

TAB 1

**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 THE APPLICANTS

December 2nd, 2010

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TO : THE SERVICE LIST

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

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APPLICANTS

NOTICE OF MOTION

Eriberto Di Paolo and Rita Blondin will make a motion to Justice Pepall of the Commercial List at the courthouse at 330 University Avenue, Toronto, Ontario, on December 10th, 2010, at 10:00 a.m. or as soon thereafter as the motion can be heard.

PROPOSED METHOD OF HEARING:

This motion is to be heard orally.

THE MOTION IS FOR:

1. An Order, if necessary, abridging the time for service of this Notice of Motion and dispensing with service on any person other than those served;

2. An Order asserting that the claims of Eriberto Di Paolo and Rita Blondin, (the "Moving Parties"), are Assumed Liabilities within the scope of the definition of Assumed Liabilities found in the Asset Purchase Agreement and its schedules, and as such, excluded from the Claims process in the matter of the Compromise or arrangement of Canwest Publishing inc./Publications Canwest Inc., Canwest Books Inc. and Canwest (Canada) inc;
3. Such further and other relief as this Honourable Court considers just.

THE GROUNDS FOR THE MOTION ARE :

1. The Moving Parties are unionized employees who have been working as typographers for The Gazette, one of the Applicants' division, namely, CanWest LP entities;
2. The Moving Parties are also signatory of two (2) tripartite agreements, respectively signed in 1982 and 1987 which tripartite agreements have been integrated in the collective agreements which have governed the labour relations between the Moving Parties and the Gazette;
3. These tripartite agreements provide, *inter alia*, a job guarantee to protect against the loss of regular full-time employment until the age of 65 years old, at full pay, an annual cost of living adjustment clause and a compulsory binding arbitration procedure;
4. In 1996, following a grievance hearing, the arbitrator Claude Foisy found the Gazette to be in breach of its contractual obligations assumed in virtue of the collective agreement and its annexes;
5. In 1999, the Quebec Court of Appeal also concluded that the Gazette had committed contractual breach of its obligations, which breach were viewed as giving the Moving Parties the right to claim the damages suffered as a result of this contractual breach;

6. The Moving Parties have established the *quantum* of damages suffered, as a direct consequence of the breach referred to, in the amount of \$6,604,376.80 plus interests for Eriberto Di Paolo and \$6, 431,536.80 plus interests for Rita Blondin;
7. The Applicants were granted protection from their creditors under the Companies' Creditors Arrangement Act, R.S.C. 1985 c. C-36 as amended (the "CCAA"), pursuant to an Initial Order of this Honourable Court dated January 8th, 2010;
8. As per an Order dated April 12th, 2010, creditors of the Applicants who wished to present a claim against the Applicants may do so by filing a Proof of Claim on or before May 7th, 2010;
9. In order to safeguard their rights against the Applicants, on May 3rd, 2010, the Moving Parties filed a proof of claim;
10. By Order, dated May 17th, 2010, this Honourable Court approved the Asset Purchase Agreement dated May 10th, 2010, between 7535538 Canada Inc., CW Acquisition Limited Partnership and the Applicants;
11. The Asset Purchase Agreement provides that the Purchaser shall be bound as a successor employer to such collective agreements to the extent required by Applicable Law;
12. The Applicable Law referred to as pertaining to the moving parties, is the *Labour Code*, R.S.Q., c. C-27;
13. Because the Moving Parties claims arose from the Gazette's breach of the tripartite agreements which forms an integral part of the collective agreement, the Purchaser is thereby bound to indemnify the Moving Parties and the claim of such, deemed Assumed Liabilities, as per the definition found in the Asset Purchase Agreement;
14. The Moving Parties will rely on Rules 37 and following of the *Rules of Civil Procedure*, R.R.O., 1990, Reg. 194, as amended;

15. The *Labour Code*, R.S.Q., c. C-27; and
16. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

17. The Affidavit of Eriberto Di Paolo, sworn December 2nd, 2010, and the exhibits thereto;
18. The Affidavit of Rita Blondin, sworn December 2nd, 2010, and the exhibits thereto;
19. The **1982** tripartite agreement between The Gazette, the Communications, Energy and Paperworkers Union of Canada, Local 145/le Syndicat Canadien de l'Imprimerie et des Communications, Local 145 and the Moving Parties;
20. The **1987** tripartite agreement between The Gazette, the Communications, Energy and Paperworkers Union of Canada, Local 145/le Syndicat Canadien de l'Imprimerie et des Communications, Local 145 and the Moving Parties;
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40. The **December 15th, 1999**, Court of Appeal Decision: Communications, Energy and Paperworkers Union of Canada, Local 145 and Blondin et al., vs The Gazette;
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43. The **August 6th, 2003**, Court of Appeal Decision: The Gazette vs Rita Blondin et al.;
44. The **September 4th, 2007** Court of Appeal Decision allowing the Moving Parties to represent themselves;
45. The **March 17th, 2008**, Court of Appeal Decision, Communications, Energy and Paperworkers Union of Canada, Local 145/La Section locale 145 du Syndicat canadien des Communications, de l'Énergie et du Papier (SCEP), Blondin et al., vs The Gazette;
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48. The **May 19th, 2010**, Superior Court's decision, rendered by Justice André Denis, Le Journal de Montréal vs Carol Jobin;
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50. In bundle, letters to and from the Monitor, between **July 2010 through November 2010**;
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55. Answer to LP Notice dated **June 27th, 2010**;
56. Actuary Report establishing quantum of loss sustained by the Moving Parties;
57. Such further and other materials as counsel may advise and this Honourable Court may permit.

December 2nd, 2010



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Court File No: CV-10-85333-00CL

APPLICANTS

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Returnable March 26, 2010)**

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