

**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"**

**FACTUM OF THE MONITOR
FTI CONSULTING CANADA INC.**

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TO: **THE SERVICE LIST**

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

Applicants

**FACTUM OF THE MONITOR
(Motion Returnable October 21, 2011)**

PART I - INTRODUCTION

1. This motion is being brought by FTI Consulting Canada Inc. ("FTI") in its capacity as the Court-appointed monitor (the "**Monitor**") of Canwest Global Communications Corp. and the other Applicants listed on Schedule "A" hereto (other than Canwest Global Broadcasting Inc./Radiodiffusion Canwest Global Inc., Canwest Television GP Inc. & Fox Sports World Canada Holdco Inc.) and The National Post Company/La Publication National Post (collectively, the "**Remaining CMI Entities**") for an Order modifying the rights, duties and obligations of any trustee in bankruptcy (the "**CMI Trustee**") that may be appointed in respect of Canwest Media Inc. (now 4514866 Canada Inc.) ("**CMI**") set forth in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**").
2. Canwest¹ carried on business through a number of subsidiaries and until recently was Canada's largest publisher of English language daily and non-daily newspapers.

¹ All capitalized terms used but not defined herein shall have the meaning ascribed to them in the Twenty-Fourth Report of the Monitor dated October 14, 2011 (the "**Report**").

Canwest directly or indirectly owned, operated and/or held substantial interests in free-to-air television stations and subscription-based specialty television channels, and websites in Canada.

Report, Motion Record, Tab 1, para. 2

3. Relief in the CCAA Proceedings was obtained by: Canwest Global, its principal operating subsidiary CMI, certain subsidiary corporations and partnerships of CMI that owned and operated Canwest's free-to-air television broadcast business and certain Canadian subscription-based specialty television channels and The National Post Company/La Publication National Post (now Legacy NPC Partnership).

Report, Motion Record, Tab 1, para. 3

4. On October 6, 2009, the CMI Entities were held to be insolvent and obtained the Initial Order which provided for a stay of proceedings until November 5, 2009 (the "Stay Period").

Report, Motion Record, Tab 1, para. 4

5. The CMI Entities prepared and filed a consolidated plan of compromise, arrangement and reorganization accepted for filing by this Court on June 23, 2010, as restated on July 16, 2010, concerning, affecting and involving Canwest Global, CMI, Canwest Television GP Inc., Canwest Television Limited Partnership, Canwest Global Broadcasting Inc./Radiodiffusion Canwest Global Inc., Fox Sports World Canada Holdco Inc., Fox Sports World Canada Partnership, National Post Holdings Ltd. (now 4514858 Canada

Inc.), The National Post Company/La Publication National Post, MBS Productions Inc., Yellow Card Productions Inc., Global Centre Inc. and 4501063 Canada Inc., as may be amended (the "**Plan**").

Report, Motion Record, Tab 1, para. 5

6. On July 19, 2010, an excess of the majority in number and two-thirds in value of the Affected Creditors of the Plan Entities with Proven Voting Claims (as these terms are defined in the Plan) present and voting at the creditors' meetings voted in favour of approving the Plan. On July 28, 2010, this Court granted an Order sanctioning the Plan (the "**Plan Sanction Order**").

Report, Motion Record, Tab 1, para. 6

7. The Plan was successfully implemented on October 27, 2010. The Monitor delivered and filed with the Court its certificate required under the Plan stating, inter alia, that the Plan Implementation Date (as defined in the Plan) has occurred.

Report, Motion Record, Tab 1, para. 7

8. By Orders dated October 30, 2009, January 21, 2010, March 29, 2010, June 8, 2010, and September 8, 2010, the Stay Period was extended until November 5, 2010. Following the Plan Implementation Date, the Stay Period with respect to Canwest Television GP Inc., Canwest Television Limited Partnership, Canwest Global Broadcasting Inc./Radiodiffusion Canwest Global Inc., Fox Sports World Canada Holdco Inc., and Fox Sports World Canada Partnership (the "**Shaw Entities**") was terminated. By Orders

dated November 2, 2010, May 3, 2011, and September 29, 2011, the Stay Period with respect to the Remaining CMI Entities (as defined in the Plan) was extended until December 31, 2011.

