

No.:  
Vancouver Registry

**IN THE FEDERAL COURT OF APPEAL**

BETWEEN:

Communications, Energy and Paperworkers Union of Canada

APPLICANT

AND:

**CH Television, a division of CanWest MediaWorks Inc. including CH Vancouver Island, CHBC, and CH Hamilton; and Global Television, a division of CanWest MediaWorks Inc, including Global BC, Global Calgary, Global Edmonton, Global Lethbridge, Global Saskatoon, Global Winnipeg, Global Ontario, and Global Maritimes**

RESPONDENTS

**NOTICE OF APPLICATION**

TO THE RESPONDENTS: **CH Television, a division of CanWest MediaWorks Inc. including CH Vancouver Island, CHBC, and CH Hamilton; and Global Television, a division of CanWest MediaWorks Inc, including Global BC, Global Calgary, Global Edmonton, Global Lethbridge, Global Saskatoon, Global Winnipeg, Global Ontario, and Global Maritimes**

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at #1600 - 700 West Georgia Street, Vancouver, B.C.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Court Rules, 1998* and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Court Rules, 1998*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: \_\_\_\_\_ Issued by: \_\_\_\_\_

Address of local office:  
#1600 - 700 West Georgia St.  
Vancouver, B.C.

To: CH Television, a division of CanWest MediaWorks Inc. including CH Vancouver Island, CHBC, and CH Hamilton; and Global Television, a division of CanWest MediaWorks Inc, including Global BC, Global Calgary, Global Edmonton, Global Lethbridge, Global Saskatoon, Global Winnipeg, Global Ontario, and Global Maritimes

CanWest MediaWorks  
CanWest Global Place  
3100-201 Portage Avenue

Winnipeg, Manitoba  
R3B 3L7

Attention: Mr. Bob Pruden  
Vice-President  
Labour Management Strategy

Tel: (204) 953-7746  
Fax: (204) 947-9841

And To: Canada Industrial Relations Board  
Law Department  
CD Howe Building  
240 Sparks Street, 4<sup>th</sup> Floor West  
Ottawa, Ontario K1A 0X8

Attention: Ms. Susan Nicholas

Tel: 613-947-5430  
Fax: 613-947-5460

## APPLICATION

This is an application for judicial review and an application for a writ of *mandamus* compelling the Canada Industrial Relations Board (the "CIRB") to issue orders and full reasons for judgment in three related matters presently before the CIRB.

The applicant makes application for:

1. A writ of *mandamus* compelling the CIRB to issue full reasons for decision ("Reasons") in relation to its Letter Decision No. 1695 (the "Letter Decision");
2. A writ of *mandamus* compelling the CIRB to issue an order in relation to an application made by the applicant pursuant to Section 54 of the *Canada Labour Code*, R.S. 1985, c. L-2 (the "Code"), in CIRB file No. 26667-C (the "Technological Change Application");
3. A writ of *mandamus* compelling the CIRB to issue an order in relation to an application made by the applicant pursuant to Section 18 of the *Canada Labour Code*, R.S. 1985, c. L-2, in CIRB file No. 26612-C (the "Interim Relief Reconsideration Application");
4. Costs of this application; and
5. Such further and other relief as counsel may advise and this Honourable Court may grant.

The grounds for the application are:

1. The Respondents, CH Television, a division of CanWest MediaWorks Inc. including CH Vancouver Island, CHBC, and CH Hamilton; and Global Television, a division of CanWest MediaWorks Inc, including Global BC, Global Calgary, Global Edmonton, Global Lethbridge, Global Saskatoon, Global Winnipeg, Global Ontario, and Global Maritimes, operate a variety of conventional television stations across Canada. The Respondents are all commonly owned by CanWest Mediaworks.
  
2. The Applicant, Communications, Energy and Paperworkers Union of Canada (the "CEP"), represents unionized workers at many of the Respondents' television stations. Until recently, those unionized workers were governed by thirteen (13) separate different collective agreements and organized into the following thirteen (13) separate bargaining units:
  - a. Hamilton;
  - b. Vancouver;
  - c. Kelowna;
  - d. Victoria;
  - e. Calgary;
  - f. Halifax – News;
  - g. Halifax—Ops;
  - h. St. John;
  - i. Toronto/ Ottawa;
  - j. Lethbridge;
  - k. Edmonton;
  - l. Winnipeg; and
  - m. Saskatoon.

