

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

HEATHER ROBERTSON

Plaintiff

- and -

THOMSON CANADA LIMITED, THOMSON AFFILIATES,
INFORMATION ACCESS COMPANY and
BELL GLOBEMEDIA PUBLISHING INC.

Defendants

Proceeding under the *Class Proceedings Act*, 1992

Settlement Agreement

Recitals

- A. The plaintiff brought this Action under the Canadian *Copyright Act*, R.S.C. c. C-42, regarding copyright in certain works and the Defendants use of Class Members' works in Electronic Media.
- B. Counsel for all the Parties have conducted a thorough analysis of the claims, and they have also taken into account the extensive burdens and expense of litigation, including the fact that part of the claim was disposed of by the Supreme Court of Canada, the risks of going to trial and the fair, cost-effective and assured method of resolving claims of the Class Members provided for in this Settlement Agreement.
- C. After their investigation, the plaintiff and Class Counsel have concluded that this Settlement Agreement provides substantial benefits to the Class Members and is fair, reasonable and in the best interests of Class Members.
- D. The Defendants have denied and continue to deny the claims advanced on behalf of the class. However, the Defendants also conclude that the Settlement Agreement is a fair and reasonable settlement of this Action.

- E. The Plaintiff and the Defendants, in consideration of all the circumstances and after prolonged arms' length negotiations, both directly and with the assistance of a mediator, wish to, and by this Settlement Agreement intend to, settle and finally resolve all actual and potential claims for or relating to the use of the Subject Works in Electronic Media.
- F. Therefore, subject to the approval of the Ontario Superior Court, the plaintiff and the Defendants agree to settle this proceeding on the following terms (the "Settlement Agreement").

Definitions

1. The following definitions apply in this Agreement:
- (a) "Action" means the action whose style of cause and Court file number appear on the first page of this Agreement.
 - (b) "Certification Order" means the order made in the Action dated February 11, 1999, certifying this proceeding as a class action.
 - (c) "Claims Administrator" is William Dovey of Cole & Partners.
 - (d) "Class Counsel Costs" means all costs (inclusive of disbursements, expert fees and disbursements, and any applicable taxes) incurred by any and all counsel for the plaintiff at any stage of this proceeding or in connection with this proceeding, before or after the signing of this Settlement Agreement.
 - (e) "Class Definition" means the description of the class members on Schedule A to this Agreement.
 - (f) "Class" or "Class Members" means the class of persons described in the Class Definition, other than those people who have opted out either in accordance with the Certification Order or the provisions of this Settlement Agreement.
 - (g) "Costs of the Notice Program" means all costs paid by the Defendants associated with the publication of the Notice of Court Approval and the Notice of Court Approval Hearing, as provided in paragraph 29, below.

- (h) “Court Approval Date” means the later of:
 - (i) 31 days after the date on which the Ontario Superior Court of Justice issues an order approving the Settlement Agreement; and
 - (ii) the disposition of any appeals from the order specified in subparagraph (i).
- (i) “Creator” means:
 - (i) in the case of a literary work, its author; and
 - (ii) in the case of an artistic work (including photographs) its author as defined in the Canadian *Copyright Act*.
- (j) “Creator’s Personal Corporation” means a private corporation, owned or controlled by a Class Member that sells the Class Member’s freelance works.
- (k) “Defendants” means the parties sued by the plaintiff originally, and as added to the proceeding (including their successors in interest), as follows:
 - (i) Thomson Canada Limited (now Thomson Reuters Canada Limited);
 - (ii) Information Access Company (now The Gale Group, Inc.);
 - (iii) Bell Globemedia Publishing Inc. (now CTVglobemedia Publishing Inc.);
 - (iv) The Thomson Corporation (now Thomson Reuters Corporation); and
 - (v) Thomson Affiliates, as defined in the Statement of Claim.
- (l) “Electronic Media” has the same meaning as in the Class Definition (“any computer database, CD-ROM, diskette, on-line service or other electronic system or device”).
- (m) “Employee Subject Works” means those Subject Works that were created in the course of the Class Members’ employment, and whose copyright is therefore owned by the Class Member’s then-employer under s. 13(3) of the Canadian *Copyright Act*. However, when the employer is a Creator’s Personal Corporation,

the Subject Work is not an Employee Subject Work, but is, rather, a Freelancer Subject Work.

- (n) “Freelancer Subject Works” means all Subject Works that are not Employee Subject Works.
- (o) “Licencees” means:
 - (i) Thomson Canada Limited (now Thomson Reuters Canada Limited), (including its partial successor-in-interest Nelson Education Ltd.);
 - (ii) Information Access Company (now The Gale Group, Inc.);
 - (iii) Bell Globemedia Publishing Inc. (now CTVglobemedia Publishing Inc.);
 - (iv) The Thomson Corporation (now Thomson Reuters Corporation);
 - (v) Thomson Affiliates, as defined in the Statement of Claim; and
 - (vi) successors and assigns of (i) and (ii).
- (p) “Non-image Based Electronic Databases” means electronic databases through which Subject Works were made available that do not display images of the entire pages of the newspaper but only text-based reproductions of individual Works.
- (q) “Notice of Court Approval” is the notice attached as Schedule “F”, as approved or amended by the Court.
- (r) “Notice of Court Approval Hearing” means the notice attached as Schedule “E”, as approved or amended by the Court.
- (s) “Opt Out Period” means the period commencing on the date that the Notice of Court Approval is published for the first time in the print edition of The Globe and Mail, and ending 30 days after it is published for the last time in the print edition of The Globe and Mail, during which an individual may opt out of this class proceeding without leave of the Court;

- (t) “Opt Out Form” means the form provided at the end of the Notice of Court Approval (Schedule “F”) or some other legible, signed, request to opt out containing substantially the same information as the form.
- (u) “Opt Out Deadline” means the last day of the Opt Out Period.
- (v) “Parties” means the parties to this agreement.
- (w) “Print Media” has the same meaning as in the Class Definition.
- (x) “Releasees” means:
 - (i) Thomson Canada Limited (now Thomson Reuters Canada Limited);
 - (ii) Information Access Company (now The Gale Group, Inc.);
 - (iii) Bell Globemedia Publishing Inc. (now CTVglobemedia Publishing Inc.);
 - (iv) The Thomson Corporation (now Thomson Reuters Corporation);
 - (v) Thomson Affiliates, as defined in the Statement of Claim;
 - (vi) all divisions, subsidiaries, affiliated companies and parent companies of the entities described in subparagraphs (i) to (v);
 - (vii) the present and former directors, officers, agents, servants and employees of the entities described in (i) to (vi); and
 - (viii) the successors, heirs, executors, estate trustees, administrators, assigns, licencees and sub-licencees of persons described in subparagraphs (i) to (vii).
- (y) “Settlement Agreement” means this agreement.
- (z) “Statement of Claim” means the statement of claim in the Action as amended from time to time.

- (aa) “Subject Works” means all Works published in Canada in Print Media on or before the date of this Settlement Agreement that have been reproduced, distributed and/or communicated to the public by telecommunication by one or more of the Defendants, or with the authorization of one or more of the Defendants, through any Electronic Media on or after April 24, 1979, except:
 - (i) Works whose Creator (or successor-in-interest) by written document assigned all of the copyright in the Work to the Defendants or their predecessors in interest in the subject Print Media;
 - (ii) Works whose Creator (or successor-in-interest) by written document granted to the Defendants or their predecessors in interest a licence to publish or use their Works in Electronic Media; or
 - (iii) Works whose Creator created the work in the course of his or her employment when the employment was under a collective agreement that governed the use of Works in Electronic Media.
- (bb) “Take-down Request” means the request specified in para. 8, below.
- (cc) “Work” or “Works” has the same meaning as “Works” in the Class Definition.

Payments to Class Members

- 2. Within 30 days after the Opt Out Deadline, and subject to the right to terminate under paragraph 16, the Defendants shall make the following payments:
 - (a) the sum of \$25,000 to each of:
 - (i) the Professional Writers Association of Canada (“PWAC”);
 - (ii) the Writers’ Union of Canada (the “Writers’ Union”); and
 - (iii) the Canadian Association of Photographers and Illustrators in Communications.

