

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

TENTH REPORT OF FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR OF THE APPLICANTS

February 14, 2010

Court File No. CV-09-8396-00CL

*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"

TENTH REPORT OF FTI CONSULTING CANADA INC.  
IN ITS CAPACITY AS MONITOR

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**TENTH REPORT OF FTI CONSULTING CANADA INC.  
IN ITS CAPACITY AS MONITOR**

**February 14, 2010**

**INTRODUCTION**

1. By Order of this Court dated October 6, 2009 (the "Initial Order") (a copy of which is attached hereto as Appendix "A"), Canwest Global Communications Corp. ("Canwest Global") and certain of its subsidiaries listed in Schedule "A" hereto (collectively the "Applicants") obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the "CCAA"). The Initial Order also granted relief in respect of certain affiliated partnerships of the Applicants listed in Schedule "B" hereto (collectively, the "Partnerships", and together with the Applicants, the "CMI Entities") and appointed FTI Consulting Canada Inc. ("FTI") as monitor (the "Monitor") of the CMI Entities. The proceedings commenced by the CMI Entities under the CCAA will be referred to herein as the "CCAA Proceedings".

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**PURPOSE OF THIS REPORT**

2. The purpose of this Tenth Report of the Monitor is to provide comments to this Honourable Court on the CMI Entities' request for an Order, *inter alia*:
- (a) approving, in connection with the proposed equity investment by Shaw Communications Inc. ("**Shaw**") in Restructured Canwest Global (the "**Shaw Transaction**"):
    - (i) the Subscription Agreement between Canwest Global and Shaw dated February 11, 2010 (the "**Shaw Subscription Agreement**") together with a related term sheet incorporated into the Shaw Subscription Agreement (the "**Shaw Subscription Term Sheet**");
    - (ii) an amendment to the Original Recapitalization Support Agreement (the "**Support Agreement Amendment**") attaching an amended and restated recapitalization term sheet (the "**Amended Recapitalization Term Sheet**"); and
    - (iii) a support agreement between Canwest Global, the Ad Hoc Committee (as defined below) and Shaw (the "**Shaw Support Agreement**");
  - (b) authorizing and approving the entering into, execution and delivery of the Shaw Subscription Agreement, the Support Agreement Amendment, and the Shaw Support Agreement by Canwest Global and the performance by Canwest Global of these agreements in accordance with their terms and conditions;

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- (c) declaring that the assets, property and undertaking of the CMI Entities are subject to the Termination and Expense Reimbursement Fee Charge (as defined and described below); and
  - (d) in the alternative to paragraphs 2(a), (b) and (c) above, sealing the Confidential Supplement to the Tenth Report of the Monitor until further Order of the Court.
3. This report should be read in conjunction with the affidavit of Thomas C. Strike sworn February 12, 2010 (the "Strike Affidavit") as certain information contained in the Strike Affidavit has not been included herein in order to avoid unnecessary duplication. A copy of the Strike Affidavit will be available shortly on the Monitor's website for the CCAA Proceedings.

#### TERMS OF REFERENCE

4. In preparing this report, FTI has relied upon unaudited financial information of the CMI Entities, the CMI Entities' books and records, certain financial information prepared by, and discussions with, the CMI Entities' management. FTI has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information and accordingly expresses no opinion or other form of assurance on the information contained in this report.
5. Capitalized terms not defined in this report are used as defined in the Pre-filing Report.

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6. Unless otherwise stated, all monetary amounts contained in this report are expressed in Canadian dollars.

## BACKGROUND

### *Canwest*

7. Canwest carries on business through a number of subsidiaries and is Canada's largest publisher of English language daily and non-daily newspapers, and directly or indirectly owns, operates and/or holds substantial interests in free-to-air television stations, subscription-based specialty television channels, and websites in Canada.
8. Relief in the CCAA Proceedings was obtained by: Canwest Global, its principal operating subsidiary CMI, certain subsidiary corporations and partnerships of CMI that own and operate Canwest's free-to-air television broadcast business and certain Canadian subscription-based specialty television channels, and, at the time, The National Post Company/La Publication National Post.
9. Canwest Global's other television broadcasting divisions and/or subsidiaries are not Applicants in the CCAA Proceedings. On January 8, 2010, the entities in Canwest's newspaper publishing and digital media business in Canada (other than National Post Inc.) applied for and obtained protection under the CCAA.
10. The Initial Order provided for a stay of proceedings until November 5, 2009 (the "Stay Period"). By Orders dated October 30, 2009 and January 21, 2010, the Stay Period was extended until January 22, 2010 and March 31, 2010, respectively.

*Original Recapitalization Transaction*

11. The basis of a plan of arrangement for the CMI Entities under the CCAA (the “**Original Recapitalization Transaction**”) is a going concern recapitalization transaction, the terms and conditions of which were agreed upon following intensive and extended negotiations between the CMI Entities and the ad hoc committee (the “**Ad Hoc Committee**”) of the CMI Senior Subordinated Noteholders. The terms of the Original Recapitalization Transaction are set out in the CCAA Support Agreement (the “**Original Recapitalization Support Agreement**”) and the term sheet attached thereto (the “**Original Recapitalization Term Sheet**”).
  
12. The Original Recapitalization Support Agreement provides that the CMI Entities will pursue a plan of arrangement or compromise on the terms set out in the Original Recapitalization Term Sheet (the “**Original Plan**”) in order to implement the Original Recapitalization Transaction as part of this CCAA Proceeding. Pursuant to the Original Recapitalization Support Agreement, the CMI Entities were required to file the Original Plan within 30 days after the commencement of the CCAA Proceedings. This date was subsequently extended to November 30, 2009. On or about December 1, 2009, the Ad Hoc Committee consented to extending the deadline for preparation and filing of the Plan until 21 days prior to the meeting of creditors to consider the Original Plan.
  
13. The Original Recapitalization Transaction contemplated that, following emergence from CCAA protection, Restructured Canwest Global would be a public company listed on the Toronto Stock Exchange.

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14. Pursuant to the Original Recapitalization Transaction, it was proposed, *inter alia*, that one or more Canadians (as defined in the CRTC Direction<sup>1</sup>) (the “New Investors”) will invest at least \$65 million in Restructured Canwest Global. The New Investors must qualify as Canadians in order to satisfy ownership requirements that apply to parent corporations of a corporation that is in receipt of a television licence from the Canadian Radio-television and Telecommunications Commission (the “CRTC”). The equity investment in Restructured Canwest Global must be on terms acceptable to CMI and the Ad Hoc Committee.
15. Further background information regarding the CMI Entities and the CCAA Proceedings is provided in, *inter alia*, the affidavit of John E. Maguire sworn October 5, 2009 (the “Initial Order Affidavit”), FTI’s pre-filing report dated October 5, 2009 (the “Pre-filing Report”) and subsequent reports of the Monitor, copies of which have been posted on the Monitor’s website for the CCAA Proceedings at <http://cfcanada.fticonsulting.com/cmi>.

#### THE EQUITY SOLICITATION PROCESS

16. On or about November 2, 2009, RBC Dominion Securities Inc. (“RBC”) commenced an equity solicitation process in order to identify potential New Investors that would satisfy the requirement of being Canadian for purposes of the CRTC Direction.
17. The equity solicitation process (described in the Strike Affidavit) was contemplated by the Original Recapitalization Transaction described in the Initial Order Affidavit.

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<sup>1</sup> *Direction to the CRTC (Ineligibility of Non-Canadians)*



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The equity solicitation process was run by RBC and the Monitor was provided with periodic updates during the process.

## THE SHAW TRANSACTION

### *General*

18. Following RBC's equity solicitation process and extensive negotiations with Shaw (all as described in greater detail in the Strike Affidavit), the CMI Entities, in consultation with, *inter alia*, RBC, selected Shaw's bid as the best overall offer received.
19. The Shaw Transaction contemplates that Restructured Canwest Global will be either a restructured Canwest Global or a newly-created private company the shareholders of which would be comprised of Shaw (or a direct or indirect wholly-owned subsidiary of Shaw that is Canadian as defined in the CRTC Direction) and those CMI Senior Subordinated Noteholders and other participating creditors of Canwest Global that elected to receive equity of Restructured Canwest Global and that would otherwise hold a minimum of 5% of the equity of Restructured Canwest Global following the completion of the Shaw Transaction (the "**Participating Creditors**").
20. Participating Creditors, except the Consenting Noteholders (as such term is defined in the Strike Affidavit), can elect to receive cash payments to extinguish their interests to be affected pursuant to the plan of arrangement or compromise on the terms set out in the Support Agreement Amendment (the "**Shaw Plan**") equal to the value of the equity they would otherwise have received under the Recapitalization Transaction as

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originally proposed. Subject to limited exceptions, Consenting Noteholders will elect to receive shares. Creditors that would hold less than 5% of the equity of Restructured Canwest Global following the completion of the Original Recapitalization Transaction (the “**Non-Participating Creditors**”) and existing shareholders of Canwest Global will receive cash payments to extinguish their interests to be affected pursuant to the Shaw Plan equal to the value of the equity they would otherwise have received under the Original Recapitalization Transaction, but using the higher implied equity value contained in the Shaw Plan. All such cash payments will be funded from the proceeds paid by Shaw for an additional commitment of equity shares of Restructured Canwest Global (the “**Additional Commitment**”) subject to the right of the members of the Ad Hoc Committee to elect to participate *pro rata* (based upon the *pro forma* ratio of equity in Restructured Canwest Global allocated to Shaw to equity allocated to the Ad Hoc Committee) with Shaw in the funding of the Additional Commitment.

21. The CMI CRA and RBC view Shaw’s bid as the best overall offer received by the CMI Entities, considering various criteria, including those communicated by RBC to the participants in the equity investment solicitation process for, *inter alia*, the following reasons:

- (a) it provides significant value to Restructured Canwest Global in exchange for the equity investment;
- (b) it will allow certain affected creditors to receive a cash distribution from the Shaw Plan as opposed to shares of a publicly traded company; and

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- (c) it will provide a long term solution and stability for Canwest Global through the involvement of a strategic investor with significant experience in the media industry.
22. As referenced above, the Original Recapitalization Transaction was conditional upon an investment in Restructured Canwest Global in the minimum amount of \$65 million by New Investors which qualify as Canadians under the CRTC Direction. Such equity investment must also be on terms acceptable to, *inter alia*, the Ad Hoc Committee.
23. Shaw qualifies as a Canadian under the CRTC Direction. Shaw's bid also meets the minimum amount of the New Investor investment as outlined in the Original Recapitalization Term Sheet and is on terms acceptable to the Ad Hoc Committee. Therefore, completion of the Shaw Transaction would satisfy a significant condition to a successful restructuring of the CMI Entities.

*The Transaction Documents*

24. The terms and conditions of the Shaw Transaction are contained in the following documents negotiated between, *inter alia*, Shaw and the CMI Entities:
- (a) the Shaw Subscription Agreement, together with the Shaw Subscription Term Sheet;
- (b) the Shaw Support Agreement; and

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- (c) the Support Agreement Amendment together with the Amended Recapitalization Term Sheet.
25. Unredacted copies of the Shaw Support Agreement, the Shaw Subscription Agreement (together with the Shaw Subscription Term Sheet) and the Support Agreement Amendment without execution pages (collectively, the “Transaction Agreements”) together with a blackline of the Amended Recapitalization Term Sheet showing changes to the Original Recapitalization Term Sheet are attached as Appendices to the Confidential Supplement to the Tenth Report of the Monitor and are being filed on a confidential basis in order to ensure the integrity of the equity solicitation process and to protect Shaw, Canwest Global and the CMI Senior Subordinated Noteholders that consented to the Shaw Transaction. It is contemplated that following approval of the Transaction Agreements, if obtained, the Monitor will circulate copies of the Transaction Agreements (without execution pages) to the service list maintained in connection with the CCAA Proceeding and post same on its website maintained in connection therewith.
26. Subsequent to the finalization of the CMI Entities’ motion materials, the Monitor engaged in discussions with Canwest Global and Shaw in order to determine if there was a proactive way in which the parties could respond to anticipated information requests while still preserving the integrity of the investment solicitation process that had been undertaken. As a result of these discussions, Shaw and Canwest Global agreed that redacted versions of the Transaction Agreements removing the proposed transaction’s economic terms could be made available to parties on the service list provided that such parties first agreed to appropriate confidentiality and standstill

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restrictions until the Court makes an endorsement finally disposing of the CMI Entities' motion.

27. On February 11, 2010, the Board of Directors of Canwest Global, upon the recommendation of the Special Committee of the Board of Directors of Canwest Global, approved the Transaction Agreements. The Transaction Agreements have been executed by the respective parties thereto and, should the Order requested by the CMI Entities be granted, such agreements will become effective and binding.
28. The features of the Shaw Transaction and the non-financial terms and conditions of the Transaction Agreements are summarized in greater detail in the Strike Affidavit and, therefore, only certain features of the Transaction Agreements are referred to herein.

Amended and Restated Shareholders Agreement relating to CW Investments Co.

29. Completion of the Shaw Transaction is conditional upon, among other things, the Amended and Restated Shareholders Agreement relating to CW Investments Co. (the "CW Investments Shareholders Agreement") with GS Capital Partners VI Fund, L.P. and its affiliates (the "GS Parties"):
  - (a) being amended and restated or otherwise addressed in a manner agreed to by Shaw, Canwest Global and the Ad Hoc Committee, subject to CRTC approval, if required; or
  - (b) being disclaimed or resiliated in accordance with the provisions of the CCAA and the CMI Claims Procedure Order dated October 14, 2009.

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30. Shaw, Canwest Global and the Ad Hoc Committee have agreed to jointly pursue in good faith an amendment and restatement of the CW Investments Shareholders Agreement with the GS Parties and have agreed to cooperate with each other in negotiations with the GS Parties. Each of Shaw, Canwest Global and the Ad Hoc Committee have further agreed to keep the other parties fully and timely informed concerning the development and progress of any such discussions.
31. A resolution of outstanding issues with the GS Parties with respect to the CW Investments Shareholders Agreement, whether through amendments or other means, is a material condition of the CMI Entities' successful emergence from CCAA protection on a going concern basis, whether pursuant to the Original Recapitalization Term Sheet or the proposed Shaw Transaction.
32. Reaching a successful resolution of the issues between the GS Parties, the Ad Hoc Committee and the CMI Entities continues to be a difficult process given the complexity of the issues involved. The introduction of other stakeholders into that negotiation may be a further complicating factor in these negotiations. The Monitor is advised that there were no preliminary discussions between Shaw and the GS Parties.
33. Canwest Global is not obligated under the Transaction Agreements to seek a disclaimer or resiliation of the CW Investments Shareholders Agreement. The Monitor has not received a request for its consent to such a disclaimer or resiliation nor has it formed a view as to whether such consent would be granted, if requested.

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34. Following finalization and service of the CMI Entities' motion materials in connection with their motion to, *inter alia*, approve the Transaction Agreements and shortly before the Monitor was going to deliver this report, the Monitor received correspondence from counsel for the GS Parties wherein the GS Parties raised concerns regarding the equity solicitation process, the timing of the motion and the length of notice of same given to the GS Parties. A copy of said letter dated February 13, 2010 (together with the letter from Gerald Cardinale of the GS Parties to the Special Committee dated February 11, 2010 attached thereto) is attached to this report as Appendix "B". The Monitor provided a copy of the correspondence to counsel for the Ad Hoc Committee and advised that delivery of this report would be delayed for a short period of time to allow a response if so disposed. Attached as Appendix "C" hereto is a copy of an e-mail dated February 14, 2010 received by the Monitor from counsel for the Ad Hoc Committee in connection with the correspondence from and concerns raised by the GS Parties.

Termination and Expense Reimbursement Fees

35. The Shaw Subscription Agreement provides for a \$5 million fee (the "Termination Fee") to be paid by Canwest Global to Shaw in the event that:
- (a) the Shaw Subscription Agreement is terminated by Shaw if the closing has not occurred on or before a date that is six months from the date of the Shaw Subscription Agreement (i.e., August 11, 2010) (the "Outside Date") solely because of a failure to satisfy certain closing conditions (relating to the "bring-down" of representations, warranties and covenants); or

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(b) the Shaw Subscription Agreement is terminated by Canwest Global at any time prior to the implementation of the Recapitalization Transaction (the “**Effective Time**”) in order to enter into a definitive amendment and restatement of the CW Investments Shareholders Agreement with the GS Parties acceptable to both Canwest Global and the Ad Hoc Committee that is not acceptable to Shaw,

(each, a “**Termination Event**”).

36. In the event that a Termination Event has occurred, the Shaw Subscription Agreement provides that in addition to the Termination Fee, Canwest Global will reimburse Shaw in an amount up to \$2.5 million for any and all out-of-pocket fees and expenses incurred by Shaw or its affiliates in connection with the negotiation and entering into of the Shaw Subscription Agreement and the Shaw Transaction (the “**Expense Reimbursement Fee**”). The Expense Reimbursement Fee is also payable to Shaw upon closing of the Shaw Transaction.
37. The Shaw Subscription Agreement contemplates that Canwest Global’s obligation to pay the Termination Fee and the Expense Reimbursement Fee will be secured by a charge over all of the assets, property and undertaking of the CMI Entities (the “**Termination and Expense Fee Reimbursement Charge**”) ranking after all existing charges in existence as at the date of the Order granting the Termination and Expense Fee Reimbursement Charge.



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Structure of the Shaw Transaction

38. As part of the equity solicitation process, RBC circulated to the Phase 2 Participants (as defined in the Strike Affidavit) a proposed form of subscription agreement that contained a "fiduciary out" provision that would allow Canwest Global to accept an offer that it determined in good faith to be superior to the offer submitted by the winning bidder, and thereafter (and following payment of a \$2.5 million topping fee) be released from its obligations to the winning bidder under the subscription agreement.
39. The Shaw Subscription Agreement does not contain this "fiduciary out" provision.
40. The Original Recapitalization Transaction contemplated Restructured Canwest Global emerging from CCAA Proceedings as a public company and affected creditors receiving equity in Restructured Canwest Global that would be listed on a stock exchange in Canada. As required by the Original Recapitalization Term Sheet, Canwest Global took the steps necessary to implement the Original Recapitalization Transaction, including by engaging RBC to undertake a comprehensive equity solicitation process. RBC proceeded on the basis that Restructured Canwest Global would emerge from the CCAA Proceedings as a public company and circulated a form of subscription agreement consistent with the Original Recapitalization Term Sheet. The Monitor is advised by RBC that it informed potential bidders that they were not obligated to submit bids consistent with the public company structure reflected in the Original Restructuring Term Sheet and had the flexibility to include in their bid alternative transaction structures.

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41. The Shaw Transaction is structured differently than the Original Restructuring Transaction. Shaw's bid contemplates that Restructured Canwest Global will emerge from the CCAA Proceedings as a private company with a limited number of shareholders. Non-Participating Creditors will receive cash consideration in the Shaw Transaction, instead of shares of a publicly traded company as contemplated under the Original Recapitalization Transaction.

