CITATION: Imperial Tobacco Company Limited, 2025 ONSC 4497
COURT FILE NO.: CV-19-615862-00CL; CV-19-616077-00CL; CV-19-616779-00CL
DATE: 2025-08-25

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.

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.

BEFORE: Chief Justice Geoffrey B. Morawetz

COUNSEL: *Deborah Glendinning, Marleigh Dick and Craig Lockwood*, for Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited

Linda Plumpton, Jeremy Opolsky, Scott Bomhof, Adam Slavens, and Alec Angle, for JT Canada LLC Inc. and PricewaterhouseCoopers Inc., in its capacity as Receiver of JTI-Macdonald TM Corp.

David Ullmann, for La Nordique Compagnie D'Assurance du Canada

Mark E. Meland, Avram Fishman, Tina Silverstein, André Lespérance, Philippe Trudel, Bruce Johnston, and Harvey Chaiton, for Conseil québécois sur le tabac et la santé, Jean-Yves Blais and Cécilia Létourneau (Québec Class Action Plaintiffs)

Brett Harrison and Guneev Bhinder, for the Province of Québec

Patrick Flaherty and Claire Wortsman, for R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International Inc.

Nicholas Kluge and Clifton Prophet, for Philip Morris International Inc.

Natasha MacParland, Chanakya Sethi and Anisha Visvanatha, for FTI Consulting Canada Inc., in its capacity as court-appointed Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited

Jacqueline Wall, for His Majesty the King, in Right of Ontario

R. Shayne Kukulowicz, for Ernst & Young Inc., in its capacity as court-appointed Monitor of Rothmans, Benson & Hedges Inc.

Matthew Gottlieb, for the Court-appointed Mediator

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

David Byers and Maria Konyukhova, for British American Tobacco p.l.c., B.A.T. Industries, p.l.c. and British American Tobacco (Investments) Limited

James Bunting and Sam Cotton, for Heart and Stroke Foundation

Michael Feder, K.C., James Gage, Paul Steep, Heather Meredith, Deborah Templer, Trevor Courtis, and Meena Alnajar, for Rothmans, Benson & Hedges Inc.

André I.G. Michael, Preet Gill, Jesse Mighton, Mike Eizenga, Shawn Kirkman, Jeffrey Leon, Michael Peerless, for the Consortium of Provinces and Territories

Douglas Lennox and David Klein, for Representative Plaintiff, Kenneth Knight, in the Certified British Columbia Class Action

Raymond Wagner, K.C., Kate Boyle and Madeline Carter, Representative Counsel for the Pan-Canadian Claimants

Robert Thornton, Leanne Williams, Scott McGrath, Mitch Grossell and Rushi Chakrabarti, for JTI-Macdonald Corp.

Robert Cunningham and Vern DaRe, for the Canadian Cancer Society

William Sasso, for The Ontario Flue-Cured Tobacco Growers' Marketing Board

Ari Kaplan, Representative Counsel for Former Genstar U.S. Retiree Group Committee

Edward Park, for Canada Revenue Agency

Stacy Petriuk, K.C. and Laura Comfort, for the Province of Alberta

Dilina Lallani, for Grand River Enterprises Six Nations Ltd.

HEARD: February 11, and March 7, 2025

AMENDED ENDORSEMENT

A. Introduction

[1] This endorsement concerns three motions to approve the payment of class counsel fees. These motions occur in the context of insolvency proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), involving JTI-Macdonald Corp. ("JTIM"), Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited ("Imperial"), and Rothmans, Benson & Hedges Inc. ("RBH") (collectively, the "Tobacco Companies").

[2] The CCAA proceedings involve claims pursued in several class action proceedings. The relevant classes are:

a. **The Québec Class Action Plaintiffs ("QCAPs"):** members of the *Blais* and *Létourneau* classes. The certified class definition in the *Létourneau* Class Action includes Québec residents who, as of 1998, were addicted to nicotine from September 30, 1994 onward and continued to be daily smokers of the Tobacco Companies' cigarettes as of February 21, 2005 (or their earlier death). The certified class definition in the *Blais* Class Action includes Québec residents who, prior to November 20, 1998, had smoked a minimum of 87,600 cigarettes and, prior to March 12, 2012, were diagnosed with Lung Cancer, Throat Cancer or Emphysema/COPD (GOLD Grade III or IV);

b. **Pan-Canadian Claimants ("PCCs"):** All individuals, excluding the *Blais* Class Members and *Létourneau* Class Members, who have asserted or may be entitled to assert a PCC Claim against the Tobacco Companies. A PCC Claim is any Claim of any Pan-Canadian Claimant to recover damages in respect of the development, design, manufacture, production, marketing, advertising, distribution, purchase or sale of Tobacco Products, including any representations or omissions in respect thereof, the historical or ongoing use of or exposure (whether directly or indirectly) to Tobacco Products or their emissions and the development of any disease or condition as a result thereof;

c. ***Knight* Class Action Plaintiffs:** Class Action Plaintiffs who pursued a certified class action against only Imperial on behalf of persons who purchased Imperial's light or mild cigarettes in British Columbia for personal, family or household use between May 9, 1997 and July 31, 2007; and

d. **Tobacco Producers:** The Ontario Flue-Cured Tobacco Growers' Marketing Board and certain individual tobacco growers who pursued three uncertified class actions commenced against each of the Tobacco Companies who sold their tobacco through the Ontario Flue-Cured Tobacco Growers' Marketing Board pursuant to the annual Heads of Agreement made with Imperial, RBH and JTIM from January 1, 1986, to December 31, 1996.

