

COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR
ARRANGEMENT OF CANWEST GLOBAL COMMUNICATIONS CORP.
AND THE OTHER APPLICANTS LISTED ON SCHEDULE "A"

APPLICANTS

NOTICE OF MOTION

The Communications, Energy and Paperworkers Union of Canada (the "**CEP**") will make a motion which will be heard by the court in writing 36 days after service of the CEP's motion record, factum and transcripts, if any, or on the filing of the CEP's reply factum, if any, whichever is earlier.

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

THE MOTION IS FOR:

1. An Order granting Leave to Appeal the decision of the Honourable Justice Pepall dated April 7, 2011;
2. Costs of this motion; and
3. Such further and other relief as this Honourable Court considers just.

THE GROUNDS FOR THE MOTION ARE:

1. On October 6, 2009 Canwest Global Communications Corp. and certain of its subsidiaries listed in Schedule "A" (collectively, the "**CMI Entities**") were granted protection from their creditors under the *Companies' Creditors Arrangement Act* ("**CCAA**").
2. Pursuant to the order of the Court dated October 14, 2009, a claims procedure was established (the "**Claims Procedure**").
3. Pursuant to the order of the Court dated October 27, 2009, the CEP was authorized to represent its current and former CEP members, including pensioners, employed or formerly employed by the CMI entities (the "**CEP Representation Order**").
4. Mr. John Bradley (the "**Grievor**") was employed by Global Television, a Division of Canwest Television Limited Partnership (the "**Employer**") for approximately twenty years as a camera operator out of its operations in Ottawa, Ontario. The Grievor is a member of CEP and is therefore represented by CEP in the CMI Entities proceedings. The Employer is an entity within the CMI group of companies.
5. On February 24, 2010, the Employer suspended the Grievor for five days for alleged misconduct. On March 8, 2010, the CEP filed a grievance under the applicable collective agreement asserting that the grievance was unjust (the "**Suspension Grievance**").
6. On March 25, 2010, the Employer terminated the employment of the Grievor for alleged misconduct. On March 26, 2010, the CEP filed a grievance under the applicable collective agreement asserting that the Grievor's termination of employment was without just cause (the "**Termination Grievance**", or collectively with the Suspension Grievance, the "**Bradley Grievances**").
7. On June 23, 2010, the CEP filed a restructuring period claim in respect of the Bradley Grievances (the "**Bradley Claim**"). The claim was filed without prejudice to

CEP's position that the Bradley Grievances could not be compromised pursuant to the Claims Procedure Order except in accordance with the terms of the applicable collective agreement.

8. Despite attempts to resolve the Bradley Claim, it became apparent that no acceptable resolution could be achieved. Further, through the course of the parties' discussions, it became apparent that the Employer's position was that the Bradley Claim would be adjudicated by a claims officer pursuant to the Claims Procedure Order notwithstanding the provisions of the collective agreement that govern the adjudication of grievances including, without limitation, the appointment of a grievance arbitrator on consent and the jurisdiction of a grievance arbitrator to award reinstatement as a remedy.

9. On February 11, 2011, the CEP brought a motion seeking, *inter alia*, an order lifting the stay of proceedings so as to permit the Bradley Grievances to be adjudicated in accordance with the collective agreement and, alternatively, an order amending the Claims Procedure Order so as to permit the Bradley Claim to be adjudicated in accordance with the collective agreement.

10. On April 7, 2011, the Honourable Justice Pepall rendered her decision by granting the CEP's request to lift the stay of proceedings so as to permit the Bradley Grievances to be adjudicated in accordance with the collective agreement. The CEP takes no issue with this aspect of the decision.

11. However, the Honourable Justice Pepall denied the CEP's motion as it related to its request to amend the Claims Procedure Order so as to permit the Bradley Claims to be adjudicated in accordance with the collective agreement. In rendering its decision on this issue, the Court erred both in fact and law.

12. On the facts, the Court erred in finding, *inter alia*, that the CEP sought to "carve out" grievances from the Claims Procedure Order rather than to amend the Claims Procedure Order so as to permit grievance-based claims to be adjudicated within the Claims Procedure Order in accordance with the collective agreement.

13. On the law, the Court erred by dismissing the CEP's argument that, *inter alia*, the collective agreement, including the grievance and arbitration provisions contained therein, continue to operate notwithstanding anything contained in the Claims Procedure Order to the contrary.

14. These matters raise serious issues in respect of insolvency proceedings and labour relations.

15. The Honourable Justice Pepall failed to give effect to section 33 of the CCAA.

16. The Honourable Justice Pepall committed a jurisdictional error insofar as the Claims Procedure Order is in conflict with the express requirements of section 33 of the CCAA.

17. The appeal is therefore *prima facie* meritorious.

18. The appeal will not unduly hinder the progress of the proceeding.

19. Sections 11, 11.01 and 33 of the CCAA.

20. Rules 61.03.1 of the *Rules of Civil Procedure*.

21. 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 the Honourable Justice Pepall dated April 7, 2011;

2. Relevant excerpts from the record before Pepall J.;

3. Such further and other material as counsel may advise and this Honourable Court permit.

April 28, 2011

CaleyWray

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

Douglas J. Wray (18023C)

Email: wrayd@caleywrap.com
Tel: 416-775-4673
Fax: 416-366-3763

Jesse Kugler (52532R)

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

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CaleyWray

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

Douglas J. Wray (18023C)
Email: wrayd@caleywright.com
Tel: 416-775-4673
Fax: 416-366-3763

Jesse Kugler (52532R)
kuglerj@caleywright.com
Tel : 416-775-4677
Fax: 416-366-3293