### CONCLUSIONS

42. The CMI Entities believe that the Transaction Agreements represent the best available transaction for the equity investment required by the Recapitalization Transaction and are a crucial step towards the finalization of a plan or arrangement of compromise.
43. As stated above, the CMI CRA and RBC view Shaw's bid as the best overall offer received by the CMI Entities, considering various criteria, including those communicated by RBC to the participants in the equity investment solicitation process.
44. The Shaw Transaction, if completed, will satisfy one of the major requirements of the Original Recapitalization Transaction, assist with the CMI Entities' successful emergence from CCAA protection and allow them to continue operating on a going concern basis thereby preserving, *inter alia*, their enterprise value for their numerous stakeholders.


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45. The Monitor is advised that RBC, the Ad Hoc Committee (which must be satisfied with the terms of the equity investment in Restructured Canwest Global), the CMI CRA, the CMI Entities' senior management and the Special Committee support the Shaw Transaction.
46. The GS Parties have raised issues with respect to the process and the timing of the hearing of the CMI Entities' motion. It is anticipated that they will appear before the Court to make submissions with respect to the same.
47. Having regard to the recommendations of RBC and the CMI CRA, supported by the other parties as referred to herein, and having given consideration to the features of the Transaction Agreements described in greater detail above, the Monitor supports approval of the Transaction Agreements.

All of which is respectfully submitted this 14<sup>th</sup> of February, 2010.

**FTI Consulting Canada Inc.,**  
in its capacity as the Monitor of Canwest Global Communications Corp. and the other  
Applicants listed in Schedule "A" and Partnerships listed in Schedule "B"

Per



Greg Watson  
Senior Managing Director

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"

Partnerships

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

APPENDIX "A"



Court File No. CV-09-8396-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE ) TUESDAY, THE 6<sup>TH</sup> DAY  
)  
MADAM JUSTICE PEPALL ) OF OCTOBER, 2009

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

INITIAL ORDER

THIS APPLICATION, made by Canwest Global Communications Corp. ("Canwest Global") and the other applicants listed on Schedule "A" hereto (collectively, the "Applicants"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of John Maguire sworn October 5, 2009 and the Exhibits thereto (the "Maguire Affidavit") and the Report of the Proposed Monitor, FTI Consulting Canada Inc. ("FTI Consulting") (the "Monitor's Pre-Filing Report"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants and the partnerships listed on Schedule "B" hereto (the "Partnerships" and collectively with the Applicants, the "CMI Entities"), the Special Committee of the Board of Directors of Canwest Global (the "Special Committee"), FTI Consulting, the *ad hoc* committee (the "Ad Hoc Committee") of holders of 8% senior subordinated notes issued by Canwest Media Inc.

(“CMI”), CIT Business Credit Canada Inc. (“CIT”) and the management directors of the Applicants (the “Management Directors”), and on reading the consent of FTI Consulting to act as the Monitor.

#### SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof.

#### APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies. Although not Applicants, the Partnerships shall enjoy the benefits of the protections provided to the Applicants by this Order.

#### PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that one or more of the Applicants, individually or collectively, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “CMI Plan”) between, *inter alia*, one or more of the CMI Entities and one or more classes of their applicable secured and/or unsecured creditors as the Applicants deem appropriate.

#### POSSESSION OF CMI PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the CMI Entities shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively, the “CMI Property”). Subject to further Order of this Court, the CMI Entities shall each continue to carry on business in a manner consistent with the preservation of their respective businesses (collectively, the “CMI Business”) and the CMI Property. The CMI Entities shall each be authorized and empowered to continue to retain and employ the employees, advisors,



consultants, agents, experts, appraisers, valuers, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order, subject to the provisions on the payment of Assistants set forth in paragraph 7 hereof.

5. THIS COURT ORDERS that the CMI Entities shall be entitled to continue to utilize the CMI Entities' centralized cash management system currently in place, as described in the Maguire Affidavit, or replace it with another substantially similar centralized cash management system satisfactory to the CMI DIP Lender (as defined below) (the "CMI Cash Management System"). Any present or future bank providing the CMI Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken thereunder, or as to the use or application by the CMI Entities of funds transferred, paid, collected or otherwise dealt with in the CMI Cash Management System, shall be entitled to provide the CMI Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the CMI Entities, pursuant to the terms of the documentation applicable to the CMI Cash Management System, and shall be, in its capacity as provider of the CMI Cash Management System, an unaffected creditor under the CMI Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the CMI Cash Management System.

6. THIS COURT ORDERS that the CMI Entities and the LP Entities (as defined in the Maguire Affidavit) shall continue to provide and pay for the Shared Services, as defined in the Maguire Affidavit, to each other and their other affiliated and related entities, in accordance with current arrangements, payment terms and business practises, except as to payment terms which may be amended to provide for revised timing of reconciliations, with such amendments to be subject to the approval of the CMI CRA (as defined below) and the prior consent of the Monitor or further Order of the Court. Notwithstanding any other provision in this Order, neither the CMI Entities nor the LP Entities shall modify, cease providing or terminate the provision of or payment for the Shared Services except with the consent of the other party receiving such Shared Services, the approval of the CMI CRA and the prior consent of the Monitor or further Order of

this Court, except with respect to portions of the CMI Business which may be shut down or reorganized in the manner contemplated by the Term Sheet attached to the Support Agreement (as defined below) attached as part of Exhibit "O" to the Maguire Affidavit.

7. THIS COURT ORDERS that, subject to availability under the CMI DIP Facility and the CMI DIP Definitive Documents (both as hereinafter defined) and subject to the applicable cash flow forecast approved by the Consenting Noteholders (as defined below) in accordance with the Use of Collateral and Consent Agreement (as defined below) (the "**Approved Cash Flow**"), the CMI Entities shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order, to the extent that such expenses are incurred or payable by the CMI Entities:

- (a) all outstanding and future wages, salaries and employee benefits (including, but not limited to, employee medical, dental, disability, life insurance and similar benefit plans or arrangements, incentive plans, share compensation plans and employee assistance programs and employee or employer contributions in respect of pension and other benefits), current service, special and similar pension and/or retirement benefit payments, vacation pay, commissions, bonuses and other incentive payments, payments under collective bargaining agreements, and employee and director expenses and reimbursements, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) compensation to employees in respect of any payments made to employees prior to the date of this Order by way of the issuance of cheques or electronic transfers that are subsequently dishonoured due to the commencement of these proceedings;
- (c) with the prior consent of the Monitor, all outstanding and future amounts owing to or in respect of individuals working as independent contractors or freelancers in connection with the CMI Business;

- (d) the reasonable fees and disbursements of any Assistants retained or employed by the CMI Entities in respect of these proceedings, at their standard rates and charges, including any payments made to Assistants prior to the date of this Order by way of the issuance of cheques or electronic transfers that are subsequently dishonoured due to the commencement of these proceedings;
- (e) any and all sums due and owing to Amex Bank of Canada ("American Express"), including, without limitation, amounts due and owing by the CMI Entities to American Express in respect of the Corporate Card Program and Central Billed Accounts Program as described in the Maguire Affidavit;
- (f) amounts owing for goods and services actually supplied to the CMI Entities, or to obtain the release of goods contracted for prior to the date of this Order:
  - (i) by distributors, broadcasting and/or production studios, suppliers or other entities, for television programming and other related products, with the prior consent of the Monitor, if, in the opinion of the CMI Entities, the supplier is critical to the business and ongoing operations of any of the CMI Entities;
  - (ii) by newsprint suppliers, newspaper distributors and other logistics suppliers, with the prior consent of the Monitor, if, in the opinion of the National Post Company, the supplier is critical to the business and ongoing operations of the National Post Company; and
  - (iii) by other suppliers, with the prior consent of the Monitor, if, in the opinion of the CMI Entities, the supplier is critical to the CMI Business and ongoing operations of any of the CMI Entities.

8. THIS COURT ORDERS that, subject to availability under the CMI DIP Facility and the CMI DIP Definitive Documents and subject to the Approved Cash Flow, and except as otherwise provided to the contrary herein, the CMI Entities shall be entitled but not required to pay all

reasonable expenses incurred by them in carrying on the CMI Business in the ordinary course from and after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the CMI Property or the CMI Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services;
- (b) payment, including the posting of letters of credit, for goods or services actually supplied or to be supplied to the CMI Entities following the date of this Order; and
- (c) payment of fees to the Canadian Radio-television and Telecommunications Commission, stock exchange listing fees and other regulatory or license fees necessary for the preservation of the CMI Property or the CMI Business,

For greater certainty, the CMI Entities shall not make any payments to or in satisfaction of any liabilities or obligations of the LP Entities, save and except for payments in respect of the Shared Services as contemplated herein.

9. THIS COURT ORDERS that the CMI Entities shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the CMI Entities' employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the CMI Entities in connection with the sale of goods and services by the CMI Entities, but only where such Sales Taxes are accrued or

collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers' compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the CMI Business by the CMI Entities.

10. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with paragraph 12(c) of this Order, the CMI Entities shall pay all amounts constituting rent or payable as rent under their respective real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the applicable CMI Entity and the relevant landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid. Upon delivery of a notice of disclaimer or resiliation, the relevant CMI Entity shall pay all Rent owing by the applicable CMI Entity to the applicable landlord in respect of such lease due for the notice period stipulated in Section 32 of the CCAA, to the extent that Rent for such period has not already been paid.

11. THIS COURT ORDERS that, except as specifically permitted herein, the CMI Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any one of the CMI Entities to any of their creditors as of this date; (b) to grant no security interests, trusts, liens, charges or encumbrances upon or in respect of any of the CMI Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the CMI Business.

## RESTRUCTURING

12. THIS COURT ORDERS that the CMI Entities shall, subject to such requirements as are imposed by the CCAA, subject to consulting with the CMI CRA, and subject to the terms of the Use of Collateral and Consent Agreement, the Support Agreement (as defined below), the CMI DIP Facility and the CMI DIP Definitive Documents, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their respective businesses or operations, to dispose of redundant or non-material assets, and to sell assets or operations not exceeding \$1,000,000 in any one transaction or \$5,000,000 in the aggregate, subject to paragraph 12(e), if applicable; SUP -
- (b) terminate the employment of such of their employees or lay off or temporarily or indefinitely lay off such of their employees as the relevant CMI Entity deems appropriate on such terms as may be agreed upon between the relevant CMI Entity and such employee, or failing such agreement, to deal with the consequences thereof in the CMI Plan; ✓ (e) ✓
- (c) in accordance with paragraphs 13 and 14, with the prior consent of the Monitor or further Order of the Court, vacate, abandon or quit the whole but not part of any leased premises and/or disclaim or resiliate any real property lease and any ancillary agreements relating to any leased premises, in accordance with Section 32 of the CCAA, on such terms as may be agreed upon between the relevant CMI Entity and such landlord, or failing such agreement, to deal with the consequences thereof in the CMI Plan;
- (d) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor or further Order of the Court, such of their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the CMI Entities deem appropriate, in accordance with Section 32 of the CCAA, with such disclaimers or resiliations to be on such terms as may be agreed upon between the relevant CMI Entity and such counter-parties, or failing such agreement, to deal with the

consequences thereof in the CMI Plan, provided that the CMI Entities shall not be entitled to disclaim or resiliate, in whole or in part, the Use of Collateral and Consent Agreement or the Support Agreement; and

- (e) pursue all avenues of refinancing and offers for material parts of the CMI Business or the CMI Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing or any sale (except as permitted by subparagraph (a), above),

all of the foregoing to permit the CMI Entities to proceed with an orderly restructuring of the CMI Business.

13. THIS COURT ORDERS that the CMI Entities shall provide each of the relevant landlords with notice of the relevant CMI Entity's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the CMI Entity's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant CMI Entity, or by further Order of this Court upon application by the relevant CMI Entity on at least two (2) days notice to such landlord and any such secured creditors. If a CMI Entity disclaims or resiliates the lease governing such leased premises in accordance with paragraph 12(c) of this Order, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the CMI Entity's claim to the fixtures in dispute.

14. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered by a CMI Entity, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the relevant landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant CMI Entity and the Monitor 24 hours' prior

written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the CMI Entity in respect of such lease or leased premises and such landlord shall be entitled to notify the CMI Entity of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE CMI ENTITIES OR THE CMI PROPERTY**

15. THIS COURT ORDERS that until and including November 5, 2009, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the CMI Entities, the Monitor or the CMI CRA or affecting the CMI Business or the CMI Property, except with the written consent of the applicable CMI Entity, the Monitor and the CMI CRA (in respect of Proceedings affecting the CMI Entities, the CMI Property or the CMI Business), the CMI CRA (in respect of Proceedings affecting the CMI CRA), or with leave of this Court, and any and all Proceedings currently under way against or in respect of the CMI Entities or the CMI CRA or affecting the CMI Business or the CMI Property are hereby stayed and suspended pending further Order of this Court. In the case of the CMI CRA, no Proceeding shall be commenced against the CMI CRA or its directors and officers without prior leave of this Court on seven (7) days notice to Stonecrest Capital Inc.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

16. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the CMI Entities, the Monitor and/or the CMI CRA, or affecting the CMI Business or the CMI Property, are hereby stayed and suspended except with the written consent of the applicable CMI



Entity, the Monitor and the CMI CRA (in respect of rights and remedies affecting the CMI Entities, the CMI Property or the CMI Business), the CMI CRA (in respect of rights or remedies affecting the CMI CRA), or leave of this Court, provided that nothing in this Order shall (i) empower the CMI Entities to carry on any business which the CMI Entities are not lawfully entitled to carry on, (ii) exempt the CMI Entities from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

17. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the CMI Entities, except with the written consent of the relevant CMI Entity and upon consultation with the CMI CRA and the consent of the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

18. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with a CMI Entity or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all programming supply, computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the CMI Business or a CMI Entity, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the CMI Entities, and that the CMI Entities shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the CMI Entities in accordance with normal payment practices of the CMI Entities or such other practices as may be agreed upon by the supplier or service provider and the applicable

CMI Entity (upon consultation with the CMI CRA) and the consent of the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

19. THIS COURT ORDERS that, notwithstanding anything else contained herein, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the CMI Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

20. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers (or their estates) of the Applicants with respect to any claim against such directors or officers that arose before the date hereof and that relates to any obligations of the CMI Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the CMI Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the CMI Entities or this Court.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

21. THIS COURT ORDERS that the Applicants shall jointly and severally indemnify their directors and officers from all claims, costs, charges and expenses relating to the failure of any of the CMI Entities, after the date hereof, to (i) make payments in respect of the CMI Entities of the nature referred to in subparagraphs 7(a), 9(a), 9(b) and 9(c) of this Order, and (ii) make payments of amounts in respect of the CMI Entities for which the directors and officers are statutorily liable, which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants except to the extent that, with respect to any officer or

director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct. For greater certainty, the indemnity provided by this paragraph 21 shall not indemnify such directors or officers from any costs, claims, charges, expenses or liabilities properly attributable to the LP Entities.

22. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "CMI Directors' Charge") on the CMI Property, which charge shall not exceed an aggregate amount of \$20,000,000, as security for the indemnity provided in paragraph 21 of this Order. The CMI Directors' Charge shall have the priority set out in paragraphs 55 and 57 herein.

23. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary (a) no insurer shall be entitled to be subrogated to or claim the benefit of the CMI Directors' Charge and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Director's Charge to the extent they do not have coverage under a directors and officers insurance policy.

24. THIS COURT ORDERS that, notwithstanding any other provision of this Order, the terms and conditions with respect to any release and discharge of the Charges (as defined herein) shall be satisfactory to the CMI Entities, the Management Directors (with respect to the CMI Directors' Charge), the Monitor and the Ad Hoc Committee.

#### APPOINTMENT OF MONITOR

25. THIS COURT ORDERS that FTI Consulting is hereby appointed pursuant to the CCAA as the Monitor of the CMI Entities, an officer of this Court, to monitor the CMI Property and the CMI Entities' conduct of the CMI Business with the powers and obligations set out in the CCAA and as set forth herein and that the CMI Entities and their shareholders, officers, directors and Assistants shall advise the Monitor of all material steps taken by the CMI Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

26. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the CMI Entities' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the CMI Entities, the CMI Property, the CMI Business, and such other matters as may be relevant to the proceedings herein; *and with respect to any payments made pursuant to paragraph 7(f)(iii) herein;* <sup>sup</sup>
- (c) assist the CMI Entities, to the extent required by the CMI Entities, in their dissemination to the CMI DIP Lender, the Ad Hoc Committee and their respective counsel of financial and other information, as agreed to between the CMI Entities and the CMI DIP Lender or the Ad Hoc Committee, as applicable, which may be used in these proceedings, including reporting on a weekly basis to the CMI DIP Lender and the Ad Hoc Committee;
- (d) advise the CMI Entities in their preparation of the CMI Entities' cash flow statements and reporting required by the CMI DIP Lender and the Ad Hoc Committee, which information shall be reviewed with the Monitor and delivered to the CMI DIP Lender, the Ad Hoc Committee and their respective counsel in compliance with the CMI DIP Definitive Documents, or as otherwise agreed to by the CMI DIP Lender or the Ad Hoc Committee, as applicable;
- (e) assist the CMI CRA in the performance of its duties as set out in the CMI CRA Agreement (as defined below);
- (f) advise the CMI Entities in their development and implementation of the CMI Plan and any amendments to the CMI Plan;
- (g) assist the CMI Entities, to the extent required by the CMI Entities, with the holding and administering of creditors' or shareholders' meetings for voting on the CMI Plan, as applicable;

- (h) have full and complete access to the CMI Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the CMI Entities, to the extent that is necessary to adequately assess the CMI Entities' business and financial affairs or to perform its duties arising under this Order;
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (j) monitor and, if necessary, report to the Court on any matters pertaining to the provision of the Shared Services in accordance with paragraph 6 of this Order; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

27. THIS COURT ORDERS that the Monitor shall not take possession of the CMI Property and shall take no part whatsoever in the management or supervision of the management of the CMI Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the CMI Business or the CMI Property, or any part thereof.

28. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the CMI Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing

herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the CMI Property within the meaning of any Environmental Legislation, unless it is actually in possession.

29. THIS COURT ORDERS that the Monitor shall provide any creditor of a CMI Entity with information provided by the CMI Entity in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by a CMI Entity is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the applicable CMI Entity may agree.

30. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to any of the CMI Entities, counsel and the financial advisor to the Special Committee, counsel to the Management Directors, RBC Dominion Securities Inc. (the "Financial Advisor"), counsel to the Ad Hoc Committee and the financial advisor to the Ad Hoc Committee (together with counsel to the Ad Hoc Committee, the "Committee Advisors") shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by any of the CMI Entities, to the extent that such fees and disbursements relate to services provided to the CMI Entities or, in the case of the Committee Advisors, to the Ad Hoc Committee, as part of the costs of these proceedings. FTI Consulting, the Financial Advisor, counsel to FTI Consulting, counsel to the CMI Entities, counsel and the financial advisor to the Special Committee and counsel to the Management Directors shall keep

separate accounts for services provided in respect of the CMI Entities and any services provided in respect of entities other than the CMI Entities. The CMI Entities are hereby authorized and directed to pay the accounts of the Monitor, the Financial Advisor, counsel to the Monitor, counsel to the CMI Entities, counsel and the financial advisor to the Special Committee, counsel to the Management Directors and the Committee Advisors on a weekly basis to the extent that such accounts relate to services provided to the CMI Entities, or, in the case of the Committee Advisors, the Ad Hoc Committee. The CMI Entities shall not be liable for and shall not pay any expenses, fees, disbursements or retainers of the Monitor, counsel to the Monitor, counsel to the LP Entities, counsel and the financial advisor to the Special Committee, counsel to the Management Directors or the Financial Advisor, to the extent that such expenses, fees, disbursements or retainers are not attributable to the CMI Entities.

32. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

33. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the CMI Entities, counsel and the financial advisor to the Special Committee, counsel to the Management Directors, the CMI CRA, the Financial Advisor and the Committee Advisors shall be entitled to the benefit of and are hereby granted a charge on the CMI Property (the "CMI Administration Charge"), which charge shall not exceed an aggregate amount of \$15,000,000 as security for their reasonable professional fees and disbursements incurred at their respective standard rates and charges in respect of such services, both before and after the making of this Order in respect of these proceedings. The CMI Administration Charge shall have the priority set out in paragraphs 55 and 57 hereof.

#### **CHIEF RESTRUCTURING ADVISOR**

34. THIS COURT ORDERS that Hap S. Stephen be and is hereby appointed as Chief Restructuring Advisor of the CMI Entities in accordance with the terms and conditions of the agreement entered into between Canwest Global and Stonecrest Capital Inc. ("Stonecrest",

collectively referred to herein with Hap S. Stephen as the “CMI CRA”) dated June 30, 2009 (as amended, the “CMI CRA Agreement”), effective as of the date of this Order.

35. THIS COURT ORDERS that the CMI CRA Agreement is hereby approved and given full force and effect and the CMI CRA is hereby authorized to retain counsel as set out in the CMI CRA Agreement.

36. THIS COURT ORDERS that the CMI Entities are authorized and directed to continue the engagement of the CMI CRA on the terms and conditions set out in the CMI CRA Agreement.

37. THIS COURT ORDERS that the CMI CRA shall not be or be deemed to be a director, officer or employee of any of the CMI Entities.

38. THIS COURT ORDERS that the CMI CRA and its directors and officers shall incur no liability or obligation as a result of Hap S. Stephen’s appointment pursuant to this Order, or the provision of services pursuant to the CMI CRA Agreement, save and except as may result from gross negligence or wilful misconduct on the part of the CMI CRA.

39. THIS COURT ORDERS that (i) the indemnification obligations of Canwest Global in favour of the CMI CRA and its officers and directors set out in the CMI CRA Agreement; and (ii) the payment obligations set out in the CMI CRA Agreement shall be entitled to the benefit of and form part of the CMI Administration Charge set out herein.

40. THIS COURT ORDERS that any claims of the CMI CRA under the CMI CRA Agreement shall be treated as unaffected in any plan of compromise or arrangement filed by the CMI Entities under the CCAA, any proposal filed by the CMI Entities under the *Bankruptcy and Insolvency Act of Canada* (the “BIA”) or any other restructuring.

#### DIP FINANCING

41. THIS COURT ORDERS that the Credit Agreement dated as of May 22, 2009 and amended as of June 15, 2009, June 30, 2009, July 17, 2009, July 31, 2009, August 14, 2009,



August 31, 2009, September 11, 2009 and September 23, 2009 (as so amended, the "CIT Credit Agreement") between CMI, the Guarantors party thereto and CIT as agent and lender be and are hereby approved. For greater certainty, references herein to CIT shall include any permitted assignee pursuant to the CIT Credit Agreement.

42. THIS COURT ORDERS that the CMI Entities are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, pledges, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, and including the CIT Credit Agreement, the "CMI DIP Definitive Documents"), as are contemplated by the CIT Credit Agreement or as may be reasonably required by the CIT Credit Agreement, and all CMI DIP Definitive Documents executed and delivered prior to the date hereof be and are hereby approved. The CMI Entities are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations under and pursuant to the CMI DIP Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

43. THIS COURT ORDERS that the credit facility provided under the CIT Credit Agreement be and is hereby converted into a debtor-in-possession financing arrangement (the "CMI DIP Facility") in accordance with the terms of the CIT Credit Agreement, provided that the aggregate principal amount of all borrowings under the CMI DIP Facility shall not exceed \$100,000,000. The CMI DIP Facility shall be on the terms and subject to the conditions set forth in the CIT Credit Agreement as attached to the Maguire Affidavit as Exhibit "F", as the CIT Credit Agreement may be amended from time to time upon the written agreement of the parties thereto. CIT, in its capacity as lender under the CMI DIP Facility, shall be referred to herein as the CMI DIP Lender.

44. THIS COURT ORDERS that CMI is hereby authorized and empowered to obtain and borrow the amounts previously or hereinafter advanced pursuant to the CMI DIP Facility in order to finance the CMI Entities' working capital requirements and other general corporate purposes and capital expenditures as contemplated by the CMI DIP Definitive Documents,

provided that borrowings under the CMI DIP Facility shall not exceed \$100,000,000 unless approved by the CMI CRA and permitted by further Order of this Court.

45. THIS COURT ORDERS that the CMI Entities shall notify counsel to the Ad Hoc Committee and the Monitor of any requested advance under the CMI DIP Facility.

46. THIS COURT ORDERS that the CMI DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "CMI DIP Charge") on the CMI Property, as security for any and all obligations of the CMI Entities under the CMI DIP Facility and the CMI DIP Definitive Documents (including on account of principal, interest, fees and expenses), which charge shall not exceed the aggregate amount owed to the CMI DIP Lender under the CMI DIP Definitive Documents advanced on or after the date of this Order. The CMI DIP Charge shall have the priority set out in paragraphs 55 and 57 hereof.

47. THIS COURT ORDERS that the deposit accounts containing cash collateral pledged to The Bank of Nova Scotia and referred to in Section 6.11 of the Collateral Agency Agreement (as defined below) as the "Cash Management Collateral Account" (the "Excluded Accounts") shall not form part of the CMI Property, shall be excluded from the CMI DIP Charge, the KERP Charge, the Directors' Charge and the Administration Charge, except as provided in paragraph 48 hereof, and shall remain subject to the existing liens in favour of The Bank of Nova Scotia in connection with the CMI Entities' obligations to The Bank of Nova Scotia in connection with overdrafts and related liabilities arising from cash consolidation, electronic funds transfer arrangements, treasury, depository and cash management services or in connection with any automated clearing house transfers of funds in an aggregate amount not to exceed \$2,500,000 (the "BNS Cash Management Obligations").

48. THIS COURT ORDERS AND DECLARES that notwithstanding any stay of proceedings imposed by this Order, The Bank of Nova Scotia shall be entitled to seize and dispose of any collateral on deposit in the Excluded Accounts and apply such proceeds to any and all outstanding BNS Cash Management Obligations, provided that, notwithstanding anything herein, upon payment and satisfaction of the BNS Cash Management Obligations in full and the

return of any remaining collateral in the Excluded Accounts to the CMI Entities, such collateral shall then form part of the CMI Property charged by the Directors' Charge, the Administration Charge, the KERP Charge and the DIP Lender's Charge.

49. THIS COURT ORDERS that the CMI DIP Charge is in addition to the existing security (the "Existing Security") in favour of CIBC Mellon Trust Company (the "Collateral Agent") pursuant to the Intercreditor and Collateral Agency Agreement dated as of October 13, 2005 among the CMI Entities and the Collateral Agent, as amended by the Credit Confirmation and Amendment to Intercreditor and Collateral Agency Agreement dated as of May 22, 2009, and as further amended by the Credit Confirmation and Amendment to Intercreditor and Collateral Agency Agreement dated as of October 1, 2009 (the "Collateral Agency Agreement"). All liabilities and obligations of the CMI Entities under the CIT Credit Agreement and the \$187,263,126 principal amount secured promissory note issued to Canwest MediaWorks Ireland Holdings ("Irish Holdco") by CMI (the "Secured Note") shall be secured by the Existing Security.

50. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the CMI DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the CMI DIP Charge or any of the CMI DIP Definitive Documents;
- (b) upon the occurrence of an event of default under the CMI DIP Definitive Documents (including, without limitation, the Existing Security solely to the extent that such Existing Security secures existing and future obligations under the CIT Credit Agreement) or the CMI DIP Charge, the CMI DIP Lender may cease making advances to the CMI Entities, and upon three (3) days notice to the CMI Entities and the Monitor, may exercise any and all of its rights and remedies against the CMI Entities or the CMI Property under or pursuant to the CMI DIP Definitive Documents and the CMI DIP Charge, including without limitation, to set off and/or consolidate any amounts owing by the CMI DIP Lender to any of

the CMI Entities against the obligations of any of the CMI Entities to the CMI DIP Lender under the CMI DIP Definitive Documents or the CMI DIP Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against any of the CMI Entities and for the appointment of a trustee in bankruptcy of any of the CMI Entities, and upon the occurrence of an event of default under the terms of the CMI DIP Definitive Documents, the CMI DIP Lender shall be entitled to seize and retain proceeds from the sale of the CMI Property and the cash flow of the CMI Entities to repay amounts owing to the CMI DIP Lender in accordance with the CMI DIP Definitive Documents and the CMI DIP Charge, but subject to the priorities as set out in paragraphs 55 and 57 of this Order; and

- (c) the foregoing rights and remedies of the CMI DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of any CMI Entity or the CMI Property.

51. THIS COURT ORDERS AND DECLARES that, in respect of the CMI DIP Facility, the CMI DIP Definitive Documents, the CIT Credit Agreement and amounts borrowed under the CIT Credit Agreement, the CMI DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the CMI Entities, or any of them, under the CCAA, or any proposal filed by the CMI Entities, or any of them, under the BIA. Further, the stays of proceedings provided for herein shall not apply to the CMI DIP Lender or its rights under or in respect of the CIT Credit Agreement, the CMI DIP Facility or the CMI DIP Definitive Documents.

52. THIS COURT ORDERS that the CMI Entities are hereby authorized and empowered to take all steps and actions in respect of, and to comply with all of their obligations pursuant to, the Secured Note, the \$430,556,189 unsecured promissory note dated October 1, 2009 granted by CMI to Irish Holdco in respect of the amounts advanced by Irish Holdco to CMI (the "Unsecured Note"), the Use of Cash Collateral and Consent Agreement between certain of the

CMI Entities and certain members of the Ad Hoc Committee (the "Consenting Noteholders") dated September 23, 2009 (the "Use of Collateral and Consent Agreement"), the CCAA Support Agreement between certain of the CMI Entities and the Consenting Noteholders dated October 5, 2009 (the "Support Agreement") and such other agreements, security documents, guarantees and other definitive documents as may be executed in connection with any such matters.

53. THIS COURT ORDERS that notwithstanding anything to the contrary herein, the CMI Entities shall be required to comply with their obligations under the Use of Collateral and Consent Agreement and the Support Agreement. Prior to exercising any and all rights and remedies they may have against the CMI Entities under or in respect of the Use of Cash Collateral Agreement and the Support Agreement, in accordance with the terms of such agreements, the Consenting Noteholders shall be required to obtain a further order of the Court, other than in respect of contractual termination rights under the Support Agreement.

54. THIS COURT ORDERS that, upon reasonable notice to the CMI Entities, the advisors to the Ad Hoc Committee, CIT and CIT's advisors shall, subject to books and records that are privileged, have clear and unfettered access to the books and records of the CMI Entities and such other information that the Ad Hoc Committee and/or CIT reasonably requests.

#### VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

55. THIS COURT ORDERS that the priorities of the CMI Directors' Charge, the CMI Administration Charge, the CMI KERP Charge (as defined below) and the CMI DIP Charge, as among them and the Existing Security, solely to the extent that such Existing Security secures existing and future obligations under the CIT Credit Agreement, shall be as follows:

First – CMI Administration Charge;

Second – The Existing Security, solely to the extent that such Existing Security secures existing and future obligations under the CIT Credit Agreement;

Third – CMI DIP Charge; and

Fourth – CMI Directors’ Charge and CMI KERP Charge, save and except that these Charges shall be postponed in right of payment to the extent of the first \$85,000,000 payable under the Secured Note.

56. THIS COURT ORDERS that the filing, registration or perfection of the CMI Directors’ Charge, the CMI Administration Charge, the CMI KERP Charge and the CMI DIP Charge (collectively, the “Charges”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

57. THIS COURT ORDERS that, the CMI Directors’ Charge, the CMI Administration Charge, the CMI DIP Charge and the CMI KERP Charge shall constitute a charge on the CMI Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, “Encumbrances”) in favour of any Person, notwithstanding the order of perfection or attachment, except for any validly perfected purchase money security interest in favour of a secured creditor or any statutory Encumbrance existing on the date of this Order in favour of any Person which is a “secured creditor,” <sup>any of</sup> ~~if any~~, in respect of <sup>SRP</sup> source deductions from wages, employer health tax, workers compensation, GST/QST, PST payables, vacation pay and banked overtime for employees, amounts under the Wage Earners’ Protection Program that are subject to a super priority claim under the BIA. <sup>as defined in the CCAA</sup>

58. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the CMI Entities shall not grant any Encumbrances over any CMI Property that rank in priority to, or *pari passu* with, any of the CMI Directors’ Charge, the CMI Administration Charge, the CMI KERP Charge or the CMI DIP Charge, unless the CMI Entities also obtain the prior consent of the Monitor, the CMI DIP Lender and the beneficiaries of the CMI Directors’ Charge, the CMI KERP Charge and the CMI Administration Charge, or upon further Order of this Court.

59. THIS COURT ORDERS that the CMI Directors' Charge, the CMI Administration Charge, the CMI KERP Charge, the CMI DIP Definitive Documents and the CMI DIP Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees"), the rights and remedies of the CMI DIP Lender under the CMI DIP Definitive Documents, the rights and remedies of Irish Holdco under the Secured Note and the rights and remedies of the Consenting Noteholders under the Use of Collateral and Consent Agreement and the Support Agreement shall not otherwise be limited or impaired in any way, subject to the provisions of paragraph 53 herein, by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the CMI Entities, or any of them, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the CIT Credit Agreement, the CMI DIP Definitive Documents, the Use of Collateral and Consent Agreement, the Support Agreement, the Secured Note or the Unsecured Note, shall create or be deemed to constitute a breach by any of the CMI Entities of any Agreement to which they are a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the CMI Entities entering into the CIT Credit Agreement or any other CMI DIP Definitive Documents, the creation of the Charges, or the execution, delivery or performance of the CMI DIP Definitive Documents; and

- (c) the CIT Credit Agreement, the CMI DIP Definitive Documents, the Use of Collateral and Consent Agreement, the Support Agreement, the Secured Note and the Unsecured Note, the payments made by the CMI Entities pursuant to the foregoing or pursuant to the terms of this Order, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

60. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the relevant CMI Entity's interest in such real property leases.

#### APPROVAL OF FINANCIAL ADVISOR AGREEMENT

61. THIS COURT ORDERS that the letter agreement dated December 10, 2008 between Canwest Global and the Financial Advisor, as amended by a letter agreement dated January 20, 2009 and a further letter agreement dated October 5, 2009, in the form attached as Exhibit "U" to the Maguire Affidavit (the "Financial Advisor Agreement"), is hereby approved and the CMI Entities are authorized and directed to make the payments contemplated thereunder in accordance with the terms and conditions of the Financial Advisor Agreement.

#### KEY EMPLOYEE RETENTION PLANS

62. THIS COURT ORDERS that the key employee retention plans (the "CMI KERPs"), in the forms attached to the Confidential Supplement to the Monitor's Pre-Filing Report (the "Confidential Supplement"), are hereby approved and the CMI Entities are authorized and directed to make the payments contemplated thereunder in accordance with the terms and conditions of the CMI KERPs.

63. THIS COURT ORDERS that the Confidential Supplement be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice which sets out the title

✓ and the letter agreement dated  
December 10, 2008 referred to in

paragraph 61 herein ✓

8VP



of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of the Court.

64. THIS COURT ORDERS that the key employees referred to in the CMI KERPs shall be entitled to the benefit of and are hereby granted a charge (the "CMI KERP Charge") on the CMI Property, which charge shall not exceed an aggregate amount of \$5,900,000, to secure amounts owing to such key employees under the CMI KERPs.

#### POSTPONEMENT OF ANNUAL GENERAL MEETING

65. THIS COURT ORDERS that Canwest Global be and is hereby relieved on any obligation to call and hold an annual meeting of its shareholders until further Order of the Court.

#### FOREIGN PROCEEDINGS

66. THIS COURT ORDERS that the Monitor is hereby authorized, as the foreign representative of the CMI Entities, to apply for recognition of these proceedings as "Foreign Main Proceedings" in the United States pursuant to Chapter 15 of the *U.S. Bankruptcy Code*.

67. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, Australia, Ireland or in any other foreign jurisdiction, to give effect to this Order and to assist the CMI Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the CMI Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the CMI Entities and the Monitor and their respective agents in carrying out the terms of this Order.

68. THIS COURT ORDERS that each of the CMI Entities and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and any other Order issued in these proceedings.

**SERVICE AND NOTICE**

69. THIS COURT ORDERS that the CMI Entities or the Monitor shall (i) without delay, publish a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against any of the CMI Entities of more than \$5,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a)(ii)(C) of the CCAA and the regulations made thereunder, provided that, for the purposes of this list, (i) with respect to the 8% senior subordinated notes issued by CMI, only the name and address of the indenture trustee of such notes and the aggregate amount owing in respect of such notes shall be listed and made publicly available and (ii) the Monitor shall not make the names and addresses of individuals who are creditors publicly available.

70. THIS COURT ORDERS that the CMI Entities and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the CMI Entities' creditors or other interested parties at their respective addresses as last shown on the records of the CMI Entities, and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

71. THIS COURT ORDERS that the CMI Entities, the Monitor, the CMI DIP Lender, the Ad Hoc Committee and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on its website at <http://cfcanada.fticonsulting.com/cmi>.

## GENERAL

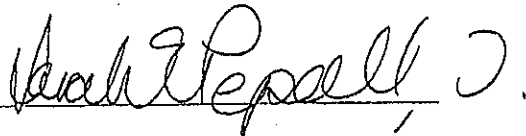
72. THIS COURT ORDERS that the CMI Entities or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

73. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the CMI Entities, the CMI Business or the CMI Property.

74. THIS COURT ORDERS that any interested party (including the CMI Entities, the CMI DIP Lender, the Ad Hoc Committee and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order, provided however that the CMI DIP Lender shall be entitled to rely on this Order as issued for all advances made under the CIT Credit Agreement and the CMI DIP Definitive Documents up to and including the date this Order may be varied or amended.

