

**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 PLAN OF COMPROMISE OR
ARRANGEMENT OF CANWEST PUBLISHING INC./
PUBLICATIONS CANWEST INC., CANWEST BOOKS
INC., AND CANWEST (CANADA) INC.**

APPLICANTS

**MOTION RECORD
(Returnable December 9, 2011)**

December 2, 2011

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Inc., in its capacity as Monitor

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TAB 1

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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INC., AND CANWEST (CANADA) INC.

NOTICE OF MOTION
(returnable December 9, 2011)

FTI Consulting Canada Inc. ("FTI"), in its capacity as monitor (the "**Monitor**") to the LP Entities (as defined below) will make a motion to a judge of the Commercial List on December 9, 2011, at 10:00 am or as soon after that time as the motion can be heard, at 393 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR an Order substantially in the form attached to this motion record at Tab 3:

- (a) extending the Stay Period and the Final Distribution Date (as these terms are defined in the Twentieth Report of the Monitor) to March 31, 2012;
- (b) approving the Monitor's activities;
- (c) approving the Monitor's and its counsel's professional fees; and

- (d) such further and other relief as counsel may request and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- (a) The facts set out in the Twentieth Report of the Monitor; and
(b) Provisions of the *Companies Creditors' Arrangement Act* (Canada).

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The Twentieth Report of the Monitor;
(b) The affidavit of Paul Bishop, sworn December 1, 2011;
(c) The affidavit of Daphne MacKenzie, sworn December 1, 2011; and
(d) Such further and other material as counsel may advise and this Honourable Court may permit.

December 2, 2011

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Lawyers for the Monitor

TO: THE SERVICE 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 PLAN OF COMPROMISE OR ARRANGEMENT OF CANWEST PUBLISHING INC./ PUBLICATIONS CANWEST INC., CANWEST BOOKS INC. AND CANWEST (CANADA) INC.

Court File No: CV-10-8533-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(RETURNABLE DECEMBER 9, 2011)**

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Lawyers for the Monitor

TAB 2

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 PLAN OF COMPROMISE OR
ARRANGEMENT OF CANWEST PUBLISHING INC./
PUBLICATIONS CANWEST INC., CANWEST BOOKS
INC., AND CANWEST (CANADA) INC.

TWENTIETH REPORT OF FTI CONSULTING CANADA INC.,
in its capacity as Monitor of the Applicants

December 2, 2011

INTRODUCTION

1. By Order of this Court dated January 8, 2010 (the “**Initial Order**”), Canwest Publishing Inc. / Publications Canwest Inc. (“**CPI**”), Canwest Books Inc. (“**CBI**”), and Canwest (Canada) Inc. (“**CCI**”, and together with CPI and CBI, the “**Applicants**”) obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the “**CCAA**”). The Initial Order also granted relief in respect of Canwest Limited Partnership / Canwest Societe en Commandite (the “**Limited Partnership**”, and together with the Applicants, the “**LP Entities**”) and appointed FTI Consulting Canada Inc. (“**FTI**”) as monitor (the “**Monitor**”) of the LP Entities. The proceedings commenced by the LP Entities under the CCAA will be referred to herein as the “**CCAA Proceedings**”.

TERMS OF REFERENCE

2. In preparing this report, FTI has relied upon unaudited financial information of the LP Entities, the LP Entities' books and records, certain financial information prepared by, and discussions with, the LP Entities' management. FTI has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information and accordingly expresses no opinion or other form of assurance on the information contained in this report.
3. Capitalised terms not defined in this report shall have the meanings assigned to them in the AHC Plan (as defined and described below). Unless otherwise stated, all monetary amounts contained in this report are expressed in Canadian dollars.

BACKGROUND

4. Relief in the CCAA Proceedings was obtained on January 8, 2010 by the Canwest entities which carried on, *inter alia*, newspaper and online publishing and digital media businesses.
5. As described in greater detail in the Seventh Report of the Monitor, following review of the bids received during a sale and investor solicitation process, the bid (the "AHC APA") submitted by the *ad hoc* committee of holders of 9.25% senior subordinated notes issued by the Limited Partnership was selected and obtained Court approval on May 17, 2010.

6. As reported in the Tenth Report of the Monitor, on June 14, 2010, affected creditors of the LP Entities voted overwhelmingly in support of the LP Entities' plan of compromise or arrangement, as amended (the "**AHC Plan**") and a majority in number and greater than two-thirds in value of the affected creditors present and voting at the creditors' meeting voted in favour of the AHC Plan.
7. By Order dated June 18, 2010 (the "**AHC Plan Sanction Order**") this Court sanctioned the AHC Plan. The AHC Transaction was successfully closed and all of the operating assets of the LP Entities were transferred to the purchaser, Postmedia Network Inc. ("**Postmedia**"), on July 13, 2010.
8. On July 6, 2010, Justice Pepall granted an Administrative Reserve and Transition Order (the "**Administrative Reserve Order**") which, among other things, established the Administrative Reserve and expanded certain powers of the Monitor following the implementation of the AHC Plan.
9. Further background information regarding the LP Entities and the CCAA Proceedings is provided in, among other things, the Pre-filing Report of the Proposed Monitor dated January 7, 2010 and in the affidavit of Thomas Strike sworn January 7, 2010, copies of which (together with other relevant materials, including a copy of the Initial Order) have been posted on the Monitor's website for the CCAA Proceedings at <http://cfcanada.fticonsulting.com/clp>.

PURPOSE OF THIS REPORT

10. The purpose of this Twentieth Report of the Monitor (the “**Twentieth Report**”) is to inform this Honourable Court of the following:
- a) The status of the Claims Procedure and the Monitor’s request for an extension of the Final Distribution Date to March 31, 2012;
 - b) The Monitor’s request for an extension of the Stay Period to March 31, 2012;
 - c) The Monitor’s activities since September 22, 2011;
 - d) The Monitor’s and its legal counsel’s professional fees; and
 - e) The Monitor’s conclusions and recommendations.

CLAIMS PROCEDURE AND REQUEST TO EXTEND THE FINAL DISTRIBUTION DATE

Claims of the Retired Typographers

11. As described in greater detail in the Seventeenth Report (the “**Seventeenth Report**”) of the Monitor dated May 12, 2011 and the Eighteenth Report (the “**Eighteenth Report**”) of the Monitor dated May 25, 2011, the claims of the Retired Typographers (as defined in the Seventeenth Report) are the only remaining unresolved claims submitted against the

LP Entities in the Claims Procedure. For the reasons outlined in the Seventeenth Report, the Monitor and the Retired Typographers have been unable to settle these claims.

12. Also as described in the Seventeenth Report and the Eighteenth Report, on April 19, 2011, Postmedia brought a motion for an Order declaring, *inter alia*, that the method of calculation of the claims of the Retired Typographers has previously been determined in a commercial arbitration award dated January 21, 2009 (the “**Arbitral Award**”) and certain other relief (as described in greater detail in Postmedia’s notice of motion dated April 19, 2011) (“**Postmedia’s Motion**”).
13. Justice Pepall heard Postmedia’s Motion on May 16, 2011 and released her decision with respect to same on July 28, 2011. Among other things, Justice Pepall held that:

... the Claims Officer should be limited by the determination of the nine month period of damages previously established by Arbitrator Sylvestre but subject to consideration of whether the motion in annulment is meritorious based on the evidence presented. If it is meritorious, the Claims Officer would be at liberty to authorize the Retired Typographers to bring a motion before me seeking to lift the stay or to make any other order he felt was appropriate. If the motion in annulment is not meritorious, the Claims Officer would simply quantify the Retired Typographers' salary and benefits for the period between May, 1999 and January 21, 2000.

A copy of Justice Pepall’s Reasons for Decision is attached hereto as **Appendix “A”**.

14. Following release of Justice Pepall’s decision, the Monitor engaged in discussions with counsel for the Retired Typographers and Postmedia as well as the Honourable Coulter Osborne in his capacity as a Claims Officer appointed under the Amended Claims

Procedure Order with respect to determination of the Retired Typographers' claims in accordance with the directions given by Justice Pepall.

15. A hearing on a preliminary issue in the Retired Typographers' Claims as required in Justice Pepall's decision was held on November 15, 2011 before the Honourable Coulter Osborne.
16. On November 24, 2011, the Honourable Coulter Osborne released an Interim Award wherein he held that he was "*satisfied that it is plain and obvious that the Motion in Annulment [with respect to the Arbitral Award] is not meritorious*". A copy of the Interim Award is attached hereto as **Appendix "B"**.
17. On November 28, 2011, the Retired Typographers served a notice of motion to appeal the Interim Award of the Honourable Coulter Osborne.

Shares Held by the Monitor

18. The Monitor is currently holding certain shares in capital of Postmedia on account of employee claim withholdings, an obligation which was subsequently satisfied upon payment in cash of the required withheld amount to Canada Revenue Agency ("**CRA**") in January 2011. The Monitor intends to return these shares to Postmedia for cancellation and for no consideration following resolution of the Claims of the Retired Typographers.

19. In addition, the Monitor continue to hold the shares set aside on account of CRA's accepted Claim against the LP Entities.

Request to Extend Final Distribution Date

20. Under the provisions of the AHC Plan and the Plan Sanction Order, any Disputed Claims that remain unresolved as at the Final Distribution Date will be forever discharged, barred and released without any compensation therefor. Final Distribution Date is defined in the AHC Plan as "*the earlier of (i) December 31, 2010; and (ii) the date which is ten (10) Business Days following the resolution of all Disputed Claims.*" By Orders dated December 30, 2010, February 28, 2011, March 21, 2011, May 30, 2011, and September 29, 2011, the Final Distribution Date was extended to December 31, 2011.
21. The Monitor seeks additional time to have the claims of the Retired Typographers settled or adjudicated and to deal with the return of the withheld shares and the possible sale of the shares held by the Monitor in respect of the CRA Claim. Accordingly, the Monitor is requesting an extension of the Final Distribution Date until March 31, 2012. The Monitor intends to proceed expeditiously and intends to proceed with the final distribution as soon as possible after the Claims of the Retired Typographers are settled or finally adjudicated.

REQUEST FOR AN EXTENSION OF THE STAY OF PROCEEDINGS

22. Pursuant to the Initial Order, Order dated February 2, 2010 and Order dated April 12, 2010, a stay of proceedings was granted and extended until, and including, June 30, 2010

(the “**Stay Period**”). Pursuant to the Sanction Order, the Stay Period was extended until, and including, the Final Distribution Date. By Orders dated December 30, 2010, February 28, 2011, March 21, 2011, May 31, 2011, and September 29, 2011, the Final Distribution Date was extended to December 31, 2011.

23. Final distribution to Affected Creditors cannot be completed until such time as the claims of the Retired Typographers are resolved. Accordingly, the Monitor seeks additional time to administer and attend to distributions to Affected Creditors. The continuation of the stay of proceedings is necessary to provide the stability needed during that time.
24. Accordingly, the Monitor is seeking an extension of the Stay Period until, and including, March 31, 2012.
25. As all of the operating assets were transferred to Postmedia Networks Inc., the LP Entities have ceased operations on the Plan Implementation Date. Accordingly, they do not have liquidity requirements that need to be satisfied during the requested extension of the Stay Period. The costs of administering the AHC Plan and the estates of the LP Entities continue to be paid out of the Administrative Reserve Account in accordance with the AHC Plan and the Administrative Reserve Order.
26. Based on the information presently available, the Monitor believes that creditors will not be materially prejudiced by an extension of the Stay Period to March 31, 2012.

27. The Monitor believes that the LP Entities have acted, and are continuing to act, in good faith and with due diligence and that circumstances exist that make an extension of the Stay Period appropriate.
28. Accordingly, the Monitor respectfully recommends that the Stay of Proceedings be extended until March 31, 2012.

MOTION BY BLONDIN AND DI PAOLO

29. As described in greater detail in the Fifteenth Report of the Monitor, in December 2010, the Typographers brought motions to seek the Court's instructions and direction with respect to the characterization of their claims as Excluded Claims (as defined in the Amended Claims Procedure Order) and Assumed Liabilities under the AHC APA.
30. On January 5, 2011, Justice Pepall released her decision with respect to the Typographers' claims (the "**January 5 Reasons**") and held, among other things, that the claims of six of the Typographers constituted Assumed Liabilities under the AHC APA (the "**Assumed Typographers**"). A copy of the January 5 Reasons is attached as **Appendix "C"**.
31. Following release of the January 5 Reasons, two of the Assumed Typographers, Eriberto Di Paolo and Rita Blondin, corresponded with the Monitor (directly or through various counsel) with respect to their claims. Copies of some of the correspondence are attached collectively hereto as **Appendix "D"**.

32. On December 1, 2011, counsel for Eriberto Di Paolo and Rita Blondin delivered to the Monitor a Notice of Motion with attachments seeking payment of certain amounts allegedly due and payable to them.
33. The Monitor respectfully submits that there is no basis for the relief sought by Eriberto Di Paolo and Rita Blondin. Copies of some of the Monitor's letters to Eriberto Di Paolo and Rita Blondin explaining why they are not entitled to the relief they are seeking is attached hereto as **Appendix "E"**.
34. In their Notice of Motion, Eriberto Di Paolo and Rita Blondin also suggest that their motion should not be heard by Justice Pepall. The Monitor disagrees with this assertion and is of the view that this matter should be heard by Justice Pepall as the judge seized of these CCAA Proceedings from their commencement and familiar with the claims of Eriberto Di Paolo and Rita Blondin.

MONITOR'S ACTIVITIES

35. Since its appointment, the Monitor has been involved with numerous aspects of the CCAA Proceedings with a view to fulfilling its statutory and court-ordered duties and obligations. The Monitor has described some of the more significant matters that it was involved in since commencement of the CCAA Proceedings until September 22, 2011 in its previous reports. Since then, the more significant matters the Monitor has undertaken include, but are not limited to, the following:

- a) posting various materials relating to the CCAA Proceedings on its website <http://cfcanada.fticonsulting.com/clp> and continuing to update the website by posting, *inter alia*, the Monitor's reports, motion materials, and Orders granted in the CCAA Proceedings;
- b) maintaining a toll free hotline number 1 888-310-7627 and a dedicated email inbox (CanwestLP@fticonsulting.com) to allow creditors and other interested parties to contact the Monitor to obtain additional information concerning the CCAA Proceedings and responding in a timely manner to over 1,383 calls and approximately 1,735 e-mails received by the Monitor as of the date of this report;
- c) discussions with various government authorities and representative counsel for some of the LP Entities' former employees with respect to withholding arrangements relating to distributions to employees under the AHC Plan and entering into such arrangements;
- d) effecting distributions pursuant to the AHC Plan, including discussions with the transfer agent with respect to delivery of shares;
- e) resolution of outstanding claims inside of the Claims Procedure;
- f) responding to enquiries from creditors regarding the Claims Procedure, distributions of shares under the AHC Plan and other issues relating to the CCAA Proceedings;

- g) responding to enquiries from former Employees of the LP entities and their counsel; and
- h) Other matters pertaining to the administration of the LP Entities' CCAA Proceedings.

PROFESSIONAL FEES

36. The Monitor and its counsel have maintained detailed records of their professional costs and time during the course of the CCAA Proceedings (as detailed in the Affidavit of Paul Bishop sworn December 1, 2011 and the Affidavit of Daphne MacKenzie sworn December 1, 2011 (collectively, the "**Fee Affidavits**"). Copies of the Fee Affidavits are attached to this report as **Appendices "F"** and **"G"**).

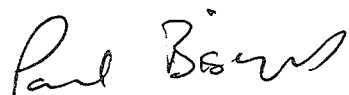
CONCLUSIONS

37. For the reasons described above, the Monitor recommends that the Stay Period and the Final Distribution Date be extended to March 31, 2012.
38. The Monitor respectfully requests that the Court approve its Twentieth Report and the activities described therein, as well as the fees and disbursements of the Monitor and its counsel (as particularized in the Fee Affidavits).

All of which is respectfully submitted this 2nd day of December, 2011.

FTI Consulting Canada Inc.,
in its capacity as the Monitor of Canwest Publishing Inc. / Publications Canwest Inc., Canwest
Books Inc., Canwest (Canada) Inc., and Canwest Limited Partnership / Canwest Societe en
Commandite

Per



Paul Bishop
Senior Managing Director

APPENDIX

"A"

CITATION: Canwest Publishing Inc., 2011 ONSC 4518
COURT FILE NO.: CV-10-8533-00CL
DATE: 20110728

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 PLAN OF COMPROMISE OR ARRANGMENT OF
CANWEST PUBLISHING INC./PUBLICATIONS CANWEST INC., CANWEST BOOKS
INC., AND CANWEST (CANADA) INC.**

Applicants

COUNSEL: *Fred Myers and Caroline Descours*, counsel for Postmedia Networks Inc.
Douglas J. Wray, Jesse B. Kugler and P. Grenier, counsel for the
Communications, Energy and Paperworkers Union of Canada, Local 145
Maria Konyukhova, for the Monitor

REASONS FOR DECISION

PEPALL J.

Relief Requested

- [1] Postmedia Network Inc. ("Postmedia") requests an order:
- (a) declaring that the method for the calculation of the claims of J.P. Martin, Marc Tremblay, Leslic Stockwell, Robert Davies and Horrace Holloway (the "Retired Typographers") against the Applicants has previously been determined in a commercial arbitration award dated January 21, 2009 and that the Retired Typographers are bound by that award which establishes and limits their claim entitlement to the payment of salary and benefits for the period between May, 1999 and January 21, 2000 subject to the overpayment of salary and benefits that were paid to the Retired Typographers by The Gazette for the period between February 5, 1998 and October 30, 1998;
 - (b) declaring that as a result, the only issues to be determined by the Claims Officer under the Amended Claims Procedure Order dated May 17, 2010 are the

quantification of the Retired Typographers' salary and benefits for the period between May, 1999 and January 21, 2000; the quantification of the applicable set off of The Gazette's overpayment; and the net amounts, if any, remaining due to the Retired Typographers or due from them; or

- (c) in the alternative, in the event that the award is held not to be determinative of the valuation of the claims, an order pursuant to, *inter alia*, s. 11 and s. 17 of the *Companies' Creditors Arrangement Act* ("CCAA") referring all questions of liability and quantum in respect of the Retired Typographers' claims to the Quebec Superior Court and the arbitration proceedings already underway in Quebec to be heard in conjunction with the ongoing litigation by six other Typographers ("the Assumed Typographers") whose claims against The Gazette were assumed by Postmedia pursuant to court order dated January 5, 2011; provided, however, that the referred proceeding shall not result in a judgment or enforceable claim against Postmedia but shall only form the quantification of the Retired Typographers' claims as filed in these proceedings.

Factual Background

[2] My reasons for decision of January 5, 2011 provided details of the history of the dispute between the Typographers and The Montreal Gazette which I do not propose to recite for the purposes of this motion although through necessity, some facts will be repeated.

(a) Court Orders

[3] The Applicants, Canwest Publishing Inc., Canwest Limited Partnership, and certain related entities (the "LP Entities") filed for CCAA protection and on January 8, 2010, I granted an Initial Order.

[4] On June 18, 2010, I granted an order sanctioning the Plan proposed by the LP Entities. All of the operating assets of the LP Entities were transferred to the Purchaser, Postmedia, on July 13, 2010.

[5] On July 6, 2010, I granted an Administrative Reserve and Transition Order which, amongst other things, established an administrative reserve and expanded certain powers of the Monitor following the implementation of the Plan.

[6] On April 12, 2010 and May 17, 2010, I granted a Claims Procedure Order and an Amended Claims Procedure Order respectively. Amongst other things, the Orders called for

claims and established the claims procedure for the identification and quantification of claims against the LP Entities.

(b) CEP Proof of Claim and the Decision

[7] On July 14, 2010, the Communications, Energy and Paperworkers Union of Canada ("CEP") filed a proof of claim on behalf of nine of the LP Entities' Typographers. CEP claimed \$500,000 in respect of each of the Typographers and did not provide any additional details in connection with their claims. In the cover letter dated July 14, 2010 enclosing the proof of claim, CEP's counsel stated:

"Our clients are employees of The Gazette and are owed money for unpaid salary. Please note that an arbitrator is seized of the claim. His latest decision in this regard is enclosed with the present letter. Please note however that this decision is being contested in front of the Superior Court of Quebec."

The letter enclosed the decision of Arbitrator Andre Sylvestre dated January 21, 2009 (the "Decision").

