

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 15
	)	
FRASER PAPERS INC., <u>et al.</u> , <sup>1</sup>	)	Case No. 09-12123 (KJC)
	)	
Debtors in Foreign Proceedings.	)	Joint Administration Proposed
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**DECLARATION OF J. PETER GORDON OF FRASER PAPERS INC. IN  
SUPPORT OF (I) PETITIONS FOR RECOGNITION OF CANADIAN PROCEEDING  
UNDER 11 U.S.C. § 1515; (II) DEBTORS' MOTION FOR ORDER DIRECTING  
JOINT ADMINISTRATION OF CHAPTER 15 BANKRUPTCY CASES UNDER  
FED. R. BANKR. P. 1015(b); AND (III) DEBTORS' MOTION FOR (A) ENTRY  
OF AN ORDER GRANTING RECOGNITION AND RELIEF IN AID OF  
FOREIGN MAIN PROCEEDING PURSUANT TO 11 U.S.C. §§ 1515, 1517 AND 1520  
AND (B) TEMPORARY RESTRAINING ORDER AND, AFTER NOTICE AND  
A HEARING, A PRELIMINARY INJUNCTION GRANTING  
PROVISIONAL RELIEF UNDER 11 U.S.C. § 1519(a)**

I, J. Peter Gordon, hereby declare as follows:

1. I am the Chief Executive Officer and a director of Fraser Papers Inc. ("Fraser"). I am also Chairman of Fraser's wholly-owned subsidiaries FPS Canada Inc. ("FPS Canada") and Fraser Papers Holdings Inc. ("Holdings"), the Chairman of Holdings' wholly-owned subsidiaries Fraser Timber Ltd. ("Timber") and Fraser Papers Limited ("Fraser Madawaska"), and the Chairman of Fraser Madawaska's wholly owned subsidiary Fraser N.H. LLC ("Fraser Gorham," and collectively with Fraser, FPS Canada, Holdings, Timber, and Fraser Madawaska, the "Debtors"). I am authorized by each of the Debtors to make this Declaration.

2. I am also authorized to act on behalf of Fraser which, by an order entered on June 18, 2009, (the "CCAA Order") by the Ontario Superior Court of Justice (Commercial

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<sup>1</sup> These jointly administered cases are those of the following debtors: Fraser Papers Inc., FPS Canada Inc., Fraser Papers Holdings Inc., Fraser Timber Ltd., Fraser Papers Limited, and Fraser N.H. LLC.

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DOCKET NO. 3

List) (the "Canadian Court") in connection with a proceeding (the "Canadian Proceeding") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), has been authorized by the Canadian Court to act as foreign representative of the Debtors. A copy of the CCAA Order, which, among other things, appointed Fraser to act as the foreign representative of the Debtors is attached hereto as Exhibit A. A copy of my affidavit submitted to the Canadian Court in support of the CCAA Order (the "CCAA Affidavit") is attached hereto as Exhibit B.

3. I submit this Declaration in support of (i) the voluntary petitions of the Debtors for recognition of the Canadian Proceeding by this Court as a foreign proceeding under 11 U.S.C. § 1515, and specifically as a foreign main proceeding under 11 U.S.C. § 1517; (ii) the joint administration of the Debtors' chapter 15 cases under Federal Rule of Bankruptcy Procedure 1015(b); and (iii) the *Debtors' Motion For (A) Entry Of An Order Granting Recognition And Relief In Aid Of Foreign Main Proceeding Pursuant To 11 U.S.C. §§ 1515, 1517 And 1520 And (B) A Temporary Restraining Order And, After Notice And A Hearing, A Preliminary Injunction Granting Provisional Relief Under 11 U.S.C. § 1519(a)*.

4. I am an individual over the age of 18 and, if called upon, could testify to all matters set forth in this Declaration. Except as otherwise indicated, all facts set forth in this Declaration in support of the Debtors' petitions (the "Chapter 15 Petitions") under chapter 15 of title 11 of the United States Code (the "Bankruptcy Code") are based upon my personal knowledge, information supplied to me by other members of the Debtors' management and professionals, or learned from my review of relevant documents or upon my opinion based upon my experience and knowledge of the Debtors' industry, operations, and financial condition. If called upon to testify, I could and would testify competently to the facts set forth herein.