75. THIS COURT Orders that, notwithstanding the immediately preceding paragraph, no order shall be made varying, rescinding or otherwise affecting the provisions of this Order with respect to the CIT Credit Agreement or the CMI DIP Definitive Documents, unless notice of a motion for such order is served on the Monitor and the CMI Entities, the Ad Hoc Committee and the CMI DIP Lender, returnable no later than November 5, 2009.

76. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

OCT 06 2009

PER / PAR: 

Joanne Nicoara  
Registrar, Superior Court of Justice

**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.

- 2 -

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

Court File No:

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

Proceeding commenced at Toronto

INITIAL ORDER

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Toronto, Ontario, Canada M5X 1B8

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Jeremy E. Dacks (LSUC#: 41851R)

Tel: (416) 862-4923

Fax: (416) 862-6666

Lawyers for the Applicants

E. 1114233

APPENDIX "B"



Barristers & Solicitors  
Patent & Trade-mark Agents

McCarthy Tétrault

McCarthy Tétrault LLP  
Box 48, Suite 5300  
Toronto Dominion Bank Tower  
Toronto, ON M5K 1E6  
Canada  
Telephone: 416 362-1812  
Facsimile: 416 868-0673  
mccarthy.ca

Kevin McElcheran  
Direct Line: 416 601-7730

February 13, 2010

Stikeman Elliott LLP  
199 Bay Street  
5300 Commerce Court West  
Toronto ON M5L 1B9

Attention: David R. Byers

Dear Sirs:

**Re: Motion to approve Subscription Agreement**

Dear David,

We and our client GSCP are gravely concerned about the news report yesterday that CanWest has entered into a deal with Shaw and intends imminently to apply to the Court for approval of this deal. This is nothing short of a surprise attack that is in flagrant violation of the terms governing the discussions between GSCP and the noteholder committee that you have initiated and been an important part of, and in GSCP has participated in good faith. The noteholder committee should comply with their agreement – and the court proceeding should be deferred until they do – and the flawed process that has led to this very unfortunate breach must be remedied.

As you know, GSCP and the ad hoc committee of noteholders agreed that while discussions were being undertaken, “neither the Ad Hoc Committee nor Goldman Sachs shall initiate, or encourage any other person (including CanWest) to initiate, or accept, approve, or provide any consent to the initiation of, any proceeding (including the filing of any motion or affidavit or the taking of any step in furtherance of the disclaimer of any contract to which Goldman Sachs or an affiliate is a party) in any court with respect to the insolvency proceeding of CanWest.” The agreement provides that this standstill will expire seven days after written notice by either party that it has decided to terminate discussions.

While we and our client have been kept in the dark by CanWest and the noteholder committee about the events that led to yesterday’s announcement, it is regrettably obvious that the noteholder committee has utterly ignored these basic understandings – indeed, the noteholder committee’s support agreement with CanWest prohibits CanWest from filing any

February 13, 2010

- 2 -

David R. Byers

proceedings that have not been accepted by the noteholder committee. We have not received any notice from the noteholder committee that it is terminating discussions – to the contrary, we attended a meeting this past Monday at your request with the noteholder committee. As you know, we also agreed at your request to another in-person meeting among the principals, which we proposed for this coming week.

The integrity of the process requires that no application for approval of the Shaw arrangement should be heard by the court until the noteholder committee provides written notice that it is terminating discussions and the seven-day period has run – to be perfectly clear, the proceedings should not even have been filed. However, GSCP is prepared during this period to speak directly with Shaw and the company about their proposal, first to understand it and then to see whether a consensual agreement can be reached.

Sadly, it is difficult to see this filing as anything other than perpetuation of the noteholder committee's and the company's continued efforts from the start to exclude GSCP from the process and force a fait accompli on GSCP. As these secret dealings underscore, the CanWest restructuring process is very poorly served by ceding control of the process to the noteholder committee. We think now is the time to correct this problem. Specifically (1) GSCP should not be restricted in any way from discussing the restructuring with Shaw or any other potential investor in CanWest, (2) CanWest should provide GSCP with full and complete information on any alternatives to Shaw that were considered and rejected by CanWest, and (3) on a go-forward basis CanWest should consult with and keep GSCP informed of all of its efforts to restructure the company. We have made these points to Canwest's board in the attached letter.

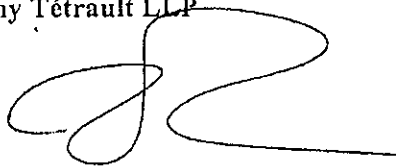
We want to emphasize that GSCP has not taken a position on the Shaw proposal, most obviously for the reason that neither Shaw nor CanWest have told us anything about it. GSCP is open to meeting with Shaw at any time and as soon as can be arranged.

This matter is of the utmost importance and we would like to understand as soon as possible your position on these critical issues.

Yours very truly,

McCarthy Tétrault LLP

Per:



c: G. Cardinale

---

Goldman, Sachs & Co. | 85 Broad Street | New York, New York 10004  
Tel: 212-902-6182 | Fax: 212-357-5505 | e-mail: gerry.cardinale@gs.com

Gerry Cardinale  
Managing Director  
Principal Investment Area

**Goldman  
Sachs**

---

February 11, 2010

VIA EMAIL

Members of the Special Committee of  
the CanWest Board of Directors

Re: CanWest Media restructuring

As you know, Goldman Sachs Capital Partners (GSCP), through its ownership interest in CW Investments, Inc. (CWI) and its Specialty TV business, is a key constituency for any restructuring of CanWest. This is reflected, among other things, in the express condition included in the noteholder's restructuring term sheet that GSCP agree to amendments of the CWI Shareholders Agreement.

Nonetheless, GSCP has been systematically excluded from participation in the marketing process that has been undertaken by the company due to the restrictive provisions of the company's agreement with the noteholders.

Continued exclusion of GSCP is an unnecessary capitulation to the narrow interests of the noteholders that is not in the best interests of the company and its constituents as a whole and does nothing but make needless litigation more likely. We do not know, for example, what the assumptions are regarding the proposed amendments to the CWI Shareholders Agreement that are being used to market the restructuring proposal. We are concerned that conducting negotiations with potential investors with only the noteholders' interests represented and considered will lead to nothing but a false conclusion that Canwest has no choice but to

February 11, 2010  
Page 2

pursue risky legal theories to repudiate GSCP's rights for the benefit of shifting value to the noteholders.

We would like Canwest to address our concern by promptly including GSCP in discussions with potential investors, and by providing to us the details of the basis on which the potential investments have been solicited. We believe there are viable restructuring plans that do not rely on unnecessary litigation. Before the board reaches any conclusions with respect to its current process, it is essential that we have the opportunity to present our alternatives, as well as have input into the potential investments already solicited.

Further, we are requesting that GSCP be given adequate notice of, and an opportunity to discuss with the board, any consideration of repudiating the CWI Shareholders Agreement prior to any decision being made.

Including GSCP directly in the discussions, and opening the process to allow Canwest and its board to consider the interests of GSCP as well as the noteholders, is the only way to ensure that the interests of all stakeholders are properly considered and the full range of restructuring alternatives are evaluated, consistent with the responsibility of any board presiding over a CCAA process.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Cardinale". The signature is fluid and cursive, with a large initial "G" and a distinct "C" for "Cardinale".

Gerald J. Cardinale

APPENDIX "C"

APPENDIX "C"

----- Original Message -----

From: Chadwick, Robert <rchadwick@goodmans.ca>

To: David Byers; 'greg.watson@fticonsulting.com' <greg.watson@fticonsulting.com>

Sent: Sun Feb 14 08:52:03 2010

Subject: Cw

We understand the Monitor has received a letter from counsel to GS dated February 13. We have reviewed the letter on receipt and spoken directly to counsel to GS Saturday night to correct various factual misunderstandings with respect to terms of our ongoing confidential discussions. We do not believe there are any restrictions or terms which affect directly or indirectly CW's motion to seek approval of the equity sponsor transaction on February 19, 2010. We also believe it is important to get your Monitor's report out to all stakeholders as soon as possible and we want to ensure there is no delay in any parties receiving its terms. Our clients have worked with CW and its advisors as part of the CCAA equity process run by RBC to find an equity sponsor in order to move forward in the CCAA proceedings in an efficient and effective manner. We believe the Shaw transaction is in best interests of CW and its stakeholders and we fully support its approval asap and as scheduled next Friday. Our clients remain committed to find consensual solutions with respect to Canwest and its ongoing CCAA proceedings. We are available to speak with the Monitor to address any additional matters or to assist in any way to ensure the paramount goal of getting CW out of its current CCAA proceedings and return it to a market leader is completed without delay. Regards Rob Chadwick

Robert J. Chadwick  
Goodmans LLP  
Direct Line: 416-597-4285  
Email: rchadwick@goodmans.ca  
Fax: 416-979-1234

Goodmans LLP  
333 Bay Street, Suite 3400  
Toronto, Ontario M5H 2S7  
General:416-979-2211

\*\*\*\*\* Attention \*\*\*\*\*

This communication is intended solely for the named addressee(s) and may contain information that is privileged, confidential, protected or otherwise exempt from disclosure. No waiver of confidence, privilege, protection or otherwise is made. If you are not the intended recipient of this communication, please advise us immediately and delete this email without reading, copying or forwarding it to anyone.

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"

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceeding commenced at Toronto

TENTH REPORT OF FTI CONSULTING CANADA  
INC., IN ITS CAPACITY AS MONITOR

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

David R. Byers LSUC #: 22992W  
Tel: (416) 869-5697

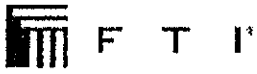
Ashley John Taylor LSUC#: 39932E  
Tel: (416) 869-5236

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Lawyers for the Monitor







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

**SUPPLEMENT TO THE TENTH REPORT  
OF FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR OF THE APPLICANTS**

**February 19, 2010**

Court File No. CV-09-8396-00CL

**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"**

**SUPPLEMENT TO THE TENTH REPORT OF FTI CONSULTING CANADA INC.  
IN ITS CAPACITY AS MONITOR**

**February 19, 2010**

**INTRODUCTION**

1. By Order of this Court dated October 6, 2009 (the "**Initial Order**") (a copy of which is attached hereto as **Appendix "A"**), Canwest Global Communications Corp. ("**Canwest Global**") and certain of its subsidiaries listed in **Schedule "A"** hereto (collectively the "**Applicants**") obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the "**CCAA**"). The Initial Order also granted relief in respect of certain affiliated partnerships of the Applicants listed in **Schedule "B"** hereto (collectively, the "**Partnerships**", and together with the Applicants, the "**CMI Entities**") and appointed FTI Consulting Canada Inc. ("**FTI**") as monitor (the "**Monitor**") of the CMI Entities. The proceedings commenced by the CMI Entities under the CCAA will be referred to herein as the "**CCAA Proceedings**".

2. This report is supplementary to the Tenth Report of the Monitor dated February 14, 2010 (the "**Tenth Report**") prepared in connection with the CMI Entities' motion for an Order approving, *inter alia*, the Subscription Agreement between Canwest Global and Shaw Communications Inc. ("**Shaw**") dated February 11, 2010 (the "**Shaw Subscription Agreement**") and should be read in conjunction therewith.
3. All capitalized terms used but not defined herein shall have the meaning ascribed to them in the Tenth Report.

#### **PURPOSE OF THIS REPORT**

4. At or about 3:38 a.m. on February 19, 2010 (and following finalization and service of the CMI Entities' motion materials and the Tenth Report), counsel for The Catalyst Capital Group Inc. ("**Catalyst**"), served on the service list maintained for these proceedings an unsworn copy of the Affidavit of Gabriel De Alba attaching, *inter alia*, a proposal to be the New Investor as defined in the Original Recapitalization Term Sheet (the "**Catalyst Proposal**"). A sworn copy of the Affidavit was served prior to the hearing of the motion.
5. At the Court hearing of the CMI Entities' motion to approve the Shaw Subscription Agreement, counsel for Catalyst and the GS Parties sought an adjournment to allow the Monitor, the Court and interested parties to review the terms of the Catalyst Proposal with a view to determining whether the terms contained therein are superior to the terms of the Shaw Subscription Agreement.
6. The Shaw Subscription Agreement is conditional upon obtaining Court approval

thereof "by February 19, 2010". At the hearing of the motion, counsel for Shaw advised the Court that Shaw was not agreeable to extending this deadline.

7. Therefore, the Court requested the Monitor to provide evidence for the record of the Monitor's position with respect to the Shaw Transaction in light of the Catalyst Proposal.
8. The limited purpose of this supplement to the Tenth Report is to advise the Court whether its conclusion to support the Shaw Transaction contained in the Tenth Report is affected by the submission of the Catalyst Proposal.
9. The Monitor prepared this supplement to the Tenth Report contemporaneously with the hearing of the CMI Entities' motion. The Monitor was requested to leave the hearing and return with this supplement.
10. In determining whether its conclusion with respect to the Shaw Transaction is affected by the Catalyst Proposal, the Monitor focused its review on the following four areas of the proposed transactions:
  - (a) Implied equity value comparison;
  - (b) Conditionality of the Shaw Subscription Agreement and the Catalyst Proposal;
  - (c) Effect of the opposition of the Ad Hoc Committee to the Catalyst Proposal;and

- (d) Certain issues with respect to the equity solicitation process carried out by RBC, including the absence of a “fiduciary out” provision in the Shaw Subscription Agreement.

*Implied Equity Value Comparison*

- 11. The Shaw Subscription Agreement, including the amount of the proposed equity investment, remains sealed pending disposition of the CMI Entities’ motion. The Shaw Subscription Agreement has a higher implied equity value than the Catalyst Proposal.
- 12. However, the Catalyst Proposal does not require an amendment or disclaimer of the CW Investments Shareholders Agreement, which is a condition of the Shaw Subscription Agreement.
- 13. As stated in paragraph 33 of the Tenth Report, the Monitor has not received a request for its consent to a disclaimer or resiliation of the CW Investments Shareholders Agreement nor has it formed a view as to whether such consent would be granted, if requested. Any calculation of the damages that may be payable by Canwest Global to the GS Parties upon a disclaimer of the CW Investments Shareholders Agreement (if such disclaimer is granted) involves a number of legal and factual assumptions. The Monitor has discussed potential methods of calculating the GS Parties’ possible damages with the CMI Entities, the Ad Hoc Committee and the GS Parties. Despite such discussions and independent extensive review of the legal and factual issues relating to the GS Parties’ potential damages, the Monitor is not in a position at this time to provide an estimate of the quantum of such damages.

14. It should also be noted that although the Catalyst Proposal is not expressly conditional on amending or disclaiming the CW Investments Shareholders Agreement, such condition remains a condition in favour of the Ad Hoc Committee in the Original Recapitalization Term Sheet. The Ad Hoc Committee has indicated that it is a condition of their approval of any recapitalization plan that the CW Investments Shareholders Agreement is amended or disclaimed. Therefore, it cannot be stated with certainty that a recapitalization plan involving the Catalyst Proposal will not include a claim for damages by GS Parties.

*Conditionality*

15. The Catalyst Proposal is also subject to negotiation and entering into definitive documentation. Catalyst has not presented definitive documentation to the Ad Hoc Committee or Canwest Global related to its equity investment proposal and therefore the Catalyst Proposal is subject to the risk that the Ad Hoc Committee, Canwest Global and Catalyst will not be able to agree upon such definitive documentation.
16. Lastly and as discussed in greater detail below, the Catalyst Proposal is subject to approval pursuant to a plan of arrangement or compromise which must be approved by the majority of the CMI Entities' creditors and the Ad Hoc Committee has informed the Monitor that it will not support any plan that includes the Catalyst Proposal.
17. However, it should also be noted that the GS Parties have stated that the amount of their claim resulting from any disclaimer of the CW Investments Shareholders Agreement will result in them also holding a blocking vote in any vote on the plan of

arrangement proposed by the CMI Entities. The Ad Hoc Committee asserts that it believes that value of the GS Parties' claim will be less than a blocking vote.

*Effect of the Opposition of the Ad Hoc Committee*

18. No plan of compromise or arrangement can be approved by the creditors of the CMI Entities without support of the Ad Hoc Committee because, among other things, it holds a blocking vote.
  
19. In addition, upon an event of default under the Use of Cash Collateral and Consent Agreement, the Ad Hoc Committee can obtain an assignment of the Irish Holdco Secured Note and the Irish Holdco Unsecured Note (collectively, the "Irish Holdco Notes") in the amounts of \$190 million and \$430 million, respectively, from Irish Holdco (as such terms are defined in the Pre-filing Report). Events of default under the Use of Cash Collateral and Consent Agreement include the following:
  - (a) The entering by Canwest Global into a restructuring agreement involving the CMI Senior Subordinated Notes in which "exclusivity is granted"; and
  
  - (b) Failure by Canwest Global to comply in all material respects with the Original Support Agreement which is not cured 5 business days after the receipt of written notice of such failure, including the requirement that subject to further order of the Court, Canwest Global shall pursue, support and use commercially reasonable efforts to complete the Original Recapitalization Transaction in good faith and do all things that are reasonably necessary and

appropriate in furtherance of, and to consummate and make effective the Original Recapitalization Transaction.

20. An assignment of the Irish Holdco Notes to the Ad Hoc Committee may also frustrate the viability of any proposed plan of arrangement which does not have the support of the Ad Hoc Committee.

*Issues with the Equity Solicitation Process*

21. At the hearing of the CMI Entities' motion, the GS Parties, Catalyst, and the Court, among other things, expressed concern with the lack of the "fiduciary out" provision in the Shaw Subscription Agreement (as described in greater detail in para. 38 of the Tenth Report).
22. Prior to the finalization and approval by Canwest Global's board of directors of the Shaw Subscription Agreement, the Monitor expressed concern to RBC, counsel for the CMI Entities, and counsel for the Ad Hoc Committee about the removal of the "fiduciary out" provision. Counsel for these parties advised that the Shaw Subscription Agreement was heavily negotiated by sophisticated parties and their advisors at arm's length and despite their best efforts to include the "fiduciary out" provision in the Shaw Subscription Agreement, Shaw refused to do so. The Monitor is advised that RBC, the CMI Entities' board of directors, the Special Committee, and the Ad Hoc Committee evaluated the Shaw Subscription Agreement in its entirety and concluded in the exercise of their respective business judgments that the Shaw Subscription Agreement was the best offer that resulted from the equity solicitation process, despite the lack of the "fiduciary out" provision.