[8] The Decision addressed a June 4, 1996 grievance filed by CEP on behalf of the Typographers relating to The Gazette's refusal to exchange last, final and best offers following a breakdown of negotiations for a new collective agreement. Arbitrator Sylvestre had to determine whether the lockout of the Typographers was unduly prolonged as a result of The Gazette's refusal to submit its last final best offers as requested by the union before a certain deadline. He determined The Gazette's liability to the Typographers under the legal test established by the Quebec Court of Appeal in its earlier decisions. While Arbitrator Sylvestre found and ruled that the Typographers were entitled to damages for the nine month period from May, 1999 to January, 2000, he did not order this amount to be paid. The reason he gave was that while various court proceedings were being pursued, The Gazette had overpaid salaries and benefits between February 5 and October 30, 1998 and in February 2001, it had commenced a civil action to be reimbursed for these amounts. Its claim had been referred to Arbitrator Sylvestre for adjudication. As The Gazette's claim for reimbursement was outstanding, Arbitrator Sylvestre wished to give the parties an opportunity to settle their issues. As such, in his Decision,

Arbitrator Sylvestre did not order the Gazette to pay the nine months of damages he had determined were due to the Typographers.

[9] A settlement did not occur and on April 16, 2009, CEP brought a proceeding before the Quebec Superior Court to set aside the Decision. The proceeding is referred to as a motion in annulment and, based on the evidence before me, is similar to a motion to set aside an arbitration award pursuant to section 46 of Ontario's Arbitration Act, 1992. The proceeding is not an appeal on the merits of Arbitrator Sylvestre's Decision. In the 2003 Quebec Court of Appeal decision, the Court wrote that on a request for annulment of an award, a judge "cannot enquire into the merits of the dispute, and it is impossible for the parties to an arbitration agreement to contract out of this rule...By establishing that these legal decisions are final and without appeal, the Code reinforces the autonomy of the arbitration procedure and its conduct. By limiting the grounds for annulling or refusing the homologation of an award, the Code reinforces the autonomy of the arbitration process and its outcome." ¹

[10] The motion in annulment was stayed as a result of the operation of the CCAA Initial Order. No one ever moved to lift the stay so as to pursue the motion in annulment nor did The Gazette pursue its claim.

(c) Court Directions Order

[11] In December, 2010, the Typographers sought this Court's instructions and directions with respect to the proper characterization of the Typographers' claims. On January 5, 2011, I released Reasons for Decision on whether claims of Typographers who worked at The Gazette were excluded from the claims process in the CCAA proceedings. I determined that liabilities relating to active employees or transferred employees (the "Assumed Typographers") had been assumed by the Purchaser, Postmedia, and were excluded from the claims process and that liabilities relating to the five Typographers who were retired or who had resigned (the "Retired Typographers") were not. Those claims were encompassed by the claims procedure in the

¹ At para 43.

CCAA proceedings. This meant that the Assumed Typographers would continue with whatever proceedings they felt were appropriate in the Province of Quebec and that the CEP would pursue the Retired Typographers' proof of claim that was filed in July, 2010, in the CCAA proceedings. Leave to appeal that decision was not sought by anyone.

[12] As part of the LP Entities' Plan transaction, The Gazette's claim was acquired by Postmedia. Additionally, the Plan contained releases of the Applicants. Accordingly, if the Retired Typographers were to seek to proceed with the motion in annulment in Quebec, an argument could be advanced that they were precluded from doing so as a result of the releases. As noted by counsel for Postmedia, the Assumed Typographers are not bound by the Plan or the releases.

[13] The claims of the Retired Typographers have not yet been referred to a Claims Officer or to the Court for resolution as provided for in paragraph 14 of the Amended Claims Procedure Order.

(d) Settlement Discussions

[14] Subsequent to the release of the January 5, 2011 Reasons for Decision, counsel for Postmedia and CEP engaged in settlement discussions with respect to all Typographers represented by CEP². Any settlement involving the claims of the Retired Typographers was subject to approval by the Monitor. The settlement efforts were unsuccessful. Subsequently, the Monitor and CEP commenced settlement discussions with respect to the claims of the Retired Typographers. As of the date of the motion, the claims of the Retired Typographers had not been settled but counsel for the Monitor advised the Court that settlement negotiations were ongoing.

[15] On April 5, 2011, during the course of settlement discussions between the Monitor and CEP, CEP's counsel delivered a breakdown of the quantum of the Retired Typographers' claims. The description referred to two grievances: the 1996 grievance and another grievance submitted on July 14, 2000. The reference to the 2000 grievance delivered to the Monitor on April 5, 2000

² Some of the Assumed Typographers are not represented by CEP.

was the first time CEP had expressly mentioned the 2000 grievance in the context of the proof of claim of \$500,000 per Typographer. CEP is claiming \$417,864 for each of the Retired Typographers in respect of the 1996 grievance and \$143,208 for each of the Retired Typographers in respect of the 2000 grievance for a total claim of \$561,072 per Retired Typographer. This is in excess of the \$500,000 amount claimed for each Typographer by CEP in its original proof of claim filed in July, 2010.

[16] In accordance with the Plan, the Monitor reserved 55,490 shares in the Disputed Claims Reserve for the claims of the Retired Typographers. This reflected the amount of the claims of \$500,000 per Retired Typographer as submitted in the proof of claim of July, 2010. These are the only shares now remaining in the Disputed Claims Reserve, all other distributions having been effected.

[17] The Monitor takes the position that any claims relating to the 2000 grievance are claims that are barred by the provisions of the Amended Claims Procedure Order. The Monitor states that if Postmedia is unsuccessful in its request for relief and the Monitor and CEP are unsuccessful in reaching a settlement of the Retired Typographers' claims, the Monitor will refer the claims of the Retired Typographers to a Claims Officer or the Court and at that time will be advancing a claims bar defence with respect to the Retired Typographers' claims relating to the 2000 grievance.

Positions of Parties

[18] Although the Retired Typographers' claims have not yet been referred to a Claims Officer, Postmedia requests that I define the mandate of the Claims Officer. It submits that the scope and extent of the Retired Typographers' damages has been determined in proceedings that are binding upon them and all that remains is an arithmetical exercise of calculating the damages and applying any available setoff. It argues that the nature and scope of the damages and the duration of the period for which they are due have been finally determined by the Quebec arbitrator and courts and cannot be relitigated. The only matters to be determined by the Claims Officer are the exact amount of those damages and the amount owed by setoff or counterclaim.

Alternatively, Postmedia submits that the proceedings should be referred to the Quebec courts and heard with the claims of the Assumed Typographers.

[19] CEP is the representative of all of the Retired Typographers. It opposes the relief on the grounds that: Postmedia lacks standing; the motion is premature and constitutes an improper collateral attack on the Typographers' April 2009 motion for annulment of the arbitral award; and the liability and quantum issues underlying the claims filed have not been finally decided and *res judicata* is inapplicable.

[20] The Monitor takes no position.

[21] During argument of this motion, I enquired as to whether those appearing were interested in a judicial settlement conference to help in resolving their dispute. Based on the response, I did arrange for a judge to assist in this regard. Many days after the motion was argued, I was advised that not all of the stakeholders wished to participate at this stage of the proceedings. If they should change their view, the Monitor's counsel should contact me and I will renew the settlement initiative.

Discussion

[22] The practical issue before me is to ensure a process that reduces the risk of inconsistent results but which is fair and expeditious for those remaining in the CCAA process. I must also be mindful of the objectives that underlie a CCAA proceeding.

[23] The Ontario proceeding could be stayed pending the outcome of the Assumed Typographers' claims and the claim of The Gazette. This would avoid inconsistent results but would compel the Retired Typographers to wait for resolution of their CCAA claims and any distribution. The CCAA claims procedure is summary in nature – in stark contrast to the proceedings in which the Typographers and The Gazette had been involved. While clearly inconsistent results would be avoided by staying the Ontario claim pending resolution of the dispute between the Assumed Typographers and Postmedia in Quebec, in my view it would be unfair to thrust the remaining Retired Typographers into that maelstrom. They are retired or have resigned from their employment with The Gazette, are entitled to have their claims addressed

summarily, and to rely on my directions order which authorized them to proceed with their proof of claim. For the same reasons, I am not prepared to refer the matter to the Quebec Superior Court and Arbitrator Sylvestre. The dispute between Postmedia and the Assumed Typographers, some of whom are not represented by CEP, may well be protracted which would be consistent with the history of the dealings between The Gazette and the Typographers. I have no confidence that the claims of the Retired Typographers would be dealt with expeditiously if addressed in conjunction with those of the Assumed Typographers.

[24] I accept CEP's submission that this motion is premature as the claims of the Retired Typographers have not yet been submitted to a Claims Officer or to the Court for determination. In addition, clearly the Monitor's report contemplates the possibility of further settlement discussions between the Monitor and the Retired Typographers. That said, in the interests of judicial economy, it makes sense to provide some direction on the mandate of the Claims Officer if appointed. As such, I will consider the issues of standing and issue estoppel. Lastly, I will address the appropriate procedure for CEP's claim relating to the July 14, 2000 grievance.

(a) Standing

[25] Postmedia owns the set off claim of The Gazette and section 36 of the Claims Procedure Order allows for setoff against payments or other distributions to be made pursuant to the Plan. Postmedia's shares are the value being distributed to creditors under the Plan. Lastly, pursuant to the provisions of the Plan, the treatment of the Retired Typographers' claims are final and binding for all purposes and enure to the benefit of Postmedia. In these circumstances, Postmedia does have standing to bring this motion.

(b) Issue Estoppel

[26] The Supreme Court of Canada in *Danyluk v. Ainsworth Technologies Inc.*³ established the three preconditions to the operation of issue estoppel:

- (i) the same question has been decided;

³ [2001] 2 S.C.R. 460 at p. 477.

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- (ii) the judicial decision which is said to create the estoppel was final; and
- (iii) the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.

[27] Even if the three preconditions are met, a court must still decide whether, as a matter of discretion, issue estoppel ought to be applied.

[28] With reference to administrative decisions, Binnie J. in *Danyluk* wrote that the objective is to balance fairness to the parties with the protection of the administrative decision-making process, whose integrity would be undermined by too readily permitting collateral attack or relitigation of issues once decided.⁴

[29] The issue engaged by this case is the second precondition which relates to finality. In *The Doctrine of Res Judicata in Canada*⁵, the author, Donald J. Lange, writes that there is an unresolved conflict in the law relating to the effect of the appeal process on the finality of a decision for the purpose of issue estoppel. He reviews numerous decisions that hold that a pending appeal does not preclude the application of issue estoppel and others that do. He also refers to Supreme Court of Canada *obiter dicta* and particularly *Toronto (City) v. CUPE, Local 79*⁶, in which Arbour J. wrote:

“A decision is final and binding on the parties only when all available reviews have been exhausted or abandoned.”

[30] In 2008, in *R. v. Mahalingan*⁷, Charron J. for the minority wrote:

Determining whether a decision is final for the purpose of issue estoppel has raised some controversy in the case law, even in the context of civil litigation. For example, the law does not appear settled concerning the effect of the appeal process on the question of finality.

⁴ *Ibid.*, at p. 475.

⁵ LexisNexis Canada Inc. 2010 (3d) at p.98.

⁶ [2003] 3 S.C.R. 77 at p. 107.

⁷ [2008] S.C.J. No. 64 at para. 134.

[31] The question before me is whether the motion in annulment is in the nature of a review that has not yet been exhausted or abandoned. In its 1999 decision, the Quebec Court of Appeal described the article of the *Quebec Civil Code of Procedure* ("CCP") on which the Retired Typographers' challenge is based.

This article [947 C.C.P.] states that an application for cancellation is the only recourse possible against an award made under an arbitration clause. Cancellation is obtained by motion to the court or by opposition to a motion for homologation. The court to which the application is made cannot enquire into the merits of the dispute (articles 946.2 and 947.2 C.C.P.). It can only cancel or set aside the award if it is established under article 946.4 C.C.P. that:

- (1) one of the parties was not qualified to enter into the arbitration agreement;
- (2) the arbitration agreement is invalid under the law elected by the parties or, failing any indication in that regard, under the laws of Quebec;
- (3) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings or was otherwise unable to present his case;
- (4) the award deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement, or it contains decisions on matters beyond the scope of the agreement; or
- (5) the mode of appointment of arbitrators or the applicable arbitration procedure was not observed.⁸

[32] In the Quebec Court of Appeal's 2003 decision, the Court referred to the motion to annul provision in the Quebec Code of Civil Procedure and noted that article 947 stated that the only possible recourse against an arbitration award was an application for its annulment. By virtue of article 947.2 and 946.2, a court could not enquire into the merits of a dispute. The Court of Appeal stated:

⁸ At page 21.

“By establishing that these legal decisions are final and without appeal the Code reinforces the autonomy of the arbitration procedure and its conduct. By limiting the grounds for annulling or refusing the homologation of an award, the Code reinforces the autonomy of the arbitration process and its outcome.”⁹

[33] As a result of Arbitrator Sylvestre’s September 28, 2000 decision and the Quebec Court of Appeal’s August 6, 2003 decision, clearly CEP and the Retired Typographers are estopped from relitigating the following:

- (i) the description of the heads of damages. They are limited to salaries and benefits set forth in the applicable collective agreement; and
- (ii) the endpoint for the calculation of damages which is January 21, 2000.

[34] In my view, the motion in annulment is in the nature of a review as contemplated by Arbour J. in *Toronto (City) v. CUPE, Local 79*¹⁰. That said, this does not mean that the Retired Typographers are at liberty to relitigate the entire proceedings. Rather, the Claims Officer should be limited by the determination of the nine month period of damages previously established by Arbitrator Sylvestre but subject to consideration of whether the motion in annulment is meritorious based on the evidence presented. If it is meritorious, the Claims Officer would be at liberty to authorize the Retired Typographers to bring a motion before me seeking to lift the stay or to make any other order he felt was appropriate. If the motion in annulment is not meritorious, the Claims Officer would simply quantify the Retired Typographers’ salary and benefits for the period between May, 1999 and January 21, 2000. The claims officer should also consider any appropriate claim for setoff. This is consistent with the broad definition of “claim” and the description of the Claims Officer’s powers found in the Amended Claims Procedure Order. While recognizing that there is some possibility that different results may ensue for the Assumed Typographers on the one hand and the Retired Typographers on the other, it seems to me that this determination is fair and is in keeping with both the objectives of the CCAA and the summary procedure provided for by my earlier orders.

⁹ At para 43.

¹⁰ [2003] 3 S.C.R. 77 at p. 107.

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(a) Claim Relating to July, 2000 Grievance

[35] As for the claim relating to the July, 2000 grievance, as submitted by the Monitor, if the CEP claim is submitted to a Claims Officer, the Monitor proposes to take the position that CEP's claim in that regard is barred by the provisions of the Amended Claims Procedure Order. In my view, that is an appropriate procedure.

Conclusion

[36] In conclusion, I have not granted the full relief requested by Postmedia but have provided directions to guide the parties in the resolution of the Retired Typographers' claims. If any other issues need to be addressed, I may be spoken to at a 9:30 am appointment.


Pepall J.

Released: July 28, 2011

CITATION: Canwest Publishing Inc., 2011 ONSC 4518
COURT FILE NO.: CV-10-8533-00CL
DATE: 20110728

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

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

AND IN THE MATTER OF A PLAN OF
COMPROMISE OR ARRANGMENT OF
CANWEST PUBLISHING INC./PUBLICATIONS
CANWEST INC., CANWEST BOOKS INC., AND
CANWEST (CANADA) INC.

Applicants

REASONS FOR DECISION

Pepall J.

Released: July 28, 2011

APPENDIX

"B"

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
CANWEST PUBLISHING INC./PUBLICATIONS CANWEST INC., CANWEST BOOKS
INC., AND CANWEST (CANADA) INC.

APPLICANT

INTERIM AWARD

(A) Introduction

[1] In a narrow context, this motion requires me to determine what the word “meritorious” means. More broadly stated, the issue before me is whether a proceeding in Quebec is “meritorious”. What immediately follows is the background against which the above question should be considered.

(B) Background

[2] Although not the chronological beginning, for my purposes 1987 is a convenient starting point.

[3] In 1987 the Gazette, the Union and 132 Typographers entered into a Tri-partite Agreement. Its text was similar to the 1982 Agreement but it also included a mechanism for the exchange of “last final best offers” (LFBO’s) on request by either party within two weeks of the time when the right to strike or lock-out accrued upon the termination of the collective agreement.

[4] If no agreement was reached in this contractually established gap period, i.e. before the right to strike or lock-out crystallized, either party could submit the disagreement to an arbitrator in accordance with the grievance procedure set out in the collective agreement. Under the applicable procedure the arbitrator was to select one or the other submitted LFBO’s in its

entirety. The deal was that the arbitrator's decision would be final and binding and would become part of the collective agreement.

[5] The LFBO focused procedure limited the right to lock-out since it provided a specific procedure for renewal of the collective agreement, albeit by arbitration.

[6] In 1994, an arbitrator (not Mr. Sylvestre) accepted the Gazette's LFBO with the result that there was a new collective agreement. This collective agreement expired on April 30, 1996 and the Union asked the Gazette to proceed with the established LFBO arbitration. The Gazette refused to go along with the LFBO process for reasons that I see no need to review. All that need be said is that the Gazette issued a lock-out notice and stopped paying the Typographers on June 3, 1996¹. The response of the Typographers and the Union was to submit the dispute to arbitration before Mr. Sylvestre. They contended that pursuant to the Tri-partite agreement the Typographers were entitled to receive full salaries and benefits during the lock-out period.

[7] Mr. Sylvestre concluded that the Gazette had breached the 1987 Agreement. His conclusion flowed from his finding that the LFBO process to which I referred above had an independent contractual force. He thus ordered the Gazette to pay wages and benefits in the lock-out period.

[8] The Quebec Court of Appeal agreed that the Gazette had breached the 1987 Agreement by refusing to participate in the LFBO process. However, the court went on to find that damages should be quantified by reference to the extent to which the Gazette's breach had "prolonged" the lock-out. It referred that question to Arbitrator Sylvestre.

[9] In a September 2000 award Arbitrator Sylvestre ruled that the Typographers' damages were limited to their lost salaries and benefits during the lock-out and that the operative period for the quantification of damages was June 4, 1996 to January 21, 2000.

[10] Consistent with the history of the parties' dealings, the matter did not end there. The Quebec Superior Court set aside Arbitrator Sylvestre's award in part. However, following another trip to

¹ By June 1996 the number of Typographers had shrunk to 11.

the Quebec Court of Appeal in 2003, that court reinstated the award in its entirety and referred the matter back to Arbitrator Sylvestre for an on the merits determination.

[11] Arbitrator Sylvestre issued a further award in 2005. In it he opined that what he had to determine was whether the Gazette's conduct constituted an abuse of rights.

[12] In 2008 Arbitrator Sylvestre's 2005 award was before the Quebec Court of Appeal which held that Arbitrator Sylvestre had asked and answered the wrong question. The court identified the question that had to be asked and answered was whether the lock-out would have ended earlier than January 21, 2000 had the required exchange of LFBO's taken place after the Union's April 30, 1996 request. The court observed that, "[T]he Gazette was required to exchange its last final best offer with the Union no later than May 2, 1996". It went on to conclude that the arbitrator had to determine what damages were caused by the Gazette's failure.

[13] It was against the background of the Court of Appeal's 2008 reasons that in 2009 Arbitrator Sylvestre issued a further award in which

He found that had the exchange of offers unfolded as it should have the lock-out would have ended in May 1999. Accordingly, he concluded that the Retired Topographers' compensable losses consisted of salaries and benefits from May 1999 to January 2000, a nine month period.

[14] On January 8, 2010 the CanWest companies were granted CCAA protection. On April 12, 2010 and May 17, 2010 the Superior Court of Ontario (Commercial List) granted a Claims Procedure Order and an Amended Claims Procedure Order.

[15] In December 2010, certain Montreal Gazette Typographers sought directions on the appropriate characterization of the Typographers' claims within the CCAA proceedings.

[16] Within the CCAA proceedings Postmedia then sought an order declaring that the Typographers were bound by Arbitrator Sylvestre's 2009 award with the result that the issues to

be determined by the CCAA Claims Officer were limited to the quantification of the Typographers' salaries and benefits in the period determined by Mr. Sylvestre in his 2009 award, the quantification of the applicable set off² and, of course, the net amount owing, essentially an arithmetic undertaking.

[17] On April 16, 2009 the Union moved in the Quebec Superior Court to set aside Mr. Sylvestre's award. This proceeding is referred to as a "Motion in Annulment".

[18] Postmedia's motion was heard by Pepall J., the CCAA Supervising Judge. In reasons released July 28, 2011, Pepall J. determined that the Union and the Retired Typographers were estopped from re-litigating the heads or categories of damages and the January 21, 2000 end point for purposes of the quantification of damages. However, she also found that the finding as to the damages period could not be brought within the ambit of issue estoppel because of the Union's Motion in Annulment, a proceeding which was staged once the CCAA Initial Order was issued.