- (b) the fees approved by the Court as being payable to Class Counsel in respect of Class Counsel Costs, to Koskie Minsky LLP;
 - (c) to the Claims Administrator, the sum of \$11 million, less
 - (i) the Costs of the Notice Program; and
 - (ii) the amounts specified in sub-paragraphs (a) and (b).
- 3. The payment to the Claims Administrator specified in paragraph 2(c), above shall be distributed in the following manner:
 - (i) \$5,000 shall be payable to Heather Robertson as compensation for acting as a representative plaintiff; and
 - (ii) the balance shall be available for the purpose of:
 - (A) providing distributions to Class Members, in settlement of the claims in the Action (the “Compensation Fund”), which shall be distributed to Class Members according to the scheme attached as Schedule B;
 - (B) paying the Claims Administrator’s compensation; and
 - (C) paying any money owed by the plaintiff to the Class Proceedings Fund.
- 4. The Defendants shall provide the Claims Administrator access to the following databases, for a period of 180 days after the Opt Out Deadline:
 - (a) any databases operated by The Gale Group, Inc. that contain Subject Works;
 - (b) the Carswell databases available through WestlaweCARSWELL; and
 - (c) Dow Jones Factiva’s Globe and Mail database.
- 5. The Defendants shall make reasonable efforts to ascertain what print publications published Subject Works and provide the list of such publications to the Claims Administrator and Class Counsel. The plaintiff acknowledges that, because of the period

of time captured by the Action, and the fact that many of the activities at issue have not been in use for many years, the list will be incomplete. If claims are made by Class Members regarding publications that are not on the list provided by the Defendants, a Class Member's sworn statement that the Works are Subject Works will be accepted, subject to the Administrator's authority to prevent fraud and abuse.

Licence

6. The order approving this Settlement Agreement shall contain a provision granting the Licencees a licence over the Subject Works (the "Licence"), with the following terms:
 - (a) With respect to Freelancer Subject Works, the Licence is a worldwide, perpetual, irrevocable and assignable licence that permits the Licencees to reproduce one or more copies of the works in Electronic Media, to distribute the works through Electronic Media either directly or through third parties, to communicate the works to the public by telecommunication, or to authorize others to do so. The Licencees are expressly authorized to grant sublicences, all of which can grant all the rights granted to the licencees, including the right to grant sub-sublicences. The Licence will be valid as of April 24, 1979, or the date of creation of the work, whichever is later. The Licencees acknowledge that the Licence is non-exclusive and that this Settlement Agreement does not assign or in any way affect Class Members' ownership of copyright in Freelancer Subject Works.
 - (b) With respect to Employee Subject Works, the Licence is a waiver of the right to restrain under s. 13(3) of the Canadian *Copyright Act*.
 - (c) Subject Works that are taken down pursuant to a valid Take-down Request are excluded from the Licence.

Take-Down Program for Freelance Works

7. Any Class Member who owns the copyright in one or more Freelancer Subject Works that were first published in The Globe and Mail may, in the alternative to participating in the payment program and being included in the order granting a licence pursuant to

paragraphs 2 - 6 of this Settlement Agreement, elect to participate in the Take-down Program in respect of those Subject Works.

8. Class Members who elect to participate in the Take-down Program may request that CTVglobemedia Publishing Inc. remove Freelancer Subject Works from commercially available Non-image Based Electronic Databases (a "Take-down Request"). Take-down Requests shall be made by the Class Member completing the Take-down Form portion of the Claim Form attached as Schedule "G" and sending it by regular mail to the Claims Administrator within the time for making a claim (the "Take-down Request Deadline").
9. No Take-down Request is valid unless the Class Member:
 - (a) provides the name of the author of the Work or Works that are the subject of the Take-down Request;
 - (b) provides the name of the Work or Works that are the subject of the Take-down Request;
 - (c) certifies that the Class Member is the owner of copyright in the Work or Works that are the subject of the Take-down Request;
 - (d) certifies that the Class Member has not signed a written document either assigning the copyright or licensing its use in Electronic Media; and that certification is correct; and
 - (e) ensures that the Take-down Request is received before the Take-down Request Deadline.
10. Any Take-down Request concerning a Work for which The Globe and Mail has obtained a written licence is not a valid Take-down Request.
11. No later than 30 days after the Take-down Request Deadline, the Claims Administrator shall provide all of the Take-down Requests to a designated person at The Globe and Mail, to be designated by CTVglobemedia Publishing Inc.

12. CTVglobemedia Publishing Inc. shall have 120 days to review and process the Take-down Requests. For those works that are the subject of a valid Take-down Request, CTVglobemedia Publishing Inc. shall, within that 120 day period, make reasonable efforts to remove them from authorized commercially available Non-image Based Electronic Databases.

Opting Out

13. Class Members shall have an additional opportunity to opt out of the class if the settlement is approved. Anyone who opts out will not be a Class Member and not entitled to any of the benefits to Class Members under this Settlement Agreement, including the right to compensation or the right to make a Take-down Request.
14. A Class Member who wishes to opt out of the Class must indicate the intention to opt out by completing an Opt Out Form and ensuring it is received by Koskie Minsky LLP within the Opt Out Period. If the Opt Out Form is not received by the Opt Out Deadline, the class member shall remain a member of the class.
15. Within 10 days of the Opt Out Deadline, Class Counsel will serve on the Defendants and file with the Court an affidavit exhibiting a list of people who have opted out. Class Counsel will also provide addresses and/or other identifying information of the opted out former Class Members to the Defendants on request.
16. The Defendants have the right to unilaterally terminate this Settlement Agreement, notwithstanding Court approval, by giving written notice to Class Counsel within 20 days of the Opt Out Deadline if more than 300 Class Members have opted out of this Settlement Agreement. In the event that the Defendants terminate this 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 Action. If the Defendants exercise their right to terminate, all court orders made to implement the settlement shall be set aside.
17. The Court order approving this Settlement Agreement shall provide that, unless terminated by the Defendants pursuant to paragraph 16, as of the Court Approval Date,

this Settlement Agreement will be binding on all Class Members, except those who opt out in accordance with the Certification Order or the terms of this Settlement Agreement.

Total Amounts Payable by the Defendants

18. The Defendants agree to pay a total amount of \$11,000,000, all inclusive, in settlement in all claims, including all payments to Class Members, Class Counsel Costs, taxes (inclusive of any GST or any other taxes which may be eligible in respect of this settlement), payment to the Class Proceedings Fund, all costs associated with the distribution of benefits, the Costs of the Notice Program, administration of this settlement, and any other monetary costs associated with this settlement (excluding only defence counsel fees and disbursements). Under no circumstances shall the Defendants' obligations under this Settlement Agreement, including the court approval process and settlement administration, require payment of any amounts in excess of \$11,000,000.

Release

19. The Court Order approving this Settlement Agreement shall provide a release whereby the Class Members:
- (a) release, remise and forever discharge the Releasees of and from all actions, causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, claims and demands whatsoever which the Class Members, or any of them, or their successors in interest, ever had, now have or may have in the future against the Releasees, or any of them, for or by reason of, or in any way arising out of any cause, matter or thing existing up to the present time which were raised in or which could have been raised in this Action, including any matters related to the use of the Subject Works in Electronic Media, and including any works subject to a Take-Down request until the works are taken down;
 - (b) specifically covenant, represent and warrant to the Releasees that the Class Members have no further claims against the Releasees for, in respect of or arising out of any cause, matter or thing whatsoever, including the Action;

- (c) agree that they will not make, commence 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 Releasees, or any of them, for contribution or indemnity or any other relief over (a “Third Party Claim”);
- (d) agree that, without limiting the generality of sub-paragraph (c), the Class Members agree to not make or advance any claim in the action styled *Robertson v. ProQuest Information and Learning Company* et al. (03-CV-252945CP) in connection with any of the Subject Works or any other claim that could result in a Third Party Claim; and
- (e) acknowledge and agree that if the Class Members should make any claim or demand or commence or threaten to commence any action, proceeding or make any claim against the Releasees for or by reason of any cause, matter or thing, including any Third Party Claim, this Settlement Agreement may be raised as a complete bar and defence to any such claim.

Court Approval Process

- 20. This Settlement Agreement is subject to Court approval as provided for in the *Class Proceedings Act*. In the event 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 Action.

Court Approval

- 21. The plaintiff shall bring a motion to the Court seeking an order:
 - (a) setting a date for a hearing at which the Court can consider whether to approve this Settlement Agreement; and
 - (b) authorizing the publishing of Notice of Court Approval Hearing.

22. The plaintiff (and Class Counsel with respect to their fee approval) shall bring a motion to the Court seeking an order:
 - (a) approving the Settlement Agreement and the Class Counsel Costs; and
 - (b) dismissing the Action.
23. The Parties consent to an order in the form attached as Schedule “D” (the “Draft Court Approval Order”) in respect of that motion.
24. Plaintiff’s counsel shall promptly notify Defendants’ counsel upon learning that any person intends to make an objection to the approval of this Settlement Agreement.