Report, Motion Record, Tab 1, para. 8

PART II - THE FACTS

9. Pursuant to paragraph 14 of the Order dated September 27, 2010 (the “**September 27 Order**”), the CMI Entities were authorized to develop and implement a strategy, to be consented to by the Monitor and the Plan Sponsor or subject to further Order of this Honourable Court (the “**Wind-up Strategy**”), to effect the liquidation, bankruptcy, winding-up or dissolution of the Remaining CMI Subsidiaries and to enter into such transactions as are necessary to implement the Wind-up Strategy.

Report, Motion Record, Tab 1, para. 13

September 27 Order, Motion Record, Tab C, para. 14

10. The stay of proceedings granted by this Honourable Court in the Initial Order was also lifted for the sole purpose of and to the extent necessary to implement the Wind-up Strategy.

September 27 Order, Motion Record, Tab C, para. 14

11. On or before the Plan Implementation Date, the CMI Entities commenced the Wind-up Strategy in accordance with the Plan, the Plan Emergence Agreement and the September 27 Order.

Report, Motion Record, Tab 1, para. 14

12. Under the Plan, the Plan Sanction Order and the September 27 Order, the Monitor is authorized, directed and empowered to, among other things:
- (a) effect the liquidation, bankruptcy, winding-up or dissolution of any of the Remaining CMI Entities;
 - (b) act, if required, as trustee in bankruptcy, liquidator, receiver or a similar official of such entities;
 - (c) in the discretion of the Monitor, liquidate any assets of the Remaining CMI Entities and to contribute any net proceeds realized therefrom to the Plan Implementation Fund; and
 - (d) take such additional actions and execute such documents, in the name of and on behalf of any of Canwest and the Canwest Subsidiaries (other than the CTLP Plan Entities), as the Monitor considers necessary or desirable in order to perform its functions and fulfill its obligations under the September 27 Order, the Plan, the Plan Sanction Order and the Plan Emergence Agreement, and to facilitate the completion of these proceedings, the winding up of the estates of Canwest and the Canwest Subsidiaries (other than the CTLP Plan Entities) and the completion of the Wind-up Strategy, and where the Monitor takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons including Canwest and the Canwest

Subsidiaries and without interference from any other Person, including any trustee in bankruptcy of Canwest or the Canwest Subsidiaries.

Report, Motion Record, Tab 1, para. 15

Plan, Motion Record, Tab A, Section 6.2(r)

Plan Sanction Order, Motion Record, Tab B, para. 87

September 27 Order, Motion Record, Tab C, para. 11

13. In accordance with the Wind-up Strategy, the Monitor is proceeding to effect the bankruptcy of CMI under the BIA. FTI Consulting Canada Inc. will act as the CMI Trustee.

Report, Motion Record, Tab 1, para. 17

14. Due to (i) the consolidated nature of the Claims, Creditors and the future distributions to the creditors of CMI and the other Remaining CMI Entities, and (ii) the various powers and obligations granted to the Monitor under the Plan, the Plan Sanction Order, the Plan Emergence Agreement and the September 27 Order, the Monitor is seeking to continue the CCAA Proceedings with respect to CMI following its voluntary assignment into bankruptcy and to modify certain duties and obligations of the CMI Trustee. In particular, the Monitor is seeking an Order empowering, authorizing and directing the Monitor to:

- (a) continue to hold the Ordinary CMI Creditors Sub-Pool and the Convenience Class Pool in trust for the benefit of the respective Affected Creditors of the Plan Entities (other than the Noteholders) in accordance with the Plan and the Plan Sanction Order until further order of this Court;
- (b) continue to hold and maintain the Plan Implementation Fund in accordance with the Plan Emergence Agreement and the Plan;
- (c) continue to be authorized, directed and empowered to liquidate any assets of the CMI Entities (other than the CTLP Entities) not transferred to New Canwest and to contribute any net proceeds realized therefrom to the Plan Implementation Fund in accordance with the September 27 Order, the Plan, the Plan Sanction Order and the Plan Emergence Agreement and for any such assets to continue to not constitute property of the CMI Entities (and as such not to vest in any CMI Trustee); and
- (d) continue to be empowered with the rights and powers granted, and continue to be authorized and directed to perform its functions and fulfill its obligations, under the Plan, the Plan Emergence Agreement, the Plan Sanction Order and the September 27 Order, including, without limitation, to take such additional actions and execute such documents, in the name of and on behalf of any of Canwest and the Canwest Subsidiaries (other than the CTLP Plan Entities), as the Monitor considers necessary or desirable in order to perform its functions and fulfill its obligations under the September 27 Order, the Plan, the Plan Sanction

