

CANADA

PROVINCE OF QUEBEC

DISTRICT OF MONTREAL

NO. 500-06-000035-978

**(CLASS ACTION)
SUPERIOR COURT
THE ELECTRONIC RIGHTS
DEFENCE COMMITTEE ERDC**

PLAINTIFF

AND

DAVID HOMEL

DESIGNATED PERSON

VS.

SOUTHAM INC.;

AND

CEDROM-SNI INC.;

AND

INFOMART DIALOG LIMITED;

AND

SOUTHAM BUSINESS
COMMUNICATIONS INC.;

AND

MONTREAL GAZETTE GROUP INC. –
GROUPE MONTREAL GAZETTE INC.;

AND

CANWEST GLOBAL COMMUNICATIONS
CORPORATION;

AND

HOLLINGER CANADIAN PUBLISHING
HOLDINGS INC.

AND

CANWEST INTERACTIVE INC.

DEFENDANTS

SETTLEMENT AGREEMENT

BETWEEN:

CANWEST PUBLISHING INC./ PUBLICATIONS CANWEST INC. (which is the legal successor through amalgamation of MONTREAL GAZETTE GROUP INC. – GROUPE MONTREAL GAZETTE INC., CANWEST INTERACTIVE INC. and INFOMART DIALOG LIMITED), a legal person having its principal place of business at 201 Portage Avenue, 31st Floor, Winnipeg, Manitoba R3B 3L7, herein represented by its duly authorized representative following a resolution dated _____ June, 2010

AND

ELECTRONIC-RIGHTS DEFENCE COMMITTEE ERDC, a legal person having its principal place of business at 2363 de Rouen Street, Montreal, Quebec H2K 1M1, herein represented by its duly authorized representative following a resolution dated _____, June, 2010

RECITALS

- A. WHEREAS on April 7, 1997 the Electronic Rights Defence Committee (“ERDC”) filed a motion seeking authorization to institute a class action;
- B. WHEREAS on March 31, 2009 Justice Eva Petras of the Superior Court of Quebec (the “Court”) authorized the bringing of the class action (the “ERDC Action”) and the appointment of

David Homel as the designated person (“Designated Person”) on behalf of the following group (the “Class Members”):

All persons residing in Quebec or having resided in Quebec or residing in Canada, who have been freelance writers or creators for the Southam Inc. daily newspaper The Gazette in Montreal, and whose articles or works have been reproduced without authorization or consent in the electronic database named INFOMART or in other electronic databases or in any form whatever and who have not obtained compensation for these illegal reproductions, as well as all assignees or transferees of copyright rights of these persons, or if these persons are deceased their heirs or legal representatives;

C. WHEREAS in her reasons dated March 31, 2009 Justice Petras directed the parties to communicate with the Court in order to finalize the form and manner of notice (the “Notice”) to be provided to Class Members (as defined below);

D. WHEREAS on January 8, 2010, Canwest Publishing Inc./Publications Canwest Inc, Canwest (Canada) Inc. and Canwest Books Inc. (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 (the “Initial Order”) of the Ontario Superior Court of Justice – Commercial List (the “Ontario Court”). The Initial Order also granted protection to Canwest Limited Partnership/Canwest Société en Commandite (together with the Applicants, the “LP Entities”);

E. WHEREAS by order dated April 12, 2010 (as amended, the “Claims Procedure Order”), the Ontario Court established a procedure for the identification and quantification of certain claims against the LP Entities;

F. WHEREAS pursuant to the terms of the Claims Procedure Order, ERDC delivered a proof of claim in respect of the matters raised in the ERDC Action (the “ERDC Claim”);

G. WHEREAS the LP Entities filed a consolidated plan of compromise dated May 20, 2010 (the “Consolidated Plan of Compromise”) with the Ontario Court;

H. WHEREAS on June 10, 2010, the LP Entities will convene a meeting (the “Creditors’ Meeting”) of certain of their creditors for the purpose of considering and, if thought advisable, a vote on the Consolidated Plan of Compromise;

I. WHEREAS ERDC and the LP Entities acknowledge the importance of protection of electronic rights and fair compensation for the electronic dissemination of content;

