EXTRACTS FROM COURT SUBMISSIONS ON BEHALF OF THE QCAPs

January 30, 2025

MR. MELAND: Mark Meland, for the Québec class action plaintiffs ("**QCAPs**").

The QCAPs strongly support the sanction of the Plan prepared and presented by the Mediator with the collaboration of the Monitors. The M&M Plan, what we call the M&M Plan, although not perfect, is nevertheless a remarkable achievement. It is a Plan worthy of high recognition and pride, and a great debt of gratitude is owed to the Honourable Warren Winkler for achieving what the parties were unable to achieve on their own and for doing exactly what the Court directed him to do.

In our view, the Plan is not only the best alternative to achieve a successful restructuring, it is the only alternative. There is no other viable Plan to consider, and if it were not approved, no better Plan could or would ever emerge.

In fact, what we've seen from the last two days is that positions are becoming less flexible rather than more.

You asked counsel yesterday what would be the alternative if this Plan could not be approved or was not approved. In our view, the unfortunate alternative would be a bankruptcy.

This is not the alternative that the QCAPs want nor any other creditor, I believe, but this would be the consequence if the parties, or if certain parties, are able to blow up the Plan.

We would be delighted if this Plan could be consensual, and we hope it will be, and we think it will be because we think ultimately, the parties will act in their own best interests.

The Plan is a good Plan, and it gives the Applicants [the tobacco companies] what they want, and the primary thing that they have always bargained for is a comprehensive release for their tobacco company groups, and the Plan delivers on that.

[…]

Thirdly, the issue of fairness, and the question is: Fairness to whom? And we say fairness primarily to the creditors, and of the creditors, fairness primarily to the victims, to the most vulnerable creditors, the creditors without an economic claim but with a moral claim; a claim that results from grievous injury.

As I pointed out, there's no doubt, in our view, on its face, that the Plan is objectively fair to the Applicants in two regards: I mentioned already the granting of a global, overall release,

but the other element of fairness, which is obvious, is that $1 trillion of claims are being compromised for $32.5 billion.

Now, let's consider fairness from a different perspective: The perspective of the victims who have been waiting 26 years for justice to be served in their regard.

To put into context the real-world impact of the delay that we have had – between March 2019 and January 2025, about 1,000 Québec class members have died during the proceedings itself.

The wait for the victims that we represent, and in most cases, unfortunately, for their heirs, and now the heirs of their heirs because of the passage of time, has been excruciating. It's been frustrating to them, discouraging, and regrettably, has led many of them to believe or to question whether our judicial system can really deal with bad actors.

However, we're now at the cusp of finally bringing this matter to a conclusion, a successful conclusion, and giving our class members and other creditors some semblance of justice and the compensation that they so desperately need and deserve.

It cannot possibly be seen to be fair to grant three tobacco companies six years of protection during which time the QCAPs were effectively in the penalty box. We weren't able to enforce an executory judgment and then to be told yesterday at the sanction hearing, well, maybe we should go back to mediation and start again.

From our perspective, and I'm saying this with great respect: Enough is enough.

In our submission, there is no Mediation 2.0, there is no Plan B, and the suggestion yesterday that perhaps we can get a new Mediator, I think that was a little bit of a Hail Mary from I don't know where, but totally unacceptable.

We have to bring this to a conclusion, we have a Plan that we can all be proud of, and we have a Plan that I am convinced, and time will tell if I'm right, that the tobacco companies, even the ones objecting before you, will see the light and give effect to its terms.

RBH [Rothmans Benson & Hedges] and JTIM [JTI-MacDonald] yesterday complained about unfairness to them. From the perspective of the people that we represent, many of whom no doubt are watching on YouTube right now, it's more than rich for any of the tobacco companies who were found to have conspired with each other to mislead consumers and whose conduct was characterized in the Québec judgments in the most harsh terms imaginable. Their conduct was described by both Courts as malicious, vexatious, egregious, particularly reprehensible, and these are the actors who are complaining about fairness today.

The Applicants, all three of them, had a choice to make when the Québec Court of Appeal rendered its judgment on March 1, 2019. They could have satisfied that judgment. Had

they done so, they could have even made a claim-over for contribution and indemnity, called a recursory action in Québec, but they didn't do that.

What they did, after being condemned jointly and severally as an industry – the three companies represent 100 percent of the legal tobacco market in Canada. So after being condemned jointly and severally as an industry for having intentionally conspired to misinform and mislead their consumers, they filed for CCAA protection within days, as an industry, in lockstep, one after another.

Thereafter, they negotiated and spoke with one voice as an industry. They offered to settle as an industry. The three tobacco companies presented five joint term sheets to the Claimants over a five-year period. The first one was in December 2019, and the last term sheet was April 2023.