Order and the Plan Emergence Agreement, and to facilitate the completion of these proceedings, the winding up of the estates of Canwest and the Canwest Subsidiaries (other than the CTLP Plan Entities) and the completion of the Wind-up Strategy, and where the Monitor takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons including Canwest and the Canwest Subsidiaries and without interference from any other Person, including any trustee in bankruptcy of Canwest or the Canwest Subsidiaries.

Report, Motion Record, Tab 1, para. 17

15. The Monitor is also seeking to extend the time periods for the CMI Trustee to perform its statutory obligations prescribed by Sections 16, 21, 22, 24, 27, 102 of the BIA (save for such reports as may be required pursuant to subsection 27(c) of the BIA) until further Order of this Honourable Court and to relieve the CMI Trustee from performing any such obligations until such Order is made.

Report, Motion Record, Tab 1, para. 19

16. The Monitor is also seeking to apply the Claims Procedure Order, the CMI Claims Bar Date, the Meeting Order and the Restructuring Period Claims Bar Date to resolve all Claims against CMI.

Report, Motion Record, Tab 1, para. 21

PART III - ISSUES AND THE LAW

17. The Court has jurisdiction to grant the Order sought by the Monitor.
18. Section 11 of the CCAA codifies the Court's inherent jurisdiction under the CCAA and provides as follows:

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.

CCAA, Section 11

19. Courts have permitted proceedings under the CCAA to overlap with proceedings under BIA.

Olympia & York Developments Ltd., Re, 1995 CarswellOnt 340 (Gen. Div.)

Re Calpine Canada Energy Limited et al., Order of Justice Romaine dated January 31, 2006, Court of Queen's Bench of Alberta, Unreported

20. Courts have also modified the statutory obligations under the BIA of a trustee appointed with respect to foreign debtor companies in proceedings under the CCAA.

Re Aero Inventory (UK) Limited and Aero Inventory PLC, Order of Justice Morawetz dated February 10, 2010, Ontario Superior Court of Justice, Unreported

21. This Court has also modified the application of the BIA to estates of debtor companies following proceedings under the CCAA. In the Plan Sanction Order granted in these CCAA Proceedings, this Court ordered that the Claims Procedure Order, the CMI Claims Bar Date, the Meeting Order and the Restructuring Period Claims Bar Date shall

apply to resolve all claims against National Post Holdings, National Post or the National Post Consolidated Bankruptcy Estate, if any.

Plan Sanction Order, Motion Record, Tab B, para. 98

22. Extension of time to complete any steps or dispensation with certain procedures under the BIA is not contrary to and is expressly permitted under the BIA.

BIA, Section 187(11) and (12)

23. Under the Plan, the Plan Sanction Order and the September 27 Order, the Monitor is already vested with the authority to effect the liquidation, bankruptcy, winding-up or dissolution of any of the Remaining CMI Entities and to act, if required, as trustee in bankruptcy, liquidator, receiver or a similar official of such entities.

Plan, Motion Record, Tab A, para. 6.2(r)

Plan Sanction Order, Motion Record, Tab B, para. 87

September 27 Order, Motion Record, Tab C, para. 11

24. The Order modifying the statutory obligations of the CMI Trustee sought by the Monitor on this motion is intended to avoid duplication of steps taken, and minimize the costs incurred, in winding up the estate of CMI and to promote efficiencies in the completion of the Wind-up Strategy under the Plan, the Plan Sanction Order and the September 27 Order.

25. The Monitor is also seeking an Order empowering, authorizing and directing it to continue to hold certain assets for the benefit of third parties and to perform or exercise the duties, obligations and rights granted to it in the Plan, the Plan Sanction Order, the Plan Emergence Agreement, and/or the September 27 Order.
26. Section 71 of the BIA, provides that upon a bankruptcy, the property of the bankrupt immediately passes and is vested in the trustee and, as a result, the bankrupt loses the ability to deal with his or her property.

BIA, s. 71.

