

**SUPERIOR COURT OF ONTARIO
(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 CANWEST PUBLISHING INC./PUBLICATIONS
CANWEST INC., CANWEST BOOKS INC., AND CANWEST
(CANADA) INC.

APPLICANTS

NOTICE OF MOTION

The Communications, Energy and Paperworkers Union of Canada Local 145 (the "**CEP**") will make a motion which will be heard at the courthouse at 363 University Avenue five (5) days after service of the CEP's Notice of Motion or such other date that this matter may be heard by the Court.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order abridging the time for, and validating the service of, the Notice of Motion and the materials filed in support of the motion;
2. An Order quashing the decision of the Claims Officer dated November 24, 2011;
3. An Order declaring that the claim of the retired typographers is meritorious;
4. Costs of this motion; and

5. Such further and other relief as the CEP may seek and this Honourable Court considers just.

THE GROUNDS FOR THE MOTION ARE:

1. On January 8, 2010 Canwest Publishing/Publications Canwest Inc., Canwest Books Inc. and Canwest (Canada) Inc. (collectively, the "**Canwest Publishing Entities**") were granted protection from their creditors under the *Companies' Creditors Arrangement Act* ("**CCAA**").
2. Pursuant to Orders of the Court dated April 12, 2010 and May 17, 2010, a claims procedure was established (the "**Claims Procedure Order**").
3. In on around 2009, provincial labour Arbitrator Sylvestre issued an award in which Arbitrator Sylvestre found, *inter alia*, that the Retired Topographers' compensable losses were limited to salaries and benefits from May 1999 to January 2000, a nine month period.
4. On April 16, 2009 the Union moved in the Quebec Superior Court to set aside Mr. Sylvestre's award. This proceeding is referred to as a "Motion in Annulment."
5. Pursuant to the Claims Procedure Order, the Retired Typographers filed a Claim in respect of their losses.
6. On July 28, 2011, the CCAA Supervising Judge, Madame Justice Pepall, issued a decision in respect of Postmedia's motion. Pepall J. found, *inter alia*, that the finding as to the damages period (i.e., Retired Topographers' compensable losses) was not barred by issue estoppel because of the CEP's Motion in Annulment. Peppal J.'s July 28, 2011 decision provided directions to the Claims Officer including leaving the decision as to whether the Motion in Annulment proceeding is meritorious to the Claims Officer.
7. On November 28, 2011, Claims Officer Coulter A. Osborne rendered his decision wherein he found that the Motion in Annulment.

8. The Claims Officer erred by finding that, *inter alia*, "it is plain and obvious that the CEP's Motion in Annulment is not meritorious."
9. The CEP's Motion in Annulment is meritorious.
10. The appeal will not unduly hinder the progress of the proceeding.
11. Sections 11 of the *CCAA*.
12. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be read in support of this motion:

1. The decision of Claims Officer Coulter A. Osborne, dated November 24, 2011;
2. Relevant excerpts from the record before Claims Officer Osborne;
3. Such further and other material as counsel may advise and this Honourable Court permit.

November 28, 2011

CaleyWray

Labour/Employment Lawyers
1600 - 65 Queen Street West
Toronto, Ontario M5H 2M5

Jesse Kugler (55269V)

Email: kuglerj@caleywrap.com
Tel : 416-775-4677
Fax: 416-366-3293

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.

Court File No. CV-10-8533-00CL

SUPERIOR COURT OF JUSTICE

NOTICE OF MOTION

CaleyWray
Labour/Employment Lawyers
1600 - 65 Queen Street West
Toronto, Ontario M5H 2M5

Jesse Kugler (55269V)
Email: kuglerj@caleywright.com
Tel: (416) 775-4677
Fax: (416) 366-3293