

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

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

Applicants

**AFFIDAVIT OF MARK HOOTNICK
(sworn January 27, 2010)**

I, MARK HOOTNICK, of the City of New York, in the State of New York,
MAKE OATH AND SAY:

1. I am a Managing Director at Moelis & Company LLC ("Moelis"), financial advisor to the ad hoc committee (the "Committee") of the holders of the 9.25% Senior Subordinated Notes (the "Notes") issued by Canwest Limited Partnership (the "Limited Partnership") under a note indenture dated July 13, 2007 (collectively, the "Noteholders"). The Notes are in default and the Noteholders are owed approximately \$438,000,000.
2. On January 8, 2010, the Court granted the Applicants and the Limited Partnership (together with the Applicants, the "LP Entities") protection from their creditors under the *Companies' Creditors Arrangement Act* (the "CCAA"). The Court

appointed FTI Consulting Inc. to act as the monitor (the "Monitor") in the CCAA proceedings.

3. Moelis is an investment bank that provides financial advisory services to clients in connection with mergers and acquisitions, restructurings and other strategic matters. Moelis' managing directors are veteran dealmakers who have extensive experience in raising capital and conducting complex transactions with respect to, among other things, distressed companies. Moelis operates through offices in North America, Europe and Australia.

4. Recently, Moelis has been involved in a number of large restructurings (representing the debtor or creditors) including Idearc Inc., Aleris International Inc., Tribune Co., Lyondell Chemical Company, TOUSA Inc., General Growth Properties Inc. and Station Casinos Inc.

5. I have been involved in the investment banking industry for approximately 15 years and have, over that time, provided restructuring advice to companies, creditors, shareholders and other interested parties on restructuring transactions. I have advised both debtors and creditors in restructurings such as General Motors Company, ICO Global Communications (Holdings) Ltd., Stolt-Nielsen S.A, Ispat Mexicana, J.G. Wentworth LLC, US Office Products Company, Dayton Superior Corporation, AMF Bowling Inc. and Lear Corporation.

Moelis Retained By Committee

6. In December 2009, the Committee's legal advisor, Davies Ward Phillips & Vineberg LLP ("Davies") selected Moelis to act as its financial advisor in connection

with the Limited Partnership's default on the Senior Secured Credit Agreement and Notes, and the fact that the Limited Partnership is seeking restructuring alternatives. Specifically, Davies advised Moelis that the Committee was considering proposing a restructuring transaction involving the Limited Partnership and Davies wanted Moelis' advices on such a proposal.

7. At the time Moelis was engaged and while Moelis was negotiating its engagement letter, Moelis requested that the LP Entities provide it with access to the LP Entities' data room and management so that it could commence its due diligence in order to advise Davies on the Committee's restructuring proposal. Moelis offered to sign a confidentiality agreement that would limit its ability to disclose confidential information, including to members of the Committee who were not yet willing to receive such information on a confidential basis. The LP Entities provided such a confidentiality agreement several days after I was informed Davies requested it. The substance of the confidentiality agreement was settled on or about December 10, 2009 and Moelis executed it but did not receive an executed counterpart. On December 16, 2009, after the confidentiality agreement was finalized, the LP Entities first insisted on seeing Moelis' engagement letter as a condition for Moelis to have access to any confidential information. At that time, Moelis, Davies and the Committee had not yet executed and delivered the engagement letter. The LP Entities are not party to the engagement letter and are not paying any of Moelis' fees. After receiving a draft of the engagement letter, the Limited Partnership provided Moelis access to the data room on December 22, 2009. Moelis requested to meet

with management of the Limited Partnership but the Limited Partnership did not make management available to Moelis until after the CCAA Filing.

8. By letter agreement dated January 4, 2010, Davies retained Moelis in Davies capacity as counsel to the Committee. Moelis is advising and assisting the Committee with respect to its desire to put forward a competitive restructuring proposal regarding the LP Entities. The Agreements among the LP Entities and the Secured Lenders described below along with the sale process those parties designed make the task of advancing a competitive restructuring proposal extremely difficult.

The Support Agreement

9. In connection with the CCAA filing, the LP Entities and The Bank of Nova Scotia, as administrative agent for a syndicate of the Secured Lenders, negotiated a support agreement dated January 7, 2010 (the "Support Agreement").

