

**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 GLOBAL
COMMUNICATIONS CORP., AND THE OTHER
APPLICANTS LISTED ON SCHEDULE "A"

APPLICANTS

FACTUM OF THE APPLICANTS
(Motion returnable September 8, 2010)

September 2, 2010

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PART I – NATURE OF THIS MOTION

1. This factum is filed by Canwest Global Communications Corp. ("**Canwest Global**") and the other Applicants listed on Schedule "A" hereto (the "**Applicants**") and the Partnerships listed on Schedule "B" hereto (the "**Partnerships**" and, together with the Applicants, the "**CMI Entities**") seeking an Order (the "**Approval and Vesting Order**"), substantially in the form attached to the Motion Record, inter alia,:

- (a) approving the sale transaction contemplated by the Offer to Purchase by and between 5313997 Manitoba Ltd. (the "**Vendor**") and Ruth Zelcer (the "**Purchaser**"), delivered to the Vendor on July 28, 2010, which Offer to Purchase was amended by letter agreements dated August 5 and 6, 2010 (collectively, the "**Offer to Purchase**") which provides for a sale of the condominium beneficially owned by CMI and located at 1003-141 Wellington Crescent in the City of Winnipeg, Manitoba (the "**Condominium**") and the Included Goods and Chattels (defined below) (the Condominium and the Included Goods and Chattels are collectively referred to as the "**Purchased Assets**");

- (b) authorizing CMI and the Vendor to complete all steps, documents and transactions contemplated by the Offer to Purchase; and
- (c) vesting all of CMI's right, title and interest in the Purchased Assets in the Purchaser free and clear of any encumbrances upon the delivery of a certificate from the Monitor;

2. In this motion, the CMI Entities are also seeking an Order, *inter alia*, extending the Stay Period (as defined below) from September 8, 2010 to November 5, 2010.

PART II – FACTS

3. The facts with respect to this Motion are more fully set out in the Affidavit of John E. Maguire sworn on September 1, 2010 (the “**Maguire Affidavit**”). Capitalized terms in this Factum not otherwise defined have the same meanings as in the Maguire Affidavit.

Background

4. The CMI Entities 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 (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) dated October 6, 2009. FTI Consulting Canada Inc. was appointed at that time to act as monitor (the “**Monitor**”) in this CCAA proceeding.

5. By Order dated July 28, 2010 (the “**Plan Sanction Order**”), this Honourable Court sanctioned a restated consolidated plan of compromise, arrangement and reorganization (as further amended from time to time, the “**Plan**”) under the CCAA and the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended in respect of certain of the CMI Entities.

6. The basis of the Plan is an amended subscription agreement between Canwest Global and Shaw Communications Inc. (“**Shaw**”), an amended support agreement between Canwest Global, Shaw and the members of an ad hoc committee (the “**Ad Hoc Committee**”) of holders of CMI’s 8% senior subordinated notes due 2012, and a further amended support agreement between Canwest Global, the other CMI Entities and the members of the Ad Hoc Committee, whereby the parties to each agreement have agreed to pursue a recapitalization transaction that, if implemented, will see a wholly-owned subsidiary of Shaw acquire the television broadcasting business of Canwest Global and its subsidiaries (the “**Amended Shaw Transaction**”).¹

7. In connection with the Plan and its implementation, Canwest Global, CMI, Shaw, the Monitor and certain other related parties entered into an agreement (the “**Plan Emergence Agreement**”) detailing certain steps that will be taken prior to, upon or following implementation of the Plan. This Honourable Court approved the Plan Emergence Agreement in the Plan Sanction Order. The steps outlined in the Plan Emergence Agreement relate to the funding of various costs that are payable by the CMI Entities on or after the date on which the Plan is to be implemented (the “**Plan Implementation Date**”), including payments that will be made (or may be made) to satisfy post-filing amounts owing by the CMI Entities.²

The Condominium

8. CMI is the beneficial owner of the Condominium. The Vendor holds legal title to Condominium. Although not an Applicant in this CCAA proceeding, the Vendor is a wholly owned subsidiary of CMI. The sole function of the Vendor within the corporate structure of

¹ Affidavit of John E. Maguire sworn September 1, 2010 (the “Maguire Affidavit”), para. 7, Motion Record of the Applicants (the “Motion Record”), Tab 2, p. 12.

