

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

HEATHER ROBERTSON

Plaintiff

and

PROQUEST INFORMATION AND LEARNING COMPANY,
CEDROM-SNI INC., TORONTO STAR NEWSPAPERS LTD.,
ROGERS PUBLISHING LIMITED and CANWEST PUBLICATIONS INC.

Defendants

and

PROQUEST INFORMATION ACCESS ULC

Defendants

SETTLEMENT AGREEMENT

RECITALS

A. WHEREAS The Plaintiff brought this Action (as hereafter defined) under the Canadian *Copyright Act*, R.S.C. c. C-42, regarding copyright in certain works and the defendants' use of Class Members (as hereafter defined) works in Electronic Media (as hereafter defined);

B. WHEREAS pursuant to the Certification Order (as hereafter defined) the Action has been certified as a Class Proceeding and the plaintiff, Heather Robertson, is the representative plaintiff ("Representative Plaintiff");

C. WHEREAS counsel for the Plaintiff and Canwest Publishing Inc. have conducted a thorough analysis of the claims, and they have also taken into account the extensive burdens and

expense of litigation, including the fact that Canwest Publishing Inc. is in the midst of a *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 restructuring, the risks of going to trial and the fair, cost-effective and assured method of resolving the claims of the Class Members provided for in this Settlement Agreement (as hereafter defined);

D. WHEREAS, after the investigation, the Plaintiff and Class Counsel (as hereafter defined) have concluded that this Settlement Agreement provides substantial benefits to the Class Members and is fair, reasonable and in the best interest of the Class Members;

E. WHEREAS Canwest Publishing Inc. has denied and continues to deny the claims advanced on behalf of the Class Members. However, Canwest Publishing Inc. also concludes that the Settlement Agreement is a fair and reasonable settlement of this Action; and

F. WHEREAS the Plaintiff and Canwest Publishing Inc., in consideration of all the circumstances and after arms length negotiations, wish to, and by this Settlement Agreement do, settle and finally resolve the Action as against Canwest (as hereinafter defined) and all actual and potential claims for or relating to the use of Freelancer Subject Works (as hereafter defined) in Electronic Media, except for certain claims that will be maintained as against ProQuest Information and Learning Company and ProQuest Information Access ULC (collectively "ProQuest").

G. Therefore, subject to the approval of the Ontario Superior Court, the Plaintiff and Canwest Publishing Inc. agree to settle this proceeding on the following terms:

DEFINITIONS

- (a) “Action” means the action bearing Court File Number 03-CV-252945CP, styled Heather Robertson v. ProQuest Information and Learning Company, CEDROM-SNI Inc., Toronto Star Newspapers Ltd., Rogers Publishing Limited and Canwest Publications Inc.
- (b) “Applicants” means Canwest Publishing Inc./Publications Canwest Inc., Canwest (Canada) Inc. and Canwest Books Inc.
- (c) “Canwest” means Canwest Publishing Inc. and its subsidiary, parent, related, affiliated and associated entities, and each of their respective successor entities, and all of their respective shareholders, directors, officers, employees, contractors, and agents.
- (d) “CCAA Proceeding” means the proceeding of the LP Entities (as defined herein) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) in the Ontario Superior Court of Justice – Commercial List under Court File No. CV-10-8533-00CL that was commenced pursuant to an initial order dated January 8, 2010.
- (e) “Certification Order” means the order made in the Action dated October 21, 2008 and amended by order dated September 15, 2009, certifying this proceeding as a Class Action.
- (f) “Class Counsel” means Koskie Minsky LLP.