[3] Class counsel for the QCAPs, the *Knight* Class Action Plaintiffs and the Tobacco Producers each move for approval of their fees. Counsel for the PCCs are compensated by the Tobacco Companies on a fee-for-service basis. As a result, no court approval is sought or required in relation to PCC Counsel's compensation.

B. Procedural History of the Québec Proceedings

[4] On February 21, 2005, the Québec Superior Court authorized the *Létourneau* and *Blais* class proceedings: *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2005 CanLII 4070 (Qc. C.S.).

[5] On June 9, 2015, the Québec Superior Court ruled in favour of the QCAPs. Riordan J.S.C. ordered that the Tobacco Companies pay $100,000 to the *Blais* class members who developed the covered forms of cancer and $30,000 to those who developed emphysema. These amounts were reduced if the class member became addicted to nicotine after January 1, 1980, when the public became aware that tobacco caused these diseases. The *Létourneau* class members were awarded $131,000,000 in punitive damages. Additionally, $30,000 of punitive damages were awarded against each of the Tobacco Companies.

[6] The Tobacco Companies appealed the decision of the Québec Superior Court. On March 1, 2019, the Québec Court of Appeal substantially upheld the trial decision: *Imperial Tobacco Canada ltée c. Conseil québécois sur le tabac et la santé*, 2019 QCCA 358, 55 C.C.L.T. (4th) 1.

[7] Within three weeks of the Court of Appeal's decision, all three Tobacco Companies filed for insolvency protection in this court under the CCAA. This commenced a five-and-a-half-year mediation process which led to a set of functionally identical plans of arrangement or compromise for each of the Tobacco Companies (the "CCAA Plans"). The CCAA Plans provide that the Tobacco Companies are to contribute a total of $32,500,000,000 in settlement of creditors' claims.

[8] On January 15, 2025, the Monitors for each of the Tobacco Companies brought motions to sanction the CCAA Plans. Hearings were conducted on January 29-31, 2025, and an additional hearing was held regarding proposed amendments to the CCAA Plans on March 3, 2025. On March 6, 2025, the CCAA Plans relating to each of the Tobacco Companies were sanctioned with reasons reported at 2025 ONSC 1358. Implementation of the CCAA Plans is pending.

[9] On January 29, 2025, I appointed The Honourable André Prévost, a retired Justice of the Québec Superior Court, as *amicus curiae* to provide (i) "a purely legal and academic description of the applicable test under Québec law to determine the appropriateness of the QCAP counsel fees"; and (ii) "some sort of position with respect to the requested fees of all counsel based on that test."

[10] Hearings on the counsel fee motions were held on February 11, 2025, and March 7, 2025. Mr. Prévost filed a factum and made oral submissions. He fulfilled his mandate. I found the contribution of The Honourable André Prévost to be most helpful and I accept the entirety of his

submissions.

[11] The release of this endorsement is timed to coincide with the implementation of the CCAA Plans, which is scheduled to occur later this week.

C. QCAP Counsel Fees

[12] On October 30, 1998, the Conseil québécois sur le tabac et la santé retained Lauzon Bélanger, a predecessor to Trudel Johnson & Lespérance, to pursue a class action claim against the Tobacco Companies. The retainer agreement provided for a 20% contingency fee on amounts collected or benefits realized from the litigation. On March 16, 2017, that retainer agreement was amended to allow for up to an additional 2% of amounts recovered to be paid to counsel providing bankruptcy and insolvency services.

[13] Counsel for the QCAPs seek approval for their fees under Art. 593 of the *Code of Civil Procedure*, C.Q.L.R., c. C-25.01.

[14] QCAP Counsel ask for $901,177,915 in class counsel fees, representing 22% of the $4.119 billion allocated to the QCAPs under the CCAA Plans. They state that over the 26 years of their retainer, counsel have expended over 203,849 hours on the file. They anticipate devoting another 8,000 hours on the matter before the CCAA Plans are fully implemented. Based on this total of 211,849 hours, QCAP Counsel estimate a straight-line billing amount of $214,653,500.

[15] Included in the requested compensation is $46,598,926 for litigation and other costs. Among other things, this includes fees to be paid to Raymond Chabot, which will support QCAPs preparation and submission of their claims without any additional costs to the claimants.

D. *Knight* Class Counsel Fees

[16] The *Knight* action was filed in the British Columbia Supreme Court on May 8, 2003. Mr. Knight sought damages against Imperial on the basis that it had misled customers by advertising "light" and "mild" cigarettes as healthier smoking products. He also sought an injunction requiring tobacco companies to refrain from using the "light" and "mild" descriptors in the marketplace.

[17] Mr. Knight entered into a retainer agreement with Klein Lawyers, who served as class counsel. The agreement provided for a 33 1/3% contingency fee plus taxes, disbursements and interest on the disbursements.

[18] The *Knight* class action was certified on February 8, 2005: *Knight v. Imperial Tobacco Canada Limited*, 2005 BCSC 172, 250 D.L.R. (4th) 347. Mr. Knight and the Government of Canada, as a third-party defendant, each appealed the certification decision. The British Columbia Court of Appeal altered the common issues and the class period but otherwise confirmed the decision below: *Knight v. Imperial Tobacco Canada Ltd.*, 2006 BCCA 235, 267 D.L.R. (4th) 579.

[19] *Knight* Class Counsel request that the court approve its fees as required by s. 38 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50. They seek $5 million plus sales tax for legal fees.

This corresponds to 33 1/3% of the $15 million recovery for the *Knight* class. They also request $1,062,746.62 for disbursements.

[20] *Knight* Class Counsel also request authorization to pay a $10,000 honorarium to Mr. Knight for his services as representative plaintiff.