Notices to the Class

25. The Parties agree that Notice of Court Approval Hearing and Notice of Court Approval shall be published in the following way:
 - (a) in long form in two consecutive Saturday publications in *The Globe and Mail* and in *The National Post*, in English;
 - (b) in short form in one further consecutive Saturday publications in *The Globe and Mail* and in *The National Post*, in English;
 - (c) in long form, in two consecutive Saturday publications in *La Presse* and in *Le Journal de Québec*, in French;
 - (d) in short form in one further consecutive Saturday publication in *La Presse* and in *Le Journal de Québec*, in French;
 - (e) accessible through a link entitled “settlement of Canadian copyright class action,” published on globeandmail.com, in both English and French;
 - (f) accessible through a link entitled “settlement of Canadian copyright class action,” published on www.carswell.com and www.westlawecarswell.com, in both English and French;

- (g) accessible through a link entitled “settlement of Canadian copyright class action”, published on www.gale.cengage.com in both English and French.
26. The plaintiff will make reasonable efforts to have each of PWAC and the Writers’ Union post the Notice of Court Approval Hearing and the Notice of Court Approval on their respective websites, in and for the times specified in paragraphs 27-28 below.
 27. The Notice of Court Approval Hearing shall be published:
 - (a) in the case of print publications, the first publication shall occur within 30 days after the form of notice is approved by the Court; and
 - (b) in the case of internet publications, within 30 days after the form of notice is approved by the Court, and shall remain online until the Court Approval Hearing.
 28. The Notice of Court Approval shall be published:
 - (a) in the case of print publications, the first publication shall occur within 30 days of the Court Approval Date; and
 - (b) in the case of internet publications, within 30 days after the Court Approval Date, and shall remain online until the Opt Out Deadline.
 29. The Defendants shall pay for all the notices and any amounts paid for such notices become Costs of the Notice Program. The plaintiff shall be responsible for placing the notices in the print edition of the above-noted newspapers and, if applicable, with PWAC and the Writers’ Union. The Defendants shall be responsible for placing the internet notices referred to in paragraphs 25(e)-(g). As specified above, the Costs of the Notice Program shall be deducted from the amount payable by the Defendants pursuant to this Settlement Agreement.

Final Resolution

30. The Parties agree that this Settlement Agreement is intended to resolve and, upon Court approval, does resolve all matters asserted in this Action or which could have been asserted in the Action. In particular, and without limitation, this Settlement Agreement is

intended to finally resolve the issue of the Defendants' rights to make the Subject Works available in Electronic Media, or authorize others to do so.

No Admission of Liability

31. It is understood and agreed that nothing in this Settlement Agreement constitutes an admission of liability or obligation on the part of any of Defendants or Releasees and any liability or obligation is, in fact, denied.

Agreement Not Evidence

32. 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 at paragraph 19(e), or otherwise as required by law.

Benefit of Thomson Reuters Corporation

33. The Parties agree and acknowledge that Thomson Canada Limited (now Thomson Reuters Canada Limited) is entering into this agreement in part for and in consideration of the benefit of the Release and licence granted to Thomson Reuters Corporation (formerly The Thomson Corporation), whose liability in the Action Thomson Reuters Canada Limited has assumed.

Execution in Counterpart

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

Governing Law

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

Currency


36. Except where otherwise expressly provided, all amounts in the Settlement Agreement are stated and shall be paid in Canadian currency.

Entire Agreement

37. This 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. None of the Parties will be bound by any prior obligations, conditions or representations with respect to this agreement, unless it is expressly incorporated. This 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.
38. The following schedules form part of this Agreement:
- (A) Class Definition
 - (B) Distribution Scheme
 - (C) Points Allocation Scheme
 - (D) Court Approval Order
 - (E) Order Approving Notice of Court Approval Hearing, including Notice of Court Approval Hearing
 - (F) Notice of Court Approval, including Opt Out Form
 - (G) Claim Form

17

May 1, 2009
Date


Heather Robertson on her own behalf
and as representative plaintiff

Thomson Reuters Canada Limited

Date

By: _____

Title: _____

The Gale Group, Inc.

Date

By: _____

Title: _____

CTVglobemedia Publishing Inc.

Date

By: _____

Title: _____

Date

Heather Robertson on her own behalf
and as representative plaintiff

May 1, 2009
Date

Thomson Reuters Canada Limited

By: Paula R. Monaghan

Title: President and Secretary

The Gale Group, Inc.

Date

By: _____

Title: _____

CTVglobemedia Publishing Inc.

Date

By: _____

Title: _____

Date

Heather Robertson on her own behalf
and as representative plaintiff

Thomson Reuters Canada Limited

Date

By: _____

Title: _____

Date

5/1/09

The Gale Group, Inc.

By: Kenneth Coss

Title: SVP

CTVglobemedia Publishing Inc.

Date

By: _____

Title: _____

Date

Heather Robertson on her own behalf
and as representative plaintiff

Thomson Reuters Canada Limited

Date

By: _____

Title: _____

The Gale Group, Inc.

Date

By: _____

Title: _____

CTVglobemedia Publishing Inc.

Date

May 1 2009

By: JP Carney

Title: PUBLISHER AND CEO

THE GLOBE AND MAIL

SCHEDULE A

Class Definition

A. All persons who were the authors or creators of original literary works or original artistic works (collectively "Works") which were published in Canada on or before the date of this Settlement Agreement in any newspaper, magazine, periodical, book, newsletter, journal or other paper-based form whatsoever (collectively "Print Media") which Print Media have been reproduced, distributed and/or communicated to the public by telecommunication by the Defendants through any computer database, CD-ROM, diskette, on-line service, or other electronic system or device (collectively "Electronic Media"), on or after 24 April 1979 except:

- (a) persons who by written document assigned all of the copyright in their Works to the Defendants or their predecessors in interest in the subject Print Media; or
- (b) persons who by written document granted to the Defendants or their predecessors in interest in the subject Print Media a license to publish or use their Works in Electronic Media; or
- (c) persons who were unionized employees of the Defendants or their predecessors in interest in the subject Print Media are excluded regarding any Works created for the subject Print Media at times when their unions' collective agreements governed the use of their Works in Electronic Media.

Where the Print Media publication was a Canadian edition of a foreign publication, only Works comprising the content exclusive to the Canadian edition shall qualify for inclusion under this definition.

(Persons included in clause A shall hereinafter be referred to as "Creators").

B. All persons (except the Defendants or their predecessors in interest in the subject Print Media) to whom a Creator, or an Assignee, assigned, granted or transmitted a right to publish or use their Works in Electronic Media. (Persons included in clause B shall hereinafter be referred to as "Assignees").

C. Where a Creator or Assignee is deceased, the personal representatives of the estate of such person unless the date of death of the Creator was on or before December 31, 1943.

SCHEDULE B**DISTRIBUTION OF COMPENSATION FUND TO CLASS MEMBERS**

39. The following definitions apply in this Schedule:
- (a) “Eligible Databases” means the online commercial databases operated by the Defendants or authorized by the Defendants as set out in the Settlement Agreement.
40. All other capitalized terms in this schedule have the same meaning as in the Settlement Agreement, unless otherwise defined.
41. The Claims Administrator shall distribute the Compensation Fund, as defined in the Settlement Agreement, as set out below.

Goal

42. The goal is to divide the net amount of the Compensation Fund among Class Members who hold the copyright in Freelancer Subject Works (as defined by the Settlement Agreement) and who submit timely claims *pro rata* based upon the number of points awarded under the Points System set out in Schedule C. This division is subject to the limit that no one Class Member may be awarded more than 1% of the net amount of the Compensation Fund.

Provision of Information to the Claims Administrator

43. The Defendants shall make reasonable efforts to provide the Claims Administrator with a list of Canadian print publications which have from time to time been disseminated through Eligible Databases specifying the range of publication dates of full text copies of the Class Members’ literary Works included in the Eligible Databases and the range of publication dates of copies of the Class Members’ artistic Works included in the Eligible Databases.
44. The Defendants shall provide the Claims Administrator access to databases on the terms specified in the Settlement Agreement.

Deadline for Claims

45. A Class Member who wishes to claim compensation shall deliver to or otherwise provide the Claims Administrator a claims form substantially in the form attached as Schedule G to the Settlement Agreement not later than 120 days after first Notice of Court Approval is published, as directed by Court Order. If the Claims Administrator does not receive a Claim Form from a particular Class Member by the said deadline, then the Class Member shall not be eligible for any compensation.

Processing Claim Forms

46. The Claims Administrator shall review each Claim Form and verify that the Works listed on the form are eligible for compensation, as follows:
- a) A Work submitted by a Class Member who claims to be the Creator of the Work shall be eligible for points in the distribution scheme if:
 - i. The database containing the Work, or the Print Media in which the Work was published, lists the Class Member as the Creator of the Work, or the Claims Administrator is otherwise satisfied the Work was created by the Class Member, and
 - ii. None of the exclusions in Clause A of the Class Definition appear to apply, and
 - iii. The claimant has not opted out of the Action and
 - iv. The Work is a Freelancer Subject Work
 - b) A Work submitted by a Class Member who claims to be the Assignee of the rights of the Creator of, or a predecessor Assignee of, a particular Work shall be eligible for points in the distribution scheme if:
 - i. The claimant files a copy of a written assignment from the person who is listed as the Creator of the Work in the database containing the Work, or the Print Media in which the Work was published, to be the Creator of the Work, or a series of written assignments from the person indicated in the database containing the

Work, or the Print Media in which the Work was published, to be the Creator of the Work, and one or more intermediate assignees, to the claimant, and

- ii. None of the exclusions in Clauses A or C of the Class Definition appear to apply, and
- iii. The claimant has not opted out of the Action, and
- iv. The Work is a Freelancer Subject Work.

c) A Work submitted by a Class Member who claims to be the personal representative of the estate of the Creator or Assignee of a particular Work shall be eligible for points in the distribution scheme if:

- i. The claimant files a copy of a will purporting to appoint the claimant as executor or trustee of the estate of the person who the database lists as the Creator of the Work or an Assignee of the Creator, or a copy of a court order purporting to appoint the claimant as administrator of the estate of the Creator or Assignee, or such other evidence satisfactory to the Claims Administrator establishing the claimant is the personal representative of the estate of the Creator or Assignee, and
- ii. None of the exclusions in Clauses A or C of the Class Definition appear to apply, and
- iii. The claimant has not opted out of the Action, and
- iv. The Work is a Freelancer Subject Work.