- (g) “Class Definition” means the description of the Class Members in Schedule A to this Settlement Agreement.
- (h) “Class” or “Class Members” means the class of persons described in the Class Definition.
- (i) “Consolidated Plan of Compromise” means the consolidated plan of compromise filed by the LP Entities pursuant to the CCAA and dated as of May 20, 2010, as amended and supplemented from time to time.
- (j) “Court Approval Date” means the date on which the Ontario Superior Court of Justice issues an order approving the Settlement Agreement.
- (k) “Creator” has the meaning given to that term in the Class Definition attached as Schedule A to the Settlement Agreement.
- (l) “Creator’s Personal Corporation” means a private corporation, owner controlled by a Class Member that sells the Class Member’s Freelancer Subject Work.
- (m) “Disseminate” means to publish, reproduce, distribute, or communicate to the public, either directly or through a third party, by way of any and all media now known or hereafter devised.
- (n) “Electronic Media” means any computer database, CD ROM, diskette, online service or other electronic system or device.

- (o) “Employee Subject Works” means those Subject Works that were created in the course of the Class Members’ employment with Canwest and whose copyright is therefore owned by the Class Members’ then-employer under Section 13(3) of the *Copyright Act*. However, when the employer is a Creator’s personal corporation, the Subject Work is not an Employee Subject Work, but is, rather, a Freelancer Subject Work.
- (p) “Freelancer Subject Works” means all Subject Works that are not Employee Subject Works.
- (q) “Licensee” or “Licensees” or “Releasee” or “Releasees” means Canwest Publishing Inc. and its subsidiary, parent, related, affiliated, associated, and successor entities, licensees and assigns, and all of their respective shareholders, directors, officers, employees, licensees, contractors, and agents. For greater certainty, Licensee or Licensees or Releasee or Releasees does not include ProQuest.
- (r) “LP Entities” means the Applicants together with Canwest Limited Partnership/Canwest Societe en Commandite.
- (s) “Parties” means the parties to this Settlement Agreement.
- (t) “Print Media” has the meaning given to that term in the Class Definition attached as Schedule A to the Settlement Agreement.

- (u) "Settlement Agreement" means this settlement agreement and any and all Schedules attached hereto, which Schedules are incorporated herein by this reference.
- (v) "Statement of Claim" means the Statement of Claim in the Action as amended from time to time.
- (w) "Subject Works" means all Works Disseminated by Canwest, or with the authorization of Canwest in Canada, published or made available by any means outside of Canada, in Print Media on or before the date of this Settlement Agreement that have been published, reproduced, distributed and/or communicated to the public by telecommunication through any Electronic Media, except:
 - (i) Works whose Creator (or successor-in-interest) by written agreement assigned all of the copyright in the Work to Canwest or their predecessors in interest in the subject Print Media;
 - (ii) Works whose Creator (or successor-in-interest) by written agreement granted to Canwest or their predecessors in interest a license to Disseminate their Works via Electronic Media; or
 - (iii) Works whose Creator created the work in the course of his or her employment when the employment was under a collective agreement that governed the use of the Works in Electronic Media.

CONSIDERATION TO CLASS MEMBERS

1. The parties expressly, irrevocably and unconditionally agree that the claim filed in the Canwest CCAA Proceeding by the Representative Plaintiff on behalf of the Class Members is hereby fully and finally determined and resolved on the basis that, for voting and distribution purposes, such claim shall be allowed in the all inclusive amount of seven and one half million dollars (\$7.5 million) inclusive of all claims, costs, and interest. Heather Robertson, in her individual capacity and on behalf of the Class and/or Class Members who have not opted out of the Action by the date of the Settlement Agreement, shall vote the aforementioned claim in favour of the proposed Consolidated Plan of Compromise and shall be entitled to receive a distribution in respect of such claim upon such distribution being made to creditors in the CCAA Proceedings. Subject only to court approval of this Settlement Agreement, the Representative Plaintiff hereby expressly, irrevocably and unconditionally waives any and all rights of appeal as such rights may now or in the future exist, whether by way of legislative enactment or otherwise at law or in equity.

LICENSE AND RELEASE

2. The Representative Plaintiff and Class Counsel each hereby expressly, irrevocably and unconditionally acknowledge and agree that the order approving this Settlement Agreement shall contain a provision granting the Licensees and Releasees a license over the Subject Works (the "License") and a release in the form attached hereto as Schedule "B" ("Release").