5. All references to currency in this Declaration are in United States dollars, unless otherwise noted.

### **BACKGROUND**

6. Fraser was incorporated pursuant to the provisions of the *Canada Business Corporations Act*, and its registered head office is in Toronto, Ontario. On July 1, 2004, Fraser, formerly a wholly-owned subsidiary of Nexfor Inc., became a separate publicly traded company. Its stock is listed on the Toronto Stock Exchange under the symbol "FPS."

7. As of June 1, 2009, the issued and outstanding capital of Fraser Papers consisted of 50,166,789 common shares. There are no other classes of shares outstanding at this time. As of December 31, 2008, Brookfield Asset Management Inc. ("Brookfield") owned, directly or indirectly, approximately 70.5% of the outstanding common shares of Fraser.

8. Each of the other Debtors is a direct or indirect wholly-owned subsidiary of Fraser. Specifically, Fraser owns all of the issued and outstanding shares of FPS Canada and Holdings. Holdings owns all of the issued and outstanding shares of Timber and Fraser Madawaska. Fraser Madawaska is the sole member and manager of Fraser Gorham. A simplified corporate chart showing the relationship of the Debtors to one another is attached as Exhibit A to the CCAA Affidavit.

9. Fraser is a specialty paper company with integrated paper, pulp and lumber operations. The Debtors are a consolidated business comprising various facilities in Canada and the United States of America (the "U.S."), operating under a combined cash management and accounting system and senior management decision making, including extensive intercompany transactions such as the sale and use of products and services among

various business operations and legal entities. As such, the business is operationally and functionally integrated and not easily divisible based on legal entity or geographic boundaries.

10. The Debtors have experienced many of the challenges faced by other companies in the North American forest products industry. The challenges faced by the Debtors include market issues and financial issues, the most pressing of which are as follows:

- (a) negative cash flow from its operations (prior to changes in non-cash working capital) of \$65.4 million and \$55.5 million in 2007 and 2008 respectively, combined with a further shortfall of \$9.7 million in the first quarter of 2009. The Debtors no longer have the ability to finance cash flow shortfalls of this magnitude;
- (b) the aforementioned cash flow shortfalls are being driven by a sharp deterioration at the Debtors' pulp operations, continuing losses from its lumber operations and are only partially offset by the turnaround in its specialty papers business;
- (c) under the current collective agreement, aggregate severance payments to unionized employees at Fraser's Thurso facility of CDN\$7.8 million are due in two equal payments on November 9 and December 31, 2009, following the mill's temporary closure on June 1, 2009, and the Debtors have no ability to pay these amounts at this time;
- (d) the Debtors are required to repay or refinance a \$25 million term loan with Canadian Imperial Bank of Commerce ("CIBC") in September 2009 and have no ability to do so at this time;
- (e) the Debtors have a substantial deficit, as determined in accordance with Generally Accepted Accounting Principles in Canada ("GAAP"), of approximately \$171.5 million at December 31, 2008 in five defined benefit pension plans and three Supplemental Executive Retirement Plans ("SERPs") and are required to make payments of \$3.5 million by September 30, 2009 and an additional \$10.1 million by December 31, 2009. Average annual payments of approximately \$34.7 million

per year from 2010 to 2013 are expected to be required to fund the Pension Plans. Unless the Applicants are able to obtain a temporary funding waiver or an alternative funding formula is achieved, the Debtors have no ability to meet these funding obligations; and

- (f) the Debtors owe trade suppliers in excess of \$10 million beyond normal credit terms and owe an additional \$7.7 million in property taxes to six municipalities.

11. In short, in the absence of judicial insolvency protection and debtor-in-possession financing, the Debtors will be unable to operate in the ordinary course of business after June 30, 2009. The Debtors are insolvent and are in need of immediate judicial protection to allow them to restructure their affairs.

12. Due to the Debtors' insolvency, Fraser will require additional funding in order to operate during the pendency of the CCAA Proceeding and the restructuring contemplated therein. To this end, the CCAA Order authorizes Fraser to obtain funding through two credit vehicles: (a) under a credit agreement dated as of May 2, 2008, between Fraser and CIT Business Credit Canada Inc. ("CIT"), as amended (the "CIT Credit Agreement"), substantially on the terms of the term sheet between the Debtors and CIT attached to the CCAA Affidavit, and (b) under a credit facility from Brookfield Asset Management Inc. (the "DIP Lender") in order to finance the Debtors' working capital requirements and other general corporate purposes and capital expenditures, pursuant to the terms of the term sheet between DIP Lender and Fraser attached to the CCAA Affidavit, provided that such credit facility shall not exceed \$22 million (the "DIP Financing") unless permitted by further order of the Canadian Court.