27. The trustee in bankruptcy acquires no greater interest in the property vested pursuant to s. 71 of the BIA than that of the bankrupt, unless otherwise provided for in legislation.

Lefebvre, Re, 2004 CarswellQue 2831 (S.C.C.); 2004 SCC 63; 3 S.C.R. 326; at para. 37.

28. Where a bankrupt has entered into bona fide arrangements through a CCAA process to alienate any aspect of its assets, then such assets do not form part of the property of the bankrupt.

Olympia & York Developments Ltd., Re, 1995 CarswellOnt 340 (Gen. Div.) at para. 16-19.

29. When a plan of arrangement is accepted by the requisite number of creditors and sanctioned by the court, it is binding on all creditors affected by the plan. If the company is in bankruptcy or in the course of being wound-up, the plan is binding on the trustee in bankruptcy.

CCAA, s. 6(1)(b)

30. A sanctioned plan of arrangement under the CCAA is a bona fide arrangement that must be taken into account for the purpose of determining what property vests in the trustee in bankruptcy when a bankruptcy order is made.

Olympia & York Developments Ltd., Re, 1995 CarswellOnt 340 (Gen. Div.); 34 C.B.R. (3d) 93; at paras. 16 and 17.

31. Similarly, where the bankrupt has relinquished ownership and control of funds that have been remitted to the CCAA monitor for the purpose of distribution under a CCAA plan, such funds are also excluded from the property of the bankrupt and such funds do not vest in the trustee.

Ressources Meston Inc., Re, 2010 CarswellQue 9769 (S.C.); 2010 QCCS 428; 66 C.B.R. (5th) 228; at paras. 82-84.

32. In the case at bar, under the Plan, the Plan Sanction Order and the September 27 Order, the Ordinary Creditors Pool, the Plan Implementation Fund, and any remaining assets of CMI do not form property of CMI.

33. Section 5.5(z) of the Plan and paragraph 66 of the Plan Sanction Order provide that the Monitor shall receive and hold the Subscription Price net of the Noteholder Pool in trust for the benefit of the Affected Creditors of the Plan Entities (other than the Noteholders) in accordance with the Plan.

Plan, Motion Record, Tab A, Section 5.5(z)

Plan Sanction Order, Motion Record, Tab B, para. 66

34. Section 4.5 of the Plan provides that the Monitor shall administer the Plan Implementation Fund in accordance with the Plan Emergence Agreement and the Sanction Order. Paragraph 73 of the Plan Sanction Order further provides that the Plan Implementation Fund shall be held in trust by the Monitor, to be used by the Monitor in accordance with the Plan and the Plan Emergence Agreement.

Plan, Motion Record, Tab A, Section 4.5

Plan Sanction Order, Motion Record, Tab B, para. 73

35. Pursuant to the Plan, the Plan Sanction Order and the September 27 Order, the Monitor is authorized, directed and empowered to, among other things, liquidate remaining assets of the Remaining CMI Entities, contribute the net proceeds realized therefrom to the Plan Implementation Fund and complete the Wind-up Strategy. The Plan Implementation Fund does not constitute property of the CMI Entities and therefore does not vest in the Trustee.

Plan, Motion Record, Tab A, Section 6.2(r)

Plan Sanction Order, Motion Record, Tab B, para. 87

September 27 Order, Motion Record, Tab C, para. 11

36. Section 5.3 of the Plan Emergence Agreement provides that any proceeds from realization of any remaining assets or property of any of the Remaining Canwest Entities

(other than National Post Holdings and National Post) is to be deposited in and forms part of the Plan Implementation Fund.

Plan Emergence Agreement, Motion Record, Tab D, Section 5.3

37. In addition, paragraphs 19 and 20 of the September 27 Order provide, in part, as follows:

19. **THIS COURT ORDERS AND DECLARES** that from and after the Plan Implementation Date, the Plan Implementation Fund, including any additional deposit contemplated by section 5.3 of the Plan Emergence Agreement or otherwise, shall not constitute property of the CMI Entities or any one of them, and that the purpose of the Plan Implementation Fund is to provide for the payment of the costs and expenses contemplated by the Plan Emergence Agreement and shall be dealt with solely in accordance with the Plan, the Plan Emergence Agreement, the Plan Sanction Order, this Order or any further Order of this Honourable Court, with any remaining balance in the Plan Implementation Fund to be distributed to New Canwest free and clear of all Encumbrances (as defined in the Plan Sanction Order) in accordance with section 5.12 of the Plan Emergence Agreement.