E. Tobacco Producers' Class Counsel Fees

[21] The Tobacco Board was the exclusive supplier of Ontario flue-cured tobacco, pursuant to supply management regulations. It administered auctions and controlled the production and marketing of Ontario-grown tobacco.

[22] Pursuant to its standard-form "Heads of Agreement", the Tobacco Board sold tobacco to the Tobacco Companies for products manufactured in Canada. The Heads of Agreement set one price for tobacco used in products sold within Canada and a lower price for tobacco used in products exported to foreign markets.

[23] On July 31, 2008, RBH and Imperial pleaded guilty to a charge that they aided the sale and possession of tobacco manufactured in Canada which was not packaged and stamped according to the *Excise Act*, R.S.C. 1985, c. E-14. JTIM pleaded guilty to similar charges on April 13, 2010.

[24] In light of the Tobacco Companies' guilty pleas, several Ontario tobacco producers allege that the Tobacco Companies wrongfully avoided paying the higher prices for tobacco to be used in products sold in Canada. The Tobacco Board commenced class proceedings for breach of contract against RBH on November 5, 2009, Imperial on December 2, 2009, and JTIM on April 23, 2010.

[25] On February 11, 2009, the Tobacco Board retained Sutts Strosberg LLP, a predecessor firm to Strosberg Wingfield Sasso LLP providing for a 25% contingency fee on all amounts recovered in the claim. Sutts Strosberg also entered into retainer agreements with individual Tobacco Producers on similar terms.

[26] Counsel for the Tobacco Producers now seek approval under s. 32(2) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

[27] They ask for 25% of the $15 million recovered on behalf of the class. This amounts to $3,750,000, less $141,960.98 previously recovered for costs and $831,018.75 previously paid by the Tobacco Board. They also seek $249.19 for outstanding disbursements and $361,045.03 in sales tax. After these adjustments, counsel ask for $3,138,314.49 in total.

F. Putting the Fee Requests into Context

[28] The QCAPs Counsel request fees in the amount of approximately $900 million. The Knight Class Counsel request fees in the amount of $5 million. The Tobacco Producers Counsel request fees in the amount of $3.75 million. This endorsement focuses on the QCAPs Counsel fee requests.

The fee requests of the Knight Class Counsel and the Tobacco Producers Counsel are, in comparison, *de minimus*.

[29] This endorsement should be read in the context that this is a unique case and the fee request of QCAPs Counsel is unlikely to ever be repeated. Consequently, this endorsement should not be taken as having any precedential value. It is unique to the circumstances of these CCAA proceedings.

G. Submissions

(i) *Amicus*

[30] As noted above, I accept the submissions of Mr. Prévost . It is helpful to set out some of his most relevant submissions.

> 19. As we understand it to also be the case in other Canadian provinces, legal fees are, in Québec, subject to court approval or determination in the context of class actions, with the court being tasked with safeguarding class members' interests. The relevant legislative provision is Article 593 of the *Code of Civil Procedure*, CQLR c. C-25.01 ("**CCP**"):
>
> > ***593.*** *The court may award the representative plaintiff an indemnity for disbursements and an amount to cover legal costs and the lawyer's professional fee. Both are payable out of the amount recovered collectively or before payment of individual claims.*
> >
> > ***In the interests of the class members, the court assesses whether the fee charged by the representative plaintiff's lawyer is reasonable; if the fee is not reasonable, the court may determine it.***
> >
> > *Regardless of whether the Class Action Assistance Fund provided assistance to the representative plaintiff, the court hears the Fund before ruling on the legal costs and the fee. The court considers whether or not the Fund guaranteed payment of all or any portion of the legal costs or the fee.*
> >
> > *[Emphasis added by Mr. Prévost]*
>
> 20. The leading case on the matter is that of *A.B. v Clercs de Saint-Viateur du Canada,*[9] which establishes the guidelines to be applied in undertaking an assessment pursuant to Article 593 CCP. As noted by the Quebec Court of Appeal, the reasonableness of the fees must be evaluated for each claim, and [t]here is no magic formula that will guarantee in every situation that the fee will ultimately be reasonable.[10]

(Footnote 9: 2023 QCCA 527 [A.B.].)

(Footnote 10: *Ibid* at para. 58.)

...

21. When seized of a motion for approval of class counsel fees, a Québec judge must "ensure that the professional fees claimed are *actually* fair and reasonable", and if they are not, they must determine the fee.[11]

    (Footnote 11: *Art* 593 CCP; *A.B., supra* note 9 at paras. 50-51.)

22. While fee agreements enjoy a presumption of validity, courts in Québec are not bound by their terms.[12] A Québec court may thus set a fee agreement aside if applying it would not be fair and reasonable for the class members in the context of the settlement or judgment at hand.[13] As indicated by Schrager, J.A.:

    [51] [...] The judge has a complex task because he or she must [translation] "find the ideal equilibrium in the remuneration by giving the lawyers the necessary and sufficient amount to encourage them to take on the next case, while bearing in mind that the class members must be the first to benefit from the amounts paid by the defendants".[14]

    (Footnote 12: *A.B. supra* note 9 at para 51, citing *Option Consommateurs c Banque Amex du Canada,* 2018 QCCA 305 at para 67 [*AMEX QCCA judgment*].)
    (Footnote 13: *Pellemans c Lacroix*, 2011 QCCS 1345 at para 50 [*Pellemans*]; *Amex QCCA judgment supra* note 12 at para 66; *Girard c Videotron*, 2019 QCCS 2412 at para 30 [*Girard*], leave to appeal dismissed at 2019 QCCA 1531 and 2019 CanLII 11805 (SCC); *A.B. supra* note 9 at para 51; Yves Lauzon & Anne-Julie Asselin, "Article 593" in Luc Chamberland (ed), *Le Grand Collectif – Code de procédure civile: Commentaires et annotations, Volume 2 (Articles 351 à 836)*, 9th ed (Éditions Yvon Blais : 2024; EYB2024GCO605) at 4 [Lauzon & Asselin] (**Tab 1**).)