23. Moreover, the Monitor is advised by RBC that the form of subscription agreement containing the “fiduciary out” provision was provided only to the four Phase 2 Participants in the equity solicitation process.
24. The GS Parties and Catalyst also made submissions to the Court that Catalyst and perhaps other parties refused to participate in the equity solicitation process due to the requirement to be bound by the non-disclosure agreement, which prohibited any communications with GS Parties.
25. While drafting this supplement to the Tenth Report, the Monitor received a letter from Quebecor Media Inc., wherein it stated that it declined to execute the non-disclosure agreement and participate in the equity solicitation process due to the prohibition on communications with the GS Parties. Quebecor Media Inc. also states that should “the Court re-order the current solicitation process and allow third party bidding in a transparent Court supervised process, Quebecor Media is prepared to consider an alternative proposal in a timely manner” [emphasis added]. A copy of the letter dated February 19, 2010 is attached to this report as **Appendix “A”**.
26. Counsel to the Monitor has advised that the form of the confidentiality agreement requested to be executed by potential bidders in this equity solicitation process is customary for an equity solicitation process.
27. The Monitor also relies strongly on the representation of Richard Grudzinski in paragraph 11 of his Affidavit sworn February 19, 2010 that “the potential market for Canadian equity investors to invest in Restructured Canwest Global to satisfy the condition dealing with the New Investors (as defined in the Restructuring Term

Sheet) has been fully canvassed and that the Shaw Transaction represents the best transaction available to Canwest Global in the circumstances”.

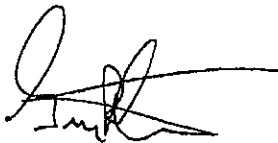
## CONCLUSIONS

28. For the reasons outlined above, the Monitor’s conclusion to support the Shaw Subscription Agreement remains unaffected by the submission of the Catalyst Proposal.

All of which is respectfully submitted this 19<sup>th</sup> of February, 2010.

**FTI Consulting Canada Inc.,**  
in its capacity as the Monitor of Canwest Global Communications Corp. and the other Applicants listed in Schedule “A” and Partnerships listed in Schedule “B”

Per



Greg Watson  
Senior Managing Director

**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"**

**Partnerships**

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

**APPENDIX "A"**



February 19, 2010

**BY EMAIL WITH ORIGINAL TO FOLLOW**

FTI CONSULTING CANADA INC.  
Court-appointed Monitor  
TD Canada Trust Tower  
161 Bay Street, 27<sup>th</sup> Floor  
Toronto, Ontario  
M5J 2S1

Attention: Mr. Paul Bishop (paul.bishop@fticonsulting.com)  
Mr. Greg Watson (greg.watson@fticonsulting.com)  
Mr. Jeffrey Rosenberg (jeffrey.rosenberg@fticonsulting.com)

Dear Sirs:

**Re: 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**


We have followed very closely the sequence of events of the last days in relation to the Plan of Compromise or Arrangement of Canwest Global Communications Corp. ("Canwest") and others that is debated this day in Ontario Superior Court of Justice (Commercial List).

Although Quebecor Media Inc. ("Quebecor Media") had discussions with RBC Capital Markets ("RBC") in connection with the equity solicitation process for the recapitalisation of Canwest, the undersigned declined to execute the proposed Non-Disclosure Agreement by RBC as it would have precluded Quebecor Media from having discussions notably with Goldman Sachs and related entities which we viewed as a key stakeholder. Despite this inextricable situation, the senior management of Quebecor Media, with the comprehensive understanding of its Board of Directors, has devoted significant efforts in the past weeks with its financial and legal advisors to structure a consensual transaction with a predictable timing and lower execution risk.

Should the Court re-order the current solicitation process and allow third party bidding in a transparent Court supervised process, Quebecor Media is prepared to consider an alternative proposal in a timely manner.

Yours truly,

QUEBECOR MEDIA INC.

By:   
Pierre-Karl Péladeau  
President & Chief Executive Officer

612, rue Saint-Jacques  
Montréal (Québec)  
H3C 4M8  
Canada  
quebecor.com

**QUEBECOR**

The logo for Quebecor, featuring the word "QUEBECOR" in a bold, sans-serif font. Below the text is a stylized, curved line that starts under the 'Q' and sweeps upwards and to the right, ending under the 'R'.

- c.c. Stikeman Elliott LLP (Lawyers for the Court-appointed Monitor)
- Mr. David R. Byers (dbyers@stikeman.com)
  - Mrs. Daphne MacKenzie (dmackenzie@stikeman.com)
  - Mrs. Ashley J. Taylor (ataylor@stikeman.com)
  - Mrs. Maria Konyukhova (mkonyukhova@stikeman.com)
  - Mrs. Jennifer Imrie (jimrie@stikeman.com)

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"

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

Proceeding commenced at Toronto

**SUPPLEMENT TO THE TENTH REPORT OF FTI  
CONSULTING CANADA INC., IN ITS CAPACITY  
AS MONITOR**

**STIKEMAN ELLIOTT LLP**  
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Lawyers for the Monitor



Court File No. CV-09-8396-00CL

**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

**NOTICE OF MOTION  
(Approval of Subscription Agreement)**

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") will make a motion before a judge of the Ontario Superior Court of Justice on Friday, February 19, 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 (the "Approval Order"):
  - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record herein, and directing that any further service of the Notice of Motion and Motion Record be dispensed with;
  - (b) approving (i) the Subscription Agreement dated February 11, 2010 (the "Subscription Agreement") between Shaw Communications Inc. ("Shaw Communications") and Canwest Global, including the subscription term

- 2 -

sheet appended thereto (the "Subscription Term Sheet"); (ii) an amendment (the "Amended Support Agreement") dated February 11, 2010 to the Support Agreement and Restructuring Term Sheet (both as defined below) made between the members of the Ad Hoc Committee (as defined below) and the CMI Entities; and (iii) the support agreement (the "Shaw Support Agreement") dated February 11, 2010 between Shaw Communications, Canwest Global and the 8% Senior Subordinated Noteholders (as defined below) party thereto (the "Consenting Noteholders") (collectively, the "Shaw Definitive Documents");

- (c) authorizing and approving the entering into, execution and delivery of the Shaw Definitive Documents by Canwest Global and the performance by Canwest Global of those agreements in accordance with their terms and conditions;
- (d) declaring that the assets, property and undertaking of the CMI Entities are subject to a charge ranking after all existing charges in existence as at the date of the Approval Order in order to secure the payment of the Termination Fee (as defined below) and the Expense Reimbursement (as defined below); and
- (e) authorizing and directing the Monitor (as defined below) post a copy of the Shaw Definitive Documents (without signature pages) on the Monitor's website and to send a copy of the Shaw Definitive Documents (without signature pages) by electronic transmission to the service list maintained with respect to this CCAA proceeding.

2. In the alternative, if the Approval Order is not granted, sealing the confidential supplement to the Monitor's Tenth Report (the "Confidential Supplement") until further Order of the Court.

3. Such further and other relief as this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

1. 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 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;
2. The Initial Order granted a stay of proceedings until November 5, 2009, or such later date as this Honourable Court may order. On October 30, 2009, the CMI Entities obtained an Order, *inter alia*, extending the Stay Period until January 22, 2010. On January 21, 2010, the CMI Entities obtained a further Order extending the Stay Period until March 31, 2010;
3. The CMI Entities have been pursuing a consensual recapitalization transaction (the "Recapitalization Transaction"), as contemplated in the term sheet (the "Restructuring Term Sheet") which was appended to the Support Agreement executed by approximately 70% of the 8% Senior Subordinated Noteholders (the "Support Agreement");
4. Under the Restructuring Term Sheet, it was proposed, *inter alia*, that creditors of the CMI Entities whose claims are compromised under the plan of arrangement or compromise (the "Plan"), including the 8% Senior Subordinated Noteholders, would receive shares of a restructured Canwest Global ("Restructured Canwest Global") which would be a publicly-listed company on the TSX;
5. On or about November 2, 2009, the CMI Entities, with the assistance of RBC Capital Markets ("RBC"), commenced a comprehensive equity solicitation process (the "Solicitation Process") in order to identify one or more Canadians (the "New Investors") (as defined in the *Direction to the CRTC (Ineligibility of Non-Canadians)* (the "CRTC Direction") that would invest at least \$65 million in Restructured Canwest Global;
6. Approximately 90 potential investors were contacted by RBC in the first phase of the Solicitation Process. The list of potential investors included both strategic and financial investors and qualified individuals in Canada;

7. Approximately 22 potential New Investors executed non-disclosure agreements and were invited to submit first round non-binding proposals by December 2, 2009;

8. Ultimately, six potential New Investors submitted non-binding proposals as of December 2, 2009. Based upon the recommendation of RBC, five of the six potential investors were invited to participate in the second phase of the Solicitation Process;

9. On January 20, 2010, RBC informed the remaining participants that final binding offers ("Formal Bids") were required to be received by 5:00 p.m. on January 27, 2010;

10. Two Formal Bids were received by RBC on or before the January 27, 2010 deadline, one of which was a Formal Bid from Shaw Communications;

11. RBC and the CMI Entities, in consultation with the Ad Hoc Committee and the CMI Chief Restructuring Advisor (the "CMI CRA"), proceeded to discuss each Formal Bid with the two remaining potential New Investors in an attempt to reach an agreement that would secure the best possible transaction in the circumstances. During this time, the terms of the Shaw Definitive Documents were negotiated;

12. On February 11, 2010, on the recommendation of the Special Committee of Canwest Global, the board of directors of Canwest Global approved the entering into of the Shaw Definitive Documents;

13. The Formal Bid submitted by Shaw Communications, as reflected in the Shaw Definitive Documents, was the best overall offer received by the CMI Entities, considering various criteria, including those communicated by RBC to the participants in the Solicitation Process;

14. The Subscription Agreement (together with the Subscription Term Sheet) contemplates that, rather than restructure Canwest Global as a public company, Restructured Canwest Global will be a private company whose shareholders will be comprised of Shaw Communications (or a direct or indirect wholly-owned subsidiary of Shaw Communications that is Canadian as defined in the CRTC Direction) (Shaw Communications and any such designated wholly-owned subsidiary being collectively referred to herein as "Shaw") and those 8% Senior Subordinated Noteholders and other participating creditors of Canwest Global that elect to

receive equity shares of Restructured Canwest Global and that would hold at least 5% of the equity of Restructured Canwest Global following the completion of the proposed Recapitalization Transaction (the "Participating Creditors"). Creditors that would hold less than 5% of the equity shares of Restructured Canwest Global upon completion of the Recapitalization Transaction (the "Non-Participating Creditors") and existing shareholders of Canwest Global (the "Existing Shareholders") will receive a cash payment (rather than equity shares of Restructured Canwest Global) to extinguish their interests to be affected pursuant to the Plan. The amount of cash to be distributed to each Non-Participating Creditor will be equal to the value of the equity they would otherwise have received under the Recapitalization Transaction as originally proposed but using the higher implied equity value contained in the Formal Bid by Shaw Communications;

15. The Subscription Agreement provides that, prior to or as soon as reasonably practicable following the successful completion of the Recapitalization Transaction, Restructured Canwest Global will apply to be de-listed from the TSX Venture Exchange and will apply to cease to be a reporting issuer for purposes of Canadian securities laws;

16. The Subscription Agreement contains certain customary deal protection provisions, including an "exclusivity" provision and a "termination fee" provision in favour of Shaw;

17. The "termination fee" provisions require Canwest Global to pay a termination fee in the amount of \$5 million (the "Termination Fee") to Shaw and to reimburse Shaw for certain out-of-pocket fees and expenses up to \$2.5 million (the "Expense Reimbursement") in the event that Canwest Global fails to satisfy certain conditions in favour of Shaw or if Canwest Global terminates the Shaw Support Agreement under certain circumstances. The Expense Reimbursement is also payable to Shaw upon closing of the Recapitalization Transaction;

18. The "termination fee" provisions and the "exclusivity" provisions are reasonable and necessary in the circumstances;

19. The Subscription Agreement requires the proposed Approval Order to provide for a charge over all of the assets, property and undertaking of the CMI Entities after all existing

charges in existence as at the date of the Approval Order in order to secure the payment of the Termination Fee and the Expense Reimbursement;

20. The CMI Entities and the ad hoc committee of 8% Senior Subordinated Noteholders (the "Ad Hoc Committee") have agreed to enter into the Amended Support Agreement in order to amend and restate a number of the terms of the Support Agreement and the Restructuring Term Sheet so that each will conform with the Subscription Agreement;

21. The obligation of Shaw and the Ad Hoc Committee to support the Recapitalization Transaction is subject to the conditions set out in the Shaw Support Agreement;

22. The Shaw Definitive Documents together represent the best available transaction for the equity investment required by the Recapitalization Transaction and are a crucial step towards the finalization of the Plan;

23. The entering into of the Shaw Definitive Documents is supported by the CMI CRA, the Ad Hoc Committee and the CMI Entities' senior management;

24. The Confidential Supplement contains copies of the Shaw Definitive Documents (without signature pages) and have been filed on a confidential basis with the material non-financial terms of such agreement being disclosed, in order to preserve the integrity of the Solicitation Process;

25. Disclosing the Shaw Definitive Documents at this time would be extremely detrimental to the CMI Entities' interest as it would significantly weaken Canwest Global's ability to bargain with other potential investors which may later wish to make an equity investment in Restructured Canwest Global in the event that the Approval Order is not granted;

26. It is proposed that the Monitor will post a copy of the Shaw Definitive Documents (without signature pages) on the Monitor's website and will distribute a copy of such agreements (without signature pages) to the service list should the Approval Order be granted;

27. Should the Approval Order not be granted, it is proposed that the Shaw Definitive Documents be sealed and kept confidential until further Order of the Court.

28. It is in the interests of the CMI Entities and their respective stakeholders that the Approval Order be granted;

29. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;

30. 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 section 137(2) of the *Ontario Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and

31. 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 this motion:

1. The Affidavit of Thomas C. Strike sworn February 12, 2010 and the exhibit thereto;
2. The Tenth Report of the Monitor and the appendices thereto;
3. The Confidential Supplement; and
4. Such further and other materials as counsel may advise and this Honourable Court may permit.

February 12, 2010

**OSLER, HOSKIN & HARCOURT LLP**  
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Lawyers for the Applicants

Court File No. CV-09-8396-00 CL

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

*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" (collectively the "APPLICANTS" or "Canwest")

**NOTICE OF MOTION**

The Respondents GS Capital Partners VI Fund L.P., GSCP VI AA One Holding S.ar.l and GS VI AA One Parallel Holding S.ar.l (collectively, "GSCP") will make a motion to the Honourable Justice Pepall at • a.m. on February •, 2010, at 330 University Avenue, Toronto, Ontario.

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

**THE MOTION IS FOR:**

1. An order
  - (a) Adjourning the motion served by the Applicants on the evening of Friday, February 12, 2010 for two weeks;
  - (b) Permitting the Applicants, the Special Committee of its board of directors and Shaw Communications Inc. ("Shaw") to meet with GSCP and otherwise communicate with GSCP to discuss any matter that relates to this restructuring without notice to or involvement of the Ad Hoc Committee of noteholders notwithstanding any agreements that they may have entered into which would restrict such communications or discussions; and
2. Such further and other relief as this Honourable Court considers just.



**THE GROUNDS FOR THE MOTION ARE:**

1. The motion for approval of the was brought in breach of the obligations of the Ad Hoc Committee to GSCP before negotiations between GSCP and the Ad Hoc Committee had been terminated on 7 days notice to GSCP;
2. Allowing the motion to proceed in breach of the Ad Hoc Committee's obligations fundamentally undermines the integrity of the process;
3. Both Shaw and Canwest have been prevented from discussing Shaw's proposed acquisition of the Applicants' interest in CW Investments with GSCP; and
4. Because of the key condition of Shaw investment is the amendment of the Shareholders Agreement which governs GSCP's rights and interests in CW Investments, the motion should not proceed at this time because no one knows whether this condition has any reasonable prospect of being fulfilled.
5. The moving parties also rely upon 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:**

- (a) Affidavit of Thomas Strike, sworn February 12, 2010;
- (b) The Tenth Report of the Monitor dated February 14, 2010;
- (c) Affidavit of Gerald J. Cardinale, sworn February 15;2010; and
- (d) Such evidence as counsel may advise and this Honourable Court may permit.

February 15, 2010

**McCarthy Tétrault LLP**  
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Toronto ON M5K 1E6

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Solicitors for GSCP Capital Partners VI Fund,  
L.P., GSCP VI AA One Holding S.ar.l, GSCP  
VI AA One Parallel Holding S.ar.l.

**TO: SERVICE LIST**

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" (collectively the "APPLICANTS" or "Canwest")

Court File No. CV-09-8396-00 CL

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

Proceeding Commenced at Toronto

**NOTICE OF MOTION**

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Solicitors for GSCP Capital Partners VI Funds  
L.P., GSCP VI AA One Holding S.ar.l, GSCP VI  
AA One Parallel Holding S.ar.l.

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**THE MATTER OF THE COMPANIES' CREDITORS  
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OF COMPROMISE OR ARRANGEMENT OF  
CANWEST GLOBAL COMMUNICATIONS CORP. AND THE OTHER APPLICANTS  
LISTED ON SCHEDULE "A" (collectively the "APPLICANTS" or "Canwest")**

**NOTICE OF MOTION**

The Respondents GS Capital Partners VI Fund L.P., GSCP VI AA One Holding S.ar.l and GS VI AA One Parallel Holding S.ar.l (collectively, the "GS Parties") will make a motion to the Honourable Justice Pepall at 10:00 a.m. on a date to be fixed by at a 9:30 appointment to be arranged at the convenience of counsel for the GS Parties, the Monitor, the Applicants and the Ad Hoc Committee of Noteholders, at 330 University Avenue, Toronto, Ontario.

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

**THE MOTION IS FOR:**

1. An order
  - (a) Setting aside and declaring void the transfer of the Shares (as defined below) from 4414616 Canada Inc. ("441") to Canwest Media Inc. ("CMI") on or about October 5, 2009 because such transfer was
    - (i) Contrary to the terms of the Shareholders Agreement (defined below) and consequently ineffective;
    - (ii) fraudulent and void as against creditors or others;

- (iii) oppressive and/or unfairly prejudicial of the interests and rights of the GS Parties; and/or
  - (iv) an abuse of these proceedings under the *Companies' Creditors Arrangement Act* (the "CCAA");
- (b) declaring that the rights and remedies of the GS Parties in respect of the obligations of 441 under the Shareholders Agreement are not affected by these CCAA proceedings in any way whatsoever;
  - (c) setting aside or amending paragraph 59 of the initial order of the Honourable Madam Justice Pepall, dated Tuesday, October 6, 2009 (the "Initial Order") to the extent that it purports to declare that certain pre-filing transactions entered into by the Applicants do not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law; and
  - (d) if necessary, a trial of the issues arising from the foregoing; and
2. Such further and other relief as this Honourable Court considers just.