COURT APPROVAL PROCESS

3. This Settlement Agreement is subject to Court Approval as provided for in the *Class Proceedings Act*. In the event that the Court does not approve this Settlement Agreement, or refuses to grant any order or any part of any order implementing the Settlement Agreement, the Settlement Agreement shall have no further force and effect, shall not be binding on the Parties and shall not be used as evidence or otherwise in the litigation of this Action.

COURT APPROVAL

4. The parties expressly and irrevocably agree that they shall each take such steps as may be necessary to:

- (A) facilitate the consent allowance of this claim or consent determination of this claim at seven and one half million dollars (\$7.5 million) for voting and distribution purposes; and
- (B) implement this Settlement Agreement, including but not limited to bringing a motion to the Court seeking an order:
 - (i) Approving the Settlement Agreement; and
 - (ii) Dismissing the Action, without costs, against Canwest.

5. The parties hereby expressly and irrevocably consent to an order in the form attached as Schedule "C" (the "Draft Court Approval Order") in respect of that motion.

6. Class Counsel shall promptly notify Canwest's counsel upon learning that any person intends to make an objection to the approval of this Settlement Agreement.

FINAL RESOLUTION

7. The parties expressly and irrevocably agree that this Settlement Agreement is intended to resolve and, upon court approval, does resolve all matters asserted in this Action or which could have been asserted in the Action. In particular, and without limitation, this Settlement Agreement is intended to finally resolve the issue of Canwest's rights to make the Freelancer Subject Works available in Electronic Media, or authorize or license others to do so. However, nothing in this agreement affects the rights or remedies available to the Class Members as against ProQuest.

NO ADMISSION OF LIABILITY

8. It is understood and agreed that nothing in this Settlement Agreement constitutes an admission of liability or obligation on the part of Canwest and any liability or obligation is, in fact, denied.

AGREEMENT NOT EVIDENCE

9. None of the Settlement Agreement, anything contained in it, any of the negotiations or proceedings connected with it, any related document, or any action taken to carry out the Settlement Agreement shall be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in the proceeding to enforce the Settlement Agreement or to defend against the assertion of claims subject to the release described at paragraph 19(e), or otherwise as required by law.

EXECUTION IN COUNTERPART

10. This Settlement Agreement may be executed in counterpart, and becomes effective on the date of the last executed counterpart.

GOVERNING LAW

11. This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and (to the extent necessary) the Federal Laws of Canada.

ENTIRE AGREEMENT

12. The Settlement Agreement constitutes the entire agreement between the parties and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, and agreements in principle, whether written or oral. None of the parties will be bound by any prior obligations, conditions or representations with respect to this agreement, whether written or oral, unless it is expressly incorporated. This Settlement Agreement may not be modified or amended except in writing and on consent of the parties and any such modification or amendment must be approved by the Court.

13. The following schedules form part of this Settlement Agreement:

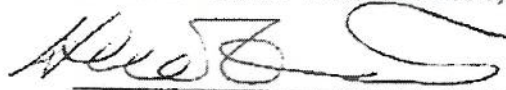
- (a) Class Definition;
- (b) License and Release; and
- (c) Draft court approval order.

DATED the 4 day of June, 2010



HEATHER ROBERTSON (in her independent capacity)

HEATHER ROBERTSON (on behalf of the Class and/or Class Members)



I have authority to bind the Class and/or Class Members

CANWEST PUBLISHING INC.

I have authority to bind the Corporation

DATED the day of June, 2010

**HEATHER ROBERTSON (in her
independent capacity)**

**HEATHER ROBERTSON (on behalf of
the Class and/or Class Members)**

I have authority to bind the Class and/or
Class Members

CANWEST PUBLISHING INC.