[19] In her reasons Pepall J. recognized there was a possibility that the existence of the motion for annulment proceeding presented a problem with the finality component of issue estoppel militating against an across the board issue estoppel ruling. She explicitly rejected referring the matter to the Quebec Superior Court and Arbitrator Sylvestre. Instead, she provided direction to the Claims Officer for which, I should add, I am grateful. Those directions included leaving the decision whether the Motion in Annulment proceeding is meritorious to the Claims Officer.

(C) Analysis

[20] In her reasons Pepall J. set out her views as to the nature or substance of the Motion in Annulment process and its effect depending on whether the motion is, or is not, meritorious (see para (34)) and as noted she left that issue to the Claims Officer. The inquiry makes it necessary to consider three broad issues. They are first, what is the true nature of the Motion in Annulment

² The set off issue arose because the Gazette paid the Typographer's salaries and benefits for the period February 5, 1998 to October 30, 1998. The Quebec Superior Court referred the Gazette's civil claim for reimbursement to Arbitrator Sylvestre. In his 2009 award Mr. Sylvestre did not rule on the Gazette's set off claim.

process; second, what is the meaning of “meritorious” in the context of Pepall J.’s reasons; and third, is the Motion for Annulment meritorious.

(i) The Motion in Annulment

[21] The parties seem to agree, or at least are close to agreeing, on the nature of the Motion in Annulment. In any event, Pepall J., I think accurately, summarized the essence of the Motion. She described it as a review of the arbitral process, but not a process through which the entire proceeding (or, in my view, any discrete part of it) is re-litigated on a correctness basis.

[22] Whether or not I am bound by Pepall J.’s analysis of the Motion in Annulment is really a non-issue since I agree completely with it.

[23] In my opinion the Motion in Annulment is analogous to the process contemplated by s. 46 of the Ontario Arbitration Act s.o. 1991, ch 17, Errors of fact or law on the Arbitrator’s part are not properly part of the Motion in Annulment process.

(ii) The Meaning of Meritorious

[24] As I have observed this part of the inquiry is not free standing. What Pepall J. meant by meritorious must be considered in the context of her reasons, which seem to me to trigger the somewhat circular question, does the Motion in Annulment have merit? This obviously drives one to consider to some articulable standard whether, on the evidence before me, what the motion’s prospects of success are. Counsel made comprehensive and helpful submissions on that issue.

[25] As to the standard of assessment, it seems to me that I should consider whether on the evidence it is plain and obvious that the Motion in Annulment will or will not succeed.

[26] For purposes of analysis I accept that the moving party has the onus of establishing that the Motion in Annulment will not succeed. I would add that onus in the circumstances of this matter

in which no new evidence was called plays no determinative role in the process. That is to say where the onus lies plays no role in the outcome.

[27] “Meritorious” is not a word that is restricted to the operating vocabulary of lawyers or judges. It has, and should be given its plain, ordinary meaning. In a legal context it has to do with the end legal worth or value of some process or position. Counsel provided useful examples of circumstances in which the merit of something is a relevant factor. I see no need to review those examples here.

[28] It seems to me that taken as part of Pepall J.’s reasons the submission that I ought to link the meritoriousness of the Motion in Annulment with a “*prima facie*” case is without merit. In my view, had Pepall J. intended that standard to frame the inquiry, she would have said so.

(iii) Is the Motion in Annulment Meritorious

[29] In his submissions, Mr. Grenier valiantly tried to squeeze and convert the alleged failings of the arbitrator into the restricted scope of the Motion in Annulment process. In the end, however, I am satisfied that all of the errors upon which Mr. Grenier relies are errors of fact or law, assuming for purposes of analysis that they are errors in the first place.

[30] To conclude, the Motion in Annulment is not a process intended for review of the merits of an arbitrator’s award. It is not a forum through which errors of fact or law are part of the review process. On the material before me, I am satisfied that it is plain and obvious that the Motion in Annulment is not meritorious.

Dated at Toronto this 24th day of November, 2011

Coulter A. Osborne, Claims Officer

APPENDIX

"C"

CITATION: Canwest Global Publishing Inc., 2010 ONSC6818
COURT FILE NO.: CV-10-8533-00CL
DATE: 20110105

ONTARIO

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
CANWEST PUBLISHING INC./PUBLICATIONS CANWEST INC.,
CANWEST BOOKS INC. AND CANWEST (CANADA) INC.

COUNSEL: *Nina V. Fernandez and Christian Pare*, counsel for the Moving Parties Eriberto Di Paolo and Rita Blondin
Douglas J. Wray and Jesse B. Kugler, counsel for the Moving Party Communications, Energy and Paperworkers' Union of Canada, Local 145 ("CEP")
Fred Myers and Logan Willis, counsel for the Respondent Postmedia Networks Inc.
Maria Konyukhova, counsel for the Monitor, FTI Consulting Canada Inc.

PEPALL J.

REASONS FOR DECISION

Relief Requested

[1] The Moving Party, the Communications, Energy and Paperworkers' Union of Canada, Local 145, ("CEP" or the "Union") is the certified bargaining agent for typographers who worked at The Gazette, an English language newspaper in Montreal which is now owned by the Respondent, Postmedia Networks Inc. Once there were 200 typographers; now there are eleven, two of whom, Eriberto Di Paolo and Rita Blondin, are also Moving Parties. Of the remaining nine, six are retired or resigned. The CEP and Mr. Di Paolo and Ms. Blondin (the "Moving Parties") request an order asserting that their claims are liabilities to be assumed by the Respondent Purchaser, Postmedia Networks Inc., pursuant to an Asset Purchase Agreement dated May 10, 2010, entered into with Canwest Publishing Inc., Canwest Limited

Partnership, and certain related entities (the "LP Entities"), and that they are excluded from the claims process in the *CCAA* proceedings. The motion is resisted by the Respondent Purchaser. The Monitor, FTI Consulting Canada Inc., takes no position.

Facts

[2] The LP Entities were granted protection from their creditors by the court pursuant to the *Companies' Creditors Arrangement Act*¹ on January 8, 2010.

[3] On May 17, 2010, an order was granted approving an amended claims procedure and an Asset Purchase Agreement ("APA") dated May 10, 2010, in which the purchaser bought certain assets and assumed certain liabilities of the LP Entities. The APA was subsequently assigned by the purchaser to Postmedia Networks Inc. (the "Respondent Purchaser"). On June 18, 2010, a vesting order was granted.

[4] The issue before me relates to the scope of the liabilities assumed by the Respondent Purchaser pursuant to the provisions of the APA and whether the claims of the Moving Parties are included. I have also been asked to consider whether the claims are excluded from the *CCAA* claims process.

[5] The terminology used in this motion is somewhat confusing as the APA refers to Assumed Liabilities and Excluded Liabilities and the *CCAA* Amended Claims Procedure Order refers to Excluded Claims. Excluded Liabilities and Excluded Claims are distinct and different concepts, the former referring to liabilities not assumed by the Purchaser in the APA and the latter referring to claims that are not part of the *CCAA* claims process for the LP Entities.

¹ R.S.C., c. C-36 as amended.

(a) History

[6] The provenance of this dispute lies in an extraordinarily troubled relationship involving typographers employed by The Gazette, an English language newspaper in Montreal. This is indeed a sorry saga. Forty six decisions have been rendered by various levels of tribunals and courts and the Union and The Gazette have attended before the Quebec Court of Appeal on at least four occasions.

[7] Approximately 200 typographers worked in the composing room of The Gazette. Historically, they performed the function of composing the type for the printing of the newspaper. With the expansion of computerized technology, this function was becoming obsolete and by the early 1980s, the typographers' positions at The Gazette were becoming redundant.

(i) 1982 Agreement

[8] The Union, CEP, and The Gazette (also referred to as the company) were party to collective agreements that governed the typographers. Consistent with the applicable law at the time, these collective agreements expired every three years.² In 1982, the Union negotiated an agreement with The Gazette and the 200 typographers (the "1982 Agreement"). It was signed on April 15, 1983 but dated November 12, 1982. The 1982 Agreement was stated to cover the 200 typographers and was to come into effect "only at the time when the collective agreement between the employer and the Union as mentioned below, similarly in the case of future collective agreements, shall end, disappear, become without value or, for any other reason become null and void or inapplicable."

[9] In return for the right to proceed with technological changes, The Gazette guaranteed to protect the typographers from the loss of regular full-time employment in the composing room due to technological changes. The full-time employment covered by the guarantee was

² The Labour Code was amended in 1994 to allow collective agreements to run for more than three years.

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to be at full pay and at not less than the prevailing union rate of pay as agreed to in the collective agreements negotiated from time to time by the parties. A job transfer was to be agreed upon by The Gazette, the Union and the employee and if required by the applicable collective agreement, any other union involved.

[10] The term of the 1982 Agreement was described as follows:

“This agreement shall remain in effect until the employment of all the persons named in the attached Appendix 1 has ceased. Neither party shall raise any matter dealt with in this Agreement in future negotiations for any new collective agreement.”

[11] In the event of a dispute as to the interpretation, application or breach of the agreement, the grievance procedure to be followed was that laid out in the collective agreement between the company and the union which was in effect at the time that the grievance was initiated.

[12] The 1982 Agreement was to cease to apply to an employee for one of the following reasons: death, voluntary resignation, termination of employment on reaching age 65 or final permanent discharge which could only occur for a major offence. In essence, the agreement was to remain in effect until each of the typographers had ceased his or her employment and ultimately until 2017.

[13] The 1982 Agreement also was to be binding on purchasers, successors or assigns of the company.

[14] The 1982 Agreement was incorporated into the 1981-1984 collective agreement and all subsequent collective agreements. The collective agreements stated:

“The parties agreed to duplicate hereunder the text of an agreement entered into between them the 12th day of November, 1982. This agreement forms an integral part of the present labour agreement without affecting its civil status beyond the collective agreement. Therefore, the parties declare that it is their intent that said agreement remains fully

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enforced, subject to the terms and conditions contained therein, notwithstanding the expiry of the present labour agreement.”³

[15] Where this paragraph uses the term labour agreement, the French version of this provision uses the term collective agreement.

(ii) 1987 Agreement

[16] In 1987, The Gazette, CEP and the then remaining 132 typographers entered into a further agreement (the “1987 Agreement”). This agreement contained language similar to that of the 1982 Agreement and included a cost of living formula. It also included a final best offer mechanism which said:

“Within 90 days before the termination of the collective agreement, the Employer and the Union may initiate negotiations for a new contract. The terms and conditions of the agreement shall remain in effect until an agreement is reached, a decision is rendered by an arbitrator, or until one or the other of the parties exercises its right to strike or lock-out.

Within the two weeks preceding acquiring the right to strike or lock-out, including the acquisition of such rights through the operation of Article X of the present agreement, either of the parties may request the exchange of “Last final best offers,” and both parties shall do so simultaneously and in writing within the following forty-eight (48) hours or another time period if mutually agreed by the parties. The “Last final best offers” shall contain only those clauses or portions of clauses upon which the parties have not already agreed. Should there still not be agreement before the right to strike or lock-out is acquired, either of the parties may submit the disagreement to an arbitrator selected in accordance with the grievance procedure in the collective agreement. In such an event, the arbitrator, after having given both parties the opportunity to make presentations on the merits of their proposals, must retain in its entirety either one or the other of the “Last final best offers” and reject, in its entirety, the other. The arbitrator’s decision shall be final and binding on both parties and it shall become an integral part of the collective agreement.”

³ This same language was used with respect to the 1987 Agreement except that the November 12, 1982 date was changed to March 5, 1987.

[17] As such, if there was no agreement prior to the acquisition of a right to strike or lock-out, either of the parties could require that best final offers be exchanged and submitted to the arbitrator selected in accordance with the grievance procedure contained in the collective agreement. The arbitrator would choose one of the last final best offers which then would be binding on the parties and become part of the collective agreement.

[18] The 1987 Agreement was incorporated into the 1987-1990 collective agreement and all subsequent collective agreements. The incorporation language was similar to that used for the 1982 Agreement. The 1987 Agreement was also to be binding on purchasers, successors and assigns of the company.

[19] Typically, each collective agreement would expire after three years. There would then be a hiatus during which time a new collective agreement would be negotiated. It would then be signed and back dated to commence on the first day following the termination of the last collective agreement. So, for example, on November 12, 1982, the parties signed a collective agreement that covered the period July 1, 1981 to June 30, 1984 and then on September 16, 1985 they signed a collective agreement that covered the period July 1, 1984 to April 30, 1987. The last collective agreement covers the period 2010 to 2017. It too is to be binding on purchasers, successors and assigns of the company.

(iii) 1991 Decision of Québec Court of Appeal

[20] Disputes arose regularly amongst the typographers, the Union and The Gazette. On numerous occasions, the Québec Court of Appeal has been obliged to rule on these disputes and on the impact and purport of both the 1982 and 1987 Agreements.

[21] In an appeal brought by two typographers in 1991, the critical question before the Québec Court of Appeal was whether the terms of the 1982 Agreement which was attached and described as Entente C to the collective agreement constituted discrimination on the grounds of age because it required retirement by the age of 65. The two typographers had not signed the 1982 Agreement. After their 65 birthdays, they were told that their employment would end on June 8, 1985. The typographers filed complaints on June 10 and 17, 1985. The

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collective agreement had expired on June 30, 1984 and a new collective agreement was not reached until September, 1985. The Superior Court judge concluded that the 1982 Agreement was in the nature of a civil contract and as the two typographers had not signed it, they were not bound by its terms.

[22] Rothman, J.A. had to determine whether the 1982 Agreement which was only signed by some typographers extended to cover all typographers as would have been the case if the 1982 Agreement were a collective agreement. He observed that the September, 1985 collective agreement again incorporated "the provisions of Entente "C" [the 1982 Agreement] which had formed part of the previous collective agreement."

[23] He went on to write:

"In my respectful opinion, the Entente was not merely a "civil contract" as the Superior Court suggests. It was negotiated and signed by The Gazette and the Union that had been certified to represent the composing room employees and it was specifically stated to form part of the Collective Agreement to which it was annexed. If the Entente was valid, it would have been legally binding on all of the employees whether or not they signed it."⁴

[24] He stated that the collective agreement could not have a term exceeding three years.

He went on to state:

"In my view, the Entente formed part of the Collective Agreement and any of the Employees who did not sign would nonetheless be bound by it. The Entente was negotiated on behalf of all of the composing room employees by a Union that was certified to represent them. It covered conditions of employment and it was expressly stated to form part of the Collective Agreement. If it was valid, I can see no reason why it would not have been legally binding on all of the composing room employees, whether or not they signed it."⁵

⁴ Page 515 of Motion Record of Di Paulo and Blondin.

⁵ *Ibid* p. 516

[25] Having concluded that the 1982 Agreement covered all typographers regardless of whether they were signatories to it, he then went on to consider whether the Entente was valid in light of the provisions of the *Labour Standards Act*⁶ and the *Québec Charter of Human Rights and Freedoms*⁷ prohibiting discrimination on the grounds of age. He concluded that it did not contravene either statute.

(iv) 1999 Québec Court of Appeal Decision

[26] The parties attended before the Québec Court of Appeal in 1999, 2003 and 2008. I do not intend to summarize each decision but will extract certain key components.

[27] On June 3, 1996, the applicable collective agreement being at an end, The Gazette had issued a lockout notice and stopped paying the 11 typographers. The Union and the 11 typographers challenged The Gazette's failure to participate in the final best offer procedure outlined in the 1987 Agreement and submitted that the 11 were entitled to salaries and benefits lost since the lockout.

[28] In 1999, the Court of Appeal had to determine the nature and scope of the 1982 and 1987 Agreements to decide "whether they could still produce effects after the lockout of June 3, 1996." The Court concluded firstly that The Gazette had breached the 1987 Agreement by refusing to exchange final best offers. Secondly, the Court determined that the 11 typographers were entitled to damages if the lock-out was unduly prolonged due to the employer's refusal to participate in the process. The Court of Appeal was of the view that the arbitrator should decide that question.

[29] In reaching the Court's decision, Rousseau-Houle J.A. wrote that the 1987 Agreement was incorporated into the collective agreement as was the 1982 Agreement. The parties intended that the 1982 and 1987 Agreements remain in full force notwithstanding the expiry

⁶ R.S.Q. ch. N-1.

⁷ R.S.Q. ch. C-12.

of the collective agreements.⁸ The 1982 and 1987 Agreements provided: (1) an employment and a salary guarantee, (2) an agreement not to renegotiate the guaranteed protection and, (3) a compulsory process for renewing the collective agreement. The 1982 and 1987 Agreements created vested rights collectively and they had to survive the expiry of the collective agreement. “The union and the employer created vested rights for the typographers including the right to job security until the age of 65, a salary adjusted to the cost of living and a compulsory arbitration mechanism. Nothing in the law precludes such a solution.”⁹ Rousseau-Houle J.A. referred to the Supreme Court of Canada’s decision in *Dayco Canada Ltd. v. TCA Canada*¹⁰ dealing with vested rights the exercise of which could be requested after the end of a collective agreement. She observed that the Agreements came into effect as independent civil agreements if the collective agreement was cancelled, lapsed or became inapplicable.

(v) 2003 Québec Court of Appeal decision

[30] This time the issue before the Court was whether an interim ruling of the arbitrator was correct. The arbitrator had ordered that the damages of the typographers were limited to compensation for lost salary and benefits during the lockout and that the period was limited to June 4, 1996 to January 21, 2000, when The Gazette submitted its final best offer. This interim ruling was upheld by the Court of Appeal. In writing for the court, Yves-Marie Morissette J.A. observed that:

- a) the 1982 and 1987 Agreements were applicable only between the expiry of one collective agreement and its replacement by a new one; and
- b) the 1999 Court of Appeal decision dealt with the legal characterization of the arbitration procedure. “It establishes

⁸ Page 25.

⁹ Page 26.

¹⁰ [1993] 2 S.C.R. 230.

that the procedure is indeed consensual, and based on [TRANSLATION] “a perfect arbitration clause obliging the parties to carry out the agreements in accordance with the ordinary rules of law. The grievance procedure that is provided for in the collective agreement and to which the arbitration clause refers is used only as a procedural framework for applying the latter.” As a result of this analysis, the [TRANSLATION] “disagreements” submitted to arbitration pursuant to the terms of Article IX of the 1987 agreement are neither “grievances” within the meaning of paragraph 1(f) of the *Labour Code*, R.S.Q. c. C-27, since they do not deal with “the interpretation or application of a collective agreement”, nor “disputes” within the meaning of para. 1(e) of the *Code*, since they are not [TRANSLATION] “disagreement[s] respecting the negotiation or renewal of a collective agreement or its revision by the parties under a clause expressly permitting the same”. Those “disagreements” actually constitute “disputes” within the meaning of article 944 *C.C.P.* ”

C.C.P. refers to the *Code of Civil Procedure* that governs civil actions in Quebec.

[31] While appealing one of the arbitral decisions, The Gazette had paid salaries and benefits between February 5, 1998 and October 30, 1998. In February, 2001, The Gazette commenced a civil action against the typographers to recover these amounts. This action is still outstanding. It was acquired by the Respondent Purchaser as part of the APA.

(vi) 2008 Quebec Court of Appeal Decision

[32] In deciding whether the lockout had been unduly prolonged so as to justify an award of damages, the arbitrator interpreted the issue to be considered as requiring him to determine whether there had been an abuse of rights by The Gazette which unduly prolonged the lockout. In 2008, the Court of Appeal determined that the arbitrator had addressed the wrong issue. The only issue that needed to be addressed was whether the lockout would have ended earlier than January 21, 2000 had the exchange of final best offers taken place following the April 30, 1996 request. The Court of Appeal remitted the matter to the arbitrator to answer that question.

[33] Since then, the arbitrator has determined that had the final best offer procedure been adhered to, the lockout would have lasted until May, 1999. Therefore the typographers were

entitled to damages covering the nine month period from May, 1999 to January, 2000. He did not order this amount to be paid, however, because The Gazette's request for reimbursement was still outstanding and had to be addressed. He therefore gave the parties an opportunity to settle the issue but retained jurisdiction. The Union and the typographers then challenged the arbitrator's January 21, 2009 decision.

[34] As mentioned, on January 8, 2010, an initial CCAA order was granted and proceedings against the LP Entities were stayed including those involving The Gazette and the typographers. Subsequently, the Respondent Purchaser acquired the assets of the LP Entities on a going concern basis for approximately \$1.1 billion. I approved both the APA and the claims procedure to be used with respect to the CCAA plan.

[35] As mentioned, six of the 11 typographers have now retired or resigned although one retired after the closing of the APA. The remaining five, including Mr. Di Paulo and Ms. Blondin, are still employed at The Gazette by the Respondent Purchaser as "Transferred Employees" under the APA.

