

**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

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**MOTION RECORD OF THE APPLICANTS  
(Returnable March 26, 2010)**

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March 19, 2010

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**TO: THE SERVICE LIST**

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)

Applicants

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# INDEX



**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

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TAB 1

**ONTARIO  
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APPLICANTS

**NOTICE OF MOTION**

The Applicants will make a motion to a judge presiding over the Commercial List on March 26, 2010 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:**

The motion is to be heard orally.

**THE MOTION IS FOR:**

1. an Order substantially in the form attached to the motion record:
  - (a) if necessary, abridging the time for service of this Notice of Motion and dispensing with service on any person other than those served;
  - (b) authorizing the LP Entities, subject to availability under the LP DIP Facility, the LP DIP Definitive Documents and the Approved Cash Flow (all as defined in the Initial Order), to make payments not to exceed a maximum aggregate amount of \$1,000,000 to employees with the prior consent of the Monitor and The Bank of Nova Scotia in its capacity as Administrative Agent (the "**LP Administrative Agent**") for the senior lenders to the Limited Partnership if, in the opinion of the LP Entities in consultation with the LP CRA, the employee's services are critical

to the continued performance or orderly transition and/or discontinuation of certain business critical functions, including the inter-entity arrangements between the LP Entities and other affiliated entities (collectively, the “**Shared Services**”);

- (c) approving the schedule of proposed employee payments in respect of employees described in (b), above, contained in the confidential supplement to the Fifth Report of the Monitor (the “**Further Confidential Supplement**”) and authorizing the LP Entities to make the payments contemplated therein;
- (d) amending the initial order made herein on January 8, 2010 (the “**Initial Order**”) as necessary to reflect recent changes to the management of the LP Entities;
- (e) approving amendments to the LP MIP and the Special Arrangements (as defined in the Initial Order), as set out in the Further Confidential Supplement, and authorizing the LP Entities to enter into such agreements, and make such payments, as are contemplated by the LP MIP and the Special Arrangements, as amended;
- (f) increasing the size of the LP MIP Charge to a maximum aggregate amount of \$4.3 million such that the key employees under the LP MIP and the Special Arrangements are entitled to the benefit of the LP MIP Charge to secure amounts owing to them under the LP MIP and the Special Arrangements;
- (g) authorizing the LP Entities to enter into a consulting agreement with Dennis Skulsky (the “**Skulsky Consulting Agreement**”) substantially in the form attached to the Further Confidential Supplement;
- (h) authorizing Douglas E.J. Lamb to execute the Skulsky Consulting Agreement on behalf of the LP Entities;
- (i) sealing the Further Confidential Supplement; and

2. such further and other relief as counsel may request and this Honourable Court may permit.

**THE GROUNDS FOR THIS MOTION ARE:**

3. The Applicants were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the "CCAA"), pursuant to an Initial Order of this Honourable Court dated January 8, 2010;

**Business Critical Employees**

4. The LP Entities currently provide certain services (collectively, the "Shared Services") to related entities including Canwest Media Inc. ("CMI");

5. Pursuant to the Agreement on Shared Services and Employees dated as of October 26, 2009 (the "New Shared Services Agreement"), the extent of Shared Services provided is being significantly reduced;

6. The LP Entities currently employ approximately 417 full-time equivalent employees who work in Shared Services functions in Toronto, Ontario and Winnipeg, Manitoba;

7. Certain of the employees that work in Shared Services and in other business units of the LP Entities perform functions that are critical to the conduct, transition or orderly wind-down of the Shared Services arrangements or the relocation of related business units and cannot be easily replaced without causing disruptions to the businesses of the LP Entities;

8. There is a risk that employees who are being terminated and employees who are being retained that are integral to the smooth operation, transition or discontinuation of a business unit of the LP Entities will be motivated to seek alternative employment during the restructuring period;

9. In the view of the LP Entities, it would be difficult to hire and train replacement employees to perform these jobs within the timeframe required to prevent serious disruptions to the businesses of the LP Entities;

10. The premature departure of these employees could undermine the continued performance or transition of the Shared Services and other business critical functions and could

undermine the restructuring of the LP Entities to the extent that the provision of these services is interrupted;

11. The proposed retention payments will incentivize such employees to remain in their current employment for such periods as are required to avoid such disruptions;

12. The requested relief is supported by the Monitor, the LP CRA and the LP Administrative Agent;

### **Directors and Officers of the LP Entities**

13. The current President of CPI (as defined in the Initial Order), Dennis Skulsky, has indicated that he is resigning effective April 30, 2010;

14. Certain changes to the Initial Order will be required as a result of Mr. Skulsky's resignation;

15. Certain changes to the LP MIP and the Special Arrangements, as they pertain to Mr. Skulsky, will also be required as a result of Mr. Skulsky's resignation;

16. Mr. Skulsky has indicated that he is prepared to offer his services as a consultant until August 31, 2010 and he and the LP Entities, in consultation with the Administrative Agent and the Monitor, have agreed on the terms on which such services would be provided;

17. It is in the overall best interests of the restructuring, and particularly the successful conclusion of the Sale and Investor Solicitation Process, to have Mr. Skulsky provide his services to the LP Entities pursuant to the proposed agreement;

18. The directors and officers of the LP Entities all resigned on March 1, 2010, and have not been replaced;

19. For the avoidance of any doubt, the Initial Order should be amended to clarify that the protections afforded to the directors and officers of the LP Entities in the Initial Order extend to anyone who, whether by statute, operation of law or otherwise, is deemed to be or is a *de facto* director or officer;

20. Certain changes to the LP MIP and Special Arrangements (as defined in the Initial Order) are required to reflect the resignations of the directors and officers of the LP Entities and the consequential realignment of roles and responsibilities within the remaining senior employees of the LP Entities;
21. The LP MIP Charge (as defined in the Initial Order) should be increased to reflect the changes to the LP MIP and the Special Arrangements;
22. The provisions of the CCAA, including section 11.02 thereof, and the inherent and equitable jurisdiction of this Honourable Court;
23. Rules 1.04, 1.05, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
24. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

25. The Affidavit of Douglas E.J. Lamb, sworn March 19, 2010, and the exhibits thereto;
26. The Fifth Report of the Monitor, to be filed separately; and
27. Such further and other materials as counsel may advise and this Honourable Court may permit.

March 19, 2010

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TO: THE SERVICE LIST



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

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

APPLICANTS

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION  
(Returnable March 26, 2010)**

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TAB 2

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

**ONTARIO  
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APPLICANTS

**AFFIDAVIT OF DOUGLAS E.J. LAMB  
(Sworn March 19, 2010)**

I, Douglas E.J. Lamb, of the City of Toronto, in the Province of Ontario, MAKE  
OATH AND SAY:

1. I am a senior employee of Canwest Publishing Inc./Publications Canwest Inc. (“CPI”). As such, I have personal knowledge of the matters deposed to herein. Where I have relied upon other sources for information, I have specifically referred to such sources and verily believe them to be true. In preparing this Affidavit, where necessary I have also consulted with other members of Canwest Global Communication Corp. (“Canwest Global”)’s senior management team and members of the senior management teams of the Applicants and Canwest Limited Partnership/Canwest Societe en Commandite (the “Limited Partnership”).
2. Capitalized terms not defined in this affidavit are as defined in the affidavit of Thomas C. Strike sworn January 7, 2010 (the “Initial Order Affidavit”). A copy of the Initial Order Affidavit (without exhibits) is attached as Exhibit “A” to this Affidavit.
3. On January 8, 2010, CPI, Canwest Books Inc. and Canwest (Canada) Inc. (collectively, the “Applicants”) were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) pursuant to an initial order (the “Initial Order”) of this Honourable Court. The Initial Order also extended relief to the Limited Partnership (together with the Applicants, the “LP Entities”) and appointed FTI

Consulting Canada Inc. as monitor (the “**Monitor**”) of the LP Entities. A copy of the Initial Order (without schedules) is attached as Exhibit “B” to this Affidavit. On February 2, 2010, the LP Entities obtained an Order, *inter alia*, extending the Stay Period until April 14, 2010. A copy of the February 2, 2010 Stay Extension Order and Order Amending the Initial Order and the Procedures for the Sale and Investor Solicitation Process (without schedules) is attached as Exhibit “C” to this Affidavit.

4. In the months that have passed since the Initial Order, the LP Entities have been carrying on business and, under the supervision of the Monitor and with the assistance of RBC Capital Markets as financial advisor, carrying out the Sale and Investor Solicitation Process (the “**SISP**”). During this time they have also continued to perform and, where applicable, are carrying out the orderly transition and/or discontinuation of certain business functions, including the inter-entity arrangements between the LP Entities and other affiliated Canwest Global entities (collectively, the “**Shared Services**”).

5. In recent weeks, the directors and officers of the LP Entities have all resigned and have not been replaced. Dennis Skulsky, the president of CPI, has resigned effective April 30, 2010.

6. In this motion, the Applicants seek an Order authorizing the LP Entities, with the consent of the Monitor, and subject to the Approved Cash Flow and the LP DIP Definitive Documents, to make retention payments to certain employees whose services are deemed by the LP Entities, in consultation with the LP CRA, to be integral to the performance and/or wind-down of the Shared Services and other Canwest business units.

7. The Applicants also seek an Order making such changes to the Initial Order, the LP MIP and the Special Arrangements as are necessary to reflect the resignations of the directors and officers of the LP Entities, the resignation of Dennis Skulsky and the reallocation of responsibilities among the remaining senior employees of the LP Entities as a result of the resignations.

8. I am swearing this affidavit in support of the Applicants’ motion.

## **THE REALIGNMENT AND DISCONTINUATION OF SHARED SERVICES**

9. As described in greater detail in the Initial Order Affidavit, over the past several years, Canwest Global attempted to streamline processes and gain synergies by sharing certain administrative, advisory and other business critical services between its subsidiaries pursuant to the terms of various inter-entity agreements (the “**Inter-Entity Agreements**”). For example, the Limited Partnership has historically provided financial and accounting support services, corporate human resources services and IT infrastructure and support services to itself, Canwest Media Inc. (“**CMI**”) and other related entities. In turn, CMI has provided the LP Entities with executive advisory services, corporate and administrative services related to legal and tax matters and insurance coverage. The Inter-Entity Agreements provide that the service provider is entitled to reimbursement for all costs and expenses incurred in the provision of the Shared Services.

10. The Shared Services arrangements are currently in the process of being discontinued, transitioned and/or realigned pursuant to the terms of a transition and reorganization agreement dated as of October 26, 2009 between Canwest Global, the Limited Partnership, CPI, CMI, Canwest Television Limited Partnership and the National Post Company (the “**Transition and Reorganization Agreement**”). By Order dated October 30, 2009, as part of the CCAA proceeding of CMI and other related entities (collectively, the “**CMI Entities**”), this Honourable Court approved, *inter alia*, the entering into, execution and delivery of the Transition and Reorganization Agreement. Attached as Schedule “A” to the Transition and Reorganization Agreement is the Agreement on Shared Services and Employees (the “**New Shared Services Agreement**”), which will significantly reduce the extent of the Shared Services provided. By its terms:

- (a) Existing arrangements will continue until various dates in 2010 and 2011;
- (b) Certain cost and expense allocations will be amended;
- (c) Certain employees will be realigned with the entity to whom they are providing services; and
- (d) Pension plan participants will be transferred to the pension plan sponsored by the entity for whom they are providing services.

11. A copy of the New Shared Services Agreement, which is attached as part of Exhibit "T" to the Initial Order Affidavit, is attached as Exhibit "D" to this Affidavit.

12. Since the commencement of this CCAA proceeding on January 8, 2010 the LP Entities have continued to provide, receive, collect and pay for Shared Services in accordance with the Initial Order and pursuant to the terms of the New Shared Services Agreement. Pursuant to the terms of the New Shared Services Agreement, on February 28, 2010, certain of the Shared Services arrangements were scheduled to be terminated. By letter agreement that will be dated as of March 1, 2010 (the "**Side Letter**"), the LP Entities and the CMI Entities agreed that certain of the Shared Services that were scheduled to be terminated on February 28, 2010 - including human resources, legal, tax and insurance-related services - would continue from March 1, 2010 to June 30, 2010 or such other period as agreed by the parties. The form of Side Letter was attached to the Fourth Report of the Monitor filed March 12, 2010.

### **THE NEED TO RETAIN CERTAIN CRITICAL EMPLOYEES**

13. The LP Entities currently employ approximately 417 full-time equivalent ("**FTE**") employees who work in Shared Services functions in Toronto, Ontario and Winnipeg, Manitoba. Of this number, approximately 232 FTE employees provide services to both the LP Entities and the CMI Entities, and approximately 185 FTE employees provide services exclusively to the LP Entities.

14. Certain of the employees that work in Shared Services perform functions that are critical to the conduct, transition and/or orderly wind-down of the Shared Services arrangements. It is anticipated that the employment of some of the Shared Services employees will be terminated in upcoming months as the inter-entity components of their respective Shared Services arrangements are discontinued. Certain of these employees have already been informed that their employment will not be continuing. As a result, there is a risk that some of the employees who perform services that are critical to the transition and wind-down of the Shared Services arrangements will seek alternative employment before their respective roles in the transition are completed. There are also certain employees that the LP Entities need to retain as part of continuing operations who may be motivated to seek alternative employment during this period. In the view of the LP Entities, it would be difficult to hire and train replacement employees to perform these jobs within the timeframe required to prevent significant disruptions

to the businesses of the LP Entities. The premature departure of certain of these employees – some of whom will be terminated and some of whom will be retained – could undermine both the transition as provided for in the New Shared Services Agreement and the restructuring of the LP Entities to the extent that the provision of these services and other business functions is interrupted.

15. Similarly, as part of their restructuring, the LP Entities will be relocating certain of their business units. It is important that employees affected by these restructuring initiatives be given incentives to remain in their employment with the LP Entities and to continue to perform their respective functions pending the complete and orderly relocation of such business services.

### **PROPOSED RETENTION PAYMENTS**

16. The LP Entities are seeking the Court's authorization to make retention payments to designated employees who work for certain Shared Services entities or whose business units are being relocated and whose services are deemed to be critical, whether to the transition and wind-down of the inter-entity arrangement or to the continued operation of the relocated business unit until relocation is completed. The proposed payments are intended to be incentives for the designated employees to continue their employment with the LP Entities.

17. The LP Entities also seek authorization to make future payments to other employees yet to be identified whose premature departure, in the opinion of the LP Entities, in consultation with the LP CRA, would be detrimental to the performance, transition or discontinuation of a business unit.

18. The LP Entities seek authorization but not direction in the proposed Order to make payments not to exceed a maximum aggregate of \$1,000,000 to employees with the prior consent of the Monitor and The Bank of Nova Scotia in its capacity as Administrative Agent (the "**LP Administrative Agent**") for the senior lenders to the Limited Partnership if, subject to availability under the LP DIP Facility, the LP DIP Definitive Documents and the Approved Cash Flow, in the opinion of the LP Entities in consultation with the LP CRA, the employee is critical to the performance, transition or discontinuation of a business unit or service. A schedule containing the names, positions, salaries and proposed retention payments of certain employees who have already been designated as critical will be disclosed in a confidential supplement to the

Fifth Report of the Monitor (the "**Further Confidential Supplement**"), which will be filed separately in connection with this motion.

19. As detailed in the Further Confidential Supplement, thus far, 67 employees have been designated to receive these payments. The aggregate of payments currently reflected in the Further Confidential Supplement is approximately \$400,000. The employees who have been informed that their positions are being eliminated are being required, as a condition of receiving the proposed payments, to sign comprehensive releases in favour of the LP Entities.

20. Subject to the granting of the requested Order by this Honourable Court, the Monitor proposes to provide subsequent reports to this Honourable Court in respect of all future proposed retention payments, which reports will include confidential supplements detailing the identities of the employees and the proposed payments.

21. The contemplated retention payments described herein are reflected in the cash flow forecast scheduled to the Second Report of the Monitor filed on January 29, 2010. In respect of the employees providing services to the CMI Entities under the New Shared Services Agreement, a portion of the retention payments are cash neutral to the LP Entities because the monthly charges payable by CMI to the LP Entities under the New Shared Services Agreement include, among other things, a provision for termination, severance and retention payments to those employees of the LP Entities that are doing work for the benefit of the CMI Entities and who, upon the termination of certain Shared Services, will become redundant to the LP Entities.

22. The business and administrative functions provided to and received by the LP Entities by the business units that perform Shared Services functions are integral to maintaining the enterprise value of the businesses of the LP Entities. The LP Entities will continue to rely on the business and administrative functions performed by the LP Entities' Shared Services business units after the discontinuation of the current inter-entity arrangements. It is therefore essential that those employees whose services are critical to the performance or orderly discontinuation of the Shared Services, the relocation of the LP Entities' business units or the continued operation of other Canwest business units be incented to remain in the employment of the LP Entities.

23. The LP Entities have consulted with the LP Administrative Agent, and it is my understanding that the LP Administrative Agent supports the proposed Order. The retention



payments were included in the Approved Cash Flow, which was approved by the LP Administrative Agent and filed as part of the Applicants' Application Record on January 8, 2010. The LP Administrative Agent has been provided with information concerning the proposed payments and does not object to the payments contemplated therein. I have been advised that the Monitor and the LP CRA also support the proposed Order and the proposed retention payments.

### ***CHANGES TO THE OFFICERS AND DIRECTORS OF THE LP ENTITIES***

24. As further described in the affidavit sworn by Thomas Strike in support of the Initial Order, the decision making within the LP Entities was streamlined through the use of unanimous shareholder declarations that removed the rights, powers and duties of the directors of the Applicants. The effect of these declarations was to consolidate decision making with the directors of Canwest Global.

25. At the same time, the day to day operations of the LP Entities have been carried out under the supervision of a group of senior employees and, in particular, Dennis Skulsky, the President of CPI (as defined in the Initial Order).

26. As noted above, on March 1, 2010, all of the directors and officers of the LP Entities resigned from their positions with immediate effect. They have not been replaced.

27. Mr. Skulsky has advised that he is resigning effective April 30, 2010. A copy of a news release announcing his resignation is attached hereto as Exhibit "E".

28. Mr. Skulsky is carrying out a key role as the LP Entities transition to Phase 2 of the SISP. His continued involvement will be particularly important over the next few weeks as prospective bidders meet with management to develop a more in-depth understanding of the LP Entities' business. Subject to finalization of arrangements regarding his separation from employment, he has agreed to remain in his position until April 30 so that he can continue to carry out this vital function. After April 30, Mr. Skulsky has agreed to provide guidance and assistance to the LP senior management in a consulting role through August 31, 2010.

## CHANGES TO THE INITIAL ORDER ARE REQUIRED

29. The Initial Order assigned certain specific responsibilities to the President of CPI, and identified Mr. Skulsky as the holder of that position. The LP Entities will be bringing a motion before April 30, 2010 to request certain additional changes to the Initial Order that are necessitated by Mr. Skulsky's resignation.

30. Given that the directors and officers of the LP Entities have resigned, certain changes to the Initial Order are currently required. I understand that the draft Order filed in connection with this motion sets out the proposed changes. The Initial Order provides certain protections for the directors and officers of the Applicants, including the granting of an indemnification and charge in favour of the directors and officers in the event of the failure, on the part of the LP Entities, to make certain kinds of payments. The directors and officers have now resigned and, as noted above, the powers and responsibilities of the directors previously had been assumed by shareholder declarations. However, members of senior management continue to oversee the day to day activities of the LP Entities.

31. Given the resignations of the board and officers, the LP Entities are asking that the Initial Order be amended to clarify, for the avoidance of any doubt, that the director and officer protections, including the indemnification and charge, apply to any deemed or *de facto* directors or officers.

## CHANGES TO THE INCENTIVE PLANS

32. The Initial Order approved the LP Entities' management incentive plan, the National Post Inc. Management incentive plan and employee special arrangements (the "**LP MIP**", the "**NP MIP**" and the "**Special Arrangements**", respectively). These arrangements provided incentives for the retention of employees who were critical to the continued operation of the LP Entities' business, the carrying out of the SISP and, more generally, the successful restructuring of the enterprise.

33. In light of Mr. Skulsky's pending resignation, and in part in light of the resignation of the other officers and directors of the Applicants, the roles and responsibilities of certain members of senior management, including individuals who are subject to the LP MIP, and/or Special Arrangements, have been amended and/or increased. I am one of the individuals in question. The LP Entities are of the view that the LP MIP and the Special Arrangements

should be amended: (i) to reflect the new responsibilities of certain individuals; (ii) to reflect the importance of retaining these individuals so as to provide continuity, during the restructuring and through CCAA emergence, in light of Mr. Skulsky's departure; and (iii) to reflect the amended retention payment terms for Mr. Skulsky, and the elimination of the Special Arrangements as they pertain to Mr. Skulsky, in light of his resignation. The NP MIP is unaffected by the proposed changes.

34. The LP Entities also propose that that the Initial Order be amended so that the amount of the LP MIP Charge (as defined in the Initial Order) is increased to account for a net increase of approximately \$1.3 million in payments contemplated pursuant to the proposed amendments to the LP MIP. If this relief is granted, the key employees referred to in the amended LP MIP will be entitled to the benefit of the LP MIP Charge in an amount not to exceed \$4.3 million to secure amounts owing to key employees under the LP MIP and the Special Arrangements.

35. The LP CRA, the Monitor and the LP Administrative Agent all support the proposed amendments.

36. The operative terms of the LP MIP and the Special Arrangements were set out, in redacted form, in an exhibit to the Initial Order Affidavit. The details of the payees and amounts were set out in schedules to those documents which were included in a confidential supplement to the report of the (then) proposed Monitor. I understand that the proposed changes to the LP MIP will be included in the Further Confidential Supplement. The Special Arrangements as they pertain to Mr. Skulsky will be eliminated, pursuant to the Skulsky Consulting Agreement (as defined below). The changes are highly commercially sensitive and pertain to identifiable individuals, and as such the LP Entities will be requesting that the revisions be sealed, as was the case with the original LP MIP and the Special Arrangements.