J. WHEREAS ERDC has concluded that this Settlement Agreement is fair, reasonable and in the best interest of the Class Members in the circumstances;

K. WHEREAS this settlement is made without any admission whatsoever by ERDC, including without limitation, any admission as to the validity of the contracts signed by Class Members who published their articles or works in the Montreal newspaper *The Gazette*, and ERDC expressly denies the validity of such contracts;

L. WHEREAS this settlement is made without any admission of liability whatsoever by the LP Entities, and such liability has been and continues to be denied by the LP Entities, including without limitation any admission as to the invalidity of the contracts signed by Class Members in the Montreal newspaper *The Gazette*, and the LP Entities expressly maintain that all of those contracts are legal and binding in all respects;

M. WHEREAS the LP Entities have concluded that this is a fair and reasonable settlement of the ERDC Action;

N. WHEREAS ERDC and the LP Entities, in consideration of all the circumstances and after arm's length negotiations, wish to, and by this Settlement Agreement do, settle and finally resolve the ERDC Action as between ERDC and the LP Entities and without prejudice to ERDC's rights as against any other person and/or defendant in the action, save and except for the LP Entities and their licensees, successors and assigns as permitted herein;

O. WHEREAS ERDC has not yet published its Notice to Class Members;

P. WHEREAS such Notice must provide Class Members with the opportunity to opt out of the Class;

Q. WHEREAS ERDC has asserted that there are approximately 800 members of the Class;

R. WHEREAS it is a condition of the present settlement that the Consolidated Plan of Compromise be approved at the Creditors' Meeting and sanctioned by the Ontario Court. In the event that the Consolidated Plan of Compromise is not approved and sanctioned, the present agreement will become null and void and ERDC will maintain its right to advance the ERDC Action against the LP Entities without prejudice to the LP Entities' right to contest the ERDC Action and the ERDC Claim; and

Therefore, subject only to the terms and conditions of this Settlement Agreement, the Plaintiff and the LP Entities expressly and irrevocably agree to fully and finally compromise and settle the ERDC Claim and the ERDC Action on the following terms:

ALLOWED CLAIM OF THE CLASS MEMBERS

S. The parties expressly and irrevocably agree that the ERDC Claim is hereby fully and finally determined and resolved on the basis that, for voting and distribution purposes, ERDC,

the Designated Person and the Class shall have one claim in the all-inclusive amount of eight and a half million dollars (\$8.5 million)(the “Settlement Amount”) inclusive of all claims, costs, and interest, provided that if more than 80 potential Class Members opt out of the Class within the period provided for in the Notice, the Settlement Amount will be as follows:

$$\text{\$8.5 million} \quad \times \quad \frac{(\text{800} - \text{number of opt outs})}{800}$$

T. ERDC, through its duly authorized representative and Designated Person on behalf of itself and the Class Members, hereby expressly and irrevocably agrees to vote the aforementioned claim in favour of the proposed Consolidated Plan of Compromise and as a result thereof shall be entitled to receive a distribution in respect of the ERDC Claim upon such distribution being made to creditors subject to affected creditor approval, sanction by the Ontario Court and implementation of the Consolidated Plan of Compromise. Subject only to court approval of this Settlement Agreement and to the approval of the Consolidated Plan of Compromise, ERDC and the LP Entities hereby expressly and irrevocably waive any and all rights of appeal as such rights may now or in the future exist, whether by way of legislative enactment or otherwise at law or in equity.

RELEASE AND LICENCE

U. In consideration of the above and subject to the authorization of the Court pursuant to Article 1025 C.C.P.:

- (a) ERDC, by its duly authorized representative and Designated Person on behalf of itself and the Class Members, expressly and irrevocably settles the ERDC Action and the ERDC Claim against the LP Entities, which is the legal successor through

amalgamation of the Montreal Gazette Group Inc. – Groupe Montreal Gazette Inc., Infomart Dialog Limited and Canwest Interactive Inc., each party paying its own costs;