(b) The APA

[36] The APA delineates the assets purchased, the liabilities that are assumed and those that are excluded. The purchase price included the amount of the Assumed Liabilities as defined in the APA.

[37] The focus of this review of the APA is to ascertain whether the Respondent Purchaser assumed the liabilities that relate to the typographers. The relevant provisions of the APA with emphasis added by me are as follows:

(i) The Purchase and Sale

s 2.1 On the Acquisition Date effective as at the Acquisition Time, pursuant to the Sanction and Vesting Orders, the LP Entities shall sell and Purchaser shall purchase the Acquired Assets, free and clear of all Encumbrances (other than Permitted Encumbrances) and Purchaser shall

assume the Assumed Liabilities, in each case, on the terms of and subject to the conditions of this Agreement, the *CCAA* Plan and the Sanction and Vesting Orders.

[38] Therefore, generally speaking, if the claims of the Moving Parties constitute Assumed Liabilities, the Respondent Purchaser is responsible for them. To assist in finding the answer to this question, one must examine the definitions found in the APA.

(ii) Definitions

(a) Assumed Liabilities

s1.1(19) "Assumed Liabilities" means (i) Accounts Payable, Deferred Revenue Obligations, Accrued Liabilities and Insured Litigation Deductibles, (ii) the other Liabilities of the LP Entities relating to the Business accrued due on, or accruing due subsequent to the Acquisition Date under the Assumed Contracts, Licences and the Permitted Encumbrances, (iii) the Liabilities of the LP Entities relating to the Transferred Employees, and (iv) other Liabilities to be assumed by Purchaser as specifically provided for under this Agreement.

(b) Liabilities

s 1.1(86) "Liabilities" of a Person means all Indebtedness, obligations and other liabilities of that Person whether absolute, accrued, contingent, fixed or otherwise, or whether due or to become due.¹¹

s 1.1(3) "Accrued Liabilities" means liabilities relating to the Business incurred by the LP Entities as of the Acquisition Time but on or after the Filing Date in the Ordinary Course of Business and in accordance with the terms of the Initial Order and this Agreement, including liabilities in respect of pre and post-filing accruals for vacation pay for Transferred Employees, customer rebates and allowance for product returns.

(c) Assumed Contracts

¹¹ Person includes a corporation.

s 1.1(18) "Assumed Contracts" means all Contracts, Personal Property Leases and Real Property Leases, other than the Excluded Contracts and Leases.

s 1.1(40) "Contracts" means all contracts and agreements relating to the Business to which any of the LP Entities is a party at the Acquisition Time...

Acquisition Time is defined as being three days after the sanction and vesting orders became final.

Excluded Contracts and Leases are described in Schedule 3.1(3). It includes certain lease agreements, financing agreements and material contracts. The Schedule does not include any collective agreements nor does it include the 1982 or 1987 Agreements.

(d) Transferred Employees

s 1.1(147) "Transferred Employees" means (i) Union Employees and (ii) non-Union Employees who accept offers of employment by Purchaser or who begin active employment with Purchaser as of the Acquisition Date or their next scheduled work day.

(e) Employees

s 1.1(52) "Employees" means any and all (i) employees who are actively at work (including full-time, part-time or temporary employees) of the LP Entities, including Misaligned CMI Employees; and (ii) employees of the LP Entities who are on approved leaves of absence (including maternity leave, parental leave, short-term disability leave, workers' compensation and other statutory leaves).

(f) Union Employees

s 1.1 (149) "Union Employees" has the meaning given to it in section 5.1(2)(a).

[39] Employee matters are addressed in Article 5 of the APA. Under this Article, the Purchaser was to offer employment to all Employees subject to certain terms. The definition of Union Employees is found in this article. It and other relevant subsections state:

s 5.1(2) Subject to section 5.1(3) and section 5.1(4)¹², Purchaser shall offer employment, effective as of the Acquisition Date and conditioned on the completion of the Acquisition, to all Employees immediately prior to the Acquisition Date on the following terms and conditions:

- (a) to Employees who are part of a bargaining unit (“Union Employees”) in respect of which a collective agreement is in force, or has expired and the terms and conditions of which remain in effect by operation of law, the terms and conditions provided for in such collective agreement, or expired collective agreement if such terms and conditions remain in effect by operation of law, subject to any amendments or alterations to the terms thereof to which the bargaining agent under such collective agreement or expired collective agreement consents; and
- (b) to all other Employees (“Non-Union Employees”) on substantially similar terms and conditions as their then existing employment immediately prior to the Acquisition Date, excluding any equity or equity-like compensation, supplementary retirement or supplementary pension arrangements or plans.

s 5.4(1) The provisions of this Article 5 insofar as they relate to unionized Employees shall be subject and subordinate to the provisions of the relevant collective agreements (including expired collective agreements that continue by operation of law) and Purchaser shall be bound as a successor employer to such collective agreements to the extent required by Applicable Law¹³.

s 5.1(9) No Employee or Person other than the LP Entities and Purchaser shall be entitled to any rights or privileges under this Section 5.1 or under any other provisions of this Agreement. Without limiting the foregoing, no provision of this Agreement shall: (i) create any third party beneficiary or other rights in any bargaining agent representing Employees or in any other Employee or former employee of an LP Entity

¹² These sections are not relevant to the facts before me.

¹³ The definition of Applicable Law is all encompassing. It means, in respect of any Person, property, transaction, event or other matter, any law, statute, regulation, code, ordinance, principle of common law or equity, municipal by-law, treaty or Order, domestic or foreign, applicable to that Person, property, transaction, event or other matter and all applicable requirements, requests, official directives, rules, consents, approvals, authorizations, guidelines, and policies, in each case, having the force of law, of any Governmental Authority having or purporting to have authority over that Person, property, transaction, event or other matter and regarded by such Governmental Authority as requiring compliance.

(or on any beneficiary or dependant of any Employee or former employee of an LP Entity); (ii) constitute or create an employment agreement or collective agreement; or (iii) constitute or be deemed to constitute an amendment to any of the Purchaser Established Benefit Plans, National Post Benefit Plans or LP Benefit Plans.

[40] Except as specifically provided for in the APA, the Purchaser did not assume liabilities.

s 3.2 Except as specifically provided in this Agreement, Purchaser shall not assume and shall not be obliged to pay, perform or discharge any Liabilities of any LP Entity which arise or relate to the Business or otherwise. Without limiting the generality of the foregoing, Purchaser shall not assume and shall have no obligations in respect whatsoever of any of the Excluded Liabilities or any Claims relating thereto.

[41] "Excluded Liabilities" are defined in section 1.1(62) as meaning all liabilities of the LP Entities other than the Assumed Liabilities, and for certainty includes all of the Liabilities described in Schedule 1.1(62). Schedule 1.1(63) is in fact the schedule that lists the Excluded Liabilities. The following are Excluded Liabilities:

s 1.1(63) (i) Certain Employee-Related Liabilities:

(i) all Liabilities of any kind, howsoever arising, in respect of any Employees or former employees other than the Transferred Employees (other than in connection with: the LP Pension Plans, as required by any collective agreement or the Purchaser Assumed Benefit Plans)

...

(k) Litigation:

All Liabilities in respect of any litigation proceedings, lawsuits, court proceedings or proceedings before any Governmental Authority against any of the LP Entities and their predecessors in respect of any matters, events or facts occurring prior to the Acquisition Time, other than the Insured Litigation Deductibles and the obligation to defend and/or settle all claims in connection therewith pursuant to Section 9.15.

[42] Representations and Warranties are found in section 7.6(2) of the APA. It states:

Except as disclosed in Schedule 7.6(2), neither any LP Entity nor National Post is a party to or bound by any collective agreement, labour contract, letter of understanding, memorandum of understanding, letter of intent, voluntary recognition agreement, or other legally binding commitment to any labour union, trade union, employcc association or similar entity in respect of any Employees...

[43] Schedule 7.6(2) includes the most recent collective agreement between The Gazette and the CEP dealing with the typographers and which in turn includes the 1982 and 1987 Agreements.

(c) The *Québec Labour Code*

[44] Section 45 of the *Québec Labour Code* provides:

The alienation or operation by another in whole or in part of an undertaking shall not invalidate any certification granted under this Code, any collective agreement or any proceeding for the securing or for the making or carrying out of a collective agreement.

The new employer, notwithstanding the division, amalgamation or changed legal structure of the undertaking, shall be bound by the certification or collective agreement as if he were named therein and shall be ipso facto a party to any proceeding relating thereto, in the place and stead of the former employer.

(d) Claims Procedure

[45] As mentioned, the Amended Claims Procedure Order was granted on May 17, 2010. It delineated, amongst other things, how proofs of claim in the *CCAA* proceedings were to be filed by creditors and how certain claims were to be excluded from the procedure. An Employee Claim consisted of “any claim by an employee or former employcc of the LP Entities arising out of the employment of such employee or former employcc by the LP Entities that relates to a Prefiling Claim or a Restructuring Period Claim other than an Excluded Claim or any employee-related liabilities that are being assumed by the Purchaser pursuant to the Purchase Agreement.” Excluded Claims included “all Grievances or claims that can only be advanced in the form of a Grievance pursuant to the terms of a collective bargaining agreement”. Grievance was defined as meaning “all grievances filed by

bargaining agents (the "Unions") representing unionized employees of the LP Entities, or their members, under applicable collective bargaining agreements".

[46] Mr. Di Paulo and Ms. Blondin filed claims for \$6,604,376.80 and \$6,431,536.80 respectively. CEP also filed a claim on behalf of the remaining 9 typographers on a without prejudice basis so as to preserve their rights. Each claim amounted to \$500,000.

(e) LP Entities' and Monitor's Correspondence on Claims Procedure

[47] On May 31, 2010, counsel for the LP Entities, Sven Poysa of Osler, Hoskin & Harcourt LLP, wrote to counsel for Mr. Di Paulo and Ms. Blondin stating:

"The Claims Procedure Order excludes certain claims from the Claims Procedure, including claims arising from grievances filed by bargaining agents (the "Unions") representing unionized employees of the LP Entities, or their members, under applicable collective bargaining agreements. Holders of Excluded Claims (as defined in the Claims Procedure Order) are not included in the Claims Procedure and can proceed to advance such claims outside of the Claims Procedure in the ordinary course. The above Grievance Matter is properly characterized as an Excluded Claim. Accordingly, your claim will not be included in the Claims Procedure."

[48] Mr. Poysa went on to state that the APA had been approved by the court and the Purchaser would be assuming certain liabilities of the LP Entities on closing "which may include the Grievance Matter".

[49] On July 14, 2010, Quebec counsel acting on behalf of 9 typographers filed a proof of claim to preserve their clients' rights. In response, the Monitor's counsel wrote that pursuant to the APA, the Respondent Purchaser had agreed to purchase substantially all of the assets and assume substantially all of the liabilities of the LP Entities. Counsel wrote:

"The Claims Procedure Order excludes certain claims from the Claims Procedure, including claims arising from grievances filed by bargaining agents (the "Unions") representing unionized employees of the LP Entities, or their members, under applicable collective bargaining agreements which are Assumed Liabilities under the APA. Holders of Excluded Claims (as defined in the Claims Procedure Order) are not included in the Claims Procedure and can proceed to advance such claims outside of the Claims Procedure in the

ordinary course which in the case of Assumed Liabilities is against the Purchaser.

In your letter of July 14, 2010, you stated that you were of the view that your clients' claim was an Excluded Claim. If your position remains that your clients' claim is an Excluded Claim, you must withdraw the claim from the Claims Procedure and pursue your claim against and through the Purchaser. Please note that if you withdraw your claim from the Claims Procedure and are ultimately unsuccessful in establishing that your claim is an Assumed Liability under the APA, you will not be able to share in the distributions to be made under the Plan to the LP Entities' creditors."

Issue

[50] I must determine whether the claims asserted against The Gazette by the Moving Parties have been assumed as liabilities by the Respondent Purchaser under the APA and whether they are Excluded Claims under the Amended Claims Procedure Order.

Positions of the Parties

[51] In brief, the positions of the parties are as follows. The Moving Party Union submits that the claim is an Excluded Claim according to the definitions contained in the Amended Claims Procedure Order and that this view is shared by both counsel to the LP Entities and counsel to the Monitor.

[52] In addition, the Union states that the claim is an Assumed Liability under the APA. The APA provides that the Liabilities of the LP Entities relating to the Transferred Employees and other Liabilities as specifically provided for under the APA are to be assumed by the Purchaser. Section 5.4 of the APA provides that the Purchaser shall be bound as a successor employer to such collective agreements to the extent required by Applicable Law. This means that the Purchaser assumes all collective agreement liabilities. This is confirmed by Schedule 1.1(63) of the APA which excludes all liabilities except those required by any collective agreement and also by the provisions of the Quebec Labour Code.

[53] The Union also submits that past judicial consideration and equity support the Union's interpretation and position. Lastly, and in the alternative, the 5 remaining typographers are clearly within the ambit of Assumed Liabilities under the APA.

[54] The position of Mr. Di Paulo and Ms. Blondin is similar to that of the Union. Additionally, they submit that the Purchaser is bound by the obligations of the LP Entities found in the 2010-2017 collective agreement which again includes the 1982 and 1987 Agreements both of which provide that they are binding on third party purchasers and also as a result of the application of the Quebec Labour Code.

[55] The Respondent Purchaser takes the position that the liability of The Gazette represents a pre-filing civil liability for damages for breach of contract and is not in the nature of a grievance. Secondly, the claims of the Moving Parties do not fall within the definition of Assumed Liabilities contained in the APA. Furthermore, as litigation, the claims are expressly excluded from the ambit of the APA. Such an interpretation is consistent with the overall interpretation of the APA read as a whole. Similarly, the claims for damages do not arise as successor employer obligations under the collective agreement. The Respondent Purchaser has never had any involvement with or connection to the claims of the typographers.

Discussion

[56] The claims of the Moving Parties that are in issue represent in part damages consisting of wages and benefits that would have been paid to the typographers had The Gazette participated in the final best offer procedure set forth in the 1987 Agreement. The damages flowed from a breach of the Agreement at a time when the old collective agreement had expired and a new collective agreement had not yet been negotiated. As noted by the Quebec Court of Appeal in 1999 and 2003, the dispute fell within the parameters of the Code of Civil Procedure that governs civil actions in the Province of Quebec.

[57] The arrangement negotiated by the Union and The Gazette was unusual. It was designed to provide protection to the typographers in exchange for which The Gazette was free to proceed with the technological changes it desired unencumbered by a resistant union

and typographers. Due to the applicable law then in force, a collective agreement could not exceed three years in duration. The 1982 and 1987 Agreements were negotiated to provide for seamless protection for the workers. They would cover any hiatus between collective agreements and were incorporated into every subsequent collective agreement. Based on the decisions of the Quebec Court of Appeal in 1999 and 2003, the claims of the Moving Parties are not technically grievances although their origins are tied to the collective agreements negotiated by the Union and The Gazette.

[58] I do note that the Quebec Court of Appeal treated the Agreements as hybrid creatures. In 1991, the Court stated that the Agreements encompassed all typographers including those who were not signatories. As J. A. Rothman stated, the Entente or the 1982 Agreement was not simply a "civil contract". In contrast, Yves-Marie Morissette J.A. described the disagreements relating to the 1982 and 1987 Agreements as being disputes within the meaning of the Code of Civil Procedure.

(a) Transferred Employees

[59] The APA contemplates that the Purchaser will continue to operate all of the businesses of the LP Entities in substantially the same manner as they had been operated and would offer employment to substantially all of the employees of the LP Entities. The existing collective agreements including that governing the typographers will continue.

[60] As part of the purchase transaction, the Purchaser agreed to assume certain liabilities and indeed the purchase price included the amount of the Assumed Liabilities. The Assumed Liabilities expressly included the liabilities of the LP Entities relating to the Transferred Employees. Liabilities are given a very broad definition in the APA. They encompass all obligations and other liabilities whether absolute, accrued, contingent, fixed or otherwise, or whether due or to become due.

[61] One must then consider who is included in the definition of Transferred Employees. Transferred Employees include Union Employees in respect of which a collective agreement is in force or has expired.

[62] This then leads one to the definition of Union Employees. Union Employees consist of active employees and employees on approved leaves of absence who are part of a bargaining unit in respect of which there is a collective agreement. This definition causes me to conclude that under the APA, as active employees, Mr. Di Paulo and Ms. Blondin are Transferred Employees and The Gazette's liability to them is assumed by the Respondent Purchaser as is the liability to the other four typographers who were not retired or who had not resigned as of the date of the closing of the APA.

[63] In my view, the description of Excluded Liabilities found in the APA does not detract from this conclusion. Firstly, the Assumed Liabilities are specifically enumerated. Secondly, Excluded Liabilities means all Liabilities of the LP Entities other than the Assumed Liabilities. Thirdly, the exclusions themselves expressly except liabilities of the Transferred Employees. Even if one were to accept that the language of the litigation exception is broad enough to encompass the Moving Parties' claims, it does not overcome these other explicit provisions.

[64] It seems to me clear therefore that the parties to the APA intended that the Assumed Liabilities would extend to cover liabilities relating to the Transferred Employees. This would cover the typographers still employed by the LP Entities and would cover "liabilities relating to them" as stated in section 1.1(19)(iii) of the APA. I would also add that the third party provision contained in the APA does not serve to relieve the Respondent Purchaser from these obligations.

[65] This conclusion is also consistent with the Amended Claims Procedure order. Under paragraph 21 of that order, the LP Entities are to deliver a LP Entities' claims package to each LP Creditor with an Employee Claim as soon as practicable. Employee Claim is defined as "any claim by an employee or former employee of the LP Entities arising out of the employment of such employee or former employee by the LP Entities that relates to a Prefiling Claim or a Restructuring Period Claim other than an Excluded Claim or any employee-related liabilities that are being assumed by the Purchaser pursuant to the Purchase Agreement." It is therefore clear that the claims process did not apply to employee related liabilities assumed by the Purchaser.

[66] In conclusion, The Gazette's liability to the Transferred Employees is assumed by the Respondent Purchaser. The Transferred Employees include Mr. Di Paulo, Ms. Blondin and the four other typographers who had not retired or resigned as of the closing of the APA. They need not participate in the *CCAA* claims procedure.

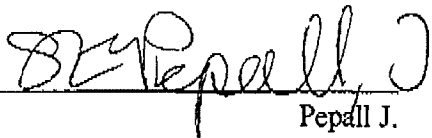
(b) Remaining Typographers

[67] The next issue to consider is whether The Gazette's liability to the remaining five typographers who retired or resigned before the closing of the APA is assumed by the Respondent Purchaser. Certainly they are not Transferred Employees within the definition of the APA. Similarly, they are not captured by Article 5 which addresses Employees who are actively at work or on a leave of absence. It is possible to argue that the definition of Assumed Liabilities extends to include the remaining typographers, however, in my view, this is straining the interpretation of the APA and does not accord with the intention of the contracting parties. Dealing firstly with section 1.1(19)(ii) of the APA, while the collective agreement which includes the 1982 and 1987 Agreements is an Assumed Contract within the meaning of the APA, any obligation to the remaining typographers accrued due well before the Acquisition Date. Similarly, the remaining typographers' claims are not within section 1.1(19) (iv) of the APA as the liability is not specifically provided for under the APA. Rather, the remaining typographers are specifically addressed in the provisions of the APA dealing with Excluded Liabilities. Schedule 1.1(63) expressly provides that all Liabilities of any kind in respect of former employees are excluded (other than pension plans). It seems to me therefore, that the claims advanced by the CEP on behalf of the remaining typographers do not represent liabilities that are assumed by the Respondent Purchaser pursuant to the provisions of the APA.

[68] As for the provisions of the Amended Claims Procedure Order, it excluded claims that could only be advanced as a grievance or in the form of a grievance pursuant to the terms of a collective bargaining agreement. The claims asserted by the CEP on behalf of the remaining typographers do not fall within that description. Accordingly, they may be submitted and disposed of in accordance with the Amended Claims Procedure Order.

Conclusion

[69] In conclusion, the claims of the Transferred Employee typographers are Assumed Liabilities within the meaning of the APA and those typographers need not participate in the claims process. The claims of the remaining typographers are not and their claims may be submitted and disposed of in accordance with the Amended Claims Procedure Order. Accordingly, the motion brought by the Moving Parties Di Paulo and Blondin is granted. The motion brought by CEP is granted insofar as it relates to the other Transferred Employees and is otherwise dismissed. The Monitor is to establish a reserve for the claims of all of the Moving Parties until the requisite time for any appeals has expired.


Pepall J.