² Maguire Affidavit, para. 10, Motion Record, Tab 2, p. 13.

Canwest Global is to hold title to the Condominium. Accordingly, as the Vendor holds the bare title to the Condominium for the benefit of CMI, the Vendor is a bare trustee for CMI.³

9. The Condominium has been used by the CMI Entities as accommodation for Canwest personnel that reside outside of Winnipeg.⁴ The Condominium is a non-core asset to the operations and business of the CMI Entities. Consequently, it is not among the assets of the CMI Entities that Shaw will acquire on the Plan Implementation Date. The Plan Sanction Order provides that the Monitor is authorized and directed to liquidate any assets of the CMI Entities, including the Condominium, not transferred to New Canwest (as defined in the Plan) pursuant to the Plan. Due to the fact that the Purchaser has requested that the purchase of the Condominium be completed on an expedited basis (*i.e.*, potentially before the Plan Implementation Date), it is necessary for the CMI Entities (as opposed to the Monitor) to effect the sale.⁵

The Offer to Purchase

10. As described in greater detail below, the Condominium has been listed on the market, with the Vendor's real estate agent, Royal LePage, for almost ten months. The Offer to Purchase presents the Vendor with the highest offer from a purchaser known to be willing to acquire the Condominium within the context of these CCAA proceedings.

11. The consideration payable by the Purchaser (the "**Purchase Price**") under the Offer to Purchase is the amount of \$365,000, subject to any customary closing adjustments.

³ Maguire Affidavit, para. 13, Motion Record, Tab 2, p. 14.

⁴ Maguire Affidavit, para. 15, Motion Record, Tab 2, p. 14-15.

⁵ Maguire Affidavit, para. 14, Motion Record, Tab 2, p. 14.

12. The Offer to Purchase provides for a possession date of October 1, 2010. The Offer to Purchase further provides that the Purchaser offers and agrees to purchase the Condominium and certain goods and chattels that are currently contained within the Condominium, including but not limited to a dryer, refrigerator, garage door opener and remotes, garburator, microwave, stove, window coverings and washer (the “**Included Goods and Chattels**”).⁶

13. It is a condition of closing that the Vendor obtain an Order from this Honourable Court approving the Offer to Purchase and vesting in the Purchaser CMI’s interest in the Condominium.⁷

Proceeds from the Sale

14. As the Condominium is a non-core asset to the business of the CMI Entities, it will not be transferred to New Canwest. Rather, the manner in which the proceeds realized from the sale of the Condominium are to be administered is provided for in the Plan and the Plan Emergence Agreement. Generally, the proceeds realized from the sale of the Condominium will form part of the monies that will be used to pay the fees and disbursements incurred by the Monitor, its legal counsel and any other advisors retained by the Monitor, in connection with fulfilling the Monitor’s duties and obligations under the Plan and the Plan Emergence Agreement, including, without limitation, those fees, disbursements, costs and expenses incurred in connection with:

- (a) resolving any unresolved claims of the Affected Creditors;
- (b) making distributions under the Plan;

⁶ Maguire Affidavit, para. 25, Motion Record, Tab 2, p. 17.

⁷ Maguire Affidavit, para. 26, Motion Record, Tab 2, p. 17.

- (c) determining any claims unaffected by the Plan;
- (d) making distributions under the Plan Emergence Agreement; and
- (e) bankrupting and acting as trustee in bankruptcy or liquidating, winding up or dissolving any Remaining Canwest Entities.⁸

15. The CMI Entities intend to instruct their counsel to hold the proceeds from the sale of the Condominium, in trust, until after the Plan Implementation Date, whereupon such monies will be transferred to the Monitor to be administered in accordance with the terms of the Plan Emergence Agreement.⁹

PART III – ISSUES

16. The issues on this Motion are:
- (a) should this Honourable Court grant the Approval and Vesting Order?; and
 - (b) should this Honourable Court extend the stay of proceedings to November 5, 2010?

PART IV –THE LAW

General Interpretive Principles under the CCAA

17. It has long been held that the CCAA is remedial legislation, which should be given a broad interpretation with a view to fulfilling its purpose – namely, the facilitation of restructuring of debtor companies, for the benefit of creditors, stakeholders and other

⁸ Maguire Affidavit, para. 28, Motion Record, Tab 2, p. 17.