13. For more detailed information regarding the Debtors' business operations, the reasons for commencing the Canadian Proceeding, and other matters, I refer the Court to my CCAA Affidavit, which is hereby incorporated in its entirety within this Declaration.

14. To the best of my information and belief, the Canadian Proceeding is a collective judicial proceeding in Canada under Canadian law relating to insolvency or the adjustment of debt in which the assets and affairs of the Debtors are subject to the control and supervision of the Canadian Court for the purpose of reorganization or liquidation. Accordingly, I believe the Canadian Proceeding is a "foreign proceeding" within the meaning of 11 U.S.C. § 101(23).

15. To the best of my information and belief, other than these cases, the Canadian Proceeding is the only insolvency proceeding of any kind pending for the Debtors and thus is the only "foreign proceeding" with respect to the Debtors within the meaning of 11 U.S.C. § 101(23).

16. To the best of my information and belief, the Canadian Proceeding is a "foreign main proceeding" within the meaning of 11 U.S.C. § 1502(4), because each of the Debtors has its center of main interest ("COMI") in Ontario. All of the Debtors' principal corporate, management, banking, and strategic functions are undertaken from its head office in Ontario. Specifically:

- (a) the Debtors operate a centralized cash management system with all centralized banking arrangements conducted in Ontario, as described in more detail below;
- (b) the Debtors each have a bank account in Ontario with at least a small credit balance;
- (c) budgeting for each facility is approved at the Fraser's head office in Ontario;

- (d) all corporate strategic decision-making for the Debtors occurs at the Fraser's head office and all Fraser senior management have their primary business office in Ontario;
- (e) as CEO of Fraser and Chairman of each of the other Debtors, I am involved, along with other members of the senior management team, in all material decisions regarding the operations of all Debtors and all such decisions are directed from, made in or monitored from our offices in Ontario;
- (f) financial reporting of the Debtors is done on a consolidated basis and the audited financial statements are prepared in Ontario;
- (g) employee administration, including certain human resource functions, pension plan administration and certain compensation and benefits functions are performed and located in Ontario;
- (h) treasury management functions are performed in Ontario;
- (i) investor communications functions are undertaken at the Ontario head office;
- (j) all corporate minute books for the Debtors are located and maintained in Ontario;
- (k) with the exception of a term loan made available to Fraser by the Province of New Brunswick (the "N.B. Loan"), all credit facilities of the Debtors are with lenders who manage such facilities in Ontario, and all loans are advanced to Fraser as borrower;
- (l) while day-to-day accounts and relationships with suppliers and customers are managed at the plant level, negotiation of the terms for any material contract with a major supplier or customer, whether in Canada or the U.S., is directed from our offices in Ontario;

- (m) the Board of Directors' meetings are held in Ontario; and
- (n) the location of the Fraser's major shareholder is in Ontario.

17. As the business operations of the Debtors are functionally integrated, there are a number of suppliers, creditors and other stakeholders of the Debtors that are common to several of the Debtors.

18. All credit facilities and loans advanced to the Debtors are advanced to Fraser as borrower. However, with the exception of the N.B. Loan, all of the Debtors have directly or indirectly guaranteed those credit facilities.

19. In addition, as described in the CCAA Affidavit, there is a significant degree of integration in the cash management arrangements among the Debtors, with the companies borrowing and advancing funds within the Debtors as needed, further demonstrating the integrated manner in which the Debtors operate and the necessity for dealing with the restructuring in a procedurally-consolidated manner.

20. As stated in the CCAA Order, Fraser is specifically authorized and directed to apply to this Court for recognition of the CCAA Order and, therefore, the Canadian Proceeding, and to seek this Court's assistance in carrying out the terms of the CCAA Order. (CCAA Order ¶ 55) Accordingly, to the best of my information and belief, Fraser is a foreign representative within the meaning of 11 U.S.C. § 101(24) and thus complies with 11 U.S.C. § 1517(a)(2).