23. If the fees resulting from a fee agreement are found to be reasonable in the particular circumstances of the case, a Québec court will not interfere[15], notably to avoid "provoking a practice among lawyers of asking for more, knowing that the agreed amount will be reduced".[16]

    (Footnote 15: *Pellemans supra* note 13 at para 50, citing *Association de protection des épargnants et investisseurs du Québec (APEIQ) c Corporation Nortel Networks*, 2007 QCCS 266.)

(Footnote 16: *Trudelle v Ticketmaster Canada*, 2024 QCCS 1007 at para 75 [*Trudelle*].)

24. In assessing the fairness and reasonableness of the fees for which approval is being sought, the court is guided by Section 102 of the *Code of Professional Conduct of Lawyers*,[17] which provides a non-exhaustive list of factors to take into account:

> ***102.*** *The fees are fair and reasonable if they are warranted by the circumstances and proportionate to the professional services rendered. In determining his fees, the lawyer must in particular take the following factors into account:*
>
> *(1) experience;*
>
> *(2) the time and effort required and devoted to the matter;*
>
> *(3) the difficulty of the matter;*
>
> *(4) the importance of the matter to the client;*
>
> *(5) the responsibility assumed;*
>
> *(6) the performance of unusual professional services or professional services requiring special skills or exceptional speed;*
>
> *(7) the result obtained;*
>
> *(8) the fees prescribed by statute or regulation; and*
>
> *(9) the disbursements, fees, commissions, rebates, costs or other benefits that are or will be paid by a third party with respect to the mandate the client gave him.*

(Footnote 17: CQLR c B-1, r 3.1. See *Trudelle* supra note 16 at para 52; *Option Consommateurs c Banque Amex du Canada*, 2017 QCCS 200 at para 83 [*Amex QCCS judgment*]; *Amex QCCA judgment supra* note 12 at paras 64-66.)

25. The risk assumed and the result obtained should normally take precedence over the time devoted to the case, bearing in mind that the weight to be given to each factor may vary from case to case, depending on the circumstances.[18]

(Footnote 18: *A.B. supra* note 9 at para 65; *Pellemans supra* note 13 at para 76; *Trudelle supra* note 16 at para 74.)

26. In assessing reasonableness, factors (3) through (6) above are to be evaluated in light of the circumstances that existed at the onset of the case, or at the time of the execution of the fee agreement, since it is at that time that the parties evaluated the risks that would be assumed by counsel.[19]

(Footnote 19: *Pellemans supra* note 13 at para 52. See also *A.B. supra* note 9 at para 54; *Trudelle supra* note 16 at para 74.)

27. As stated above, a Québec court must strike a balance between incentivizing lawyers to undertake class actions and ensuring that class members are the first beneficiaries of the amounts paid by defendants.[20]

(Footnote 20: *A.B. supra* note 9 at para 51; Pierre-Claude Lafond, "Sur les honoraires professionnels," in *Libres propos sur la pratique de l'action collective* (Éditions Yvon Blais : 2020; EYB2020LPP28) at 4 [Lafond] (**Tab 2**).)

28. Québec courts must moreover ensure that the fee agreement is not susceptible of giving the legal profession a "profit-seeking character",[21] a notion found at Section 7 of the *Code of Professional Conduct of Lawyers*.

(Footnote 21: *A.B. supra* note 9 at para 55; Lauzon & Asselin *supra* note 13 at 5; *Amex QCCS judgment supra* note 17 at para 110.
See also *Code of Professional Conduct of Lawyers supra* note 17, Section 7 ("*A lawyer must avoid all methods and attitudes likely to give a profit-seeking character to his profession, namely, greedily seeking a profit or abusing his status as a lawyer in order to enrich himself.*").)

29. In addition to the factors outlined in Section 102 of the *Code of Professional Conduct of Lawyers*, Québec courts also consider the well-known objectives class actions aim to achieve as a procedural vehicle, namely, the benefits of judicial economy, access to justice and deterrence of misconduct.[22] Fulfilment of these objectives could justify higher fees.

(Footnote 22: Jean-Philippe Groleau & Guillame Charlebois, "Les honoraires en demande en matière d'actions collectives: comment éviter de jouer à l'apprenti-sorcier en vue de moduler le comportement des avocats," in *Volume 455 – Colloque national sur l'action collective: développements récents au Québec, au Canada et aux Étas-Unis* (2019),

at 184 [Groleau & Charlebois] (**Tab 3**); *Western Canadian Shopping Centres Inc. v Dutton*, 2001 SCC 46 at paras 27-29.)

30. Some authors have indeed opined that higher incentive premiums are warranted in cases that best realize the objectives of class actions. This would include instances in which a class action is undertaken against an entire industry that has engaged in harmful conduct causing real societal harm, as opposed to a class action undertaken against a defendant purely based on a technical violation of the law.[23]

    (Footnote 23: Groleau & Charlebois *supra* note 22 at 185.)

31. Class action fee agreements generally provide that fees will be calculated as a percentage of the amounts recovered through settlement or judgment and, in Québec, percentages ranging from 15% to 33% are often used and considered reasonable by the courts, with the most common range being 20 to 25%.[24]

    (Footnote 24: Lafond *supra* note 20 at 2; *Pellemans supra* note 13 at paras 53, 57; *Marcotte c Banque de Montréal*, 2015 QCCS 1915 at para 6 [*Marcotte*]; *Amex QCCS judgment supra* note 17 at paras 88- 89; *Girard supra* note 13 at paras 28-29; *Trudelle supra* note 16 at para 79.)