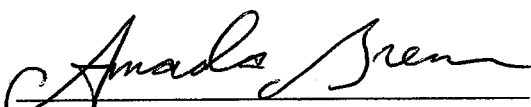
### **CONSULTING AGREEMENT WITH MR. SKULSKY**

37. Notwithstanding his resignation effective April 30, Mr. Skulsky has agreed to be available to the LP Entities as a consultant until August 31, 2010. To that end, the LP Entities and Mr. Skulsky have agreed to a form of consulting agreement (the "**Skulsky Consulting Agreement**") which is subject to Court approval.

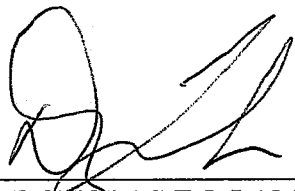
38. Mr. Skulsky has been involved with the newspaper industry for more than thirty years, and has held senior positions, within and outside of the LP Entities, across the country. The next few months will be critical for the restructuring, and to position the LP Entities for a successful emergence from CCAA protection. I believe that the LP Entities will benefit greatly, during this period, from having the ability to call on Mr. Skulsky's vast experience and acumen.

39. I understand that the form of Skulsky Consulting Agreement will be attached to the Further Confidential Supplement. I believe that it is in the best interests of the restructuring that it be approved. The LP CRA, Administrative Agent and Monitor all support its approval. This document is highly sensitive and, as such, the LP Entities will be requesting that the form of Skulsky Consulting Agreement be sealed.


SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, on March 19, 2010.

  
 Commissioner for Taking Affidavits

**Amanda Elizabeth Brennan, a  
 Commissioner, etc., Province of  
 Ontario, while a Student-at-Law  
 Expires April 3, 2011.**

  
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 DOUGLAS E.J. LAMB

This is Exhibit "A" to the  
Affidavit of DOUGLAS E.J. LAMB  
sworn before me this 19th day of March, 2010.

  
Commissioner for Taking Affidavits

**Amanda Elizabeth Brennan, a  
Commissioner, etc., Province of  
Ontario, while a Student-at-Law.  
Expires April 3, 2011.**

Court File No.

**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

**AFFIDAVIT OF THOMAS C. STRIKE  
(Sworn January 7, 2010)**

I, Thomas C. Strike, of the City of Winnipeg, in the Province of Manitoba, the President, Corporate Development & Strategy Implementation and Recapitalization Officer of Canwest Global Communications Corp. ("Canwest Global"), MAKE OATH AND SAY:

**INTRODUCTION**

1. This Affidavit is made in support of an Application by Canwest Publishing Inc./Publications Canwest Inc. ("CPI"), Canwest Books Inc. ("CBI"), and Canwest (Canada) Inc. ("CCI"), (together, the "Applicants"), for relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"). The Applicants seek to have a stay of proceedings and other benefits of an Initial Order under the CCAA extended to Canwest Limited Partnership/Canwest Societe en Commandite (the "**Limited Partnership**"), as it carries on operations integral to the business of the Applicants. CPI's wholly-owned subsidiary National Post Inc., which publishes the *National Post* national newspaper, is not an applicant in this CCAA proceeding.

2. I am the President, Corporate Development & Strategy Implementation and Recapitalization Officer of Canwest Global, the publicly-traded parent company of the Applicants and the Limited Partnership. I am also a director of, among other entities, CCI. As such, I have personal knowledge of the matters deposed to herein. Where I have relied upon

other sources for information, I have specifically referred to such sources and verily believe them to be true. In preparing this Affidavit, where necessary I have also consulted with other members of Canwest Global's senior management team and, where necessary, members of the senior management teams of the Applicants and the Limited Partnership.

3. Hereinafter, where reference is made to the Canwest enterprise as a whole, which includes the Limited Partnership and the Applicants, together with Canwest Global's other subsidiaries which are not Applicants in this proceeding, the term "Canwest" will be used. Where reference is made solely to the Limited Partnership and the Applicants, the term "LP Entities" will be used.

4. Canwest is a leading Canadian media company with ownership interests in (i) newspaper publishing and digital media and on-line operations in Canada; and (ii) free-to-air television stations and subscription-based specialty television channels in Canada.

5. Canwest, through its ownership interests in the LP Entities, is the largest publisher of daily English-language newspapers in Canada. Collectively, the newspapers of the LP Entities have an estimated average daily circulation of approximately 970,000 copies and an estimated average weekly readership of approximately 4.1 million. The LP Entities also publish a number of community newspapers and other publications and have extensive digital media and online operations. In addition, the LP Entities, through their ownership interest in National Post Inc. publish the *National Post* national newspaper and operates its related digital media and online operations. The *National Post* has an estimated average daily circulation of approximately 160,000 and an estimated average weekly readership of approximately 1,100,000. National Post Inc. is not an applicant in this CCAA proceeding.

6. Canwest, through its ownership interest in Canwest Television Limited Partnership ("CTLP"), owns and operates the *Global Television Network*. The *Global Television Network* is comprised of 12 free-to-air television stations situated across Canada and covers approximately 97% of Canada's English-language television market. Canwest also owns and operates a portfolio of leading subscription-based national specialty television channels, many of which are owned jointly with Goldman Sachs Capital Partners ("Goldman Sachs") in CW Investments Co. and its subsidiaries. These subscription-based specialty channels include *Food Network Canada*, *HGTV Canada*, *Slice* and *History Television*.

7. As described in greater detail below, the entities that are seeking relief in this CCAA proceeding consist solely of the entities in Canwest's Canadian newspaper publishing and digital media and on-line operations (with the exception of the newspaper publishing and digital media and online operations of the *National Post*, which does not seek relief in this proceeding). Canwest Global, the entities in Canwest's Canadian television business (excluding CW Investments Co. and its subsidiaries) and The National Post Company/La Publication National Post<sup>1</sup> (the "**National Post Company**") (collectively, the "**CMI Entities**") filed for and obtained protection from their creditors in a separate CCAA proceeding under Court File No. CV-09-8396-00CL pursuant to the Initial Order of the Honourable Madam Justice Pepall dated October 6, 2009.
8. As at August 31, 2009, Canwest employed approximately 7,000 full time equivalent ("**FTE**") employees. Of that number, the LP Entities employed approximately 5,300 FTE employees throughout Canada, with approximately 1,300 of those employees working in Ontario.
9. The LP Entities, like most other companies in the newspaper publishing industry, generate the majority of their revenues from the sale of advertising (approximately 72% of the LP Entities' consolidated revenue in their fiscal year ended August 31, 2009). Over the past year, the entire Canwest enterprise, including the LP Entities, has been seriously affected by the economic downturn in Canada. General weakness in the Canadian economy in the latter half of 2008 and in 2009 prompted advertising customers to spend less and forced the LP Entities to reduce their advertising rates. As a result, the LP Entities' consolidated advertising revenues declined substantially during this period.
10. Due to this significant decline in the LP Entities' advertising revenues and increases in certain of their operating costs, on May 29, 2009, the Limited Partnership failed, for the first time, to make certain interest and principal reduction payments and related interest and cross-currency swap payments totalling approximately \$10 million in respect of its senior secured credit facilities (the "**LP Secured Credit Facilities**"). On the same day, the Limited

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<sup>1</sup> The National Post Company is a partnership with units held by Canwest Media Inc. ("**CMI**") and National Post Holdings Ltd. Prior to October 30, 2009, when substantially all of the assets of the National Post Company were transferred to an entity held by CPI, the National Post Company was the entity that held the assets of the *National Post*.



- 4 -

Partnership announced that, as of May 31, 2009, it would be in breach of certain financial covenants set out in the credit agreement dated as of July 10, 2007 between CanWest MediaWorks Limited Partnership ("**CanWest MediaWorks**") (now the Limited Partnership), The Bank of Nova Scotia, as Administrative Agent (the "**LP Administrative Agent**"), a syndicate of lenders (the "**LP Secured Lenders**") and CanWest MediaWorks (Canada) Inc. ("**CanWest MediaWorks (Canada)**") (now CCI), CanWest MediaWorks Publications Inc. ("**CanWest MediaWorks Publications**") (now CPI) and CBI, as guarantors (the "**LP Guarantors**") (the "**LP Credit Agreement**"). The Limited Partnership also failed to make principal, interest and fee payments due pursuant to the LP Credit Agreement on June 21, 2009, June 22, 2009, July 21, 2009, July 22, 2009 and August 21, 2009.

11. On or around August 31, 2009, the Limited Partnership and certain of the LP Secured Lenders entered into a forbearance agreement (the "**Forbearance Agreement**") that is described in greater detail below and under which certain of the LP Secured Lenders agreed, subject to specified terms and conditions including payment of outstanding interest and fees, to forbear from enforcement of their security in order to allow the Limited Partnership, the LP Guarantors and the LP Secured Lenders the opportunity to negotiate a pre-packaged restructuring or reorganization of the affairs of the LP Entities. After numerous waivers and one extension by the LP Secured Lenders, the Forbearance Agreement expired on November 9, 2009. The Limited Partnership is currently in default under the LP Credit Agreement. As a result, the LP Secured Lenders are now in a position to take steps to demand immediate payment of all amounts owing under the LP Secured Credit Facilities (as defined below) (which totalled the Canadian dollar equivalent of approximately \$953.3 million (exclusive of unpaid interest but inclusive of swap default amounts described below) as at August 31, 2009) from the Limited Partnership and the LP Guarantors. The Limited Partnership and the LP Guarantors do not have the liquidity required to repay amounts owed under the LP Credit Agreement and/or the LP Senior Subordinated Credit Agreement.

12. The defaults on May 29, 2009 under the LP Secured Credit Facilities triggered defaults in respect of related foreign currency and interest rate swaps. As a result, the swap counterparties demanded immediate repayment of amounts totalling approximately \$68.9 million. The Limited Partnership and the LP Guarantors have not satisfied those demands and do

not have adequate liquidity to do so. These unpaid amounts rank *pari passu* with amounts owing under the LP Secured Credit Facilities and are accruing interest daily.

13. On July 21, 2009 the Limited Partnership failed to make an interest payment under its senior subordinated credit agreement dated as of July 10, 2007 between CanWest MediaWorks (now the Limited Partnership), The Bank of Nova Scotia, as Administrative Agent (the "**Subordinated Agent**"), a syndicate of lenders (the "**LP Subordinated Lenders**"), and CanWest MediaWorks (Canada) (now CCI), CanWest MediaWorks Publications (now, CPI) and CBI, as guarantors (the "**LP Subordinated Guarantors**") (the "**LP Senior Subordinated Credit Agreement**"). The defaults under the LP Credit Agreement were also events of default under the LP Senior Subordinated Credit Agreement. There is no forbearance agreement in place in respect of the LP Senior Subordinated Credit Agreement, so the LP Subordinated Lenders may now demand immediate payment of all outstanding amounts (which totalled approximately \$75 million (exclusive of unpaid interest) as at August 31, 2009) from the Limited Partnership and the LP Subordinated Guarantors. The Limited Partnership and the LP Subordinated Guarantors do not have the liquidity required to repay amounts owed under the LP Credit Agreement and/or the LP Senior Subordinated Credit Agreement.

14. On August 3, 2009, the Limited Partnership announced that it would not make an interest payment of approximately US\$18.5 million due on August 1, 2009 under a note indenture dated July 13, 2007 (the "**LP Note Indenture**") with CanWest MediaWorks Publications (now, CPI) and CBI as guarantors (the "**LP Note Indenture Guarantors**"), the Bank of New York as U.S. Trustee, and BNY Trust Company of Canada as Canadian Trustee that was entered into in connection with the issuance of US\$400 million (approximately \$438 million as at August 31, 2009) of senior subordinated notes that bear interest at 9.25% *per annum* (the "**LP Notes**"). Under the terms of the LP Note Indenture, the Limited Partnership is required to make semi-annual interest payments to the holders of the LP Notes (the "**LP Noteholders**"). The failure to make the interest payment on August 1, 2009 caused a default under the LP Note Indenture on September 1, 2009. In addition, the termination and demands for payment in respect of the Limited Partnership's foreign currency and interest rate swaps have resulted in a default under the LP Note Indenture. The LP Noteholders are currently in a position to take steps to demand immediate payment of all amounts owing in respect of the LP Notes (which totalled the Canadian dollar equivalent of approximately \$438 million (exclusive of unpaid interest) as at

August 31, 2009) from the Limited Partnership and the LP Note Indenture Guarantors. The Limited Partnership and the LP Note Indenture Guarantors would be unable to satisfy this obligation if payment were demanded.

15. Accordingly, and for the reasons set out herein, the LP Entities are insolvent and a restructuring of the LP Entities' long-term debt and balance sheet is urgently required.

16. In order to permit the businesses of the LP Entities to continue to operate as going concerns and in an effort to preserve the greatest number of jobs and maximize value for the stakeholders of the LP Entities, the LP Entities and the LP Secured Lenders (including the *pari passu* swap counterparties) have negotiated a pre-arranged support transaction pursuant to which, if it is implemented, an entity capitalized by the LP Secured Lenders and the *pari passu* secured swap counterparties ("AcquireCo") would acquire substantially all of the assets of the LP Entities (including the shares in National Post Inc.) and assume certain of the liabilities of the LP Entities (the "Support Transaction"). The Support Transaction is to be approved by the LP Secured Lenders pursuant to a plan of compromise or arrangement between the LP Entities and the LP Secured Lenders (the "Senior Lenders' CCAA Plan").

17. The Senior Lenders' CCAA Plan contemplates that AcquireCo will offer employment to all or substantially all employees of CPI (including all or substantially all of the employees of the Limited Partnership, whose employment would be acquired and assumed by CPI on or before closing) on substantially similar terms and conditions to their existing employment. On closing, AcquireCo would also assume all of CPI's existing pension plans, existing post-retirement and post-employment benefit plans (other than supplemental pensions) and unpaid severance obligations that would be stayed during this CCAA proceeding. The assumption of employee-related obligations by AcquireCo is subject to a right of AcquireCo, acting commercially reasonably and after consultation with the operational management of CPI, to exclude certain specified liabilities.

18. In order to ensure that the Support Transaction will produce the best available outcome for all of the stakeholders of the LP Entities, RBC Dominion Securities Inc., a member company of RBC Capital Markets ("RBC Capital Markets"), as financial advisor to the LP Entities (the "Financial Advisor") will conduct a comprehensive sale and investor solicitation process (the "SISP") with an initial phase of approximately seven weeks in an effort to attract an

offer from a third party that is superior (within the meaning of the SISP) (a "Superior Offer") than the one contained in the Senior Lenders' CCAA Plan. RBC Capital Markets has prepared an extensive list of prospective financial and strategic acquirers and/or investors that will be approached upon commencement of the SISP.

19. Subject to Court approval and any Superior Offer, the Senior Lenders' CCAA Plan contemplates that at the closing of the Support Transaction the LP Secured Lenders and the *pari passu* swap counterparties having outstanding secured claims against the Limited Partnership and the LP Guarantors (each a "Secured Claim") will be deemed to have transferred their outstanding Secured Claims to AcquireCo. The stay of proceedings will be lifted to enable AcquireCo to issue demand to CPI on account of CPI's guarantee obligations. AcquireCo will acquire the subject assets in full satisfaction of CPI's guarantee obligations in respect of the indebtedness in an amount equal to the Reference Amount (as defined in the Senior Lenders' CCAA Plan) and in consideration of the assumption of specified liabilities by Acquireco. The acquired assets will be delivered to AcquireCo or separate operating entities. The holders of Secured Claims will each receive a *pro rata* share of the debt and equity to be issued by AcquireCo

20. The LP Secured Lenders have advised that they may choose to enforce their rights through a non-consensual court proceeding if the LP Entities do not move forward with the Support Transaction and the SISP. In a letter dated December 7, 2009 from Ms. Jane Rowe, on behalf of the LP Administrative Agent, to Mr. Gary Colter, as restructuring advisor to the LP Entities, (the "**Administrative Agent Letter dated December 7, 2009**") the LP Administrative Agent referenced the material breaches under the LP Credit Agreement and urged the LP Entities to commence a CCAA proceeding and proceed with the Support Transaction on a timely basis. The LP Administrative Agent also noted that the Support Transaction could result in a going concern outcome for the businesses of the LP Entities whereas an alternative course (including a non-consensual court proceeding) might not offer the same positive outcome to the stakeholders of the LP Entities. The LP Administrative Agent concluded by stating that although the LP Secured Lenders had cooperated with the LP Entities thus far, the LP Administrative Agent had been empowered by the steering committee of the LP Secured Lenders (the "**Steering Committee**") to enforce the rights of the LP Secured Lenders under the LP Credit Agreement

through non-consensual legal action. A copy of the Administrative Agent Letter dated December 7, 2009 is attached as Exhibit "A" to this Affidavit.

21. The LP Administrative Agent repeated its position in a letter dated December 23, 2009 from Ms. Jane Rowe to Mr. Gary Colter. In it, Ms. Rowe again encouraged the Limited Partnership to proceed with the Support Transaction immediately. The letter concluded by stating that the terms of the Support Transaction were sufficiently developed to permit scheduling of a board of directors meeting of Canwest Global Communications Corp. ("Canwest Global") for January 7, 2009.

22. On January 4, 2010, Mr. Leonard Asper wrote to the LP Administrative Agent in his capacity as CEO of Canwest Media Inc., to express his profound disagreement with a CCAA filing by the LP Entities. A copy of Mr. Asper's letter is attached hereto as Exhibit "B". The LP Administrative Agent replied by letter dated January 6, 2010, a copy of which is attached hereto as Exhibit "C". In it, the LP Administrative Agent again unambiguously expressed the view that a CCAA filing including a pre-packaged Support Transaction and a SISP is in the best interests of stakeholders.

23. The LP Entities are seeking a stay of proceedings under the CCAA so that they may restructure and reorganize their businesses. The granting of the requested stay of proceedings by this Honourable Court provides the best opportunity for an orderly restructuring of the businesses of the LP Entities with a positive outcome for the greatest number of the LP Entities' stakeholders. As set out below, the LP Entities have negotiated a debtor-in-possession financing facility (the "LP DIP Facility") with certain of the LP Secured Lenders that will provide it with additional liquidity support during the period of the LP Entities' reorganization. Granting a stay of proceedings will allow the LP Entities to run the SISP and, subject to Court approval, proceed with either the Support Transaction or a Superior Offer generated by the SISP. The LP Entities believe that the proposed course of action - including the presence of a Support Transaction that already contemplates a going concern outcome - provides the maximum possible benefit for all stakeholders in the circumstances. The businesses of the LP Entities will carry on in the ordinary course, providing stability for employees, suppliers, and other stakeholders including the millions of people who rely on the news and other information services provided by the LP Entities every day.

## **CORPORATE STRUCTURE OF CANWEST GLOBAL**

24. Canwest Global is a public company continued under the *Canada Business Corporations Act*, R.S., 1985, c. C-44 (the "CBCA"). Canwest Global and the other CMI Entities filed for and obtained protection from their creditors under the CCAA on October 6, 2009.

25. Canwest Global has a direct 100% ownership interest in Canwest Media Inc. ("CMI"). CMI, in turn, has direct and indirect ownership interests in all of the other entities in the Canwest enterprise, including indirect ownership interests in the Applicants and the Limited Partnership. A copy of Canwest's corporate organization chart is attached as Exhibit "D" to this Affidavit and the LP Entities are described at page 4 of Exhibit "D".

## **CORPORATE STRUCTURE OF THE LP ENTITIES**

26. The Limited Partnership is a limited partnership that was formed on September 7, 2005 under the laws of Ontario. Until October 5, 2009, CMI was the only limited partner of the Limited Partnership and CCI was the general partner of the Limited Partnership. On October 5, 2009, 4501071 Canada Inc. ("4501071 Canada") became the sole limited partner of the Limited Partnership. 4501071 Canada is a wholly-owned subsidiary of CMI. CCI is a wholly-owned subsidiary of 4501071 Canada.

27. The Limited Partnership is the administrative backbone of the LP Entities. Among other things, the Limited Partnership: (i) owns all of the shared information technology ("IT") assets used by the various LP entities; (ii) provides IT hosting services for the LP Entities; (iii) holds many software licences used by the LP Entities; (iv) is a party to certain shared administrative and/or advisory service agreements with the CMI Entities (as further described below); and (v) employs approximately 390 employees working in shared services areas, such as human resources, accounting, business and IT services and the *ReachCanada* call centre.

28. CPI (formerly CanWest MediaWorks Publications) was amalgamated with 4309626 Canada Inc. under the laws of the CBCA on August 31, 2005. CPI owns all of the newspaper publishing and digital media and online assets held by the LP Entities and, effective October 30, 2009, also owns the *National Post* and related assets through its ownership of a wholly-owned subsidiary, National Post Inc. CPI employs the vast majority of the LP Entities'

approximately 5,300 FTE employees. In addition, CPI has entered into substantially all of the contractual arrangements with the LP Entities' newsprint suppliers, newspaper distributors and other goods and services suppliers.

29. CBI was incorporated on September 30, 2004 under the laws of the CBCA and is currently inactive. CCI was incorporated on August 26, 2005 under the laws of the CBCA. CCI is the general partner of the Limited Partnership, holding an undivided interest of 0.001% in the Limited Partnership. 4501071 Canada was incorporated on April 2, 2009 under the laws of the CBCA. There are 101 common shares issued and outstanding in 4501071 Canada, all of which are held by CMI.

### ***The Income Trust Spin-off and Privatization***

30. The Limited Partnership was formed in 2005 to acquire CMI's newspaper publishing and digital media and online entities (excluding the National Post Company) and to operate such businesses, as well as certain shared services operations, as part of a planned income trust spin-off of CMI's newspaper publishing and digital media and online operations.