Released: January 5, 2011

CITATION: Canwest Global Publishing Inc., 2010 ONSC 6818
COURT FILE NO.: CV-10-8533-00CL
DATE: 20110105

ONTARIO

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

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

AND IN THE MATTER OF A PLAN OF
COMPROMISE OR ARRANGEMENT OF
CANWEST PUBLISHING
INC./PUBLICATIONS CANWEST INC.,
CANWEST BOOKS INC. AND CANWEST
(CANADA) INC.

REASONS FOR DECISION

Pepall J.

Released: January 5, 2011

APPENDIX

"D"



*Me Brian Howard
450.681.1002 ext. 222
bhoward@howardassociés.com*

Laval, February 15th, 2011

BY FAX ONLY

Mr. Paul Bishop
FTI Consulting
79, Wellington Street West, suite 2010
P.O. Box 104
Toronto, ON M5K 1G8

Re : Eriberto Di Paolo & Rita Blondin vs. The Gazette a division of Canwest

Dear Sir,

The Honorable Justice Pepall rendered judgment in the above mentioned matter on or about January 5th 2011 in which our clients motion was granted, defining our clients claims filed on or about May 3rd 2010 and resubmitted on or about June 27th, 2010, for the amount of 6 599 074,30\$ for Mr Eriberto Di Paolo and for the amount of 6 413 714,30 \$ for Mrs. Rita Blondin as Assumed Liabilities according to the Asset Purchase Agreement.

The said judgment was not appealed by the respondent Postmedia Networks Inc. or the Monitor in the appropriate time frame and therefore Honorable Justice Pepall's judgment stands.

In view of the Asset Purchase Agreement and the Assignment and Amending Agreement, the amount of the Assumed Liabilities was included in the Purchase Price of the Acquired Assets and the payment of the Purchase Price shall be satisfied by Postmedia Networks Inc. at the Acquisition Date.

Therefore, being the Monitor named by the Court in the CCAA process, you should have held in Trust a sufficient amount to cover the payment of the Assumed Liabilities.



Considering that Justice Pepall's judgment dated January 5th, 2011 acquired *res judicata*, would you kindly remit to the undersigned In Trust the amounts of 6 599 074,30\$ for Mr. Eriberto Di Paolo and 6 413 714,30\$ for Mrs. Rita Blondin.

If we do not receive the above mentioned amounts within seventy-two hours of the reception of the present letter of demand, our instructions are to take the necessary legal proceedings to claim and obtain the said amounts of 6 599 074,30\$ for Mr. Eriberto Di Paolo and 6 413 714,30\$ for Mrs. Rita Blondin without any further delays or notice.

Kindly govern yourself accordingly.

HOWARD & ASSOCIATES



BRIAN HOWARD, attorney

BH/ss

c.c: Maria Konyukhova, Stikeman Elliott
Attorney for Monitor

Fred Myers, Goodmans,
Attorney for Postmedia Networks Inc.

STIKEMAN ELLIOTT

Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, Canada M5L 1B9
Tel: (416) 869-5500 Fax: (416) 947-0866 www.stikeman.com

Direct: (416) 869-5230
E-mail: mkonyukhova@stikeman.com

February 17, 2011

Me Brian Howard
Howard & Associés
2540 boul. Daniel-Johnson,
bureau 1002
Laval (Québec) H7T 2S3

Dear Sir:

Re: Canwest Publishing Inc. and Claims of Eriberto Di Paolo & Rita Blondin

Thank you for your letter of February 15, 2011 which was forwarded to us for response.

The Asset Purchase Agreement dated as of May 10, 2010 (the "Asset Purchase Agreement") does not contemplate any cash payment in respect of the Assumed Liabilities¹ being made to the LP Entities or the Monitor. Rather, Section 2.3 of the Asset Purchase Agreement provides that payment of the Purchase Price will be satisfied by the Purchaser, in part, as follows:

(e) *Purchaser shall assume the Assumed Liabilities effective at the Acquisition Time.*

Accordingly, no cash payment in respect of Assumed Liabilities was made by the Purchaser to the LP Entities or the Monitor on the Acquisition Date (or at any subsequent date).

Similarly, and contrary to the assertion in your letter, neither the Asset Purchase Agreement, the CCAA Plan, nor the CCAA require the Monitor to establish or maintain any trust sufficient to cover payment of the Assumed Liabilities. Accordingly, the Monitor is not holding any amounts in trust in respect of your clients' claims or any other Assumed Liabilities.

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¹ All capitalized terms used but not defined herein have the meaning ascribed to them in the Asset Purchase Agreement.

Pursuant to Justice Pepall's reasons released January 5, 2011, your clients' claims constitute Assumed Liabilities under the Asset Purchase Agreement. As such, any future correspondence regarding your clients' claims should be directed to Postmedia Networks Inc.' counsel.

Yours truly,



for Maria Konyukhova

mk/

cc: Paul Bishop, *FTI Consulting Canada Inc.*
Daphne MacKenzie, *Stikeman Elliott LLP*
Fred Myers, *Goodmans LLP*

Ali Gholampour
Avocat/Advocat.

Without Prejudice
Montreal, March 24th 2011

By fax and registered mail: (416) 947-0866

Stikeman Elliott LLP
Ms. Maria Konyukhova
5300 Commerce Court West
199 Bay Street
Toronto, Ontario M5L 1B9

Re: Claims of Eriberto Di Paolo & Rita Blondin.

Dear colleague;

We have been mandated by Mr Di Paolo and Ms. Blondin in the above named matter.

We have taken cognizance of Justice Pepall's January 5th 2011 decision where the Court granted our clients' motion and found their claims to be assumed liabilities within the meaning of the APA and ordered your client to:

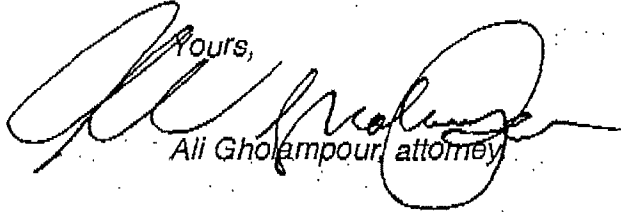
« establish a reserve for the claims of all the Moving Parties until the requisite time for any appeals has expired ».

Although you were personally present at the hearing, copy of the said decision is also enclosed herewith.

To this date, our clients have not received distribution of their funds by the Monitor and you have, in contradiction with the clear order of the said decision, referred their previous attorneys' enquiries to the Purchaser.

I wish to inform you that given their present legal status, as assumed liability claimants, we will not deal with the purchaser nor their attorneys as it is your client's responsibility, as the Monitor of the sale of Canwest publishing, to compensate our clients and dispense the amounts claimed in the present matter. Also, our clients shall not suffer the consequence of your client's initial miscategorization of their claims.

Therefore, we wish to make it clear that justice Pepall's decision will be executed and enforced, under penalty of contempt if necessary, should we not receive a certified cheque in the amount of \$13,021,788.60 in trust in the order of Ali Gholampour avocat inc. by April 4th 2011 at 5 p.m. at our Montreal offices.

Yours,

Ali Gholampour, attorney

c.c. Erierto Di Paolo & Rita Blondin.
c.ci. Mr Paul Bishop, FTI consulting,
c.cii. Fred Myers, Goodmans;

507 Place d'Armes, Suite 1539, Montréal, Québec, H2Y 2W8
514 395-0522 Fax: 514 845-5546
aligholampour@lawyer.com

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March 31, 2011

Ali Gholampour
507 Place d'Armes, Suite 1539
Montreal, Quebec
H2Y 2W8

Dear Sir:

Re: Canwest Publishing Inc. et al. (the "LP Entities") and Claims of Eriberto Di Paolo & Rita Blondin

Thank you for your letter of March 24, 2011.

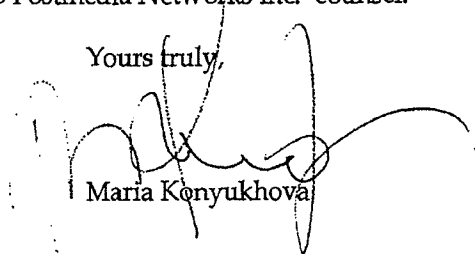
The reference to establishment of a "reserve" by Justice Pepall in her Honour's decision which you have quoted in your letter is a reference to a reserve of shares of Postmedia Networks Inc., not a reserve of cash as you seem to suggest. In the quoted excerpt, Justice Pepall directed the Monitor to reserve such shares pending expiration of the applicable appeal periods so that there would be sufficient shares to make distributions to your clients and the other typographers in case Postmedia Networks Inc. appealed Justice Pepall's decision and was successful on appeal. If the decision was successfully appealed and your clients' claims found by the appeal court to be Affected Claims within the meaning of the LP Entities' plan of compromise and arrangement (the "CCAA Plan"), then your client's claims would be compromised and entitled to receive shares of Postmedia Networks Inc. on a compromised basis.

Postmedia Networks Inc. did not appeal Justice Pepall's decision and your clients' claims remain Assumed Liabilities within the meaning of the LP Entities' CCAA Plan. Accordingly, the reserve of shares directed to be established by Justice Pepall is no longer required and was released subsequent to the expiration of the appeal period. Furthermore, it should be noted that Justice Pepall was not asked to, and did not, deal with the quantification of your clients' claims. Her Honour was only dealing with the issue of which entity those claims should be directed against.

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Your clients' continued insistence that the Monitor is under obligation to make any payments or distributions in respect of your clients' claims is misguided. Pursuant to Justice Pepall's reasons, your clients' claims constitute Assumed Liabilities under the CCAA Plan. As such, any future correspondence regarding your clients' claims should be directed to Postmedia Networks Inc.' counsel.

Yours truly,

A handwritten signature in black ink, appearing to read 'Maria Konyukhova', written over the typed name below it.

Maria Konyukhova

mk/

cc: Paul Bishop, *FTI Consulting Canada Inc.*
Fred Myers, *Goodmans LLP*

BY FAX ONLY: 416 327 5417

April 29, 2011

TO THE HONOURABLE ONTARIO SUPERIOR COURT JUSTICE PEPALL J.

COMMERCIAL LIST

ON THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C., C-36, AS AMENDED

AND THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF CANWEST PUBLISHING INC./
AND CANWEST (CANADA) INC., CANWEST BOOK AND CANWEST
(CANADA) Inc,

CITATION: Canwest Global Publishing Inc., 2010 ONSC 6818

COURT FILE NO.: CV-10 8533-0OCL

**RE: MOTION RECORD OF POSTMEDIA NETWORK INC.
(RETURNABLE May 16, 2011)**

Madam Justice Peppal J.:

We, the undersigned, Eriberto Di Paolo and Rita Blondin, have received the above Motion with an introduction letter from Mtre Caroline Descours of Goodmans LLP. (Enclosure 1)

The above Motion was sent to us *as a courtesy*, for, Mtre Fred Myers, also of Goodmans LLP states in an email that we will not be affected legally, "*While we do not believe that the Motion affects Blondin and Di Paolo in a legal sense, ...*" (Enclosure 2) We do not agree that the outcome of the Motion will not affect us legally. It will, and it will be detrimental, especially considering that the opposing parties are willing for the case to return to Quebec's jurisdiction despite the fact that by Your Judgement our claims were deemed Assumed Liabilities and not Excluded Claims.

In the Motion's Service List, all parties concerned are listed, **except** Eriberto Di Paolo and Rita Blondin. Re-iterating, their names are not listed as a separate and autonomous party. Despite the fact that Eriberto Di Paolo and Rita Blondin are not included in the Service List, Eriberto Di Paolo and Rita Blondin are surreptitiously included in the above Motion as two typographers that will be affected: page 2 of the said Motion: ... *already underway in Québec to be heard in*

conjunction with the ongoing litigation by six other typographers (the 'Assumed Typographers', together with the Retired Typographers, ... (emphasis added)

The word 'six' should legally be replaced by the word 'four' to reflect in its exactitude the Service List in the Motions before Your Honour on December 10, 2010. In addition, it has been established for a number of years now that the law firm Melançon, Marceau, Grenier et Sciortino making legal representation for the Union, CEP, do not legally represent Eriberto Di Paolo and Rita Blondin. Eriberto Di Paolo and Rita Blondin have either represented themselves or been represented by legal counsel other than the above law firm. The **four** names that the above firm represents are Umed Gohil, Pierre Rebetez, Joseph Brazeau, and Michael Thomson, and the five retirees. More importantly, the undersigned allege that the Union, CEP, will not oppose the said Motion on May 16, 2011 resulting for the findings of your Honour's Judgement rendered on January 5, 2011 to become null and void for the Moving Parties, Eriberto Di Paolo and Rita Blondin. The exercise of December 10, 2010 carried out for the eventual Judgement rendered on January 5, 2011, will then have merely meant a stressful and very expensive exercise in complete futility for the already heavily prejudiced parties Eriberto Di Paolo and Rita Blondin: (Enclosure 3) Eriberto Di Paolo was obliged to retire on December 31, 2010, despite the fact that he lacked nine years of employment out of 28 years guaranteed; he has had to retire without the psychological, financial, and spiritual prejudice being compensated.

Moreover, while it is true that the above four typographers filed proceedings in April 2009 via their legal counsel in Quebec Superior Court, Eriberto Di Paolo and Rita Blondin have not. They have learned from past experience that a judicial review or an annulment proceeding is not enacted if Arbitrator André Sylvestre did not render a **Final** Award on January 21, 2009. Indeed, after 13 years of being seized with a grievance out of several others still pending, Arbitrator Sylvestre rendered merely an **Interim** Award. Furthermore, Superior Court Judge Louis-Paul Cullen stated in his Judgement of March 6, 2009: *10. En somme, les parties n'ont pas épuisé le recours à l'arbitrage.* (emphasis added)

Specifying, in the above Superior Court proceedings, the four assumed typographers and five retirees (a total of nine and not eleven) are the parties that have filed and produced the proceedings in question. The **Plaintiffs** listed are CEP, Robert Davies, Umed Gohil, Jean-Pierre Martin, Leslie Stockwell, Marc-André Tremblay, Joseph Brazeau, Horace Holloway, Pierre Rebetez, and Michael Thomson. The **Defendant** is Mre André Sylvestre. *The Gazette* is a joinder of the parties and so are Eriberto Di Paolo and Rita Blondin. Re-iterating, Eriberto Di Paolo and Rita Blondin have not filed the action in Quebec Superior Court against *The Gazette* for compensation on account of the nine-year lockout. The latter proceedings are not taking place as the opposing parties will have anyone believe. As a matter of fact, the action filed and produced by CEP is against Arbitrator André Sylvestre in order to have him removed as an arbitrator and in annulment of his **Interim** Award. It is not even against *The Gazette*. And, in this same proceeding, *The Gazette* strenuously objected Eriberto Di Paolo's and Rita Blondin's participation. (Enclosure 3) Were the case to 'return' to Quebec's jurisdiction, Eriberto Di Paolo and Rita Blondin would have to file and produce new and independent proceedings in the Civil Division of Quebec Superior Court against the *The Gazette*. This unwanted, unacceptable, and life-enduring imposed option would render Your Judgement inoperable and would pave the way for the now 18-year Sorry Saga to continue *ad infinitum*, considering the iron-clad 'legal' pattern that the opposing parties have put in place – 18 years strong – in the Quebec Civil Justice System.

In conclusion and in view of the above, Eriberto Di Paolo and Rita Blondin request confirmation that the word 'six' of the Motion Record of Postmedia Network Inc. be amended to 'four'. This

way it will not affect Eriberto Di Paolo and Rita Blondin on the said Motion's outcome and they therefore would not have the obligatory need to make representation.

However, should the Motion not be amended, Eriberto Di Paolo and Rita Blondin request that Postmedia Network Inc. include in the Service List the names Eriberto Di Paolo and Rita Blondin so that they will be officially and properly served; hence, making it legally possible to exercise their right to make representation. Should PostMedia opt for the latter option, that is include Eriberto Di Paolo and Rita Blondin in the Service List and hence serve them, the hearing cannot take place on May 16, 2011: Eriberto Di Paolo and Rita Blondin would need a fair period of time to draw up an opposing Motion especially seeing that they are currently not legally represented by legal counsel.

As Your Honour is aware, we, the undersigned, wish to inform you that we were legally represented on December 10, 2010 by Mtres Nina Fernandez and Christian Paré of the firm Howard & Associés, but it is no longer the case since March 2010. In a span of three weeks prior to December 10, 2010 hearing, Howard & Associés charged \$67,000 in legal fees, expenses, and costs. The latter amount was honoured in full prior to December 10, 2010. The Professional Contract with Howard & Associés was that should the undersigned be categorized as Assumed Liabilities, Howard & Associés would not continue to charge their clients on an hourly basis but would take 15% of the total Assumed Claims received. Sales taxes would have to be honoured by Eriberto Di Paolo and Rita Blondin on the 15%.

However, on January 10, 2011, Mtre Brian Howard of Howard & Associés, commented on the Judgement: "she went here, she went there, and she did not rule by law." And, as of January 5, 2011, Howard & Associés have billed the undersigned in excess of \$25,000 and refused to follow any procedure that would make Your Honour's Judgement operable in order to end this 18-year long travesty. An official complaint with the *Barreau du Québec* has been filed on March 16, 2011.

Since then, we have been actively trying to get legal representation either in Quebec or Ontario. Either the lawyers contacted were not interested in helping us, or if they were interested in helping, they asked for retainers in the tens of thousands of dollars and a continued-invoicing at an hourly basis with no guarantee in sight when the 'litigation' would end. Furthermore, it must be stressed that the lawyers we approached in Quebec have claimed that punitive damages are not recognized in Quebec even though proven intentional.

It has become very clear to us that in order to ratify Your Judgement, it seems that we would have to continue depleting the already 18-year depleted assets that we have remaining. Hence, we would like to know if there are provisions in the CCAA Process that would provide legal representation for those that are in such dire predicament? If, however, such a provision does not exist, would it be possible for it be implemented by the Trusteeship, or any other entity that would have the authority to do so, considering the peculiarity of the case and our continual outpouring of our personal monies, where all other interested parties in the CCAA Process seem to be financed legally without costing them their personal heritage? We really do not understand why we have to continue to be punished and suffer immeasurably. We have done nothing wrong —*bien au contraire*—we have been honourable, exemplary and law-abiding.

We humbly and respectfully submit the above, and we are appreciative for Your Honour's consideration in the above matters.

Yours truly,

Eriberto Di Paolo

Eriberto Di Paolo
6752 Jean Milot
Montreal, Quebec
H1M 2Y9

T. & F.: 514 256 8617

Eriberto Di Paolo

for

Rita Blondin
588 Antoine-Séguin Blvd.
Saint-Eustache, Terrebonne
Quebec J7P 5N6

T.: 450 491 0736

c.c.: Mtre Fred Myers of Goodmans
Mr. Paul Bishop FTI
Mtre. Maria Konyukhova

STIKEMAN ELLIOTT

Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, Canada M5L 1B9
Tel: (416) 869-5500 Fax: (416) 947-0866 www.stikeman.com

Direct: (416) 869-5230
E-mail: mkonyukhova@stikeman.com

VIA E-MAIL

May 5, 2011

Eriberito Di Paolo
6752 Jean Milot
Montreal, Quebec

Rita Blondin
588 Antoine-Seguin
Saint-Eustache, Quebec
J7P 5N6

Dear Ms. Blondin and Mr. Di Paolo:

Re: Canwest Publishing Inc. et al. (the "LP Entities") and Claims of Eriberito Di Paolo & Rita Blondin

We are writing in connection with your email correspondence of April 28, 2011, your fax correspondence dated April 29, 2011 (received May 1, 2011) addressed to Madame Justice Pepall, Mr. Myers' letter of May 3, 2011, and your email correspondence of May 3, 2011.

We continue to encourage you to retain legal counsel to assist you through this process.

We also agree with Mr. Myers in that we do not believe that it is appropriate to communicate with Justice Pepall through correspondence, and to the extent you require to communicate with the Court regarding scheduling a hearing, encourage you or your legal counsel to correspond with our office.

With respect to your proposed terms for the draft Order for Justice Pepall's decision of January 5, 2011, we wish to reiterate (what we have tried to explain to you and your former counsel on a number of occasions) that in her January 5, 2011 decision, Justice Pepall ruled that Postmedia Networks Inc. assumed liability for any amounts due to you as a result of your employment by the LP Entities. This ruling means that amounts, if any, due to you as result of your employment by the LP Entities are not claims in the LP Entities' CCAA Proceedings. Your recourse is against Postmedia Networks Inc., not the estate of the LP Entities. Therefore, you cannot continue to pursue your claims in the LP Entities' CCAA Proceedings.