- 47. The Claims Administrator shall review the lists of Works on the claim forms and, with respect to all Works that are eligible, assign the number of points to the claims prescribed by the Points System set out in Schedule C to the Settlement Agreement.
- 48. The Claims Administrator shall take reasonable measures to verify that the Works are eligible for points in the compensation scheme. The Claims Administrator may rely on a

sampling of the Works and need not search the databases for each and every Work on each and every claim form.

49. Where a Work does not correspond to the list of publications provided pursuant to paragraph 5, the Claims Administrator may decide that the Work is eligible for points in the distribution scheme based on the other information available to the Claims Administrator.

Pro Rata Allocation

50. As soon as possible after (i) all timely claims forms have been processed, and (ii) the time to request a hearing for claims disallowed under paragraph 23 below has expired, and (iii) all hearings under paragraph 24 regarding disallowed claims have been finally disposed of (including disposition of any appeals or the expiry of time to institute appeal proceedings), the Claims Administrator shall allocate to each of the claimants the net contents of the Compensation Fund on a *pro rata* basis based upon the claimants' points.

One Percent Limit

51. Despite paragraph 12, in no event shall a single claimant be paid more than 1% of the net contents of the Compensation Fund. If the number of points awarded as set out above to any particular claimant would be greater than 1% of all points awarded, then such claimants' points shall be adjusted and reduced to 1% of all points awarded, and the Claims Administrator shall re-allocate amount the claimants the net contents of the Compensation Fund *pro rata* based upon the claimants' adjusted points.

Compensation Cheques

52. The Claims Administrator shall mail the compensation cheques to the claimants at their last known addresses. If, for any reason, a claimant does not cash a cheque within 6 months after its date, the claimant shall forfeit the right to compensation and the Claims Administrator shall pay the aggregate of the amounts so forfeited to the Periodical Writers Association of Canada (Canada Revenue Agency registration number 124191198RR0001) to be used for such charitable purposes as it sees fit.

Remaining Amounts

53. If, after all distributions to Class Members have been made and all other financial commitments have been met under the Settlement Agreement and this Schedule, money remains in the Compensation Fund, it shall be paid to the Periodical Writers' Association of Canada.

Completion of Claim Form

54. If, for any reason, a living Class Member is unable to complete the Claim Form then it may be completed by the Class Member's personal representative, or a member of the Class Member's family.

Irregular Claims

55. The claims process is intended to be expeditious, cost effective and "user friendly" and to minimize the burden on Class Members. The Claims Administrator shall, in the absence of reasonable grounds to the contrary, assume the Class Members to be acting in good faith.
56. Where a Claim Form contains minor omissions or errors the Claims Administrator shall correct such omissions or errors if the information necessary to correct the error or omission is readily available to the Claims Administrator.
57. The claims process is also intended to prevent fraud and abuse. If, after reviewing any Claim Form, the Claims Administrator believes that the claim contains unintentional errors which would materially exaggerate the number of points to be awarded to the claimant, then the Claims Administrator may disallow the claim in its entirety. If the Claims Administrator believes that the claim is fraudulent, or contains intentional errors which would materially exaggerate the number of points to be awarded to the claimant, then the Claims Administrator shall disallow the claim in its entirety.
58. Where the Claims Administrator disallows a claim in its entirety, the Claims Administrator shall send to the claimant at the claimant's last known postal address or email address, a Notice of Right to Hearing in concerning the Class Member's right to a

hearing, and shall also provide a copy of the Notice to the solicitors for the Class. For greater certainty, where the Claims Administrator concludes the claimant is not entitled to points for some of the Works listed in the claim form, but does not disallow the claim in its entirety, the claimant is not entitled to a notice or a hearing.

59. Where a claimant files a request for hearing with the Claims Administrator, the Claims Administrator shall conduct an administrative review of the Class Member's complaint before any hearing, and in the event that the Claims Administrator determines that the Class Member's claim was disallowed in error, the Claims Administrator may remedy any defect in such disallowance prior to the hearing.
60. In the event that the Claims Administrator reverses a disallowance in respect of a Class Member's claim, the Claims Administrator shall send the claimant at the claimant's last known postal address or email address, a Notice of Revision, specifying the revision to the Claims Administrator's disallowance, and indicating that no hearing in respect of the disallowance will proceed.
61. The Class Member shall be required to file a Request for Hearing with the Claims Administrator within 15 business days of the issuance of the Notice of Right to Hearing to exercise his or her right to a hearing. Should no Request for Hearing be received by the Administrator within 15 business days of the issuance of the Notice of Right to Hearing, the Class Member's shall be deemed to have accepted the Claims Administrator's determination, and his or her rights to claim compensation under the Settlement Agreement shall be forever extinguished.
62. Hearings in respect of disallowances by the Claims Administrator shall proceed before a judge of the Superior Court of Ontario, in such form and manner as the Court may direct, pursuant to s. 25 of the *Class Proceedings Act, 1992*.

SCHEDULE C

Points Allocation System

A Class Member shall receive the indicated number of points for the indicated items.

Unpaid Works

(i.e. Works for which the Creator received no payment when the Work was initially published in Print Media)

Table 1

Unpaid Literary Works or Unpaid Artistic Works (regardless of the Print Media in which it appeared)

1 point per Work

Paid Works

(i.e. Works for which the Creator received payment when the Work was initially published in Print Media)

Table 2

Paid Literary Works

| Length of Work | Tier 1 (Minor Print Media) | Tier 2 (Intermediate Print Media) | Tier 3 (Major Print Media) |
|-------------------------------|-------------------------------|--------------------------------------|-------------------------------|
| Short (500 or fewer words) | 10 points | 50 points | 100 points |
| Medium (501 to 2999 words) | 50 points | 250 points | 500 points |
| Long (3000 or more words) | 100 points | 500 points | 1000 points |

Notes

1. A Tier 1 or "Minor Print Media" publication means all publications not included in Tiers 2 or 3.
2. A Tier 2 or "Intermediate Print Media" publication means
 - a) Publications such as the following:

The Montreal Gazette
Beaver: Exploring Canada's History
British Columbia Magazine
Canadian Family
Computerworld
Focus
FW
Innovation
L'Actualité
New Internationalist
Patient Care
Presbyterian Record

Report Newsmagazine
Saskatchewan Business
Sports Illustrated (Canada)
Time (Canada)
Toronto Life

and

b) Such other publications as the Publication Classification Committee¹ designates as an “Intermediate Print Media” publication on the grounds that:

i. The publication had a paid circulation of 50,000 or more but less than 250,000 at some point in time during which its contents were included in the subject databases, or

ii. Both:

A. The publication had a paid circulation of 25,000 or more at some point in time during which its contents were included in the subject databases, and

B. In the Committee’s opinion the publication had important regional influence or important influence in a particular sector of the public.

3. A Tier 3 or “Major Print Media” publication means:

a) Publications such as the following:

The Globe and Mail
Maclean’s
Time (Canadian Edition)
Fusion
Report on Business Magazine
Sierra
What Magazine
What’s Hers

and

b) Such other publications as the Publication Classification Committee designates as a “Major Print Media” publication on the grounds that:

i. The publication had a paid circulation of 250,000 or more at some point in time during which its contents were included in the subject databases, or

¹ The Publication Classification Committee shall be comprised of the Representative Plaintiff, Heather Robertson, and 8 other class members to be appointed by the Court.

ii. Both:

- A. The publication had a paid circulation of 50,000 or more at some point in time during which its contents were included in the subject databases, and
 - B. In the Committee's opinion the publication had important national influence or important influence in a particular sector of the public.
4. A literary Work published in serial form (i.e. divided into chapters or parts and published in several editions of a Print Media publication) shall be deemed to be a series of separate works for purposes of points allocation. For example, a 10,000 word short story divided into five 2,000 word parts and published in five editions of a magazine would be deemed to be 5 "medium" length Works.
 5. If a Work has been published in more than one of the Print Media publications, it shall be allocated a single set of points based on the highest Tier of the Print Media publications in which it appeared. For example, if a Work were published in both a Major Print Media publication and a Minor Print Media publication, then the stated number of points would be awarded under the column Major Print Media and no points would be awarded under the column Minor Print Media. Or, if a Work were published in two Major Print Media publications, it would receive the stated number of points under the column Major Print Media, not twice the stated number.

