

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR
ARRANGEMENT WITH RESPECT TO FRASER PAPERS INC., FPS CANADA INC.,
FRASER PAPERS HOLDINGS INC., FRASER TIMBER LTD., FRASER PAPERS
LIMITED and N.H. LLC

Applicants

**NOTICE OF MOTION
(returnable ,2009)**

Murray Dunnigan, Paul Desrosiers, Armand Renaud, and Tim Kenney (collectively, the "Representatives") on behalf of the Salaried Retirees of Fraser Papers Inc., FPS Canada Inc., Fraser Papers Holdings Inc., Fraser Timber Ltd., Fraser Papers Limited and N.H. LLC (collectively "Fraser Papers") or any person claiming an interest under or on behalf of such Salaried Retiree and surviving spouses in receipt of the Régime de retraite des salariés de Papiers Fraser Inc., Pâtes Thurso, "Régime B" or in receipt of the Fraser Papers New Brunswick Defined Benefit Salaried Pension Plan ("the Pension Plans") or group or class of them (collectively the "Salaried Retirees") will make a motion to a judge of the Commercial List at the courthouse at 330 University Avenue, Toronto, Ontario on a date to be set by judge of the Commercial List at a chambers appointment on August 7, 2009 at 9:30 a.m. or as soon thereafter as the motion can be heard.

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

THE MOTION IS FOR:

1. An Order appointing the Representatives to represent the Salaried Retirees in the proceedings under the *Companies' Creditors Arrangement Act* (Canada) ("CCAA"), the *Bankruptcy and Insolvency Act* (Canada) (the "BIA") or in any other proceeding which has been or may be brought before this Honourable Court (the "Proceedings"). Such Representatives may determine, advance and compromise any and all Salaried Retirees' claims which now have arisen or may arise at law or equity or under federal or provincial legislation, including but not limited to actual or deemed trust claims, secured or unsecured claims under the BIA, contractual claims, and any claims arising under pension legislation which may be made against Fraser Papers or its estate, as the case may be, relating to or arising out of the Salaried Retirees' entitlement to the Pension Plan or other retirement related benefits (the "Claims").
2. An Order that Nelligan O'Brien Payne LLP and Shibley Righton LLP be appointed in these proceedings to represent the Fraser Papers' Salaried Retirees Committee for all matters relating to the Claims and any issues affecting the Salaried Retirees in the Proceedings.

3. An Order that Fraser Papers shall forthwith provide to the Representatives and their counsel, without charge:
 - a. the names, last known addresses and last known phone numbers and email addresses (if any) of all the Salaried Retirees, whom they represent, as well as applicable data regarding their entitlements, subject to a confidentiality agreement and the information to only be used for the purposes of the Proceedings;
 - b. all documents and data, including generally those pertaining to the various pension, retiree benefits and supplementary pension including up-to-date financial information regarding the funding and investments of any of these arrangements and any associated actuarial valuation and reports; and
 - c. any other documents relevant to the Claims.

4. An Order that all reasonable legal, actuarial and financial expert and advisory fees and all other incidental fees and disbursements, as may have been or shall be incurred by the Representatives and their counsel, shall be paid by Fraser Papers on a bi-weekly basis, forthwith upon the rendering of accounts to the Monitor.

5. An Order that notice of the granting of this Order be provided to the Salaried Retirees by advertisement in Le Droit and other local newspapers in such form and under such terms and conditions to be set by this Honourable Court.
6. An Order that the Representatives, or their counsel on their behalf, are authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body and other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.
7. An Order that any individual Salaried Retiree who does not wish to be bound by this Order and all other Orders which may subsequently be made in these proceedings shall, within 30 days of receiving notice of this Order, notify the Monitor, Fraser Papers and Nelligan O'Brien Payne LLP in writing, and shall thereafter represent themselves as an independent individual party to these proceedings.
8. An Order that Salaried Retirees bound by this order specifically exclude any former unionized employees who are represented by their former union pursuant to a Court approved representation order and that the Representatives have no obligation to represent such persons to the extent that their former union chooses to represent their interests.

9. An Order extending the Claims Bar Date from September 30, 2009 at 5:00p.m. (Eastern Standard Time) to enable the Representatives to establish the value of each retiree's claim and to prepare any such claim.

10. An Order that the Representatives and Nelligan O'Brien Payne LLP and Shibley Righton LLP shall have no liability as a result of their respective appointment or the fulfillment of their duties in carrying out the provisions of this Order save and except for any gross negligence or unlawful misconduct on their part.

11. An Order that the Representatives shall be at liberty and are authorized at any time to apply to this Honourable Court for advice and directions in the discharge or variation of their powers and duties.