10. The Support Agreement requires the LP Entities to:

- (i) accept a debtor-in-possession loan with terms that are more expensive than the Noteholders' proposal and which includes fees and restrictions that may have the effect of discouraging attempts to obtain alternative financing;
- (ii) pay fees that are likely to be substantial to the Secured Lender's advisors and not pay fees to financial advisors to other major stakeholders;

- (iii) pay fees to Secured Lenders who commit to accept the plan of reorganization described in the Support Agreement, which has the effect of benefiting the Secured Lenders over other stakeholders; and
- (iv) accept a sale and investor solicitation process (the "SISP") which is flawed (for the reasons described below) and has the effect of giving the Secured Lenders extensive control over the process and the ability to deter other bidders.

11. The Support Agreement also requires the LP Entities pursue a credit acquisition (the "Credit Acquisition") by an entity, capitalized by the Secured Lenders and the *pari passu* swap counterparties, that will acquire substantially all of the assets of the LP Entities.

The Sale and Investor Solicitation Process

12. I have reviewed the SISP and considered whether the SISP is an appropriate process to achieve the highest likely value for the LP Entities' business and benefit all of the LP Entities' stakeholders. The SISP became available to us when the Applicants filed for protection under the CCAA and the order was granted; neither Moelis nor the Committee had any input in its preparation. In my view, for the reasons set out below, among others, the SISP is not an appropriate process to maximize value for stakeholders and will likely deter competitive bidding for the LP Entities.

(a) Lack of Competition for Credit Acquisition

13. The Credit Acquisition establishes a floor price for the SISP using the principal amount of the Secured Debt (as defined below) to set the minimum value of

the LP Entities. No competitive process established the floor price. A competitive process may have allowed the LP Entities to arrange a stalking horse bid with a higher price. A higher price would also have allowed for distributions to stakeholders other than the Secured Lenders. If bids are submitted in accordance with the SISP then those bids are more than likely to be only marginally above the floor price.

14. The SISP, which the Secured Lenders proposed, will likely have the effect of deterring competitive bids and imposing increased costs on the LP Entities.

(b) Secured Lenders' Veto Rights

15. The SISP gives, in various stages, the Secured Lenders the ability to veto or reject any bid or offer that the LP Entities receive and that does not pay the Secured Lenders, in cash, the full amount owed to them (the "Secured Debt"), minus \$25 million. The veto right has several negative impacts on the ability of the SISP to achieve a maximum price for LP Entities.

16. First, the veto right will allow the Secured Lenders to defeat a proposal that could, in actual value terms, provide the most significant payment for the LP Entities. The vote of Senior Lenders holding only one-third of the Secured Debt could defeat such a proposal. The Secured Lenders could defeat such a proposal without any say from the Limited Partnership, the Court or FTI Consulting Inc., the court-appointed Monitor of the LP Entities. That is the case, notwithstanding that such a proposal could provide a greater benefit to all of the LP Entities' stakeholders, including the Secured Lenders.

17. For example, the Support Agreement gives Secured Lenders holding one-third of the Secured Debt the ability to veto an offer that would provide the Secured Lenders with almost a full payout of the Secured Debt in cash plus debt and securities in a restructured Limited Partnership and provide additional payments or benefits to other stakeholders. Less than a majority of the Secured Lenders could veto this proposal at Phase 1 so that the bid or offer would not be further considered or developed by the offeror or, indeed, by the LP Entities, the Monitor and others. This is the case notwithstanding that the value of the offer might exceed the value of the Secured Debt and might even offer the Secured Lenders a package of securities and cash that many of them would prefer. It is also possible that a proposal would allow those Secured Lenders who wanted a cash repayment to receive it, while allowing Secured Lenders who would prefer non-cash consideration to receive such other consideration; a minority of Secured Lenders could prevent this.

18. The SISF gives a group of the Secured Lenders control over whether any other stakeholder may obtain benefits from the sale of the Limited Partnership's assets or any other investment transaction. Giving such power to a small group of the Secured Lenders does not ensure that the sale process will obtain the maximum benefit for all stakeholders. Instead, such a process merely gives the Secured Lenders the opportunity to obtain what they consider best for themselves.

19. Second, the fact that a group of Secured Lenders are given a veto right over a bid that does not provide full cash payout of the Secured Debt will have a significant negative impact on the entire bidding process. The process favors an all cash bid, over a restructuring transaction that considers all options that are available.

20. Parties that may otherwise be willing to make a significant offer (but not a full cash payout of the Secured Lenders) will be less inclined to spend the time, effort and money that is required to make a proposal if the Secured Lenders can simply prevent the offer from moving forward without consideration of the desire of other stakeholders. Parties are unlikely to make a credible proposal when they are aware that it can be rejected, out of hand, by a party that has already had its bid approved.

