget, the Courts find it to be reasonable and appropriate in the circumstances and it is approved.

[15] The Courts noted at the hearing that the First Quarterly Budget was filed with certain information redacted regarding the hourly rates of Epiq timekeepers and standardized task rates that Epiq considers to be confidential and commercially sensitive vis-à-vis its competitors in the marketplace. Paragraph 18 of the Amended and Restated Claims Administrator Orders provides that Epiq may seek permission from the CCAA Plan Administrators or the CCAA Court and the Superior Court of Québec to redact from the public record copies of any Subsequent Quarterly Claims Administration Costs Budget filed with the CCAA Court

and Superior Court of Québec any confidential or commercially sensitive information. Such permission has been granted.

- [16] The redacted confidential and commercially sensitive information has been reviewed by the Monitors and CCAA Plan Administrators, the court-appointed mediator, PCC representative counsel, Québec class counsel, the tobacco companies, and their respective legal counsel and no concerns have been raised about the redacted rates. The Courts take comfort in that, but nonetheless issued a direction on September 14, 2026, requesting that Epiq provide them by direct email with unredacted copies of the First Quarterly Budget.
- [17] Having now received the unredacted First Quarterly Budget, the Courts are satisfied that the identified information was properly redacted on the basis of confidentiality and commercial sensitivity. The unredacted motion record/materials need not be filed with the Courts, but if they were filed, the Courts are satisfied that they meet the *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 requirements, as modified by the reformulation of the test in *Sherman Estate v. Donovan*, 2021 SCC 25, at para 38 for sealing, and they would have been sealed. The redactions are limited in scope to confidential information about the hourly rates of Epiq timekeepers and standardized task rates so as to minimally intrude upon the public interest in the openness of our courts while protecting legitimate commercial requirements for confidentiality.
- [18] If Epiq intends to redact confidential commercially sensitive information from future budgets for which approval of the Courts is being sought, it must make it clear that permission to do so is being sought in the prayer for relief in its Notice of Motion, and it shall provide unredacted versions of those materials to the court in advance of the motion by email on a confidential basis (with the redactions replaced by highlighting for ease of reference for the Courts), and shall ensure that the Courts are provided with the appropriate evidence and analysis to be satisfied that the unredacted material could be sealed (irrespective of whether or not it will be placed in the court file under seal). If redactions are made in future more broadly, stakeholders are reminded that orders for the sealing or redaction of documents, or any order that infringes on the open court principle, need to be supported by evidence and these requests should not be glossed over.

Approval of Epiq's Activities and Conduct

- [19] The March 6, 2025 CCAA plan sanction orders (the "Sanction Orders") in respect of each of JTI-Macdonald Corp., Benson & Hedges Inc., and Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited approved the PCC Compensation Plan and the Québec Administration Plan. Since the Superior Court of Québec issued the July 21, 2025 Come in Aid Order, the CCAA Plans have had full force and effect in the Province of Québec. Paragraph 11.2 of the Québec Administration Plan provides that the CCAA Court's oversight of the Québec Administration Plan shall be "exercised in a joint and coordinated manner with the Quebec Superior Court".
- [20] These Compensation Plans are intended to govern the payment of compensation to eligible persons with specified tobacco-related diseases. As part of the Sanction Orders and approval of the Québec Administration Plan, Epiq was appointed as the claims administrator with the powers, rights and obligations as set out in the Compensation Plans. Those powers, rights and obligations include the management of the overall administration of the claims processes for both Compensation Plans, including the design, implementation, and management of the "Global Notice Plan", as well as the review and administration of claims submitted by claimants, and the disbursement of compensation to eligible claimants.
- [21] There are existing orders in both Ontario and Québec that specify the scope and timing of certain reporting to be provided by Epiq during the administration of the Compensation Plans (beyond the now required quarterly budgets), including "Weekly Reports" and "Monthly Reports" and also included a

number of provisions related to Epiq's costs. These entail periodic reporting, including detailed reporting on its costs incurred, referred to as "Weekly Actual Costs Reports" and "Monthly Actual Costs Reports", respectively, that are to set out the actual costs incurred by Epiq, including actual time spent and hourly rates applied, and expenditures made by Epiq during the relevant time period with respect to various activities that Epiq carried out in furtherance of its mandate.