I have authority to bind the Corporation

Schedule A

CLASS DEFINITION

- A. All persons who were the authors or creators of original literary works (“Works”) which were published in Canada in any newspaper, magazine, periodical, newsletter, or journal (collectively “Print Media”) which Print Media have been reproduced, distributed or communicated to the public by telecommunication by, or pursuant to the purported authorization or permission of, one or more of the defendants, through any electronic database, excluding electronic databases in which only a precise electronic reproduction of the Work or a substantial portion thereof is made available (such as PDF and analogous copies) (collectively “Electronic Media”), excluding:
- (a) persons who by written document assigned or exclusively licensed all of the copyright in their Works to a defendant, a licensor to a defendant, or any third party; or
 - (b) persons who by written document granted to a defendant or a licensor to a defendant a license to publish or use their Works in Electronic Media; or
 - (c) persons who provided Works to a not for profit or non-commercial publisher of Print Media which was a licensor to a defendant (including a third party defendant), and where such persons either did not expect or request, or did not receive, financial gain for providing such Works; or
 - (d) persons who were employees of a defendant or a licensor to a defendant, with respect to any Works created in the course of their employment.

Where the Print Media publication was a Canadian edition of a foreign publication, only Works comprising of the content exclusive to the Canada edition shall qualify for inclusion under this definition.

(Persons included in clause A are hereinafter referred to as “Creators”. A “licensor to a defendant” is any party that has purportedly authorized or provided permission to one or more defendants to make Works available in Electronic Media. References to defendants or licensors to defendants include their predecessors and successors in interest)

- B. All persons (except a defendant or a licensor to a defendant) to whom a Creator, or an Assignee, assigned, exclusively licensed, granted or transmitted a right to publish or use their Works in Electronic Media.

(Persons included in clause B are hereinafter referred to as “Assignees”)

- C. Where a Creator or Assignee is deceased, the personal representatives of the estate of such person unless the date of death of the Creator was on or before December 31, 1950.

Schedule B

License and Release

Definitions

1. **“Action”** means the action bearing the Court File Number 03-CV-252945CP, styled Heather Robertson v. ProQuest Information and Learning Company, CEDROM-SNI Inc., Toronto Star Newspapers Ltd., Rogers Publishing Limited and Canwest Publications Inc.

2. **“Canwest”** means Canwest Publishing Inc. and its subsidiary, parent, related, affiliated and associated entities, and each of their respective successor entities, and all of their respective shareholders, directors, officers, employees, contractors, and agents.

3. **“Class Definition”** means:

A. All persons who were the authors or creators of original literary works (“Works”) which were published in Canada in any newspaper, magazine, periodical, newsletter, or journal (collectively, “Print Media”) which Print Media have been reproduced, distributed or communicated to the public by telecommunication by, or pursuant to the purported authorization or permission of, one or more of the defendants, through any electronic database, excluding electronic databases in which only a precise electronic reproduction of the Work or a substantial portion thereof is made available (such as PDF and analogous copies) (collectively “Electronic Media”), excluding:

- a) Persons who by written document assigned or exclusively licensed all of the copyright in their Works to a defendant, a licensor to a defendant, or any third party; or
- b) Persons who by written document granted to a defendant or a licensor to a defendant a license to publish or use their Works in Electronic Media; or
- c) Persons who provided Works to a not for profit or non-commercial publisher of Print Media which was a licensor to a defendant (including a third party defendant), and where such persons either did not expect or request, or did not receive, financial gain for providing such works; or
- d) Persons who were employees of a defendant or a licensor to a defendant, with respect to any Works created in the course of their employment.

Where the Print Media publication was a Canadian edition of a foreign publication, only Works comprising the content exclusive to the Canadian edition shall qualify for inclusion under this definition.

(Persons included in clause A are hereinafter referred to as "Creators". A "licensor to a defendant" is any party that has purportedly authorized or provided permission to one or more defendants to make Works available in Electronic Media. References to defendants or licensors to defendants include their predecessors and successors in interest.)

- B. All persons (except a defendant or a licensor to a defendant) to whom a Creator, or an Assignee, assigned, exclusively licensed, granted or transmitted a right to publish or use their Works in Electronic Media.

(Persons included in clause B are hereinafter referred to as "Assignees")

- C. Where a Creator or Assignee is deceased, the personal representative of the estate of such person unless the date of death of the Creator was on or before December 31, 1950

4. **"Class" or "Class Members"** means the class of persons described in the Class Definition.

