

## NOTICE OF APPROVAL OF SETTLEMENT OF COPYRIGHT CLASS ACTION

### *HEATHER ROBERTSON V. TORONTO STAR NEWSPAPERS LTD., ROGERS PUBLISHING LIMITED, CEDROM-SNI INC. AND PROQUEST INFORMATION AND LEARNING LLC*

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

This notice is addressed to people who may be class members in this class action and provides information about the court-approved settlement of this action, how class members may make a claim for compensation under the settlement or, alternatively, how they may opt-out of the settlement.

#### **BACKGROUND**

In 2003, the plaintiff Heather Robertson commenced a lawsuit against Toronto Star Newspapers Ltd. (“Toronto Star”), Rogers Publishing Limited (“Rogers”), CEDROM-SNi Inc. (“Cedrom”), ProQuest Information and Learning LLC (“ProQuest”) and Canwest Publishing Inc. (“Canwest”) (collectively “defendants”). Ms. Robertson alleged that the defendants infringed the copyrights of authors or assignees of original literary works published in print media in Canada by disseminating copies of those literary works using electronic databases. The defendants claimed they had the requisite rights to disseminate those works and denied Ms. Robertson’s claims. In October 2008, the Ontario court certified the action as a class proceeding.

#### **WHO IS A CLASS MEMBER**

This class action generally applies to freelance authors and assignees who wrote for publications owned or operated by Toronto Star, Rogers, Canwest or their affiliates (including predecessors).

More specifically, class membership is defined as

- A. All persons who were the authors or creators of original literary works (“Works”) which were published in Canada in any newspaper, magazine, periodical, newsletter, or journal (collectively “Print Media”) by Toronto Star Newspapers Limited, Rogers Publishing Limited, Canwest Publishing Inc. or their Affiliates on or before the date of this order which Print Media have been reproduced, distributed or communicated to the public by telecommunication by, or pursuant to the purported authorization or permission of, one or more of the defendants or their Affiliates, through any electronic database, excluding electronic databases in which only a precise electronic reproduction of the Work or a substantial portion thereof is made available (such as PDF and analogous copies) (collectively “Electronic Media”), excluding:
  - (a) persons who by written document assigned or exclusively licensed all of the copyright in their Works to a defendant, a licensor to a defendant, or any third party; or
  - (b) persons who by written document granted to a defendant or its Affiliates or a licensor to a defendant a license to publish or use their Works in Electronic Media; or
  - (c) persons who were employees of a defendant or a defendant’s Affiliate or a licensor to the defendant, with respect to any Works created in the course of their employment.

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

(Persons included in clause A are referred to as “Creators”. A “licensor to a defendant” is any party that has purportedly authorized or provided permission to one or more defendants to make Works available in Electronic Media. References to defendants or licensors to defendants include their predecessors and successors in interest.)

- B.** All persons (except a defendant or a licensor to a defendant) to whom a Creator, or an Assignee, assigned, exclusively licensed, granted or transmitted a right to publish or use their Works in Electronic Media.

(Persons included in clause B are hereinafter 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, 1950.

### **Definition of Affiliate**

An “Affiliate” means

- (i) all divisions, subsidiaries, affiliated companies and parent companies of a company;
- (ii) the present and former directors, officers, agents, servants and employees of a company and the entities described in (i); and
- (iii) the successors, heirs, executors, estate trustees, administrators, assigns, licencees and sub-licencees of the persons and/or entities described in subparagraphs (i) and (ii).

### **SETTLEMENT**

The Ontario court has approved settlements with the defendants. The settlements provide approximately \$7.9 million in cash for the benefit of class members. In return, there will be a release of all claims against these defendants and their Affiliates and a licence in respect of literary works that were published by Toronto Star, Rogers, Canwest or their Affiliates.

The case has been financially supported by the Class Proceedings Fund operated by the Law Foundation of Ontario. As required by law, 10% of the net proceeds of the action will be paid to the Class Proceedings Fund.

The court has also approved legal fees of approximately \$1.9 million (plus disbursements and applicable taxes) to be paid from the settlement fund to class counsel. Class counsel represented the class in this action on a contingency fee basis, meaning they agreed they would receive no pay for their work unless there was a settlement or judgment. The approved legal fees represent 8 years of class counsel’s work in this litigation.

### **MAKING A CLAIM FOR COMPENSATION**

William Dovey of Duff & Phelps is claims administrator for the compensation fund and can be reached at:

80 Richmond Street West, Suite 2000,  
Toronto, ON, M5H 2A4  
Tel: 416.361.2590 Fax: 416.364.2904

To receive compensation, a class member must submit by mail or facsimile a completed claim form and supporting documents by no later than 5:00 p.m. Toronto time on October 15, 2011. If you fail to submit a claim form and the supporting documents by this date, you will not receive any compensation from the compensation fund.

Class members can obtain a claim form from:

- (i) class counsel's website, [www.kmlaw.ca/freelanceclassaction](http://www.kmlaw.ca/freelanceclassaction)
- (ii) the claims administrator's website, [www.duffandphelps.com/freelanceclaims](http://www.duffandphelps.com/freelanceclaims)
- (iii) calling or faxing the claims administrator.

The claim form includes instructions on how to complete it. Class members may also contact the claims administrator if they have questions about the claim form.

Compensation is based on the number of literary works claimed, the length of the works and the publication in which they initially appeared. Additional information on the claims process and compensation is available on class counsel's website at [www.kmlaw.ca/freelanceclassaction](http://www.kmlaw.ca/freelanceclassaction) under the link titled "Settlement".

## **OPTING OUT**

If you are a class member (as described above) and you do not want to participate in the settlements you may choose to opt out. If you opt out, you will not be entitled to any compensation from the settlements.

To opt out you must fill out the form below and send it to class counsel by mail or fax to:

Koskie Minsky LLP, Barristers & Solicitors  
20 Queen St. West, Suite 900, Box 52, Toronto, ON, M5H 3R3  
Re: Robertson v. ProQuest et al. Class Action  
Fax: 416.204.2897

The deadline for opting out is July 31, 2011. If your written opt out is not received by that date you will remain a member of the class.

## **FURTHER INFORMATION**

If you wish to obtain additional information about the settlement or claims process, please contact class counsel by mail at the above address, email at [freelance1classaction@kmlaw.ca](mailto:freelance1classaction@kmlaw.ca) or by phone at [1.866.777.6343](tel:18667776343).

In addition, a copy of the order approving the settlements and other information about the settlements, claims process and this action are available on class counsel's website.

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

**OPT OUT FORM**

**THIS IS NOT A REGISTRATION FORM OR CLAIM FORM.  
IT EXCLUDES YOU FROM THE SETTLEMENT.  
YOU WILL NOT RECEIVE ANY COMPENSATION.**

To: **Koskie Minsky LLP**  
900 - 20 Queen St. West, Box 52  
Toronto, ON M5H 3R3  
**Attn. Robertson v. ProQuest, et al. Class Action**  
Tel: 1.866.777.6343, Fax: 416.204.2897

I \_\_\_\_\_ (please print full name) am one of the following: (please check the applicable boxes):

- the writer;
  - the assignee; or
  - the representative of the estate of a writer or assignee;
- 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. ProQuest* class action. I understand that by opting out, I will not be entitled to any of the benefits of the settlement.

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

Address:  
Postal code:  
Telephone:

*Note: To opt out, this form must be completed and received at the above address before July 31, 2011.*