

**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 Publishing Inc./Publications Canwest Inc., Canwest Books Inc. and Canwest (Canada) Inc.**

**APPLICANTS**

**FACTUM  
OF THE COMMUNICATIONS, ENERGY AND  
PAPERWORKERS UNION OF CANADA  
(Motion Returnable February 2, 2010)**

January 29, 2010

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**TO: SEE ATTACHED SERVICE LIST**

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**FACTUM OF THE MOVING PARTY  
(Returnable February 2, 2010)**

**PART I – OVERVIEW**

1. This is a motion made by the Communications, Energy and Paperworkers Union of Canada (the "Union") requesting an Order appointing the Union to represent current and former members of the Union, including pensioners and their beneficiaries, employed or formerly employed by the Applicants ("Current and Former Members") in the proceedings under the *Companies' Creditors Arrangement Act* ("CCAA"), the *Bankruptcy and Insolvency Act* (the "BIA") or in any other proceeding which has been or may be brought before this Honourable Court (the "Proceedings").
2. No party, other than the Union, is seeking to represent the Current and Former Members in the Proceedings.

## **PART II - FACTS**

3. The Union is the bargaining agent for employees working at the Applicants' facilities in bargaining units at the Ottawa Citizen, the Windsor Star, the Montreal Gazette, the Edmonton Journal, the Calgary Herald, the Alberni Valley Times, the Nanaimo Daily News, College Printers, the Sun and Province in B.C., the Burnaby/Coquitlam Now-Royal City Record, Surrey Now, the Abbotsford Times, the Victoria Times Colonist, and the Campbell River Courier-Islander. A principal function of the Union as exclusive bargaining agent of employees employed by the Applicants is the negotiation and administration of collective agreements.

Reference: Affidavit of Peter Murdoch sworn January 28, 2010, Motion Record of the Moving Party, Tab A, paragraph 6 ("Murdoch Affidavit").

4. The Union represents twenty five (25) bargaining units with the Applicants and has collective agreements with respect to these bargaining units ("Collective Agreements").

Reference: Murdoch Affidavit, paragraph 7.

5. The terms and conditions of the collective agreements negotiated by the Union have a direct impact on the benefit entitlements payable to the Union's Former Members. The pension and post-retirement/post-employment benefits currently enjoyed by the Union's Former Members are the product of benefits negotiated by the Union with the Applicant and form part of the collective agreements. Given the foregoing, the Union has extensive knowledge of the issues that may arise in respect to the interests of its Former Members during the Applicants' CCAA proceedings.

Reference: Murdoch Affidavit, paragraph 9.

6. The Applicants maintain two (2) defined benefit plans ("DB Plans") in Ontario and one DB Plan in British Columbia. They also maintain and contribute to three (3) defined contribution plans ("DC Plans") and several multi-employer pension plans. As described in the Strike Affidavit, the DB Plans have a combined windup deficiency of \$106,349,581 as of the last valuation date which was on December 31, 2008. The estimated annual current service cost in respect of the DB Plans is \$8,264,473. The total of the annual special payments made by the Applicants in respect of the deficiencies in the DB Plans is \$18,566,666. As a result of the recent economic decline it is expected that the next valuation of the DB Plans will reflect a significantly deteriorated financial position.

Reference: Murdoch Affidavit, paragraph 10.  
Affidavit of Thomas C. Strike, sworn January 7, 2010,  
Applicants' Application Record, TAB 2, paragraphs 127 to  
132 (the "Strike Affidavit").

7. The Applicants' DB Plans have, in aggregate, approximately 2,210 active members, and approximately 685 pensioners, survivors and other non-active DB Plan members. The Union has Current and Former Members in one of the Ontario DB Plans and in the British Columbia DB Plan. It also has members in a number of the Applicants' multi-employer pension plans.

Reference: Murdoch Affidavit, paragraphs 11 and 12.  
Strike Affidavit, paragraph 129.

8. The Applicants also provide post-retirement/post-employment benefits to some former employees, which include some of the Union's Former Members. Those benefits include health, dental and term life insurance benefits. The aggregate annual cash contribution in the year ended August 31, 2009 to provide such post-retirement/post-employment benefits for all former employees of the Applicants was approximately \$3 million. The aggregate accrued benefit

obligation relating to these benefits for all of the Applicants' former employees, as at the year ending August 31, 2009, totalled approximately \$64.8 million.