(c) Lack of Clarity

21. Based on the SISIP, bidders will only be able to continue to Phase 2 of the process if the bids (i) contemplate a cash amount equal or greater to the Secured Debt or (ii) are structured in a way that might receive approval from the Secured Lenders. Based on the lack of information available regarding the Senior Lenders' proposal, it is impossible for a prospective bidder to know what form of bid the Secured Lenders might approve.

22. In order to assess whether a potential bid might receive such approval, a bidder needs to understand what value the Secured Lenders are to receive under their proposal. In order to understand that, a bidder must receive significant information that the Secured Lenders have not made available, including, for example, the debt to equity mix, the terms of the securities that the Secured Lenders will receive, whether those securities will be public or private, how much cash the Secured Lenders will receive, etc. As a result of the lack of the foregoing information, it is impossible for a potential bidder to know what type of consideration the Secured Lenders will receive under their own proposal. The information is necessary for a

proposed bidder to create a bid that would be potentially more valuable to the Secured Lenders.

23. Due to the lack of information being made available, potential bidders are being asked to bid against a proposal that they cannot value. As a result, the bidding process is, to a significant degree, illusory.

(d) Aggressive Timetable

24. The transaction to purchase the LP Entities is complex. The LP Entities operate 35 newspapers across nine metropolitan markets as well as a significant internet network of digital media properties. The LP Entities employ over 4,700 people, own or lease 17 principal facilities and are party to a variety of complex and material contractual arrangements. The businesses generate approximately \$1 billion a year in revenue.

25. It will be difficult and time consuming for a bidder to raise in the range \$1 billion and that difficulty will be compounded by the need to ensure that the business will continue to meet the Canadian ownership requirements of the *Income Tax Act*. That difficulty is further compounded by the fact that the Steering Committee of the Senior Lenders includes all of Canada's major chartered banks who may be unwilling to support competing bidders if they prefer their own bid.

26. For a transaction of this size and complexity, and given the limited access to information that has been provided to potential bidders, the current timetable is insufficient to ensure that the bid process is likely to result in the highest bid possible. Seven weeks is not enough time to allow for an interested party who has had limited

access to information to prepare and deliver a well considered bid, even one that is not binding. Further, the SISP requires a potential bidder to give some evidence of financing at Phase 1 and therefore a potential bidder will also need to have its prospective financial partners conduct due diligence and those financial sources will require that same diligence to be conducted.

Alternative Process

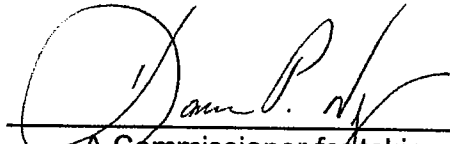
27. In my view, a process that would have a superior chance of creating a competitive and robust bidding process would be one that modifies the existing SISP as follows:

- (i) Extend the periods for Phase 1 and Phase 2 from seven weeks to at least eight weeks, respectively;
- (ii) Allows financing sources to access the Confidential Information Memorandum during Phase 1 upon the execution of a confidentiality agreement and perform customary due diligence during Phase 2;
- (iii) Removes the veto rights that the Agent has in relation to waiving compliance with any of the requirements for a Qualified Bidder, Qualified Investment Bids, Qualified Purchase Bids or changing the sale process; and
- (iv) Removes the Agent's ability to affect the sale process based on its determination of whether the Potential Superior Alternative Offer would receive Secured Lender approval.

28. The amended Sale and Investor Solicitation Process is attached to my Affidavit as Exhibit A.

29. I believe the alternative process described herein addresses the concerns outlined above and therefore is an appropriate process for attempting to obtain the highest possible value for the LP Entities' business, striking a fair balance among the interested parties. It will also allow the Noteholders and other parties a real opportunity to make a competitive bid for the LP Entities' business.

SWORN BEFORE ME at)
the City of New York, in the)
State of New York, this)
27th day of January, 2010)


A Commissioner for taking
Affidavits, etc.