32. Legislation in Québec does not provide for a cap on fees, nor have the Québec courts established one.[25]

    (Footnote 25: Groleau & Charlebois *supra* note 22 at 176.)

33. The lodestar method, or multiplier method, which involves calculating the multiplier obtained by dividing the fees sought by the value of the hours worked, while taking into account a risk premium, is applied with caution in Québec, and is generally deemed useful mostly as a means of controlling the reasonableness of the professional fees in the context of class actions.[26]

    (Footnote 26: *Pellemans supra* note 13 at paras 64, 121; Groleau & Charlebois *supra* note 22 at 186; Yves Lauzon and Bruce W. Johnston, "Les honoraires, les frais et l'indemnité au representant," in *Traité pratique de l'action collective* (Éditions Yvon Blais, 2021) at 5 (**Tab 4**); *A.B. supra* note 9 at paras 59, 62.)

[31] *Amicus* disagrees with elements of QCAP Counsel's submissions. He submits that Québec law likely should follow the approach in other provinces to set aside the presumption in favour of the retainer agreement, and instead proceed on a case-by-case analysis to determine if a fee is fair and reasonable.

[32] Moreover, *Amicus* states that there is no principled reason to draw a distinction between mega-fund cases that settle before trial and those that are fully litigated for the purposes of class counsel fees. Instead, that consideration is subsumed in other factors like the time dedicated to the case and the risk assumed by counsel. Regardless, *Amicus* notes that this case was ultimately resolved through a Plan of Compromise under the CCAA, so it is ultimately the result of a settlement.

[33] *Amicus* submits that it would be helpful in this case to conduct a "Lodestar" analysis as a "cross-check" for the reasonableness of the fees sought by QCAP Counsel. Under this approach to assessing counsel fees, the starting point is the amount of work class counsel performed with respect to the matter. Counsel will demonstrate the number of hours expended on the case by counsel and what they would have billed if they had been acting under an ordinary retainer. This amount that would have been billed is the "Lodestar". Next, counsel will divide the compensation sought by the Lodestar. The result indicates what multiple of the Lodestar class counsel seeks as compensation: *Fresco v. Canadian Imperial Bank of Commerce*, 2023 ONSC 3335, at paras. 134-37, aff'd 2024 ONCA 628.

[34] The multiplier factor represents a premium flowing to class counsel for taking on the risk associated with pursuing the retainer. A larger multiplier should correspond to a higher degree of risk shouldered by the law firm. The Ontario courts have stated that class counsel may be compensated at a rate of up to 4 times the Lodestar amount in the "most deserving of cases": *Gagne v. Silcorp Ltd.* (1998), 41 O.R. (3d) 417 (C.A.), at para. 26.

[35] After subtracting disbursements from the fees sought, the multiplier in this case would be 3.981 ($854,578,989 ÷ $214,653,500).

[36] *Amicus* states that, in Quebec cases, counsel have received fees representing a multiplier ranging from less than one up to seven.

(ii) Québec

[37] Québec filed its factum prior to the appointment of Mr. Prévost as *Amicus*. The purpose of its factum was to provide assistance to the Court. Québec's factum emphasizes three points. First, Québec's interest is to maximize recovery for the victims, and counsel fees, by definition, operate to reduce class compensation. Second, Québec has an interest in the undistributed funds. Third, there is a lack of detail to support the hours worked, the hourly rate and the disbursements claimed.

[38] Québec argues that QCAP Counsel have provided inadequate evidence to support its alleged Lodestar amount of $214,653,500. It also argues that Counsel have not sufficiently proven the $46,598,926 of disbursements that they claim. It observes that QCAP Counsel's submissions fail to allocate the hours worked among Counsel's various firms. Further, the hourly rates assigned to the lawyers lacked adequate supporting evidence.

[39] Thus, Québec submits that this Court has inadequate information to determine whether the fees sought are fair and reasonable.

[40] Québec acknowledges that QCAP Counsel achieved considerable success on behalf of the QCAPs. However, it submits that the amount sought by QCAP Counsel in this case would greatly reduce the amount of funds available to be distributed to claimants. Further, Québec argues that the amounts sought by class counsel are out of proportion with the amount class members expect to recover.

(iii) QCAP Counsel

[41] QCAP Counsel submit that they assumed great risk in advancing the claims in this case. Success was by no means assured. Tobacco companies had not previously been held liable for the harms caused by their products. Establishing liability in this case required advancing several novel legal arguments. Indeed, Québec's public fund for supporting class action litigation refused to provide financial assistance in 2001, because it assessed the chances of success as too low.

[42] Moreover, the tobacco industry had developed a reputation for being highly litigious, and succeeding in any claim against the Tobacco Companies would require considerable time and expense.

[43] QCAP Counsel further submit that, even after succeeding at trial and then on appeal, there was still considerable risk that they would never be paid. The Tobacco Companies filed for insolvency protection soon after the Court of Appeal upheld the trial decision. Thus, QCAP Counsel submits, there was considerable risk relating to every stage of these proceedings over the past 26 years.

[44] QCAP Counsel argue that they achieved an excellent outcome on behalf of the QCAPs. They recovered $4.25 billion on behalf of the *Blais* and *Létourneau* class members and arranged for novel processes that will streamline the claims process.

[45] QCAP Counsel also submit that I should take into account the recovery on behalf of the PCCs. While the PCCs had their own representative counsel, the success of their claims was derived from the work of QCAP Counsel.

