

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: QCAP Motion for a Signing Authorization Order – Returnable on August 15,
2025)

August 13, 2025

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Létourneau (the “**Quebec Class Action
Plaintiffs**” or “**QCAPs**”)

TO: THE COMMON SERVICE LIST

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PART I - INTRODUCTION

1. By way of their Notice of Motion dated August 8, 2025, the QCAPs seek this Court's authorization for Quebec Class Counsel (as well as other Claimant Class Counsel) to sign all required plan implementation documentation as they consider advisable to give effect to the CCAA Plans.¹

PART II - BACKGROUND AND FACTS

2. After five and a half years of complex mediation, and further to the directions of the CCAA Court issued on October 5, 2023, the Court-Appointed Mediator and Monitors filed CCAA Plans in respect of each of the Tobacco Companies to effect a global settlement of all Affected Claims against the Tobacco Companies.²

3. On October 31, 2024, the CCAA Court issued Meeting Orders that accepted the CCAA Plans for filing and ordered that the Meetings be held on December 12, 2024 to permit the Affected Creditors to vote on the CCAA Plans.³

4. The Meeting Orders appointed PCC Representative Counsel, Quebec Class Counsel, *Knight* Class Counsel and Counsel for the Tobacco-Producers (collectively, the "**Claimant Class Counsel**") to act as proxy and to vote the Voting Claims of their respective Claimant groups as follows:⁴

*21. **THIS COURT ORDERS** that PCC Representative Counsel, without the need to provide any Proxy or any other document to affect same, is hereby appointed as proxy*

¹ Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Affidavit of André Lespérance dated August 8, 2025 (the "**Lespérance Affidavit**").

² Lespérance Affidavit at [para. 4.](#)

³ Lespérance Affidavit at [para. 5-6](#) and [Exhibit A](#) thereto.

⁴ Lespérance Affidavit at [para. 7.](#)

for all Pan-Canadian Claimants and is hereby authorized to vote the Voting Claims of all Pan-Canadian Claimants on their behalf at the Meeting.

22. THIS COURT ORDERS that Quebec Class Counsel, without the need to provide any Proxy or any other document to affect same, is hereby appointed as proxy for all Quebec Class Action Plaintiffs and is hereby authorized to vote the Voting Claims of all Quebec Class Action Plaintiffs on their behalf at the Meeting.

23. THIS COURT ORDERS that Counsel for the Tobacco Producers, without the need to provide any Proxy or any other document to affect same, is hereby appointed as proxy for all Tobacco Producers and is authorized to vote the Voting Claims of all Tobacco Producers on their behalf at the Meeting.

24. THIS COURT ORDERS that Knight Class Counsel, without the need to provide any Proxy or any other document to affect same, is hereby appointed as proxy for all Knight Class Action Plaintiffs and is authorized to vote the Voting Claims of all the Knight Class Action Plaintiffs on their behalf at the Meeting.

5. At the Meetings held on December 12, 2024, the Affected Creditors voted unanimously to approve the CCAA Plans, with each Claimant Class Counsel voting on behalf of the Claimant group they represent in accordance with the Meeting Orders.⁵

6. On March 6, 2025, this Honourable Court issued Sanction Orders approving the CCAA Plans (as amended on February 27, 2025).⁶

7. The Plan Implementation Date is scheduled to occur on August 29, 2025.⁷

8. The CCAA Plans provide in sections 18.1 and 19.2 that the Sanction Order shall:⁸

⁵ Lespérance Affidavit at [para. 8](#).

⁶ Lespérance Affidavit at [para. 9](#).

⁷ Lespérance Affidavit at [para. 10](#).

⁸ Specifically, sections 18.1.12 (b)(i) and 19.2 (p) in the JTIM CCAA Plan and sections 18.1.11 (b)(i) and 19.2 (q) in the Imperial and RBH CCAA Plans. Lespérance Affidavit at paras. [11-12](#) and [Exhibit B](#) thereto.

Authorize Quebec Class Counsel, PCC Representative Counsel, Knight Class Counsel and Counsel for the Tobacco Producers to execute and deliver the Claimant Contractual Release on behalf of the Quebec Class Action Plaintiffs, the Pan-Canadian Claimants, the Knight Class Action Plaintiffs, and the Tobacco Producers and Ontario Flue-Cured Tobacco Growers' Marketing Board, respectively;

9. However, by inadvertence, the Sanction Orders did not contain such authorization to execute and deliver the Claimant Contractual Releases.⁹

10. In addition to the Claimant Contractual Releases, Claimant Class Counsel shall be requested to sign and deliver other documents on behalf of their respective Claimant groups to comply with various conditions precedent to plan implementation including, without limitation, Plan Implementation Certificates, Collateral Agency Agreements and a Flow of Funds Agreement.¹⁰

11. The above-mentioned additional documents were not specifically referenced in the CCAA Plans, but the Claimants are being requested to sign them in order to facilitate plan implementation.

