

**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

**MOTION RECORD OF
PROQUEST INFORMATION AND LEARNING LLC AND
PROQUEST LLC
(Motion Returnable: June 16, 2010)**

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TO: SERVICE LIST

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.
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INC./PUBLICATIONS CANWEST INC., CANWEST BOOKS INC. AND CANWEST (CANADA)

Applicants

CANWEST LP SERVICE LIST AS OF MAY 18, 2010

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Applicants

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TAB 1

ONTARIO
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Applicants

NOTICE OF MOTION

ProQuest Information and Learning LLC ("**PIL LLC**") and ProQuest LLC (collectively with PIL LLC, "**ProQuest**"), will make a motion to a Judge presiding over the Commercial List on June 16, 2010 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR:

1. an order extending the LP Claims Bar Date in respect of Proquest to two business days after the date of this motion in order to permit Proquest to file one or more LP Proofs of Claim, as those terms are defined in the Amended Claims Procedure Order of Justice Pepall dated May 17, 2010 made in this proceeding (the "**LP Claims Procedure Order**"); and
2. such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

The ProQuest Companies

1. PIL LLC is an electronic publisher and microform publisher based in Ann Arbor, Michigan, U.S.A. PIL LLC uses computer facilities in Michigan and Virginia, U.S.A. operated by ProQuest LLC to operate electronic archives in the U.S.A. of published media such as newspapers, periodicals and aggregated databases. Such archives are available to users in Canada.

2. ProQuest LLC is a limited liability company incorporated in Delaware with principal offices at 789 E. Eisenhower Parkway, Ann Arbor, Michigan. PIL LLC is a wholly owned subsidiary of ProQuest LLC.

3. ProQuest Information Access Ltd. is ProQuest LLC's Canadian affiliate.

The Robertson Action

4. On July 25, 2003, the Representative Plaintiff, Heather Robertson (the "**Representative Plaintiff**"), commenced an action identified by Court File No. 03-CV-252945CP (the "**Robertson Action**") seeking, among other things, compensatory and punitive damages in the total amount of \$550 million against Canwest Publications Inc. ("**Canwest Publications**"), ProQuest Information and Learning Company (which is now PIL LLC) and others.

5. The Plaintiff Class, as certified by Mr. Justice Cullity, includes, subject to certain exceptions, authors of original literary works that were published in Canada in any newspaper, magazine, periodical, newsletter or journal (defined as "**Print Media**").

6. PIL LLC's electronic archives contain Print Media from over 200 Canadian publishers of such Print Media ("**ProQuest's Print Publishers**"), including Canwest Publications.

7. The Representative Plaintiff has alleged that PIL LLC has infringed copyright by making available and distributing to Canadians some of its Print Media from any or all of its over 200 Canadian Print Publishers, including Canwest Publications.

8. PIL LLC, Canwest Publications and the other defendants have each defended the Robertson Action.

9. As part of its content licensing agreements, Canwest Publications represented to what is now PIL LLC that Canwest Publications had the right to license its content to PIL LLC for electronic publication. Canwest Publications agreed to indemnify and hold harmless PIL LLC against any damage, claim, liability, settlement cost or expense (including attorney's fees) incurred by PIL LLC arising out of any claim or action for infringement or violation of intellectual property rights.

10. In the Robertson Action, PIL LLC has cross-claimed against Canwest Publications in respect of the aforesaid indemnification clauses.

11. Numerous third party and fourth party claims were also subsequently commenced in that proceeding.

12. To date, the extent (if any) of liability by PIL LLC or Canwest Publications to the Plaintiff Class, and consequently, the extent (if any) of Canwest Publications' indemnity liability to PIL LLC, have neither been determined nor quantified.

13. PIL LLC received similar representations and indemnities from the other defendants in the Robertson Action, and PIL LLC has also cross-claimed against those parties seeking contribution, indemnity and costs. To date, the extent (if any) of liability by those defendants to the Plaintiff Class, and consequently, the extent (if any) of their indemnity liability to PIL LLC, have neither been determined nor quantified.

Canwest CCAA Proceedings

14. On January 12, 2010, Canwest Publications notified PIL LLC, among others, that Canwest Limited Partnership and certain of its subsidiaries, including Canwest Publications, had commenced CCAA proceedings, as a result of which the Robertson Action was stayed as against Canwest Publications.

15. On April 27, 2010, FTI Consulting (“**FTI**”) sent a letter to ProQuest Information Access Ltd. advising that, on April 12, 2010, the Ontario Superior Court of Justice made an Order under the CCAA authorizing Canwest Publishing and certain other Canwest entities (collectively, the “**LP Entities**”) “to conduct a claims procedure for the identification and quantification of certain claims against the LP Entities” (the “**Claims Process**”). The letter was accompanied by an “LP Claims Package” and indicated that, according to the books and records of the LP Entities, an amount of \$19,595.61 was owed to ProQuest Information Access Ltd. by Canwest Publishing.

16. In fact, the debt listed in the letter is actually owed to ProQuest LLC, not ProQuest Information Access Ltd., and is close to but not exactly the correct amount owed.

No Proof of Claim was Filed

17. With respect to the claim of ProQuest LLC, in subsequent discussions with Canwest personnel, Canwest recommended that instead of filing a Proof of Claim pursuant to the Claims Process, ProQuest should simply offset the amount of the claim against monies owed to Canwest in respect of content provided by Canwest to ProQuest.

18. ProQuest was later informed that the claim of ProQuest LLC could not be satisfied by an offset against other monies owed to Canwest. However, by this time, the deadline date had passed for the filing of claims under the Claims Process.

19. Notwithstanding the foregoing, at no time did PIL LLC understand that the Claims Process also applied to contingent or unliquidated claims, such as PIL LLC's crossclaim against Canwest Publications, as opposed to claims that were quantified, such as the claim of ProQuest LLC.

20. Although Canwest Publications was obviously aware of the claims by PIL LLC and PIAU for contribution and indemnity, it did not provide a copy of the LP Claims Package to those entities at any time.

21. If PIL LLC had understood that the Claims Process did, in fact, include all contingent or unliquidated claims against Canwest Publications, it most certainly would have filed a proof of claim.

22. The delay in filing a proof of claim was caused by inadvertence.

23. ProQuest has acted in good faith at all times.

24. There is no prejudice caused by the delay in ProQuest filing claims at this stage.
25. Such further and other grounds as counsel may advise and this Honourable Court permits.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Affidavit of Janet C. Driver sworn June 14, 2010.
2. Such further and other material as counsel may advise and this Honourable Court permits.

June 11, 2010

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TO: THE SERVICE LIST

TAB 2

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

Applicants

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Proceeding commenced at Toronto

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