[22] Since its appointment as Claims Administrator, Epiq has undertaken various activities in fulfilment of its obligation to manage the overall administration of the individual claims process. It seeks court approval of its activities and conduct as described in the Affidavit of Michael O'Connor affirmed August 31, 2026 (the "Second O'Connor Affidavit"), including:

- (a) Notice Plan Design and Implementation.
- (b) Development of Claims Administration Infrastructure.
- (c) Claims Processing.
- (d) Assisting Claimants.

[23] Epiq maintains that these activities were carried out in good faith, and were performed in accordance with Epiq's duties and responsibilities as prescribed by the Compensation Plans, the Sanction Orders, and the Claims Administrator Orders. Epiq asks that its activities and conduct (for certainty, including in each of its capacities as PCC Agent and Claims Administrator), as set out in the Second O'Connor Affidavit, be ratified and approved by the courts; provided, however, that only Epiq, with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

[24] The Sanction Orders originally contained provisions that were removed on August 27, 2025 that purported to shield Epiq from any liability as a result of its appointment or the carrying out of its duties under the Sanction Orders, save and except for gross negligence and wilful misconduct. Epiq contends that the approval of its conduct and activities now sought is not the same as the previously removed provisions because those were prospective, whereas what it seeks now is approval of work it has already done.

[25] Since the commencement of the claims administration process, Epiq has maintained regular and transparent communication with the Monitors and CCAA Plan Administrators, the court-appointed mediator, PCC representative counsel, Quebec class counsel, the tobacco companies, and their respective legal counsel to keep all parties informed regarding Epiq's work. This has included providing status updates and participating in update calls typically on a weekly basis with the CCAA Plan Administrators and the court-appointed mediator.

[26] However, that detailed reporting has not been included in the court record. The Monitors and CCAA Plan Administrators, who are appointed court officers that the court would look to for recommendations and advice, have made it clear that they have not audited or vetted Epiq's extensive activities over the past year.¹ The Monitors and CCAA Plan Administrators are not recommending that the Courts grant the requested approval of Epiq's conduct and activities. To the contrary, they oppose the granting of this aspect of the relief that Epiq seeks.

[27] QPAC and the PCC are the lone supporters of this aspect of the relief that Epiq seeks, but they have not purported to review, audit or vet all of Epiq's conduct and activities either. Their support is not based on their review of the conduct and activities *per se*, but rather purports to be based on a "principled" argument that Epiq is a court officer deserving of this protection that is sometimes afforded to court officers such as monitors and receivers, either at the end of the case when they are discharged or once they have completed some specific tasks in the course of their mandate.

¹ There is a separate procedure for the approval of Epiq's fees and accounts, which the Courts also do not review and are not being asked to approve. These are reviewed and vetted by the Monitors and Plan Administrators, QPAC, the PCC and others.