5. **"Creator"** has the meaning ascribed to it in the Class Definition

6. **"Creator's Personal Corporation"** means a private corporation, owned or controlled by a Class Member that sells the Class Member's Freelancer Subject Works.

7. **"Disseminate"** means to publish, reproduce, distribute, or communicate to the public, either directly or through a third party, by way of any and all media now known or hereafter devised, or to license to a third party.

8. **"Electronic Media"** means any computer database, CD ROM, diskette, online service or other electronic system or device, now known or hereinafter devised.

9. **"Employee Subject Works"** means those Subject Works that were created in the course of the Class Members' employment with Canwest and whose copyright is therefore owned by the Class Members' then employer under Section 13(3) of the *Canadian Copyright Act*. However, when the employer is a Creator's Personal Corporation, the Subject Work is not an Employee Subject Work, but is, rather, a Freelancer Subject Work.

10. **"Freelancer Subject Works"** means all Subject Works that are not Employee Subject Works.

11. **"Licensee" or "Licensees" or "Releasee" or "Releasees"** means Canwest Publishing Inc. and its subsidiary, parent, related, affiliated, associated, and successor entities, licensees and assigns, and all of their respective shareholders, directors, officers, employees, licensees, contractors, and agents. For greater certainty, Licensee or Licensees or Releasee or Releasees does not include ProQuest Information and Learning Company, ProQuest Information Access ULC, their subsidiaries, parents, related, affiliated and associated entities, and each of their respective successor entities, and all of

their respective shareholders, directors, officers, employees, contractors, and agents (collectively "ProQuest").

12. "Subject Works" means all Works Disseminated by Canwest, or with the authorization of Canwest in Canada or outside of Canada, in Print Media on or before the date of this Settlement Agreement through any Electronic Media, except:

- (ii) Works whose Creator (or successor-in-interest) by written agreement assigned all of the copyright in the Work to Canwest or their predecessors in interest in the subject Print Media;
- (iii) Works whose Creator (or successor-in-interest) by written agreement granted to Canwest or their predecessors in interest a license to Disseminate their Works via, *inter alia*, Electronic Media; or
- (iv) Works whose Creator created the work in the course of his or her employment when the employment was under a collective agreement that governed the use of the Works in Electronic Media.

License

1. Heather Robertson, in her personal capacity and as representative plaintiff and on behalf of the Class and/or Class Members, save and except those Class Members who have opted out of the Action before the date of the Settlement Agreement (collectively the "Licensor" or the "Licensors" and the "Releasor" and the "Releasers") hereby expressly and irrevocably grants the following non-exclusive license to the Licensees in respect of all Freelancer Subject Works:
 - A. With respect to Freelancer Subject Works, this License is a non-exclusive, worldwide, perpetual, irrevocable and assignable license that permits the Licensees to reproduce one or more copies of the Freelancer Subject Works in Electronic Media, or to Disseminate the Freelancer Subject Works through Electronic Media either directly or through third parties and/or to authorize others to do so.
 - B. The Licensees are expressly and irrevocably authorized to grant sublicenses, all of which can grant all the rights granted to the Licensees, including the right to grant sub-sublicenses. Notwithstanding the foregoing and Clause 1A, the Licensees agree not to license any of the Freelancer Subject Works to ProQuest until such time as the Action is resolved against ProQuest.
 - C. The License will be valid as of the date of execution of this Settlement Agreement, or the date of creation of the Freelancer Subject Work, whichever is earlier. The Licensees acknowledge that the License is non-exclusive and that this Settlement Agreement does not assign or in any way affect Class Members' ownership of copyright or moral rights in the Freelancer Subject Works, provided however that the Freelancer Subject Works shall remain expressly subject to this License in the event of any sale, assignment or other transfer of copyright in the

Freelancer Subject Work and that the transferee of such copyright shall have no claims against the Licensees in connection with the Freelancer Subject Works.