**THE GROUNDS FOR THE MOTION ARE:**

- 1. The Initial Order was made without notice to the GS Parties;
- 2. In all of the circumstances set out in the affidavit of Gerald J. Cardinale sworn on November 2, 2009 (the "Cardinale Affidavit"), the actions taken by CMI to transfer all of the assets of 441, substantially comprised of shares (the "Shares") in the common equity of CW Investments Co. (Canada) ("CWI") and to dissolve 441 were

- (a) Contrary to the terms of the Shareholders Agreement entered into as of August 15, 2007 and amended and restated as of January 4, 2008 (the “Shareholders Agreement”) and consequently ineffective;
  - (b) fraudulent and void as against creditors or others;
  - (c) oppressive and/or unfairly prejudicial of the interests and rights of the GS Parties; and/or
  - (d) an abuse of these proceedings under the *Companies' Creditors Arrangement Act* (the “CCAA”)
3. Paragraph 59 of the Initial Order purports to order that certain agreements and payments made pursuant to such agreements “do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law”;
  4. This court has no jurisdiction in the Initial Order to declare payments and transactions that were entered into or made prior the the Initial Order are not “challengeable, voidable or reviewable”;
  5. In any event, instead of being approved on an application made without notice, the transactions which immediately preceded the Application for the Initial Order should be investigated so that all of the facts relating to these transactions are fully disclosed and all affected parties have an opportunity to make submissions to the court on a fully informed basis;
  6. In all of the circumstances set out in the Cardinale Affidavit, the payment of approximately \$426 million (US\$399 million) by CMI to holders of unsecured notes issued by CMI (“Noteholders”) is presumed by the CCAA to have been made, incurred, taken or suffered with a view to giving the Noteholders the preference and thus is void;
  7. The moving parties also rely upon:

- (a) The Shareholders Agreement;
- (b) the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F.29;
- (c) the Business Corporations Act, R.S.C. 1985, c. C-44, as amended
- (d) the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;
- (e) the CCAA;
- (f) 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:

- (a) Affidavit of John E. Maguire, sworn October 5, 2009 and documents produced by the Applicants to the GS Parties;
- (b) Affidavit of Gerald J. Cardinale, sworn November 2; and
- (c) Such evidence as counsel may advise and this Honourable Court may permit.

November 2, 2009

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L.P., GSCP VI AA One Holding S.ar.l, GSCP  
VI AA One Parallel Holding S.ar.l.



**TO: SERVICE LIST**

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANWEST GLOBAL COMMUNICATIONS CORP. AND THE OTHER APPLICANTS LISTED ON SCHEDULE "A" (collectively the "APPLICANTS" or "Canwest")

Court File No. CV-09-8396-00 CL

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
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**NOTICE OF MOTION**

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AA One Parallel Holding S.ar.l.

COURT FILE NO.: CV-09-8241-OOCL  
DATE: 20091215

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

COUNSEL: *Lyndon Barnes, Alex Cobb and Shawn Irving* for the CMI Entities

*Alan Mark and Alan Merskey* for the Special Committee of the Board of Directors  
of Canwest

*David Byers and Maria Konyukhova* for the Monitor, FTI Consulting Canada Inc.

*Benjamin Zarnett and Robert Chadwick* for the Ad Hoc Committee of  
Noteholders

*K. McElcheran and G. Gray* for GS Parties

*Hugh O'Reilly and Amanda Darrach* for Canwest Retirees and the Canadian  
Media Guild

*Hilary Clarke* for Senior Secured Lenders to LP Entities

*Steve Weisz* for CIT Business Credit Canada Inc.

DATE HEARD: December 8, 2009

**REASONS FOR DECISION**

**PEPALL J.**

**Relief Requested**

[1] The CCAA applicants and partnerships (the "CMI Entities") request an order declaring that the relief sought by GS Capital Partners VI Fund L.P., GSCP VI AA One Holding S.ar.1 and GS VI AA One Parallel Holding S.ar.1 (the "GS Parties") is subject to the stay of proceedings

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granted in my Initial Order dated October 6, 2009. The GS Parties bring a cross-motion for an order that the stay be lifted so that they may pursue their motion which, among other things, challenges pre-filing conduct of the CMI Entities. The Ad Hoc Committee of Noteholders and the Special Committee of the Board of Directors support the position of the CMI Entities. All of these stakeholders are highly sophisticated. Put differently, no one is a commercial novice. Such is the context of this dispute.

#### Background Facts

[2] Canwest's television broadcast business consists of the CTLP TV business which is comprised of 12 free-to-air television stations and a portfolio of subscription based specialty television channels on the one hand and the Specialty TV Business on the other. The latter consists of 13 specialty television channels that are operated by CMI for the account of CW Investments Co. and its subsidiaries and 4 other specialty television channels in which the CW Investments Co. ownership interest is less than 50%.

[3] The Specialty TV Business was acquired jointly with Goldman Sachs from Alliance Atlantis in August, 2007. In January of that year, CMI and Goldman Sachs agreed to acquire the business of Alliance Atlantis through a jointly owned acquisition company which later became CW Investments Co. It is a Nova Scotia Unlimited Liability Corporation ("NSULC").

[4] CMI held its shares in CW Investments Co. through its wholly owned subsidiary, 4414616 Canada Inc. ("441"). According to the CMI Entities, the sole purpose of 441 was to insulate CMI from any liabilities of CW Investments Co. As a NSULC, its shareholders may face exposure if the NSULC is liquidated or becomes bankrupt. As such, 441 served as a "blocker" to potential liability. The CMI Entities state that similarly the GS parties served as "blockers" for Goldman Sachs' part of the transaction.

[5] According to the GS Parties, the essential elements of the deal were as follows:

- (i) GS would acquire at its own expense and at its own risk, the slower growth businesses;

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- (ii) CW Investments Co. would acquire the Specialty TV Business and that company would be owned by 441 and the GS Parties under the terms of a Shareholders Agreement;
- (iii) GS would assist CW Investments Co. in obtaining separate financing for the Specialty TV Business;
- (iv) Eventually Canwest would contribute its conventional TV business on a debt free basis to CW Investments Co. in return for an increased ownership stake in CW Investments Co.

[6] The GS Parties also state that but for this arrangement, Canwest had no chance of acquiring control of the Specialty TV Business. That business is subject to regulation by the CRTC. Consistent with policy objectives, the CRTC had to satisfy itself that CW Investments Co. was not controlled either at law or in fact by a non-Canadian.

[7] A Shareholders Agreement was entered into by the GS parties, CMI, 441, and CW Investments Co. The GS Parties state that 441 was a critical party to this Agreement. The Agreement reflects the share ownership of each of the parties to it: 64.67% held by the GS Parties and 35.33% held by 441. It also provides for control of CW Investments Co. by distribution of voting shares: 33.33% held by the GS Parties and 66.67% held by 441. The Agreement limits certain activities of CW Investments Co. without the affirmative vote of a director nominated to its Board by the GS Parties. The Agreement provides for call and put options that are designed to allow the GS parties to exit from the investment in CW Investments Co. in 2011, 2012, and 2013. Furthermore, in the event of an insolvency of CMI, the GS parties have the ability to effect a sale of their interest in CW Investments Co. and require as well a sale of CMI's interest. This is referred to as the drag-along provision. Specifically, Article 6.10(a) of the Shareholders Agreement states:

Notwithstanding the other provisions of this Article 6, if an Insolvency Event occurs in respect of CanWest and is continuing, the GS Parties shall be entitled to sell all of their Shares to any *bona fide* Arm's Length third party or parties at a price and on other terms and conditions negotiated by GSCP in its discretion provided that such third party or parties acquires all of the Shares held by the CanWest Parties at the same price and on the same terms and conditions, and in such event, the CanWest Parties shall sell their Shares to such third party or parties at such price and on

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such terms and conditions. The Corporation and the CanWest Parties each agree to cooperate with and assist GSCP with the sale process (including by providing protected purchasers designated by GSCP with confidential information regarding the Corporation (subject to a customary confidentiality agreement) and with access to management).

[8] The Agreement also provided that 441 as shareholder could transfer its CW Investments Co. shares to its parent, CMI, at any time, by gift, assignment or otherwise, whether or not for value. While another specified entity could not be dissolved, no prohibition was placed on the dissolution of 441. 441 had certain voting obligations that were to be carried out at the direction of CMI. Furthermore, CMI was responsible for ensuring the performance by 441 of its obligations under the Shareholders Agreement.

[9] On October 5, 2009, pursuant to a Dissolution Agreement between 441 and CMI and as part of the winding-up and distribution of its property, 441 transferred all of its property, namely its 352,986 Class A shares and 666 Class B preferred shares of CW Investments Co., to CMI. CMI undertook to pay and discharge all of 441's liabilities and obligations. The material obligations were those contained in the Shareholders Agreement. At the time, 441 and CW Investments Co. were both solvent and CMI was insolvent. 441 was subsequently dissolved.

[10] For the purposes of these two motions only, the parties have agreed that the court should assume that the transfer and dissolution of 441 was intended by CMI to provide it with the benefit of all the provisions of the CCAA proceedings in relation to contractual obligations pertaining to those shares. This would presumably include both the stay provisions found in section 11 of the CCAA and the disclaimer provisions in section 32 .

[11] The CMI Entities state that CMI's interest in the Specialty TV Business is critical to the restructuring and recapitalization prospects of the CMI Entities and that if the GS parties were able to effect a sale of CW Investments Co. at this time, and on terms that suit them, it would be disastrous to the CMI Entities and their stakeholders. Even the overhanging threat of such a sale is adversely affecting the negotiation of a successful restructuring or recapitalization of the CMI Entities.

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[12] On October 6, 2009, I granted an Initial Order in these proceedings. CW Investments Co. was not an applicant. The CMI Entities requested a stay of proceedings to allow them to proceed to develop a plan of arrangement or compromise to implement a consensual "pre-packaged" recapitalization transaction. The CMI Entities and the Ad Hoc Committee of 8% Noteholders had agreed on terms of such a transaction that were reflected in a support agreement and term sheet. Those noteholders who support the term sheet have agreed to vote in favour of the plan subject to certain conditions one of which is a requirement that the Shareholders Agreement be amended.

[13] The Initial Order included the typical stay of proceedings provisions that are found in the standard form order promulgated by the Commercial List Users Committee. Specifically, the order stated:

15. THIS COURT ORDERS that until and including November 5, 2009, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the CMI Entities, the Monitor or the CMI CRA or affecting the CMI Business or the CMI Property, except with the written consent of the applicable CMI Entity, the Monitor and the CMI CRA (in respect of Proceedings affecting the CMI Entities, the CMI Property or the CMI Business), the CMI CRA (in respect of Proceedings affecting the CMI Entities, the CMI property or the CMI Business), the CMI CRA (in respect of Proceedings affecting the CMI CRA), or with leave of this Court, and any and all Proceedings currently under way against or in respect of the CMI Entities or the CMI CRA or affecting the CMI Business or the CMI Property are hereby stayed and suspended pending further Order of this Court. In the case of the CMI CRA, no Proceeding shall be commenced against the CMI CRA or its directors and officers without prior leave of this Court on seven (7) days notice to Stoncrest Capital Inc.

16. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the CMI Entities, the Monitor and/or the CMI CRA, or affecting the CMI Business or the CMI Property, are hereby stayed and suspended except with the written consent of the applicable CMI Entity, the Monitor and the CMI CRA (in respect

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of rights and remedies affecting the CMI Entities, the CMI Property or the CMI Business), the CMI CRA (in respect of rights or remedies affecting the CMI CRA), or leave of this Court, provided that nothing in this Order shall (i) empower the CMI Entities to carry on any business which the CMI Entities are not lawfully entitled to carry on, (ii) exempt the CMI Entities from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

[14] The GS parties were not given notice of the CCAA application. On November 2, 2009, they brought a motion that, among other things, seeks to set aside the transfer of the shares from 441 to CMI or, in the alternative, require CMI to perform and not disclaim the Shareholders Agreement as if the shares had not been transferred. On November 10, 2009 the GS parties purported to revive 441 by filing Articles of Revival with the Director of the CBCA. The CMI Entities were not notified nor was any leave of the court sought in this regard. In an amended notice of motion dated November 19, 2009 (the "main motion"), the GS Parties request an order:

- (a) Setting aside and declaring void the transfer of the shares from 441 to CMI;
- (b) declaring that the rights and remedies of the GS Parties in respect of the obligations of 441 under the Shareholders Agreement are not affected by these CCAA proceedings in any way whatsoever;
- (c) in the alternative to (a) and (b), an order directing CMI to perform all of the obligations that bound 441 immediately prior to the transfer;
- (d) in the alternative to (a) and (b), an order declaring that the obligations that bound 441 immediately prior to the transfer, may not be disclaimed by CMI pursuant to section 32 of the CCAA or otherwise; and
- (e) if necessary, a trial of the issues arising from the foregoing.

[15] They also requested an order amending paragraph 59 of the Initial Order but that issue has now been resolved and I am satisfied with the amendment proposed.



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[16] The CMI Entities then brought a motion on November 24, 2009 for an order that the GS motion is stayed. As in a game of chess, on December 3, 2009, the GS Parties served a cross-motion in which, if required, they seek leave to proceed with their motion.

[17] In furtherance of their main motion, the GS Parties have expressed a desire to examine 4 of the 5 members of the Special Committee of the Board of Directors of Canwest. That Committee was constituted, among other things, to oversee the restructuring. The GS Parties have also demanded an extensive list of documentary production. They also seek to impose significant discovery demands upon the senior management of CanWest.

#### Issues

[18] The issues to be determined on these motions are whether the relief requested by the GS Parties in their main motion is stayed based on the Initial Order and if so, whether the stay should be lifted. In addition, should the relief sought in paragraph 1(c) of the main motion be struck.

#### Positions of Parties

[19] In brief, the parties' positions are as follows. The CMI Entities submit that the GS Parties' motion is a "proceeding" that is subject to the stay under paragraph 15 of the Initial Order. In addition, the relief sought by them involves "the exercise of any right or remedy affecting the CMI Business or the CMI Property" which is stayed under paragraph 16 of the Initial Order. The stay is consistent with the purpose of the CCAA. They submit that the subject matter of the motion should be caught so as to prevent the GS parties from gaining an unfair advantage over other stakeholders of the CMI Entities and to ensure that the resources of the CMI Entities are devoted to developing a viable restructuring plan for the benefit of all stakeholders. They also state that CMI's interest in CW Investments Co. is a significant portion of its enterprise value. They state further that their actions were not in breach of the Shareholders Agreement and in any event, debtor companies are able to organize their affairs in order to benefit from the CCAA stay. Furthermore, any loss suffered by the GS Parties can be quantified.

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[20] In paragraph 1(e) of the main motion, the GS parties seek to prevent CMI from disclaiming the obligations of 441 that existed immediately prior to the transfer of the shares to CMI. If this relief is not stayed, the CMI Entities submit that it should be struck out pursuant to Rule 25.11(b) and (c) as premature and improper. They also argue that section 32 of the CCAA provides a procedure for disclaimer of agreements which the GS Parties improperly seek to circumvent.

[21] Lastly, the CMI Entities state that the bases on which a CCAA stay should be lifted are very limited. Most of the grounds set forth in *Re Canadian Airlines Corp.*<sup>1</sup> which support the lifting of a stay are manifestly inapplicable. As to prejudice, the GS parties are in no worse position than any other stakeholder who is precluded from relying on rights that arise on an insolvency default. In contrast, the prejudice to the CMI Entities would be debilitating and their resources need to be devoted to their restructuring. The GS Parties' rights would not be lost by the passage of time. The GS Parties' motion is all about leverage and a desire to improve the GS Parties' negotiating position submits counsel for the CMI Entities.

[22] The Ad Hoc Committee of Noteholders, as mentioned, supports the CMI Entities' position. In examining the context of the dispute, they submit that the Shareholders Agreement permitted and did not prohibit the transfer of 441's shares. Furthermore, the operative obligations in that agreement are obligations of CMI, not 441. It is the substance of the GS Parties' claims and not the form that should govern their ability to pursue them and it is clearly encompassed by the stay. The Committee relies on *Chef Ready Foods Ltd. v. Hongkong Bank of Canada*<sup>2</sup> in support of their position on timing.

[23] The Special Committee also supports the CMI Entities. It submits that the primary relief sought by the GS parties is a declaration that their contracts to and with CW Investments cannot or should not be disclaimed. The debate as to whether 441 could properly be assimilated into CMI is no more than an alternate argument as to why such disclaimer can or cannot occur. They state that the subject matter of the GS Parties' motion is premature.

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<sup>1</sup> (2000), 19 C.B.R. (4<sup>th</sup>) 1.

<sup>2</sup> [1990] B.C.J. No. 2385 (C.A.) at p. 4.

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[24] The GS Parties submit that the stay does not prevent parties affected by the CCAA proceedings from bringing motions within the CCAA proceedings themselves. The use of CCAA powers and the scope of the stay provided in the Initial Order and whether it applies to the GS Parties' motion are proper questions for the court charged with supervising the CCAA process. They also argue that the motion would facilitate negotiation between key parties, raises the important preliminary issue of the proper scope and application of section 32 of the CCAA, and avoids putting the Monitor in the impossible position of having to draw legal conclusions as to the scope of CMI's power to disclaim. The court should be concerned with pre-filing conduct including the reason for the share transfer, the timing, and CMI's intentions.

[25] Even if the stay is applicable, the GS parties submit that it should be lifted. In this regard, the court should consider the balance of convenience, the relative prejudice to parties, and where relevant, the merits of the proposed action. The court should also consider whether the debtor company has acted and is acting in good faith. The GS Parties were the medium by which the Specialty TV Business became part of Canwest. Here, all that is being sought is a reversal of the false and highly prejudicial start to these restructuring proceedings. It is necessary to take steps now to protect a right that could be lost by the passage of time. The transfer of the shares exhibited bad faith on the part of Canwest. 441 insulated CW Investments Co. and the Specialty TV Business from the insolvency of CMI and thereby protected the contractual rights of the GS Parties. The manifest harm to the GS Parties that invited the motion should be given weight in the court's balancing of prejudices. Concerns as to disruption of the restructuring process could be met by imposing conditions on the lifting of a stay as, for example, the establishment of a timetable.

#### Discussion

##### (a) Legal Principles

[26] First I will address the legal principles applicable to the granting and lifting of a CCAA stay.

[27] The stay provisions in the CCAA are discretionary and are extraordinarily broad. Section 11.02 (1) and (2) states:

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11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
- (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.

(2) 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.

[28] The underlying purpose of the court's power to stay proceedings has frequently been described in the case law. It is the engine that drives the broad and flexible statutory scheme of the CCAA: *Re Stelco Inc*<sup>3</sup> and the key element of the CCAA process: *Re Canadian Airlines Corp.*<sup>4</sup> The power to grant the stay is to be interpreted broadly in order to permit the CCAA to

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<sup>3</sup> (2005), 75 O.R. (3d) 5 (C.A.) at para. 36.

<sup>4</sup> (2000), 19 C.B.R. (4<sup>th</sup>) 1.

