

**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 CANWEST GLOBAL COMMUNICATIONS
CORP., AND THE OTHER APPLICANTS LISTED ON SCHEDULE "A"**

APPLICANTS

**RESPONDING MOTION RECORD OF COMMUNICATIONS, ENERGY AND
PAPERWORKERS UNION OF CANADA**

**(MOTION REGARDING CH PLAN CLAIMS,
RETURNABLE MARCH 4, 2010)**

February 24, 2010

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TO: THE SERVICE LIST ATTACHED

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
CANWEST GLOBAL COMMUNICATIONS CORP.
AND THE OTHER APPLICANTS LISTED ON SCHEDULE "A"

Applicants

CANWEST SERVICE LIST, JANUARY 13, 2010

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APPLICANTS

**(MOTION REGARDING CH PLAN CLAIMS,
RETURNABLE MARCH 4, 2010)**

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TAB 1

Court File No. CV-09-8396-00CL

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**AFFIDAVIT OF DAVID LEWINGTON
(sworn February 24, 2010)**

I, David Lewington, of the Town of Whitby in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the National Representative for the Communications, Energy and Paperworkers Union of Canada, and was responsible for servicing a bargaining unit at CHCH-TV, a Division of CanWest MediaWorks Inc. ("CHCH-TV"). As such, I have knowledge of the matters set out in this Affidavit.
2. I have reviewed and am familiar with the Affidavit of Mr. John E. Maguire, sworn February 11, 2010, which forms part of the Applicants' Motion Record in respect of the Declarations Regarding the CH Plan Claims (the "Maguire Affidavit"). In this, my affidavit, I will make reference to some documents which form part of the Exhibits to Mr. Maguire's affidavit, and with which I am familiar.

3. The Communications, Energy and Paperworkers Union of Canada ("CEP" or the "Union") is the bargaining agent for the employees of CHCH-TV, and together with its Local Union 1100, was subject to a collective agreement with CHCH-TV in Ontario.
4. Local 1100 represented the employees of CHCH-TV including those engaged in technical operations, technical maintenance, production, and presentation of the television station's broadcasts, as well as administrative, sales and clerical staff, but did not represent sales persons, some supervisors and managers. On July 31, 2009 there were approximately 100 full-time and part-time employees in the bargaining unit.
5. On or about August 30, 2009 CHCH-TV was sold to an affiliate of Channel Zero Inc. The CEP has continued to represent the bargaining unit with the new employer.
6. While employed by CHCH-TV, the bargaining unit employees participated in a defined benefit pension plan governed by the *Pension Benefits Standards Act*. The pension plan was known as the "Global Communications Limited Retirement Plan for CH Employees" (the "CH Pension Plan"). A copy of the working consolidation of the CH Pension Plan is attached as Exhibit D to the Maguire Affidavit.
7. I was the chief spokesperson for the Union in 2005 during the round of negotiations for the last CHCH-TV collective agreement, which had a term of April 1, 2005 to March 31, 2008 (the "Collective Agreement"). Following March 31, 2008, and pursuant to a provision of the Collective Agreement regarding automatic yearly renewals, that collective agreement continued in force until the effective date of the sale of CHCH-TV to Channel Zero Inc., on August 30, 2009. Attached as Exhibit G to the Maguire Affidavit is a copy of the last CHCH-TV Collective Agreement.

8. To the Union's knowledge and during the course of bargaining for the last collective agreement, the CH Pension Plan was fully funded. Further, as of December 31, 2006 the Union understood that the CH Pension Plan was in a surplus position. Based on its past experience the Union had no reason to doubt that the CH Pension Plan would remain fully funded.
9. Article 18.3.1 of the Collective Agreement states as follows:

The Pension Plan presently in effect shall be continued during the term of this Agreement and is hereby incorporated by reference into this Agreement. The Company agrees it will make no amendments to the terms of the Pension Plan as it now stands without consultation with the Pension Committee which consists of six (6) members, three (3) appointed by the Union and three (3) appointed by the Company. The Company agrees to provide to the Pension Committee all relevant records, actuarial and financial data, plan documents and other information requested by the Committee. Each party may make representation to the Committee with such consultants, as it deems necessary. Meetings will be arranged as deemed necessary by the committee or at the request of either party.
10. It was not until June 30, 2009 that the Union was made aware that there was a deficit in the CH Pension Plan and that solvency issues had arisen after the December 31, 2006 Actuarial Valuation. I learned from one of the Union-appointed members of the Pension Committee that the Committee had not been meeting and had not been informed of this development.
11. On or about June 30, 2009 Canwest Global announced that it had reached an agreement to sell CHCH-TV to Channel Zero Inc. and that the proposed sale was conditional on securing the agreement of the Union to renewal of the Collective Agreement with Channel Zero Inc., and to the removal of the CH Pension Plan from that renewal Collective Agreement. Canwest Global also announced its intention to terminate the CH Pension Plan effective August 31, 2009.