Reference: Murdoch Affidavit, paragraph 13.  
Strike Affidavit, paragraph 136.

9. On January 8, 2010 the Applicants obtained an order pursuant to the CCAA staying all proceedings and claims against them (the "Initial Order"). The effect of the Stay Order has been far reaching. For instance, immediately after the issuance of the Initial Order, the Applicants stopped making payments to a number of the Union's Formers Members who were in receipt of severance pay in the form of salary continuance.

Reference: Murdoch Affidavit, paragraph 14.

10. The Union has approximately forty five (45) outstanding grievances at businesses of the Applicants including the Montreal Gazette, the Ottawa Citizen, the Windsor Star, College Printers, the Sun and Province, and the Victoria Times Colonist. Of these, approximately three (3) are at arbitration.

Reference: Murdoch Affidavit, paragraph 15.

11. The Initial Order may necessitate filing a large number of diverse and complex claims on behalf of the Current and Formers Members. The Union intends to facilitate and advance the claims of its Current and Former Members.

Reference: Murdoch Affidavit, paragraph 16.

12. To the extent possible, the Union has been communicating with the Current and Former Members regarding the Proceedings and the impact of the Initial Order.

Given the Union's localized operations, it has been effective in keeping the Current and Formers Members informed and advised of the progress of the Proceedings. However, obtaining full contact information for the Current and Former Members from the Applicants is essential to fulfilling the Union's mandate as representative in the Proceedings.

Reference: Murdoch Affidavit, paragraph 17.

### **PART III – ISSUE AND THE LAW**

13. The following issue arises in respect of the within motion:

- (i) Is it appropriate for the Court to appoint the Union as representative, and CaleyWray as representative counsel, on behalf of the Union's Current and Former Members?

### **ISSUE I: REPRESENTATION ORDER**

#### **Jurisdiction**

14. The Court has the authority under Rule 10.01(1) of the Rules of Civil Procedure to appoint representative counsel where a person with an interest in an estate cannot be readily ascertained, found or served. Rule 10.01 states:

"10.01(1)...a judge may by order appoint one or more persons to represent any person or class of persons who are unborn or unascertained or who have a present, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served."

*Rules of Civil Procedure*, R.R.O. 1990, Reg. 199, R. 10.01(1)

15. The Honourable Justice Campbell in a matter on the Commercial List stated the test for a Rule 10 representation order as "a simple balance of convenience test".

Justice Campbell indicated:

"...the court is to consider the inconvenience that would be experienced by each party if the order were or were not granted".

*Dugal v. Research In Motion Ltd* (2007), 87 O.R. (3d) 721 (S.C.J. - Commercial List), para. 21 ("*Dugal v. Research In Motion*")

16. In *Dugal v. Research In Motion*, Justice Campbell decided that a Representation Order was appropriate, particularly given the opt-out provision that was included in the Order. In his analysis, Justice Campbell refers to *Police Retirees of Ontario v. Ontario Municipal Employees' Retirement Board*, a leading case on Representation Orders as follows:

"... the test to be applied in considering a request for a representation order is not whether the individual members of the group can be ascertained or found, but rather whether the balance of convenience favours granting of a representation order instead of individual service upon each member of the group and individual participation in the proceedings. Such an interpretation is consistent with the legislative purpose behind this provision, which is designed to encourage an expeditious means of resolving contentious issues without the cost and expense associated with a Rule 12 order. In analyzing the balance of convenience test, I must consider the inconvenience that would be experienced by each party if the representation order were or were not granted".

*Dugal v. Research in Motion*, supra, para. 21

*Police Retirees of Ontario Inc v. Ontario Municipal Employees' Retirement Board* (1997), 35 O.R. (3d) 177 (Ont. Gen. Div.), para.

17. Alternatively, Rule 12.07 of the Rules of Civil Procedure provides the Court with the authority to appoint a representative defendant where numerous persons have the same interests. Rule 12.07 provides as follows:

"12.07 Where numerous persons have the same interest, one or more of them may defend a proceeding on behalf or for the benefit of all, or may be authorized by the court to do so."

