

**ONTARIO
SUPERIOR COURT OF JUSTICE**



IN THE MATTER OF AN APPLICATION UNDER s. 60(1) of the *Trustee Act*, R.S.O. 1990, c. T.23 and s. 243(1) of the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44 and R. 14.05(3)(a) and (d) of the *Rules of Civil Procedure*, RRO 1990, Reg 194

CANADIAN MUSICAL REPRODUCTION RIGHTS AGENCY LIMITED and
COMPUTERSHARE TRUST COMPANY OF CANADA

Applicants

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicants. The claim made by the applicants appears on the following page.

THIS APPLICATION will come on for a hearing on Tuesday, January 10, 2017, at 10:00 a.m. at 161 Elgin Street, Ottawa, Ontario K2P 2K1.

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 an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date September 14, 2016

Issued by

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned above a horizontal line.

Local registrar

Address of 161 Elgin Street, Ottawa,
court office Ontario K2P 2K1

APPLICATION

1. The Applicants make application for:

- (a) The opinion, advice and direction of the court in respect to the interpretation of the Trust Agreement (defined below) pursuant to section 60 of the *Trustee Act*, R.S.O. 1990, c. T. 23, s. 243(1) of the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44, and R. 14.05(3)(a) and (d) of the *Rules of Civil Procedure*, RRO 1990, Reg 194;
- (b) A declaration that the beneficial owners of the shares of the Canadian Musical Reproduction Rights Agency Limited ("CMRRA") are the members of the Board of Directors, at any time and from time to time;
- (c) An order, if necessary, dispensing with service or ordering substitute service of this Notice of Application; and,
- (d) Such further and other relief as counsel to the Applicants may advise and this Honourable Court deems fit.

2. The grounds for the application are:

- (a) CMRRA is a corporation incorporated pursuant to the laws of Canada on May 16, 1975 in Toronto, Ontario.
- (b) CMRRA's authorized, issued, and outstanding share capital is composed of 50,000 common shares.
- (c) On November 9, 1976, each member of CMRRA's board of directors (the "Board"), as shareholders of CMRRA, entered into an agreement with Canada Permanent Trust Company (the "Original Trustee") and CMRRA in order to establish an irrevocable voting trust with respect to the shares of CMRRA (the "Trust Agreement").
- (d) The Trust Agreement provides that the Original Trustee is to exercise the voting rights pertaining to the shares of CMRRA in the manner set out in the Trust Agreement.

- (e) On June 28, 1990, the then-current members of the Board entered into a supplemental trust agreement with the Original Trustee, CMRRA and Montreal Trust Company of Canada (the "Second Trustee") in order to transfer the appointment of trustee under the Trust Agreement to the Second Trustee.
- (f) On April 30, 2002, the then-members of the Board entered into a second supplemental trust agreement with the Second Trustee, CMRRA and Computershare Trust Company of Canada (the "Current Trustee") in order to transfer the appointment of trustee under the Trust Agreement to the Current Trustee.
- (g) Since the inception of the Trust Agreement, the members of the Board, CMRRA, and each subsequent trustee under the Trust Agreement have all conducted themselves as though the beneficial ownership of the shares resides with the Board, as it is comprised from time to time. Both of the supplemental trust agreements were executed by the corporation's then-current Board members.
- (h) In 2015, CMRRA undertook an internal governance review. During the course of this review, it came to the attention of CMRRA and the Current Trustee that there exists an apparent ambiguity in the wording of the Trust Agreement with respect to the identity of the beneficial shareholders, despite all parties consistently operating on the basis that the beneficial ownership of the shares resides with the members of the Board, as comprised from time to time.
- (i) On its face, the Trust Agreement appears capable of two interpretations. One possible interpretation is that the beneficial shareholders of CMRRA are those individual Board members who entered into the original Trust Agreement. The other possible interpretation is the interpretation under which all parties have consistently operated, namely, that the beneficial shareholders of CMRRA are the current members of the Board at any time and from time to time.

- (j) CMRRA and the Current Trustee have taken all diligent and reasonable measures to resolve this ambiguity. CMRRA and the Current Trustee have reached the conclusion that the beneficial ownership of CMRRA's outstanding shares resides with the current members of the Board at any time and from time to time.
- (k) CMRRA and the Current Trustee are now seeking the Court's opinion, advice and direction with respect to this interpretation of the Trust Agreement.
- (l) Rules 14.05(2) and 14.05(3)(a) of the *Rules of Civil Procedure*, s. 60(1) of the *Trustee Act*, R.S.O. 1990, c. T.23, s. 243(1) of the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44, s. 97 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

3. The following documentary evidence will be used at the hearing of the application:

- (a) Affidavit of Caroline Rioux, President of CMRRA; and
- (b) Such further evidence as counsel may advise and this Honourable Court permits.

September 14, 2016

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CANADIAN MUSICAL REPRODUCTION RIGHTS AGENCY LIMITED and COMPUTERSHARE
TRUST COMPANY OF CANADA
Applicants

Court File No: 16-69928

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Ottawa

NOTICE OF APPLICATION

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