

Court File No. CV-19-615862-00CL
Court File No. CV-19-616077-00CL
Court File No. CV-19-616779-00CL

**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.**

Applicants

FACTUM OF THE QUEBEC CLASS ACTION PLAINTIFFS
(Re: PCC Representative Counsel's Motion for Injunctive Relief -
Returnable on March 26, 2025)

March 24, 2025

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THE COMMON SERVICE LIST

TABLE OF CONTENTS

PART I - INTRODUCTION4

PART II – BACKGROUND AND FACTS5

PART III –LAW AND ARGUMENT5

PART IV – RELIEF REQUESTED7

PART I - INTRODUCTION

1. The QCAPs are submitting the present Factum in support of the request made by PCC Representative Counsel by Motion dated March 21, 2025 (the “**PCC Motion**”) to issue mandatory injunctive relief against AIAG, LLC, carrying on business as Attorney Group, and its named incorporator, organizer and registered agent, Mr. Lyle Foster, and its named principal, Mr. Anthony Johnson (collectively, “**Attorney Group**”) including with respect to the scope and timing of the prohibition on solicitation of the Pan-Canadian Class Members and/or the *Blais* Class Members (the “**QCAPs**”).
2. As appears from the materials filed in support of the PCC Motion, Attorney Group by its conduct and actions has violated the prohibition on counsel, other than PCC Representative Counsel, of soliciting Pan-Canadian Claimants in the context of their Tobacco Claims, as is set out in section 8.4 of the Third Amended Restated CCAA Plans (the “**PCC Non-Solicitation Provision**”) that were sanctioned by this Court on March 6, 2025 (the “**Plans**”).¹
3. The comparable provision with respect to the QCAPs, set out in section 7.6 of the Plans, states:

7.6 No Solicitation of Blais Class Members

No Persons other than the Quebec Class Counsel, their agent Raymond Chabot, the Claims Administrator, or any person specifically authorized by any of the foregoing Persons or by the CCAA Court, shall solicit Blais Class Members in order to assist them with the preparation or submission of their Proofs of Claim under the Quebec Administration Plan.

4. As explained below (and as also appears from the PCC Motion and supporting materials), Attorney Group are not the first lawyers to seek to profit from the tobacco-related CCAA Proceedings by misrepresenting to potential individual claimants that they would benefit from legal assistance in the claims process, although such assistance is specifically built into the Plans and is to be provided to them on a cost-free basis.
5. In addition to the relief specifically sought with respect to the improper attempt by Attorney Group to solicit PCCs, it is evident that it is in the interests of justice and judicial efficiency to ensure that the injunctive relief now being sought in relation to the application of sections 8.4 and 7.6 of the Plans remains in effect until the completion of the claims processes that have been established for the benefit of the PCCs and *Blais* Class

¹ *Imperial Tobacco Canada Limited*, [2025 ONSC 1358](#) (“**Sanction Endorsement**”).

Members.

6. The QCAPs support the PCC Motion in its entirety but believe that it may be of assistance to the Court to provide the particular perspective of the QCAPs in the present Factum.

PART II – BACKGROUND AND FACTS

7. The background and relevant facts are well-known to this Court, most especially with respect to the role played by Quebec Class Counsel in the tobacco-related litigation over 26 years and the provisions relating to the claims administration process which are set out in detail in the now sanctioned Plans.

PART III –LAW AND ARGUMENT

8. As described in the materials in support of the PCC Motion, Attorney Group is not the first, and will likely not be the last, law firm to improperly seek to benefit financially from the claims processes that have been put in place in the Plans and which have now been sanctioned by this Honourable Court.

9. Indeed, on December 9, 2024, this Court granted interlocutory relief against Actis Law Group and its principal Andrea Grass (together, “**Actis**”) requested by the QCAPs.² Like Attorney Group, Actis sought to solicit claimants/class members, suggesting that this vulnerable group would benefit from their assistance in navigating the claims process for Tobacco Victims – a suggestion without any merit.

10. With respect to the present debate concerning Attorney Group, and whether the test for an interlocutory injunction is met, the QCAPs adopt the statement of law and argument submitted by the PCC Class Representative, this Court’s analysis set out in the Actis Judgment, as well as the reasoning in the *Moushoom*³ case.

11. Although not decided in a CCAA context, the *Moushoom* case provides a precedent for the orders sought in the present matter.

12. In that case, the Federal Court was asked to order Consumer Law Group (the former law firm of Ms. Andrea Grass, the principal of Actis Law Group) to take down

² *Imperial Tobacco Limited*, 2024 ONSC 6885 (the “**Actis Judgment**”). Note that a similar decision was rendered further to the motion made by the PCC Class Representative: *Imperial Tobacco Limited*, [2024 ONSC 6890](#).

³ *Moushoom v Canada (Attorney General)*, [2022 FC 1212](#) [*Moushoom*].

websites containing communication to the vulnerable class members in such proceeding and to cease communicating with such class members. Much like in the present case, after news of a large financial settlement broke, Consumer Law Group put up a misleading website seeking to solicit class members to join. The court explained:

[7] In the meantime, and prior to the FSA receiving Court approval, CLG, who are not class counsel and who have had no involvement in these proceedings, put information on two websites about the “settlement” and invited class members to “Join this Class Action”. Their websites offer contingency fee retainers and request that class members provide personal information - including information about “damages or symptoms experienced”.