20. **THIS COURT ORDERS AND DECLARES** that from and after the Plan Implementation Date, the Ordinary Creditors Pool and the Convenience Class Pool shall not constitute property of the CMI Entities or of any one of them and that the purpose of the Ordinary Creditors Pool and the Convenience Class Pool is to provide for the payments contemplated by the Plan and shall be dealt with in accordance with the Plan and the Plan Sanction Order.

[Emphasis added]

September 27 Order, Motion Record, Tab C, paras. 19 and 20

38. Under the terms of the Plan Emergence Agreement, if at any time the Plan Implementation Fund is insufficient to fund the activities of the Monitor pursuant to the Plan or the Plan Emergence Agreement, then New Canwest and/or CTLP shall pay

additional funds satisfactory to the Monitor for the benefit of CMI and such funds shall be deposited into the Plan Implementation Fund.

39. Also, under the terms of the Plan Emergence Agreement, any residual funds remaining in the Plan Implementation Fund following completion of the Monitor's duties under the CCAA, the Plan Sanction Order and the Plan Emergence Agreement and obtaining an order discharging the Monitor, shall be remitted to New Canwest.
40. Accordingly, New Canwest and CTLP are the only parties with an economic interest in the costs of the winding up of the Remaining Canwest Subsidiaries. New Canwest and CTLP support the Monitor's request for the Order modifying the duties and obligations of the CMI Trustee under the BIA.
41. The Monitor notified the Office of the Superintendent in Bankruptcy (the "OSB") of the within motion. Following discussions with the OSB with respect to the form of the draft Order sought by the Monitor and certain amendments to same, the OSB advised that it does not oppose the granting of an Order in the form attached hereto as Schedule "D".

PART IV - ORDER REQUESTED

42. The Monitor respectfully requests an Order in the form attached hereto as Schedule "D" modifying the duties and obligations of the CMI Trustee under the BIA.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 20th day of October, 2011.

A handwritten signature in black ink, appearing to read 'DR Byers', is written over a horizontal line.

David R. Byers
Maria Konyukhova
Jennifer Imrie

Stikeman Elliott LLP

Lawyer for the Monitor

Schedule "A"**The Applicants**

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

SCHEDULE "B"
LIST OF AUTHORITIES

1. *Lefebvre, Re*, 2004 CarswellQue 2831 (S.C.C.); 2004 SCC 63; 3 S.C.R. 326, retrieved from Westlaw on October 19, 2011.
2. *Olympia & York Developments Ltd., Re*, 1995 CarswellOnt 340 (Gen. Div.); 34 C.B.R. (3d) 93, retrieved from Westlaw on October 19, 2011.
3. *Ressources Meston Inc., Re*, 2010 CarswellQue 9769 (S.C.); 2010 QCCS 428; 66 C.B.R. (5th) 228; retrieved from Westlaw on October 19, 2011.
4. *Re Calpine Canada Energy Limited et al.*, Order of Justice Romaine dated January 31, 2006, Court of Queen's Bench of Alberta, Unreported
5. *Re Aero Inventory (UK) Limited and Aero Inventory PLC*, Order of Justice Morawetz dated February 10, 2010, Ontario Superior Court of Justice, Unreported

**SCHEDULE “C”
RELEVANT STATUTES**

1. *Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended*

s. 2 “property” means any type of property, whether situated in Canada or elsewhere, and includes money, goods, things in action, land and every description of property, whether real or personal, legal or equitable, as well as obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, in, arising out of or incident to property;

...