31. On October 13, 2005, CMI completed the income trust spin-off by causing CanWest MediaWorks (which changed its name to Canwest Limited Partnership (the Limited Partnership) on January 10, 2008) to acquire substantially all of the newspaper publishing, digital media and online and related assets and to assume substantially all of the newspaper publishing, digital media and online, and related operating liabilities of CMI, including CanWest MediaWorks Publications (now CPI) and CBI, but excluding The National Post Company, in exchange for units of CanWest MediaWorks, notes payable and convertible notes payable. On the same day, CanWest MediaWorks issued units to the CanWest MediaWorks Income Fund (the "**Income Fund**") in exchange for proceeds of \$550 million. The units of the Income Fund were listed for trading on the Toronto Stock Exchange. In November 2005, the convertible notes payable were converted into additional units of CanWest MediaWorks. Following the conversion, CMI held a 74.2% ownership interest in CanWest MediaWorks and the Income Fund had a 25.8% ownership interest in CanWest MediaWorks.

32. CanWest MediaWorks operated with the Income Fund as a limited partner between October 2005 and July 2007. Following an announcement by the Federal government

regarding the future taxation of income fund distributions; in May 2007 CanWest MediaWorks entered into a privatization agreement with CMI, CanWest MediaWorks (Canada) (now CCI), CWMW Trust (an unincorporated open-ended trust established under the laws of the Province of Ontario) and the Income Fund for the purpose of effectuating a going-private transaction of the Income Fund. The transaction was approved by unit holders of the Income Fund in July 2007. Pursuant to the privatization transaction, CanWest MediaWorks purchased for cancellation the 55 million partnership units held indirectly by the Income Fund for \$495 million.

33. Since July 2007, CanWest MediaWorks (now the Limited Partnership) has been wholly-owned indirect subsidiary of Canwest Global.

### **CORPORATE DECISION MAKING**

34. In April and May 2009, Canwest Global and certain of its subsidiaries, including certain of the LP Entities, took steps to consolidate and streamline corporate decision making in the Canwest enterprise. To do so, between April 2, 2009 and April 6, 2009 the shareholder of each of CMI, CCI, CPI, National Post Holdings Ltd. ("**National Post Holdings**"), 4501063 Canada Inc. ("**4501063 Canada**") and Canwest Television GP Inc. entered into a series of unanimous shareholder declarations that removed the rights, powers and duties of the directors of the respective subsidiary companies to manage, or supervise the management of, the business and affairs of the relevant subsidiary companies. By unanimous shareholder agreement dated December 8, 2009 between CCI, the Limited Partnership, CPI, Richard Leipsic and Riva Richard, the unanimous shareholder agreement in respect of CPI was restated.

35. Subsequently, on May 28, 2009, 4501071 Canada executed a unanimous shareholder declaration that removed the directorial powers from the directors of CCI. The implementation of the shareholder declaration by 4501071 Canada resulted in an event of default under the LP Credit Agreement described below.

36. The ultimate effect of the various unanimous shareholder declarations was to consolidate decision-making within Canwest Global through its board of directors.



## **CHIEF PLACE OF BUSINESS**

37. The chief place of business of the LP Entities is in the Province of Ontario. The LP Entities are each headquartered at 1450 Don Mills Road in Toronto, Ontario. As of the date of this filing, all national advertising, sales policies and guidelines for the LP Entities are managed from CPI's national sales offices at 250 Yonge Street in Toronto, Ontario. CPI's national news bureau, operated by Canwest News Service, which is an operating division of CPI, is located in Ottawa, Ontario. The LP Entities centrally produce many pages of their newspapers' editorial content from the offices of Canwest Editorial Services, which is an operating division of CPI that is located in Hamilton, Ontario. Two of the LP Entities' 10 metropolitan daily newspapers (*The Windsor Star* and *Ottawa Citizen*) and three of their non-daily newspapers are located in Ontario.

38. As described below, as at August 31, 2009, the LP Entities employed approximately 1,300 FTE employees in Ontario, which represented more people than the LP Entities employed in any other province except British Columbia at that date.

## **THE BUSINESS OF THE LP ENTITIES**

39. As described above, Canwest's business operations consist of (a) the Canadian newspaper publishing and digital media and on-line publishing businesses; and (b) the Canadian free-to-air and specialty television businesses. This CCAA proceeding involves only the LP Entities which are a part of Canwest's newspaper publishing and digital media and online publishing businesses (with the exception of the operations of the *National Post*, which is owned by National Post Inc.).

### **A. Description of the Canadian Newspaper Publishing Industry**

40. The Canadian newspaper publishing industry is made up principally of newspaper chains that own portfolios of daily and/or non-daily newspapers, often with a geographic focus. The Canadian newspaper publishing industry has undergone ownership consolidation over the past several decades as these newspaper chains have formed and grown. There are 10 major competitive newspaper markets in Canada, and a substantial number of daily newspapers operate as the sole provider of daily information within their home markets. There are two national English-language newspapers – *The Globe and Mail* and the *National Post*.

41. The Canadian newspaper publishing industry is comprised of approximately 100 daily paid newspapers and numerous non-daily paid and free-distribution publications. The industry is mature and dominated by a small number of publishers. Based upon the most recently available statistics, in 2008, the LP Entities were the largest publisher of daily English-language newspapers in Canada and were responsible for 32% of English-language paid circulation (the LP Entities and National Post Inc. were together responsible for 38% of English-language paid circulation in that period), ahead of Quebecor/Sun Media (20%), Torstar Corporation (14%), CTVglobemedia Inc. (10%) and others (18%).
42. Newspapers are the largest media segment in Canada and represent an important advertising medium, as they reach a broad-based and demographically diverse audience. Total Canadian daily newspaper publishing industry revenue was approximately \$2.5 billion in 2008, with 76.6% of revenue derived from advertising (71.5% from print advertising and 5.1% from online advertising) and the balance of 23% drawn from circulation. Canadian newspapers sell advertising based upon readership levels, which tend to correlate with education and income. Advertising revenue and, to a lesser extent, circulation revenue, are cyclical and dependent upon general economic conditions.
43. The LP Entities' advertising revenue is generated from three main sources: (a) national accounts; (b) retail or local accounts; and (c) classifieds. National accounts are advertisements run by national firms in multiple newspapers across the country. Retail or local advertising accounts include department stores, small business, grocery and other retailers. Classified advertisements are generally solicitations of sale or purchase by local businesses and private individuals and include employment, real estate and automotive advertisements. Approximately 50% of newspaper advertising sales are generated locally, and each newspaper has a dedicated sales force and currently has a classified advertising call centre. The LP Entities are in the process of centralizing their newspapers' classified advertising call centres in Calgary, Alberta. The remainder of the LP Entities' advertising sales are generated from national and multi-market retail accounts.
44. Circulation revenue is generated from: (a) home delivery sales; (b) single copy sales made through retailers and vending boxes; and (c) corporate bulk sales. In the fiscal year ended August 31, 2009, approximately 79% of the LP Entities' circulation revenue was

generated from home delivery subscriptions, 19% was generated from single copy sales and 2% was generated from corporate bulk sales. For the fiscal year ended August 31, 2009, the LP Entities' daily metropolitan newspapers had an aggregate average daily circulation of approximately 760,000 home delivery subscribers, and an aggregate average daily circulation of 1.1 million copies. When *National Post* circulation is included, aggregate average daily circulation for the metropolitan newspapers of the LP Entities was approximately 1.3 million copies in fiscal year 2009.

## **B. Regulatory Environment**

45. The publication of newspapers in Canada is not regulated directly by federal or provincial laws. There are, however, indirect restrictions on the foreign ownership of Canadian newspapers by virtue of certain provisions of the *Income Tax Act* (Canada), 1985, c. 1 (5<sup>th</sup> Supp.) (the "**Income Tax Act**"). The Income Tax Act limits the deductibility by Canadian taxpayers of expenditures for newspaper advertising to advertising that is made in "Canadian issues of Canadian newspapers", except in limited circumstances. For any given publication to qualify as a "Canadian issue of a Canadian newspaper", the entity that publishes it, if publicly traded, must ultimately be controlled by Canadian citizens. If the entity publishing the newspaper is privately held, it must be at least 75% owned by Canadians. In addition, the publication must, with limited exceptions, be printed and published in Canada.

## **C. Overview of the LP Entities' Businesses**

46. The LP Entities own, operate and publish a number of newspapers and magazines, including 10 major metropolitan daily newspapers, 2 small market daily newspapers and 23 non-daily newspapers. The LP Entities also own and operate a number of digital media and online operations, including *canada.com*. CPI also owns all of the shares of National Post Inc., which publishes the *National Post*, one of Canada's two national daily newspapers. National Post Inc. is not seeking relief in this CCAA proceeding.

### **(i) Daily Newspapers**

47. The LP Entities publish 10 metropolitan daily newspapers (nine broadsheets and one tabloid) and 2 other smaller market daily newspapers (broadsheets). The average age of the LP Entities' daily newspapers is 128 years.

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48. The following table sets out the 12 daily newspapers owned and operated by the LP Entities and includes approximate readership statistics in 2008\*:

Publication	Market	Distribution	Average Weekly Readership
<i>The Vancouver Sun</i>	Vancouver	1912	781,800
<i>The Province</i>	Vancouver	1898	824,700
<i>The Gazette</i>	Montreal	1778	500,000
<i>Ottawa Citizen</i>	Ottawa	1845	404,500
<i>Edmonton Journal</i>	Edmonton	1903	463,800
<i>Calgary Herald</i>	Calgary	1883	477,900
<i>The Windsor Star</i>	Windsor	1918	195,900
<i>Times Colonist</i>	Victoria	1858	23,900
<i>The Star Phoenix</i>	Saskatoon	1902	132,500
<i>Leader-Post</i>	Regina	1885	113,700
<i>Nanaimo Daily News</i>	Nanaimo	1874	n/a
<i>Alberni Valley Times</i>	Port Alberni	1919	n/a
<b>TOTAL</b>			<b>4,098,100</b>

\* Source: NADbank 2008 readership data

49. In 2008, the LP Entities' major metropolitan daily newspapers (excluding the *National Post*) had an aggregate average daily paid circulation of approximately 970,000 copies, representing approximately 32% of Canada's daily average English-language newspaper circulation based upon data compiled by the Canadian Newspaper Association, and an estimated average weekly readership of approximately 4.1 million people (based upon the NADbank 2008 readership survey).

### (ii) **Non-Daily Newspapers**

50. In addition to their daily newspaper publications, the LP Entities also publish 23 non-daily newspapers distributed in various communities in British Columbia and Ontario, most of which are free distribution publications. The free distribution newspapers are generally delivered to every household in their respective regions, thereby providing advertisers with complete market coverage. The LP Entities' non-daily newspapers are also managed by the head office of the LP Entities, which is located in Toronto, Ontario.

51. The LP Entities publish 12 community newspapers that are printed and distributed two or three times per week throughout the Lower Mainland of British Columbia. On Vancouver

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Island, the LP Entities' publish four bi-weekly and two weekly newspapers (collectively, the "Vancouver Island Newspaper Group").

52. In Ontario, the LP Entities own and operate five community publications that reach over 45,000 homes in the Windsor-Essex County region.

**(iii) Digital Media and Online Operations**

53. The LP Entities' digital media and online businesses include over 80 destination websites in the *canada.com* network, including websites for the LP Entities' daily and community newspapers, online classified websites, *dose.ca* (an entertainment website) and *FPinfomart.ca* (a subscription-based media monitoring service). These digital media and online operations are used, *inter alia*, to distribute Canwest's and other third parties' entertainment, news and editorial content across multiple media platforms. The LP Entities also distribute entertainment, news and editorial content that are produced by the CMI Entities and certain other of Canwest's speciality television channels, which are owned and operated by its subsidiary, CW Investments Co. and its subsidiaries.

54. The web portal *canada.com* is a comprehensive 24/7 online news, entertainment and information network that leverages the content, brands and customer relationships of Canwest's major media properties across Canada. Generally speaking, *canada.com* seeks to provide a "Canadian perspective" regarding news, events, entertainment and information to Canadians and people across the world. At present, the *canada.com* online network has approximately 6 million unique users per month. The *canada.com* online network includes respected media properties such as the *National Post*, *Global National*, *Ottawa Citizen*, *The Gazette*, *The Vancouver Sun*, *The Province*, *Edmonton Journal* and *Calgary Herald*. For these properties, *canada.com* provides a platform to market and promote key off-line activities and build and reinforce relationships with advertisers and end-users.

55. The LP Entities' online newspaper websites feature headlines, breaking news, analysis, commentary and selected stories from the daily newspaper print editions and serve as both online advertising and marketing vehicles. These newspaper websites also publish digital editions of all of the LP Entities' major daily newspapers. These digital editions are available free to paid print subscribers or as digital-only paid subscriptions. The websites also serve as

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customer relationship tools, promoting subscriptions to printed newspapers and digital editions, allowing for purchase or renewal of subscriptions, permitting notification of vacation stops and re-activations, and processing of billing inquiries.

56. The LP Entities also operate a number of classified advertising websites such as *househunting.ca* (real estate sales), *working.com* (careers), *driving.ca* (automobile), *remembering.ca* (obituaries), *celebrating.com* (announcements) and *connecting.com* (personals). These websites leverage existing customer relationships and give classified advertisers the opportunity to extend the reach of their advertising to internet consumers. Revenue from the classified advertising websites has grown rapidly in the recent past, from \$3 million in fiscal year 2003 to \$23.2 million in fiscal year 2009.

57. *FPinfomart.ca* is a subscription-based service offering one of Canada's largest online news and business research services, providing businesses, government and the non-profit sector with more than 4,800 Canadian and international news sources. Sources for *FPinfomart.ca* include major daily newspapers (including all of the LP Entities' newspapers and the *National Post*), newswires, regional community newspapers, corporate databases, specialty trade journals, magazines, broadcast television, radio and blogs. *FPinfomart.ca* can be used by its subscribers for online media monitoring, archival news searches, and in-depth research on approximately 4,000 publicly-traded companies and approximately 430,000 Canadian companies. *FPinfomart.ca* also includes a video/broadcast module enabling customers to receive relevant video clips from over 80 Canadian news and information broadcasts within minutes of their live broadcast.

#### **(iv) Revenues and Expenses**

58. For the fiscal year ended August 31, 2009, the LP Entities' consolidated revenues were \$1.021 billion, down 15% from the previous year. Its consolidated operating profits (excluding restructuring expenses) were down \$180 million (or 41%) from the year ended August 31, 2008. In the fiscal year ended August 31, 2009, the LP Entities derived approximately 72% and 22% of their consolidated revenue from advertising and circulation, respectively. The LP Entities' advertising revenue is subject to seasonal advertising patterns and seasonal influences on the consumer's media consumption habits. Advertising revenue is typically lowest during the fourth quarter of the LP Entities' fiscal year, which ends on August

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31<sup>st</sup>, and highest during the first quarter of the fiscal year, which ends on November 30<sup>th</sup>, primarily as a result of holiday-related advertising. Circulation revenue is generated from home-delivery subscriptions for newspapers and single-copy sales at retail outlets and vending machines. The LP Entities' national sales group, operated by Canwest Publishing Sales (an operating division of CPI), co-ordinates national advertising sales, although each of their newspapers has its own local sales force.

59. The LP Entities' consolidated operating expenses decreased by \$56 million (6%) in fiscal 2009, primarily as the result of reductions in payroll, distribution, newsprint and marketing and promotion costs. The LP Entities' principal operating expenses in fiscal 2009 were: (i) payroll-related (54%); (ii) distribution expenses (17%); and (iii) newsprint, ink and printing (10%). The LP Entities' consolidated operating results are particularly sensitive to variations in the cost and availability of newsprint, which is a commodity and is generally subject to price volatility. The cost of newsprint is influenced by supplier relationships, volume purchasing power, proximity to paper mills and regional supply arrangements that affect transportation costs. The LP Entities purchase newsprint from a number of Canadian suppliers, typically pursuant to 12-month supply agreements based upon projected needs.

60. The LP Entities own the majority of their manufacturing equipment for their newspapers, including printing presses and mailroom inserting equipment. In an effort to increase efficiency, the LP Entities also use their printing press capacity to print advertising inserts, flyers and other publications on behalf of third parties.

### **CANWEST BUSINESSES NOT INCLUDED IN THESE PROCEEDINGS**

61. Canwest's other major business is television. Canwest's television business is notionally divided between two operating segments: (i) free-to-air television stations and subscription-based specialty television channels which are owned by CTLP (the "**Canadian Television Segment**"); and (ii) subscription-based specialty television channels which are owned by CW Investments co. and its subsidiaries (the "**CW Media Segment**"). Certain operations within Canwest's Canadian television business are the subject of a separate CCAA proceeding. None of Canwest's Canadian television business is included in this proposed CCAA proceeding.

62. The Canadian Television Segment of Canwest's broadcast business is operated by CTLP and consists of (i) 12 free-to-air television stations which comprise the *Global Television Network*; (ii) three subscription-based specialty television channels that are wholly-owned and operated by CTLP; (iii) two subscription-based specialty television channels that are partially owned and operated by CTLP (*TVtropolis* and *Mystery TV*); and (iv) one subscription-based specialty channel that is partially-owned but not operated by CTLP (*MenTV*). The *Global Television Network* broadcasts many of the most popular television programs in Canada.

63. The CW Media Segment is comprised of a portfolio of 17 wholly-owned or partially-owned specialty television channels that were acquired jointly with Goldman Sachs from Alliance Atlantis Communications Inc. in August 2007. Collectively, these channels deliver some of the most popular programming in Canadian specialty television and include channels such as *Showcase*, *Slice*, *HGTV Canada*, *History Television* and *Food Network Canada*.

64. The Canadian Television Segment, with the exceptions of CTLP's partially-owned specialty television channels (*TVtropolis*, *Mystery TV* and *MenTV*) is currently part of the CMI Entities' separate CCAA proceeding. The CW Media Segment is not part of the CMI Entities' CCAA proceeding, nor is it a part of this proposed CCAA proceeding.

### **THE FINANCIAL POSITION OF THE LP ENTITIES**

65. On November 26, 2009, the Limited Partnership released its annual consolidated financial statements for the year ended August 31, 2009. Those consolidated financial statements of the Limited Partnership included the accounts of the Limited Partnership, CPI and CBI. Because the Limited Partnership is an unincorporated entity, its balance sheets did not include the assets, liabilities, revenue and expenses of its partners (*i.e.*, CMI (since replaced as limited partner by 4501071 Canada) and CCI). A copy of the Limited Partnership's audited consolidated financial statements for the year ended August 31, 2009 (with comparative figures for the year ended August 31, 2008) is attached as Exhibit "E" to this Affidavit.

#### **A. Assets**

66. As at August 31, 2009, the Limited Partnership had total consolidated assets with a net book value of approximately \$644.9 million (decreased from approximately \$647.6 million



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as at August 31, 2008). This included consolidated current assets of \$182.7 million and consolidated non-current assets of approximately \$462.2 million.

**(i) Current Assets**

67. As at August 31, 2009, the Limited Partnership's consolidated current assets consisted of the following:

- Cash and cash equivalents - \$43,427,000
- Accounts receivable - \$103,489,000
- Amounts due from related companies - \$2,266,000
- Inventory - \$6,594,000
- Prepaid Expenses - \$12,991,000
- Restricted cash - \$13,900,000

**(ii) Non-Current Assets**

68. As at August 31, 2009, the Limited Partnership's consolidated non-current assets consisted of the following:

- Property and equipment - \$340,980,000
- Other assets (pension assets, deferred financing costs and advertising rights) - \$26,195,000
- Goodwill - \$95,034,000

69. With respect to property and equipment, the Limited Partnership held the following as at August 31, 2009:

	2009	2008	2007
Land	\$29,329,000	-	\$29,329,000
Buildings	\$196,646,000	\$83,225,000	\$113,421,000
Machinery and equipment	\$644,629,000	\$450,307,000	\$194,322,000
Leasehold and land improvements	\$12,877,000	\$8,969,000	\$3,908,000
<b>TOTAL</b>	<b>\$883,481,000</b>	<b>\$542,501,000</b>	<b>\$340,980,000</b>

**B. Liabilities**

70. As at August 31, 2009, the Limited Partnership had total consolidated liabilities of approximately \$1.719 billion (increased from approximately \$1.656 billion as at August 31, 2008). These liabilities consisted of consolidated current liabilities of \$1.612 billion and consolidated non-current liabilities of \$107 million.

**(i) Current Liabilities**

71. As at August 31, 2009, the Limited Partnership's consolidated current liabilities included the following:

- Accounts payable and Accrued Liabilities - \$126,260,000
- Amounts due on Swap Settlement - \$68,874,000
- Income Tax Payable - \$12,000
- Amounts due to related companies - \$3,777,000
- Current portion of long-term debt - \$1,380,094,000
- Current portion of obligations under capital leases - \$3,138,000

72. The current portion of long-term debt consisted of all of the debt obligations of the LP Entities. As described herein, the Limited Partnership is currently in default under the LP Credit Agreement and the LP Senior Subordinated Credit Agreement as well under the LP Note Indenture. As a result, the LP Secured Lenders, the LP Subordinated Lenders and/or the LP Noteholders may take steps to demand immediate payment of their respective debts. These defaults caused additional defaults under related foreign currency and interest rate swaps, and the swap counterparties have demanded immediate repayment in the aggregate amount of \$69.8 million (described as "amounts due on swap settlement") in paragraph 70. In total, an aggregate principal amount of approximately \$1.45 billion of indebtedness is now due within one year and has been categorized as "current liabilities" for accounting purposes.

**(ii) Non-Current Liabilities**

73. As of August 31, 2009, the Limited Partnership's consolidated non-current liabilities consisted of the following:

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- Obligations under capital leases - \$3,696,000
- Accrued pension, post-retirement and other liabilities - \$75,318,000
- Future income taxes - \$27,478,000

### C. Partner's Deficiency

74. As at August 31, 2009, the Limited Partnership had total consolidated partner's deficiency of approximately \$1.074 billion (increased from approximately \$1.008 billion as at August 31, 2008). The consolidated partner's deficiency consists of the following:

- Partner's capital - \$39,188,000
- Contributed surplus - \$55,000,000
- Deficit - (\$1,168,093,000)

### D. Revenues

75. The Limited Partnership has been experiencing deteriorating financial results over the past year. For the year ended August 31, 2009, the Limited Partnership's consolidated revenues decreased by \$181.7 million, or 15%, to \$1.021 billion as compared to \$1.203 billion for the year ended August 31, 2008. For the year ended August 31, 2009, the Limited Partnership reported a consolidated net loss of \$66.0 million, compared to consolidated net earnings of \$143.5 million, for fiscal 2008.