THE GROUNDS FOR THE MOTION ARE:

Fraser Papers' underfunded and underpaid obligations to pensioners

- (a) On June 18, 2009, Fraser Papers obtained an order, pursuant to the CCAA, staying all proceedings and claims against them (the "Stay Order") Fraser Papers is insolvent, and suffers severe financial difficulties;

- (b) The Fraser Papers' Defined Benefit Salaried Pension Plans are underfunded. The total deficit with respect to all of Fraser Papers' Pension Plans if they were wound

up would be approximately US\$ 171.5 million. Fraser Papers anticipates that its pension plan funding requirement in 2009 and 2010 will increase in a very substantial and material manner due to recent adverse financial market conditions;

- (c) Salaried Retirees' medical supplement benefits are funded through a Health and Welfare Trust. At the time of filing, there was a balance of approximately US\$1 million in the trust. Fraser Papers does not intend to make any further payments into this trust after the date of its application, June 18, 2009 and until such time as the funds are fully depleted through the payment of benefits to employees. As individuals on fixed income, the Salaried Retirees are particularly reliant on and vulnerable to any loss of their pension and their benefits.

- (d) Fraser Papers has stopped making payments under all of the following programs which seriously effect Salaried Retirees:
 - i. All pensions which were paid from sources other than a registered Pension Plan, including but not limited to payments in respect of the Fraser Papers supplementary employee retirement plan and of the Fraser Papers supplementary executive retirement plan.

 - ii. such other unsecured claims against Fraser Papers which any Salaried Retiree may have.

- (e) In addition, the loss of SERP payments for some Salaried Retirees has meant a substantial reduction of their monthly income, drastically impacting their quality of life. These retirees planned their retirement based on the knowledge that they would be receiving a certain fixed income. They are therefore, particularly vulnerable in these proceedings.

- (f) There are approximately 200 Salaried Retirees from Quebec and approximately over 500 from New Brunswick, all of who are particularly vulnerable to any changes to their fixed income. These individuals cannot replace their lost pension entitlements with another source of income, as many of them are elderly. Therefore, any reduction to their pension entitlement will severely impact their lives and those of their beneficiaries.

- (g) These Salaried Retirees should be represented as a group as they are all affected by Fraser Papers' insolvency proceedings. This vulnerable group's interests are not being protected and their input in these proceedings is crucial. To the extent that the Unionized Retirees are being represented by their former union, their interests are already being protected. However, should their union elect not to speak on their behalf, the group described below could encompass Unionized Retirees.

The Representatives and Nelligan O'Brien Payne

- (h) The Representatives are in fact the Steering Committee of the Fraser Papers' Salaried Retirees Committee ("FPSRC"), a volunteer group created on June 30, 2009 in response to the Stay Order with a mandate to defend and protect the pensions, retirement payments and other benefits and interests of Salaried Retirees
- (i) The FPSRC currently has 108 members; all of whom have executed retainers with Nelligan O'Brien Payne LLP (the "Retainers");
- (j) Included in the Committee are Salaried Retirees with the full range of specific claims outlined in subparagraph (d) above;
- (k) There are persons in the Salaried Retirees group who are unascertained or may have a present, future, contingent, or unascertained interest in or may be affected by the proceedings herein, and who cannot be readily ascertained, found or served;
- (l) It is desirable that the rights of the Salaried Retirees are dealt with in a fair, independent, cost-effective and orderly way, and that they be represented by counsel;
- (m) It is also desirable that the counsels chosen by the Salaried Retirees be appointed to represent them as they have the confidence of the group which they seek to

represent. Furthermore, their hourly rates are considerably lower than many large law firms. It would therefore be more cost-effective.

- (n) Claims of Salaried Retirees are complex and varied, requiring legal, actuarial and accounting advice in order to be properly ascertained and filed;
- (o) Rule 10 of the Rules of Civil Procedure;
- (p) Section 131(1) of the Courts of Justice Act;
- (q) Section 197(1) of the Bankruptcy and Insolvency Act; and
- (r) Section 11(1) of the Companies' Creditors Arrangement Act.

THE FOLLOWING DOCUMENTARY EVIDENCE will be read in support of this motion:

- (a) The Affidavit of Murray Dunnigan;
- (b) The Affidavit of Paul Desrosiers;
- (c) The Affidavit of Armand Renaud;

- (d) The Affidavit of Tim Kenney;
- (e) Such further and other material as counsel may advise and this Honourable Court permit

August 6, 2009

Nelligan O'Brien Payne LLP

Barristers and Solicitors
50 O'Connor, Suite 1500
Ottawa, ON K1P 6L2

Steven Levitt
LSUC #46358C

Mark Seebaran
LSUC #38928V

(613) 231-8283
(613) 788-2369 (fax)

Email:
steven.levitt@nelligan.ca
mark.seebaran@nelligan.ca

Shibley Righton LLP
250 University Avenue, Suite 700
Toronto, ON, M5H 3E5

Thomas McRae
LSUC #32375U
(416) 214-5206
Fax: (416)214-5400

Email:
thomas.mcrae@shibleyrighton.com

Solicitors for the Fraser Papers'
Salaried Retirees Committee

TO: THE ATTACHED SERVICE LIST