Property of bankrupt

67. (1) The property of a bankrupt divisible among his creditors shall not comprise

(a) property held by the bankrupt in trust for any other person;

(b) any property that as against the bankrupt is exempt from execution or seizure under any laws applicable in the province within which the property is situated and within which the bankrupt resides;

(b.1) goods and services tax credit payments that are made in prescribed circumstances to the bankrupt and that are not property referred to in paragraph (a) or (b);

(b.2) prescribed payments relating to the essential needs of an individual that are made in prescribed circumstances to the bankrupt and that are not property referred to in paragraph (a) or (b); or

(b.3) without restricting the generality of paragraph (b), property in a registered retirement savings plan or a registered retirement income fund, as those expressions are defined in the *Income Tax Act*, or in any prescribed plan, other than property contributed to any such plan or fund in the 12 months before the date of bankruptcy,

but it shall comprise

(c) all property wherever situated of the bankrupt at the date of the bankruptcy or that may be acquired by or devolve on the bankrupt before their discharge, including any refund owing to the bankrupt under the *Income Tax Act* in respect of the calendar year — or the fiscal year of the bankrupt if it is different from the calendar year — in which the bankrupt became a bankrupt, except the portion that

(i) is not subject to the operation of this Act, or

(ii) in the case of a bankrupt who is the judgment debtor named in a garnishee summons served on Her Majesty under the *Family Orders and Agreements Enforcement Assistance Act*, is garnishable money that is payable to the bankrupt and is to be paid under the garnishee summons, and

(d) such powers in or over or in respect of the property as might have been exercised by the bankrupt for his own benefit

...

Vesting of property in trustee

71. On a bankruptcy order being made or an assignment being filed with an official receiver, a bankrupt ceases to have any capacity to dispose of or otherwise deal with their property, which shall, subject to this Act and to the rights of secured creditors, immediately pass to and vest in the trustee named in the bankruptcy order or assignment, and in any case of change of trustee the property shall pass from trustee to trustee without any assignment or transfer.

...

Court may extend time

187 (11) Where by this Act the time for doing any act or thing is limited, the court may extend the time either before or after the expiration thereof on such terms, if any, as it thinks fit to impose.

Court may dispense with certain requirements respecting notices

187 (12) Where in the opinion of the court the cost of preparing statements, lists of creditors or other material required by this Act to be sent with notices to creditors, or the cost of sending the material or notices, is unjustified in the circumstances, the court may give leave to omit the material or any part thereof or to send the material or notices in such manner as the court may direct.

2. *Companies Creditors' Arrangement Act, R.S.C. 1985, c. C-36 as amended*

6. (1) If a majority in number representing two thirds in value of the creditors, or the class of creditors, as the case may be — other than, unless the court orders otherwise, a class of creditors having equity claims, — present and voting either in person or by proxy at the meeting or meetings of creditors respectively held under sections 4 and 5, or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court and, if so sanctioned, is binding

(a) on all the creditors or the class of creditors, as the case may be, and on any trustee for that class of creditors, whether secured or unsecured, as the case may be, and on the company; and

(b) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act* or is in the course of being wound up under the *Winding-up and Restructuring Act*, on the trustee in bankruptcy or liquidator and contributories of the company.

...

General power of court

11. 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.

SCHEDULE "D"
DRAFT ORDER

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

THE HONOURABLE) FRIDAY, THE 21ST
)
MADAM JUSTICE PEPALL) DAY OF OCTOBER, 2011

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

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

Applicants

**ORDER
(CMI TRANSITION)**

THIS MOTION, made by FTI Consulting Canada Inc. in its capacity as the Court-appointed Monitor ("**Monitor**") of Canwest Global Communications Corp. and the other Applicants listed on **Schedule "A"** hereto (other than Canwest Global Broadcasting Inc./Radiodiffusion Canwest Global Inc., Canwest Television GP Inc. & Fox Sports World Canada Holdco Inc.) and The National Post Company/La Publication National Post (collectively, the "**Remaining CMI Entities**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an order modifying the rights, duties and obligations of the CMI Trustee (as defined below) set forth in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") and other ancillary relief (as described in greater detail below) was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the Twenty-Fourth Report of the Monitor and on hearing the submission of counsel to the Monitor and such other counsel as were present, and on being advised that the Service List was served with the Motion Record herein:

1. **THIS COURT ORDERS** that the time for service of the Motion Record shall be and is hereby abridged, if necessary, and that the motion is properly returnable today and that service thereof upon any interested party other than the persons served with the Motion Record is hereby dispensed with.