⁹ Maguire Affidavit, para. 29, Motion Record, Tab 2, p. 17.

constituencies that would be detrimentally affected by the cessation of the debtor's business in a bankruptcy or liquidation.

18. As Blair J. stated in *Re Royal Oak Mines Inc.*:¹⁰

It is well established that the provisions of the Act are remedial in nature, and that they should be given a broad and liberal interpretation in order to facilitate compromises and arrangements between companies and their creditors, and to keep companies in business where that end can reasonably be achieved.

It is Appropriate Grant the Approval and Vesting Order

19. The CCAA amendments which came into force on September 18, 2009 have conferred on CCAA Courts the statutory jurisdiction to authorize a sale or disposition of assets, even if shareholder approval was not obtained. Specifically, under section 36 of the CCAA, court approval is required if (i) a debtor company proposes to sell or dispose of assets; and (ii) the sale or disposition of assets is outside the ordinary course of business. The relevant clauses of section 36 are as follows:

36(1) Restriction on disposition of business assets – A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

36(2) Notice to creditors – A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

36(3) Factors to be considered – In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

¹⁰ (1999, 6 C.B.R. (4th) 314 (Ont. Gen. Div.), Applicants' Book of Authorities, Tab 3.

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

...

36(6) Assets may be disposed of free and clear – The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

36(7) Restriction – employers – The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and 6(6)(a) if the court had sanctioned the compromise or arrangement.

20. Additionally, pursuant to section 36(4) of the CCAA, certain mandatory criteria must be met for court approval of a sale or disposition to a related party. In the present case, the Vendor and the Purchaser are not related persons within the meaning of the CCAA.¹¹

21. The new amendments to the CCAA should be interpreted and applied with regard to the underlying purposes of the CCAA. As this Honourable Court held in granting the Initial Order in these proceedings:

In no way do the amendments change or detract from the underlying purpose of the CCAA, namely to provide debtor companies with the opportunity to extract themselves from financial difficulties notwithstanding insolvency and to reorganize their affairs for the benefit of stakeholders. In my view, the amendments should be interpreted and applied with that objective in mind. (emphasis added)¹²

¹¹ Maguire Affidavit, para. 27, Motion Record, Tab 2, p. 17.

¹² *Re CanWest Global Communications Corp. et al.* [2009] O.J. No. 4286 (S.C.J.) at para. 24, Applicants' Book of Authorities, Tab 1.

22. The CMI Entities submit that, taking into account the factors listed in section 36(3) of the CCAA, in addition to certain other factors, and with regard to the general interpretative provisions of the CCAA, this Honourable Court ought to grant the Approval and Vesting Order.

A. Process Leading to the Sale of the Condominium was Reasonable in the Circumstances

23. The CMI Entities submit that the Vendor followed a reasonable process leading up to the sale of the Condominium. The Vendor listed the Condominium for sale on November 30, 2009 at an initial listing price of \$449,900. The listing of the Condominium was posted on the “mls.ca” website operated by The Canadian Real Estate Association. After receiving no serious expressions of interest from prospective purchasers in the first five months it was on the market, the Vendor reduced the asking price for the Condominium to \$429,900 in April 2010.¹³

24. Following the reduction of the asking price, the Vendor received an offer in the amount of \$330,000 for the Condominium in early April 2010. As the offer was almost \$100,000 lower than the then asking price for the Condominium, the Vendor rejected it.¹⁴

25. In early May 2010, the Vendor received two offers to purchase the Condominium on the same day: one offer for \$370,000 and another for the then asking price of \$429,900. The Vendor accepted the latter offer, conditional on approval of counsel for the offeror and the Vendor within seven days of the Vendor’s acceptance of such offer. Shortly thereafter, the offeror was advised by the Vendor that this offer would need to be amended in order to take into account the fact that the beneficial owner of the Condominium, CMI, is subject to creditor

¹³ Maguire Affidavit, para. 18, Motion Record, Tab 2, p. 15.

