

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

**Imperial Tobacco Canada Limited and
Imperial Tobacco Company Limited**

TWELFTH REPORT OF THE MONITOR

July 8, 2022

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**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
Imperial TOBACCO CANADA LIMITED AND Imperial TOBACCO COMPANY LIMITED

**TWELFTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

A. GENERAL

1. In this Report, unless otherwise defined, all capitalized terms shall have the respective meanings specified in the glossary attached to this Report as Appendix "A". The first instance of each capitalized term, if defined in the glossary, is hyperlinked to the glossary.

B. INTRODUCTION

2. The principal purpose of these CCAA Proceedings, and the related Chapter 15 Proceedings, is to restructure and compromise Imperial's liabilities, specifically the liabilities arising from the Tobacco Claims, including the Quebec Appeal Judgment.
3. The Initial Order in these CCAA Proceedings was issued by this Court on March 12, 2019, as amended and restated as of April 5, 2019, further amended and restated as of April 25, 2019, and updated by written endorsement on March 6, 2020.

C. BACKGROUND

4. Imperial is the largest distributor of Tobacco Products in Canada and operates two businesses: tobacco and logistics. The tobacco business includes the marketing and sale of Tobacco Products and Vapour Products. The logistics business distributes Tobacco Products and Vapour Products for tobacco manufacturers, as well as certain non-tobacco products and services.

5. All Court materials filed and orders issued in these CCAA Proceedings and the related Chapter 15 Proceedings are available on the Monitor's website at <http://cfcanada.fticonsulting.com/imperialtobacco>.

D. TERMS OF REFERENCE AND DISCLAIMER

6. In preparing this Report, the Monitor has relied upon certain financial information and forecasts prepared by Imperial, and discussions and correspondence with, among others, the senior management and advisors to Imperial. The Monitor has not audited or otherwise attempted to verify the accuracy or completeness of this information. Accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in this Report or relied on in its preparation.
7. This Report should be read in conjunction with the July 2022 Rokas Affidavit, which can be found [here](#).

E. PURPOSE OF THIS REPORT

8. The purpose of this Report is to provide this Court with information regarding the motion brought by Imperial seeking authorization for ITCAN to post other security of up to \$5 million with the CRA as required by recent amendments to the Excise Act concerning, among other things, the import of vaping products into Canada.

F. VAPOUR PRODUCTS SUBJECT TO NEW EXCISE DUTY

9. Imperial offers adult consumers a full range of vaping products under the "Vuse" trademark. As part of Imperial's strategy to market Vapour Products, among other things, it has opened Vuse stores. ITCAN currently has seven open and operating Vuse stores and anticipates opening four additional Vuse stores across Canada by the end of 2022.
10. The Canadian Federal government announced in its 2022 budget that it intended to impose an excise duty on vaping products. As a result of amendments to the Excise Act and accompanying regulations, this excise duty will require, effective October 1, 2022, all vaping products to be packaged with an excise stamp affixed to the product as evidence

that duties have been paid. ITCAN must apply to the CRA for a vaping product licence to obtain the necessary excise tax stamps.

11. The Monitor understands that the CRA will provide excise stamps to ITCAN only if it posts the New Excise Act Security. The amount of security ranges from \$5,000 to a maximum of \$5 million and is based on the estimated monthly duty payable in respect of the vaping products. The Monitor has been informed that ITCAN must post security of \$5 million.

G. NEW EXCISE ACT SECURITY IS NOT CURRENTLY AUTHORIZED

12. Paragraph 11 of the Initial Order authorizes Imperial to post Bonding Collateral in an aggregate amount not exceeding \$111 million to provide security “in the ordinary course and consistent with past practice” in relation to the collection and remittance of excise taxes and customs and import duties. Paragraph 14 of the Initial Order permits the Applicants to, among other things, post security, grant security interests and incur liabilities in the ordinary course of the Business (as defined in the Initial Order).
13. The New Excise Act Security is part of a new regulatory framework concerning vaping products. Thus, in the view of the Monitor, its posting by ITCAN would not be “consistent with past practice”. This also means that the posting of this security is not incurred “in the ordinary course of the Business” as contemplated by the Initial Order. No other authorization for the New Excise Act Security is apparent in the Initial Order. Accordingly, the Applicants are seeking the approval of this Court to post the security required under the Excise Act.