- (b) ERDC, by its duly authorized representative and Designated Person on behalf of itself and the Class Members, hereby expressly and irrevocably releases the LP Entities and their subsidiary, parent, related, affiliated, associated and successor entities, licensees and assigns, and all of their respective shareholders, directors, officers, employees, licensees, contractors and agents and any other person or entity who may be, or may hereafter become, responsible for the LP Entities, from and against any and all past, present and future claims arising directly or indirectly from all matters and allegations contemplated in the ERDC Action and the ERDC Claim, as well as any and all demands, damages, liabilities, causes of action, suits, grievances, costs, expenses and attorney's fees, at law or in equity, of any nature, character or description whatsoever, whether known or unknown or suspected or unsuspected or anticipated or unanticipated, which any Class Member ever had or now has or may in the future have in respect thereof, including without limitation in connection with unknown and unsuspected claims, counterclaims, crossclaims, setoffs, demands and causes of action, including, for greater certainty and without limiting the generality of the foregoing, claims asserted or capable of being asserted against any third party in respect thereof;
- (c) ERDC, by its duly authorized representative and Designated Person on behalf of itself and the Class Members, hereby expressly and irrevocably agrees not to make, commence, authorize or maintain any action or proceeding of any kind

against any person or corporation or the Crown in which any claim could arise against the LP Entities for contribution or indemnity or any other relief over in respect of any and all matters and allegations contemplated in the ERDC Action and the ERDC Claim.. Subject to the foregoing sentence, nothing in this Settlement Agreement prevents ERDC from pursuing the ERDC Action as against the other defendants;

- (d) ERDC, by its duly authorized representative and Designated Person on behalf of itself and the Class Members, hereby expressly and irrevocably grants to the LP Entities a worldwide, perpetual, irrevocable and assignable licence to use and/or reproduce in any electronic media or databases (including computer databases, CD ROMs, diskettes, online services or other electronic systems or devices, no known or hereinafter devised)(collectively, “Electronic Media”) the articles and/or works of the Class Members that were included in and/or contemplated by the ERDC Action and the ERDC Claim, including without limitation any and all works created by the Class Members that were published in the Montreal newspaper *The Gazette* up to and including the date of execution of this Settlement Agreement (the “Subject Work”);
- (e) This licence expressly and irrevocably authorizes the LP Entities (and their successors, licensees, sub-licensees and assigns) the right to grant sublicences for the Subject Work, all of which sub-licensees may further sub-license all or any portion of the rights herein granted to the LP Entities. Notwithstanding the foregoing, the LP Entities agree not to license any of the Subject Work to other

defendants in the ERDC Action until such time as the ERDC Action is resolved against the other defendants.

- (f) The LP Entities acknowledge that this licence is non-exclusive and that this licence does not assign or in any way affect Class Members' ownership of copyright in the Subject Work, provided however that the Subject Work shall remain expressly subject to this licence in the event of any sale, assignment or other transfer of copyright in the Subject Work and that the transferee of such copyright shall have no claims against the LP Entities or their successors, licensees, sub-licensees and assigns in connection with the Subject Work.
- (g) ERDC, by its duly authorized representative and Designated Person on behalf of itself and the Class Members, expressly and irrevocably agrees to keep in trust any amount paid or any shares issued and/or delivered to it as part of the CCAA Proceeding following the present settlement until a final judgment of the Court provides for its distribution to the Class Members.

COURT APPROVAL PROCESS

V. This Settlement Agreement is subject to approval by the Court. In the event that the Court does not approve this Settlement Agreement, or refuses to grant any order or any part of any order implementing the Settlement Agreement, the Settlement Agreement shall have no further force and effect, shall not be binding on the Parties and shall not be used as evidence or otherwise in the litigation of this ERDC Action, and ERDC shall immediately return to the LP Entities any shares held in trust pursuant to paragraph U(g) herein.

COURT APPROVAL

W. In order to give effect to this settlement, ERDC, by its duly authorized representative and Designated Person on behalf of itself and the Class Members, expressly and irrevocably agrees to present a motion to the Court seeking authorization to settle the ERDC Action against the LP Entities pursuant to article 1025 C.C.P. without prejudice to the right of ERDC to continue the ERDC Action against any other defendants, which motion shall recite the terms of the settlement, advise the Court that ERDC has accepted the settlement and request that the Court authorize the settlement.