2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the consolidated plan of compromise, arrangement and reorganization accepted for filing by this Court on June 23, 2010, as restated on July 16, 2010, concerning, affecting and involving Canwest Global, Canwest Media Inc. (now 4514866 Canada Inc.) (“**CMI**”), Canwest Television GP Inc., Canwest Television Limited Partnership, Canwest Global Broadcasting Inc./Radiodiffusion Canwest Global Inc., Fox Sports World Canada Holdco Inc., Fox Sports World Canada Partnership, National Post Holdings Ltd. (now 4514858 Canada Inc.), The National Post Company/La Publication National Post, MBS Productions Inc., Yellow Card Productions Inc., Global Centre Inc. and 4501063 Canada Inc., as may be amended (the “**Plan**”).

3. **THIS COURT ORDERS** that this Order shall become operative upon the bankruptcy of CMI and shall bind any trustee in bankruptcy that may be appointed in respect of CMI (the “**CMI Trustee**”).

4. **THIS COURT ORDERS** that the Monitor shall:

- (a) continue to hold the Ordinary CMI Creditors Sub-Pool and the Convenience Class Pool in trust for the benefit of the Affected Creditors of the Plan Entities (other than the Noteholders) in accordance with the Plan and the Plan Sanction Order dated July 28, 2010 (the “**Plan**”).

Sanction Order") and continue to be authorized, empowered and directed to make distributions thereunder in accordance with the Plan and the Plan Sanction Order until further order of this Court;

- (b) continue to hold and maintain the Plan Implementation Fund in accordance with the Plan Emergence Agreement and the Plan;
- (c) continue to be authorized, directed and empowered to liquidate any assets of the CMI Entities (other than the CTLP Entities) not transferred to New Canwest and to contribute any net proceeds realized therefrom to the Plan Implementation Fund in accordance with the September 27 Order, the Plan, the Plan Sanction Order and the Plan Emergence Agreement and any such assets shall continue to not constitute property of the CMI Entities (and as such shall not vest in any CMI Trustee);
- (d) continue to be empowered with the rights and powers granted, and continue to be authorized and directed to perform its functions and fulfill its obligations, under the Plan, the Plan Emergence Agreement, the Plan Sanction Order and the Order dated September 27, 2010 (the "**September 27 Order**"), including, without limitation, to take such additional actions and execute such documents, in the name of and on behalf of any of Canwest and the Canwest Subsidiaries (other than the CTLP Plan Entities), as the Monitor considers necessary or desirable in order to perform its functions and fulfill its obligations under the September 27 Order, the Plan, the Plan Sanction Order and the Plan Emergence Agreement, and to facilitate the completion of these proceedings, the winding up of the estates of Canwest and the Canwest Subsidiaries (other than the CTLP Plan Entities) and the completion of the Wind-up Strategy (as defined in the September 27 Order), and

where the Monitor takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons including Canwest and the Canwest Subsidiaries and without interference from any other Person, including any trustee in bankruptcy of Canwest or the Canwest Subsidiaries; and

- (e) return to Court in order to seek such further authority or directions as the Monitor considers appropriate with respect to the proceedings of CMI under the CCAA.

5. **THIS COURT ORDERS** that the time periods for the CMI Trustee to perform its statutory obligations prescribed by Sections 16, 21, 22, 24, 27, 102 of the BIA (save for such reports as may be required pursuant to subsection 27(c) of the BIA) are hereby extended until further Order of this Honourable Court, and until such Order is made, the CMI Trustee shall be relieved from performing any such obligations.

6. **THIS COURT ORDERS** that the Noteholders and the Trustee shall have no Claims against CMI and that the Claims Procedure Order, the CMI Claims Bar Date, the Meeting Order and the Restructuring Period Claims Bar Date shall apply to resolve all Claims against CMI.

7. **THIS COURT ORDERS** that the Monitor, in the name of and on behalf of CMI, is authorized and directed to pay to the CMI Trustee appointed in respect of CMI a retainer of \$10,000 for its fees and disbursements from the Plan Implementation Fund, without any personal liability to the Monitor in connection therewith.

8. **THIS COURT ORDERS AND DECLARES** that in addition to the protections in favour of the Monitor as set out in the Initial Order, the CCAA, the Plan, the Plan Sanction Order and the September 27 Order, the Monitor shall not be liable for any act or omission on the part of the Monitor pertaining to the discharge of its duties

under this Order, save and except for any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Monitor.

Schedule "A"

The Applicants

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

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"

Court File No: CV-09-8396-CL

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

Proceeding commenced at Toronto

**FACTUM OF THE MONITOR
(RETURNABLE OCTOBER 21, 2011)**

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