[46] QCAP Counsel responded to Québec's arguments by stating that it expects all QCAPs to receive the full amount of their claims out of the funds established under the CCAA Plans. Any excess amounts are to be paid to the provinces in respect of their various claims. Thus, any reduction in the requested fee for QCAP Counsel would not affect the recovery for class members. Any reduction in the requested fee would accrue to the provinces. This point was confirmed by Ms. Wall on behalf of the Province of Ontario. Ms. Wall made specific reference to the Québec Class Action Administration Plan, which is Schedule "N" to the CCAA Plans of RBH and JTIM and Schedule "K" to the CCAA Plan of Imperial.

[47] QCAP Counsel submit that the fees they seek do not represent a windfall or a sweetheart deal that would bring the integrity of the profession into disrepute. Indeed, the 22% contingency fee falls near the low end of typical retainers in such cases. They stress that the court must have a principled basis for concluding that a certain fee award would be unfair or unreasonable.

[48] QCAP Counsel also submit that the legislature created legislation enabling class proceedings to promote access to justice and promote punishment, deterrence, and denunciation and that their conduct throughout the proceeding has only furthered these goals. Thus, QCAP Counsel submits that they should be entitled to the benefit of their retainer agreement.

Contingency fees in mega-fund cases

[49] QCAP Counsel acknowledge that courts are generally more hesitant to award the contingency fees set out in the retainer in the case of "mega-fund" cases of $100 million or more. However, they argue that the presumption in favour of the fees set out in the retainer agreement nevertheless applies to mega-fund cases in Québec law.

[50] QCAP Counsel also submits that the underlying reasons for this hesitancy are not engaged in this case. Typically, mega-fund cases settle before a trial on the merits. Here, the case was fully tried and then appealed. Because mega-fund cases typically settle, it can be hard to assess the degree of success that counsel achieved on behalf of the class. Further, many mega-fund cases are characterized by "piggy-backing" on prior liability findings. There was no such prior finding of liability on which the QCAPs relied in this case.

(iv) Canadian Cancer Society

[51] It is also informative to take into account submissions made by interested parties, who do not have any direct interest in the outcome of these motions. The Canadian Cancer Society is one such party.

[52] Counsel to the Canadian Cancer Society, Mr. Robert Cunningham, provided what he referenced as "an external validation for the absolutely incredible work done and results achieved by the QCAP Counsel in this internationally unprecedented case."

[53] Mr. Cunningham went on to submit:

> "For the QCAPs, in terms of the results achieved, it should not just be in comparison with other class action cases in Canada. A global comparison of other tobacco cases should also be done. The QCAP result is, by far, the best outcome of any individual case, class action case, against the tobacco industry, upheld on appeal, in the world, ever. No other case is even close. The QCAP outcome is an enormous global world precedent.
> ...
>
> One can't just say that the QCAP counsel really did an incredible job, but they do; the work that was done was so many orders of magnitude greater than that. As a result of the work of QCAP counsel, there are at least four categories of beneficiaries, if not more.
>
> First, Québec class members. Without this team of extraordinary QCAP lawyers and their work, there would be no recovery at all. Compensation would be zero.

Second, the Pan-Canadian claimants. The work of QCAP counsel has been essential to the compensation received by the PCC's. Raymond Wagner, counsel for the PCC's, said as much in the media last October when the CCAA Plans were filed, and this is noted in the QCAP materials.

Third, the provinces and territories. And, again, without diminishing the work at all, [by] counsel for the provinces, the provinces did obtain for free a partial roadmap to assist in their own cases through the documents, testimony, and argument in the Québec proceedings.

...

Fourth, behaviour modification and deterring future wrongful conduct of tobacco companies not only in Canada but internationally. There can be no doubt that the Québec class action outcome of $4.1 billion and the other consequential financial effects will help focus the corporate mind of the parent companies to think how they may behave in other countries.

...

In closing, I emphasize that the work of QCAP counsel has been unparalleled, deserves the highest recognition, and is consistent with the finest traditions of the legal profession."

[54] Mr. Cunningham was provided with a further opportunity to make submissions just prior to the closing of argument. He added the following points:

"In assessing the counsel fee for the Québec Class Action, this case is really at the upper end of the upper end. Table[s] summarizing previous cases can be partially useful, and such tables have been included in what has been filed by the QCAPs, the Attorney General of Québec, and the *Amicus*, the Honorable André Prévost.

But the facts relating to the Québec Class Action and counsel for the Québec Class Action means that this case is far outside these tables of past cases. It is beyond the grid. There's never been any case like it, and there may never again be such a case.

In terms of the reputation of the legal profession, what the QCAP counsel have done has enhanced the reputation of the profession enormously. Who takes on and pursues tenaciously [for] decades such a case?

As I noted at the February 11th hearing, QCAP counsel have achieved against the tobacco industry what no one else has ever achieved anywhere in the world with cases going back to the 1950s. They have surmounted impossible odds in the face of incredible risk. Their unique legal story will last in Québec, Canada and globally.

> The public benefit that these lawyers have achieved is of fundamental and historic importance. There must be the necessary and very significant incentive for counsel to take on and pursue such impossible cases against such a massively well-financed worldwide industry."

[55] The submissions of counsel for The Canadian Cancer Society are a ringing endorsement in support of the fee request of QCAP Counsel.

(v) PROVINCES of British Columbia, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, and the Territories of Yukon, Nunavut and the Northwest Territories

[56] The provinces of British Columbia, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, and the territories of Yukon, Nunavut and Northwest Territories took no position on the issue of the QCAP Counsel fees.

[57] Québec made reference in its factum to the fact that it has an economic interest in the undistributed funds from the QCAP settlement, but this point was not vigorously pursued in argument.