H. RECOMMENDATION

14. Because the New Excise Act Security is a condition of securing a vaping product licence and, therefore, of continuing to sell Vapour Products in the Canadian market, the Monitor supports the relief sought by Imperial in its motion and respectfully recommends that this Court grant an order authorizing ITCAN to post the New Excise Act Security of up to \$5 million in the form of order attached to the motion record of Imperial dated July 7, 2022 filed in these CCAA Proceedings.

The Monitor respectfully submits this Report.

Dated this 8th day of July 2022.

FTI Consulting Canada Inc.

FTI Consulting Canada Inc.

in its capacity as Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited and not in its personal capacity

APPENDIX “A” GLOSSARY

“**CCAA**” means the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended.

“**CCAA Proceedings**” means Court File No. CV-19-616077-00CL commenced by Imperial under the CCAA.

“**Chapter 15 Proceedings**” means the proceedings commenced by ITCAN on March 13, 2019, for relief under Chapter 15 of the U.S. Bankruptcy Code.

“**Court**” means the Ontario Superior Court of Justice (Commercial List).

“**CRA**” means the Canada Revenue Agency.

“**FTI**” means FTI Consulting Canada Inc.

“**Imperial**” means collectively, ITCAN and Imperial Tobacco Company Limited.

“**Information**” means common categories of information in respect of the Applicants which are responsive to requests submitted by Mediation Participants, as well as other information which the Tobacco Monitors considered relevant.

“**Initial Order**” means the initial order granted by this Court on March 12, 2019, as amended and restated as of April 5, 2019 and further amended and restated as of April 25, 2019 and updated by written endorsement on March 6, 2020, which authorized, among other things, the Stay of Proceedings and FTI’s appointment as Monitor of Imperial’s CCAA Proceedings.

“**ITCAN**” means Imperial Tobacco Canada Limited.

“**July 2022 Rokas Affidavit**” means the Affidavit of George Rokas, Treasurer and Corporate Controller of ITCAN, sworn July 7, 2022.

“**Monitor**” means FTI Consulting Canada Inc.

“**New Excise Act Security**” means security of up to \$5 million to be posted with the CRA as required by recent amendments to the Excise Act concerning, among other things, the import of vaping products into Canada.

“**Quebec Appeal Judgment**” means the Court of Appeal of Quebec’s decision on the appeal of the Quebec Judgment whereby the Court of Appeal substantially upheld the Quebec Judgment with two notable modifications: (i) the total claim amount was reduced by just over \$1 million; and (ii) the interest schedule was adjusted, reducing the interest payable on the total claim amount.

“**Quebec Judgment**” means the Quebec Superior Court’s judgment on the “Letourneau action” and the “Blais action” released on May 27, 2015 in which the trial judge found the co-defendants jointly liable for \$15.6 billion, with Imperial’s share being approximately \$10.6 billion.

“**Report**” means this twelfth report of the Monitor filed on July 8, 2022.

“**Stay of Proceedings**” means the stay of proceedings during the Stay Period in favour of Imperial and their non-applicant subsidiaries, including Liggett & Meyers Tobacco Company of Canada Limited, as well as a limited stay in favour of BAT and certain BAT affiliates.

“**Stay Period**” means the term of the Stay of Proceedings, to September 30, 2022.

“**Vapour Products**” means potential reduced risk, rechargeable, battery-powered devices that heat liquid formulations – e-liquids – to create a vapour which is inhaled, and which are sold under the tradename of Vype/Vuse.

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ONTARIO
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Proceeding commenced at Toronto

TWELFTH REPORT OF THE MONITOR

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