- D. The Licensors hereby expressly and irrevocably acknowledge and agree that all Employee Subject Works are owned by Canwest and the Licensors have no claims in connection therewith, nor will the Licensors seek, authorize or attempt to enforce any injunctive, equitable, common law or statutory claims in connection therewith.
- E. The Licensors hereby expressly and irrevocably acknowledge that the License in no way alters, restricts, overrides, supersedes or otherwise affects or changes any right or license already granted to or held by Canwest.

Release

2. The Licensors and Releasers hereby expressly and irrevocably release the Releasees from and against any and all claims arising out of, pertaining to, concerning, or in any way, directly or indirectly connected to the use, publication, reproduction, distribution or communication to the public, either directly or through a third party, of Freelancer Subject Works in Electronic Media, including but not limited to the claims directly or indirectly advanced or contemplated in the Action, as well as any and all demands, damages, liabilities, causes of action, suits, grievances, costs, expenses and attorney's fees, at law or in equity, of every nature, character or description whatsoever, whether known or unknown or suspected or unsuspected or anticipated or unanticipated, which the Class and or any Class Member ever had or now has or may in the future have in respect of Freelancer Subject Works authored by any or all of the Class Members and licensed in any way to or by Canwest or by an unrelated party having derived or obtained the published works from or through Canwest publication or license or sub-license by Canwest. For greater certainty, the claims released herein relate only to those claims arising by virtue of Freelancer Subject Works Disseminated in Canada or outside of Canada on or before the date of this Settlement Agreement by Canwest, or with the authorization of Canwest, through any Electronic Media, and in no way affect claims or potential claims related to ownership or reproduction of works created on or after the date of this Settlement Agreement. Furthermore, the claims released herein in no way relate to any Subject Works Disseminated in Canada by Toronto Star Newspapers Ltd., Rogers Publishing Limited or ProQuest.
 - A. The Licensors and Releasers expressly and irrevocably agree and consent that this release shall be given full force and effect according to each and all of its terms and provisions, including, but not limited to, those relating to this Action, unknown and unsuspected claims, counterclaims, crossclaims, setoffs, demands and causes of action, including, for greater certainty and without limiting the generality of the foregoing, the claims asserted by the Licensors and Releasers against Cedrom-SNI Inc., and excluding the claims asserted by the Licensors and Releasers in the Action against ProQuest, to the extent that such claims are in respect of Freelancer Subject Works.
 - B. The Licensors and Releasers agree that the Class and/or the Class Members will not make, commence or maintain any action or proceeding of any kind against any person or corporation or the Crown in which any claim could arise against Canwest for contribution or indemnity or any other relief over, with the sole exception of the claims asserted by the Licensors and Releasers against ProQuest in the Action (a "Third Party Claim").
 - C. It is expressly and irrevocably understood and agreed that the facts and assumptions on which this Settlement Agreement is based may later be known to be other than, or different from, the facts now known or believed to be true. Each of Canwest and the Licensors and Releasers expressly and irrevocably accepts

and assumes the risk of the facts and/or assumptions so appearing to be different and each of Canwest and the Licensors and Releasers expressly and irrevocably agrees that this Full and Final Release shall be in all respects effective and not subject to termination, rescission or modification by reason of any such difference in facts and/or assumptions.

DATED the day of June, 2010

HEATHER ROBERTSON (in her independent capacity)

HEATHER ROBERTSON (on behalf of the Class and/or Class Members)

I have authority to bind the Class and/or Class Members

CANWEST PUBLISHING INC.

I have authority to bind the Corporation

Schedule C

Court File No. 03-CV-252945CP
Court File No. CV-10-8533-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MADAM

....., THE

JUSTICE PEPALL

DAY OF, 2010

BETWEEN:

(Court Seal)

HEATHER ROBERTSON

Plaintiff

and

PROQUEST INFORMATION AND LEARNING COMPANY,
CEDROM-SNI INC., TORONTO STAR NEWSPAPERS LTD.,
ROGERS PUBLISHING LIMITED and
CANWEST PUBLICATIONS INC.