[58] The provinces and territories have actively participated in the CCAA proceedings from the outset. They are familiar with the CCAA Plans. They are aware of the amount being requested by QCAP Counsel, yet they consciously made the decision not to oppose the requested fee. This decision is significant given that any reduction in the fees awarded to the QCAP Counsel would accrue to the provinces and territories. Simply put, these provinces and territories have a direct economic interest in the amount being requested by QCAP Counsel.

[59] I am not in a position to speculate as to why the provinces and territories chose to take "no position" on this issue. However, due to their extensive involvement in the CCAA process, they are arguably in a much better position than most participants in these CCAA proceedings, to judge whether the fee request of QCAP Counsel is reasonable in the circumstances. Their silence on this point speaks volumes.

H. Analysis and Conclusion

(i) QCAP Counsel

[60] The retainer agreement formed between class counsel and the representative plaintiff is the starting point for the analysis of counsel fees. However, the agreement may be set aside upon a finding that it is not fair and reasonable: *A.B. v. Clercs de Saint-Viateur du Canada*, 2023 QCCA 527 at para. 51. In assessing the fairness and reasonableness of the fee, the courts consider several factors set out in s. 102 of the *Code of Professional Conduct of Lawyers*, C.Q.L.R. c. B-1, r. 3.1. According to the parties, the key relevant considerations in this case include:

a. The risks assumed by counsel;

b. The scope of the retainer; and

c. The outcome achieved on behalf of the class.

[61] The court must also consider how the fee reflects on the integrity of the profession. The court must not grant a fee award that would be susceptible to giving the legal profession "a profit-seeking character": *A.B.*, at para. 51.

[62] The law in Québec is summarized in the submission of *Amicus*. The law is, in most respects, the same in Ontario (see: *Fresco v. Canadian Imperial Bank of Commerce*, 2024 ONCA 628, and *David v. Loblaw*, 2025 ONSC 2792, at paras. 40-47).

[63] I accept the following:

(a) QCAP Counsel assumed great risk in accepting the retainer from the class.

(b) The 22% fee arrangement is at the low end of the scale and is fair and reasonable.

(c) The QCAPs succeeded at trial and the Québec Court of Appeal.

(d) Although the CCAA Plans reflected a mediated settlement, the CCAA Plans were only put forth to a creditor vote after five and a half years of mediation. This reflects hard fought negotiations.

(e) An exceptional outcome was obtained for the Class. The monetary award for each member of the Class is fixed. Even if the fee request of QCAP Counsel is reduced, the reduction will not flow to the benefit of the Class.

(f) the PCCs, as well as the provinces and territories obtained residual benefits as a result of the work of QCAP Counsel.

(g) With the exception of Québec, the provinces and territories took no position on the appropriateness of the fees. This is significant as any reduction in the fees being awarded to the QCAPs would flow to the provinces and territories.

[64] It is not, in my view, practical to review the dockets of each lawyer or timekeeper. The work was performed over twenty-six years and for the past six years, much of the professional services performed were rendered in the confidential mediation conducted by The Honourable Warren K. Winkler, K.C. Québec raised certain concerns with respect to the absence of any docket review. However, in the circumstances, it seems to me that there is no productive utility in conducting an in-depth review. The hours and related dollar value will be enormous even if there was a significant adjustment. Rather, when you take into account the foregoing, the real issue is whether the fee request is too high.

[65] To state the obvious, the fee request is astronomical. But is there any principled basis on which the fee can be or should be reduced? The work was done pursuant to a written agreement. The work was well done and produced an exceptional result. The risk assumed by QCAP Counsel was significant and a premium, by way of a multiplier, is, in my view, justified.

[66] And, if there was a significant reduction, where would the money go? Subject to the proviso described below, it would not go to the benefit of the QCAPs. The funds would not go to the benefit of other class action plaintiffs. It would go to the provinces and territories, all of whom, with the exception of Québec, took no position on this motion.

[67] It also must be recognized that a significant amount of the funds awarded to counsel will find their way back to the government treasuries through taxation.

[68] This leads me to conclude that, from the standpoint of the class and the provinces and territories, the fee request of QCAP counsel cannot be said to be unreasonable.

[69] The fee request of $909 million is unheard of in Canadian legal history. As previously stated, this is a unique case and this decision should never be considered to have any precedential value.

[70] Taking all the foregoing into account, I am unable to find a principled basis on which to reduce the fee request. Further, even if there was a significant reduction, the amount awarded will still be enormous.

[71] However, there is one potential scenario that has to be taken into account.

[72] Québec raised the possibility that QCAPs could proportionately receive less than the amount of their individual claims out of the funds established under the CCAA Plans.

[73] At para. 4 of its factum, Québec submits that it has an interest in ensuring the fees are fair to the class members so as to maximize recovery for those victims of tobacco related harms.

[74] As noted above at para. 46, QCAP Counsel states that it expects all QCAPs to receive the full amount of their claim.

[75] The actual amount being paid out to each claimant cannot be established with finality at this time.

[76] In my view, it is appropriate to set up a reserve out of the fee awarded to QCAP Counsel to ensure that each approved claimant receives the full amount of their claim under the CCAA Plans.

[77] For greater certainty, I am cognizant of the provisions of the Quebec Class Action Administration Plan, which has been sanctioned by this Court. Paragraphs 26.7, 35.3, 41.1 and 53.1 of this Plan contemplate that the "actual quantum" of compensation payable to a Tobacco-Victim Claimant or Succession Claimant "will be determined on a *pro rata* basis between all *Blais*

Class Members" based on the number of claims received and the amount available for distribution after all claims have been received (*Paras.* 26.7 and 35.3). The Plan states that the "quantum of the payments" specified in the compensation table "may be reduced on a *pro rata* basis based upon the actual take-up rate and other factors" (*Para.*41.1).