Table 3
Paid Artistic Works
(e.g. photographs, drawings, cartoons)

| Number of Works in Single Edition | Tier 1 (Minor print Media) | Tier 2 (Intermediate Print Media) | Tier 3 (Major Print Media) |
|-----------------------------------|-------------------------------|--------------------------------------|-------------------------------|
| 1 Work | 10 points | 50 points | 100 points |
| 2 to 9 Works | 50 points | 250 points | 500 points |
| 10 or more Works | 100 points | 500 points | 1000 points |

Notes

1. Tier 1, Tier 2 and Tier 3 publications have the same meanings as in the notes for Literary Works above.
2. An Artistic Work consisting of a closely related series of Artistic Works reproduced in the same edition of a publication shall be deemed to be a single Work for purposes of points allocation. For example a comic strip consisting of 4 panels would be deemed to be a single Work. Similarly, a series of photographs of the same subject (e.g. a sequence of photos showing a building collapsing, or "before" and "after" photos of a subject) shall be deemed to be a single Work for purposes of points allocation. However, a series of photographs of different subjects (e.g. photographs of the top 10 landmarks of Toronto) would count as separate works.

3. If a Work is published more than once in the same Print Media publication (whether in the same or different editions), it shall receive only one set of points, and shall not receive additional points for each time it was published.
4. If a Work has been published in more than one of the Print Media publications, it shall be allocated a single set of points based on the highest Tier of the Print Media publication in which it appeared. For example, if a Work were published in both a Major Print Media publication and a Minor Print Media publication, then the stated number of points would be awarded under the column Major Print Media and no points would be awarded under the column Minor Print Media. Or, if a work were published in two Major Print Media publications, it would receive the stated number of points under the column Major Print Media, not twice the stated number.

SCHEDULE D

Court File No. 96-CU-110595CP

ONTARIO

SUPERIOR COURT OF JUSTICE

**THE HONOURABLE MR. JUSTICE
MAURICE C. CULLITY**

)
)
)

, THE
DAY OF JUNE, 2009

B E T W E E N:

HEATHER ROBERTSON

Plaintiff

- and -

**THOMSON CANADA LIMITED, THOMSON AFFILIATES,
INFORMATION ACCESS COMPANY and
BELL GLOBEMEDIA PUBLISHING INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

JUDGMENT

THIS MOTION, made by the Plaintiff for an order approving the settlement of this Action, in accordance with the terms of the Settlement Agreement, was heard June 16, 2009, at the Court House, 361 University Avenue, Toronto, Ontario, judgment having been reserved until this day.

ON READING the Plaintiff's motion record, including the affidavit of Heather Robertson, the Plaintiff's factum, and upon being advised that the Defendants support the Plaintiff's motion, and upon hearing all interested parties, including objections, written and oral, and upon being advised of the consent and support of this motion of all of the parties to the Settlement Agreement,

AND WITHOUT ADMISSION OF LIABILITY on the part of any of the Defendants, who deny liability,

AND UPON HEARING the submissions of counsel for the Plaintiff and the Defendants, for written reasons delivered this day,

1. **THIS COURT ORDERS AND DECLARES** that for the purpose of this order, and all subsequent judgments or orders herein, the following definitions shall apply:

DEFINITIONS:

- (a) "Act" means the *Class Proceedings Act, 1992*;
- (b) "Action" means this proceeding, court file number 96-CU-110595CP;
- (c) "Class Definition", means:

All persons who were the authors or creators of original literary works or original artistic works (collectively "Works") which were published in Canada on or before the date of this Settlement Agreement in any newspaper, magazine, periodical, book, newsletter, journal or other paper-based form whatsoever (collectively "Print Media") which Print Media have been reproduced, distributed and/or communicated to the public by telecommunication by the Defendants through any computer database, CD-ROM, diskette, on-line service, or other electronic system or device (collectively "Electronic Media"), on or after 24 April 1979 except:

- (a) persons who by written document assigned all of the copyright in their Works to the Defendants or their predecessors in interest in the subject Print Media; or
- (b) persons who by written document granted to the Defendants or their predecessors in interest in the subject Print Media a license to publish or use their Works in Electronic Media; or
- (c) persons who were unionized employees of the Defendants or their predecessors in interest in the subject Print Media are excluded regarding any Works created for the subject Print Media at times when their unions' collective agreements governed the use of their Works in Electronic Media.

Where the Print Media publication was a Canadian edition of a foreign publication, only Works comprising the content exclusive to the Canadian edition shall qualify for inclusion under this definition.

(Persons included in clause A shall hereinafter be referred to as "Creators").

B. All persons (except the Defendants or their predecessors in interest in the subject Print Media) to whom a Creator, or an Assignee, assigned, granted or transmitted a right to publish or use their Works in Electronic Media. (Persons included in clause B shall hereinafter be referred to as "Assignees").

C. Where a Creator or Assignee is deceased, the personal representatives of the estate of such person unless the date of death of the Creator was on or before December 31, 1943.

- (d) "Class" or "Class Members", as amended by paragraph 2 of this order, means the class of persons described in the Class Definition, other than those people who have opted out either in accordance with the Certification Order or the provisions of this order.
- (e) "Defendants" mean Thomson Canada Limited (now Thomson Reuters Canada Limited), Thomson Affiliates, Information Access Company (now The Gale Group, Inc.), Bell Globemedia Publishing Inc. (now CTVglobemedia Publishing Inc.), The Thomson Corporation (now Thomson Reuters Corporation.), including each of their respective past and present parents, subsidiaries and related or affiliated entities and their respective employees, agents, officers, directors, shareholders, principals, members, attorneys, insurers, subrogees, representatives, executors, administrators, predecessors, successors, heirs, transferees and assigns;
- (f) "Licencees" means:
 - (i) Thomson Canada Limited (now Thomson Reuters Canada Limited), (including its partial successor-in-interest Nelson Education Ltd.);
 - (ii) Information Access Company (now The Gale Group, Inc.);
 - (iii) Bell Globemedia Publishing Inc. (now CTVglobemedia Publishing Inc.);
 - (iv) The Thomson Corporation (now Thomson Reuters Corporation);
 - (v) Thomson Affiliates, as defined in the Statement of Claim; and
 - (vi) successors and assigns of (i) and (ii).
- (g) "Opt Out Period" means the period commencing on the date that the Notice of Court Approval is published for the first time in the print edition of The Globe and Mail, and ending 30 days after it is published for the last time in the print edition of The Globe and Mail, during which an individual may opt out of this class proceeding without leave of the Court.
- (h) "Opt Out Deadline" means the last day of the Opt Out Period.
- (i) "Releasees" means:
 - i. Thomson Canada Limited (now Thomson Reuters Canada Limited);
 - ii. Information Access Company (now The Gale Group, Inc.);

- iii. Bell Globemedia Publishing Inc. (now CTVglobemedia Publishing Inc.);
 - iv. The Thomson Corporation (now Thomson Reuters Corporation);
 - v. Thomson Affiliates, as defined in the Statement of Claim;
 - vi. all divisions, subsidiaries, affiliated companies and parent companies of the entities described in subparagraphs (i) to (v);
 - vii. the present and former directors, officers, agents, servants and employees of the entities described in (i) to (vi); and
 - viii. the successors, heirs, executors, estate trustees, administrators, assigns, licencees and sub-licencees of persons described in subparagraphs (i) to (vii);
- (j) "Representative Plaintiff" or "Plaintiff" is Heather Robertson, as reflected in the title of proceedings.
- (k) "Settlement Agreement" means the Settlement Agreement entered into by the parties on ■, 2009, with Schedules, attached hereto as Schedule "A".
- (l) In addition, all definitions from the Settlement Agreement are incorporated as per paragraph 5 below.

2. **THIS COURT ORDERS** that, for the purposes of the settlement only, the certification order dated February 11, 1999 (the "Certification Order), attached hereto as Schedule "B", is amended as follows:

- a) The Class Definition in paragraph 1 of the Certification Order is amended to provide an end-date, specifically that only Works published in Print Media on or before the date of the Settlement Agreement (■, 2009) shall be included in the Class;
- b) The opt out provision in paragraph 4 of the Certification Order is amended to permit Class Members to opt out any time until the Opt Out Deadline by providing to Koskie Minsky LLP the Opt Out Form in the Notice of Court Approval, but that no Class Member may opt out of the class proceeding after the Opt Out Deadline without leave of the Court.

3. **THIS COURT ORDERS AND DECLARES** that the settlement of this Action, pursuant to the terms of the Settlement Agreement, is fair, reasonable and in the best interests of the Class.

4. **THIS COURT ORDERS AND DECLARES** that approval of the settlement is without prejudice to the Defendants' right to contest liability, should the Settlement Agreement not be so approved or fail pursuant to Article 16 of the Settlement Agreement. All materials filed, submissions made or positions taken by any party in respect of this settlement are without prejudice.

5. **THIS COURT ORDERS** that the Settlement Agreement, which is attached hereto as Schedule "A", and which is expressly incorporated by reference into this order, including the definitions included therein, is hereby approved and shall be implemented, in accordance with this order and any further order of this Court.