Each time they presented a term sheet, they presented the term sheet as an industry. The Applicants could have made their own offers. They could have provided separate term sheets, but they did not. And when the Claimants interfaced with the Applicants, they interfaced with effectively one party: The industry.

Each time a proposal was made, each time a term sheet was delivered, there was actually a formal presentation where the parties would come together; because of COVID, usually by Teams or Zoom. And one of the three companies, one of the three Applicants, would designate a representative to speak for all three.

So it was reasonable for the creditors, when they dealt with the Applicants, to assume that their counterparty had resolved the issues that we're now hearing about yesterday and today.

Each of the proposals has certain fundamental characteristics from the very beginning. Each of them specified a global settlement amount. There was never an amount offered by individual company. The amount changed over time, but it was always a global settlement amount.

Every offer contemplated that there would be upfront payments of cash and that there would be payments over time, based on capacity to pay, and the only thing that altered over time was the percentage that the companies would be able to retain for themselves. But the concept never changed.

In every proposal, […] the creditors were concerned about payment assurance. In every proposal, there was an offer of a first-ranking security charge over the assets of all the companies, notably including JTIM, to secure the payment obligations in the future. And in all the term sheets from the very first one, there was an agreement that JTI-TM would subordinate.

The issues that are now being raised by JTIM and by RBH were never raised in one single term sheet. Consequently, it's not surprising that what emerged as the Plan that you're being called upon to deal with now is a Plan that is entirely consistent with those bedrock principles that I've just mentioned to you.

But to put it into the most simple terms, essentially all of the value of the Canadian companies was being handed over to the creditors. […].

There was another concept, which permeated from the very beginning, and that concept was – it was a made-in-Canada solution. And what did that mean? It meant that the parent companies, who are highly profitable, would not be contributing to the global settlement amount. That was actually a very bitter pill for the creditors to swallow, but they did.

[…]

At each stay extension hearing, and there were many – and a number of them the QCAPs, as you're aware, contested – we were told and the Court was told each time that the Applicants were acting in good faith and negotiating in good faith. And I believe that it was largely on that basis, without being presumptuous, that the Court agreed to these many extensions.

But in our view and our submission, it cannot be good faith [for the tobacco companies] to make an offer with a fixed amount and then claim at the very end, after ten term sheets are exchanged: Well, we never figured out who was going to pay the offer that we made to you.

[…]

I mentioned to you the notion of fairness and fairness from the perspective of the persons that we represent.

When the Plan was made public last October, the QCAPs held a press conference on October 18. And at that press conference, the son of the late designated class member – you heard about the name Blais; you heard of the *Blais* group.

The son of Mr. Jean-Yves Blais spoke at the press conference, and he spoke of the frustration of him and all of the other class members of waiting so long for the settlement to be concluded. But he said that although the Plan won't bring my father back, at least it would start to heal the wounds that the family had suffered.

He publicly declared – he made this statement at the press conference – that achieving the final settlement enshrined in the Plan would be the class members finally winning their Stanley Cup.

And I trust that being in a Toronto courtroom, that metaphor resonates.

THE COURT: Don't go there. It's painful, very painful.

MR. MELAND: So when you consider whether to approve the Plan, which we say you should, we urge you to take into account fairness and reasonableness from the perspective of Mr. Blais and all of the other Québec class members.

[…]

I want to very briefly, because I think it's important, to give you some of the features of the Plan because you're being asked to approve a Plan. And we say, and I said at the outset, that it is a worthy Plan, a Plan that we should all be very proud to have approved by this Court and approved by the creditors.

And I want to explain to you why getting 100 percent unanimous support was such an achievement.

On the creditors' side, there were effectively two groups of creditors: There were the victims, and the victims were comprised of the QCAPs, who we represent, and the creditors or potential creditors represented by the representative counsel for the PCCs [the other Canadian victims].

On the government side, we had 13 governments, 10 provinces and 3 territories, asserting claims of a trillion dollars.

So in his wisdom, the Honourable Warren Winkler, what he did was the following, and this was very clear in the Plan: He gave hundreds of thousands of votes to the victims, and he gave, by way of a negative claims process, nearly a trillion dollars of claims to the provinces and territories, but they each had one vote.

So the dynamic in this negotiation, on the Claimants' side, was that it could only work if the Plan had the support of both the victims and the provinces and territories. One side had [virtually] all of the value of the claims, and one side had [virtually] all of the votes of the claims.

And in that very difficult situation, after many, many mediation sessions, hundreds of sessions, the end result was we have a Plan that all of the governments approve and all of the victims approve. That is an enormous success, and one that should be very persuasive, in our humble submission, to the Court.