¹⁴ Maguire Affidavit, para. 19, Motion Record, Tab 2, p. 16.

protection under the CCAA. The offeror was also advised that Court approval of the sale of the Condominium would need to be obtained before the purchase and sale transaction could close.¹⁵

26. Upon being advised of these further conditions, the offeror abandoned its offer. The offeror indicated that he was uncomfortable with the perceived uncertainty involved in acquiring the Condominium within the context of these CCAA proceedings, and because the offeror wanted to take possession of the Condominium before Court approval for the sale of the Condominium could reasonably have been obtained.¹⁶

27. Following the failure to consummate this offer, the Vendor did not receive any expressions of interest in the Condominium for several weeks. Consequently, on June 30, 2010, the Vendor further lowered the asking price for the Condominium to \$399,000. The Vendor did not receive any further offers to purchase the Condominium until the Purchaser delivered the Offer to Purchase.¹⁷

B. The Purchase Price is Fair and Reasonable Taking into Account Market Value of the Purchased Assets

28. The CMI Entities submit that the Purchase Price represents fair and reasonable value in the current marketplace for several reasons. The Condominium has been on the market for almost ten months and the Offer to Purchase represents the highest offer from a purchaser known to be willing to acquire the Condominium within the context of these CCAA proceedings. In addition, two recent sales of reasonably similar units in the Condominium Project demonstrate that the Purchase Price represents fair and reasonable value for the Condominium in the current marketplace:

¹⁵ Maguire Affidavit, para. 20, Motion Record, Tab 2, p. 15-16.

¹⁶ Maguire Affidavit, para. 21, Motion Record, Tab 2, p. 16.

¹⁷ Maguire Affidavit, para. 22, Motion Record, Tab 2, p. 16.

- a unit that is approximately 136 square feet larger than the Condominium was recently sold for \$379,806 (i.e., only 3.9% higher than the Purchase Price). This unit had been on the market since September 2008 and had an original asking price of \$589,900; and
- a unit in the Condominium Project of the same size as the Condominium recently sold for \$379,900 (i.e., only 4% higher than the Purchase Price). This latter unit was listed in September 2008 at an original asking price of \$529,900.¹⁸

29. In light of the fact that (i) the Condominium has had a prolonged listing period, (ii) the Offer to Purchase presents the highest offer from any purchaser known to be willing to acquire the Condominium in the context of these CCAA proceedings, and (iii) the Purchase Price is comparable to the prices recently garnered by the sale of similar units in the Condominium Project, the CMI Entities submit the Purchase Price is fair and reasonable.

C. The Monitor Supports the Transaction

30. In its Eighteenth Report, the Monitor has recommended approval of the Offer to Purchase by this Honourable Court. In arriving at this recommendation, the Monitor has concluded that (i) the Vendor has acted in good faith to maximize value in attempting to divest the Condominium; (ii) the Vendor made satisfactory efforts to obtain the best price and has not acted improvidently; and (iii) the sale of the Condominium under a bankruptcy would not be more beneficial to the creditors of the CMI Entities.¹⁹

D. Other Creditors were Consulted

31. The CMI Entities have consulted with the Ad Hoc Committee, CIBC Asset-Based Lending Inc. (“CIBC”), Irish Holco and Shaw in respect of the Offer to Purchase. Shaw has

¹⁸ Maguire Affidavit, para. 32, Motion Record, Tab 2, p. 18-19.

¹⁹ Eighteenth Report of the Monitor, para. 35.

approved of the proposed transaction, including the Purchase Price to be received by the Vendor, and CIBC, Irish Holdco and the Ad Hoc Committee have not expressed any opposition to the proposed transaction.²⁰

32. A title search conducted by the CMI Entities' agent in Manitoba dated August 20, 2010 (the "**Title Search**") reveals that, apart from a "caveat" in favour of Manitoba Telephone System, title to the Condominium is clear and there are no specific charges or other encumbrances that need to be vested out.²¹

33. In addition to the Title Search, the CMI Entities also conducted a search (the "**PPSA Search**") under the *Manitoba Personal Property Security Act* for registrations in Manitoba against the Vendor and CMI. The PPSA Search did not identify any registrations against the Vendor or any specific registrations in respect of the Condominium.²²

34. Counsel to the CMI Entities have also previously conducted searches of the personal property registry systems in all other Canadian provinces and territories against CMI (the "**PPR Searches**"). The PPR Searches reveal numerous provincial registrations over all of CMI's present and after-acquired property in favour of CIBC Mellon Trust Company ("**CIBC Mellon**"), as collateral agent under the senior secured revolving asset-based loan facility held by CIBC and the Secured Intercompany Note. Notwithstanding that the PPSA Search and the PPR Searches did not identify any registrations against the Vendor or any specific registrations in

²⁰ Maguire Affidavit, para. 38, Motion Record, Tab 2, p. 20; Eighteenth Report of the Monitor, para. 36.