MARK HOOTNICK

KAREN P. NG
Notary Public, State of New York
No. 01NG6070434
Qualified in Queens County
Commission Expires Mar. 4, 2016

This is Exhibit A referred to in the
 affidavit of Mark Hoetnick
 sworn before me, this 27th
 day of January 2010

Schedule "A"

Procedures for the Sale and Investor Solicitation Process

Don P. Hoff
 A COMMISSIONER FOR TAKING AFFIDAVITS

On January 8, 2010, Canwest Publishing Inc. / Publications Canwest Inc. ("CPI"), Canwest (Canada) Inc. and Canwest Books Inc. (the "Applicants") obtained an initial order (the "Initial Order") under the *Companies' Creditors Arrangement Act* ("CCAA") from the Ontario Superior Court of Justice (the "Court"). The Initial Order also applies to Canwest Limited Partnership/Canwest Societe en Commandite (the "Limited Partnership", which together with the Applicants make up the "LP Entities"). As part of the Initial Order, the Court: (i) approved the Sale and Investor Solicitation Process (the "SISP") set forth herein to determine whether a Successful Bid (as defined below) can be obtained; and (ii) authorized CPI and the Limited Partnership to file the Senior Lenders CCAA Plan, pursuant to which, if there is no Successful Bid, 7272049 Canada Inc. ("AcquireCo") will acquire certain assets and assume certain liabilities of CPI (the "Credit Acquisition").

Set forth below are the procedures (the "SISP Procedures") to be followed with respect to a sale and investor solicitation process to be undertaken to seek a Successful Bid, and if there is a Successful Bid, to complete the transactions contemplated by the Successful Bid.

Defined Terms

All capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Initial Order or in the Senior Lenders CCAA Plan, attached to the Initial Order. In addition, in these SISP Procedures:

"**CCAA Senior Lender Approval**" means a formal vote of the Senior Lenders under the CCAA, pursuant to which super majority approval of the Senior Lenders as required by the CCAA, being 66.7% by Cdn\$ and an absolute majority in number of the Senior Lenders that vote, is obtained;

"**Senior Secured Claims Amount**" means the aggregate amount owing (whether for principal, interest, fees, recoverable costs or otherwise) to the Senior Lenders and the Agent, as at the date upon which the transactions contemplated by the Successful Bid, if any, are completed, under:

- (i) the Senior Credit Agreement;
- (ii) all Hedging Agreements; and
- (iii) the LP Support Agreement,

in each case calculated based on the deemed conversion of claims denominated in US Dollars to Canadian Dollars on the Filing Date;

"**Superior Cash Offer**" means a credible, reasonably certain and financially viable offer that would result in a cash distribution to the Senior Lenders on closing of the transaction contemplated by the offer of the Senior Secured Claims Amount less a discount of Cdn \$25 million calculated as of the date of such closing (the "**Reference Amount**");

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"Superior Alternative Offer" means a credible, reasonably certain and financially viable offer for the purchase of all or substantially all of the LP Property (for greater certainty, including any such offer where the cash component available for distribution to the Senior Lenders upon closing, if any, is less than the Reference Amount) or a reorganization of the LP Plan Entities; and

"Superior Offer" means either a Superior Cash Offer or a Superior Alternative Offer.

Solicitation Process

The SISP Procedures set forth herein describe, among other things, the LP Property available for sale and the opportunity for an investment in the LP Business, the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the LP Property and the LP Business, the manner in which bidders and bids become Qualified Bidders (as defined below) and Qualified Bids (as defined below), respectively, the receipt and negotiation of bids received, the ultimate selection of a Successful Bidder (as defined below) and the Court's approval thereof (collectively, the **"Solicitation Process"**). The Monitor shall supervise the SISP Procedures and in particular shall supervise the Financial Advisor in connection therewith. The LP Entities are required to assist and support the efforts of the Monitor, the Financial Advisor, and the LP CRA as provided for herein. In the event that there is disagreement as to the interpretation or application of these SISP Procedures, the Court will have jurisdiction to hear and resolve such dispute.

Sale and Investment Opportunity

A Confidential Information Memorandum describing the opportunity to acquire all or substantially all of the LP Property or invest in the LP Entities will be made available by the Financial Advisor to prospective purchasers or prospective strategic or financial investors that have executed a confidentiality agreement with the LP Entities. One or more Qualified Non-Binding Indications of Interest (as defined below) for less than substantially all of the LP Property will not be precluded from consideration as a Superior Cash Offer or Potential Superior Alternative Offer (as defined below).

"As Is, Where Is"

The sale of the LP Property or investment in the LP Business will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Monitor, the LP Entities or any of their agents or estates, except to the extent set forth in the relevant sale or investment agreement with a Successful Bidder.

Free Of Any And All Claims And Interests

In the event of a sale, all of the rights, title and interests of the LP Entities in and to the LP Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, the **"Claims and Interests"**) pursuant to section 36(6) of the CCAA, such Claims and Interests to attach to the net proceeds of the sale of such LP Property (without prejudice to any claims or