PART III - ISSUES, LAW AND ARGUMENT

A. Broad discretion of the CCAA Court

12. Section 11 CCAA sets out the Court's broad discretionary authority:

*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***

⁹ Lespérance Affidavit at paras. [13-14](#) and [Exhibit C](#) thereto.

¹⁰ As such documents are defined in the Lespérance Affidavit at [para. 15](#).

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.

13. Section 11 CCAA grants this Court the jurisdiction to make all orders necessary to implement the CCAA Plans.¹¹

14. Unless expressly restricted in the CCAA, the vast authority and discretion conferred by section 11 is not limited by the availability of more specific orders;¹² an order must simply be appropriate in the circumstances and the applicant must have acted in good faith and with due diligence.¹³

15. Appropriateness in this context is assessed in view of the remedial objectives of the CCAA, including the timely and efficient resolution of a debtor's insolvency and the fair and equitable treatment of claims.¹⁴

B. Appropriateness of granting the Motion

16. The signing authorization order sought by the QCAPs is appropriate in that:

- a. it is a necessary aspect of the implementation of the CCAA Plans, which were already approved unanimously by the Affected Creditors, and by this Court;
- b. the approved CCAA Plans already provide for Claimant Class Counsel to be authorized by this Court to execute and deliver the Claimant Contractual

¹¹ *Plus Products Inc. (Re)*, [2022 BCSC 206](#) at para. [14](#). See also *Arrangement relatif à FormerXBC Inc. (Xebec Adsorption Inc.)*, [2023 QCCS 4972](#) at para. [21](#), in which the Superior Court of Quebec (Commercial Division) ordered that the debtors and monitor “...are authorized and directed to take all steps and actions necessary or appropriate to implement the Plans...”.

¹² *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#) at para. [70](#).

¹³ *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](#) [*Callidus*].

¹⁴ *Callidus*, *ibid.* at para. [40](#).

Releases, but such authorization was not included in the Sanction Orders by inadvertence;

- c. As appears from the Meeting Orders, Quebec Class Counsel (as well as the other Claimant Class Counsel) were previously authorized to act as proxy for their respective Claimant groups and to vote their Voting Claims;
- d. considering the many thousands of individuals entitled to receive compensation, the requested authorization to sign plan implementation documents giving effect to the approved CCAA Plans is fully consistent with the aforesaid proxy authorization previously granted and clearly in the interests of those individuals;
- e. the requested authorization is proportional, practical, efficient and necessary for the timely and efficient resolution of a debtor's insolvency and the fair and equitable treatment of claims, which is consistent with the remedial objectives of the CCAA; and
- f. no party would be prejudiced by the relief sought.

17. Out of an abundance of caution, Quebec Class Counsel are thus seeking this Court's authorization to execute and deliver any and all required plan implementation documentation as they consider advisable. It is respectfully proposed that this Court's authorization be extended to the other Claimant Class Counsel in order to avoid the necessity of multiple motions seeking the same relief.

18. PCC Representative Counsel, *Knight* Class Counsel and Counsel for the Tobacco Producers are all in agreement with the requested relief.¹⁵

PART IV - RELIEF REQUESTED

19. Accordingly, the QCAPs seek a signing authorization order substantially in the form included at Tab 3 of the QCAP Motion Record.

The undersigned lawyers certify that they are satisfied as to the authenticity of every authority cited in this factum, the content of which is respectfully submitted.

Wednesday, August 13, 2025


FISHMAN FLANZ MELAND PAQUIN LLP


TRUDEL JOHNSTON & LESPÉRANCE

Lawyers for the Quebec Class Action Plaintiffs

¹⁵ Lespérance Affidavit at [para. 18](#).

SCHEDULE “A”
LIST OF AUTHORITIES

1. *Plus Products Inc. (Re)*, [2022 BCSC 206](#)
2. *Arrangement relatif à FormerXBC Inc. (Xebec Adsorption Inc.)*, [2023 QCCS 4972](#)
3. *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#)
4. *Canada v. Canada North Group Inc.*, [2021 SCC 30](#)
5. *9354-9186 Québec inc. v. Callidus Capital Corp.*, [2020 SCC 10](#)

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.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36, AS AMENDED
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Proceeding commenced at Toronto

**Factum of the Quebec Class Action Plaintiffs
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