3. On April 27, 2001, the CEP applied to the CIRB for an order under Sections 18, 18.1, and 35 of the *Code* for an order declaring the Respondents to be a "common employer" for the purposes of the *Code* (the "Common Employer Application") and for an order fashioning a single bargaining unit.
4. The Common Employer Application was driven by the CEP's concern that the Respondents' common ownership and control of all of these stations allowed it to devise and implement common corporate strategies and use technology to achieve the centralization of job functions or transfers of work between stations. The Common Employer Application sought to remedy the labour relations consequences of that common direction and control. Absent a common employer declaration and a single bargaining unit, the CEP is restricted to negotiating separate collective agreements with each Respondent and cannot effectively bargain with the Respondents collectively.
5. The hearing of the Common Employer Application concluded in May 2003.
6. On February 27, 2004, while the Common Employer Application was outstanding, the CEP filed an application for an interim order enjoining the Respondents from implementing layoffs relating to the transfer of "master control" functions from Winnipeg and Regina to Calgary, and the transfer of "traffic" functions from Winnipeg and Regina to Vancouver. The CIRB did not formally respond to this application until March 17, 2006.
7. On September 17, 2004, in response to a transfer of master control functions from Victoria to Calgary, and of traffic functions from Kelowna

to Vancouver, the CEP applied again for interim relief. Again, the CIRB did not formally respond to this until March 17, 2006.

8. On March 4, 2005, the CIRB issued its reasons for decision in relation to the Common Employer Declaration. The CIRB declared the Respondents to be a "common employer" but fashioned three regional bargaining units: the Maritimes, Ontario, and the rest of Canada. The CIRB dismissed all of the applications for interim orders.
9. On June 30, 2005, the CEP filed an application for reconsideration of the CIRB's decision, citing, among other things, further centralization (*i.e.* the transfer of master control functions to Vancouver and Toronto). The Respondents also filed an application for reconsideration of that decision.
10. On January 13, 2006, while the CIRB's decision in relation to the reconsideration application remained outstanding, the CEP applied for yet a further interim order in response to the transfer of VTR, master control, and traffic functions from Global Maritimes to Toronto.
11. On March 17, 2006, the CIRB issued its decision (the "Reconsideration Decision") in relation to the parties' reconsideration applications. The Respondents were confirmed as constituting a "common employer" for the purposes of the *Code*. The decision to fashion three bargaining units was set aside. The CIRB indicated that the issue of bargaining units would be revisited by a new panel if the parties failed to resolve it directly. For that reason, it also declined to deal with any of the CEP's previous applications for interim relief, reasoning that subsequent events have "overtaken the necessity of such applications".

12. On June 14, 2006, the CEP applied for a determination of the appropriate bargaining unit structure per Section 18.1(4) of the *Code*, as that issue (*i.e.* the "Bargaining Unit Structure") remained undetermined as a result of the Reconsideration Decision. The CEP noted that since the reconsideration application was filed, all master control functions for the Common Employer had been consolidated in Calgary. All submissions to the CIRB were concluded in April 2007.
13. On October 4, 2007, while the decision on Bargaining Unit Structure remained outstanding, the Respondents announced the implementation of "Broadcast Centres" (which involves the further transfer of certain job functions between stations) and the ensuing layoff of approximately 250 employees across the Respondents' network. The CEP applied for yet another interim order enjoining the Respondents from implementing the Broadcast Centres and accompanying layoffs (the "Interim Relief Application").
14. On November 6, 2007, the CIRB issued Letter Decision No. 1695 (the "Letter Decision"), which was a "bottom line" decision, dismissing the Interim Relief Application and determining the Bargaining Unit Structure by fashioning three regional bargaining units: British Columbia, Alberta, and the rest of Canada. The new Bargaining Unit Structure was entirely different from the original three regional bargaining units. As a "bottom line" decision, this Letter Decision communicated only the decision itself, not the CIRB's reasons for decision.
15. On November 27, 2007, the CEP applied for reconsideration of both the Letter Decision's denial of the Interim Relief Application and its determination regarding Bargaining Unit Structure (the "Interim Relief

Reconsideration Application” and the “Bargaining Unit Structure Reconsideration”, respectively).