### E. Secured Debt and Credit Facilities

76. As more fully described below, the Limited Partnership had consolidated indebtedness totalling \$1.45 billion as at August 31, 2009:

		2012	2009	2008	2007
Limited Partnership	Senior Secured Credit Facility – revolver		\$116,000,000	\$116,000,000	\$96,000,000
	Senior Secured Credit Facilities –	2012	\$265,000,000	\$262,692,000	\$262,028,000

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	credit C				
	Senior Secured Credit Facilities – credit D	2014	US\$458,042,000	\$497,311,000	\$483,999,000
	Amounts due on swap settlement		\$68,874,000	\$68,874,000	\$68,874,000
	Senior Subordinated Unsecured Credit Facility	2015	\$75,000,000	\$74,235,000	\$74,152,000
	Senior Subordinated Unsecured Notes	2015	US\$400,000,000	\$429,856,000	\$415,766,000
<b>TOTAL</b>			<b>\$1,382,916,000</b>	<b>\$1,448,964,000</b>	<b>\$1,400,819,000</b>

\* all facilities are in default and therefore all are due immediately

**(i) LP Credit Agreement**

77. As noted above, CanWest MediaWorks (now the Limited Partnership) entered into the LP Credit Agreement dated as of July 10, 2007 with The Bank of Nova Scotia, as LP Administrative Agent, the LP Secured Lenders and the LP Guarantors. The LP Credit Agreement provides the Limited Partnership with the LP Secured Credit Facilities, which include:

- (a) a revolving five-year credit facility (including a swingline facility of \$15 million (the “LP Swingline Facility”)) of up to \$250 million (the “LP Revolving Facility”), which was effectively capped at the time of default on May 29, 2009 by the LP Secured Lenders at the amount outstanding of \$116 million plus outstanding letters of credit;
- (b) a non-revolving term credit facility in the amount of \$265 million (the “Credit C Facility”); and
- (c) a non-revolving term credit facility in the amount of US\$458 million (the “Credit D Facility”).

A copy of the LP Credit Agreement, as amended without appendices and signature pages, is attached as Exhibit “F” to this Affidavit.

78. The LP Revolving Facility was to mature in July 2012 and bears interest at prime plus a margin (payable on a monthly basis) for prime rate or base rate advances or at the last day of the applicable LIBOR period for LIBOR advances. As at August 31, 2009, the LP Revolving

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Facility had an interest rate of 3.75% *per annum* and outstanding borrowings of \$116 million net of outstanding letters of credit of \$2.0 million. The availability under the LP Revolving Facility has been permanently reduced to the level of current borrowings of \$116 million plus outstanding letters of credit as a result of the defaults on May 29, 2009 and as agreed in the Forbearance Agreement.

79. The Credit C Facility was to mature in July 2012, bears interest at prime or LIBOR plus a margin (payable on a monthly basis), and is subject to principal payment reductions of a minimum of 1.25% per quarter beginning in the fourth quarter of fiscal 2009 and 2.5% per quarter beginning in the fourth quarter of fiscal 2010. As at August 31, 2009, the Credit C Facility had an interest rate of 3.75% *per annum* and outstanding principal of approximately \$265 million.

80. The Credit D Facility was to mature on July 13, 2014 and bears interest on a monthly basis in respect of base rate advances. Floating rate advances are based upon LIBOR rate or base rate plus a margin. The Limited Partnership had previously entered into a foreign currency and interest rate swap (the "LP Foreign Currency and Interest Rate Swap") to fix the interest and principal payments on a notional amount of US\$466 million, which reduced with principal payments on the debt, at a fixed currency exchange rate of US\$1:\$1.0725 until July 2014, resulting in a swap adjusted effective interest rate of 7.5% *per annum*.

81. As a result of the Events of Default (as defined in the LP Credit Agreement) occurring in respect of the LP Secured Credit Facilities (described below), including the failure to pay the interest and principal reduction payments which were due on May 29, 2009 in respect of the LP Secured Credit Facilities, Events of Default (as defined in the LP Foreign Currency and Interest Rate Swap and LP Notes Swap agreements) were triggered in respect of the LP Foreign Currency and Interest Rate Swap and the LP Notes Swap (defined below). Consequently, all swaps were terminated by the swap counterparties effective late May and early June of 2009. Settlement payments in the aggregate amount of approximately \$68.9 million are now owed by the LP Obligors to the swap counterparties as a result of the early termination of the swaps. These amounts are accruing interest daily. These unpaid swap amounts rank *pari passu* with amounts owing under the LP Credit Agreement. Since the LP Foreign Currency and Interest Rate Swap (defined below) was terminated, the Credit D Facility is no longer hedged

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against foreign currency fluctuations. Pursuant to the terms of the Forbearance Agreement (which is now expired), the LP Obligors agreed to make all payments of interest and fees when due in accordance with the terms of the swap agreements on a going forward basis.

82. As at August 31, 2009, the indebtedness under the Credit D Facility totalled approximately US\$458 million and bore interest at the rate of 4.8 % *per annum*.

83. The LP Guarantors (collectively with the Limited Partnership, the "LP Obligors") have guaranteed the payment and performance of the Limited Partnership's obligations under the LP Secured Credit Facilities and the obligations of the LP Obligors under or in connection with any swap transaction (including now terminated foreign currency and interest rate hedging transactions) and cash consolidation, cash management and electronic funds transfer arrangements (collectively, the "Other LP Secured Obligations").

84. The amounts outstanding from time to time under the LP Secured Credit Facilities and including the Other LP Secured Obligations are secured by charges against all of the assets of the LP Obligors pursuant to various security arrangements (including a General Security Agreement) in favour of CIBC Mellon Trust Company of Canada, acting in its capacity as collateral agent (the "Security").

85. The LP Secured Credit Facilities are subject, *inter alia*, to the following financial covenants:

- Total leverage ratio (the ratio calculated by dividing total debt by EBITDA (as defined in the LP Credit Agreement) for the Limited Partnership's four most recently completed fiscal quarters) not exceeding 5.75 times;
- Senior leverage ratio (the ratio calculated by dividing senior debt at such time by EBITDA (as defined in the LP Credit Agreement) determined on an adjusted consolidated basis for the Limited Partnership's four most recently completed fiscal quarters) not exceeding 3.75 times; and
- Interest coverage ratio (the ratio calculated by dividing EBITDA (as defined in the LP Credit Agreement) for the Limited Partnership's four most recently completed fiscal

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quarters by interest expense for such period) not to be less than 1.75 times prior to August 31, 2009 and 2.00 times thereafter.

86. With respect to partnership distributions, under the LP Credit Agreement, the Limited Partnership is permitted to use up to \$75 million of the LP Revolving Facility to make distributions to its partners in cash, securities or other property so long as no default under the LP Credit Agreement has occurred and is continuing or would result from such distributions, and such distributions do not exceed (in the aggregate) \$75 million plus the lesser of (a) Distributable Cash (as defined in the LP Credit Agreement) and (b) EBITDA (as defined in the LP Credit Agreement) less 1.4 times interest expense for the Limited Partnership's four most recent consecutive fiscal quarters. As the Limited Partnership is currently in default under the LP Credit Agreement, the Limited Partnership cannot make any further distributions to its partners.

87. Under the terms of the LP Credit Agreement, an Event of Default (as defined in the LP Credit Agreement) occurs, *inter alia*, when any LP Obligor becomes a party to a proceeding seeking court protection from its creditors. Absent a stay of proceedings, upon such an insolvency filing, the LP Credit Agreement will terminate and all obligations under the LP Secured Credit Facilities will become automatically due and payable without presentment, demand, protest or other notice of any kind. In addition, the Forbearance Agreement expired and the LP Administrative Agent is now entitled to proceed to enforce its rights and remedies under the LP Credit Agreement. In addition, the LP Obligors would be required, absent a stay of proceedings, to deposit the full face amount at maturity of all letters of credit. The LP Obligors do not have the financial resources to satisfy their obligations under the LP Credit Agreement should the obligations thereunder become due and payable.

88. As at August 31, 2009, the Limited Partnership had total outstanding borrowings on the LP Secured Credit Facilities in an amount that is the Canadian dollar equivalent of approximately \$953.3 million (exclusive of unpaid interest).

89. On May 29, 2009, Canwest Global announced that the Limited Partnership would be in breach of certain financial covenants in the LP Credit Agreement as of May 31, 2009. At that time, Canwest Global also announced that the Limited Partnership would not make certain interest and principal reduction payments aggregating approximately \$10 million which were

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due on May 29, 2009 in respect of the Credit D Facility. A copy of the news release dated May 29, 2009 is attached as Exhibit "G" to this Affidavit.

90. On June 1, 2009, the LP Entities received a letter from the LP Administrative Agent advising that the breach of the financial covenants in the LP Credit Agreement and the missed interest and principal reduction payments that were due on May 29, 2009 in respect of the Credit D Facility were Events of Default as defined in the LP Credit Agreement. The LP Administrative Agent noted that the LP Secured Lenders reserved their rights to fully invoke their rights, remedies, powers or privileges under the LP Credit Agreement and the Security or as otherwise available at law or in equity, at any time as they deem appropriate with respect to the Events of Default that had occurred or that may occur in the future. A copy of the letter from the LP Administrative Agent dated June 1, 2009 is attached as Exhibit "H" to this Affidavit.

91. On June 3, 2009, the LP Obligors responded to the LP Administrative Agent and requested that the LP Administrative Agent communicate to the LP Secured Lenders a request that they not enforce their rights under the LP Credit Agreement as a result of the Events of Default at that time. The LP Obligors also advised the LP Administrative Agent that, in the near term, the LP Entities would be (i) considering the engagement of an experienced restructuring advisor; (ii) providing access to advisors of a steering committee of the LP Secured Lenders to a comprehensive data room; and (iii) developing a timeline for a sale and/or investment solicitation effort with RBC Capital Markets as part of a recapitalization effort. A copy of the letter from the LP Obligors (undated but sent on June 3, 2009) is attached as Exhibit "I" to this Affidavit.

92. The LP Administrative Agent responded to the LP Obligors' June 3<sup>rd</sup> letter on June 12, 2009. In the response, the LP Administrative Agent confirmed that it had advised the LP Secured Lenders of the LP Obligors' request not to accelerate the obligations owing under the LP Credit Agreement. The LP Administrative Agent reiterated that the LP Secured Lenders continued to reserve their rights under the LP Credit Agreement. A copy of the letter from the LP Administrative Agent dated June 12, 2009 is attached as Exhibit "J" to this Affidavit.

93. By letter dated June 24, 2009, the Limited Partnership advised the LP Administrative Agent that it would not be making any further payments of interest, principal or fees due under the terms of the LP Credit Agreement on or after May 29, 2009. A copy of the



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letter from the Limited Partnership to the LP Administrative Agent dated June 24, 2009 is attached as Exhibit "K" to this Affidavit.

94. Altogether, the LP Obligors were not able to make principal, interest and fee payments owing under the LP Credit Agreement on May 29, 2009, June 21, 2009, June 22, 2009, July 21, 2009, July 22, 2009 and August 21, 2009. The LP Obligors have been in default under the LP Credit Agreement since May 29, 2009.

**(ii) The Forbearance Agreement**

95. On or around August 31, 2009, the LP Obligors and certain of the LP Secured Lenders entered into the Forbearance Agreement pursuant to which the LP Secured Lenders agreed to forbear, subject to certain terms and conditions, from taking steps to proceed with enforcement of security held in support of the loans under the LP Credit Agreement in order to allow the LP Obligors and the LP Secured Lenders an opportunity to negotiate a pre-arranged restructuring, recapitalization or reorganization of the financial affairs of the LP Entities. A copy of the Forbearance Agreement is attached as Exhibit "L" to this Affidavit.

96. The Forbearance Agreement expressly contemplated that the LP Obligors and the LP Secured Lenders would negotiate the terms of a pre-packaged restructuring or recapitalization transaction (the "Pre-Pack") to be effectuated under CCAA protection. Schedule "C" to the Forbearance Agreement established "Pre-Pack Milestones" including:

- on or before September 15, 2009, agreement to the terms, timing and conduct of the SISF;
- on or before September 30, 2009, agreement on the principal terms of a Pre-Pack arrangement and its method of implementation; and
- on or before October 15, 2009: (i) delivery by the LP Administrative Agent to the LP Obligors of a written proposal for a Pre-Pack approved by sufficient LP Secured Lenders and counter-parties to the swap agreements; (ii) documentation of the terms of restructuring or termination of existing services agreements, allocation of fees for separate restructurings of the LP Entities and the CMI Entities and terms of

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governance of the LP Obligors during the course of any CCAA proceeding; and (iii) agreement on a proposed Initial Order.

97. The Forbearance Agreement also required the LP Obligors to submit regular rolling cash flow reports and provided that total operating disbursements and receipts from the previous four week period could not deviate from their respective cash flow projections by negative variances greater than 10%.

98. Under the Forbearance Agreement:

- the LP Secured Lenders had no obligation to make any further advances and the Swingline Availability (as defined in the LP Credit Agreement) was cancelled;
- the LP Obligors were not permitted to make payments in excess of \$1,000,000 individually or \$5,000,000 in the aggregate except as expressly contemplated in the cash flow projections delivered to the LP Administrative Agent;
- immediate payment was required in respect of all outstanding interest and fees under the LP Credit Agreement and swap agreements and the Limited Partnership was required to continue to make current and ongoing payments in respect of interest and fees under such agreements when due; and
- without the written consent of the LP Administrative Agent, no payments could be made to other Canwest entities except in accordance with the terms and conditions of certain existing shared services agreements and no new agreements for shared services with the Canwest entities could be entered into.

99. By its terms, the Forbearance Agreement expired on the earlier of:

- October 31, 2009;
- failure of the LP Obligors to meet any of the Pre-Pack Milestones to the satisfaction of the LP Secured Lenders;
- delivery by the Limited Partnership to the LP Administrative Agent of notice of a proceeding to obtain court protection;

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- unless waived by the LP Administrative Agent; receipt by the LP Obligors of a notice of acceleration by the LP Noteholders;
- the occurrence of any default or event of default other than defaults and events of default for which the Forbearance Agreement was provided; or
- the failure of the LP Obligors to comply with their obligations under the Forbearance Agreement.

100. On August 31, 2009, the Limited Partnership transferred \$13.9 million to a restricted bank account that was used to pay outstanding interest owing on the LP Secured Credit Facilities pursuant to the terms of the Forbearance Agreement.

101. The LP Obligors and the LP Secured Lenders did not achieve the Pre-Pack Milestones set out in the Forbearance Agreement. As a result, the LP Obligors had to request, and were granted, numerous short-term extensions to the milestones by the LP Secured Lenders. These included extensions of Pre-Pack Milestones to September 22, 2009, September 29, 2009, October 7, 2009, October 15, 2009, October 30, 2009 and November 9, 2009. A copy of the last waiver and extension letter dated October 30, 2009 is attached as Exhibit "M" to this Affidavit.

102. On two occasions, the LP Obligors were also required to request amendments to the Forbearance Agreement because actual cash receipts in their rolling cash flow reports deviated from cash flow projections by in excess of the permitted 10% negative variance. By letter dated October 9, 2009, the LP Obligors requested that the LP Secured Lenders consent to: (i) the total negative receipt variance of 12% reported in the rolling cash flow reports dated October 8, 2009; and (ii) a maximum total negative receipt variance of up to 20% for all future rolling cash flow reports. Pursuant to the Waiver and Amendment Agreement to the Forbearance Agreement between the LP Obligors and the LP Administrative Agent, the LP Administrative Agent agreed, *inter alia*, to: (i) waive the termination events under the Forbearance Agreement and the events of default and defaults under the LP Credit Agreement; and (ii) amend section 6(b) of the Forbearance Agreement to increase the maximum negative variance from 10% to 20% for the period from October 18, 2009 to October 25, 2009. A copy of the Waiver and Amendment Agreement to the Forbearance Agreement is attached as Exhibit "N" to this Affidavit.

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103. On November 9, 2009, with requests by the LP Obligors for additional waivers, extensions and maximum negative variances outstanding, the Forbearance Agreement expired on its terms. As a result, the LP Obligors are in default under the LP Credit Agreement and the LP Secured Lenders have since that date been in a position to take steps to demand immediate payment of all amounts owing under the LP Credit Agreement (which totalled the Canadian dollar equivalent of approximately \$953.3 million (exclusive of unpaid interest) as at August 31, 2009).

**(iii) LP Senior Subordinated Credit Agreement**

104. CanWest MediaWorks (now the Limited Partnership) entered into the LP Senior Subordinated Credit Agreement dated as of July 10, 2007 with The Bank of Nova Scotia, as Subordinated Agent, the LP Subordinated Lenders and the LP Subordinated Guarantors, which provides the Limited Partnership and the other LP Entities with access to an unsecured credit facility (the "LP Senior Subordinated Credit Facility") of up to \$75 million. A copy of the LP Senior Subordinated Credit Agreement is attached as Exhibit "O" to this Affidavit.

105. The LP Senior Subordinated Credit Facility was to mature in July 2015 and bears interest at one of prime rate, base rate or LIBO rate. Interest is payable monthly with respect to prime rate and base rate advances or on the last day of the applicable LIBO period for LIBO advances. As at August 31, 2009, the LP Senior Subordinated Credit Facility had an effective interest rate of 9.0% *per annum* and the Limited Partnership had outstanding borrowings under the facility of \$75 million.

106. The LP Subordinated Guarantors have provided unsecured guarantees of the payment and performance of the Limited Partnership's obligations under the LP Senior Subordinated Credit Agreement. Pursuant to an Intercreditor Agreement dated as of July 10, 2007 (the "Intercreditor Agreement"), the obligations of the Limited Partnership and the LP Subordinated Guarantors are subordinated and postponed until the payment in full of Senior Indebtedness (as defined therein), including all amounts owing by the Limited Partnership and the LP Subordinated Guarantors under the LP Credit Agreement, all documentation securing the LP Secured Credit Facilities, swap agreements and money transfer and payroll services, foreign currency exchange, cash management and any other services provided by a lender under the LP

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Credit Agreement. The unsecured guarantees rank *pari passu* with all other senior subordinated indebtedness of the Limited Partnership, including indebtedness under the LP Note Indenture.

107. The failure of the Limited Partnership to pay the interest due and payable on May 31, 2009 in respect of the LP Credit Agreement resulted in an event of default under the LP Senior Subordinated Credit Agreement. Under the terms of the LP Senior Subordinated Credit Agreement, an event of default also occurs upon the occurrence of a default under any agreement related to the Limited Partnership's or any LP Subordinated Guarantor's indebtedness or swap obligations, which permits the acceleration of the date on which the indebtedness or swap obligations become due.

108. An event of default also occurs under the LP Senior Subordinated Credit Agreement when the Limited Partnership or any LP Subordinated Guarantor becomes subject to any proceeding seeking court protection from its creditors. Absent a stay of proceedings, a CCAA filing causes a termination of the LP Senior Subordinated Credit Agreement with all obligations thereunder becoming automatically due and payable without presentment, demand, protest or other notice of any kind (subject to the terms of the Intercreditor Agreement). In addition, the Limited Partnership and/or the LP Subordinated Guarantors would be required, absent a stay of proceedings, to deposit the full face amount at maturity of all letters of credit now outstanding. Furthermore, the Limited Partnership would also be required to cause all cash flow of the Limited Partnership and LP Subordinated Guarantors to be paid directly to the LP Subordinated Agent upon demand by the LP Subordinated Agent (subject to the terms of the Inter-creditor Agreement). The Limited Partnership and the LP Subordinated Guarantors do not have the financial resources to satisfy their obligations under the LP Senior Subordinated Credit Agreement should the LP Subordinated Agent demand payment of the LP Senior Subordinated Facility.

109. On June 12, 2009, the LP Subordinated Agent sent a letter to the Limited Partnership and the LP Subordinated Guarantors advising them that the above-referenced occurrences of events of default under the LP Credit Agreement constituted events of default under the LP Senior Subordinated Credit Agreement. The LP Subordinated Agent also advised that (i) the LP Subordinated Lenders had not waived and did not intend to waive, any outstanding default or event or default; and (ii) the making of any advance under the LP Senior

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Subordinated Credit Agreement by any of the LP Subordinated Lenders, or any LP Subordinated Lender's agreement to make any such advance, did not constitute an agreement or obligation to make any further or other advance to the Limited Partnership. The LP Subordinated Agent expressly reserved its rights under the LP Senior Subordinated Credit Agreement and the other loan documents with respect to the events of defaults under the LP Senior Subordinated Credit Agreement that have occurred or may subsequently occur. A copy of the letter from the LP Subordinated Agent dated June 12, 2009 is attached as Exhibit "P" to this Affidavit.

110. By letter dated June 24, 2009, the Limited Partnership and the LP Subordinated Guarantors notified the LP Subordinated Agent that they would not be making any payments in respect of interest, principal or other fees due under the terms of the LP Senior Subordinated Credit Agreement on or after May 29, 2009. The Limited Partnership and the LP Subordinated Guarantors failed to make the interest payment due and payable on June 21, 2009 under the LP Senior Subordinated Credit Agreement, and the LP Senior Subordinated Credit Agreement is now in default. A copy of the letter to the LP Subordinated Agent dated June 24, 2009 is attached as Exhibit "Q" to this Affidavit.

111. There are no waivers or forbearance agreements in place between the Limited Partnership, the LP Subordinated Guarantors and the LP Subordinated Lenders.

**(iv) LP Notes**

112. On July 13, 2007, CanWest MediaWorks (now the Limited Partnership) entered into the LP Note Indenture with the LP Note Indenture Guarantors, the Bank of New York, as U.S. trustee, and BNY Trust Company of Canada as Canadian trustee in connection with the issuance of the LP Notes in an aggregate principal amount of US\$400 million. A copy of the LP Note Indenture is attached as Exhibit "R" to this Affidavit.