6. **THIS COURT ORDERS AND DECLARES** that this Court shall supervise the implementation of the Settlement Agreement and this order and, without limiting the generality of the foregoing, may issue such orders as are necessary to implement and enforce the provisions of the Settlement Agreement and this order.

7. **THIS COURT ORDERS AND DECLARES** that the claims of the Class Members are released and the terms of the release are as follows:

Each Class Member, and his or her heirs, personal representatives and assigns or their past and present agents, representatives, executors, administrators, predecessors, successors, transferees and assigns:

- a) releases, remises and forever discharges the Releasees of and from all actions, causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, claims and demands whatsoever which the Class Members, or any of them, or their successors in interest, ever had, now have or may have in the future against the Releasees, or any of them, for or by

reason of, or in any way arising out of any cause, matter or thing existing up to the present time which were raised in or which could have been raised in this Action, including any matters related to the use of the Subject Works in Electronic Media, and including any works subject to a Take-down Request until the works are taken down;

- b) specifically covenants, represents and warrants to the Releasees that the Class Members have no further claims against the Releasees for, in respect of or arising out of any cause, matter or thing whatsoever, including the Action;
- c) agrees that they will not make, commence 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 Releasees, or any of them, for contribution or indemnity or any other relief over (a "Third Party Claim");
- d) agrees that, without limiting the generality of sub-paragraph (c), the Class Members agree to not make or advance any claim in the action styled *Robertson v. ProQuest Information and Learning Company et al.* (03-CV-252945CP) in connection with any of the Subject Works or any other claim that could result in a Third Party Claim; and
- e) acknowledges and agrees that if any Class Member should make any claim or demand or commence or threaten to commence any action, proceeding or make any claim against the Releasees for or by reason of any cause, matter or thing, including any Third Party Claim, this order and the Settlement Agreement may be raised as a complete bar and defence to any such claim.

8. **THIS COURT ORDERS AND DECLARES** that the following Licence is granted to the Licencees in respect of all Subject Works:

- a) With respect to Freelancer Subject Works, the Licence is a worldwide, perpetual, irrevocable and assignable licence that permits the Licencees to reproduce one or more copies of the works in Electronic Media, to distribute the works through Electronic Media either directly or through third parties, to communicate the works to the public by telecommunication, or to authorize others to do so. The Licencees are expressly

authorized to grant sublicences, all of which can grant all the rights granted to the licencees, including the right to grant sub-sublicences. The Licence will be valid as of April 24, 1979, or the date of creation of the work, whichever is later. The Licencees acknowledge that the Licence is non-exclusive and that this Settlement Agreement does not assign or in any way affect Class Members' ownership of copyright in Freelancer Subject Works.

- b) With respect to Employee Subject Works, the Licence is a waiver of the right to restrain under s. 13(3) of the Canadian *Copyright Act*.
- c) Subject Works that are taken down pursuant to a valid Take-down Request are excluded from the Licence.

9. **AND THIS COURT ORDERS AND DECLARES** for greater certainty that the Releases referred to in paragraph 7 above bind each Class Member whether or not he or she is eligible for individual compensation under the Settlement Agreement or whether the Class Member's claim is accepted in whole or in part under the points system specified in schedules to the Settlement Agreement.

10. **THIS COURT ORDERS AND DECLARES** that the claims of the Class Members in this Action are hereby dismissed, without costs and with prejudice and that such dismissal shall be a defence to any subsequent action in respect of the subject matter hereof.

11. **THIS COURT ORDERS** that within 30 days of the Court Approval Date, notice shall be given of this judgment and the approval of the Settlement Agreement, by the commencement of the notice plan as set out in paragraphs 25-29 of the Settlement Agreement and in the form attached as Schedule "F" to thereto.

12. **THIS COURT DECLARES** that the notice provided in paragraph 11 above, satisfies the requirements of the Act, this Court and is the best notice practicable under the circumstances.

13. **THIS COURT ORDERS** that forthwith after the publication and delivery of the notice required by paragraph 11 of this order, Class Counsel shall serve the Defendants and file with this Court, affidavits confirming that notice has been given in accordance with the Settlement Agreement and this order.

14. **THIS COURT ORDERS** that Crawford Class Action Services, shall, within thirty (10) days after the Opt Out Deadline, report to this Court and advise as to the names of those persons who have opted out of this class proceeding.

15. **THIS COURT ORDERS AND DECLARES** that in the event that the number of persons who would otherwise be eligible to receive compensation under this Settlement Agreement who opt out of this action exceeds two hundred (200), the Defendants may elect within 20 days of the Opt Out Deadline to declare the Settlement Agreement void, in which case this order will be set aside in its entirety.

16. **THIS COURT DECLARES** that the provisions of the Act shall apply in their entirety to the supervision, operation and implementation of the Settlement Agreement and this order.

SCHEDULE E

Court File No. 96-CU-11059CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR. JUSTICE
MAURICE CULLITY

)
) FRIDAY, THE 4TH
) DAY OF MAY, 2009
)

B E T W E E N:

HEATHER ROBERTSON

Plaintiff

- and -

THOMSON CANADA LIMITED, THOMSON AFFILIATES, INFORMATION ACCESS
COMPANY and BELL GLOBEMEDIA PUBLISHING INC.

Defendants

O R D E R

THIS MOTION was heard this day, at the Court House at 361 University Avenue,
Toronto, Ontario.

ON READING the pleadings and proceedings herein, and on being advised of the
consent of the parties,

1. THIS COURT ORDERS that notice of the settlement approval hearing be given to the
Class in the form attached hereto as Schedule 'A,' as follows:

- (a) in long form in two consecutive Saturday publications in *The Globe and Mail*
and in *The National Post*, in English;
- (b) in short form in one further consecutive Saturday publications in *The Globe*
and Mail and in *The National Post*, in English;
- (c) in long form, in two consecutive Saturday publications in *La Presse* and in *Le*
Journal de Québec, in French;

- (d) in short form in one further consecutive Saturday publication in *La Presse* and in *Le Journal de Québec*, in French;
- (e) accessible through a link entitled “settlement of Canadian copyright class action,” published on globeandmail.com, in both English and French;
- (f) accessible through a link entitled “settlement of Canadian copyright class action” published on www.carswell.com and www.westlawecarswell.com, in both English and French;
- (g) accessible through a link entitled “settlement of Canadian copyright class action”, published on www.gale.cengage.com, in both English and French.

2. THIS COURT ORDERS that class members shall have until June 8, 2009 to provide notice to Class Counsel of their intention to object to the Proposed Settlement, as described in the Notice to the Class, by delivering such notice to Koskie Minsky LLP, addressed as follows:

Koskie Minsky LLP
900-20 Queen St. West, Box 52
Toronto, ON, M5H 3R3
Attn: Robertson v. Thomson, et al.

Schedule "A"

**NOTICE OF HEARING TO PROPOSE SETTLEMENT OF CLASS
PROCEEDING HEATHER ROBERTSON V. THOMSON AND OTHERS**

**If you are a writer, artist or photographer, wherever you reside, please read this
notice carefully as it may affect your rights.**

This is a court-approved notice to people who may be members of the Class in the above class proceeding. It provides information about an upcoming hearing before the Ontario Superior Court of Justice on June 16, 2009, in Toronto, when the Court will be asked to consider and approve the proposed settlement of this class proceeding.

In 1996, Heather Robertson (the "Plaintiff"), a freelance writer, commenced an action against The Thomson Corporation (now, the Thomson Reuters Corporation), Thomson Canada Limited (now, Thomson Reuters Canada Limited), Thomson Affiliates and Information Access Company (now, The Gale Group, Inc.). In 1999, the action was amended to include Bell Globemedia Publishing Inc. (now, CTVglobemedia Publishing Inc.) as a defendant (collectively, the "Defendants"). In the action, the Plaintiff alleged that the Defendants infringed the copyrights of creators or assignees of original literary or artistic works published in print media in Canada ("Works") by disseminating, or authorizing the dissemination of copies of the Works using electronic databases, contrary to the Canadian *Copyright Act*. The Plaintiff sought compensatory, punitive and exemplary damages, as well as injunctive relief, on behalf of the writers, artists and photographers who created the Works ("creators"), their estates and assigns. The Defendants denied the Plaintiff's claims.

In 1999, the Superior Court of Justice certified this action as a class proceeding, on behalf of the creators of original literary and artistic Works, their estates or assigns, wherever they live. Excluded from the class proceeding were all Works where the creator gave written permission to make the Works available electronically, as well as all Works created by unionized employees of the Defendants whose collective agreement governed the use of employees' Works in electronic media.