12. On July 20, 2009 the Union filed a grievance alleging that CHCH-TV was in violation of the terms of the Collective Agreement by unilaterally deciding to terminate and/or wind up the CH Pension Plan (the "Grievance"). The Union also alleged that CHCH-TV's intention not to fully fund any deficit in the pension plan was a violation of the Collective Agreement. The Grievance alleged breaches of Articles 4, 18 and 20 of the Collective Agreement. Attached as Exhibit I to the Maguire Affidavit is a copy of the July 20, 2009 Grievance.
13. Article 4 of the Collective Agreement is the "Management Rights" provision, and the Union intends to argue that there is no management right to unilaterally change the terms of the CH Pension Plan, including terminating the plan in its entirety.
14. Article 18 of the Collective Agreement includes the provision at Article 18.3.1 incorporating the Pension Plan into the Collective Agreement, states that the Pension Plan would be continued during the term of the Agreement, and outlines specifically that CHCH-TV agreed that it would not amend the terms of the Pension Plan without consultation with the Pension Committee, which included three members of the Union.
15. Article 20 of the Collective Agreement addresses existing benefits and that CHCH-TV agreed not to alter or change existing benefits or practices in such a manner as to discriminate against members of the bargaining unit.
16. Enrolment in the Pension Plan was mandatory for all full-time employees once they had reached the age of 25 and had one year of service. Each member of the Pension Plan was required to contribute 5% of earnings into the plan, and could also make further voluntary contributions to a permitted maximum.
17. It is the Union's belief that since the active employees of CHCH-TV had been required to participate in the CHCH-TV defined benefit pension plan; had incorporated that plan into their collective agreement; and, the pension plan

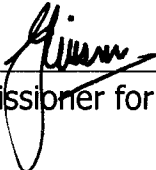
outlined what the level of benefits would be upon retirement for all participants in the plan, including the active employees, that as such they had vested rights in the CH Pension Plan.

18. It is further the Union's belief that section 13.3 of the Pension Plan text supports its claim that the pension benefits of all active employees vested on the date of the termination of the plan, and that those employees' pension benefits are to be determined as if they had satisfied all eligibility conditions for a deferred pension under the plan.
19. The Union believes that this Grievance should be remitted to arbitration so that a labour arbitrator, who would have significant experience regarding collective bargaining, contract interpretation, and the general labour relations context, could determine the issues raised.
20. In or about September 2009, I corresponded with Carol Beisel, the Vice President of Labour Relations for Global Television, with respect to referring the grievance to arbitration. Ms. Beisel requested that the Union hold the grievance in abeyance pending receipt of an actuarial report detailing the shortfall in the pension plan .
21. By a letter dated February 19, 2010 counsel for the Union asked the Federal Minister of Labour, the Honourable Lisa Raitt, to appoint an arbitrator pursuant to section 57(4) of the *Canada Labour Code* to hear the Grievance. Attached as **Exhibit 1** to this my Affidavit is a copy of the letter sent.
22. However, in the interim, since the Applicants are under *Companies' Creditors Arrangement Act* protection and since a Claims procedure had been ordered, the Union has filed a claim regarding the Grievance for what it believes the pension plan deficit may be with respect to active employees. Attached as Exhibit N to the Maguire Affidavit is a copy of the CEP claim.

23. As the Union's claim stated, the \$15,438,739 pre-filing claim was subject to verification upon receipt of documentation. The Union is well aware that the amount of the claim is likely higher than it needs to be, but since the Applicants have not yet provided an actuarial report as of the date of termination of the plan, it was impossible for the Union to provide any more specific claim than it did.

24. I make this affidavit in good faith and in support of the CEP's response to the Applicants' motion regarding the CH Plan Claims and for no improper purpose.

SWORN before me in the City of Toronto, in the Province of Ontario, this 24th day of February, 2010.

 G. MISRA.
A Commissioner for taking affidavits.


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File No. 777

February 19, 2010

COURIER

The Honourable Lisa Raitt
Minister of Labour
Place du Portage, Phase 2
11th Floor, 165 Hotel-De-Ville Street
Gatineau QC K1A 0J2

This is Exhibit "1" referred to in the
Affidavit of David Lewington sworn before
me this 24th day of February, 2010


G. MISRA.
A Commissioner, etc.

Dear Honourable Raitt:

RE: COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA, LOCAL 1100M AND GLOBAL TELEVISION, CANWEST BROADCASTING – POLICY GRIEVANCE #1100-2009-03 – RETIREMENT PLAN FOR CH EMPLOYEES

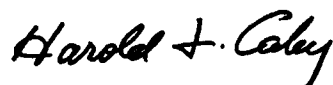
We act on behalf of Communications, Energy and Paperworkers Union of Canada and its Local 1100 and on their behalf and pursuant to Section 57(4) of the *Canada Labour Code*, we are requesting that you appoint an Arbitrator to determine the above referred to grievance.

We enclose a copy of the grievance; a copy of the letter dated February 12, 2010 referring the grievance to arbitration; and a copy of the collective agreement.

The contact information for the company is: Ms Carol Beisel, Vice President of Labour Relations, Canwest Broadcasting, c/o Global BC, 7850 Enterprise Street, Burnaby BC V5A 1V7 (cbeisel@globaltv.com).

Given the circumstances, we request that you expedite this appointment.

Yours truly,
CaleyWray



Harold F. Caley
HFC/mb
Enclosure

cc: D. Lewington (w/e)
C. Beisel (w/e)
D. Byers (w/e)

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 GLOBAL COMMUNICATIONS CORP, et. al.

Applicants

Court File No. CV-09-8396-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**AFFIDAVIT OF D. LEWINGTON
Sworn February 24, 2010**

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Lawyers for the Communications, Energy
and Paperworkers Union of Canada

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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MOTION RECORD

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