13. In *Moushoom*, the court issued an interim and interlocutory injunction ordering that the misleading websites be removed and that no legal professionals, other than the class counsel appointed by the Court and the claims administrator, were permitted to communicate to class members concerning the proceedings without the prior approval of the Court. The Court considered this relief was necessary, in particular, in light of the fact that the official notices from class counsel had not yet been issued, and therefore “*allowing non-class legal counsel to provide information on the proposed FSA in a manner that is outside the Court’s purview poses a serious risk to the class proceedings*”.⁴

14. In the present case, and for many of the same reasons identified by the Federal Court in *Moushroom*, all of the criteria for the issuance of the injunctive relief sought in the PCC Motion are met. Moreover and significantly, the scope of the order issued by Justice McDonald in *Moushroom* extended well beyond simply addressing the conduct of Consumer Law Group, the counsel that was known at that time to be improperly soliciting class members. In particular, her order prohibited all legal professionals, other than class counsel, to publish communications relating to the subject class proceedings without the Court’s prior approval and further ordered all websites relating to the subject class proceedings to be removed unless the communications contained in such websites were approved by the Court.

15. Quebec Class Counsel also agree with PCC Representative Counsel that similar predatory attempts will likely be made in the future by other lawyers to try to take advantage of vulnerable individuals and induce them to sign up for unnecessary legal representation and to then charge such individuals for clearly unnecessary and useless legal “services”.

⁴ *Ibid*, para. 18.

16. In accordance with section 22.1 of the Quebec Administration Plan, the claims process for *Blais* Class Members will commence as at the Plan Implementation Date (Effective Time), such that any attempts by other law firms and/or purported “claims fillers” to improperly and opportunistically solicit class members contrary to the terms of the Plans would also create confusion among the class members and complicate a process that is intended to be user-friendly, simple and cost-free.

17. In order to avoid the necessity to return before this Court to address future violations of sections 7.6 and 8.4 of the Plans, it is appropriate and in the interests of judicial economy, that this Honourable Court extend the application of the injunctive relief herein sought to any persons or entities with knowledge of the Order (if granted hereunder) seeking to similarly solicit PCCs or *Blais* Class Members in connection with the Plans, the PCC Compensation Plan or the Quebec Administration Plan.

18. This Court can and should use its broad discretionary authority to render orders that are required to protect vulnerable stakeholders in the CCAA process from predatory practices which bring the profession into disrepute and in order to give effect to the Plans.

PART IV – RELIEF REQUESTED

Accordingly, the QCAPs support the request made by PCC Representative Counsel that the interlocutory injunctive relief as proposed in the draft Order in the PCC Motion record be granted.

All of which is respectfully submitted.

Monday, March 24, 2025

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FISHMAN FLANZ MELAND PAQUIN LLP

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Lawyers for the Quebec Class Action Plaintiffs

SCHEDULE “A”

LIST OF AUTHORITIES

1. *Imperial Tobacco Canada Limited*, [2025 ONSC 1358](#)
2. *Imperial Tobacco Limited*, [2024 ONSC 6885](#)
3. *Moushoom v Canada (Attorney General)*, [2022 FC 1212](#)

SCHEDULE "B"

TEXT OF STATUTES & REGULATIONS

Companies' Creditors Arrangement Act, RSC 1985 c C-36

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Courts of Justice Act, RSO 1990, c C.43

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

Terms

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

Rules of Civil Procedure, RRO 1990, Reg 194

RULE 40 INTERLOCUTORY INJUNCTION OR MANDATORY ORDER

How Obtained

40.01 An interlocutory injunction or mandatory order under section 101 or 102 of the *Courts of Justice Act* may be obtained on motion to a judge by a party to a pending or intended proceeding. R.R.O. 1990, Reg. 194, r. 40.01.

Where Motion Made without Notice

Maximum Duration

40.02 (1) An interlocutory injunction or mandatory order may be granted on motion without notice for a period not exceeding ten days. R.R.O. 1990, Reg. 194, r. 40.02 (1).

Extension

(2) Where an interlocutory injunction or mandatory order is granted on a motion without notice, a motion to extend the injunction or mandatory order may be made only on notice to every party affected by the order, unless the judge is satisfied that because a party has been evading service or because there are other exceptional circumstances, the

injunction or mandatory order ought to be extended without notice to the party. R.R.O. 1990, Reg. 194, r. 40.02 (2).

(3) An extension may be granted on a motion without notice for a further period not exceeding ten days. R.R.O. 1990, Reg. 194, r. 40.02 (3).

Labour Injunctions Excepted

(4) Subrules (1) to (3) do not apply to a motion for an injunction in a labour dispute under section 102 of the *Courts of Justice Act*. R.R.O. 1990, Reg. 194, r. 40.02 (4).

Undertaking

40.03. On a motion for an interlocutory injunction or mandatory order, the moving party shall, unless the court orders otherwise, undertake to abide by any order concerning damages that the court may make if it ultimately appears that the granting of the order has caused damage to the responding party for which the moving party ought to compensate the responding party. R.R.O. 1990, Reg. 194, r. 40.03.

Code of Professional Conduct of Lawyers, CQLR c B-1, r 3.1

DIVISION III

DUTIES TO A PARTY OR THE PARTY'S LAWYER

119. A lawyer must not act in such a manner as to mislead a party or the party's lawyer, or in such a manner as to abuse their good faith.

120. A lawyer must not communicate in a matter with a person whom he knows to be represented by a lawyer, except in the presence or with the consent of that lawyer or unless he is authorized to do so by law. In the event of an unsolicited or accidental communication, the lawyer must promptly inform the person's lawyer of the circumstances and content of the communication.

Subject to the first paragraph, a lawyer may seek information from any potential witness, but he must disclose the interests of the person for whom he is acting.

129. A lawyer must contribute to preserving the honour, dignity and reputation of his profession and to maintaining the public's confidence in the profession.

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