The Plaintiff and the Defendants have reached a tentative settlement (the "Proposed Settlement"). Under the terms of the Proposed Settlement, the Defendants will pay C\$11million, inclusive of legal and settlement administration fees, to provide benefits to Class Members. The Proposed Settlement includes a compensation plan under which Class Members can file claims for compensation for freelance Works, an alternative take-down benefit for freelance Works that appeared in *The Globe and Mail*, as well as donations to the Professional Writers Association of Canada, The Writers' Union of Canada and the Canadian Association of Photographers and Illustrators to the general benefit of all creators of written and artistic Works. The settlement includes a release of all claims, as well as a license in respect of all Works that are not taken down. Class Members will also be provided a further opportunity to opt out of the Proposed Settlement if it is approved by the Court. Further information about the Proposed Settlement, including information about class membership, and the terms of the Proposed Settlement, is available on the website listed below.

The parties will appear before the Ontario Superior Court of Justice at the Court House located at 361 University Avenue, Toronto, Ontario on June 16, 2009 at 10:00 a.m. to ask the Court to approve the Proposed Settlement. Class Members may attend the hearing before the Court and may ask the Court to make submissions regarding the Proposed Settlement. Any Class Members who wish to attend and object to the Proposed Settlement must first provide written notice of their objection to Class Counsel by June 8, 2009, describing the nature of the objection to the Proposed Settlement. Class Counsel will provide a copy of all written notices to Defendants' counsel and the Court upon receipt.

If you are a Class Member and wish to obtain additional information about the Proposed Settlement or object to the Proposed Settlement, please contact Class Counsel, Koskie Minsky LLP, at the address below:

Koskie Minsky LLP, Barristers & Solicitors
20 Queen St. West, Suite 900, Box 52, Toronto, ON, M5H 3R3
Re: Robertson v. Thomson et al. Class Action

In addition, information is available on Class Counsel's website: **[insert website address]**

If you have no objection to the Proposed Settlement, you are not required to take any action.

If the Proposed Settlement is approved by the Court, and you do not opt out, you may be entitled to file a claim for compensation under the terms of the Settlement Agreement.

PLEASE DO NOT CONTACT THE COURT OR THE REGISTRAR OF THE COURT ABOUT THIS CLASS PROCEEDING. THEY ARE NOT ABLE TO ANSWER YOUR QUESTIONS.

Dated: ☐, 2009

**NOTICE OF HEARING TO PROPOSE SETTLEMENT OF CLASS PROCEEDING
HEATHER ROBERTSON V. THOMSON AND OTHERS**

**If you are a writer, artist or photographer, wherever you reside, please read this notice
carefully as it may affect your rights.**

This notice is addressed to people who may Class Members in this class proceeding, and provides information about a hearing before the Ontario Superior Court of Justice on June 16, 2009, in Toronto, when the Court will be asked to approve a proposed settlement of this action.

In 1996, the Plaintiff commenced an action against The Thomson Corporation (now, the Thomson Reuters Corporation), Thomson Canada Limited (now, Thomson Reuters Canada Limited), Thomson Affiliates and Information Access Company (now, The Gale Group, Inc.). In 1999, the action was amended to include Bell Globemedia Publishing Inc. (now, CTVglobemedia Publishing Inc.) as a defendant (collectively, the "Defendants"). The Plaintiff alleged that the Defendants infringed the copyrights of creators or assignees of original literary or artistic works published in print media in Canada ("Works") by disseminating, or authorizing the dissemination of copies of the Works using electronic databases, contrary to the Canadian *Copyright Act*. The Defendants denied the Plaintiff's claims. In 1999, the Superior Court of Justice certified this action as a class proceeding.

The Plaintiff and the Defendants have reached a tentative settlement, under which the Defendants will pay C\$11million, inclusive of legal and settlement administration fees, to provide benefits to Class Members. The proposed settlement includes a claims-based compensation plan for class members, an alternative take-down benefit for certain freelance Works, as well as certain donations. The settlement includes a release of all claims and a license in respect of all Works not taken down. Class Members will be provided a further opportunity to opt out of the Proposed Settlement if it is approved by the Court.

The parties will appear before the Ontario Superior Court of Justice at the Court House located at 361 University Avenue, Toronto, Ontario on June 16, 2009 at 10:00 a.m. to ask the Court to approve the proposed settlement. Class Members may attend the hearing and may ask to make submissions regarding the proposed settlement. Any Class Members who wishes to object must provide written notice of their objection to Class Counsel by June 8, 2009.

If you are a Class Member and wish to obtain additional information or to object to the proposed settlement, please contact Class Counsel, Koskie Minsky LLP, at the address below:

Koskie Minsky LLP, Barristers & Solicitors
20 Queen St. West, Suite 900, Box 52, Toronto, ON, M5H 3R3
Re: Robertson v. Thomson et al. Class Action
[insert website address]

**PLEASE DO NOT CONTACT THE COURT OR THE REGISTRAR OF THE COURT ABOUT
THIS CLASS PROCEEDING. THEY ARE NOT ABLE TO ANSWER YOUR QUESTIONS.**

Dated: □, 2009

**NOTICE OF APPROVAL OF THE SETTLEMENT OF CLASS PROCEEDING
ROBERTSON V. THOMSON AND OTHERS**

If you are a writer, artist or photographer, wherever you live, please read this notice carefully as it may affect your rights.

This is a court-approved notice to people who may be members of the Class in the above class proceeding. It describes the class proceeding, the class of people affected, and the court-approved settlement of this class proceeding.

In 1996, Heather Robertson (the "Plaintiff"), a freelance writer, commenced an action against The Thomson Corporation (now, Thomson Reuters Corporation), Thomson Canada Limited (now, Thomson Reuters Canada Limited), Thomson Affiliates and Information Access Company (now, The Gale Group, Inc.). In 1999, the action was amended to include Bell Globemedia Publishing Inc. (now CTVglobemedia Publishing, Inc.) as a defendant (collectively, the "Defendants"). In the action, the Plaintiff alleges that the Defendants infringed the rights of creators or assignees of original literary or artistic works published in print media in Canada ("Works") by disseminating or authorizing the dissemination of copies of the Works through electronic databases, contrary to the Canadian *Copyright Act*. The Plaintiff sought compensatory, punitive and exemplary damages, as well as injunctive relief, on behalf of writers, artists and photographers who created the Works ("Creators"), their estates and assigns. The Defendants denied the Plaintiff's claims.

In 1999, the Superior Court of Justice certified this action as a class proceeding, on behalf of the creators of original literary and artistic Works, their estates or assigns, where they live. The Class includes the following people:

A. All persons who were the authors or creators of original literary works or original artistic works (collectively "Works") which were published in Canada in any newspaper, magazine, periodical, book, newsletter, journal or other paper-based form whatsoever (collectively "Print Media") which Print Media have been reproduced, distributed and/or communicated to the public by telecommunication by the Defendants through any computer database, CD-ROM, diskette, on-line service, or other electronic system or device (collectively "Electronic Media"), on or after 24 April 1979 except:

- (a) persons who by written document assigned all of the copyright in their Works to the Defendants or their predecessors in interest in the subject Print Media; or
- (b) persons who by written document granted to the Defendants or their predecessors in interest in the subject Print Media a license to publish or use their Works in Electronic Media; or

(c) persons who were unionized employees of the Defendants or their predecessors in interest in the subject Print Media are excluded regarding any Works created for the subject Print Media at times when their unions' collective agreements governed the use of their Works in Electronic Media.

Where the Print Media publication was a Canadian edition of a foreign publication, only Works comprising the content exclusive to the Canadian edition shall qualify for inclusion under this definition. (Persons included in Clause A shall hereinafter be referred to as "Creators").

B. All persons (except the Defendants or their predecessors in interest in the subject Print Media) to whom a Creator, or an Assignee, assigned, granted or transmitted a right to publish or use their Works in Electronic Media. (Persons included in clause B shall hereinafter be referred to as "Assignees").

C. Where a Creator or Assignee is deceased, the personal representative of the estate of such person unless the date of death of the Creator was on or before December 31, 1943 (the "Class").

By further Order of the Court dated June □, 2009, the action was limited to Creators of Works published in print prior to □, 2009.

SETTLEMENT APPROVAL

A court approved Notice of the Settlement Approval Hearing was published in The Globe and Mail, the National Post, Le Journal de Québec and La Presse on □, 2009, as well as on certain websites. The parties attended before the Ontario Superior Court of Justice on □, 2009, and obtained court approval of the settlement agreement reached between the parties, as well as Class Counsel fees in the amount of □.

The Court determined that the Settlement is fair and reasonable, and in the best interests of Class Members.

Settlement Benefits

Under the terms of the approved Settlement, the Defendants will pay C\$11,000,000, inclusive of legal and settlement administration fees, to provide benefits to Class Members. The Settlement includes a compensation plan for freelance Works, an alternative take-down benefit for freelance Works that appeared in The Globe and Mail, as well as a donation to the Professional Writers Association of Canada, The Writers' Union of Canada and the Canadian Association of Photographers and Illustrators in Communications, to the general benefit of all Creators of written and artistic Works. The settlement includes a release of all claims, as well as a license in respect of Works that are not taken down.

The case has been financially supported by the Class Proceedings Fund operated by the Law Foundation of Ontario, and as required by law 10% of the net proceeds of the case will be paid to the Class Proceedings Fund if the tentative settlement is approved.