X. Prior to the presentation of the motion, ERDC, by its duly authorized representative and Designated Person on behalf of itself and the Class Members, agrees to present a motion to the Court seeking the approbation of the Notice to Class Members, annexed as Schedule A, and the following proposed plan of publication:

- (a) ERDC, by its duly authorized representative on behalf of itself and Class Members, expressly and irrevocably agrees to send a copy of the Notice with a copy of this Settlement Agreement to all Class Members for whom it has a known email address or mailing address, such notice to be sent to Class Members not later than five (5) days after the Court's approval of the Notice to Members and plan of publication;
- (b) The Notice to Class Members and a copy of the Settlement Agreement will be published on the following websites for at least thirty (30) days after the Court's approval of the Notice to Members and plan of publication:

www.erdca.ca (Plaintiff's Website)

www.sfpavocats.ca (Attorneys of the group Website)

www.writersunion.ca (The Writers' Union of Canada (TWUC))

www.qwf.org (Quebec Writers' Federation (QWF))

www.uneq.qc.ca (Union des écrivains québécois (UNEQ))

www.pwac.ca (Periodical Writers' Association of Canada (PWAC))

www.ajiq.qc.ca (Association des journalistes indépendants du Québec(AJIQ))

www.cfunion.ca (Canadian Freelance Union (CFU))

Y. ERDC, by its duly authorized representative and its Designated Person, on its own behalf and on behalf of the Class Members, expressly agrees that it will promptly notify counsel to the LP Entities upon being advised that any Class Member intends to make an objection to the approval of this Settlement Agreement.

FINAL RESOLUTION

Z. The parties expressly and irrevocably agree that this Settlement Agreement is intended to resolve and, upon court approval, does resolve all matters asserted in the ERDC Action and/or ERDC Claim and any and all matters contemplated therein, or which were, or were capable of, being asserted in the ERDC Action and/or the ERDC Claim in connection with the Subject Work. In particular, and without limitation, this Settlement Agreement is intended to fully and finally resolve the issue of the LP Entities' rights to make the Subject Work available in Electronic Media, or authorize others to do so.

NO ADMISSION OF LIABILITY

AA. It is understood and agreed that nothing in this Settlement Agreement constitutes an admission of liability or obligation on the part of the LP Entities or the Releasees and any

liability or obligation is, in fact, denied, including without limitation any admission as to the invalidity of the contracts signed by the Class Members who published their articles or works in the Montreal newspaper *The Gazette*, and the LP Entities expressly maintain that all of those contracts are legal and binding in all respects.

BB. It is understood and agreed that nothing in this Settlement Agreement constitutes an admission on the part of ERDC, including without limitation, admission as to the validity of the contracts signed by the Class Members that published their articles or works in the Montreal newspaper *The Gazette*, and ERDC expressly maintains that most of those contracts are invalid.

AGREEMENT NOT EVIDENCE

CC. None of the Settlement Agreement, anything contained in it, any of the negotiations or proceedings connected with it, any related document, or any action taken to carry out the Settlement Agreement shall be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to enforce the Settlement Agreement or to defend against the assertion of claims subject to the release described herein, or otherwise as required by law.

EXECUTION IN COUNTERPART

DD. This Settlement Agreement may be executed in counterpart, and becomes effective on the date of the last executed counterpart.

GOVERNING LAW

EE. This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Quebec and (to the extent necessary) the Federal

Laws of Canada. The parties have agreed to execute this Settlement Agreement in the English language. Les parties ont convenu de rediger la presente entente en anglais.

ENTIRE AGREEMENT

FF. The Settlement Agreement constitutes the entire agreement between the parties and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, and agreements in principle, whether written or oral. None of the parties will be bound by any prior obligations, conditions or representations with respect to this agreement, whether written or oral, unless it is expressly incorporated. This Settlement Agreement may not be modified or amended except in writing and on consent of the parties and any such modification or amendment must be approved by the Court.

GG. The following schedule forms part of this Settlement Agreement:

- (a) Notice to Class Members.

DATED the ● day of June, 2010

**THE ELECTRONIC DEFENCE
RIGHTS COMMITTEE** per Mary
Soderstrom

CANWEST PUBLISHING INC.

I have authority to bind the Corporation