21. I understand that the Debtors' petitions for recognition have been accompanied by a certified copy of the CCAA Order and a statement identifying all foreign proceedings with respect to the Debtors that are known by Fraser. Accordingly, I believe that the Debtors' petitions meet the requirements of 11 U.S.C. § 1515.

22. To the best of my information and belief, all six Debtors are affiliated with one another, and their chapter 15 petitions are pending in the United States Bankruptcy Court for the District of Delaware. Accordingly, I believe the Debtors' chapter 15 estates are eligible for joint administration under Federal Rule of Bankruptcy Procedure 1015(b).

23. As explained more fully in the *Debtors' Motion For (A) Entry Of An Order Granting Recognition And Relief In Aid Of Foreign Main Proceeding Pursuant To 11 U.S.C. §§ 1515, 1517 And 1520 And (B) A Temporary Restraining Order And, After Notice And A Hearing, A Preliminary Injunction Granting Provisional Relief Under 11 U.S.C. § 1519(a)*, absent preliminary relief under section 1519 of the Bankruptcy Code pending the Court's determinations with respect to recognition of the Canadian Proceeding as a "foreign main proceeding," U.S. creditors may seek a tactical advantage through unilateral action, including acceleration of efforts to commence litigation, attachment or other legal process in whatever U.S. jurisdiction a creditor may choose. In particular, creditors may seek to take enforcement actions against the Debtors' U.S. bank accounts, thereby interrupting the Debtors' cash flows. In addition, U.S. creditors may attempt to avoid participation in the Canadian Proceeding via litigation. Accordingly, Debtors filed chapter 15 petitions in this Court, which sits in the jurisdiction where Fraser's principal U.S. assets, the equity in Fraser Papers Holdings, Inc., are located.

24. As the success of the Canadian Proceeding depends on the Debtors' ability to adopt a unified plan covering the claims of all creditors, the threat of disruption of the reorganization process as well as the legal cost of defending such actions, may have a severe and adverse impact on any chance of a successful reorganization in the Canadian Proceeding, causing irreparable harm to the Debtors and other interested parties. In addition, without approved

debtor-in-possession financing, the Debtors would most likely cease to operate within two weeks. For these reasons, preliminary relief is urgently necessary.

25. Indeed, upon commencement of the Canadian Proceeding, a dire situation has developed for one of the Debtors' U.S. paper mills, because critical suppliers have stopped all of their shipments. Without immediate injunctive relief from this Court, these operations, essential to the Debtors' existence, will shut down nearly immediately.

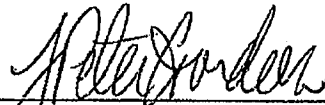
26. To forestall this irreparable harm, the Debtors seek to give effect to the CCAA Order in the United States on both an interim and final basis and to obtain recognition of the CCAA stay of proceedings and debtor-in-possession financing arrangements to protect their United States assets and operations. Specifically, the Debtors seek recognition of the Canadian Proceeding as a "foreign main proceeding" for the purposes of granting full recognition to the CCAA Order in the United States. The Debtors require immediate protection in the United States, consistent with the relief provided for in the CCAA Order, to prevent suppliers, creditors and other stakeholders from taking steps to disrupt the Debtors' operations, potentially deplete their estates to the detriment of all stakeholders, and irreparably jeopardize the Debtors' ongoing efforts to restructure.

27. To ensure the Debtors' continued operation during its restructuring process, the Debtors also urgently require this Court's recognition or approval of the DIP Financing terms and conditions, which are more fully described in paragraph 162 of my CCAA Affidavit and in the relevant exhibits thereto. As § V(C) and pertinent exhibits to my CCAA Affidavit demonstrate in detail, the DIP Financing is fair, reasonable, and entered into in good faith by the Debtors.

28. The relief requested in these Debtors' chapter 15 cases is therefore well justified under the circumstances.

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I declare under penalty of perjury under the laws of the United States of America  
that the foregoing is true and correct. Executed on June 18, 2009.



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J. Peter Gordon  
Chief Executive Officer of Fraser Papers Inc.

Due to the size of the Exhibits to the Declaration of J. Peter Gordon, the Debtors are not including them in this service. If you would like a copy of the Exhibits, they will be provided upon reasonable request to Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, Wilmington, Delaware 19899-1347 U.S.A., Attn: John A. Sensing, Esquire, [jsensing@mnat.com](mailto:jsensing@mnat.com). Thank you.