Another critical element of the Plan, which is very unusual, especially when it comes to product liability litigation, is that the Plan is largely a victim-centered Plan. It prioritizes the payment of billions of dollars to victims.

In fact, the Plan provides that $8 billion in the aggregate will be paid to the QCAPs, the PCCs, and the Cy-près [Foundation], and the Cy-près is the basket to deal with the claims of all other victims who would not otherwise receive any compensation.

And moreover, the Plan provides that roughly 50 percent of the cash would be paid to the victims. And the rationale for that, to put it in the most blunt terms, is the provinces and territories could wait, but the victims can't.

What we have here is something that, to my knowledge, has never been done elsewhere. The only comparable would be the U.S. master settlement agreement, which settled the tobacco litigation in the U.S.

In the master settlement agreement in the U.S., not one penny was paid to a victim. And even today, I'm sure the Court is aware of the new agreement that was arrived at in the Purdue bankruptcy in the U.S., where a tiny fraction of the settlement, a tiny fraction of what is being paid here in Canada to victims, will be paid to victims of the opioid crisis in the U.S.

So what we've achieved here and one of the things that we are most proud of is that this Plan prioritizes the payment to victims.

In addition to paying victims, another historic effect of the Plan is a $1 billion Cy-près. The Cy-près had a practical reason, but it also had a public-interest reason.

On the practical reason, because the Plan provided for broad releases, there had to be a mechanism to give some form of compensation to the people that were notionally granting the release so that people that were not otherwise entitled to any compensation would be indirectly compensated through the Cy-près.

But in addition to that practical component, there's a public interest component. And the public interest component – and what is revolutionary – is that there is a billion dollars that will be available in an independent, charitable foundation to take initiatives that will be geared to helping people and to dealing with situations relating to tobacco-related disease.

The QCAPs themselves contributed $131 million of our allocation to that fund for two reasons: Firstly, because we thought that it was the proper thing to do, but secondly, it was a way to settle the claims of the second class action in Québec, the *Létourneau* class action, where the judgment was found in favour of the *Létourneau* class members, but there was no distribution, no individual distribution, to individuals who were harmed because of their addiction to the nicotine contained in the cigarettes sold by the Applicants.

So we were able to resolve the *Létourneau* action through the Cy-près, and we've created a mechanism to do good in Canada, which should be celebrated.

The distribution and claims processes, both for the QCAPs and for the PCCs, are also revolutionary. Never been done before. They're user-friendly. They're non-adversarial, and they help victims to actually make a claim and receive compensation.

Unfortunately, in many claims processes, the process seems to be designed to make it difficult to make a claim. This is the opposite.

So there are three elements to the [distribution] plans that I'd like to tell you about: The first is presumptive causation. What does that mean? And it's taken from the Riordan judgment. If the victim, if the QCAP or PCC declares to have smoked 12-pack years of the cigarettes produced by one of the three companies and was diagnosed with one of the three compensable diseases – lung cancer, throat cancer, or emphysema or COPD – then there is a presumption that there is causation provided that the diagnosis took place during the designated period of time.

In the case of the QCAPs, it has to be before 2012. In the case of the PCCs, between 2015 and 2019. So there's presumptive causation.

Secondly, there is no need for victims to hire a lawyer or engage a doctor. We put in place a mechanism, especially in Québec, where with a health insurance number, all the victim has to do is give their number, and we will get a government confirmation as to whether or not the person was diagnosed with a disease and when.

And thirdly, the claims process will be entirely cost-free to the victims. There is no need for “claims fillers”. There will be agents that will be made available, both in Québec and outside of Québec, to assist these class members in making claims.

In the Québec administration Plan […], one of the features is that in the judgment of Justice Riordan, which was rendered in 2015, the judgment was in favour of class members and their heirs. Because of the enormous passage of time in this case, we're now dealing with situations of heirs of heirs of heirs.

So to take an example, our class member died; his heir, his wife, died. We're now at the level of the children or the grandchildren. The […] architecture of the Plan is that those heirs of heirs will also be entitled to compensation. And there will be a mechanism to make the compensation criteria simple and do-able for these estates.

[…]

So to conclude, for the victims that we represent and their families, we view the Plan as the culmination of a valiant and improbable victory against the tobacco companies. Improbable because it never happened anywhere else in the world.

Many of our class members, as I pointed out, have expressed concern that the justice system, has let them down. We hope that the approval of the Plan, which we urge you to do, will show them that it hasn't, and that the fight and the wait were actually worth it.

Those are my submissions.

THE COURT: Thank you, Mr. Meland.