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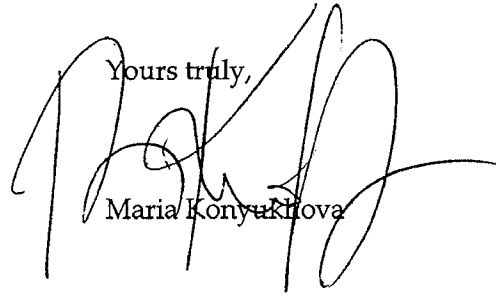
In addition, the reference to establishment of a "reserve" by Justice Pepall in her Honour's decision is a reference to a reserve of shares of Postmedia Networks Inc., not a reserve of cash as you seem to suggest. Justice Pepall directed the Monitor to reserve such shares pending expiration of the applicable appeal periods so that there would be sufficient shares to make distributions to you and the other typographers in case Postmedia Networks Inc. appealed Justice Pepall's decision and was successful on appeal.

Postmedia Networks Inc. did not appeal Justice Pepall's decision and your claims remain Assumed Liabilities (within the meaning of the LP Entities' CCAA Plan) of Postmedia Networks Inc. Accordingly, the reserve of shares noted above was released subsequent to the expiration of the appeal period. Furthermore, it should be noted that Justice Pepall was not asked to, and did not, deal with the quantification of your claims against Postmedia Networks Inc. Her Honour was only dealing with the issue of which entity those claims were against.

It appears from your correspondence with Mr. Myers that the parties will not be able to settle the terms of the draft Order for Justice Pepall's decision of January 5, 2011. We also understand Postmedia Networks Inc. is bringing a motion returnable May 16, 2011 to settle the terms of the Order. Accordingly, you or your legal counsel should attend on May 16, 2011 before Justice Pepall to settle the terms of that Order if you continue to disagree with the terms proposed by Postmedia Networks Inc. Justice Pepall indicated that she is able to hear the parties on that point on May 16, 2011.

With respect to your concerns regarding Postmedia Networks Inc.'s motion returnable May 16, 2011, we point out that this motion is in respect of the claims of the retired typographers against the estate of the LP Entities, not liabilities, such as any liability to you, assumed by Postmedia Networks Inc. and so we fail to see any impact of the relief sought by Postmedia Network Inc. on your claims. However, if you believe otherwise, you may attend at the hearing of the motion on May 16, 2011 and seek standing to make submissions with respect thereto. Again, it is not appropriate to make any submissions with respect to that motion (or any other matter) to the Court through correspondence. Please let us know if you wish to file materials in advance of the motion or attend at the hearing of same and we will attempt to assist with the circulation of those materials and any other logistical aspects relating to your attendance.

Yours truly,

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Maria Konyukhova

mk/

cc: Paul Bishop, *FTI Consulting Canada Inc.*
Fred Myers, *Goodmans LLP*

CHOQUETTE BEAUPRÉ RHÉAUME

AVOCATS, BARRISTERS & SOLICITORS

5316, Avenue du Parc
Bureau 200
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H2V 4G7
Tel. (514) 270-3192
Télé. (514) 270-8876
Courriel jchoq@qc.aira.com

JÉRÔME CHOQUETTE C.R./Q.C.
ANDRÉ RHÉAUME
FRÉDÉRIC CHOQUETTE
JEAN-STÉPHANE KOURIE
JULIE MORIN

Montreal, November 16th 2011

Mr. Paul Bishop
c/o FTI Consulting Canada inc.
TD Canada Trust Tower
79, Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ont.
M5K 1G8

By Fax : 416-947-0866

**Re : Asset purchase agreement by Post Media Network inc. dated 10-5-10
In the matter of the Companies' creditors arrangement act, R.S.C.,
1985, c. C-36 as amended and
In the matter of a plan of compromise or arrangement of Canwest
Publishing inc./Publications Canwest inc., Canwest Books inc. and
Canwest (Canada) inc.**

Dear Sir,

In respect to our conversation of this day, I wish to make the following points:

1. By her judgment of January 5th 2011, Justice Sarah Peppal recognized our clients' claims in the parties presence, Maria Konyukhova representing FTI Consulting Canada inc., Fred Myers and Logan Willis representing Post Media Network, as well as Douglas J. Wray and Jesse B. Kugler representing the Communications Energy and Paper workers union – local 145, on the application of “moving parties”, Eriberto Di Paolo and Rita Blondin, represented by Nina V. Fernandez and Christian Paré, at paragraph 62, as “transferred employees”, assumed by the Respondents purchaser Post Media as assumed liabilities;
2. Furthermore, in the same judgment, at paragraph 60, Justice Sarah Peppal states the following:

Affiliés / Affiliated

ME GUY BERNARD 37, rue de Lille - 75007 Paris Tel. 01.42.61.15.45 Télé. 01.42.61.10.83	ROCHMAN LANDAU 45 Mortimer Street London, England, W1N 7TD Tel. (44) 207-544-2424 Tele. (44) 207-544-2400	MACARON LAW OFFICE Édifice Centre Mathaf 7 ^e étage, P.O. Box 116-2392 Beyrouth, Liban Tel. (961) 1611761 Tele. (961) 1611762	ACKER CHOQUETTE 1019 Khalid Ibn Walleed Street Juma Al Majid Bldg, suite 215 P.O. Box 21506, Dubai, U.A.E. Tel. (9714) 3550004 Tele. (9714) 3513622	EDWARD C. KRAMER 488 Madison Avenue, suite 1100 New York, N.Y. 10022 Tel: (212) 490-1616 Tele. (212) 490-2888 Cell. (917) 992-0450
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CHOQUETTE BEAUPRÉ RHÉAUME
AVOCATS, BARRISTERS & SOLICITORS

“As part of the purchase transaction, the Purchaser agreed to assume certain liabilities and indeed the purchase price included the amount of the Assumed Liabilities. The Assumed Liabilities expressly included the liabilities of the LP Entities relating to the Transferred Employees. Liabilities are given a very broad definition in the APA. They encompass all obligations and other liabilities whether absolute, accrued, contingent, fixed or otherwise, or whether due or to become due”.

3. Furthermore, as entered in the official records of the court, on May 27th 2011, the operative part of the judgment of January 5th 2011, was stated to be as appears from its conclusion:

“1. This court orders and declares that the claims of the Moving Parties asserted against The Gazette are Assumed Liabilities within the meaning of the APA and that the Moving Parties are excluded from the claims process.

2. This court orders that the Monitor is directed to establish a reserve for the claims of the Moving Parties until the requisite time for any appeals has expired.”

4. Referring to the Assignment and Amending Agreement, dated June 10th 2010, the following was stipulated at paragraph 2.1, the Assignor being Canwest and the Assignee being Post Media:

“a) The Assignor hereby transfers, sells, conveys, assigns and delivers unto the Assignee, its successors and assigns, and the Assignee hereby acquires and accepts, effective as of the Effective Date, all of the Assignor’s right, title and interest in and to the Asset Purchase Agreement.

b) The Assignee hereby assumes the obligations of the assignor under the Asset Purchase Agreement, effective as of the Effective Date, and shall pay, keep, observe, perform and discharge all of the terms, covenants, conditions, obligations and liabilities of the Assignor thereunder.

c) From and after the Effective Date (i) the Assignee shall be the “Purchaser” under the Asset Purchase Agreement and have all of the rights, benefits, obligations and liabilities of the “Purchaser” thereunder and under any other agreements or documents required to be delivered pursuant to the Asset Purchase Agreement and shall be bound by the provisions thereof; and (ii) the Assignor relinquishes all of its rights and benefits and is released from its obligations and liabilities under the Asset Purchase Agreement and under any other agreements or documents required to be delivered pursuant to the Asset Purchase Agreement.”

CHOQUETTE BEAUPRÉ RHÉAUME
AVOCATS, BARRISTERS & SOLICITORS

5. The actual transfer of assets purchased by Post Media Network from LP Entities actually took place on July 13th 2010;
6. Justice Peppal stated in her decision of January 5th at paragraphs 36, 37 and 38, the following:

“[36] The APA delineates the assets purchased, the liabilities that are assumed and those that are excluded. The purchase price included the amount of the Assumed Liabilities as defined in the APA.

[37] The focus of this review of the APA is to ascertain whether the Respondent Purchaser assumed the liabilities that relate to the typographers. The relevant provisions of the APA with emphasis added by me are as follows:

(i) The Purchase and Sale

s 2.1 On the Acquisition Date effective as at the Acquisition Time, pursuant to the Sanction and Vesting Orders, the LP Entities shall sell and Purchaser shall purchase the Acquired Assets, free and clear of all Encumbrances (other than Permitted Encumbrances) and Purchaser shall assume the Assumed Liabilities, in each case, on the terms of and subject to the conditions of this Agreement, the CCAA Plan and the Sanction and Vesting Orders.

[38] Therefore, generally speaking, if the claims of the Moving Parties constitute Assumed Liabilities, the Respondent Purchaser is responsible for them. To assist in finding the answer to this question, one must examine the definitions found in the APA.

(ii) Definitions

(a) Assumed Liabilities

Sl.1(19) “Assumed Liabilities” means(iii) the Liabilities of the LP Entities relating to the Transferred Employees.

7. On May 16th 2011, my clients appeared before Justice Sarah Peppal in Toronto and requested the order from the judge as to the operative part of her previous judgment which they obtained as hereinabove quoted.
8. Referring back to the operative order of Justice Sarah Peppal, Eriberto Di Paolo and Rita Blondin, specifically mentioned, as the moving parties and entitled to benefit of the conclusions hereinabove quoted of the order, they were to receive from the reserve established to pay out the claims of Eriberto Di Paolo and Rita Blondin presented to

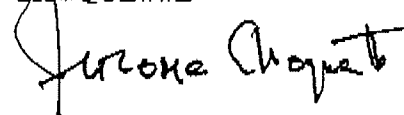
CHOQUETTE BEAUPRÉ RHÉAUME

AVOCATS, BARRISTERS & SOLICITORS

the court which it was your duty to present and obtain the proper directions which you neglected to do throughout the period of one (1) year from July 13th 2010;

9. As a matter of fact, their lawyer, Frank Bennett, corresponded with you and with Maria Konyukhova, and you even reported to the Court by your report dated May 12th 2011, following Justice Peppal's judgment of January 2011, without requesting any instructions from the judge on how to deal with Eriberto Di Paolo's and Rita Blondin's positions in view of the delay which had intervened.
10. And furthermore, your attorney, Me Konyukhova admitted before Justice Peppal that they (you) thought originally that Eriberto Di Paolo and Rita Blondin were in the compromise claims and not assumed liabilities, as they had always claimed. This assumption is the most obvious explanation for your mistake in not presenting their claim to the Court for disposal.
11. As a matter of fact, at paragraph 23 of your 13th report dated July 22nd 2010, you mention having "*received nine (9) additional claims... which were not submitted prior to the claims bar date set out in the Amended Claims Procedure Order as they were initially thought to be Excluded claims (as defined in the Amended Claims Procedure Order). The status of these (and two additional related claims) and their inclusion under the Claims Procedure are currently under review*". These two related claims are no doubt those of Eriberto Di Paolo and Rita Blondin.
12. In your 17th report dated May 12th 2011, at paragraph 12, in which you review nine claims against the LP Entities, you omitted to mention our clients' claims who were assumed liabilities as previously decided by Justice Peppal and asserted by them since the beginning.
13. We have in our files a communication from Me Frank Bennett reviewing the confusion introduced into the dealings with the order and our clients' status from which appears that your errors consisted in making the wrong assessment as to their status and further not asking for directions from the Court at any time, either prior to the acquisition date or after.
14. Our position justifies our clients in presenting a motion for the distribution of funds to satisfy the payment of the money to which they are entitled.

CHOQUETTE BEAUPRÉ RHÉAUME



Jérôme Choquette, Q.C..

STIKEMAN ELLIOTT

Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, Canada M5L 1B9
Tel: (416) 869-5500 Fax: (416) 947-0866 www.stikeman.com

Direct: (416) 869-5230
E-mail: mkonyukhova@stikeman.com

November 18, 2011

Jerome Choquette
Choquette Beaupre Rheaume
5316 Avenue de Parc
Montreal, Quebec
H2V 4G7

Dear Sir:

Re: Canwest Publishing Inc. et al. (the "LP Entities") and Claims of Eriberto Di Paolo & Rita Blondin

Your letter of November 16, 2011 has been forwarded to us for response.

We and the Monitor have spent an ample amount of time on a number of occasions attempting repeatedly to explain to your clients and their previous counsel why the position outlined in your most recent letter is incorrect and is a misinterpretation of Justice Pepall's decision of January 5, 2011. We are attaching copies of some of the correspondence delivered by us to your clients in that respect. As you will see from a careful review of this correspondence and the court orders already in your possession the salient facts are as follows:

1. In her decision of January 5, 2011, Justice Peppall agreed with your clients in ruling that any claim they may have is an "Assumed Liability" and any monies that may be due to your clients are payable by Postmedia Networks Inc.
2. Justice Peppall ordered the Monitor to establish a reserve for the Moving Parties "*until the requisite time for any appeals has expired*". As has been explained to you, a) this reserve was a reserve of shares to cover the eventuality that Postmedia Networks Inc. successfully appealed Justice Pepall's order of January 5, 2011, thereby returning your clients' claims (and the claims of the other assumed employees) to the status of a claim in the LP Entities' CCAA proceedings, and b) the time for appeals expired and the reserve *of shares* was released in accordance with Justice Pepall's order.
3. As a result, your clients have no claim in the LP Entities' CCAA proceedings. Moreover, the Monitor is not and never was under any

TORONTO
MONTREAL
OTTAWA
CALGARY
VANCOUVER
NEW YORK
LONDON
SYDNEY

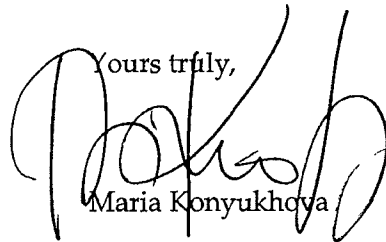
STIKEMAN ELLIOTT

obligation, nor has or ever had the power, to establish a reserve for the monetary payment of the liabilities, if any, to your clients that have been assumed by Postmedia Networks. Inc

4. Lastly, we would point out that the amount, if any, due to your client has not been established or agreed. As your clients have been informed on many occasions, they will need to address the quantum of their claim with Postmedia Networks Inc.

We see no benefit in entering into further correspondence on this matter. Therefore, please let us know if your clients wish to bring a motion before Justice Pepall for any relief you consider your clients to be entitled to and we will canvass her Honour's availability to hear same.

Yours truly,

A handwritten signature in black ink, appearing to read 'Maria Konyukhova', written over the typed name.

Maria Konyukhova

mk/

cc: Paul Bishop, *FTI Consulting Canada Inc.*

APPENDIX

"E"

STIKEMAN ELLIOTT

Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, Canada M5L 1B9

Tel: (416) 869-5500 Fax: (416) 947-0866 www.stikeman.com

Direct: (416) 869-5230

E-mail: mkonyukhova@stikeman.com

February 17, 2011

Me Brian Howard
Howard & Associés
2540 boul. Daniel-Johnson,
bureau 1002
Laval (Québec) H7T 2S3

Dear Sir:

**Re: Canwest Publishing Inc. and Claims of Eriberto Di Paolo & Rita
Blondin**

Thank you for your letter of February 15, 2011 which was forwarded to us for response.

The Asset Purchase Agreement dated as of May 10, 2010 (the "Asset Purchase Agreement") does not contemplate any cash payment in respect of the Assumed Liabilities¹ being made to the LP Entities or the Monitor. Rather, Section 2.3 of the Asset Purchase Agreement provides that payment of the Purchase Price will be satisfied by the Purchaser, in part, as follows:

(e) *Purchaser shall assume the Assumed Liabilities effective at the Acquisition Time.*

Accordingly, no cash payment in respect of Assumed Liabilities was made by the Purchaser to the LP Entities or the Monitor on the Acquisition Date (or at any subsequent date).

Similarly, and contrary to the assertion in your letter, neither the Asset Purchase Agreement, the CCAA Plan, nor the CCAA require the Monitor to establish or maintain any trust sufficient to cover payment of the Assumed Liabilities. Accordingly, the Monitor is not holding any amounts in trust in respect of your clients' claims or any other Assumed Liabilities.

TORONTO

MONTREAL

OTTAWA

CALGARY

VANCOUVER

NEW YORK

LONDON

SYDNEY

¹ All capitalized terms used but not defined herein have the meaning ascribed to them in the Asset Purchase Agreement.

Pursuant to Justice Pepall's reasons released January 5, 2011, your clients' claims constitute Assumed Liabilities under the Asset Purchase Agreement. As such, any future correspondence regarding your clients' claims should be directed to Postmedia Networks Inc.' counsel.

Yours truly,



for Maria Konyukhova

mk/

cc: Paul Bishop, *FTI Consulting Canada Inc.*
Daphne MacKenzie, *Stikeman Elliott LLP*
Fred Myers, *Goodmans LLP*

STIKEMAN ELLIOTT

Stikeman Elliott LLP Barristers & Solicitors

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Tel: (416) 869-5500 Fax: (416) 947-0866 www.stikeman.com

Direct: (416) 869-5230
E-mail: mkonyukhova@stikeman.com

November 18, 2011

Jerome Choquette
Choquette Beaupre Rheame
5316 Avenue de Parc
Montreal, Quebec
H2V 4G7

Dear Sir:

Re: Canwest Publishing Inc. et al. (the "LP Entities") and Claims of Eriberto Di Paolo & Rita Blondin

Your letter of November 16, 2011 has been forwarded to us for response.

We and the Monitor have spent an ample amount of time on a number of occasions attempting repeatedly to explain to your clients and their previous counsel why the position outlined in your most recent letter is incorrect and is a misinterpretation of Justice Peppall's decision of January 5, 2011. We are attaching copies of some of the correspondence delivered by us to your clients in that respect. As you will see from a careful review of this correspondence and the court orders already in your possession the salient facts are as follows:

1. In her decision of January 5, 2011, Justice Peppall agreed with your clients in ruling that any claim they may have is an "Assumed Liability" and any monies that may be due to your clients are payable by Postmedia Networks Inc.
2. Justice Peppall ordered the Monitor to establish a reserve for the Moving Parties "*until the requisite time for any appeals has expired*". As has been explained to you, a) this reserve was a reserve of shares to cover the eventuality that Postmedia Networks Inc. successfully appealed Justice Peppall's order of January 5, 2011, thereby returning your clients' claims (and the claims of the other assumed employees) to the status of a claim in the LP Entities' CCAA proceedings, and b) the time for appeals expired and the reserve *of shares* was released in accordance with Justice Peppall's order.
3. As a result, your clients have no claim in the LP Entities' CCAA proceedings. Moreover, the Monitor is not and never was under any

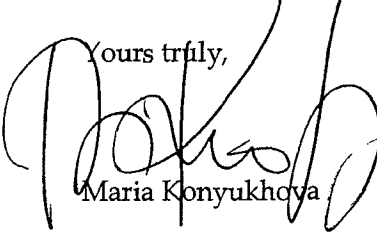
TORONTO
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VANCOUVER
NEWYORK
LONDON
SYDNEY

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obligation, nor has or ever had the power, to establish a reserve for the monetary payment of the liabilities, if any, to your clients that have been assumed by Postmedia Networks. Inc

4. Lastly, we would point out that the amount, if any, due to your client has not been established or agreed. As your clients have been informed on many occasions, they will need to address the quantum of their claim with Postmedia Networks Inc.

We see no benefit in entering into further correspondence on this matter. Therefore, please let us know if your clients wish to bring a motion before Justice Pepall for any relief you consider your clients to be entitled to and we will canvass her Honour's availability to hear same.

Yours truly,

Maria Konyukhova

mk/

cc: Paul Bishop, *FTI Consulting Canada Inc.*

APPENDIX

"F"

**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 PLAN OF COMPROMISE OR ARRANGEMENT
OF CANWEST PUBLISHING INC./PUBLICATIONS CANWEST INC.,
CANWEST BOOKS INC. AND CANWEST (CANADA) INC.**

**AFFIDAVIT OF DAPHNE J. MACKENZIE
(sworn December 1, 2011)**

I, Daphne J. MacKenzie, of the City of Toronto, in the Province of Ontario
MAKE OATH AND SAY

1. I am a Partner in the law firm of Stikeman Elliott LLP ("**Stikeman Elliott**"), solicitors for FTI Consulting Canada Inc. ("**FTI**"), in its capacity as the court appointed monitor for Canwest Publishing Inc./Publications Canwest Inc., Canwest Books Inc., Canwest (Canada) Inc. and Canwest Limited Partnership/Canwest Societe en Commandite (collectively the "**LP Entities**"), and, as such, I have knowledge to the matters to which I hereinafter depose.