Defendants

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 CANWEST PUBLISHING
INC./PUBLICATIONS CANWEST INC., CANWEST BOOKS
INC. AND CANWEST (CANADA) INC.

Applicants

JUDGMENT

THIS MOTION, made by the Defendant, Canwest Publications Inc. ("Canwest"), for Judgment pursuant to Section 29(2) of the *Class Proceedings Act, 1992* and pursuant to the *Companies' Creditors Arrangement Act*, approving the settlement of the action as between the

Plaintiff and Canwest was heard this day at the court house, 393 University Avenue, 10th Floor, Toronto, Ontario, M5G 1E6.

WHEREAS this action was certified as a class proceeding pursuant to the Order of Justice Cullity dated October 21, 2008 and subsequently amended pursuant to the September 15, 2009 Order of Justice Cullity (the "Certification Order");

AND WITHOUT ADMISSION OF LIABILITY on the part of Canwest Publishing Inc., which denies liability;

AND UPON HEARING the submissions of counsel for the Plaintiff and the Defendant Canwest Publishing Inc., the Monitor and such other parties as were heard;

1. THIS COURT ORDERS AND DECLARES that for the purposes of this Judgment, and all subsequent judgments or orders herein, the following definition shall apply:

- (a) "Action" means the action bearing Court File Number 03-CV-252945CP, styled Heather Robertson v. ProQuest Information and Learning Company, CEDROM-SNI Inc., Toronto Star Newspapers Ltd., Rogers Publishing Limited and Canwest Publications Inc.
- (b) "Canwest" means Canwest Publishing Inc. and its subsidiary, parent, related, affiliated and associated entities, and each of their respective successor entities, and all of their respective shareholders, directors, officers, employees, contractors, and agents.

- (c) "Certification Order" means the Order of Justice Cullity dated October 21, 2008, subsequently amended pursuant to the September 15, 2009 Order of Justice Cullity, certifying this proceeding as a Class Proceeding.
- (d) "Class Definition" has the meaning set out in the Order dated October 21, 2008, as amended by the Order dated September 15, 2009, and set out in Schedule "A" to this Judgment.
- (e) "Class" or "Class Members" means the class of persons described in the Class Definition.
- (f) "Court Approval Date" means the date on which the Ontario Superior Court of Justice issues an order approving the Settlement Agreement.
- (g) "Creator" has the meaning given to that term in the Class Definition attached as Schedule "A" to this Judgment.
- (h) "Creator's Personal Corporation" means a private corporation, owner controlled by a Class Member that sells the Class Member's Freelancer Subject Works.
- (i) "Electronic Media" means any computer database, CD ROM, diskette, online service or other electronic system or device.
- (j) "Employee Subject Works" means those Subject Works that were created in the course of the Class Members' employment with Canwest and whose copyright is therefore owned by the Class Members' then-employer under Section 13(3) of the Canadian *Copyright Act*. However, when the employer is a Creator's Personal

Corporation, the Subject Work is not an Employee Subject Work, but is, rather, a Freelancer Subject Work.

- (k) "Freelancer Subject Works" means all Subject Works that are not Employees' Subject Works.
- (l) "Licensee" or "Licensees" or "Releasee" or "Releasees" means Canwest Publishing Inc. and its subsidiary, parent, related, affiliated, associated, and successor entities, licensees and assigns, and all of their respective shareholders, directors, officers, employees, licensees, contractors, and agents. For greater certainty, Licensee or Licensees or Releasee or Releasees does not include ProQuest Information and Learning Company, ProQuest Information Access ULC, their subsidiaries, parents, related, affiliated and associated entities, and each of their respective successor entities, and all of their respective shareholders, directors, officers, employees, contractors, and agents (collectively "ProQuest").
- (m) "Notice Program" means the program to be approved by the Court to provide Notice to the Class of the Settlement Agreement.
- (n) "Parties" means the parties to the Settlement Agreement.
- (o) "Settlement Agreement" means the Agreement attached as Schedule "B".
- (p) "Statement of Claim" means the Statement of Claim in the Action as amended from time to time.