113. Under the terms of the LP Note Indenture, the Limited Partnership is required to make semi-annual interest payments to the LP Noteholders. The LP Notes bear interest at 9.25% *per annum* and are due in August 2015. The LP Notes have a variable prepayment option at a premium. The LP Note Indenture Guarantors have guaranteed the payment and performance of the amounts owing by the Limited Partnership under the LP Note Indenture.

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114. On July 13, 2007, after signing the LP Note Indenture, the Limited Partnership entered into a US\$400 million foreign currency and interest rate swap resulting in a fixed currency exchange rate of US\$1:\$1.0725 until July 2015 and a fixed interest rate of 9.1% *per annum* (the "LP Notes Swap"). As noted above, as a result of defaults occurring in respect of the LP Credit Agreement (described above), defaults were triggered in respect of the LP Foreign Currency and Interest Rate Swap and the LP Notes Swap. Consequently, the swap counterparties terminated all swap instruments and demanded immediate payment of an aggregate amount of approximately \$68.9 million from the LP Obligors. The LP Obligors have not satisfied this demand and do not have adequate liquidity to satisfy this demand or any such demand.

115. The LP Notes are unsecured obligations of the Limited Partnership and the LP Note Indenture Guarantors. They are expressly subordinated to all Senior Indebtedness (as defined in the LP Note Indenture) of the Limited Partnership and the LP Note Indenture Guarantors, including: (i) indebtedness under the LP Credit Agreement; (ii) all swap obligations of the LP Obligors; (iii) all reimbursement obligations of the LP Obligors in respect of amounts paid under letters of credit or other similar instruments; and (iv) any other indebtedness that does not by its terms provide that such indebtedness is to rank *pari passu* with, or subordinate to, the LP Notes. The LP Notes rank *pari passu* to all other indebtedness of the Limited Partnership, including the LP Senior Subordinated Credit Facility, which does not constitute Senior Indebtedness (as defined in the LP Note Indenture).

116. Under the terms of the LP Note Indenture, an event of default occurs upon the failure by the Limited Partnership or any LP Note Indenture Guarantor to pay when due principal, interest or premium in an aggregate amount of US\$25 million or more which default is not cured, waived or postponed within 60 days after written notice is provided or the acceleration of indebtedness aggregating US\$25 million or more is not rescinded or annulled within 30 days after written notice is provided. Accordingly, the LP Noteholders are currently in a position to take steps to demand immediate repayment of all amounts outstanding under the LP Notes as a result of the events of default under the LP Credit Agreement and the LP Senior Subordinated Credit Agreement. As noted above, the failure to pay the interest due on August 1, 2009 also resulted in an event of default under the LP Note Indenture on September 1, 2009. A copy of the news release dated August 3, 2009 is attached as Exhibit "S" to this Affidavit.

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117. An event of default under the LP Note Indenture occurs when the Limited Partnership or any Significant Subsidiary (as such term is defined in rule 1-02(w) of regulation S-X under the *U.S. Securities Act of 1933*) commences a voluntary insolvency proceeding. Consequently, the commencement of this CCAA proceeding will also constitute an event of default under the LP Note Indenture. The result of this event of default would be that, absent a stay of proceedings, all principal, premium, if any, and interest now outstanding with respect to the LP Notes would become due and payable immediately without any declaration or other act.

#### **F. Distributions**

118. The Limited Partnership has historically made monthly distributions to its then partners, CMI and CCI. Throughout fiscal 2008, the Limited Partnership made distributions of Distributable Cash (as defined in the LP Credit Agreement) to partners of the Limited Partnership in accordance with the Amended and Restated Limited Partnership Agreement (the "**Partnership Agreement**"). Distributions were approved quarterly in advance by the Board of Directors of CanWest MediaWorks (Canada) (now CCI) (the "**Board**"). As approved by the Board, monthly distributions were made on issuance of an officers' certificate signed by the President, Publications and the Executive Vice-President and Chief Financial Officer of the Limited Partnership each month (the "**Compliance Certificate**"). The Compliance Certificates stated that each of those officers had reviewed the financial statements and other documents relevant to the business of Canwest and Canwest MediaWorks (now the Limited Partnership) and that, to their knowledge, no events had occurred that would adversely impact the ability of the Limited Partnership to pay the distributions that had been declared.

119. During the four months ended December 31, 2008, the Limited Partnership made monthly distributions to its partners aggregating approximately \$45 million. At the time of all of these monthly distributions, the Limited Partnership was in compliance with the Partnership Agreement and all of its various lending arrangements.

120. On December 15, 2008 the Limited Partnership revised its quarterly forecast for the balance of fiscal 2009. Based upon this forecast, its senior management believed that the Limited Partnership would remain in compliance with its financial covenants throughout fiscal 2009. Although the Limited Partnership's forecasts were typically only updated and revised by its senior management on a quarterly basis, on January 23, 2009, the Limited Partnership's



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senior management revised the December forecast due to weaker than expected results in December 2008 and based upon an expected further deterioration of results in January 2009. It was concluded at the time that, although the Limited Partnership was in full compliance with its financial covenants under the LP Credit Agreement, it could possibly breach its financial covenants later in fiscal 2009. Accordingly, the January 2009 distribution to partners of the Partnership Agreement was not made. Between January 1, 2009 and May 29, 2009, the Limited Partnership's did not make any distributions to its partners due to concerns surrounding potential financial covenant breaches under the LP Secured Credit Facilities and by limitations on availability of Distributable Cash. Since May 29, 2009, the Limited Partnership has been unable to make distributions because of both financial covenant breaches and failures to make the interest and principal reduction payments in respect of the LP Credit Agreement.

## **EMPLOYEES**

121. As noted above, as of August 31, 2009, Canwest employed approximately 7,000 FTE employees. Of that number, the LP Entities (primarily CPI) employed approximately 5,300 FTE employees (including approximately 390 FTE employees who work in shared services (as described below)). Approximately 1,300 of the 5,300 FTE employees of the LP Entities are situated in Ontario.

122. Approximately 45% of the LP Entities' employees are employed under a total of 43 collective agreements. As at July 22, 2009, the LP Entities' unionized employees had filed a total of 73 active grievances, 12 of which are currently at the arbitration stage.

123. Twenty-five of the LP Entities' bargaining units are represented by the Communications, Energy and Paper Workers Union ("CEP"); 12 are represented by the Communications Workers of America ("Guild") ("CWA"); three are represented by the National Automobile, Aerospace, Transportation and General Workers Union ("Canadian Auto Workers") ("CAW"); two are represented by the Teamsters/Graphics Communications Conference Union ("Teamsters"); and one is represented by the Calgary Printing Trades Union ("CPTU"). In general, collective agreements in the LP Entities' operations relate to individual newspaper publications or business units or locations, rather than multiple locations. As of September 30, 2009, seven of the 43 collective agreements have expired, two of which are in conciliation. By January 1, 2011, three-quarters of the LP Entities' collective agreements will have expired.

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124. As at August 31, 2009, the Limited Partnership employed approximately 390 FTE employees working in shared services functions in Toronto, Ontario and Winnipeg, Manitoba. Shared service functions include departments such as human resources, the *ReachCanada* call centre, accounting and business services and IT services. Employees in the shared services areas support the CMI Entities and the CW Media Segment as well as the LP Entities.

### **PAYROLL OBLIGATIONS**

125. The LP Entities' consolidated gross payroll obligation (including salaries for full-time and part-time workers, salaries for freelancers and temporary workers, commissions and bonuses) for their employees for the year ended August 31, 2009 was approximately \$376.3 million.

126. The LP Entities also offer benefits and perquisites to their eligible salaried and hourly employees, including benefits provided through group insurance programs. These benefits and perquisites include, but are not limited to, employee medical, dental, disability, accidental death and dismemberment, life insurance and similar benefit plans, share compensation and stock option plans, automobile allowances and leased automobiles, club memberships and employee assistance programs. The total amounts paid by the LP Entities for group benefits and perquisites (excluding share compensation plans and employee assistance programs) for eligible hourly and salaried employees during the year ended August 31, 2009 (excluding all statutory withholdings) totalled approximately \$37.5 million.

### **PENSION, POST-RETIREMENT AND POST-EMPLOYMENT BENEFITS**

127. CPI maintains in the aggregate two defined benefit pension plans that are registered under the *Ontario Pension Benefits Act*, R.S.O., 1990, c. P.8 (the "Ontario DB Pension Plans") and one defined benefit pension plan that is registered under the *British Columbia Pension Benefits Standards Act*, R.S.B.C., 1996, c. 352 (the "British Columbia DB Pension Plan") (collectively, the "DB Pension Plans").

128. The Ontario DB Pension Plans and the British Columbia DB Pension Plan are as follows:

#### Ontario DB Pension Plans

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- CanWest Publications Inc. Retirement Plan (“CPI Plan”); and
- CanWest Windsor Star Group Inc. Pension Plan (“Windsor Star Plan”).

British Columbia DB Pension Plan

- CanWest Pension Plan for Vancouver Island Employees (“Vancouver Island Plan”)<sup>2</sup>

129. Mercers (Canada) Ltd. (“Mercers”) is the actuary for the DB Pension Plans. As at the effective date of the last filed actuarial valuations (*i.e.* as at December 31, 2008), the DB Pension Plans had, in the aggregate, approximately 2,210 active members and 685 pensioners, survivors and other non-active DB Plan members.

130. In addition to the DB Pension Plans, the LP Entities maintain and contribute to the following three defined contribution pension plans:

- Retirement Plan for Management and Non-Bargaining Unit Employees of Global Communications Limited<sup>3</sup>;
- Pension Plan for the Employees of Saskatoon *Star Phoenix* and Regina *Leader-Post*;
- Defined Contribution Component of the Vancouver Island Plan; and
- Pension Plan for Employees of CanWest Interactive Inc.<sup>4</sup>

131. CPI also contributes to the following multi-employer pension plans:

- GCIU Supplemental Retirement and Disability Fund;
- GCIU Employer Retirement Fund for Canada;
- CWA/ITU Negotiated Pension Plan (Canada);
- Canadian Multi Employer Retirement Fund for the Graphic Arts Media;
- GCIU Local 525 Pension Plan;

<sup>2</sup> This plan provides benefits on both a defined benefit and a defined contribution basis; see paragraph 129

<sup>3</sup> Note that the main sponsor of this plan is CTLP. At present, 237 employees of the LP Entities participate in this plan.

<sup>4</sup> Note that the Affidavit of John Maguire sworn October 5, 2009 in support of the application of Canwest Global and certain other entities for protection under the CCAA incorrectly referred to the Pension Plan for Employees of CanWest Interactive Inc. as a pension plan maintained and contributed to by the CMI Entities.

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- Pacific Press Retirement Plan and Trust Fund; and
- CEP Multi Employer Pension Plan.

In addition to the above, a discrete number of employees of the LP Entities participate in certain other pension plans which are maintained by other Canwest entities.

132. The annual special payments and current service costs for each registered DB Pension Plan and the date of the most recent valuation report that determined these amounts are as follows:

Plan	Solvency Deficiency as at last valuation date	Annual Special Payment	Estimated Annual Current Service Cost	Last Valuation Date	Valued at Solvency Deficiency as at last valuation date
1. CPI Plan*	\$8,531,139	\$17,529,108	\$7,706,965	12/31/08	\$101,904,036
2. Windsor Star Plan*	\$132,334	\$148,214	\$49,301	12/31/08	\$751,078
3. Vancouver Island Plan*	\$1,631,723	\$889,344	\$508,207	12/31/08	\$3,694,467
<b>TOTAL</b>	<b>\$10,295,196</b>	<b>\$18,566,666</b>	<b>\$8,264,473</b>		<b>\$106,349,581</b>

- ⊕ The Solvency Deficiencies shown in the above table assume that the solvency assets include the present value of five years of previously established special payments
- Estimated Annual Current Service Cost is based on the rule for computing the Employer's current service costs (as reflected in the valuation report) updated to reflect a recent estimate of active membership in the plan, and corresponding current payroll and employee contribution levels
- Plans have going concern unfunded liability in addition to solvency deficiency. Special payments include payments towards going concern unfunded liability and solvency deficiency

133. The DB Pension Plans are valued on a regular basis, in accordance with the requirements of their respective governing legislation. The DB Pension Plans are next required to file actuarial valuations effective as of December 31, 2009. As a result of the recent economic decline and the concurrent negative results in the financial marketplace, the current actuarial valuations (*i.e.*, those as at December 31, 2008), reflect significantly deteriorated financial positions for the DB Pension Plans from that reported in the previously filed actuarial valuations (*i.e.*, those as at December 31, 2007). Increased special payments for the DB Pension Plans retroactive to January 1, 2009 have been fully paid and all required contributions to date for current service and special payments have been remitted. The LP Entities intend to continue to make special payments throughout the course of this CCAA proceeding, and the special

payments and current service contributions are contemplated in the cash flow projections described below.

134. The Limited Partnership maintains the Canwest MediaWorks Limited Partnership Retirement Compensation Arrangement Plan (the "LP RCA"). A November 2008 valuation (the "LP RCA Valuation") estimated that the settlement liabilities under the LP RCA for the period ending December 31, 2009 were approximately \$2 million. The LP RCA Valuation estimated that net assets (after provision for expenses) available to provide benefits would be approximately \$0.1 million. The difference between the net assets and estimated settlement liabilities (approximately \$1.9 million) was secured by an irrevocable letter of credit (the "LP RCA Letter of Credit") held by Royal Trust Corporation of Canada in its capacity as the trustee of the LP RCA ("Royal Trust"). The Limited Partnership was not able to make arrangements to renew the LP RCA Letter of Credit on December 1, 2009. Royal Trust, therefore, demanded payment under the LP RCA Letter of Credit and payment was made to Royal Trust in response to the demand on December 16, 2009. As a result of such demand, the LP RCA has been automatically terminated. The terms of the trust agreement governing the LP RCA require Royal Trust to distribute the assets of the LP RCA to those persons who are entitled to benefits under the LP RCA.

135. CPI is responsible for certain top-up pension obligations owing to a small number of current or former executives pursuant to individual agreements known as Southam Executive Retirement Arrangements ("SERAs"). At December 1, 2009 the aggregate benefit obligation related to SERAs was approximately \$14.4 million. The SERAs are unfunded and not secured under any letter of credit arrangement.

136. The LP Entities also provide post-employment and post-retirement benefits to certain of its employees, most notably health, dental and term life insurance benefits. The aggregate annual cash contribution in the year ended August 31, 2009 to provide these post-employment and post-retirement benefits was approximately \$3 million. The aggregate accrued benefit obligation relating to these benefits as at the end of the fiscal 2009 year was approximately \$64.8 million.

## **CASH MANAGEMENT SYSTEM**

137. In the ordinary course of their businesses, the LP Entities use a centralized cash management system maintained at The Bank of Nova Scotia to monitor account activity and account balances (the "LP Cash Management System"). The LP Cash Management System consists of 61 Canadian dollar accounts and 17 U.S. dollar accounts (the "LP Accounts"). Almost all (*i.e.* 50 of the 61) of the Canadian LP Accounts are consolidated daily. Fifty of the Canadian dollar accounts and all 17 U.S. dollar accounts in the LP Cash Management System operate under a mirror netting arrangement.

138. The LP Cash Management System is managed jointly by CMI's treasury department and Canwest Business Services, an operating division of the Limited Partnership, which is located in Winnipeg, Manitoba. On a daily basis, CMI's treasury department and Canwest Business Services review the account activity, inter-entity fund transfers and account balances. In addition, in order to assess cash requirements, items in transit for the LP Entities are monitored through the accounts payable system by Canwest Business Services.

139. By centralizing control over its cash management arrangements, the LP Entities are able to facilitate cash forecasting and reporting, monitor collection and disbursement of funds, and maintain control over the administration of various bank accounts required to effect the collection, disbursement and movement of cash. The LP Cash Management System is essential to the orderly management of the LP Entities' business affairs, and a significant change to the current system would be seriously disruptive.

140. The LP Entities intend to maintain the LP Cash Management System throughout the course of this CCAA Proceeding.

## **SHARED SERVICES AND TRANSFER OF THE NATIONAL POST NEWSPAPER**

### **A. Overview**

141. Over the past several years, Canwest has attempted to streamline processes and gain synergies by sharing certain administrative, advisory and other business critical services between its various corporate entities. Most of these inter-entity arrangements (the "Shared Services") are governed by inter-entity agreements (the "Inter-Entity Agreements").

142. By their terms, the Inter-Entity Agreements provide generally that the service provider (whether CMI, the Limited Partnership or otherwise) is entitled to reimbursement for all costs and expenses incurred in the provision of the Shared Services. Costs and expenses that are shared between the service provider and the service recipient are allocated between the parties on reasonable bases consistent with past practices. Neither the reimbursement of costs and expenses nor the payment of fees is intended to result in any material financial gain or loss to the service provider.

143. In particular, the Limited Partnership provides CMI, CTLP, and the CW Media Segment with, *inter alia*, the following Shared Services:

- financial and accounting support services, including accounts payable, accounts receivable, payroll services, cash flow management, and accounting services;
- corporate services, including human resources consulting, pension services, and disability and other employee benefits administration;
- IT infrastructure and support services, IT processing and website development and maintenance services; and
- certain cross-promotional activities, such as providing advertising space in its newspapers and online media.

For the year ended August 31, 2008, the aggregate amount received by the LP Entities from CMI, CTLP, and the CW Media Segment, in respect of these Shared Services was approximately \$16.2 million. The aggregate amount received by the LP Entities from CMI, CTLP, and the CW Media Segment for fiscal 2009 was \$14.8 million.

144. Prior to October 30, 2009, the LP Entities provided the National Post Company with, *inter alia*, the following Shared Services:

- financial and accounting support services, including accounts payable, accounts receivable, payroll services, cash flow management, and accounting services;
- corporate services, including human resources consulting, pension services and disability and other employee benefits administration;

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- IT infrastructure and support services, including IT processing and website development and maintenance services (*FPinfomart.com*; *NationalPost.com*);
- advisory services regarding corporate development, capital expenditures and other operational matters;
- content from Canwest News Service and other editorial services;
- sales and marketing services;
- office space at 1450 Don Mills Road, Toronto, Ontario;
- classified advertising and customer support services provided by *ReachCanada* call centre; and
- printing and distribution services, including outsourced printing of the *National Post* at various metropolitan newspaper printing facilities.

For the year ended August 31, 2008, the total amount received by the LP Entities from the National Post Company in respect of these Shared Services was approximately \$21.5 million. The total amount received by the LP Entities from the National Post Company for fiscal 2009 was \$22.6 million.

145. In addition to the above, the LP Entities manage, invoice and collect certain advertising and circulation revenues on behalf of the *National Post* and certain advertising revenues on behalf of the CW Media Segment and CTLP. The LP Entities are required to make payment to the applicable Canwest entities based upon actual gross sales and collections. The total amount payable in respect of these Shared Services for the year ended August 31, 2009 was approximately \$40.0 million (approximately \$35.0 million for the National Post Company, \$1.9 million for CTLP and \$3.1 million for the CW Media Segment).

146. CMI provides the LP Entities with, *inter alia*, the following Shared Services based upon various fee and cost allocation agreements and practices:

- executive advisory services related to corporate development, strategic planning, capital allocation, financing, equity and debtholder relations, insurance and risk management, tax planning and certain operational matters;



- corporate and administrative services related to legal matters (including securities law compliance, corporate records maintenance, contract management and corporate secretarial services), tax compliance, financial reporting, internal audit, investor and public relations, treasury, human resources management, sales representation and capital asset management; and
- insurance coverage (comprehensive, general liability, property, etc.) for which insurance premiums are shared.

The total amount paid to CMI by the LP Entities for the year ended August 31, 2008 in respect of these services was approximately \$6.1 million. The total amount paid to CMI by the LP Entities for fiscal 2009 was approximately \$6.5 million.

147. Canwest Global has granted to the Limited Partnership a non-exclusive, royalty-free, non-transferable licence to use some or all of the "Canwest" trademarks in Canada and to sublicense the use of the "Canwest" trademarks to the other LP Entities.

148. In addition, the Limited Partnership, CMI, the CTLP and the CW Media Segment each provide each other with certain affiliation services related to editorial content. As well, CMI, CTLP and the CW Media Segment are part of and contribute content to the *canada.com* network.

### **B. New Shared Services Agreement**

149. As noted above, the Forbearance Agreement required, as part of the Pre-Pack, that the LP Entities make arrangements with the CMI Entities either providing or receiving Shared Services to either restructure or terminate the Inter-Entity Agreements governing Shared Services. Likewise, the recapitalization transaction that the CMI Entities negotiated with an *ad hoc* committee of their 8% senior subordinated noteholders contemplated that the LP Entities and the CMI Entities would agree to an orderly transition and disentanglement and/or realignment of the Shared Services arrangements existing as of the date of the CMI Entities' filing for protection from their creditors under the CCAA on October 6, 2009. Because of both the high degree of integration of the *National Post* newspaper into the Shared Services arrangements and a desire on the parts of both the LP Entities and the CMI Entities to transfer the ownership of the assets and business of the National Post Company to the LP Entities, it was determined that the New

Shared Services Agreement and the transfer of the assets and business of the *National Post* newspaper would occur contemporaneously.