2. On January 8, 2010, the LP Entities obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended, (the "**CCAA**") pursuant to the initial order granted by the Honourable Madam Justice Pepall (the "**Initial Order**"). FTI was appointed as monitor (the "**Monitor**") of the LP Entities. The proceedings commenced by the LP Entities under the CCAA will be referred to herein as the "**CCAA Proceedings**".

3. This affidavit is made in support of a motion for, *inter alia*, the approval of the fees and disbursements of Stikeman Elliott for the period from August 1, 2011 to October 31, 2011.

4. During the period from August 1, 2011 to October 31, 2011 Stikeman Elliott docketed 52.0 hours in respect of the CCAA Proceedings and billed a total of \$40,643.86 amounting to legal fees of \$35,376.50 and disbursements and other charges of \$606.12 plus Harmonized Sales Tax ("HST") of \$4,661.24. Attached and marked collectively as **Exhibit "A"** to this affidavit are true copies of the accounts rendered to FTI in connection with the CCAA Proceedings for the period of August 1, 2011 to October 31, 2011 (redacted for confidential information).

5. Attached hereto as **Exhibit "B"** is a schedule summarizing each invoice in Exhibit "A", the legal fees, disbursements, HST and total fees charged for each invoice.

6. Attached hereto as **Exhibit "C"** is a schedule summarizing the billing rates of each of the members of Stikeman Elliott who acted on behalf of the Monitor in the CCAA Proceedings from August 1, 2011 to October 31, 2011.

7. The hourly billing rates applied in the invoices of Stikeman Elliott are Stikeman Elliott's normal hourly rates which were in effect from August 1, 2011 to October 31, 2011 and are comparable to the hourly rates charged by Stikeman Elliott for services rendered in relation to similar proceedings.

8. The rates charged by Stikeman Elliott throughout the course of the CCAA Proceedings are comparable to the rates charged by other law firms in the Toronto market for the provision of similar services.

9. Stikeman Elliott's fees and disbursements for the period of November 1, 2011 up to and including the effective date of the Monitor's discharge will be calculated and billed at Stikeman Elliott's standard rates.

SWORN BEFORE ME at the City of Toronto, Province of Ontario on December 1, 2011.

Commissioner for Taking Affidavits

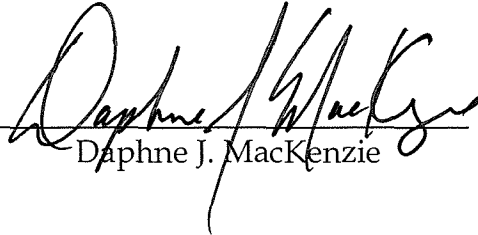
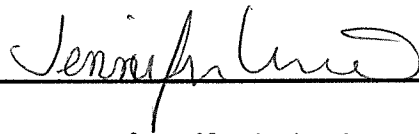

Daphne J. MacKenzie

EXHIBIT " A "

referred to in the Affidavit of

DAPHNE J. MACKENZIE

Sworn December 1, 2011

A handwritten signature in cursive script, appearing to read "Jennifer L. Imrie", is written over a solid horizontal line.

Jennifer L. Imrie

STIKEMAN ELLIOTT

Stikeman Elliott LLP, Barristers & Solicitors
5300 Commerce Court West, 199 Bay Street, Toronto, Canada M5L 1B9
Tel: (416) 869-5500 Fax: (416) 947-0866 www.stikeman.com

G.S.T./H.S.T. NO. 1214111360001
Q.S.T. No. 1018978624

Invoice

FTI Consulting Canada Inc.
TD Waterhouse Tower
Suite 2010, P.O. Box 104
79 Wellington Street, West
Toronto, ON M5K 1G8
Attention: Paul Bishop

September 22, 2011
File No. 1096791004
Invoice No. 5003624

FOR PROFESSIONAL SERVICES RENDERED in connection with Canwest Limited
Partnership for the period up to August 31, 2011.

<u>Date</u>	<u>Timekeeper</u>	<u>Hours</u>	<u>Description</u>
Aug 2, 2011	D.R. Byers	0.75	Review Reasons of Justice Pepall and meeting with M. Konyukhova with respect to setting up Claims Officer meeting
Aug 3, 2011	D.R. Byers	0.42	Re-read Reasons of Justice Pepall to prepare for call and attend on call with client
	M. Konyukhova	0.50	Correspondence with FTI regarding decision of Justice Pepall with respect to typographers' claim; review decision; call with FTI regarding same
Aug 8, 2011	D.R. Byers	0.33	Telephone discussion with M. Konyukhova with respect to referral of typographers' claim to Claims Officer; review and comment on draft letter
Aug 8, 2011	M. Konyukhova	0.75	Draft letter to CEP with respect to Retired Typographers' claim; correspondence with D. Byers regarding same
Aug 10, 2011	D.J. MacKenzie	1.50	Review correspondence; conference call with FTI regarding shares; prepare e-mail correspondence to S. Pasternack
Aug 11, 2011	D.R. Byers	0.17	Attend to emails with respect to typographers' claim
	D.J. MacKenzie	0.50	Correspondence to FTI
Aug 11, 2011	M. Konyukhova	0.33	Correspondence regarding typographers' claim
Aug 15, 2011	D.R. Byers	0.17	Attend to emails with respect to scheduling call with Claims Officer and involvement of Post

<u>Date</u>	<u>Timekeeper</u>	<u>Hours</u>	<u>Description</u>
Aug 15, 2011	M. Konyukhova	0.75	Media Correspondence with J. Kugler regarding settlement of typographers' claim; review prior correspondence regarding same; emails with D. Byers concerning settlement
Aug 16, 2011	D.R. Byers	0.17	Review draft form of Order and attend to emails with respect to same
	D.J. MacKenzie	1.50	Telephone call with M. Konyukhova regarding status of LP entities' CCAA proceedings; correspondence to [REDACTED]
	M. Konyukhova	1.50	correspondence to Postmedia Call with D. Myers with respect to retired typographers' claim; review draft Order regarding retired typographers' claim and provide comments; call with D. MacKenzie with correspondence to [REDACTED]; review email
Aug 17, 2011	D.R. Byers	0.17	Attend to emails with respect to conference before Claims Officer
	D.J. MacKenzie	0.33	Correspondence with Postmedia and FTI
	M. Konyukhova	0.83	Attend to various correspondence with respect to scheduling of conference call with Justice Osborne; call and email to Justice Osborne
Aug 19, 2011	D.R. Byers	1.00	Conference call with counsel for Postmedia and review material with respect to typographers' claim to prepare for call with Claims Officer
	M. Konyukhova	1.00	Email correspondence with C. Osborne's office and counsel for typographers and Postmedia regarding conference call; call with F. Myers regarding claims hearing; correspondence with Montreal office with respect to record before Court on a motion in annulment; correspondence with C. Osborne's office regarding conference call
Aug 23, 2011	D.R. Byers	1.00	Prepare for and attend on call with Claims Officer Osborne
Aug 23, 2011	M. Konyukhova	1.00	Conference call with Justice Osborne and counsel for Postmedia and CEP with respect to typographers' claim; correspondence concerning same
Aug 24, 2011	D.R. Byers	0.25	Call to F. Myers and discuss typographers' claim hearing with M. Konyukhova
Aug 29, 2011	D.R. Byers	0.25	Telephone call and emails from F. Myers
Aug 30, 2011	D.R. Byers	0.17	Review emails and send email with respect to lifting the to proceed against Postmedia
Aug 31, 2011	D.R. Byers	0.50	Conference call with F. Myers and report to

<u>Date</u>	<u>Timekeeper</u>	<u>Hours</u>	<u>Description</u>
Aug 31, 2011	M. Konyukhova	0.33	client with respect to same; email from P. Bishop Correspondence regarding resolution of typographers' claims

FEE SUMMARY

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate/Hr</u>	<u>Amount</u>
D.R. Byers	5.35	\$950.00	\$5,082.50
D.J. MacKenzie	3.83	825.00	3,159.75
M. Konyukhova	6.99	500.00	3,495.00

FEES

Professional Services	CAD \$11,737.25
HST @ 13.0%	1,525.84
Total Professional Services and Taxes	CAD \$13,263.09

CHARGES SUMMARY

<u>Description</u>	<u>Taxable</u>	<u>Non - Taxable</u>	<u>Total</u>
Photocopies	0.75		0.75
Total Charges	0.75	0.00	0.75
HST @ 13.0%			0.10
Total Charges and Taxes			CAD \$0.85

DISBURSEMENTS SUMMARY

<u>Description</u>	<u>Taxable</u>	<u>Non - Taxable</u>	<u>Total</u>
Telephone	29.90		29.90
Total Charges	29.90	0.00	29.90
HST @ 13.0%			3.89
Total Charges and Taxes			CAD \$33.79

INVOICE SUMMARY

Invoice No. 5003624

Re: Canwest Limited Partnership

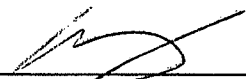
File No. 1096791004

	<u>Taxable</u>	<u>Non-Taxable</u>	<u>Total</u>
Professional Services	11,737.25	0.00	\$11,737.25
HST @ 13.0%			1,525.84
Charges	0.75	0.00	0.75
HST @ 13.0%			0.10
Disbursements	29.90		29.90
HST @ 13.0%			3.89

AMOUNT DUE

CAD 13,297.73

STIKEMAN ELLIOTT LLP



David R. Byers

Disbursements and charges may not have been posted at the date of this account. Please quote our File number and/or Invoice number when making payment. Accounts are due when rendered. Interest at the rate of 1.30 percent per annum will be charged for amounts unpaid 30 days or more.

STIKEMAN ELLIOTT

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G.S.T./H.S.T. NO. 1214111360001
Q.S.T. No. 1018978624

Invoice

FTI Consulting Canada Inc.
TD Waterhouse Tower
Suite 2010, P.O. Box 104
79 Wellington Street, West
Toronto, ON M5K 1G8
Attention: Paul Bishop

November 14, 2011
File No. 1096791004

Invoice No. 5023792

FOR PROFESSIONAL SERVICES RENDERED in connection with Canwest Limited
Partnership for the period up to October 31, 2011.

<u>Date</u>	<u>Timekeeper</u>	<u>Hours</u>	<u>Description</u>
Oct 5, 2011	D.J. MacKenzie	0.75	Correspondence with J. Lorito regarding [REDACTED]; correspondence to FTI regarding claims
Oct 17, 2011	D.R. Byers	0.17	Attend to email with D. MacKenzie with respect to [REDACTED] and discussion with respect to same
Oct 24, 2011	D.R. Byers	0.25	Attend to email with respect to the withheld shares being returned to the company (or transfer agent) for cancellation and discuss same with D. MacKenzie
Oct 24, 2011	D.J. MacKenzie	0.50	Correspondence with FTI; telephone call with M. Spiro regarding shares

FEE SUMMARY

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate/Hr</u>	<u>Amount</u>
D.R. Byers	0.42	\$950.00	\$399.00
D.J. MacKenzie	1.25	825.00	1,031.25

FEES

Professional Services	CAD \$1,430.25
HST @ 13.0%	185.93
Total Professional Services and Taxes	CAD \$1,616.18

DISBURSEMENT SUMMARY

<u>Description</u>	<u>Taxable</u>	<u>Non-Taxable</u>	<u>Total</u>
Agents' Fees	40.00		40.00
Business Meals - In Town	24.23		24.23
Total Disbursements	64.23		64.23
HST @ 13.0%			8.35
Total Disbursements and Taxes			\$72.58

INVOICE SUMMARY


Invoice No. 5023792

Re: Canwest Limited Partnership

File No. 1096791004

	<u>Taxable</u>	<u>Non-Taxable</u>	<u>Total</u>
Professional Services	1,430.25	0.00	\$1,430.25
HST @ 13.0%			185.93
Charges	0.00	0.00	0.00
HST @ 13.0%			0.00
Disbursements	64.23	0.00	64.23
HST @ 13.0%			8.35
AMOUNT DUE			<u>CAD \$1,688.76</u>

STIKEMAN ELLIOTT LLP



David R. Byers

Disbursements and charges may not have been posted at the date of this account.
Please quote our File number and/or Invoice number when making payment.
Accounts are due when rendered. Interest at the rate of 1.30 percent per annum
will be charged for amounts unpaid 30 days or more.

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G.S.T./H.S.T. NO. 1214111360001
Q.S.T. No. 1018978624

Invoice

FTI Consulting Canada Inc.
TD Waterhouse Tower
Suite 2010, P.O. Box 104
79 Wellington Street, West
Toronto, ON M5K 1G8
Attention: Paul Bishop

October 31, 2011
File No. 1096791004
Invoice No. 5013877

FOR PROFESSIONAL SERVICES RENDERED in connection with Canwest Limited
Partnership for the period up to September 30, 2011.

<u>Date</u>	<u>Timekeeper</u>	<u>Hours</u>	<u>Description</u>
Sep 1, 2011	D.R. Byers	0.50	Email to F. Myers; emails with M. Konyukhova with respect to motion to extend the stay of proceedings
	M. Konyukhova	0.50	Emails with respect to motion to extend stay of Proceeding and resolution of typographers' claims
Sep 2, 2011	D.R. Byers	0.17	Attend to emails from and to F. Myers
Sep 6, 2011	J. Imrie	0.47	Review of previous fee affidavit; email to FTI requesting invoices for fees; collection of Stikeman Elliott invoices for fees
Sep 7, 2011	D.J. MacKenzie	1.00	Review reports and correspondence; correspondence to Goodmans regarding tax matters; voice mail message for P. Bishop
Sep 8, 2011	D.J. MacKenzie	0.25	Telephone call with P. Bishop
	M. Konyukhova	0.50	Draft report for stay extension motion
Sep 9, 2011	D.R. Byers	0.25	Attend to telephone calls with respect to typographers' claim
	M. Konyukhova	0.75	Call with J. Porepa regarding report; draft report for stay extension motion
	J. Imrie	0.83	Revisions to charts prepared as attachments to fee affidavit
Sep 10, 2011	J. Imrie	0.80	Revisions to exhibits to fee affidavits
Sep 12, 2011	D.R. Byers	0.33	Conference call with F. Myers; meeting with M. Konyukhova with respect to draft Report
	D.J. MacKenzie	0.50	Exchange correspondence with [REDACTED]

<u>Date</u>	<u>Timekeeper</u>	<u>Hours</u>	<u>Description</u>
Sep 13, 2011	D.R. Byers	0.75	Review report from F. Myers and comment on same to client; prepare for conference call with Claims Officer
Sep 14, 2011	J. Imrie	0.70	Completed draft fee affidavits and exhibits
	D.R. Byers	0.75	Conference call with Claims Officer; emails with F. Myers; telephone call from P. Bishop
	M. Konyukhova	1.00	Conference call with counsel for the typographers and Postmedia and J. Osborne; draft reporting email regarding same
Sep 15, 2011	D.R. Byers	0.17	Comment on draft Minutes of Case Conference with Claims Officer
	M. Konyukhova	1.75	Correspondence regarding call with respect to retired typographers; draft Nineteenth Report; attend to correspondence with respect to same
Sep 16, 2011	J. Imrie	0.40	Review of draft Monitor's Report and previous reports in order to get up to speed for upcoming stay extension motion
	J. Imrie	0.93	Drafting of Notice of Motion and draft Order for Motion returnable Sept. 27, 2011
Sep 19, 2011	D.R. Byers	1.00	Review and comment on draft Nineteenth Monitor's Report and meeting with M. Konyukhova with respect to same
	D.J. MacKenzie	1.00	Attend to distribution issues; consider barred claims
	M. Konyukhova	1.50	Revise draft Report; correspondence with D. Byers with respect to same; correspondence with J. Porepa regarding Report; correspondence with D. MacKenzie regarding report and disclosure
	J. Imrie	1.87	Completed draft Motion Record; Notice of Motion and Order for motion returnable Sept 29
Sep 20, 2011	D.R. Byers	0.42	Review revised draft Monitor's Report
	D.J. MacKenzie	1.50	Review and revise Monitor's Report; correspondence with Goodmans; correspondence with [REDACTED]
	M. Konyukhova	2.25	Attend to preparation of materials for fee approval; review comments on Report; correspondence with respect to same; draft correspondence with respect to disallowance of tax assessments
Sep 21, 2011	D.R. Byers	0.50	Review client comments on draft Monitor's Report and emails with respect to the same; review Postmedia comments and emails with respect to the same

<u>Date</u>	<u>Timekeeper</u>	<u>Hours</u>	<u>Description</u>
	D.J. MacKenzie	0.33	Attend to Report issues; review affidavit
	M. Konyukhova	0.50	Revisions to Report; correspondence regarding same
	J. Imrie	0.58	Revisions to fee affidavits; review of redactions; prepared affidavits for swearing; emails with J. Porepa regarding the same
Sep 22, 2011	D.R. Byers	0.75	Review and approve final form of Motion Record
	M. Konyukhova	0.75	Correspondence with P. Bishop regarding fee affidavits; revisions to same; attend to finalizing Motion Record and service and filing of same
	J. Imrie	0.61	Revisions to motion materials; compiling of Motion Record
	M.D. Smith	0.30	Commissioned an affidavit
Sep 28, 2011	D.R. Byers	1.58	Prepare for motion
	D.J. MacKenzie	1.00	Prepare for motion; review Motion record; telephone call with D. Byers
Sep 28, 2011	J. Imrie	0.25	Telephone call to Commercial List regarding motion returnable September 29; preparing for attendance at court
Sep 29, 2011	D. Byers	1.25	Meeting with S. Bissell of FTI; attend on motion before Justice Pepall
Sep 29, 2011	D.J. MacKenzie	1.50	Prepare for and attend motion regarding stay extension
Sep 29, 2011	J. Imrie	1.42	Attendance at motion stay extension and fee affidavits; entered orders with Commercial List; sent copies to FTI for posting on website

FEE SUMMARY

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate/Hr</u>	<u>Amount</u>
D.R. Byers	8.42	\$950.00	\$7,999.00
D.J. MacKenzie	7.08	825.00	5,841.00
M. Konyukhova	9.50	500.00	4,750.00
J. Imrie	8.86	400.00	3,544.00
Michael Smith	0.30	250.00	75.00

FEES

Professional Services	CAD \$22,209.00
HST @ 13.0%	2,887.17
Total Professional Services and Taxes	CAD \$25,096.17

CHARGES SUMMARY

<u>Description</u>	<u>Taxable</u>	<u>Non - Taxable</u>	<u>Total</u>
Photocopies	272.00		272.00
Total Charges	272.00	0.00	272.00
HST @ 13.0%			35.37
Total Charges and Taxes			CAD \$307.37

DISBURSEMENTS SUMMARY

<u>Description</u>	<u>Taxable</u>	<u>Non - Taxable</u>	<u>Total</u>
Agents' Fees	67.08		67.08
Cash Received		-147,539.62	-147,539.62
Cash refunded		147,539.61	147,539.61
Filing Fees - N/T		127.00	127.00
Book Binding/Binders	11.20		11.20
Telephone	33.97		33.97
Total Disbursements	112.25	126.99	239.24
HST @ 13.0%			14.59
Total Disbursements and Taxes			CAD \$253.83

INVOICE SUMMARY

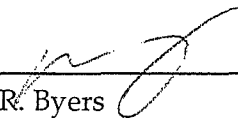
Invoice No. 5013877

Re: Canwest Limited Partnership

File No. 1096791004

	<u>Taxable</u>	<u>Non-Taxable</u>	<u>Total</u>
Professional Services	22,209.00	0.00	\$22,209.00
HST @ 13.0%			2,887.17
Charges	272.00	0.00	272.00
HST @ 13.0%			35.37
Disbursements	112.25	126.99	239.24
HST @ 13.0%			14.59
AMOUNT DUE			<u>CAD \$25,657.37</u>

STIKEMAN ELLIOTT LLP



David R. Byers

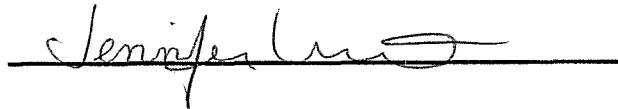
Disbursements and charges may not have been posted at the date of this account. Please quote our File number and/or Invoice number when making payment. Accounts are due when rendered. Interest at the rate of 1.30 percent per annum will be charged for amounts unpaid 30 days or more.