- [28] The premise of Epiq’s request (as stated in paragraph 37 of its factum on this motion) is that, while it is not a court-appointed monitor or receiver, it is, in several ways, similarly situated to such court-appointed officers. Counsel for QPAC more aggressively assert that Epiq is, in fact, a court officer. It is then suggested by the proponents of this relief that, because there are precedents for granting this protection in favour of court officers such as monitors and receivers in proceedings under the CCAA and the *Bankruptcy and Insolvency Act* (see *Target Canada Co, Re*, 2015 ONSC 7574 at paras. 1-2 and *Kingsett Mortgage Corporation v. Churchill Lands United Inc.*, 2024 ONSC 7127 at para. 45), the same policy and practical reasons for doing so in those cases for court officers should be applied in favour of Epiq.
- [29] Those cases afforded the court officers the opportunity to bring their conduct before the court for review and approval, on notice to stakeholders. The rationale is that the stakeholders will have insight into the work that was being done and be given the opportunity to raise concerns, which can be heard by the court and, if deemed appropriate, the relief can be granted as a way of allowing the court officers to move forward with some security that their past actions have been deemed proper and appropriate by the court which might afford them some additional legal protection.
- [30] Epiq is seeking this comfort and security of the court’s approval of its past actions based on a high level description of those activities in the Second O’Connor Affidavit. However, Epiq is not a court appointed officer like a monitor or a receiver, whose appointments are prescribed under the CCAA and the BIA, nor is it carrying out functions that a monitor or receiver would typically carry out, or reporting to the court as a monitor or receiver would do.
- [31] Court officers are often described as the “eyes and ears” and sometimes the nose of the court. They are directly accountable to the court and are required to report directly to the court: see 9354-9186 *Québec inc. v. Callidus Capital Corp*, 2020 SCC 10, para. 52; *Ernst & Young Inc. v. Essar Global Fund Limited*, 2017 ONCA 1014, at paras. 105-109. In Ontario, they are considered fiduciaries: see *Page (Re)*, 2002 CarswellOnt 3892, [2002] O.J. No. 4345, 118 A.C.W.S. (3d) 52, 27 C.P.C. (5th) 310, 38 C.B.R. (4th) 241, at paras. 12-18.
- [32] The fact that Epiq’s powers, rights and obligations are derived from court orders rather than a contract, and its appointment to its various roles was approved in court orders, does not transform Epiq into a court officer. It is a service provider.
- [33] It was suggested that there was a need to protect Epiq because it is a service provider but does not have a contract, but that is a non-sequitur because it has not identified any provision in a typical contract that this type of blanket approval of its conduct and activities is a substitute for. There is no “liability gap” here because of the absence of a contract, as was suggested by the proponents of this provision.
- [34] Contracting parties protect themselves through their commercial terms, including their fees and liability insurance, and Epiq has not identified any particular contractual provision or commercial protection that it has been deprived of due to the absence of a contract to cover the mandate that it is carrying out. Just as would be the case under a contract, Epiq has clearly delineated roles and responsibilities set out in court orders and has the protection of being able to say that it has carried out those duties in good faith if it is challenged.
- [35] Epiq tries to downplay the significance of what it is asking the court to do. It argues that it is not asking the Courts to review and approve all of the conduct and activities detailed in its reports and communications to the Monitors and CCAA Plan Administrators, the court-appointed mediator, PCC representative counsel, Quebec class counsel, the tobacco companies, and their respective legal counsel, but rather only that which is outlined in the Second O’Connor Affidavit.
- [36] The magnitude of what Epiq is asking the court to approve cannot be understated. The suggestion by QPAC counsel that the request is benign is exactly that, an understatement. This is not a benign request. It is an admittedly unprecedented request for the court to “approve” the conduct and activities of a claims

administrator that is clearly intended to, at least in part, protect or insulate the claims administrator from future theoretical liability to third parties (including, presumably, claimants).

[37] The Courts are not well placed to ratify and approve Epiq's conduct and activities. The Courts have not been privy to the full extent of reporting and communications, and it was not contemplated that they would be. Nor have the potential other stakeholders who might be affected by this approval been privy to such, so the Courts cannot take any comfort from the argument that the request is not opposed by any stakeholder. Even the appointed court officers that have been privy to the full reporting and communications have advised the court that they have not vetted or approved Epiq's past conduct and activities and that they are not able to do so.

[38] QPAC's counsel warned of a "chilling effect" if Epiq does not receive this comfort and security, that might lead Epiq to spend more time (at increased cost) to scrutinize claims as belt and suspenders, to protect itself. This argument implies that Epiq might otherwise not apply the level of detail, attention and scrutiny to the work that it is being extremely well paid to do. Epiq's counsel wisely did not adopt this argument and assured the Courts that it has been applying, and will continue to apply, its full diligence and attention to its work, with or without this added protection.

[39] We are not persuaded that this relief, for the Courts to approve Epiq's activities and conduct, is appropriate to grant at this time and in the circumstances of this case. We are not prepared to exercise our discretion to do so.

Orders

[40] We have today signed the orders requested by Epiq dated September 9, 2026 in all three Ontario CCAA proceedings and in the Québec Proceeding, with proposed paragraph 4 (in Ontario) and 8 (in Québec) dealing with the approval of its conduct and activities removed.



Justice Catherine Piché



Justice Jessica Kimmel

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