*Rules of Civil Procedure, R.R.O. 1990, Reg. 194, R. 12.07*

18. The Court has wide discretion pursuant to Section 11 of the CCAA to appoint Representatives on behalf of a group of employees in CCAA proceedings and to order legal and other professional expenses of such representatives to be paid from the estate of the company. Section 11 of the CCAA provides as follows:

11. Despite anything in the Bankruptcy and Insolvency Act or the Wind-up and Restructuring Act, if an application is made under this Act in respect of a company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make an order that it considers appropriate in the circumstances.

### **Vulnerable Group**

19. Employees and retirees are a vulnerable group of creditors in an insolvency because they have little means to pursue a claim in complex CCAA proceedings or other related insolvency proceedings. The vulnerability of employees terminated in connection with an insolvency has been articulated as follows:

"Employees comprise the largest segment of those creditors of business organizations who have little capacity to protect themselves from the effects of their debtors. This is due in large part to the fact that the circumstances surrounding the formation of employment contracts do not facilitate the use of protective



measures. A prospective employee rarely has the bargaining power to demand some form of security interests in the property of a prospective employer to protect against the possibility that amounts owing under an employment contract are not paid...Further, employees do not have the capacity to spread the loss resulting from non-payment over a large number of transactions. Nor can an employee "write-off" a loss from non-payment of wages against other income."

*R.C.C. Cuming, Enhanced Enforcement of Wage Claims under Canadian Bankruptcy and Receivership Law, prepared for the Corporate Law Policy Directorate of Industry Canada by Robert C.C. Cuming, College of Law - University of Saskatchewan, April 1998, p. 1.*

20. This reasoning extends to all Current and Former Members, who are or were employees of the Applicants. Notwithstanding that the Current Members continue to be represented by the Union, both they, the Former Member retirees, and the Union do not have all the relevant information, and have few means to pursue their claims in respect of pension, termination, severance, retirement payments and other claims in the Proceedings and will benefit from an Order appointing the Union as representative and CaleyWray as representative counsel in the Proceedings.

### **Social Benefit**

19. Granting a representation order and appointing representative counsel will provide a social benefit by assisting Current and Former Members, the vast majority of whom would otherwise have no means to advance their claims in respect of retirement and employment-related payments. Representative counsel will provide a reliable source for these individuals for information about the process. Representative counsel can speak on behalf of Current and Former Members to other stakeholders and report back through various modes of

communication including the Union's website and its legal counsel's website. The Union can advocate on behalf of Current and Former Members in the negotiation of any potential Plan of Arrangement and can address with the Court issues that may affect their interests.

### **Streamlined Process**

20. Appointing the Union in a representative capacity, and representative counsel, benefits all parties as it creates a unified voice for the Current and Former Members and streamlines the process for all parties involved in the Applicants' insolvency. It prevents Former Members in particular from filing inconsistent claims and ensures that claims are advanced by all Members in a timely and efficient manner.
21. Having a representative and representative counsel appointed to act on behalf of the Current and Former Members is important in large-scale insolvencies where there is potential for proceedings to become delayed if individual employees begin to advance claims and interests without an effective unified voice.

### **Efficiency**

36. Appointing a representative and having representative counsel will introduce efficiency to the process as having one representative for all Current and Former Members of the Union benefits the entire group of creditors and also the estate by avoiding multiple legal representations and proceedings. The practical reality is that a large-scale restructuring such as the Applicants' may be unable to progress in an efficient manner without a Representation Order. The large

number of employees working or retired in multiple locations and provinces, and the concomitant pension and other complex issues, require effective and efficient advocacy.

37. Protracted and unnecessary litigation depletes the assets of the company and its estate, if applicable, which is a concern in complex insolvency proceedings. As stated earlier, by authorizing specialized counsel to provide legal services to all Current and Former Members as a group, rather than having employees and retirees individually seeking their own counsel, protracted and duplicative proceedings are avoided and the assets of all interested parties are maximized.

*Ontario (Director, Mortgage Broker's Act) v. Coulter* [1990] O.J. 1334 (Ont. S.C.J) at 9.

38. The "balance of convenience test" as outlined in *Dugal v. Research in Motion* has been met in this case. The Current and Former Members are not otherwise represented and are a vulnerable group that requires assistance in the restructuring process. The appointment of the Union as representative and CaleyWray as representative counsel to the Current and Former Members would provide a social benefit and would streamline and introduce efficiency to the process for all parties involved in the Proceedings. It is therefore beneficial that the Union be appointed as representative, and CaleyWray be appointed as representative counsel, to the Current and Former Members.