²¹ Maguire Affidavit, para. 35, Motion Record, Tab 2, p. 19.

²² Maguire Affidavit, para. 36, Motion Record, Tab 2, p. 20.

respect of the Condominium, the CMI Entities have provided notice of the instant motion to all parties who have registered financing statements against CMI, including CIBC Mellon.²³

E. Other Factors in Support of Approval

35. Finally, the CMI Entities submit that the following additional factors also support the granting of the Approval and Vesting Order:

- (a) it will generate proceeds to contribute to the funding of the resolution of unresolved claims of Affected Creditors and to effect distributions under the Plan and the Plan Emergence Agreement;
- (b) it provides certainty that the Condominium will be sold during these CCAA proceedings (as opposed to some date after the Plan Implementation Date);
- (c) it provides the opportunity to divest a non-core asset to the operations of the CMI Entities; and
- (d) it takes advantage of the fact that the Purchaser is willing to acquire the Condominium at fair market value in the context of these CCAA proceedings.²⁴

36. In addition, as the Offer to Purchase is simply the monetization of a hard asset and does not contemplate the transfer of employees or pension plans to the Purchaser (or otherwise touch on employee issues), the CMI Entities submit that section 36(7) of the CCAA has no application to the present motion. This Honourable Court concluded that section 36(7) of the

²³ Maguire Affidavit, para. 37, Motion Record, Tab 2, p. 20.

²⁴ Maguire Affidavit, para. 34, Motion Record, Tab 2, p. 19.

CCAA did not apply in respect of a similar sale of an asset (the sale of a corporate jet) within these CCAA proceedings.²⁵

37. The CMI Entities therefore submit that, in the circumstances, and with regard to the factors listed in section 36(3) of the CCAA, it is appropriate for this Honourable Court to grant the Approval and Vesting Order.

STAY OF PROCEEDINGS

38. In the Initial Order, the Court granted the CMI Entities a stay of proceedings until November 5, 2009 (the “**Stay Period**”). Pursuant to section 11.02(2) of the CCAA, a court may extend the Stay Period “for any period that the court considers necessary.” Section 11.02(3) requires that the applicants must show that the granting of an extension of the stay period is appropriate and that the applicants have acted in good faith and with due diligence. Since the granting of the Initial Order, this Honourable has extended the Stay Period on four subsequent occasions, most recently on June 8, 2010, with the Stay Period now scheduled to expire on September 8, 2010.

39. As described more fully in the Maguire Affidavit, since the granting of the most recent extension of the Stay Period, the CMI Entities have acted in good faith and with due diligence to further a restructuring under the CCAA. In its Eighteenth Report, the Monitor states its view that the CMI Entities have acted, and are continuing to act, in good faith and with due diligence.²⁶ Specifically, the CMI Entities have, among other things, (i) resolved a dispute with certain of the existing shareholders of Canwest Global that threatened to disrupt the CMI Entities’ restructuring efforts; (ii) held the Creditor Meetings and obtained the approval of the

²⁵ *Re CanWest Global Communications Corp. et al.* (Endorsement of Madam Justice Pepall dated March 4, 2010) Applicants’ Book of Authorities, Tab 2.

²⁶ Eighteenth Report of the Monitor, para. 58.

requisite majority of the Affected Creditors at such meetings; (iii) obtained the Plan Sanction Order from this Honourable Court; (iv) obtained approval from the Competition Bureau in respect of the Amended Shaw Transaction pursuant to the *Competition Act*, R.S.C. 1985, c. C-34; (v) worked with Shaw in preparing for the hearing before the *Canadian Radio-television and Telecommunications Commission* (“CRTC”) seeking the transfer of certain broadcasting licences pursuant the Broadcasting Act, S.C. 1991, c. 11; and (vi) made significant progress in advancing any remaining outstanding Claims against the CMI Entities and the directors and officers of the Applicants pursuant to the Claims Procedure Order.²⁷

40. In addition to permitting the CMI Entities to complete the necessary corporate documentation to effect the closing of the Amended Shaw Transaction and the transactions contemplated by the Plan, an extension of the Stay Period will allow the CMI Entities and/or the Monitor to: (i) appear before the CRTC in respect of the CRTC Applications; (ii) take the steps necessary to effect the liquidation, winding-up, dissolution, bankruptcy or abandonment of the Remaining Canwest Entities; (iii) resolve remaining unresolved claims pursuant to the Claims Procedure; (iv) implement the Post-Filing Claims Procedure; and (v) commence the matters contemplated by the Plan Emergence Agreement.