150. On October 26, 2009, Canwest Global, the Limited Partnership, CPI, CMI, CTLP and the National Post Company entered into an agreement (the “**Transition and Reorganization Agreement**”) that set forth the terms of reorganization and realignment of Shared Services, operations and employees as between the LP Entities and the CMI Entities. Attached as Schedule “A” to the Transition and Reorganization Agreement is the New Shared Services Agreement, which effectuates the intention of the LP Entities and the CMI Entities to reduce the extent of Shared Services provided. Among other things, the parties to the New Shared Services Agreement have agreed that: i) existing allocations will continue until various dates in 2010 and 2011 as specified in the New Shared Services Agreement, at which point the relevant Shared Services will either cease to be provided or will be renegotiated on commercial terms; ii) certain cost and expense allocations in respect of Shared Services will be amended; iii) the employment of certain employees who are currently employed by one entity but providing services exclusively or almost exclusively to another entity will be realigned to the entity to which they are providing services; and iv) currently misaligned pension plan participants will be transferred to the pension plan sponsored by the appropriate entity for whom they provide services. It is anticipated that many of the Shared Services will cease to be provided after August 31, 2010. A copy of the Transition and Reorganization Agreement, with Schedules “A” and “B” thereto, is attached as Exhibit “T” to this Affidavit.

151. By Order dated October 30, 2009, as part of the CCAA proceeding of the CMI Entities, this Honourable Court approved, *inter alia*, the entering into, execution and delivery of the Transition and Reorganization Agreement.

152. During the course of this CCAA proceeding, the LP Entities intend to continue to provide, receive, collect and pay for the Shared Services and inter-entity transactions in the ordinary course of their business pursuant to the terms of the New Shared Services Agreement and in accordance with current arrangements, payment terms and business practices, except as to payment terms that may be amended to provide for revised timing of reconciliations. It is proposed in the draft Initial Order in this CCAA proceeding that the LP Entities and CMI Entities will be prohibited from modifying, ceasing to provide or terminating the provision or

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payment of the Shared Services except with the consent of the other party receiving such Shared Services and the consent of the proposed Monitor or further Order of this Honourable Court. The Initial Order granted by this Honourable Court on October 6, 2009 in the CCAA proceeding of the CMI Entities contained a similar Order. It is anticipated that the LP Entities will have a net cost recovery of \$10.7 million during the year ending August 31, 2010 in respect of Shared Services.

153. The Shared Services provided and received by the LP Entities are greatly beneficial to them as well as the CMI Entities and are therefore integral to maintaining the enterprise value of the LP Entities. It is intended that all pre-filing amounts owing by the LP Entities for Shared Services will be paid in the ordinary course during this CCAA proceeding.

### **C. Transfer of the National Post's Assets and Business**

154. As noted above, it was the intention of the LP Entities and the CMI Entities that the adoption of the New Shared Services Agreement and the transfer of the assets and business of the *National Post* newspaper from the National Post Company, a wholly-owned subsidiary of CMI, to National Post Inc., a wholly-owned subsidiary of CPI, would occur at the same time. Prior to 2005, both the Canadian television and newspaper publishing and digital media operations of Canwest were owned directly or indirectly by a single corporate entity: CanWest MediaWorks Inc. ("CMW") (now CMI). CanWest MediaWorks (now the Limited Partnership) was formed in 2005 to acquire all of CMW's newspaper publishing and digital media and online operations (excluding those of the *National Post*) as part of the creation of the Income Trust. The *National Post* was not included in the creation of the Income Trust because of its historic unprofitability. Two years later, in May 2007, CanWest MediaWorks effectuated a going-private transaction of the Income Trust after an announcement by the federal government regarding the future income taxation of income fund distributions.

155. Notwithstanding the segregation of *National Post's* operations from the core newspaper publishing and digital media and online operations of Canwest as part of the formation of the Limited Partnership, there are practical and operational synergies between the *National Post's* operations and the newspaper publishing and digital media and online businesses of the LP Entities. The Limited Partnership provided the National Post Company with, *inter alia*, services in the areas of: finance and accounting; IT; human resources and benefits

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administration; sales and marketing; advertising and customer support; and printing and distribution services. The transfer of the assets and business of the *National Post* newspaper to a wholly-owned subsidiary of CPI has eliminated the inter-entity nature of the Shared Services provided by the LP Entities to the *National Post* newspaper and has effectuated an operational alignment of Canwest's newspaper publishing and digital media and online businesses within the LP Entities and CPI's subsidiary, National Post Inc. The National Post Transition Agreement is Schedule "B" to the Transition and Reorganization Agreement, which is attached as Exhibit "T" to this Affidavit.

156. Under the National Post Transition Agreement, the assets and business of the *National Post* newspaper were transferred as a going concern to a newly created wholly-owned subsidiary of CPI, National Post Inc. (formerly 4513401 Canada Inc.) (the "Transferee"). The transferred assets (the "Transferred Assets") included the National Post Company's right, title and interest in its: (i) accounts receivable; (ii) prepaid expenses; (iii) inventory; (iv) equipment; (v) contracts and licenses; (vi) intellectual property; (vii) goodwill; (viii) certain intercompany receivables; and (ix) books and records.

157. The National Post Transition Agreement also provides that the Transferee will assume certain of the operating liabilities of the National Post Company, including accounts payable not stayed by the CCAA Proceeding of the CMI Entities, accrued expenses, deferred revenue and any amounts due to *National Post's* employees. The Transferee also assumed all liabilities and obligations under the National Post Pension Plan and related benefit plans and offered employment to all employees of the National Post Company. Liabilities excluded from the transfer included certain intercompany payables due to CMI and contingent liabilities relating to existing litigation claims.

158. The transition cost that was paid in exchange for the transfer of *National Post's* assets was approximately \$2.5 million in addition to the assumption of certain liabilities.

159. By Order of this Honourable Court dated October 30, 2009 as part of the CCAA proceeding of the CMI Entities, substantially all of the assets and business of the National Post Company were to be transferred to and vested in the Transferee upon the delivery of a certificate evidencing the closing of the transaction to the satisfaction of the Court-appointed monitor for the CMI Entities. The transfer of the assets and business of the *National Post* newspaper to, and

assumption of the *National Post's* liabilities by, the Transferee occurred October 30, 2009. Effective November 2, 2009, the Transferee changed its name from 4513401 Canada Inc. to "National Post Inc."

160. National Post Inc. is currently funded through an intercompany loan agreement (the "NP Intercompany Loan Agreement") between 4513401 Canada Inc. (now National Post Inc.) and CPI that is dated October 30, 2009. Pursuant to the terms of the NP Intercompany Loan Agreement, CPI has agreed to make secured revolving loans to National Post Inc. from time to time up to an aggregate amount of \$12,500,000 less the Availability Block (as defined in the NP Intercompany Loan Agreement). The obligations under the NP Intercompany Loan Agreement are secured by first-ranking security and charge over all present and future property of National Post Inc. The NP Intercompany Loan Agreement expires and is due and payable on the earlier of July 26, 2010 or a change of control of National Post Inc. Subject to the approval of this Honourable Court, it is the intention of the LP Entities to seek authorization to continue providing funding to National Post Inc. pursuant to the terms of the NP Intercompany Loan Agreement throughout the course of this proposed CCAA proceeding. A copy of the NP Intercompany Loan Agreement is attached as Exhibit "U" to this Affidavit.

161. In addition to the defaults and events of default described above, the transfer of the National Post assets and the entering into of the NP Intercompany Loan Agreement breached certain provisions of the LP Credit Agreement and the Forbearance Agreement, which was in effect at the time of the transfer. Pursuant to a consent and waiver dated as of October 30, 2009, the Required Lenders (defined as lenders holding a minimum of 50.1% of the aggregate commitments of all lenders under all Credits (as defined in the LP Credit Agreement and the Forbearance Agreement)) consented to the transfer of the *National Post's* assets and waived the defaults and events of default under the LP Credit Agreement and the Forbearance Agreement resulting from the National Post transaction.

162. The transfer of the *National Post's* assets also breached certain provisions of the LP Senior Subordinated Credit Agreement. The LP Subordinated Lenders did not waive any defaults resulting from the transfer of the *National Post's* assets.

## **THE FINANCIAL POSITION OF THE LP ENTITIES**

163. As discussed in greater detail above, the recently released annual audited consolidated financial statements of the Limited Partnership for the year ended August 31, 2009 revealed a decline in its consolidated revenues that has constrained the LP Entities' ability to satisfy their financial obligations and precipitated defaults under the LP Credit Agreement, the LP Senior Subordinated Credit Agreement and the LP Note Indenture. Significantly, there is no immediate prospect for a dramatic turn-around in the financial prospects of the LP Entities.

164. The LP Entities generate the majority of their revenue from the sale of advertising (approximately 72% of their consolidated revenue for the year ended August 31, 2009). During the past 12 to 18 months, many segments of the Canadian newspaper publishing industry have experienced significant and sudden declines in advertising revenues reflecting the weakening economic environment in Canada and elsewhere. The LP Entities reported a 19% reduction in their consolidated advertising revenues and a 15% overall decline in their consolidated revenues for the year ended August 31, 2009.

165. At present, the outlook for the advertising market in Canada has become more stable, but remains difficult. The weakness in advertising revenues has created a business environment that continues to be challenging for the LP Entities, and management of the LP Entities anticipates that the declines in their advertising revenue may continue into its fiscal year ending August 31, 2010.

### **A. Efforts by the LP Entities to Respond to Poor Economic Conditions**

166. Over the past 12 to 18 months, the LP Entities have implemented a range of cost reduction initiatives in efforts to improve their cash flow and mitigate the effects of the economic downturn on their advertising revenues. These operational restructuring initiatives are expected to result in a workforce reduction of approximately 840 FTE employee positions, 557 of which are permanent reductions and the remainder of which may be reinstated when the Canadian economy recovers. Some of the most significant of these initiatives include: (i) restructuring of the community newspaper group; (ii) streamlining of certain production processes; (iii) consolidation of classified call centres in a national centre in Calgary, Alberta; (iv) outsourcing of advertising production to lower cost suppliers in the Philippines and India; (v) implementation

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of a new enterprise-wide editorial content management system; (vi) implementation of voluntary employee buyout programs; and (vii) web width (page size) reductions in certain newspapers.

167. Other operating cost saving initiatives implemented by the LP Entities include: (i) restrictions on discretionary expenditures such as marketing, travel, cell phones, training and conferences; and (ii) in an effort to mitigate against the increased cost of newsprint (which increased approximately 21% during the first six months of fiscal 2009) introduction of initiatives to reduce newsprint consumption, including, among other things, aggressive reductions in return targets and newsprint waste and reduced editorial content pages.

168. The LP Entities have also closed a number of non-core or developing businesses including directories in Ottawa, Saskatoon and Regina and the *rush hour* free daily newspapers in Ottawa, Calgary and Edmonton.

169. The Limited Partnership intends to continue the implementation of cost-saving measures and anticipates a further headcount reduction of 120 FTE employees during fiscal 2010.

170. Altogether, as a result of these efforts, operating costs declined approximately \$56 million in the year ended August 31, 2009 relative to the year ended August 31, 2008. Further operating cost declines are expected in fiscal 2010 based upon continuing cost reduction efforts.

#### **B. Appointment of Special Committee, Restructuring Advisor and Recapitalization Officer**

171. On February 19, 2009, the board of directors of Canwest Global struck a special committee of directors (the "Special Committee") with a mandate to explore and consider strategic alternatives available to Canwest Global. The Special Committee was initially comprised of Mr. Derek Burney (Chair), Mr. David Kerr, Mr. David Drybrough and Ms. Margot Micallef. Mr. Frank King was subsequently appointed to the Special Committee effective April 17, 2009.

172. The mandate of the Special Committee includes, among other things, responsibility for overseeing and directing the implementation of a restructuring and/or recapitalization transaction with respect to all, or part, of the business and/or capital structure of Canwest, including the LP Entities.

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173. On or about April 21, 2009, I was appointed by the Special Committee as Canwest Global's Recapitalization Officer ("**Recapitalization Officer**"). My responsibilities as Recapitalization Officer include, among other things: (i) developing, for consideration by the Special Committee, strategic alternatives for the operational and financial restructuring of Canwest Global and its subsidiaries, including the LP Entities; (ii) developing a restructuring plan or plans for presentation to lenders, creditors and other stakeholders; and (iii) negotiating all necessary agreements with equity sponsors, lenders, creditors, stakeholders, including those of the LP Entities, and other interested parties that may be necessary or desirable in connection with any restructuring. In this role, Mr. Strike currently reports directly and exclusively to the Special Committee in respect of the restructuring activities of the LP Entities. As of the filing by the CMI Entities under the CCAA on October 6, 2009, he also reports to the chief restructuring advisor of the CMI Entities in respect of the restructuring activities of those entities. On filing by the LP entities under the CCAA, Mr. Strike will also report to the LP CRA in respect of the restructuring activities of the LP Entities, who in turn will report directly to the Special Committee.

174. The mandate of the Special Committee was later revised to include selecting one or more individuals who would provide advisory services to the Recapitalization Officer and the Special Committee with respect to the formulation and implementation of a restructuring and/or recapitalization plan for the LP Entities. To that end, on or about July 1, 2009, Mr. Gary F. Colter of CRS Inc. ("**CRS**") was retained by the Special Committee to serve as the Restructuring Advisor for the LP Entities (the "**Restructuring Advisor**"). The Restructuring Advisor reports directly and exclusively to the Special Committee. It is proposed that the Restructuring Advisor will be named as the LP Entities' Chief Restructuring Advisor (the "**LP CRA**") in the event that this Honourable Court grants the proposed Initial Order. Upon the occurrence of that event, Mr. Colter, as LP CRA, will assume primary responsibility for the formulation and implementation of the restructuring and/or recapitalization plan for the LP Entities. The draft Initial Order sets out certain matters that will require consultation with or the consent of the LP CRA during the course of this CCAA proceeding. Mr. Strike will continue to act as the Recapitalization Officer and will report directly to the LP CRA in respect of the restructuring or recapitalization process for the LP Entities. A copy of the retainer agreement, as amended, signed by Gary F. Colter on behalf of CRS is attached as Exhibit "V" to this Affidavit.



175. Throughout the course of this CCAA proceeding, Mr. Dennis Skulsky, who is the president of CPI (the "President"), will report directly to the Special Committee. It is the intention of the LP Entities that the President will keep the Monitor, the LP CRA and Alvarez & Marsal Canada ULC, which is the financial advisor to counsel for the LP Administrative Agent (the "McMillan Financial Advisor"), apprised on a timely basis of developments in the operations and financial performance of the LP Entities. Pursuant to the terms of the Support Transaction, the President is to meet at least once per week with the Monitor, the LP CRA and the McMillan Financial Advisor for this purpose.

176. In the event that the Special Committee disagrees with the President and precludes the President from proceeding with any recommended financial or operational initiative that the President believes is in the best interests of the LP Entities, it is proposed that the President will advise the Monitor, the LP CRA and the McMillan Financial Advisor so that the Monitor may attempt to assist the parties in coming to agreement. If the Monitor is unable to help the parties reach an agreement, it is proposed that the Monitor will apply to this Honourable Court for advice and direction.

### **C. Recent Creditor and Other Actions**

177. Notwithstanding the proactive steps taken by the LP Entities over the past year to improve the Limited Partnership's consolidated balance sheet, the LP Entities have begun to experience a significant tightening of credit from critical suppliers and other trade creditors as a result of the continued and publicized uncertainty surrounding the stability of Canwest's various businesses. Certain of these creditor actions that have affected the LP Entities are detailed below:

- (a) The LP Entities have received calls from a number of major advertising agencies that represent some of the LP Entities' major advertising clients expressing concerns about the stability of the LP Entities' businesses and advising that they plan to reduce their advertising spending with the LP Entities based upon that financial uncertainty;
- (b) One of *FPinfomart.ca*'s editorial content providers has demanded that the LP Entities' make royalty payments in advance of its content delivery;

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- (c) A number of the LP Entities' newsprint, ink, distribution and printing suppliers have expressed concerns that the LP Entities will not be able to satisfy their obligations and have requested more restricted credit terms. Other trade creditors have made similar requests and, in some cases, have requested payment in advance or cash on delivery;
- (d) One of CPI's newsprint suppliers amended its existing supply and storage agreement with CPI by requiring that CPI hold all newsprint supplied by the supplier in segregated and clearly designated storage areas. Under the proposed arrangement, CPI would agree to hold the newsprint as "bailee" for and on behalf of the supplier and would be deemed to purchase the newsprint only when it is removed from the segregated storage area;
- (e) Certain of the LP Entities' credit card processors (*i.e.* companies responsible for processing credit card payments received from, *inter alia*, newspaper subscribers and advertisers) have held amounts in excess of \$5 million in reserve or, in certain cases, have extended the payment cycle. Collectively, these companies process approximately \$220 million in annual revenue on the LP Entities' behalf;
- (f) Due in part to late receipt of a payment, Hydro Quebec registered a lien on a production facility used by *The Gazette* in Montreal. The lien was subsequently removed following the LP Entities' remittance to Hydro Quebec of a deposit cheque in the amount of \$50,000, which is equivalent to approximately one month's utility charge; and
- (g) Several large information technology suppliers and a number of smaller services firms have requested deposits or prepayments prior to providing services or shipping products.

178. On May 1, 2009, Standard & Poor's Ratings Services ("S&P") assigned the Limited Partnership its 'CCC' long-term corporate credit rating due to the financial difficulties noted above. At the same time, S&P lowered its rating for the Limited Partnership's senior secured indebtedness from 'CCC+' to 'CCC'. S&P also revised its recovery rating on the Limited Partnership's senior secured indebtedness to '3' from '2'. Recovery ratings focus on expected

recovery in the event of a payment default of a specific issue, and utilize a numerical scale that runs from 1+ to 6. The '3' recovery rating indicates that, in S&P's opinion, there will be "meaningful" recovery in the event of a default (in the 50%-70% range), in contrast to a '2' recovery rating, which indicates that, in S&P's opinion, there will be "substantial" recovery in the event of a default (in the 70%-90% range).

179. On May 29, 2009, following the failure of the LP Entities to make the interest and principal reduction payments in respect of the LP Secured Credit Facilities, S&P lowered the Limited Partnership's corporate credit rating from 'CCC' to 'D' and downgraded its rating for the LP Notes from 'CC' to 'C'. The 'D' rating category is used when payments on an obligation are not made on the date due even if the applicable grace period has not expired. A 'C' rating is assigned to, among other things, obligations that are currently highly vulnerable to non-payment. In December 2009, the Limited Partnership was advised by S&P that it intended to suspend coverage pending the outcome of the restructuring process

### **CAUSES OF INSOLVENCY**

180. The recent declines in advertising revenues combined with increases in the price of newsprint negatively impacted the net cash position of the LP Entities. As a result, by May 31, 2009, the Limited Partnership was in breach of certain financial covenants set out in the LP Credit Agreement.

181. The breaches of the financial covenants in the LP Credit Agreement and the failure to make timely interest and principal reduction payments in respect of the LP Secured Credit Facilities have resulted in events of default under the LP Credit Agreement. Since the expiration of the Forbearance Agreement, the LP Secured Lenders have been in a position to declare all amounts owing under the LP Credit Agreement to be immediately due and payable at any time. If a demand for payment is made by the LP Secured Lenders, the LP Obligors do not have sufficient liquidity to satisfy the amounts owing (which totalled the Canadian dollar equivalent of approximately \$953.3 million (exclusive of unpaid interest) as at August 31, 2009).

182. Further, as a result of the events of default occurring in respect of the LP Credit Agreement, events of default were triggered in respect of the LP Foreign Currency and Interest Rate Swap and the LP Notes Swap. These swaps were consequently terminated by the swap

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counterparties. Settlement payments in the aggregate amount of approximately \$68.9 million (exclusive of unpaid interest) are now owed by the LP Obligors to the swap counterparties as a result of the early termination. The LP Obligors have not satisfied this demand and do not have adequate liquidity to satisfy this demand. These unpaid amounts rank *pari passu* with amounts owing under the LP Credit Agreement and are accruing interest daily.

183. Additionally, the failure to make timely interest payments in respect of the LP Secured Credit Facilities resulted in an event of default under the LP Senior Subordinated Credit Agreement. The failure to make an interest payment in respect of the LP Senior Subordinated Credit Facility on July 21, 2009 was also an event to default. The LP Subordinated Lenders are therefore in a position to take steps to demand immediate repayment of all amounts owing under the LP Senior Subordinated Credit Agreement (which totalled \$75 million (exclusive of unpaid interest) as at August 31, 2009). The Limited Partnership and the LP Subordinated Guarantors would be unable to meet their obligations under the defaulted LP Senior Subordinated Credit Agreement should payment be demanded.

184. As noted above, the LP Notes are also in default and the LP Noteholders are now in a position to take steps to demand immediate payment of all amounts due in respect of the LP Notes (which totalled the Canadian dollar equivalent of approximately \$438 million (exclusive of unpaid interest) as at August 31, 2009). The Limited Partnership and the LP Note Indenture Guarantors would be unable to meet their obligations under the defaulted LP Notes should payment be demanded.

185. Irrespective of whether the amounts owing under the LP Secured Credit Facilities, the LP Senior Subordinated Credit Facility and/or the LP Notes are accelerated due to the covenant defaults and missed payments, without additional liquidity, the LP Entities are unable to satisfy their obligations as they come due, including interest and principal reduction payments (totalling approximately \$40 million plus default interest) that the LP Entities anticipate will be due and payable under the LP Credit Agreement and the LP Senior Subordinated Credit Agreement within the next four months.

186. Thus, despite the proactive steps taken by the LP Entities to date, the LP Entities, in consultation with their advisors, including RBC Capital Markets, have concluded that the LP Entities will be unable to satisfy their respective debt obligations described herein when they

become due and are thus insolvent. As such, and due to the enterprise value that exists in the LP Entities, a restructuring of the LP Entities' indebtedness and balance sheets is required and should be pursued under the protection of the CCAA in order to maintain going concern operations and to preserve their enterprise value.

187. In addition, this CCAA filing itself constitutes an "Event of Default" under the various credit agreements described above (in addition to the various covenant and payment defaults detailed herein) with the effect of immediately accelerating the amounts owing by the LP Entities under those agreements. Without the benefit of a stay of proceedings, the LP Entities will be required to repay the Canadian dollar equivalent of approximately \$1.45 billion in aggregate indebtedness (at current foreign currency exchange rates) and will be unable to continue operating their businesses.