*Fraser Papers Inc.*, Endorsement of the Honourable Pepall J. dated September 17, 2009, at paragraph 7.

*Nortel Networks Corp.*, [2009] O.J. No. 2166, at paragraphs 13-14.

## **The Union as Representative**

39. No other party may seek to represent the unionized current employees (the Current Members) since the Union has legally binding exclusive bargaining rights pursuant to the applicable provincial labour legislation with respect to those employees.

40. The Courts have held that absent clear legislation to the contrary, unions have legal status in courts when such status is necessary for them to perform their labour relations functions.

*Professional Institute of the Public Service of Canada v. Canada (Attorney General)*, [2002] O.J. No. 4831 (Ont. C.A.), at paras. 25 – 27.

41. Unions have legal status in the courts, which is to say that they must be treated as juridical entities, for the purpose of defending their members or former members from the possible adverse effects of any changes to their pensions and benefits.

*Professional Institute of the Public Service of Canada v. Canada (Attorney General)*, [2002] O.J. No. 4831 (Ont. C.A.), at para. 32.

42. Section 3(2) of the *Rights of Labour Act* does not prevent the Union from being added as a party to act in a representative capacity. The section states:

A trade union shall not be made a party to any action in any court unless it may be so made a party irrespective of this Act or of the *Labour Relations Act*.

*Rights of Labour Act*, R.S.O. 1990, c.R.33

43. When considering whether s. 3(2) prohibits the Court from making a union a party to an action, the Court asks "whether irrespective of the RLA or the OLRA, the [applicants] may be parties to an action in court."

*Professional Institute of the Public Service of Canada v. Canada (Attorney General)*, [2002] O.J. No. 4831 (Ont. C.A.), at para. 30.

44. The Union has collective agreements with the Applicants which only it has the right to enforce, or to re-negotiate, if necessary. It also has extensive knowledge of the terms and conditions of the collective agreements and pension and benefits entitlements.

Reference: Murdoch Affidavit, paragraphs 6 and 9

45. Furthermore, since the Pension Plans form part of the collective agreements, the retirees (the Former Members), have always had their interests represented through the Union and the collective agreements, the Union is the appropriate representative for them in the context of a restructuring in which defined pension and other rights that were negotiated by the Union may have to be addressed in the Proceedings.
46. The representative who is granted representative status on behalf of all Current and Former Members should create a unified voice for them, should have their trust, and should be well-equipped to deal with all their issues and interests.
47. The Union is a large, established, democratically run and well-organized entity that has as its mandate to negotiate collective agreements and represent the interests of its members. It has in place established means of communicating with its members and former members.

Reference: Murdoch Affidavit, paragraphs 4, 6 and 17

48. Given its localized operations, the Union has been effective in keeping Current and Former Members informed and updated as to the progress of the proceedings. The Union has been engaged in determined efforts to create a strong and unified voice for the Current and Former Members in the CCAA process as exemplified by its efforts on behalf of its members and its retention of qualified legal counsel.

Reference: Murdoch Affidavit, paragraph 17

49. Given that the Union is national in scope it has the facility and infrastructure to address the needs and interests, and the informational requirements of its Current and Former Members whether they are located in British Columbia, Ontario or anywhere else.

50. For the reasons outlined above, the Union is well-suited to represent all Current and Former Members in the Applicants' Proceedings in respect of all of their interests, and therefore the Court should exercise its discretion pursuant to section 11 to grant a Representation Order in favour of the Union.

51. The Court has held that the Union may appropriately represent its members and former members.

*Canwest Global Communications Corp.*, Endorsement of the Honourable Pepall J. dated October 27, 2009, at paragraph 17.

## **The Appointment of Representative Counsel**

52. It is important for the Union, if appointed as representative on behalf of the Current and Former Members, to retain legal counsel which is well-suited to dealing with the labour and pension issues relating to all Current and Former Members, and who will adequately advance their claims.

## **Duplication**

53. As stated in *Ontario (Director, Mortgage Broker's Act) v. Coulter*, by authorizing specialized counsel to provide legal services to all of the Union's members and the Applicants' Current and Former employees as a group, rather than having individuals seek their own counsel, protracted and duplicative proceedings are avoided and the assets of all interested parties are maximized.