[78] Section 53.1 of the Quebec Class Action Administration Plan addresses the prospect of the funds remaining in the QCAP Trust Account "*after the payment of the Quebec Class Counsel Fee*" being insufficient to pay the aggregate of the Compensation Payments. In that event, payments owing to the class members eligible for compensation shall be reduced on a *pro rata* basis so that the amount payable does not exceed the funds remaining in the QCAP Trust Account (*Para.* 53.1).

[79] These provisions of the Quebec Class Action Administration Plan are binding on affected parties. The amount available to fund the claims is fixed by the terms of the Sanction Order. The face value of the claims is not guaranteed. Rather, to the contrary, the amount payable to each eligible claimant is determined once all claims are processed, the actual take-up rate is known, and the amount available to pay the approved claims to individual claimants is capable of determination. Nonetheless, I direct that a reserve be held back from the QCAP Counsel fee and retained in the respective QCAP Trust Accounts in the total amount of $50,000,000, the purpose of which is to alleviate, to the extent possible, any reduction in compensation to claimants because of the actual take-up rate or other factors, on a *pro-rata* basis. If this amount is not required, whether in whole or in part, the amount remaining shall, with the approval of the CCAA Plan Administrators, be remitted to the QCAP Counsel. Otherwise, the full amount of the fee sought by the QCAP Counsel shall be paid to them in the amount herein approved, in conformity with the provisions of the Quebec Class Action Administration Plan, upon implementation of the CCAA Plans.

[80] Subject to this foregoing *proviso*, in the absence of a principled basis on which to reduce the quantum sought, the requested fee of QCAP Counsel is, reluctantly, approved in the amount requested.

(ii) Knight

[81] The principles governing fee approvals in British Columbia law are the same as those discussed above with respect to Québec and Ontario law.

[82] Class counsel submits that a one-third contingency fee, like the one sought here, is standard practice in British Columbia class actions, and that such fees are frequently held reasonable: *Chartrand v. Google LLC*, 2021 BCSC 7, at para. 60.

[83] Class counsel further submits that the $1,062,746.62 of disbursements in this case were reasonable and necessary, including the interest amounts. Particularly, it was reasonable and necessary to hire U.S. law firms to consult on the case given the overlap between light cigarette litigation in the U.S. and the claims at issue in the *Knight* class action. Through this consultation, class counsel accessed documents and information that they otherwise would not have obtained.

[84] Finally, class counsel submits that it is common practice under British Columbia law to award an honourarium to a representative plaintiff for "competent service": *Parsons v. Coast Capital Savings Credit Union*, 2010 BCCA 311, 321 D.L.R. (4th) 338, at para. 22. In this way, British Columbia law diverges from Ontario law, which allows for such an honourarium only in "exceptional circumstances": *Doucet v. The Royal Winnipeg Ballet*, 2023 ONSC 2323 (Div. Ct.), at para. 92.

[85] Regardless, class counsel argue that Mr. Knight's service over 22 years since commencing the class action satisfies either the lower "competent" threshold or the higher "exceptional" one. They submit a $10,000 honourarium represents a modest recognition of his services.

[86] Taking into account the result achieved, risk, time expended, complexity, and importance of the matter to the Class, I am satisfied that the requested fee is reasonable in the circumstances and it is approved, as is the honorarium to Mr. Knight.

(iii) Tobacco Producers

[87] Counsel argue that the retainer is presumptively valid and enforceable, and the 25% contingency fee should be awarded unless for example, (i) the representative plaintiff did not fully understand or accept the agreement, (ii) the contingency amount is excessive or (iii) the award would be so large as to be unseemly or otherwise unreasonable: *Cannon v. Funds for Canada Foundation*, 2013 ONSC 7686, [2013] O.J. No. 5825, at para. 9. Counsel submits that the presumption in favour of the agreed compensation is not rebutted in this case and that a 25% contingency fee is within the common range in class proceedings. I agree.

[88] Counsel also referenced the Lodestar multiplier analysis. They submit that they have dedicated over 4,100 hours to the underlying class action and the CCAA proceedings. They estimate that this would amount to over $3 million in legal fees at standard hourly rates. As a result, their requested fees represent a multiplier of 0.8, while multipliers of 2.5 or higher are commonly considered reasonable: *Pace Securities Corp. et al v. First Hamilton Holdings Inc. et al.*, 2021 ONSC 6956, at para. 28.

[89] Taking into account the result achieved, risk, complexity, and importance of the matter to the Class, I am satisfied that the requested fee is reasonable in the circumstances and it is approved.

I. Postscript

[90] I feel compelled to add a postscript. Much has been said about creating an incentive for counsel to take on such risky cases. Here, this created the opportunity for QCAP Counsel to obtain compensation beyond their wildest expectations. In receiving this reward, if counsel are truly acting in the best traditions of the legal profession they should recognize that they have a moral obligation to society. QCAP Counsel have unquestionably acted in a way that has fully discharged their obligations to the class. A truly outstanding result has been obtained for the class in a case in which QCAP Counsel took on an exceptional risk. However, the question remains – do they have further and wider obligations to society? It will be up to each QCAP Counsel fee recipient to answer this question for themselves. If she or he conclude that they do have such an obligation and

choose to honour it, they can do so by publicly making a meaningful and significant contribution to a health-related charity of their choice. In this way, they can be publicly recognized for their incredible work in this matter.

Chief Justice Geoffrey B. Morawetz

Date: August 25, 2025