The Compensation Plan

Eligible Class Members may complete and submit a claim form to the Claims Administrator, listing freelance Works for which compensation is sought. The Claims Administrator processes the claims and establishes entitlements of individual Class Members, according to the distribution scheme outlined below. For Works that appeared in The Globe and Mail, Eligible Class Members may choose to forego compensation, and instead request that those Works be removed from the commercial databases maintained by the Defendants.

The compensation owing to individual Class Members will be determined by the Claims Administrator, on the basis of a points system. Briefly, a member's entitlement to compensation will be calculated on the basis of a points system which takes into account various factors, particularly the following:

1. Whether the individual was paid or not paid for the initial publication of any freelance Work;
2. The length of the Work;
3. The publication in which the Work initially appeared.

Under the terms of the Settlement, no individual Class Member will be entitled to compensation in excess of 1% of the total Compensation Fund.

Administrator's Fees

The fees of the Claims Administrator will be deducted from the Settlement Funds.

TO MAKE A CLAIM FOR COMPENSATION

The Court appointed ☐ as Claims Administrator. The Claims Administrator's contact information is as follows:

☐

To receive compensation, each Class Member must submit a completed Claim Form and supporting documents, on or before ☐ Toronto time on ☐, 2009. The Claim Form is available at ☐ or by calling ☐.

The Claim Form should be submitted by mailing, emailing or faxing the Claim Form and supporting documents to the Claims Administrator at the above-noted address.

If you fail to submit a Claim Form and the supporting documents, on or before ☐ Toronto time, you will not receive any part of the net settlement monies unless the Court extends the deadline.

OPTING OUT

If you are a person falling within the Class described above and you did not opt out when the action was certified in 1999, you will automatically be included in the Class unless you opt out now. Class Members who do not opt out may seek the settlement benefits described above.

Class Members may choose to opt-out now. If you opt-out, you will not be entitled to any of the benefits of the settlement.

To opt out of the Class you must fill out the Form below and send it to Koskie Minsky LLP (at the address listed below), the lawyers for the Class. The deadline for opting out is ☐. If your written request to opt out is not received by that date you will remain a member of the Class.

FURTHER INFORMATION

If you are a Class Member and wish to obtain additional information about the Settlement, please contact Koskie Minsky LLP at the address below:

Koskie Minsky LLP
Barristers & Solicitors
20 Queen St. West, Suite 900, Box 52
Toronto, ON, M5H 3R3
Re: Robertson v. Thomson et al.

In addition, information is available on Class Counsel's website **[ntd: insert website]**

PLEASE DO NOT CONTACT THE COURT OR THE REGISTRAR OF THE COURT ABOUT THIS CLASS PROCEEDING. THEY ARE NOT ABLE TO ANSWER YOUR QUESTIONS.

Dated: ☐, 2009

OPT OUT FORM

**THIS IS NOT A REGISTRATION FORM OR CLAIM FORM. IT
EXCLUDES YOU FROM THE SETTLEMENT CLASS.**

To: **Koskie, Minsky**
900 - 20 Queen St. West, Box 52
Toronto, ON M5H 3R3
Attn. Robertson v. Thomson, et al.

I _____ (please print full name) am a/the:
(please check the applicable boxes)

- ☐ writer;
- ☐ artist;
- ☐ photographer (or author as per the Canadian *Copyright Act*);
- ☐ estate or assignee of any of the above;

of Works as defined in the Notice.

I confirm that:

- ☐ my Works were not created under a collective agreement that governed the use of the Works in electronic media;
- ☐ I have not given written permission to make my Works available in commercial online databases operated by or authorized by the defendants

I wish to opt out of the *Robertson v. Thomson* class action. I understand that by opting out, I will not be entitled to any of the benefits of the settlement.

Signature

Address:

Postal code:

Telephone:

Note: To opt out, this form must be completed and received at the above address before ●

SCHEDULE G

Heather Robertson v. Thomson Canada Ltd. Class Action Claim Form

Part 1 - Your Contact Information*

1. First (Given) Name: _____

2. Middle Names: _____

3. Last (Family) Name: _____

4. Street Address*: _____

5. City/Town: _____

6. Province: _____

7. Postal Code: _____

8. Telephone number: _____

9. E-mail address: _____

Part 2 - Lists of Your Works²

10. **Literary Works.** Please list your eligible Freelance Literary Works (i.e. articles, book excerpts, etc., which were published in Canada in any newspaper, magazine, periodical, book, newsletter, journal or other paper-based form whatsoever (collectively "Print Media") and a copy of which subsequently appeared in an Eligible Database)

| Name of Creator ³ | Description of Work (title, headline, etc.) | Name of Print Media in which Work appeared | Date Published in Print Media | Length of Work ⁴ |
|------------------------------|--|--|-------------------------------------|--------------------------------|
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |

* * if you change addresses it is your responsibility to advise the Claim Administrator of your new address.

² "Work" means any original literary or artistic work (including newspaper and magazine articles, photographs, cartoons, illustrations, etc.) which first appeared in Print Media in Canada and a copy of which has been disseminated through commercial online databases operated by or authorized by the defendants containing text-based reproductions ("Eligible Databases").

³ "Creator" means the writer, photographer, illustrator, etc who created the Work.

⁴ Approximate number of words.

| | | | | |
|----|--|--|--|--|
| 4. | | | | |
| 5. | | | | |

(attach additional sheets as necessary)

11. Artistic Works. Please list your eligible Freelance Artistic Works (i.e. photographs, cartoons, illustrations, etc. which were published in Canada in any newspaper, magazine, periodical, book, newsletter, journal or other paper-based form whatsoever (collectively "Print Media") and a copy of which subsequently appeared in an Eligible Database)

| Name of Creator | Description of Work (title, headline, etc.) | Name of Print Media in which Work appeared | Date Published in Print Media | Length of Work ⁵ |
|-----------------|--|--|-------------------------------------|--------------------------------|
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |

(attach additional sheets as necessary)

Part 3 - Entitlement, Election & Certification

Your Basis of Entitlement

12. What is the basis of your entitlement? (X appropriate boxes)

- ☐ I am the Creator of the Works listed above.
- ☐ I am the Assignee of the Creator of the Works listed above, and
- ☐ I attach a copy of the written assignment(s), or
- ☐ I cannot attach a copy of the written assignment(s).⁶
- ☐ The Creator is deceased, and I am the personal representative of the Estate of the Creator of the Works listed above, and

⁵ An Artistic Work consisting of a closely related series of Artistic Works reproduced in the same edition of a publication shall be deemed to be a single Work. For example a comic strip consisting of 4 panels would be deemed to be a single Work. Similarly, a series of photographs of the same subject (e.g. a sequence of photos showing a building collapsing, or "before" and "after" photos of a subject)) shall be deemed to be a single Work. However, a series of images of different subjects (e.g. photographs of the top 10 landmarks of Toronto) would count as separate works.

⁶ No compensation will be awarded to Assignees who cannot file copies of the written assignment(s) on which their entitlement is based.

- ☐ I attach a copy of the Creator's Will appointing me as Executor or Trustee, or
- ☐ I attach a copy of a court order appointing me as Administrator of the Creator's estate, or
- ☐ I attach other evidence showing I am the personal representative of the Creator's estate, or
- ☐ I cannot attach evidence showing I am the personal representative of the Creator's estate.⁷
- ☐ The Creator of the Works listed above is not deceased, but is unable to complete the Claim Form, and I am a member of the Creator's family, or a personal representative of the Creator.⁸
- ☐ Other. (Please explain and attach any corroborating document⁹)

Election

13. With respect to works published in The Globe and Mail, you can elect either to (a) permit the Works to remain on the Eligible Databases and receive compensation under this settlement or (b) have the Works removed from the Eligible Databases and receive no compensation under this settlement. What is your choice? (X appropriate box)

- ☐ I wish to permit these Works to remain on the Eligible Databases and receive compensation under this settlement. Or
- ☐ I wish to have the Works first published in The Globe and Mail removed from the Eligible Databases and not to receive compensation for those Works under this settlement.

If you make no election, you will be deemed to have elected compensation.

⁷ No compensation will be awarded to personal representatives of estates who cannot file copies of Wills, or court orders, or other evidence satisfactory to the Claims Administrator.

⁸ The Claims Administrator may request corroboration, e.g. showing that the claimant is a member of the Creator's family. If the claim is accepted on this basis, the compensation cheque will be made payable to the Creator, not to the claimant.

⁹ For example, if you are the personal representative of a deceased Assignee's Estate, you should attach copies of the assignment(s) as well as the Will, court order, or other evidence showing you represent that estate.

Certification

14. I hereby certify:

- (b) that I am not claiming for any Works that were created in the course of my employment;
- (c) that I am not claiming for any Works for which I have signed a written agreement granting the right to place the Works in Eligible Databases; and
- (d) all information I have provided on this form is true to the best of my knowledge and belief.

Date

Signature

IT IS A SERIOUS OFFENCE TO MAKE A FALSE STATEMENT.