*Ontario (Director, Mortgage Broker's Act) v. Coulter* [1990] O.J. 1334 (Ont. S.C.J.) at 9.

54. By appointing the Union as representative for all Current and Former Members and CaleyWray as representative counsel, the Court will avoid offending the principle of multiplicity and will avoid the duplicative proceedings that may arise.

## **Advantages of appointing CaleyWray as Representative Counsel**

55. It is in the best interests of the Current and Former Members to be represented by counsel of the Union's choice who are best able to deal with all of their claims and have the experience required to deal with all of the issues in the Proceedings.

56. The lawyers and administrative staff at CaleyWray have the necessary experience and are equipped to deal with all of the legal issues and communications that may be required in these proceedings.

Reference: Affidavit of Harold Caley sworn January 27, 2010, paragraphs 4 and 5

### **Unified Voice**

57. It is in the best interests of the Current and Former Members to be represented as one group with a strong, unified voice as opposed to being fragmented into smaller, weaker constituent groups. The Union has a large number of Current and Former Members who are and were employed by the Applicants across Canada, has a developed strong network of communication and has retained legal counsel that is well-suited to deal with all issues affecting the Current and Former Members.

### **Economies of Scale**

58. It is in the best interests of the Current and Former Members to take advantage of the economies of scale that will come with having one able representative counsel acting for all of them. Should the Court grant the Order sought by the Union, the Current and Former Members will be able to take advantage of experienced legal counsel at no cost.



### **No Conflict of Interest**

59. As all the Current and Former Members may ultimately have unsecured claims against the Applicants in the CCAA proceedings, there is no conflict of interest as between the claims the Current and Former Members.
60. While Current Members have an interest in preserving their employment with the Applicants and thus may have somewhat different interests than Former Members, there is no conflict of interest between these groups because the Current Members would also have an interest in the preservation and maintenance of the Pension Plans and post-retirement/post-employment benefits.
61. There is no actual conflict of interest at this time and the Court need not be concerned with hypothetical scenarios which may never materialize. In the unlikely event of a serious conflict between the groups, such matters can be brought to the attention of the Court by the Union and its counsel for resolution.
62. For the reasons listed above, it is in the best interests of the Current and Former employees that the Representation Order be granted in favour of the Union and that its legal counsel CaleyWray be appointed as Representative Counsel.

**PART IV: ORDER REQUESTED**

63. The Union respectfully requests:

- a) If necessary, **AN ORDER** abridging the time for service of the notice of motion and the motion record, and validating that the motion is properly returnable on February 2, 2010.
- b) **AN ORDER** that the Union is authorized to continue to represent its current members, and appointing the Union to represent its former members, including pensioners, retirees, deferred vested participants and surviving spouses and dependents, the Current and Former Members, employed or formerly employed by the Applicants or the Limited Partnership referred to in paragraph 2 of the Initial Order (collectively "the Applicants") in this proceeding under the *Companies' Creditors Arrangement Act*, and in connection with any concurrent or subsequent proceeding that may be commenced under the *Bankruptcy and Insolvency Act* or in any other proceeding which has been or may be brought before this Honourable Court (the "Proceedings").
- c) **AN ORDER** that the Union is authorized to determine, file, advance or compromise any and all claims of its Current and Former Members which exist or may arise at law or equity or pursuant to any applicable collective agreement, which may be made against the Applicants in the Proceedings in connection with any issue or matter related to any recovery, compromise of rights or entitlements of the Current and Former Members.
- d) **AN ORDER** that the Applicants be, and are authorized and directed to, provide to counsel for the Union, as soon as possible and without charge the names, last known addresses, last known phone numbers and email addresses (if any) of all the Current and Former Members.

- e) **AN ORDER** that, subject to any claims of privilege by the Applicants and in accordance with the terms of any applicable collective bargaining agreement to which the Applicants and the Union are a party, the Applicants shall respond, without charge, to reasonable disclosure requests from counsel for the Union with respect to any claim properly brought in the Proceedings. For that purpose, the Applicants shall be authorized to provide information which includes personal information related to individual Current and Former Members. For greater clarity, the Applicants would not be required to create documents in response to such requests by the Union. In the event of any dispute regarding such disclosure requests, the Monitor would assist in attempting to resolve such disputes.
  