- (q) "Subject Works" means all Works Disseminated by Canwest, or with the authorization of Canwest in Canada, published or made available by any means outside of Canada, in Print Media, on or before the date of this Settlement Agreement that have been published, reproduced, distributed and/or communicated to the public by telecommunication through any Electronic Media, except:
- (i) Works whose Creator (or successor-in-interest) by written agreement assigned all of the copyright in the Work to Canwest or their predecessors in interest in the subject Print Media;
 - (ii) Works whose Creator (or successor-in-interest) by written agreement granted to Canwest or their predecessors in interest a license to Disseminate their Works via, *inter alia*, Electronic Media; or
 - (iii) Works whose Creator created the work in the course of his or her employment when the employment was under a collective agreement that governed the use of the Works in Electronic Media.

2. THIS COURT ORDERS, ADJUDGES AND DECLARES that for the purposes of this judgment the word "Agreement" means the Settlement Agreement attached hereto as Schedule "B", and that all of the other capitalized terms in this judgment have the same meaning as defined in the Agreement.

3. THIS COURT ORDERS AND ADJUDGES that the Settlement Agreement is fair, reasonable and in the best interests of the Plaintiff and members of the Class.

4. THIS COURT ORDERS AND ADJUDGES that the approval of the Settlement Agreement is without prejudice to Canwest's right to contest liability, should the Settlement Agreement not be so approved or fail. All materials filed, submissions made or positions taken by any party in respect of this settlement are without prejudice in such event.

5. THIS COURT ORDERS AND ADJUDGES that the terms of the Settlement Agreement, including the quantification of the claims of the Class Members for the purposes of the CCAA proceeding bearing Court File No. CV-10-8533-00CL, are without precedent or prejudice to the value of damages that are claimed by the Plaintiff or Class Members, or may be ordered by the Court in this Action as against ProQuest Information and Learning Company, Cedrom-SNI Inc., Toronto Star Newspapers Ltd., and Rogers Publishing Ltd.

6. THIS COURT ORDERS that the Settlement Agreement, which is attached as Schedule "B", and which is expressly incorporated by reference into this Judgment, including the definitions included therein, is hereby approved and shall be implemented, in accordance with this Judgment and any further order of this Court.

7. THIS COURT ORDERS AND DECLARES that the claims of each member of the Class, and the Class as a whole, and his or her successors, heirs, executors, administrators, legal representatives and assignees, are dismissed as against Canwest and released in accordance with the terms of the License and Release attached hereto as Schedule "C".

8. THIS COURT ORDERS AND DECLARES that the Licensees are granted a License on the terms described more particularly in the License and Release attached as Schedule C hereto.

9. AND THIS COURT ORDERS AND DECLARES for greater certainty that the Releases referred to in paragraph 7 above bind each Class Member who has not opted out of the Action before the date of the Settlement Agreement whether or not he or she is eligible for individual compensation under the Settlement Agreement.

10. THIS COURT ORDERS, ADJUDGES AND DECLARES that this Judgment and the Agreement are binding upon each Class Member in accordance with this Judgment, including those persons who are under disability, and their requirements of rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of this Action.

11. Without in any way effecting the finality of this Judgment this Court reserves exclusive and continuing jurisdiction of this Action, the Plaintiff, all of the Class Members and Canwest for the limited purpose of:

- (a) implementing the Settlement Agreement; and
- (b) enforcing and administering the Settlement Agreement and this Judgment.

12. THIS COURT ORDERS AND ADJUDGES that, save as aforesaid, this Action is dismissed, without costs and with prejudice, as against Canwest and that such dismissal shall be a defence to any subsequent action in respect of the subject matter hereof.

(Signature of Judge)

HEATHER ROBERTSON
Plaintiff

-and- PROQUEST INFORMATION AND LEARNING COMPANY et al.
Defendants

Court File No. 03-CV-252945CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

ORDER

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