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accomplish its legislative purpose. As noted in *Re Lehndorff General Partner Ltd.*<sup>5</sup>, the power to grant a stay extends to effect the position of a company's secured and unsecured creditors as well as other parties who could potentially jeopardize the success of the restructuring plan and the continuance of the company. As stated by Farley J. in that case,

"It has been held that the intention of the CCAA is to prevent any manoeuvres for positioning among the creditors during the period required to develop a plan and obtain approval of creditors. Such manoeuvres could give an aggressive creditor an advantage to the prejudice of others who are less aggressive and would undermine the company's financial position making it even less likely that the plan will succeed.... The possibility that one or more creditors may be prejudiced should not affect the court's exercise of its authority to grant a stay of proceedings under the CCAA because this affect is offset by the benefit to all creditors and to the company of facilitating a reorganization. The court's primary concerns under the CCAA must be for the debtor and *all* of the creditors."<sup>6</sup>  
(Citations omitted)

[29] The all encompassing scope of the CCAA is underscored by section 8 of the Act which precludes parties from contracting out of the statute. See *Chef Ready Foods Ltd. v. Hongkong Bank of Canada*<sup>7</sup> in this regard.

[30] Two cases dealing with stays merit specific attention. *Campeau v. Olympia & York Developments Ltd.*<sup>8</sup> was a decision granted in the early stages of the evolution of the CCAA. In that case, the plaintiffs brought an action for damages including the loss of share value and loss of opportunity both against a company under CCAA protection and a bank. The statement of claim had been served before the company's CCAA filing. The plaintiff sought to lift the stay to proceed with its action. The bank sought an order staying the action against it pending the disposition of the CCAA proceedings. Blair J. examined the stay power described in the CCAA, section 106 of the Courts of Justice Act<sup>9</sup> and the court's inherent jurisdiction. He refused to lift the stay and granted the stay in favour of the bank until the expiration of the CCAA stay period. Blair J. stated that the plaintiff's claims may be addressed more expeditiously in the CCAA

<sup>5</sup> (1993), 17 C.B.R. (e3d) 24.

<sup>6</sup> *Ibid.*, at p. 32.

<sup>7</sup> *Supra*, note 2

<sup>8</sup> (1992) 14 C.B.R. (3d) 303.

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proceeding itself.<sup>10</sup> Presumably this meant through a claims process and a compromise of claims. The CCAA stay precludes the litigating of claims comparable to the plaintiff's in *Campeau*. If it were otherwise, the stay would have no meaningful impact.

[31] The decision of *Chef Ready Foods Ltd. v. Hongkong Bank of Canada* is also germane to the case before me. There, the Bank demanded payment from the debtor company and thereafter the debtor company issued instant trust deeds to qualify for protection under the CCAA. The bank commenced proceedings on debenture security and the next day the company sought relief under the CCAA. The court stayed the bank's enforcement proceedings. The bank appealed the order and asked the appellate court to set aside the stay order insofar as it restrained the bank from exercising its rights under its security. The B.C. Court of Appeal refused to do so having regard to the broad public policy objectives of the CCAA.

[32] As with the imposition of a stay, the lifting of a stay is discretionary. There are no statutory guidelines contained in the Act. According to Professor R.H. McLaren in his book "Canadian Commercial Reorganization: Preventing Bankruptcy"<sup>11</sup>, an opposing party faces a very heavy onus if it wishes to apply to the court for an order lifting the stay. In determining whether to lift the stay, the court should consider whether there are sound reasons for doing so consistent with the objectives of the CCAA, including a consideration of the balance of convenience, the relative prejudice to parties, and where relevant, the merits of the proposed action: *ICR Commercial Real Estate (Regina) Ltd. v. Bricore Land Group Ltd.*<sup>12</sup>. That decision also indicated that the judge should consider the good faith and due diligence of the debtor company.<sup>13</sup>

[33] Professor McLaren enumerates situations in which courts will lift a stay order. The first six were cited by Paperny J. in 2000 in *Re Canadian Airlines Corp.*<sup>14</sup> and Professor McLaren has added three more since then. They are:

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<sup>9</sup> R.S.O. 1990, c.C.43.

<sup>10</sup> Supra, note 6 at paras. 24 and 25.

<sup>11</sup> (Aurora: Canada Law Book, looseleaf) at para. 3.3400.

<sup>12</sup> (2007), 33 C.B.R. (5<sup>th</sup>) 50 (Sask. C.A.) at para. 68.

<sup>13</sup> Ibid, at para. 68.

<sup>14</sup> Supra, note 3.

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1. When the plan is likely to fail.
2. The applicant shows hardship (the hardship must be caused by the stay itself and be independent of any pre-existing condition of the applicant creditor).
3. The applicant shows necessity for payment (where the creditors' financial problems are created by the order or where the failure to pay the creditor would cause it to close and thus jeopardize the debtor's company's existence).
4. The applicant would be significantly prejudiced by refusal to lift the stay and there would be no resulting prejudice to the debtor company or the positions of creditors.
5. It is necessary to permit the applicant to take steps to protect a right which could be lost by the passing of time.
6. After the lapse of a significant time period, the insolvent is no closer to a proposal than at the commencement of the stay period.
7. There is a real risk that a creditor's loan will become unsecured during the stay period.
8. It is necessary to allow the applicant to perfect a right that existed prior to the commencement of the stay period.
9. It is in the interests of justice to do so.

(b) Application

[34] Turning then to an application of all of these legal principles to the facts of the case before me, I will first consider whether the subject matter of the main motion of the GS Parties is captured by the stay and then will address whether the stay should be lifted.

[35] In analyzing the applicability of the stay, I must examine the substance of the main motion of the GS Parties and the language of the stay found in paragraphs 15 and 16 of my Initial Order.

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[36] In essence, the GS Parties' motion seeks to:

- (i) undo the transfer of the CW Investments Co. shares from 441 to CMI or
- (ii) require CMI to perform and not disclaim the Shareholders Agreement as though the shares had not been transferred.

[37] It seems to me that the first issue is caught by the stay of proceedings and the second issue is properly addressed if and when CMI seeks to disclaim the Shareholders Agreement.

[38] The substance of the GS Parties' motion is a "proceeding" that is subject to the stay under paragraph 15 of the Initial Order which prohibits the commencement of all proceedings against or in respect of the CMI Entities, or affecting the CMI Business or the CMI Property. The relief sought would also involve "the exercise of any right or remedy affecting the CMI Business or the CMI Property" which is stayed under paragraph 16 of the Initial Order.

[39] When one examines the relief requested in detail, the application of the stay is clear. The GS Parties ask first for an order setting aside and declaring void the transfer of the shares from 441. As the shares have been transferred to the CMI Entities presumably pursuant to section 6.5(a) of the Shareholders Agreement, this is relief "affecting the CMI Property". Secondly, the GS Parties ask for a declaration that the rights and remedies of the GS Parties in respect of the obligations of 441 are not affected by the CCAA proceedings. This relief would permit the GS Parties to require CMI to tender the shares for sale pursuant to section 6.10 of the Shareholders Agreement. This too is relief affecting the CMI Entities and the CMI Property. Thirdly, they ask for an order directing CMI to perform all of the obligations that bound 441 prior to the transfer. This represents the exercise of a right or remedy against CMI and would affect the CMI Business and CMI Property in violation of paragraph 16 of the Initial Order. This is also stayed by virtue of paragraph 15. Fourthly, the GS Parties seek an order declaring that the obligations that bound 441 prior to the transfer may not be disclaimed. This both violates paragraph 16 of the Initial Order and also seeks to avoid the express provisions contained in the recent amendments to the CCAA that address disclaimer.



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[40] Accordingly, the substance and subject matter of the GS Parties' motion are certainly encompassed by the stay. As Mr. Barnes for the CMI Entities submitted, had CMI taken the steps it did six months ago and the GS Parties commenced a lawsuit, the action would have been stayed. Certainly to the extent that the GS Parties are seeking the freedom to exercise their drag along rights, these rights should be captured by the stay.

[41] The real question, it seems to me, is whether the stay should be lifted in this case. In considering the request to lift the stay, it is helpful to consider the context and the provisions of the Shareholders Agreement. In his affidavit sworn November 24, 2009, Mr. Strike, the President of Corporate Development & Strategy Implementation of Canwest Global and its Recapitalization Officer, states that the joint acquisition from Alliance Atlantis was intensely and very carefully negotiated by the parties and that the negotiation was extremely complex and difficult. "Every aspect of the deal was carefully scrutinized, including the form, substance and precise terms of the Initial Shareholders Agreement." The Shareholders Agreement was finalized following the CRTC approval hearing. Among other things:

- Article 2.2 (b) provides that CMI is responsible for ensuring the performance by 441 of its obligations under the Shareholders Agreement.
- Article 6.1 contains a restriction on the transfer of shares.
- Article 6.5 addresses permitted transfers. Subsection (a) expressly permits each shareholder to transfer shares to a parent of the shareholder. CMI was the parent of the shareholder, 441.
- Article 6.10 provides that notwithstanding the other provisions of Article 6, if an insolvency event occurs (which includes the commencement of a CCAA proceeding), the GS Parties may sell their shares and cause the Canwest parties to sell their shares on the same terms. This is the drag along provision.
- Article 6.13 prohibits the liquidation or dissolution of another company<sup>15</sup> without the prior written consent of one of the GS Parties<sup>16</sup>.

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<sup>15</sup> This was 4414641 Canada Inc. but not 4414616 Canada Inc., the company in issue before me.

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[42] The recital of these provisions and the absence of any prohibition against the dissolution of 441 indicate that there is a good arguable case that the Shareholders Agreement, which would inform the reasonable expectations of the parties, permitted the transfer and dissolution.

[43] The GS Parties are in no worse position than any other stakeholder who is precluded from relying on rights that arise upon an insolvency default. As stated in *San Francisco Gifts Ltd.*<sup>17</sup>:

“The Initial Order enjoined all of San Francisco’s landlords from enforcing contractual insolvency clauses. This is a common prohibition designed, at least in part, to avoid a creditor frustrating the restructuring by relying on a contractual breach occasioned by the very insolvency that gave rise to proceedings in the first place.”<sup>18</sup>

[44] Similarly, in *Norcen Energy Resources Ltd.*<sup>19</sup>, one of the debtor’s joint venture partners in certain petroleum operations was unable to rely on an insolvency clause in an agreement that provided for the immediate replacement of the operator if it became bankrupt or insolvent.

[45] If the stay were lifted, the prejudice to CMI would be great and the proceedings contemplated by the GS Parties would be extraordinarily disruptive. The GS Parties have asked to examine 4 of the 5 members of the Special Committee. The Special Committee is a committee of the Board of Directors of Canwest. Its mandate includes, among other things, responsibility for overseeing the implementation of a restructuring with respect to all, or part of the business and/or capital structure of Canwest. The GS Parties have also requested an extensive list of documentary production including all documents considered by the Special Committee and any member of that Committee relating to the matters at issue; all documents considered by the Board of Directors and any member of the Board of Directors relating to the matters at issue; all documents evidencing the deliberations, discussions and decisions of the Special Committee and the Board of Directors relating to the matters at issue; all documents relating to the matters at issue sent to or received by Leonard Asper, Derek Burney, David Drybrough, David Kerr,

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<sup>16</sup> Specifically, GS Capital Partners V1 Fund, L.P.

<sup>17</sup> 5 C.B.R. (5<sup>th</sup>) 92 at para.37.

<sup>18</sup> *Ibid.*, at para. 37.

<sup>19</sup> (1988), 72 C.B.R. (N.S.) 1.

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Richard Leipsic, John Maguire, Margot Micillef, Thomas Strike, and Hap Stephen, the Chief Restructuring Advisor appointed by the court. As stated by Mr. Strike in his affidavit sworn November 24, 2009,

"The witnesses that the GS Parties propose to examine include the most senior executives of the CMI Entities; those who are most intensely involved in the enormously complex process of achieving a successful going concern restructuring or recapitalization of the CMI Entities. Myself, Mr. Stephen, Mr. Maguire and the others are all working flat out on trying to achieve a successful restructuring or recapitalization of the CMI Entities. Frankly, the last thing we should be doing at this point is preparing for a forensic examination, in minute detail, over events that have taken place over the past several months. At this point in the restructuring/recapitalization process, the proposed examination would be an enormous distraction and would significantly prejudice the CMI Entities' restructuring and recapitalization efforts."

[46] While Mr. McElcheran for the GS Parties submits that the examinations and the scope of the examinations could be managed, in my view, the litigating of the subject matter of the motion would undermine the objective of protecting the CMI Entities while they attempt to restructure. The GS Parties continue to own their shares in CW Investments Co. as does CMI. CMI continues to operate the Specialty TV Business. Furthermore, CMI cannot sell the shares without the involvement of the Monitor and the court. None of these facts have changed. The drag along rights are stayed (although as Mr. McElcheran said, it is the cancellation of those rights that the GS Parties are concerned about.)

[47] A key issue will be whether the CMI Parties can then disclaim that Agreement or whether they should be required to perform the obligations which previously bound 441. This issue will no doubt arise if and when the CMI Entities seek to disclaim the Shareholders Agreement. It is premature to address that issue now. Furthermore, section 32 of the CCAA now provides a detailed process for disclaimer. It states:

32.(1) Subject to subsections (2) and (3), a debtor company may — on notice given in the prescribed form and manner to the other parties to the agreement and the monitor — disclaim or resiliate any agreement to which the company is a party on the day on

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which proceedings commence under this Act. The company may not give notice unless the monitor approves the proposed disclaimer or resiliation.

(2) Within 15 days after the day on which the company gives notice under subsection (1), a party to the agreement may, on notice to the other parties to the agreement and the monitor, apply to a court for an order that the agreement is not to be disclaimed or resiliated.

(3) If the monitor does not approve the proposed disclaimer or resiliation, the company may, on notice to the other parties to the agreement and the monitor, apply to a court for an order that the agreement be disclaimed or resiliated.

(4) In deciding whether to make the order, the court is to consider, among other things,

- (a) whether the monitor approved the proposed disclaimer or resiliation;
- (b) whether the disclaimer or resiliation would enhance the prospects of a viable compromise or arrangement being made in respect of the company; and
- (c) whether the disclaimer or resiliation would likely cause significant financial hardship to a party to the agreement.

[48] Section 32, therefore, provides the scheme and machinery for the disclaimer of an agreement. If the monitor approves the disclaimer, another party may contest it. If the monitor does not approve the disclaimer, permission of the court must be obtained. It seems to me that the issues surrounding any attempt at disclaimer in this case should be canvassed on the basis mandated by Parliament in section 32 of the amended Act.

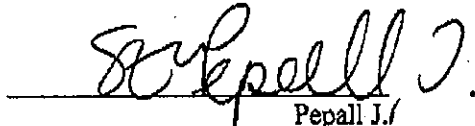
[49] In my view, the balance of convenience, the assessment of relative prejudice and the relevant merits favour the position of the CMI Entities on this lift stay motion. As to the issue of good faith, the question is whether, absent more, one can infer a lack of good faith based on the facts outlined in the materials filed including the agreed upon admission by the CMI Entities. The onus to lift the stay is on the moving party. I decline to exercise my discretion to lift the stay on this basis.

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[50] Turning then to the factors listed by Professor McLaren, again I am not persuaded that based on the current state of affairs, any of the factors are such that the stay should be lifted. In light of this determination, there is no need to address the motion to strike paragraph 1(e) of the GS Parties' main motion.

[51] The stay of proceedings in this case is performing the essential function of keeping stakeholders at bay in order to give the CMI Entities a reasonable opportunity to develop a restructuring plan. The motions of the GS Parties are dismissed (with the exception of that portion dealing with paragraph 59 of the Initial Order which is on consent) and the motion of the CMI Entities is granted with the exception of the strike portion which is moot.

[52] The Monitor, reasonably in my view, did not take a position on these motions. Its counsel, Mr. Byers, advised the court that the Monitor was of the view that a commercial resolution was the best way to resolve the GS Parties' issues. It is difficult to disagree with that assessment.

  
Pepall J./

DATE: December 15, 2009



Court File No. CV-09-8396-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE

)

TUESDAY, THE 6<sup>TH</sup> DAY

)

MADAM JUSTICE PEPALL

)

OF OCTOBER, 2009

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

INITIAL ORDER

THIS APPLICATION, made by Canwest Global Communications Corp. ("Canwest Global") and the other applicants listed on Schedule "A" hereto (collectively, the "Applicants"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of John Maguire sworn October 5, 2009 and the Exhibits thereto (the "Maguire Affidavit") and the Report of the Proposed Monitor, FTI Consulting Canada Inc. ("FTI Consulting") (the "Monitor's Pre-Filing Report"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants and the partnerships listed on Schedule "B" hereto (the "Partnerships" and collectively with the Applicants, the "CMI Entities"), the Special Committee of the Board of Directors of Canwest Global (the "Special Committee"), FTI Consulting, the *ad hoc* committee (the "Ad Hoc Committee") of holders of 8% senior subordinated notes issued by Canwest Media Inc.

(“CMI”), CIT Business Credit Canada Inc. (“CIT”) and the management directors of the Applicants (the “**Management Directors**”), and on reading the consent of FTI Consulting to act as the Monitor.

### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof.

### **APPLICATION**

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies. Although not Applicants, the Partnerships shall enjoy the benefits of the protections provided to the Applicants by this Order.

### **PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that one or more of the Applicants, individually or collectively, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**CMI Plan**”) between, *inter alia*, one or more of the CMI Entities and one or more classes of their applicable secured and/or unsecured creditors as the Applicants deem appropriate.

### **POSSESSION OF CMI PROPERTY AND OPERATIONS**

4. THIS COURT ORDERS that the CMI Entities shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively, the “**CMI Property**”). Subject to further Order of this Court, the CMI Entities shall each continue to carry on business in a manner consistent with the preservation of their respective businesses (collectively, the “**CMI Business**”) and the CMI Property. The CMI Entities shall each be authorized and empowered to continue to retain and employ the employees, advisors,

consultants, agents, experts, appraisers, valuers, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order, subject to the provisions on the payment of Assistants set forth in paragraph 7 hereof.

5. THIS COURT ORDERS that the CMI Entities shall be entitled to continue to utilize the CMI Entities' centralized cash management system currently in place, as described in the Maguire Affidavit, or replace it with another substantially similar centralized cash management system satisfactory to the CMI DIP Lender (as defined below) (the "CMI Cash Management System"). Any present or future bank providing the CMI Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken thereunder, or as to the use or application by the CMI Entities of funds transferred, paid, collected or otherwise dealt with in the CMI Cash Management System, shall be entitled to provide the CMI Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the CMI Entities, pursuant to the terms of the documentation applicable to the CMI Cash Management System, and shall be, in its capacity as provider of the CMI Cash Management System, an unaffected creditor under the CMI Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the CMI Cash Management System.