EXHIBIT " B "

referred to in the Affidavit of

DAPHNE J. MACKENZIE

Sworn December 1, 2011



Jennifer L. Imrie

EXHIBIT "B"

Summary of Stikeman Elliott Invoices
Invoices dated from September 22, 2011 to November 14, 2011

Invoice #	Date	Fees	Expenses	HST	TOTAL
5003624	22-Sep-11	\$ 11,737.25	\$ 30.65	\$ 1,529.83	\$ 13,297.73
5013877	31-Oct-11	\$ 22,209.00	\$ 511.24	\$ 2,937.13	\$ 25,657.37
5023792	14-Nov-11	\$ 1,430.25	\$ 64.23	\$ 194.28	\$ 1,688.76
TOTAL		\$ 35,376.50	\$ 606.12	\$ 4,661.24	\$ 40,643.86

EXHIBIT " C "

referred to in the Affidavit of

DAPHNE J. MACKENZIE

Sworn December 1, 2011

A handwritten signature in cursive script, appearing to read "Jennifer L. Imrie", is written over a solid horizontal line.

Jennifer L. Imrie

Exhibit "C"

Summary of Stikeman Elliott Fees
Services Rendered from August 1, 2011 to October 31, 2011

Name		Position	Total Hours	Hourly Rate	TOTAL
D.	Byers	Sr. Litigation Partner	14.19	\$ 950	\$ 13,480.50
D.	MacKenzie	Sr. Corporate Partner	12.16	\$ 825	\$ 10,032.00
M.	Konyukhova	Litigation Associate	16.49	\$ 500	\$ 8,245.00
J.	Imrie	Litigation Associate	8.86	\$ 400	\$ 3,544.00
M.	Smith	Articling Student	0.30	\$ 250	\$ 75.00
TOTAL			52.00		\$ 35,376.50

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS
AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANWEST PUBLISHING
INC./PUBLICATIONS CANWEST INC., CANWEST BOOKS INC. AND CANWEST (CANADA) INC.

Court File No: CV-10-8533-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF DAPHNE J. MACKENZIE
(SWORN DECEMBER 1, 2011)**

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

David R. Byers LSUC #: 22992W
Tel: (416) 869-5697
Ashley John Taylor LSUC#: 39932E
Tel: (416) 869-5236
Maria Konyukhova LSUC#: 52880V
Tel: (416) 869-5230
Fax: (416) 861-0445

Lawyers for the Monitor

APPENDIX

"G"

**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 PLAN OF COMPROMISE OR ARRANGEMENT
OF CANWEST PUBLISHING INC./PUBLICATIONS CANWEST INC.,
CANWEST BOOKS INC. AND CANWEST (CANADA) INC.**

**AFFIDAVIT OF PAUL BISHOP
(sworn December 1, 2011)**

I, Paul Bishop, of the City of Toronto, in the Province of Ontario MAKE OATH
AND SAY:

1. I am a Senior Managing Director of FTI Consulting Canada Inc. ("**FTI**") and, as such, I have knowledge of the matters to which I hereinafter depose.
2. On January 8, 2010, Canwest Publishing Inc./Publications Canwest Inc., Canwest Books Inc., Canwest (Canada) Inc. and Canwest Limited Partnership/Canwest Societe en Commandite (collectively the "**LP Entities**"), obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended, (the "**CCAA**") pursuant to the initial order granted by the Honourable Madam Justice Pepall (the "**Initial Order**"). FTI was appointed as monitor (the "**Monitor**") of the LP Entities. The proceedings commenced by the LP Entities under the CCAA will be referred to herein as the "**CCAA Proceedings**".
3. This affidavit is made in support of a motion for, *inter alia*, the approval of fees and disbursements of FTI for the period of September 1, 2011 to October 31, 2011.

4. Attached and marked collectively as **Exhibit "A"** to this affidavit are true copies of the accounts rendered to the LP Entities for the period of September 1, 2011 to October 31, 2011 (redacted for confidential information), in the total amount of \$29,402.60.

5. Attached hereto as **Exhibit "B"** is a schedule summarizing each invoice in Exhibit "A", the fees, disbursements, HST and total fees charged for each invoice.

6. Attached hereto as **Exhibit "C"** is a schedule summarizing the billing rates and total amounts billed with respect to each member of FTI that rendered services in the CCAA Proceedings from September 1, 2011 to October 31, 2011.

7. To the best of my knowledge, the rates charged by FTI throughout the course of the CCAA Proceedings are comparable to the rates charged by other firms in the Toronto market for the provision of similar restructuring services.

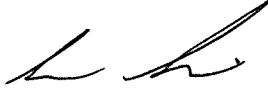
8. The hours spent on this matter involved monitoring the LP Entities and dealing with a number of CCAA issues (as more particularly described in the Monitor's reports) and I believe that the total hours incurred by FTI were reasonable and appropriate in the circumstances.

9. Additional professional time will be required to complete the CCAA Proceedings.

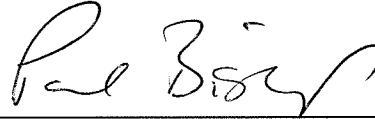
10. FTI requests that the Court approve its accounts for the period of September 1, 2011 to October 31, 2011 for fees in the amount of \$26,020.00 and HST of \$3,382.60. No disbursements were incurred by FTI for the period of September 1, 2011 to October 31, 2011.

11. This Affidavit is sworn in support of a motion for the approval of the fees and disbursements and for no improper purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on December 1, 2011.



Commissioner for Taking Affidavits



Paul Bishop

**Sean Edward Gibson, a
Commissioner etc., Province of Ontario,
while a student-at-law.
Expires April 12, 2013.**

EXHIBIT " A "

referred to in the Affidavit of

PAUL BISHOP

Sworn Dec 1, 2011



Sean Edward Gibson, a
Commissioner etc., Province of Ontario,
while a student-at-law.
Expires April 12, 2013.



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FTI Consulting Canada Inc.
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto ON M5K1G8

Invoice Remittance

Canwest Limited Partnership
c/o FTI Consulting Canada Inc.
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON M5K 1G8

September 30, 2011
FTI Invoice No. 29000106
FTI Job No. 012660.0008
Terms: Payment on Presentation

Current Invoice Period: Charges Posted through September 30, 2011

	<i>CAD (\$)</i>
Professional Services.....	\$19,530.00
Expenses.....	\$0.00
Total Fees and Expenses.....	\$19,530.00
HST Registration No. 835718024RT0001	\$2,538.90
Total Amount Due this Period.....	\$22,068.90
Previous Balance Due.....	\$0.00
Total Amount Due.....	<u>\$22,068.90</u>

Please Wire Transfer To:

**Bank of Nova Scotia
Scotia Plaza, 44 King Street West
Toronto, ONT M5H 1H1
Swift Code: NOSCCATT
Bank Number: 002
Beneficiary: FTI Canada Inc.
Beneficiary account number: 476960861715**



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Canwest Limited Partnership
c/o FTI Consulting Canada Inc.
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON M5K 1G8

Invoice Summary

September 30, 2011
FTI Invoice No. 29000106
FTI Job No. 012660.0008
Terms Payment on Presentation

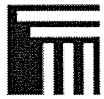
Current Invoice Period: Charges Posted through September 30, 2011

Name	Title	Rate	Hours	Total
Paul Bishop	Senior Managing Director	\$830.00	14.2	\$11,786.00
Steven Bissell	Managing Director	\$700.00	6.1	\$4,270.00
Jodi Porepa	Director	\$575.00	3.4	\$1,955.00
Patrick Leimkuehler	Consultant	\$355.00	4.0	\$1,420.00
Ana Arevalo	Administrative Professional	\$110.00	0.9	\$99.00
Total Hours and Fees			28.6	\$19,530.00
HST Registration No. 835718024RT0001				\$2,538.90
Invoice Total for Current Period				\$22,068.90

Canwest Limited Partnership
012660.0008 - September 30, 2011
Invoice # 29000106

Date	TK#	Name	Hours	Amount	Hours	Amount	Narrative	Task Code
09/01/11	15273	Ana Arevalo	0.50	\$ 55.00	0.50	\$ 55.00	File administration.	1
09/02/11	15273	Ana Arevalo	0.40	\$ 44.00	0.40	\$ 44.00	File administration.	1
09/01/11	14800	Paul Bishop	1.20	\$ 996.00	1.20	\$ 996.00	Work regarding typographers. Follow up on emails and review of information.	1
09/08/11	14800	Paul Bishop	0.80	\$ 664.00	0.80	\$ 664.00	Call with DMackenzie regarding shares and prepare for same.	1
09/13/11	14800	Paul Bishop	0.70	\$ 581.00	0.70	\$ 581.00	Update on status with Typographers.	1
09/14/11	14800	Paul Bishop	1.80	\$ 1,494.00	1.80	\$ 1,494.00	Conference call regarding typographer claim. Follow up regarding same.	1
09/19/11	14800	Paul Bishop	1.80	\$ 1,494.00	1.80	\$ 1,494.00	Draft report.	1
09/20/11	14800	Paul Bishop	3.10	\$ 2,573.00	3.10	\$ 2,573.00	Review and revise report. Prepare and review fee affidavit.	1
09/21/11	14800	Paul Bishop	2.10	\$ 1,743.00	2.10	\$ 1,743.00	Finalize report and fee affidavit.	1
09/22/11	14800	Paul Bishop	1.80	\$ 1,494.00	1.80	\$ 1,494.00	Fee affidavit execution. Teleconference regarding same. Issue court report.	1
09/23/11	14800	Paul Bishop	0.90	\$ 747.00	0.90	\$ 747.00	Update regarding share issues and research regarding same.	1
09/19/11	14856	Steven Bissell	0.50	\$ 350.00	0.50	\$ 350.00	Administration of payments from Administrative Reserve Account. Correspondence and follow-up regarding outstanding issues including [REDACTED].	1
09/20/11	14856	Steven Bissell	0.80	\$ 560.00	0.80	\$ 560.00	Discussions regarding Monitor's report and comments regarding same. Payment administration and reporting in Ascend.	1
09/22/11	14856	Steven Bissell	1.00	\$ 700.00	1.00	\$ 700.00	Review of court materials including Monitor's reports filed with respect to Court hearing on September 29th.	1
09/12/11	14856	Steven Bissell	0.50	\$ 350.00	0.50	\$ 350.00	Review of correspondence regarding [REDACTED]. Dealing with bank accounts. Emails to [REDACTED] regarding same.	1
09/07/11	14856	Steven Bissell	0.80	\$ 560.00	0.80	\$ 560.00	Updates to Administrative Reserve summary and email regarding same to [REDACTED].	1
09/29/11	14856	Steven Bissell	2.50	\$ 1,750.00	2.50	\$ 1,750.00	Preparation for, and attendance in Court for hearing to request extension of Final Distribution date and Stay of Proceedings.	1
03/14/11	14648	Patrick Leimkuehler	2.00	\$ 710.00	2.00	\$ 710.00	Follow up on call log.	1
03/18/11	14648	Patrick Leimkuehler	1.00	\$ 355.00	1.00	\$ 355.00	Follow up on call log and respond to creditor inquiries via email.	1
03/25/11	14648	Patrick Leimkuehler	1.00	\$ 355.00	1.00	\$ 355.00	Checked call log. Responded to email inquiries.	1
09/08/11	15532	Jodi Porepa	1.20	\$ 690.00	1.20	\$ 690.00	Discussion regarding next court report. Review billing.	1
09/14/11	15532	Jodi Porepa	0.70	\$ 402.50	0.70	\$ 402.50	Conference call with Stikemans, Goodmans, Typographer counsel and Claims Officer. Review email history.	1
09/27/11	15532	Jodi Porepa	1.50	\$ 862.50	1.50	\$ 862.50	Review Monitor's report and provide comments.	1
09/20/11	15532	Jodi Porepa	1.50	\$ 862.50	1.50	\$ 862.50	Review Monitor's report and provide comments.	1
09/27/11	15532	Jodi Porepa	-1.50	\$ (862.50)	-1.50	\$ (862.50)	Time reversal	1
GRAND TOTAL			28.60	\$ 19,530.00	28.60	\$ 19,530.00		

- \$ -



F T I
CONSULTING

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FTI Consulting Canada Inc.
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto ON M5K1G8

Invoice Remittance

Canwest Limited Partnership
c/o FTI Consulting Canada Inc.
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON M5K 1G8

October 31, 2011
FTI Invoice No. 29000113
FTI Job No. 012660.0008
Terms: Payment on Presentation

Current Invoice Period: Charges Posted through October 31, 2011

	<i>CAD (\$)</i>
Professional Services.....	\$6,490.00
Expenses.....	<u>\$0.00</u>
Total Fees and Expenses.....	\$6,490.00
HST Registration No. 835718024RT0001	<u>\$843.70</u>
Total Amount Due this Period.....	\$7,333.70
Previous Balance Due.....	<u>\$0.00</u>
Total Amount Due.....	<u><u>\$7,333.70</u></u>

Please Wire Transfer To:

Bank of Nova Scotia
Scotia Plaza, 44 King Street West
Toronto, ONT M5H 1H1
Swift Code: NOSCCATT
Bank Number: 002
Beneficiary: FTI Canada Inc.
Beneficiary account number: 476960861715



Critical thinking at the critical time.™

Canwest Limited Partnership
c/o FTI Consulting Canada Inc.
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON M5K 1G8

Invoice Summary

October 31, 2011
FTI Invoice No. 29000113
FTI Job No. 012660.0008
Terms Payment on Presentation

Current Invoice Period: Charges Posted through October 31, 2011

Name	Title	Rate	Hours	Total
Paul Bishop	Senior Managing Director	\$830.00	4.9	\$4,067.00
Steven Bissell	Managing Director	\$700.00	3.1	\$2,170.00
Pamela Luthra	Director	\$550.00	0.3	\$165.00
Ana Arevalo	Administrative Professional	\$110.00	0.8	\$88.00
Total Hours and Fees			9.1	\$6,490.00
HST Registration No. 835718024RT0001				\$843.70
Invoice Total for Current Period				\$7,333.70

Canwest Limited Partnership
012660.0008 - October 31, 2011
Invoice # 29000113

Date	TK#	Name	Hours	Amount	Hours	Amount	Narrative	Task Code
10/04/11	15273	Ana Arevalo	0.40	\$ 44.00	0.40	\$ 44.00	File administration.	1
10/03/11	15273	Ana Arevalo	0.40	\$ 44.00	0.40	\$ 44.00	File administration.	1
10/17/11	14800	Paul Bishop	0.80	\$ 664.00	0.80	\$ 664.00	Email regarding [REDACTED]	1
10/19/11	14800	Paul Bishop	1.10	\$ 913.00	1.10	\$ 913.00	Review and call regarding share sales.	1
10/27/11	14800	Paul Bishop	1.20	\$ 996.00	1.20	\$ 996.00	Correspondence from counsel regarding Typographers and shares. Follow up regarding same.	1
10/05/11	14800	Paul Bishop	0.80	\$ 664.00	0.80	\$ 664.00	Review of correspondence from Alberta and Stikemans. Teleconference with claimant.	1
10/06/11	14800	Paul Bishop	1.00	\$ 830.00	1.00	\$ 830.00	Correspondence regarding Typographer claims.	1
10/03/11	14856	Steven Bissell	1.50	\$ 1,050.00	1.50	\$ 1,050.00	Investigations into quantum and treatment of provincial government claim for corporate income taxes for tax year ending August 31, 2010. Discussions with P. Bishop and email to Stikeman Elliott regarding same. Payment administration and reconciliation regarding Administration.	1
10/12/11	14856	Steven Bissell	1.30	\$ 910.00	1.30	\$ 910.00	Payments from Administrative Reserve. Monitor's bank account review and reconciliations.	1
10/13/11	14856	Steven Bissell	0.30	\$ 210.00	0.30	\$ 210.00	Administration of Monitor's bank accounts and follow-up with Monitor's bank regarding status of accounts.	1
10/03/11	14888	Pamela Luthra	0.30	\$ 165.00	0.30	\$ 165.00	Responding to the Monitor's hotline.	1
GRAND TOTAL			9.10	\$ 6,490.00	9.10	\$ 6,490.00		

- \$ -

EXHIBIT " B "

referred to in the Affidavit of

PAUL BISHOP

Sworn Dec 1, 2011



Sean Edward Gibson, a
Commissioner etc., Province of Ontario,
while a student-at-law.
Expires April 12, 2013.

Exhibit "B"

Summary of FTI Invoices
Invoices dated September 30, 2011 to October 31, 2011

Invoice #	Date	Fee	Disbursements	HST	Total
29000106	30-Sep-11	\$ 19,530.00	\$ -	\$ 2,538.90	\$ 22,068.90
29000113	31-Oct-11	\$ 6,490.00	\$ -	\$ 843.70	\$ 7,333.70
TOTAL		\$ 26,020.00	\$ -	\$ 3,382.60	\$ 29,402.60

EXHIBIT " C "

referred to in the Affidavit of

PAUL BISHOP

Sworn Dec 1, 2011



Sean Edward Gibson, a
Commissioner etc., Province of Ontario,
while a student-at-law.
Expires April 12, 2013.

Exhibit "C"

Summary of FTI Fees

Services Rendered from September 30, 2011 to October 31, 2011

Name	Position	Hours	Hourly Rate	Total
P. Bishop	Sr. Managing Director	19.1	\$ 830	\$ 15,853.00
S. Bissell	Managing Director	9.2	\$ 700	\$ 6,440.00
J. Porepa	Director	3.4	\$ 575	\$ 1,955.00
P. Luthra	Director	0.3	\$ 550	\$ 165.00
P. Leimkuehler	Consultant	4	\$ 355	\$ 1,420.00
A. Arevalo	Admin. Professional	1.7	\$ 110	\$ 187.00
Totals		37.7		\$ 26,020.00

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS
AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANWEST PUBLISHING
INC./PUBLICATIONS CANWEST INC., CANWEST BOOKS INC. AND CANWEST (CANADA) INC.

Court File No: CV-10-8533-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**AFFIDAVIT OF PAUL BISHOP
(SWORN DECEMBER 1, 2011)**

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

David R. Byers LSUC #: 22992W
Tel: (416) 869-5697
Ashley John Taylor LSUC#: 39932E
Tel: (416) 869-5236
Maria Konyukhova LSUC#: 52880V
Tel: (416) 869-5230
Fax: (416) 861-0445

Lawyers for the Monitor

TAB 3

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

THE HONOURABLE) FRIDAY, THE 9TH
)
MADAM JUSTICE PEPALL) DAY OF DECEMBER, 2011

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF CANWEST PUBLISHING INC./ PUBLICATIONS CANWEST INC.,
CANWEST BOOKS INC., AND
CANWEST (CANADA) INC.**

Applicants

ORDER

THIS MOTION, made by FTI Consulting Canada Inc. ("FTI"), in its capacity as monitor ("**Monitor**") to Canwest Publishing Inc./Publications Canwest Inc. ("**CPI**"), Canwest Books Inc. ("**CBI**"), and Canwest (Canada) Inc. ("**CCI**"), and together with the CPI and CBI, the "**Applicants**") and Canwest Limited Partnership/Canwest Societe en Commandite (the "**Limited Partnership**", and together with the Applicants, the "**LP Entities**") for an order, *inter alia*, extending the Final Distribution Date (as defined below) and approving the activities of the Monitor and the fees and disbursements of the Monitor and its counsel was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Twentieth Report of the Monitor dated December 2, 2011, the Affidavit of Paul Bishop, sworn December 1, 2011 (the "**Bishop Affidavit**"), the Affidavit of Daphne J. MacKenzie, sworn December 1, 2011 (the "**MacKenzie Affidavit**") and on hearing from counsel for the Monitor and other such counsel as were present, no one else appearing although duly served.

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and that the motion is properly returnable today

and service upon any interested party other than those parties served is hereby dispensed with.

2. **THIS COURT ORDERS** that the definition of "Final Distribution Date" contained in section 1.1 of the consolidated plan of compromise concerning, affecting and involving the LP Entities dated as of May 20, 2010, as amended by Order dated December 30, 2010, Order dated February 28, 2011, Order dated March 21, 2011 and Order dated May 30, 2011 is hereby amended to read as follows:

"Final Distribution Date" means March 31, 2012.

3. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 21 of the Initial Order of the Honourable Madam Justice Pepall dated January 8, 2010) is hereby extended until and including March 31, 2012.

4. **THIS COURT ORDERS** that the Twentieth Report of the Monitor dated December 2, 2011 and the activities described therein are hereby approved.

5. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its counsel, Stikeman Elliott LLP for the period of August 1, 2011 to October 31, 2011, all as particularized in the Bishop Affidavit and the MacKenzie Affidavit are hereby approved.

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

Court File No: CV-10-8533-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANWEST PUBLISHING INC./PUBLICATIONS CANWEST INC., CANWEST BOOKS INC. AND CANWEST (CANADA) INC.

Applicants

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

Proceeding commenced at Toronto

ORDER

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

Court File No. CV-10-8533-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANWEST PUBLISHING INC./PUBLICATIONS CANWEST INC., CANWEST BOOKS INC. AND CANWEST (CANADA) INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
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MOTION RECORD
(RETURNABLE DECEMBER 9, 2011)

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