188. Some or all of the Applicants are guarantors under the LP Credit Agreement (CCI, CPI and CBI), the LP Senior Subordinated Credit Agreement (CCI, CPI and CBI) and LP Note Indenture (CCI and CPI) and are thus also insolvent as they cannot meet their respective guarantee obligations.

### ***DIP FINANCING***

189. Subject to certain conditions, upon a CCAA filing certain of the LP Secured Lenders (the "DIP Lenders") have agreed to extend to the LP Entities a DIP Facility with maximum availability of \$25 million pursuant to a commitment letter dated as of January 7, 2010 (the "DIP Commitment Letter") on terms described in greater detail in a term sheet dated January 7, 2010 (the "DIP Term Sheet"). Prior to entering into the DIP Facility, the LP Entities sought proposals from other third party lenders for a DIP facility in the event that the LP Entities were required to file for CCAA protection. Permitted uses of the DIP Facility include: (i) working capital and other ordinary course expenditures (including capital expenditures) in accordance with cash flow forecasts; (ii) specified fees and expenses; (iii) advanced under the NP Intercompany Loan Agreement; and (iv) interest payments owing in respect of obligations under the LP Credit Agreement. Copies of the DIP Commitment Letter and the DIP Term Sheet are attached as Exhibit "W" to this Affidavit.

190. The DIP Facility is to be secured by a Court-ordered security interest, lien and charge on the LP collateral (the "DIP Charge"). It is a condition precedent to the availability of the DIP Facility that the Initial Order under the CCAA be in form and substance satisfactory to the DIP Lenders. The DIP Charge is to have priority over all other security interests, charges and liens other than the Administration Charge or as contemplated by the Initial Order, and will rank *pari passu* with the existing security for cash management obligations (up to a maximum of \$7.5 million).

191. Based upon the LP Entities' current cash flow projections, the LP Entities do not anticipate drawing on the DIP Facility during the early stages of this CCAA proceeding. However, the LP Entities' cash flow projections indicate that, at certain points throughout the period covered by the forecast, the total amount of cash on hand is projected to sink to levels that do not provide a sufficient cushion for an enterprise of this magnitude. Accordingly, the LP Entities are seeking approval of the proposed DIP Facility to accommodate any additional liquidity requirements during this CCAA proceeding. The proposed DIP Facility will provide additional assurances to the trade creditors of the LP Entities that the LP Entities will be able to continue to operate as going concerns while pursuing the implementation of a viable restructuring or recapitalization plan.

## **THE SUPPORT TRANSACTION AND THE SISF**

### **A. Support Transaction and the Support Agreement**

192. Since August 31, 2009, pursuant to the terms of the Forbearance Agreement, the LP Entities and the LP Administrative Agent on behalf of the LP Secured Lenders have worked together to negotiate terms for a consensual, pre-arranged restructuring, recapitalization or reorganization of the business and affairs of the LP Entities as a going concern (the "Support Transaction"). The Support Transaction contemplates that a CBCA entity (AcquireCo), that will be capitalized by the LP Secured Lenders and the *pari passu* secured swap counterparties will: (i) acquire all of the financial and operating assets and businesses of the LP Entities as well as the shares of National Post Inc. and assume certain specified operating liabilities of the LP Entities pursuant to the Senior Lenders' CCAA Plan, and (ii) surrender substantially all of the debt of the LP Entities to the LP Secured Lenders and the swap counterparties.

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193. The parties have also agreed that if the Support Transaction is approved as part of the Senior Lenders' CCAA Plan, at the time of closing, AcquireCo will offer employment to all or substantially all employees of CPI (including all or substantially all of the employees of the Limited Partnership, whose employment would be acquired and assumed by CPI on or before closing) on substantially similar terms and conditions to their existing employment. On closing, AcquireCo would also assume all of CPI's existing pension plans (other than supplemental pensions), existing post-retirement and post-employment benefit plans and unpaid severance obligations that would be stayed during this CCAA proceeding. The assumption of employee-related obligations by AcquireCo would be subject to a right of AcquireCo, acting commercially reasonably and after consultation with the operational management of CPI, to exclude certain specified liabilities.

194. As described in greater detail below, the Support Agreement contemplates that the Financial Advisor will conduct the SISF with the objective of obtaining a Superior Offer (as defined below) to the Support Transaction. If a Superior Offer is not obtained in the SISF, the LP Entities and the LP Administrative Agent intend for the Support Transaction to proceed subject to Court approval and LP Secured Lender approval of the Senior Lenders' CCAA Plan.

195. In furtherance of the pursuit of the Support Transaction, on January 7, 2010, the LP Entities and the LP Administrative Agent entered into a support agreement (the "Support Agreement") dated January 7, 2010, that sets forth the terms of certain agreements and arrangements between the LP Entities and the LP Administrative Agent in respect of the Support Transaction. Pursuant to the Support Agreement, subject to the approval of this Honourable Court, the LP Entities have agreed, *inter alia*, to commence this CCAA proceeding and to use commercially reasonable efforts to implement the Support Transaction, conduct the SISF and, if appropriate, obtain an Order from this Honourable Court sanctioning the Senior Lenders' CCAA Plan. The schedules to the Support Agreement include the Senior Lenders' CCAA Plan and a form of the Acquisition and Assumption Agreement, which sets forth the terms pursuant to which the assets and certain specified liabilities of the LP Entities would be acquired and assumed by Acquireco if the Support Transaction is pursued and a Superior Offer (as defined below) is not obtained by the SISF. Copies of the Support Agreement, together with the Senior Lenders' CCAA Plan and the Acquisition and Assumption Agreement, are attached as Exhibit "X" to this Affidavit.

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196. The Support Agreement provides that, pending the closing of the Support Transaction, the LP Entities will continue to carry on their businesses in the ordinary course. The Senior Lenders' CCAA Plan prohibits the LP Entities from:

- (a) making distributions to shareholders or partners;
- (b) making non-arm's length payments to other Canwest entities (except in accordance with the New Shared Services Agreement or advances to National Post Inc. in accordance with the NP Intercompany Loan Agreement, as described above);
- (c) ceasing to operate any of its publications other than as expressly permitted;
- (d) other than in the ordinary course of business, disposing of assets, entering into new material contracts or assuming new material liabilities; or
- (e) other than in the ordinary course of business, changing employee compensation arrangements.

197. Pursuant to the Support Agreement, the LP Entities are required to report regularly on operations to the LP Administrative Agent and to grant the LP Secured Lenders reasonable access to the LP Entities' premises, books and records.

198. Although the Support Agreement does not require the LP Administrative Agent or any of the LP Secured Lenders to support the Senior Lenders' CCAA Plan, the LP Administrative Agent has made a representation as to the number and percentage (by value) of members of the syndicate of LP Secured Lenders that have entered into a senior lender support agreement in favour of the Support Transaction as of the time of the execution of the Support Agreement.

## **B. The SISP**

199. Subject to approval by this Honourable Court and in an effort to ensure that the Senior Lenders' CCAA Plan represents the best available offer for the LP Entities' stakeholders, the LP Entities and the LP Administrative Agent (on behalf of the LP Secured Lenders) have agreed that the Financial Advisor, under the supervision of the Monitor and with the assistance



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of the LP Entities and the LP CRA, will conduct the SISP in order to solicit competing offers for the acquisition of, or equity investment in and restructuring or recapitalization of, the LP Entities' businesses on terms similar or more favourable than those set out in the Senior Lenders' CCAA Plan. The procedures for the SISP (the "**SISP Procedures**") are attached as Schedule "A" to the draft Initial Order.

200. The LP Entities and the LP Administrative Agent on behalf of the LP Secured Lenders have agreed that the SISP will be conducted in up to two phases. In the first phase ("**Phase 1**"), for a period of approximately seven weeks or such other period as this Honourable Court may order following the date of the Initial Order, the Financial Advisor will solicit interest from prospective financial or strategic parties to acquire the assets and undertaking of the LP Entities as a going concern and/or invest in and recapitalize the LP Entities. During Phase 1, qualified interested parties that execute a confidentiality agreement will be provided with a confidential information memorandum (the "**CIM**"), which has been developed by the Financial Advisor in consultation with the LP Entities and which contains general information about the business and financial affairs of the LP Entities and National Post Inc. The LP Entities and the Financial Advisor, in consultation with the Monitor and the LP CRA, will ask those parties that have reviewed the CIM to submit non-binding proposals at a date to be determined. In evaluating such non-binding proposals, the LP Entities, in consultation in the Financial Advisor, the Monitor and the LP CRA, will consider, *inter alia*: (i) whether each proposal maximizes value for the LP Entities and their stakeholders; (ii) the form of consideration being offered; (iii) the time required to complete the proposed transaction; (iv) the likelihood that the proposed transaction will be consummated; and (v) proposed treatment of the stakeholders of the LP Entities, including employees.

201. At the end of Phase 1, the Monitor will assess whether there is a realistic prospect of obtaining a cash offer that is equal to or higher than the Secured Claims Amount (a "**Superior Cash Offer**"). In the event that there is a reasonable prospect of obtaining a Superior Cash Offer, the SISP will continue for a further period of seven weeks (or such longer period as may be agreed by the Financial Advisor and the Agent) ("**Phase 2**").

202. If the Monitor determines that there is no realistic prospect of a Superior Cash Offer, the Monitor will assess whether there whether there is a reasonable prospect that any non-

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binding proposals received may result in an alternative offer that is not a Superior Cash Offer but that might nevertheless receive approval from the LP Secured Lenders (a "**Potential Superior Alternative Offer**"). If the Monitor advises the LP Administrative Agent that a Potential Superior Alternative Offer exists, the LP Administrative Agent will have two weeks to advise the Monitor that LP Secured Lenders holding more than 33.3% (by value) of the Secured Claims do not support pursuing the potential Superior Alternative Offer. The SISP will proceed to Phase 2 if the LP Administrative Agent does not so advise the Monitor.

203. Collectively, the Superior Cash Offer and Superior Alternative Offer are referred to as a "Superior Offer". If the Monitor determines that there is no realistic prospect of a Superior Offer at the end of Phase 1, the SISP will be terminated.

204. If the SISP continues to Phase 2, qualified parties would be granted access to an electronic data room containing comprehensive information about the businesses and financial affairs of the LP Entities and National Post Inc. and invited to participate in management presentations and site visits. Following this period of due diligence, management presentations and site visits, qualified parties that have participated in Phase 2 would be asked to submit final, binding proposals at a date to be established as seven weeks following the commencement of Phase 2 (the "**Phase 2 Bid Deadline**").

205. In order to be considered a "Qualified Bid", a bid or offer must include, *inter alia*, an irrevocable offer letter, a duly executed purchase agreement or binding term sheet and written evidence of financial commitment. A Qualified Bid must not be conditional on diligence or financing.

206. The Monitor, in consultation with the Financial Advisor, the LP CRA and the LP Administrative Agent will be required to review the Qualified Bids in light of the terms of the Support Transaction.

207. If none of the Qualified Bids is a Superior Offer, the LP Entities will apply for Court approval of the Support Transaction.

208. If the Monitor determines that one or more of the Qualified Bids is a Superior Cash Offer, the Monitor shall recommend to the Special Committee that the most favourable

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Superior Cash Offer be selected. If, in the absence of a Superior Cash Offer, the Monitor determines that one or more of the Qualified Bids is a Potential Superior Alternative Offer, the LP Administrative Agent shall have two weeks to advise the Monitor that LP Secured Lenders holding more than 33.3% (by value) of the Secured Claims do not support pursuing such offer. In absence of such a notification, the Monitor shall have the right to recommend to the Special Committee that the Monitor, in consultation with the Financial advisor and the LP CRA, and the Agent negotiate a definitive agreement in respect of the Potential Superior Alternative Offer, subject to court approval and CCAA Senior Lender Approval. Accordingly, in essence, the SISP will provide a rigorous litmus test for whether the proposed Support Transaction delivers the best possible result for all stakeholders.

### **C. Implementation of the Senior Lenders' CCAA Plan**

209. Subject to the outcome of the SISP, the LP Entities will seek approval of the Senior Lenders' CCAA Plan pursuant to which they will effectuate a plan of compromise and arrangement of the debt currently held by the LP Secured Lenders and the *pari passu* swap counterparties. The LP Secured Lenders and the swap counterparties are the only affected creditors under the Senior Lenders' CCAA Plan, so no other creditors will be entitled to any distributions thereunder.

210. The Senior Lenders' CCAA Plan provides that, subject to approval by this Honourable Court, the following will be approved and implemented:

- (a) CPI will acquire the all of assets of the Limited Partnership (other than securities of CPI which are owned by the Limited Partnership) in exchange for shares of CPI and assumption of specified operating liabilities of the Limited Partnership by CPI;
- (b) All secured claimants of the LP Entities will assign all of their senior loans, swap termination amounts and security to AcquireCo in exchange for a combination of debt and equity issued by AcquireCo in a manner to be determined prior to the sanctioning of the Senior Lenders' CCAA Plan; and

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- (c) the stay of proceedings will be lifted to enable AcquireCo to (i) issue demand to CPI on account of guarantee obligations; and (ii) acquire the subject assets in full satisfaction of its guarantee obligations in respect of the indebtedness equal to the Reference Amount (as defined in the Senior Lenders' CCAA Plan) less a discount amount of \$25 million and assumption of specified liabilities and direct that assets be delivered to AcquireCo or separate operating entities.

211. The Senior Lenders' CCAA Plan, as well as the Support Agreement and the Acquisition and Assumption Agreement contemplate upon the closing of the Support Transaction, a cash reserve (the "Cash Reserve") will be established by the Monitor as a segregated account to be held in trust by the Monitor for the benefit of Persons entitled to be paid Cash Reserve Costs and Acquireco out of the cash and cash equivalents held by the LP Entities for the purpose of paying certain administrative costs and claims to the extent not assumed by AcquireCo. The amount of the Cash Reserve would include amounts in respect of: (i) amounts secured by the Administration Charge or the Directors' and Officers' Charge or Financial Advisor Charge (each as defined below) (ii) certain government priority claims, (iii) pre-filing vacation pay, (iv) certain pension priority claims, (v) certain trustee fees and costs, and (vi) certain post-filing trade payables. At the hearing to sanction the Senior Lenders CCAA Plan, the LP Entities will seek to obtain an Order from this Honourable Court that will set out the amount of the Cash Reserve and the process for administering the Cash Reserve.

212. The LP Entities and the LP Secured Lenders have agreed that, subject to approval of this Honourable Court and as set out in the Initial Order, a vote by the LP Secured Lenders on the Senior Lenders' CCAA Plan is to be held on January 27, 2010.

#### **D. Meeting and Voting Procedures**

213. As part of the initial application the Applicants also seek relief in respect of a meeting of creditors and voting procedures including, *inter alia*:

- (a) authorization to file the Senior Lenders' CCAA Plan;
- (b) establishment of a Senior Lenders' claims process;

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- (c) authorization to the LP Entities to call and conduct a meeting of the LP Secured Lenders on January 27, 2010 for the purpose of voting on a resolution to approve the Senior Lenders' CCAA Plan;
- (d) classification of creditors and voting such that for the purposes of voting on the Senior Lenders' CCAA Plan there is one class of creditors consisting of the LP Secured Lenders; and
- (e) establishment of procedures for the delivery of notice and materials relating to the meeting of the LP Secured Lenders.

214. The Applicants anticipate that, after the vote on the Senior Lenders' CCAA Plan and the conclusion of the SISP, if a Superior Offer is not obtained, the Applicants will return to this Honourable Court to seek a sanction Order addressing implementation of the Senior Lenders' CCAA Plan, including the appointment of the board of directors of AcquireCo.

#### ***E. Opposition by LP Noteholders to CCAA Filing and Senior Lenders' CCAA Plan***

215. Over the course of the last several months as part of the effort to facilitate the restructuring of the LP Entities, the Limited Partnership has encouraged a number of the LP Noteholders to form and organize an informal committee. An *ad hoc* committee of the LP Noteholders (the "**Ad Hoc Committee**") formed and retained Davies Ward Phillips & Vineberg LLP as their counsel and advisor ("**Counsel to the Ad Hoc Committee**").

216. On August 24, 2009, Counsel to the Ad Hoc Committee signed a confidentiality agreement and was thereafter granted access by the Limited Partnership to certain confidential information regarding the business and affairs of the LP Entities. By letter agreement dated August 24, 2009, the Limited Partnership agreed, *inter alia*, to pay the fees of Counsel to the Ad Hoc Committee up to a maximum aggregate amount of \$250,000. The LP Administrative Agent has consented to this funding.

217. Since August, representatives of the Limited Partnership and their advisors have met with and discussed the LP Entities' affairs frequently with Counsel to the Ad Hoc Committee. During this time, the Limited Partnership and its advisors have expressed to Counsel

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to the Ad Hoc Committee and representatives of the Ad Hoc Committee the need for a comprehensive restructuring of the financial affairs of the LP Entities, possibly including the need for a filing for creditor protection under the CCAA. The Limited Partnership has and its advisors have also repeatedly expressed a willingness to provide additional confidential information to Counsel to the Ad Hoc Committee or a "restricted" financial advisor to the Ad Hoc Committee, should one be retained, for the purpose of permitting the LP Noteholders to form a restructuring proposal.

218. By letter dated December 15, 2009 that was addressed to Mr. Derek Burney, Chairman of the Special Committee of the Board of Directors (the "**Letter from the Ad Hoc Committee**"), Counsel to the Ad Hoc Committee advised that the Ad Hoc Committee had retained Moelis & Company to act as its financial advisor ("**Financial Advisor to the Special Committee**"). Counsel to the Ad Hoc Committee further stated that the Financial Advisor to the Ad Hoc Committee had signed a Non-Disclosure Agreement in favour of the Limited Partnership and intended to commence due diligence for the purpose of developing a restructuring proposal. The Letter from the Ad Hoc Committee also referenced "rumours" that the Limited Partnership was about to enter into an agreement with the LP Secured Creditors that contemplated a CCAA filing and expressed concerns that such an agreement would prejudice a sale or investor solicitation process. The Letter from the Ad Hoc Committee concluded by urging the Limited Partnership not to proceed with any such agreement or filing. A copy of the Letter from the Ad Hoc Committee is attached as Exhibit "Y" to this Affidavit.

219. By letter dated December 18, 2009 Mr. Edward Sellers, counsel to the LP Entities, responded to Counsel to the Ad Hoc Committee (the "**Letter to the Ad Hoc Committee**"). The Letter to the Ad Hoc Committee requested further information on the retainer of the Financial Advisor to the Ad Hoc Committee so that due diligence could be facilitated. Mr. Sellers also stated that the LP Entities would not comment on "rumours" but noted that, as previously communicated to Counsel to the Ad Hoc Committee, a pre-arranged support transaction with the LP Secured Lenders and a sale and investor solicitation process under court supervision might be required in the absence of an alternative restructuring proposal by the LP Noteholders. The Letter to the Ad Hoc Committee concluded by stating that the Limited Partnership would welcome discussion of any restructuring proposal put forward by the Ad Hoc

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Committee. A copy of the Letter to the Ad Hoc Committee is attached as Exhibit "Z" to this Affidavit.

220. The Ad Hoc Committee has expressed objections to both the prospect of a filing for creditor protection under the CCAA and the possibility of the Senior Lenders' CCAA Plan. At the same time, to date, the Ad Hoc Committee has not put forward any concrete restructuring proposal to the LP Entities. The Financial Advisor to the Ad Hoc Committee may continue to conduct due diligence with a view to forming a restructuring proposal within the framework of the Court-supervised SISF.

221. As described in greater detail in this Affidavit, the LP Entities have undertaken operational restructuring initiatives over the course of the past year in an effort to improve cash flow and mitigate the negative effects of the economic downturn on the businesses of the LP Entities. The salutary efforts of these operational restructuring efforts are dwarfed by the extent of the liabilities of the LP Entities, in particular outstanding debt and associated interest payments in excess of \$1.45 billion. Although the management of the LP Entities has gone to great lengths to avoid insolvency and the need for a filing for creditor protection under the CCAA, it is the position of the LP Entities that a CCAA filing is inevitable and that such filing with the benefit of the Senior Lenders' CCAA Plan and the SISF is in the best interests of the LP Entities and all of their stakeholders.

***F. Support by LP Secured Lenders for Senior Lenders' CCAA Plan and SISF***

222. Significantly, a large percentage (by value) of the LP Secured Lenders support the CCAA filing, the Secured Lender Plan and the SISF. In fact, a CCAA filing is a requirement of the Support Transaction. The Limited Partnership has been in default under the LP Credit Agreement since May 29, 2009. Since that time, the LP Obligors and the LP Administrative Agent, and their respective advisors, have communicated and met frequently to discuss possible terms of recapitalization or restructuring of the LP Entities. As described in greater detail above, the LP Obligors and the LP Secured Lenders entered into a Forbearance Agreement dated as of August 31, 2009. After numerous short-term waivers and extensions and one amendment, the Forbearance Agreement expired on November 9, 2009. The LP Secured Lenders are now in a position to demand repayment of all amounts borrowed under the LP Secured Credit Facilities,

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which totalled the Canadian dollar equivalent of \$953.3 million (exclusive of unpaid interest) as at August 31, 2009.

223. Since August 31, 2009, the LP Obligors and the LP Secured Lenders have worked together to negotiate the terms of a pre-arranged support transaction that would result in a going concern outcome for the businesses of the LP Entities. The current Support Transaction, which is contained in the Support Agreement (together with Senior Lenders' CCAA Plan and Acquisition and Assumption Agreement which are schedules thereto), contemplates, among other things, assumption by AcquireCo of all or substantially all of the employees and employee-related obligations of the LP Entities. The LP Secured Lenders also support the conduct of a comprehensive SISP pursuant to which the Senior Lenders' CCAA Plan will be tested in the market and the Financial Advisor will solicit Superior Offers from third parties.

224. The support of the LP Secured Lenders for this proposed CCAA proceeding, the Support Transaction and the SISP are crucial to the successful financial restructuring of the LP Entities. As noted in the Administrative Agent Letter dated December 7, 2009, the Support Transaction provides the possibility of a consensual financial restructuring that contemplates a going concern outcome for all of the businesses currently operated by the LP Entities. There is no assurance that the LP Entities will be able to secure a going concern outcome in the event of a non-consensual financial restructuring initiated by the LP Secured Lenders or other creditors of the LP Entities.