- f) **AN ORDER** that the Applicants shall forthwith provide to the Union and its counsel, without charge, all documents and data, including generally those pertaining to the various pension, benefit, and severance and termination payments and other arrangements for group health, life insurance, including where available, up-to-date financial information regarding the funding and investments of any of these arrangements.
  
- g) **AN ORDER** that any Current or Former Member whose personal information is provided to counsel for the Union by the Applicants pursuant to the Order is deemed to have consented for the purposes of any applicable privacy legislation to the Applicants providing such information, and to the collection, use and disclosure by the Union of such information, provided that such information would be used or disclosed by the Union solely for the purpose of representing the Current and Former Members' interests in these Proceedings.

- h) **AN ORDER** that the Union, or its' counsel on behalf of the Union, be authorized to take all steps and to do all acts necessary or desirable to carry out the terms of the Order, including dealing with any Court or any regulatory body, other governmental ministry, department or agency (each a "Governmental Authority"), and to take all such steps that may be necessary or incident thereto, provided adequate notice is given to the Applicants before any formal proceedings before a Court or Governmental Authority are commenced.
- i) **AN ORDER** that the law firm CaleyWray Labour/Employment Lawyers ("CaleyWray") be authorized to act as counsel for the Current and Former Members in the Proceedings.
- j) **AN ORDER** that notice of the granting of this Order may be provided to the Current and Former Members in such form and under such terms and conditions as deemed appropriate by the Union and this Honourable Court.
- k) **AN ORDER** that any individual Former Member who does not wish to be represented by the Union or CaleyWray pursuant to the terms of this Order or all other related Orders which may subsequently be made in this CCAA proceeding concerning the Current or Former Members or relating to the appointment of the Union and/or CaleyWray shall, within 30 days of receiving notice of this Order, notify the Monitor, the Applicants and CaleyWray in writing, and shall thereafter represent themselves as an independent individual party to these proceedings.
- l) **AN ORDER** that the Union and CaleyWray shall have no liability as a result of their respective appointment or the fulfilment of their duties in carrying out the provisions of this Order save and except for any gross negligence or unlawful misconduct on their part.

- m) **AN ORDER** that the Union shall be at liberty and are authorized at any time to apply to this Honourable Court for advice and directions in the discharge or variation of their powers and duties.

ALL OF WHICH IS RESPECTFULLY SUBMITTED  
this 29<sup>th</sup> day of January, 2010.



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**Douglas Wray**



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**Jesse Kugler**  
Solicitors for the  
Communications, Energy and  
Paperworkers Union of Canada

**SCHEDULE "A"**

**LIST OF AUTHORITIES**

*Dugal v. Research In Motion Ltd* (2007), 87 O.R. (3d) 721 (S.C.J. - Commercial List)

*Police Retirees of Ontario Inc v. Ontario Municipal Employees' Retirement Board* (1997), 35 O.R. (3d) 177 (Ont. Gen. Div.)

*Ontario (Director, Mortgage Broker's Act) v. Coulter* [1990] O.J. 1334 (Ont. S.C.J)

*Fraser Papers Inc.*, Endorsement the Honourable Pepall J. dated September 17, 2009

*Nortel Networks Corp.*, [2009] O.J. No. 2166

*Professional Institute of the Public Service of Canada v. Canada (Attorney General)*, [2002] O.J. No. 4831 (Ont. C.A.)

*Canwest Global Communications Corp.*, Endorsement of the Honourable Pepall J. dated October 27, 2009

**SCHEDULE "B"**

**TEXT OF STATUTES**

*Companies Creditors Arrangement Act, R.S.C. 1985. c. C-36*

*General power of court*

11. Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

*Rights of Labour Act, R.S.O. 1990, c. R-33*

*Acts done by two or more members*

3.--(1) Any act done by two or more members of a trade union, if done in contemplation or furtherance of a trade dispute, is not actionable unless the act would be actionable if done without any agreement or combination.

*Trade union, party to action*

(2) A trade union shall not be made a party to any action in any court unless it may be so made a party irrespective of this Act or of the Labour Relations Act.

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., ET AL.

**Applicant**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**FACTUM**

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