16. On December 21, 2007, the CEP filed an application pursuant to s. 54 of the *Code* (the “Technological Change Application”) with a view to permitting the CEP to bargain with the Respondent Global Maritimes (and its parent company, Global Television, a division of CanWest MediaWorks Inc.) in relation to the first phase of implementation of “Broadcast Centres” and the ensuing layoffs in Global Maritimes.
17. On February 22, 2008, the CEP sent a letter to the CIRB requesting that the CIRB issue, within 30 days:
  - a. full reasons for decision in relation to the Letter Decision;
  - b. a decision in relation to the Technological Change Application;  
and
  - c. a decision in relation to the Interim Relief Reconsideration Application;
18. On March 3, 2008, the CIRB acknowledged receipt of the CEP’s February 22, 2008 request, indicating that it “expects to be in a position to render its decision in the very near future”.
19. As of the date of this Notice of Application, the CIRB has failed to issue Reasons in relation to the Letter Decision, and has not yet issued any decision or order in relation to either the Technological Change Application or the Interim Relief Reconsideration Application.

20. The Respondents continue to implement the Broadcast Centres. The ensuing layoffs are imminent.
  
21. The duty of procedural fairness requires a provision of a written explanation for decisions made by administrative tribunals such as the CIRB, particularly where the decision is of much significance to the parties. Further, those reasons must be adequate; that is, they must be sufficiently clear, precise and intelligible to enable the parties to know why the tribunal decided as it did, to enable the parties to assess whether there are grounds on which to challenge the decision, to assess whether a reviewing body could test the validity of the reasons, and to assess whether relevant criteria were considered and due weight given to the important interests affected by the decision. The brief Letter Decision serves none of those purpose, and thus the applicant is deprived of any meaningful explanation of the manner in which the CIRB disposed of an application of great significance to the parties. Thus, the CIRB has failed to observe a principle of natural justice.
  
22. Where an applicant makes application to the CIRB under the *Code* for an order, the CIRB is under a public legal duty to the applicant to issue a decision and reasons for decision in a timely fashion and without unreasonable delay.
  
23. Section 14.2(2) of the *Code* provides that the CIRB "must render its decision and give notice of it to the parties no later than ninety days after the day on which it reserved its decision or within any further period that may be determined by the Chairperson".
  
24. The CIRB has unreasonably delayed in issuing its Reasons in relation to the Letter Decision, and has unreasonably delayed in issuing orders or

decisions in relation to both the Technological Change Application and Interim Relief Reconsideration Application. This delay is not isolated; rather, it marks a continuation of a pattern of delay by the CIRB throughout this matter.

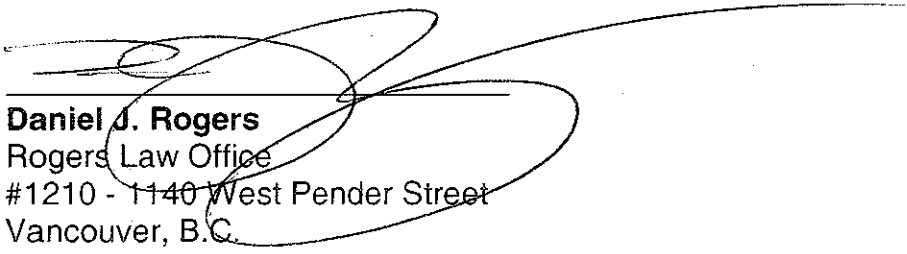
25. In the case of the Technological Change Application and Interim Relief Reconsideration Application, the CIRB has failed to render its decision within the ninety-day period for which s. 14.2(2) of the *Code* provides.
26. The CEP is at a loss to understand the logic or rationale which led to the particular Bargaining Unit Structure created by the CIRB and has filed a *pro forma* application for reconsideration of that decision. However, that application cannot proceed until Reasons are issued. Thus, the CIRB's delay in issuing such Reasons has delayed the final resolution of this matter.
27. The CIRB's delay in issuing orders has deprived the applicant of the opportunity to negotiate with the Respondents in relation to the Broadcast Centres and ensuing layoffs and has prejudiced the applicant's ability to ameliorate the labour relations impact of that initiative, and thus the CIRB's delay has substantially prejudiced the applicant's interests.
28. Sections 18, 18.1 28, and 44 of the *Federal Court Act*, R.S.C. 1985, c. F-7.
29. *The Federal Court Rules, 1998*, SOR/98-106.
30. Sections 14.2, 18, 18.1, 35, and 54 of the *Canada Labour Code*, R.S. 1985, c. L-2.

31. Such further and other grounds as counsel may advise and this Honourable Court permit.

This application will be supported by the following material:

1. Affidavit of Robert Lumgair sworn April 7, 2008, with attached exhibits;
2. Other affidavit material as may be necessary; and
3. Such further and other material as counsel may advise and this Honourable Court may allow.

Date: April 7, 2008



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