### **PAYMENTS DURING CCAA PROCEEDING**

225. During the course of this CCAA proceeding, the LP Entities intend to make payments for goods and services supplied post-filing as set out in the cash flow projections described below and as permitted by the Initial Order.

226. As discussed above, the LP Entities' employees are compensated in various ways, including by way of salaries, commissions and bonuses. It is contemplated in the cash flow projections that arrears of salaries, commissions, bonuses and outstanding employee expenses will be paid or reimbursed in the ordinary course and that compensation programs for active employees will continue in the ordinary course post-filing. The cash flow projections also contemplate the continued payment of current service and special payments with respect to the



LP Entities' DB Pension Plans. The cash flow projections do not contemplate termination and severance payments or benefits being paid to previously terminated employees.

227. It is also contemplated in the cash flow projections that the LP Entities will continue to make payments, including payments relating to pre-filing provision of goods and services, to independent contractors and freelancers who provide services post-filing, as independent contractors and freelancers are integral to the LP Entities' operations.

228. In addition, the LP Entities are proposing in the Initial Order that they be authorized with the consent of the Monitor, but not required, to make certain payments, including any payments owing in respect of the pre-filing provision of goods and services, to the following third parties that provide goods or services that are integral to their businesses:

***i. Newsprint and Ink Suppliers***

229. The LP Entities are dependent upon a continuous and uninterrupted supply of newsprint and ink from certain of their newsprint and ink suppliers. After wages and employee benefits expenses, the purchase of newsprint and ink represents one of the LP Entities' most significant operating costs. The LP Entities do not maintain sufficient inventory of newsprint on-hand to enable them to continue publishing for any extended period of time if there is an interruption in the supply of newsprint or ink. It is therefore crucial that the LP Entities have access to a continuous flow of newsprint so they may continue publishing newspapers. The inability to publish a newspaper on any given day due to a lack of newsprint or ink would significantly impair the enterprise value of the LP Entities' businesses.

230. The LP Entities expect that their newsprint suppliers will honour their contractual arrangements as long as all post-filing payments are made in the normal course. However, in order to ensure a continuous supply of newsprint, the LP Entities are seeking in the Initial Order to be authorized, with the consent of the Monitor, but not required to pay pre-filing amounts owing in arrears, to certain newsprint suppliers, if, in the opinion of the LP Entities, those newsprint suppliers are critical to their businesses and ongoing operations.

***ii. Newspaper Distributors***

231. The LP Entities are similarly dependent upon third parties to distribute their newspapers through a network of independent newspaper distributors. Certain of the LP Entities

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have entered into agreements with independent newspaper distributors that provide for newspaper delivery services for the LP Entities within certain geographic territories. Generally speaking, the newspaper distributors handle all manner of delivery, including corporate delivery, home delivery, bulk drop offs and deliveries to vending boxes.

232. An interruption in the delivery of newspapers would significantly impair the enterprise value of the LP Entities' business. As a result, the LP Entities are seeking authorization but not direction in the Initial Order to pay, with the consent of the Monitor, pre-filing amounts owing in arrears to newspaper distributors if, in the opinion of the LP Entities, those distributors are critical to their businesses and ongoing operations.

**iii. American Express**

233. Canwest has implemented certain policies whereby its employees, including employees of the LP Entities, may seek reimbursement of business-related expenses. The expenses are generally incurred by the LP Entities' employees in the ordinary course of performing their job functions. Included in this category are the following Amex Bank of Canada ("**American Express**") corporate card programs and accounts that are used by the employees of the LP Entities for business related expenses: (i) American Express Corporate Card Program; and (ii) American Express Central Billed Accounts.

234. The American Express Corporate Card Program allows employees of the LP Entities to use corporate cards to charge business related travel and entertainment expenses. It is essential to the continued operation of the business of the LP Entities that the LP Entities be permitted to continue reimbursing their employees for such expenses whether such expenses were incurred before or after the commencement of this CCAA proceeding.

235. On January 23, 2009, as a condition of continuing the American Express Corporate Card Program, American Express required the LP Entities to agree that in the event of a filing under the CCAA, the LP Entities would seek a provision in the Initial Order allowing for payment of any and all amounts due to American Express at the time of filing. The LP Entities are therefore seeking the authority from this Honourable Court to pay all pre-filing amounts due to American Express.

236. The American Express Central Billed Accounts program is used by employees of the LP Entities to charge the same types of expenses as are incurred in respect of the American Express Corporate Card Program (*i.e.*, employee business travel). Use of the American Express Central Billed Accounts is an integral part of the LP Entities' cash management and account functions, and it is essential to continued operation of the businesses that employees of the LP Entities continue to have the ability to use the Central Billed Accounts for business travel.

**iv. Other Goods and Services Providers**

237. In order to maintain their enterprise value, the LP Entities seek the ability to pay to other suppliers, subject to the consent of the Monitor, any further amounts, costs or expenses (subject to further order of this Honourable Court) whenever incurred, if in the opinion of the LP CRA, those suppliers are critical to their businesses and ongoing operations. The draft Initial Order includes a provision directing the Monitor to report to this Honourable Court with respect to any payments made to other suppliers that are deemed to be critical suppliers by the LP CRA.

**v. Parties to Sales Agency Agreements**

238. The LP Entities are parties to various sales representation agreements with third parties pursuant to which the LP Entities sell as commissioned agent both newspaper and/or on-line advertising on behalf of those third party customers. In some of these arrangements, the LP Entities also invoice and collect payment for advertising on behalf of these third party customers. The LP Entities charge fees for these services, and the fees are typically calculated as a percentage of the advertising sold and collected on behalf of any particular customer. At any point in time, the LP Entities hold in trust cash collected pursuant to one or more of these sales representation agreements that is owed to one or more of their customers.

239. The LP Entities intend to continue to honour the terms of those third party sales representation agreements throughout the pendency of this proposed CCAA proceeding. In order to honour the terms of those third party sales representation agreements, the LP Entities have requested that any cash held on behalf of third party sales representation customers not be subject to the stay of proceedings provided in the Initial Order. The proposed Monitor has indicated that it is supportive of this request.

**vi. FPinfomart.ca Content Providers**

240. As described in greater detail above, the LP Entities' businesses include the website *FPinfomart.ca*, which is a subscription-based on-line service that provides its subscribers with access to Canadian and international news sources. The LP Entities enter into agreements with providers of editorial content to *FPinfomart.ca* that generally include royalty fees calculated as a percentage of subscriber revenue generated in any given month. *FPinfomart.ca* collects the revenue from its customers and then remits royalty fees to its content providers pursuant to the terms of their respective agreements.

241. In my view, it is critical that the supply of content to *FPinformart.ca* continue uninterrupted during the course of this proposed CCAA proceeding. *FPinfomart.ca* is and should continue to be an important source of online revenue for the LP Entities. It is therefore critical that the LP Entities be granted authority to pay royalty fees accrued and owing as of the date of the Initial Order.

### **COST SHARING ARRANGEMENT**

242. The CMI Entities and the LP Entities have agreed that it is appropriate for the CMI Entities to bear the costs and expenses of the financial restructuring of the businesses operated by the CMI Entities and for the LP Entities to bear the costs and expenses of the financial restructuring of the businesses operated by the LP Entities. Although no formal cost sharing agreement has been executed, the CMI Entities and the LP Entities have been and are operating under this cost-sharing principle. Consistent with this agreement and understanding, the draft Initial Order provides that the LP Entities shall not make any payments to or in satisfaction of any liabilities or obligations of the CMI Entities, save and except for payments in respect of Shared Services.

### **DIRECTORS' AND OFFICERS' PROTECTION**

243. A successful restructuring of the LP Entities will only be possible with the continued participation of the LP Entities' boards of directors, management and employees. These personnel are essential to the viability of the continuing businesses of the LP Entities. The directors of the Applicants consist entirely of management directors who have many years of experience in the Canadian newspaper publishing industry and with the LP Entities' businesses. This specialized expertise and the relationships that the management directors have forged with

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the LP Entities' suppliers, employees and other stakeholders cannot be easily replicated or replaced.

244. I am advised by Osler, Hoskin & Harcourt LLP, counsel for the LP Entities, and believe that, in certain circumstances, directors can be held personally liable for certain obligations of a company, including in respect of amount owing to (i) employees, including unpaid wages, termination and severance amounts, pension amounts and accrued vacation pay; and (ii) the federal and provincial governments, including payroll remittances, sales taxes, goods and services tax ("GST"), withholding taxes and workers' compensation remittances. The LP Entities estimate that the amount of the Directors' Charge (as defined below) will not cover all of the directors' and officers' liabilities in the event of a complete shutdown of the LP Entities' businesses.

245. Canwest Global maintains directors' and officers' liability insurance (the "D&O Insurance") for the directors and officers of Canwest Global and its subsidiaries (including the directors and officers of the LP Entities). The current D&O Insurance policy provides \$30 million in coverage plus \$10 million in excess coverage for a total of \$40 million in coverage for the entire Canwest enterprise. The D&O Insurance originally expired on August 31, 2009. The D&O Insurance policy was subsequently extended for two months in light of Canwest's current financial situation and was then extended again to December 1, 2009. The D&O Insurance policy has now been extended to February 28, 2010 and no further extensions are available under the terms of the policy. As of the date of the swearing of this Affidavit, Canwest has been unable to obtain additional or replacement D&O Insurance coverage. In addition, there are contractual indemnities that have been given to the directors by the LP Entities. Canwest, on an enterprise basis, does not have sufficient funds to satisfy those indemnities should the directors of the Applicants be found responsible for the full amount of the potential directors' liabilities.

246. The directors of the Applicants have indicated that, due to the potential for significant personal liability, they cannot continue their service and involvement in this restructuring unless the Initial Order grants a charge on all of the property of the LP Entities in the amount of \$35 million (the "Directors' and Officers' Charge"), in priority to all other charges except the Administration Charge, the FA Charge (defined below) and the DIP Charge and Cash Management Existing Security (up to \$7.5 million), as security for the LP Entities'

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indemnification obligations for the potential liabilities imposed upon the directors and officers of the Applicants as set out above. The LP Entities believe the Directors' and Officers' Charge is fair and reasonable in the circumstances.

247. The Directors' and Officers' Charge is necessary so that the LP Entities may continue to benefit from their directors' and officers' extensive experience with the LP Entities and, more generally, with the newspaper publishing industry. It is critical to the restructuring efforts of the LP Entities that the management directors remain with the LP Entities in order to continue their focus on achieving one or more financial restructuring transactions to benefit the LP Entities' stakeholders. The Directors' and Officers' Charge will also provide assurances to the employees of the LP Entities that obligations for accrued wages, accrued vacation pay and accrued pension benefits and severance and termination pay will be satisfied. The proposed Monitor has expressed its support for the amount of the proposed Directors' and Officers' Charge.

### **MANAGEMENT INCENTIVE PLAN AND SPECIAL ARRANGEMENTS**

248. In order to preserve enterprise value and ensure the continued participation of the LP Entities' senior management and other key employees in Canwest's newspaper publishing business and the restructuring, the LP Entities have developed a "Management Incentive Plan" (the "LP MIP"). The MIP will provide the participants thereunder (the "LP MIP Participants") with payments as incentives to continue their employment with the LP Entities through the full term of this proposed CCAA proceeding.

249. The payments to the LP MIP Participants will be calculated as a percentage of the LP MIP Participants' base compensation and the LP MIP provides that they be paid in two tranches. The first payment was made on the last regular payroll period occurring in December, 2009. The second and final payment will be made on the date upon which the LP Entities emerge from CCAA protection.

250. It is proposed that the LP MIP Participants be granted a charge (the "LP MIP Charge") over the LP Property in the amount of the financial obligation owing by the LP Entities under the LP MIP. The LP MIP Charge will rank on a pari passu basis with the proposed Directors' and Officers' Charge. The proposed LP MIP Charge has been calculated

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with reference to the amount payable by the LP Entities to each of the LP MIP Participants under the LP MIP.

251. Because certain of the LP MIP Participants are also currently providing restructuring and related advisory services to the CMI Entities, and certain employees of the CMI Entities are providing restructuring services to the LP Entities, a cost recovery plan has been developed between the CMI Entities and the LP Entities whereby each will make a payment to the other in respect of the employees who participate in the LP MIP or the CMI Entities' key employee retention plans (the "CMI KERP") and who contribute to the restructuring efforts of the other. The LP Entities have requested, and the LP Administrative Agent has consented, for a trust to be established for the benefit of the participants in the CMI KERP of the CMI Entities (the "CMI KERP Participants") in an amount equal to \$3,946,022, as the Limited Partnership's contribution to the CMI KERP (net of the CMI Entities' contribution to the MIP). On November 12, 2009, the LP Entities distributed the \$3,946,022 to a trust account that is currently held by RBC Dominion Securities Inc.

252. All of the LP MIP Participants are critical to the successful restructuring of the LP Entities, as they perform critical support functions for the LP Entities on a daily basis. It is likely that some or all of the LP MIP Participants would consider other employment options if the LP MIP is not granted and secured by the LP MIP Charge. It would be extremely difficult at this stage of the restructuring process to find adequate replacements for those employees. Significantly, the proposed Monitor is supportive of the LP MIP.

253. In addition, and again in order to preserve enterprise value and ensure continuity of leadership within the LP Entities' during the restructuring, the LP Entities have reached agreement with two key employees on amendments to their employment agreements (the "Special Arrangements"). The Special Arrangements are in respect of Dennis Skulsky, the President of CPI and Gordon Fisher, who is the publisher employed by National Post Inc. and provide for termination payments to be made to Messrs. Skulsky and Fisher in the event that a sale, divestiture, reorganization or recapitalization occurs and they are not offered employment with the successor entity on commercially reasonable terms. The termination payments are inclusive of all entitlements to all notice of termination, pay in lieu thereof and similar obligations.

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254. It is proposed that the amounts potentially payable pursuant to the Special Arrangements be secured by the LP MIP Charge. The proposed Monitor supports this proposal.

255. Messrs. Skulsky and Fisher are critical to the successful restructuring of the LP Entities. It would be extremely difficult and disruptive to replace them if they should leave, and their continued employment will provide considerable value during the restructuring of the LP Entities.

256. It is the view of the LP Entities that the LP MIP and the Special Arrangements provide appropriate incentives for the LP MIP Participants and Messrs. Skulsky and Fisher to remain in their current positions. The LP MIP also ensures that the LP MIP Participants will be properly compensated for their assistance in the reorganization process. A copy of the LP MIP, redacted to remove individually identifiable information and compensation information, is attached as Exhibit "AA" to this Affidavit. Copies of the Special Arrangements, redacted to remove compensation and other financially sensitive information, are attached as Exhibit "BB" to this Affidavit.

257. In order to retain a key employee that will provide integral assistance to National Post Inc., considering it will be significantly affected by the larger financial restructuring of the LP Entities, National Post Inc. has developed a "Management Incentive Plan" (the "NP MIP"). The NP MIP will provide the participants there under with payments and incentives to continue his employment with National Post Inc. through the full term of this proposed CCAA proceeding. The proposed Initial Order authorizes the LP Entities to make payments pursuant to the NP MIP. It is not contemplated that amounts payable under the NP MIP will be covered by the LP MIP Charge.

258. A copy of the NP MIP redacted to remove individually identifiable information and compensation information, is attached as Exhibit "CC" to this Affidavit.

259. The form and substance of the LP MIP, the Special Arrangements and the NP MIP have been approved by the LP Administrative Agent, the LP CRA, the Board and the Special Committee, and the proposed payments and charge are supported by the Monitor.



## **FINANCIAL ADVISOR AGREEMENT APPROVAL**

260. On or about October 1, 2009 Canwest Global and the Limited Partnership entered into an agreement with RBC Dominion Securities Inc., a member company of RBC Capital Markets, relating to RBC Capital Markets' provision of investment banking services to the LP Entities (as amended, the "Financial Advisor Agreement"). Prior to October 1, 2009, RBC Capital Markets provided financial advisory services to the LP Entities pursuant to a letter agreement dated December 10, 2008 between Canwest Global, on behalf of itself and its subsidiaries. A copy of the Financial Advisor Agreement that has been redacted to obscure commercially sensitive information is attached as Exhibit "DD" to this Affidavit. An un-redacted version of the Financial Advisor Agreement is filed as part of the confidential supplement to the pre-filing report of the proposed Monitor.

261. The Financial Advisor Agreement provides, *inter alia*, that if, during the term of RBC Capital Markets' engagement or during the period of 12 months following termination of its engagement, Canwest Global or any of its subsidiaries, including the LP Entities, commences a CCAA proceeding, Canwest Global will, subject to the discretion of the relevant court, engage RBC Capital Markets on terms and conditions identical to the terms and conditions set out in the Financial Advisor Agreement.

262. The Financial Advisor Agreement also provides that the Financial Advisor is entitled to a success fee upon completion of the SISP pursuant to its terms. The Applicants propose that the Financial Advisor shall be entitled to the benefit of a charge on the Property of the LP Entities (the "FA Charge") not to exceed an aggregate amount of \$10 million as security for the fees and disbursements, including any success fee (if any) payable to the Financial Advisor Agreement. The LP Administrative Agent supports the granting of such charge.

263. It should be noted that, pursuant to the Financial Advisor Agreement, RBC Capital Markets is incited to identify and pursue either a Superior Cash Offer or a Superior Alternative Offer in accordance with the SISP Procedures described above, as their compensation is greater if a Superior Offer is obtained that results in the consummation of an alternative transaction and the Support Transaction is not pursued.

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264. It is my belief, and the belief of senior management of the LP Entities, that RBC Capital Markets' significant investment banking experience and expertise, its extensive knowledge of the capital markets and its capabilities in the area of financial restructurings and recapitalizations have to date greatly benefited the LP Entities.

265. RBC Capital Markets has spent more than 12 months working closely with senior management of the LP Entities and their other advisors. RBC Capital Markets has greatly assisted the LP Entities in their financial restructuring efforts to date and has gained a thorough and intimate understanding of the businesses operated by the LP Entities. If the LP Entities were deprived of the benefit of RBC Capital Markets' continued advice and assistance and were required to retain a new financial advisor, it would likely take a significant period of time for such financial advisor to acquire a similar working knowledge of the LP Entities' businesses. Such a disruption would make it extremely difficult to implement the financial restructuring or recapitalization initiatives under consideration, including the SISP, in the currently contemplated time frame. Thus, the LP Entities believe that the continued involvement of RBC Capital Markets as their Financial Advisor is essential to the completion of its successful financial restructuring.

266. It is also my belief that the quantum and nature of the remuneration provided for in the Financial Advisor Agreement is fair and reasonable.

### **MONITOR**

267. FTI Consulting Canada Inc. ("**FTI Consulting**") has consented to act as the monitor (the "**Monitor**") of the LP Entities in this proposed CCAA proceeding.

268. The LP Entities, with the assistance of FTI Consulting, have prepared consolidated 13-week cash flow projections for the LP Entities (the "**LP Cash Flow Projection**"), as required by the CCAA. A copy of the LP Cash Flow Projection is attached as Exhibit "EE" to this Affidavit.

269. The proposed Monitor will also be filing an initial report as prospective Monitor in conjunction with the LP Entities' request for relief under the CCAA.

## **ADMINISTRATION CHARGE**

270. It is contemplated in the draft Initial Order that the Monitor and its counsel, counsel to the LP Entities, counsel and the financial advisor to the Special Committee, the LP CRA and counsel to the LP CRA will be granted the right to receive a first priority Court-ordered charge on the LP Property for services rendered to the LP Entities (the "Administration Charge") up to the maximum amount of \$3 million in respect of their respective fees and disbursements.

271. It is proposed that the charges requested to be created by the Initial Order will not rank in priority to validly perfected purchase money security interests in favour of secured creditors and statutory encumbrances in favour of any entity which is a secured creditor as set out in the draft Initial Order. As the LP Secured Lenders and swap counterparties have been given notice of this CCAA proceeding, based upon the books and records of the LP Entities, and to the best of my knowledge, secured creditors who are likely to be affected by the proposed charges have been given notice of this CCAA proceeding.

272. The draft Initial Order also provides that the names and addresses of individuals who are creditors of the LP Entities are not required to be included on the list prepared by the proposed Monitor in accordance with section 23(1)(a)(ii)(c) of the CCAA. The LP Entities believe that the identity and privacy of their former employees and retirees and other individuals who are creditors should be respected and wish to prevent any harm that may arise to their former employees and retirees and other individuals who are creditors from having their names and addresses included on such list.


## **CONCLUSION**

273. I am confident that granting the Initial CCAA Order sought by the Applicants is in the best interests of the LP Entities and their respective stakeholders. Without the "breathing space" afforded by a stay of proceedings, the LP Entities face obligations to repay approximately \$1.45 billion of indebtedness and a cessation of going concern operations, the liquidation of their assets and the loss of employment for approximately 5,300 FTE employees in Canada. The LP Entities require time to test the market to ensure that the best possible going concern outcome is achieved; one that permits the continuation of employment for as many of their employees as is possible. To that end, the SISP will provide a robust litmus test for whether the proposed

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Support Transaction delivers the best possible result for all stakeholders. Granting a stay of proceedings will allow the LP Entities to run the SISP and, subject to Court approval, proceed with either the Support Transaction or a Superior Offer generated by the SISP. The LP Entities believe that the proposed course of action - including the presence of a Support Transaction that already contemplates a going concern outcome - provides the maximum possible benefit for all stakeholders in the circumstances. The businesses of the LP Entities will carry on in the ordinary course, providing stability for employees, suppliers, and other stakeholders including the millions of people who rely on the news and other information services provided by the LP Entities every day.

SWORN BEFORE ME at the City of  
Toronto, in the Province of Ontario, on  
January 7, 2010.

  
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Commissioner for Taking Affidavits

  
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THOMAS C. STRIKE