41. Moreover, the extension of the Stay Period is supported by the CMI Entities’ Chief Restructuring Advisor, Shaw, the Ad Hoc Committee and the Monitor.²⁸

42. In light of the good faith efforts and due diligence of the CMI Entities, and in light of the significant progress that has been made and the measures that remain to be

²⁷ Maguire Affidavit, para. 48, Motion Record, Tab 2, p. 22.

²⁸ Maguire Affidavit, para. 71, Motion Record, Tab 2, p. 29.

completed, it is submitted that it is necessary and appropriate to extend the Stay Period to November 5, 2010.

PART IV – NATURE OF THE ORDER SOUGHT

43. The CMI Entities therefore request an Order substantially in the form of the draft Order attached to the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:

Lyndon Barnes / per DRA
Lyndon A.J. Barnes

Jeremy Dacks / per DRA
Jeremy Dacks

DRA
Duncan Ault

SCHEDULE "A"

Applicants

1. Canwest Global Communications Corp.
2. Canwest Media Inc.
3. MBS Productions Inc.
4. Yellow Card Productions Inc.
5. Canwest Global Broadcasting Inc./Radiodiffusion Canwest Global Inc.
6. Canwest Television GP Inc.
7. Fox Sports World Canada Holdco Inc.
8. Global Centre Inc.
9. Multisound Publishers Ltd.
10. Canwest International Communications Inc.
11. Canwest Irish Holdings (Barbados) Inc.
12. Western Communications Inc.
13. Canwest Finance Inc./Financiere Canwest Inc.
14. National Post Holdings Ltd.
15. Canwest International Management Inc.
16. Canwest International Distribution Limited
17. Canwest MediaWorks Turkish Holdings (Netherlands) B.V.
18. CGS International Holdings (Netherlands) B.V.
19. CGS Debenture Holding (Netherlands) B.V.
20. CGS Shareholding (Netherlands) B.V.
21. CGS NZ Radio Shareholding (Netherlands) B.V.
22. 4501063 Canada Inc.
23. 4501071 Canada Inc.
24. 30109, LLC
25. CanWest MediaWorks (US) Holdings Corp.

SCHEDULE "B"

Partnerships

1. Canwest Television Limited Partnership
2. Fox Sports World Canada Partnership
3. The National Post Company/La Publication National Post

SCHEDULE "C" - STATUTORY REFERENCES

COMPANIES' CREDITORS ARRANGEMENT ACT

R.S.C. 1985, c. C-36, as amended

s. 11(1) General power of court - Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances. **caution is made under this Act** in respect of a company, the court, on the application of any person interested in the matter, may, subject to this Act, on notice to any other person or without notice as it may see fit, make an order under this section.

11.02 (2) Stays, etc. — other than initial application - A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Restriction on disposition of business assets

36. (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
- (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

- (a) a director or officer of the company;
- (b) a person who has or has had, directly or indirectly, control in fact of the company; and
- (c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(4)(a) and (5)(a) if the court had sanctioned the compromise or arrangement.

SCHEDULE "D"

LIST OF AUTHORITIES

1. *Re CanWest Global Communications Corp. et al.* [2009] O.J. No. 4286 (Ont. S.C.J.)
2. *Re CanWest Global Communications Corp. et al.* (Endorsement of Madam Justice Pepall dated March 4, 2010)
3. *Re Royal Oak Mines Inc* (1999), 6 C.B.R. (4th) 314 (Ont. Gen. Div.)

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANWEST GLOBAL
COMMUNICATIONS CORP., AND THE OTHER APPLICANTS LISTED ON SCHEDULE "A"

APPLICANTS

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

FACTUM OF THE APPLICANTS
(Motion returnable September 8, 2010)

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