6. THIS COURT ORDERS that the CMI Entities and the LP Entities (as defined in the Maguire Affidavit) shall continue to provide and pay for the Shared Services, as defined in the Maguire Affidavit, to each other and their other affiliated and related entities, in accordance with current arrangements, payment terms and business practises, except as to payment terms which may be amended to provide for revised timing of reconciliations, with such amendments to be subject to the approval of the CMI CRA (as defined below) and the prior consent of the Monitor or further Order of the Court. Notwithstanding any other provision in this Order, neither the CMI Entities nor the LP Entities shall modify, cease providing or terminate the provision of or payment for the Shared Services except with the consent of the other party receiving such Shared Services, the approval of the CMI CRA and the prior consent of the Monitor or further Order of



this Court, except with respect to portions of the CMI Business which may be shut down or reorganized in the manner contemplated by the Term Sheet attached to the Support Agreement (as defined below) attached as part of Exhibit "O" to the Maguire Affidavit.

7. THIS COURT ORDERS that, subject to availability under the CMI DIP Facility and the CMI DIP Definitive Documents (both as hereinafter defined) and subject to the applicable cash flow forecast approved by the Consenting Noteholders (as defined below) in accordance with the Use of Collateral and Consent Agreement (as defined below) (the "**Approved Cash Flow**"), the CMI Entities shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order, to the extent that such expenses are incurred or payable by the CMI Entities:

- (a) all outstanding and future wages, salaries and employee benefits (including, but not limited to, employee medical, dental, disability, life insurance and similar benefit plans or arrangements, incentive plans, share compensation plans and employee assistance programs and employee or employer contributions in respect of pension and other benefits), current service, special and similar pension and/or retirement benefit payments, vacation pay, commissions, bonuses and other incentive payments, payments under collective bargaining agreements, and employee and director expenses and reimbursements, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) compensation to employees in respect of any payments made to employees prior to the date of this Order by way of the issuance of cheques or electronic transfers that are subsequently dishonoured due to the commencement of these proceedings;
- (c) with the prior consent of the Monitor, all outstanding and future amounts owing to or in respect of individuals working as independent contractors or freelancers in connection with the CMI Business;

- (d) the reasonable fees and disbursements of any Assistants retained or employed by the CMI Entities in respect of these proceedings, at their standard rates and charges, including any payments made to Assistants prior to the date of this Order by way of the issuance of cheques or electronic transfers that are subsequently dishonoured due to the commencement of these proceedings;
- (e) any and all sums due and owing to Amex Bank of Canada (“**American Express**”), including, without limitation, amounts due and owing by the CMI Entities to American Express in respect of the Corporate Card Program and Central Billed Accounts Program as described in the Maguire Affidavit;
- (f) amounts owing for goods and services actually supplied to the CMI Entities, or to obtain the release of goods contracted for prior to the date of this Order:
  - (i) by distributors, broadcasting and/or production studios, suppliers or other entities, for television programming and other related products, with the prior consent of the Monitor, if, in the opinion of the CMI Entities, the supplier is critical to the business and ongoing operations of any of the CMI Entities;
  - (ii) by newsprint suppliers, newspaper distributors and other logistics suppliers, with the prior consent of the Monitor, if, in the opinion of the National Post Company, the supplier is critical to the business and ongoing operations of the National Post Company; and
  - (iii) by other suppliers, with the prior consent of the Monitor, if, in the opinion of the CMI Entities, the supplier is critical to the CMI Business and ongoing operations of any of the CMI Entities.

8. THIS COURT ORDERS that, subject to availability under the CMI DIP Facility and the CMI DIP Definitive Documents and subject to the Approved Cash Flow, and except as otherwise provided to the contrary herein, the CMI Entities shall be entitled but not required to pay all

reasonable expenses incurred by them in carrying on the CMI Business in the ordinary course from and after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the CMI Property or the CMI Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services;
- (b) payment, including the posting of letters of credit, for goods or services actually supplied or to be supplied to the CMI Entities following the date of this Order; and
- (c) payment of fees to the Canadian Radio-television and Telecommunications Commission, stock exchange listing fees and other regulatory or license fees necessary for the preservation of the CMI Property or the CMI Business,

For greater certainty, the CMI Entities shall not make any payments to or in satisfaction of any liabilities or obligations of the LP Entities, save and except for payments in respect of the Shared Services as contemplated herein.

9. THIS COURT ORDERS that the CMI Entities shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the CMI Entities' employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the CMI Entities in connection with the sale of goods and services by the CMI Entities, but only where such Sales Taxes are accrued or

collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers' compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the CMI Business by the CMI Entities.

10. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with paragraph 12(c) of this Order, the CMI Entities shall pay all amounts constituting rent or payable as rent under their respective real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the applicable CMI Entity and the relevant landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid. Upon delivery of a notice of disclaimer or resiliation, the relevant CMI Entity shall pay all Rent owing by the applicable CMI Entity to the applicable landlord in respect of such lease due for the notice period stipulated in Section 32 of the CCAA, to the extent that Rent for such period has not already been paid.

11. THIS COURT ORDERS that, except as specifically permitted herein, the CMI Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any one of the CMI Entities to any of their creditors as of this date; (b) to grant no security interests, trusts, liens, charges or encumbrances upon or in respect of any of the CMI Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the CMI Business.

**RESTRUCTURING**

12. THIS COURT ORDERS that the CMI Entities shall, subject to such requirements as are imposed by the CCAA, subject to consulting with the CMI CRA, and subject to the terms of the Use of Collateral and Consent Agreement, the Support Agreement (as defined below), the CMI DIP Facility and the CMI DIP Definitive Documents, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their respective businesses or operations, to dispose of redundant or non-material assets, and to sell assets or operations not exceeding \$1,000,000 in any one transaction or \$5,000,000 in the aggregate, subject to paragraph 12(e), if applicable; SWP -
- (b) terminate the employment of such of their employees or lay off or temporarily or indefinitely lay off such of their employees as the relevant CMI Entity deems appropriate on such terms as may be agreed upon between the relevant CMI Entity and such employee, or failing such agreement, to deal with the consequences thereof in the CMI Plan; ✓ (e) ✓
- (c) in accordance with paragraphs 13 and 14, with the prior consent of the Monitor or further Order of the Court, vacate, abandon or quit the whole but not part of any leased premises and/or disclaim or resiliate any real property lease and any ancillary agreements relating to any leased premises, in accordance with Section 32 of the CCAA, on such terms as may be agreed upon between the relevant CMI Entity and such landlord, or failing such agreement, to deal with the consequences thereof in the CMI Plan;
- (d) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor or further Order of the Court, such of their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the CMI Entities deem appropriate, in accordance with Section 32 of the CCAA, with such disclaimers or resiliations to be on such terms as may be agreed upon between the relevant CMI Entity and such counter-parties, or failing such agreement, to deal with the

consequences thereof in the CMI Plan, provided that the CMI Entities shall not be entitled to disclaim or resiliate, in whole or in part, the Use of Collateral and Consent Agreement or the Support Agreement; and

- (e) pursue all avenues of refinancing and offers for material parts of the CMI Business or the CMI Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing or any sale (except as permitted by subparagraph (a), above),

all of the foregoing to permit the CMI Entities to proceed with an orderly restructuring of the CMI Business.

13. THIS COURT ORDERS that the CMI Entities shall provide each of the relevant landlords with notice of the relevant CMI Entity's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the CMI Entity's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant CMI Entity, or by further Order of this Court upon application by the relevant CMI Entity on at least two (2) days notice to such landlord and any such secured creditors. If a CMI Entity disclaims or resiliates the lease governing such leased premises in accordance with paragraph 12(c) of this Order, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the CMI Entity's claim to the fixtures in dispute.

14. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered by a CMI Entity, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the relevant landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant CMI Entity and the Monitor 24 hours' prior

written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the CMI Entity in respect of such lease or leased premises and such landlord shall be entitled to notify the CMI Entity of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE CMI ENTITIES OR THE CMI PROPERTY**

15. THIS COURT ORDERS that until and including November 5, 2009, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the CMI Entities, the Monitor or the CMI CRA or affecting the CMI Business or the CMI Property, except with the written consent of the applicable CMI Entity, the Monitor and the CMI CRA (in respect of Proceedings affecting the CMI Entities, the CMI Property or the CMI Business), the CMI CRA (in respect of Proceedings affecting the CMI CRA), or with leave of this Court, and any and all Proceedings currently under way against or in respect of the CMI Entities or the CMI CRA or affecting the CMI Business or the CMI Property are hereby stayed and suspended pending further Order of this Court. In the case of the CMI CRA, no Proceeding shall be commenced against the CMI CRA or its directors and officers without prior leave of this Court on seven (7) days notice to Stonecrest Capital Inc.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

16. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the CMI Entities, the Monitor and/or the CMI CRA, or affecting the CMI Business or the CMI Property, are hereby stayed and suspended except with the written consent of the applicable CMI

Entity, the Monitor and the CMI CRA (in respect of rights and remedies affecting the CMI Entities, the CMI Property or the CMI Business), the CMI CRA (in respect of rights or remedies affecting the CMI CRA), or leave of this Court, provided that nothing in this Order shall (i) empower the CMI Entities to carry on any business which the CMI Entities are not lawfully entitled to carry on, (ii) exempt the CMI Entities from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

17. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the CMI Entities, except with the written consent of the relevant CMI Entity and upon consultation with the CMI CRA and the consent of the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

18. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with a CMI Entity or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all programming supply, computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the CMI Business or a CMI Entity, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the CMI Entities, and that the CMI Entities shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the CMI Entities in accordance with normal payment practices of the CMI Entities or such other practices as may be agreed upon by the supplier or service provider and the applicable



CMI Entity (upon consultation with the CMI CRA) and the consent of the Monitor, or as may be ordered by this Court.

### **NON-DEROGATION OF RIGHTS**

19. THIS COURT ORDERS that, notwithstanding anything else contained herein, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the CMI Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

20. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers (or their estates) of the Applicants with respect to any claim against such directors or officers that arose before the date hereof and that relates to any obligations of the CMI Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the CMI Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the CMI Entities or this Court.

### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

21. THIS COURT ORDERS that the Applicants shall jointly and severally indemnify their directors and officers from all claims, costs, charges and expenses relating to the failure of any of the CMI Entities, after the date hereof, to (i) make payments in respect of the CMI Entities of the nature referred to in subparagraphs 7(a), 9(a), 9(b) and 9(c) of this Order, and (ii) make payments of amounts in respect of the CMI Entities for which the directors and officers are statutorily liable, which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants except to the extent that, with respect to any officer or

director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct. For greater certainty, the indemnity provided by this paragraph 21 shall not indemnify such directors or officers from any costs, claims, charges, expenses or liabilities properly attributable to the LP Entities.

22. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**CMI Directors' Charge**") on the CMI Property, which charge shall not exceed an aggregate amount of \$20,000,000, as security for the indemnity provided in paragraph 21 of this Order. The CMI Directors' Charge shall have the priority set out in paragraphs 55 and 57 herein.

23. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary (a) no insurer shall be entitled to be subrogated to or claim the benefit of the CMI Directors' Charge and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Director's Charge to the extent they do not have coverage under a directors and officers insurance policy.

24. THIS COURT ORDERS that, notwithstanding any other provision of this Order, the terms and conditions with respect to any release and discharge of the Charges (as defined herein) shall be satisfactory to the CMI Entities, the Management Directors (with respect to the CMI Directors' Charge), the Monitor and the Ad Hoc Committee.

#### **APPOINTMENT OF MONITOR**

25. THIS COURT ORDERS that FTI Consulting is hereby appointed pursuant to the CCAA as the Monitor of the CMI Entities, an officer of this Court, to monitor the CMI Property and the CMI Entities' conduct of the CMI Business with the powers and obligations set out in the CCAA and as set forth herein and that the CMI Entities and their shareholders, officers, directors and Assistants shall advise the Monitor of all material steps taken by the CMI Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

26. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the CMI Entities' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the CMI Entities, the CMI Property, the CMI Business, and such other matters as may be relevant to the proceedings herein; *and with respect to any payments made pursuant to paragraph 7(f)(iii) herein;* <sup>MF</sup>
- (c) assist the CMI Entities, to the extent required by the CMI Entities, in their dissemination to the CMI DIP Lender, the Ad Hoc Committee and their respective counsel of financial and other information, as agreed to between the CMI Entities and the CMI DIP Lender or the Ad Hoc Committee, as applicable, which may be used in these proceedings, including reporting on a weekly basis to the CMI DIP Lender and the Ad Hoc Committee;
- (d) advise the CMI Entities in their preparation of the CMI Entities' cash flow statements and reporting required by the CMI DIP Lender and the Ad Hoc Committee, which information shall be reviewed with the Monitor and delivered to the CMI DIP Lender, the Ad Hoc Committee and their respective counsel in compliance with the CMI DIP Definitive Documents, or as otherwise agreed to by the CMI DIP Lender or the Ad Hoc Committee, as applicable;
- (e) assist the CMI CRA in the performance of its duties as set out in the CMI CRA Agreement (as defined below);
- (f) advise the CMI Entities in their development and implementation of the CMI Plan and any amendments to the CMI Plan;
- (g) assist the CMI Entities, to the extent required by the CMI Entities, with the holding and administering of creditors' or shareholders' meetings for voting on the CMI Plan, as applicable;

- (h) have full and complete access to the CMI Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the CMI Entities, to the extent that is necessary to adequately assess the CMI Entities' business and financial affairs or to perform its duties arising under this Order;
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (j) monitor and, if necessary, report to the Court on any matters pertaining to the provision of the Shared Services in accordance with paragraph 6 of this Order; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

27. THIS COURT ORDERS that the Monitor shall not take possession of the CMI Property and shall take no part whatsoever in the management or supervision of the management of the CMI Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the CMI Business or the CMI Property, or any part thereof.

28. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the CMI Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing

herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the CMI Property within the meaning of any Environmental Legislation, unless it is actually in possession.

29. THIS COURT ORDERS that the Monitor shall provide any creditor of a CMI Entity with information provided by the CMI Entity in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by a CMI Entity is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the applicable CMI Entity may agree.

30. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to any of the CMI Entities, counsel and the financial advisor to the Special Committee, counsel to the Management Directors, RBC Dominion Securities Inc. (the "Financial Advisor"), counsel to the Ad Hoc Committee and the financial advisor to the Ad Hoc Committee (together with counsel to the Ad Hoc Committee, the "**Committee Advisors**") shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by any of the CMI Entities, to the extent that such fees and disbursements relate to services provided to the CMI Entities or, in the case of the Committee Advisors, to the Ad Hoc Committee, as part of the costs of these proceedings. FTI Consulting, the Financial Advisor, counsel to FTI Consulting, counsel to the CMI Entities, counsel and the financial advisor to the Special Committee and counsel to the Management Directors shall keep

separate accounts for services provided in respect of the CMI Entities and any services provided in respect of entities other than the CMI Entities. The CMI Entities are hereby authorized and directed to pay the accounts of the Monitor, the Financial Advisor, counsel to the Monitor, counsel to the CMI Entities, counsel and the financial advisor to the Special Committee, counsel to the Management Directors and the Committee Advisors on a weekly basis to the extent that such accounts relate to services provided to the CMI Entities, or, in the case of the Committee Advisors, the Ad Hoc Committee. The CMI Entities shall not be liable for and shall not pay any expenses, fees, disbursements or retainers of the Monitor, counsel to the Monitor, counsel to the LP Entities, counsel and the financial advisor to the Special Committee, counsel to the Management Directors or the Financial Advisor, to the extent that such expenses, fees, disbursements or retainers are not attributable to the CMI Entities.

32. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

33. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the CMI Entities, counsel and the financial advisor to the Special Committee, counsel to the Management Directors, the CMI CRA, the Financial Advisor and the Committee Advisors shall be entitled to the benefit of and are hereby granted a charge on the CMI Property (the "**CMI Administration Charge**"), which charge shall not exceed an aggregate amount of \$15,000,000 as security for their reasonable professional fees and disbursements incurred at their respective standard rates and charges in respect of such services, both before and after the making of this Order in respect of these proceedings. The CMI Administration Charge shall have the priority set out in paragraphs 55 and 57 hereof.

#### **CHIEF RESTRUCTURING ADVISOR**

34. THIS COURT ORDERS that Hap S. Stephen be and is hereby appointed as Chief Restructuring Advisor of the CMI Entities in accordance with the terms and conditions of the agreement entered into between Canwest Global and Stonecrest Capital Inc. ("**Stonecrest**"),

collectively referred to herein with Hap S. Stephen as the “CMI CRA”) dated June 30, 2009 (as amended, the “CMI CRA Agreement”), effective as of the date of this Order.

35. THIS COURT ORDERS that the CMI CRA Agreement is hereby approved and given full force and effect and the CMI CRA is hereby authorized to retain counsel as set out in the CMI CRA Agreement.

36. THIS COURT ORDERS that the CMI Entities are authorized and directed to continue the engagement of the CMI CRA on the terms and conditions set out in the CMI CRA Agreement.

37. THIS COURT ORDERS that the CMI CRA shall not be or be deemed to be a director, officer or employee of any of the CMI Entities.

38. THIS COURT ORDERS that the CMI CRA and its directors and officers shall incur no liability or obligation as a result of Hap S. Stephen’s appointment pursuant to this Order, or the provision of services pursuant to the CMI CRA Agreement, save and except as may result from gross negligence or wilful misconduct on the part of the CMI CRA.

39. THIS COURT ORDERS that (i) the indemnification obligations of Canwest Global in favour of the CMI CRA and its officers and directors set out in the CMI CRA Agreement; and (ii) the payment obligations set out in the CMI CRA Agreement shall be entitled to the benefit of and form part of the CMI Administration Charge set out herein.

40. THIS COURT ORDERS that any claims of the CMI CRA under the CMI CRA Agreement shall be treated as unaffected in any plan of compromise or arrangement filed by the CMI Entities under the CCAA, any proposal filed by the CMI Entities under the *Bankruptcy and Insolvency Act of Canada* (the “BIA”) or any other restructuring.

#### **DIP FINANCING**

41. THIS COURT ORDERS that the Credit Agreement dated as of May 22, 2009 and amended as of June 15, 2009, June 30, 2009, July 17, 2009, July 31, 2009, August 14, 2009,

August 31, 2009, September 11, 2009 and September 23, 2009 (as so amended, the "**CIT Credit Agreement**") between CMI, the Guarantors party thereto and CIT as agent and lender be and are hereby approved. For greater certainty, references herein to CIT shall include any permitted assignee pursuant to the CIT Credit Agreement.

42. THIS COURT ORDERS that the CMI Entities are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, pledges, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, and including the CIT Credit Agreement, the "**CMI DIP Definitive Documents**"), as are contemplated by the CIT Credit Agreement or as may be reasonably required by the CIT Credit Agreement, and all CMI DIP Definitive Documents executed and delivered prior to the date hereof be and are hereby approved. The CMI Entities are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations under and pursuant to the CMI DIP Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

43. THIS COURT ORDERS that the credit facility provided under the CIT Credit Agreement be and is hereby converted into a debtor-in-possession financing arrangement (the "**CMI DIP Facility**") in accordance with the terms of the CIT Credit Agreement, provided that the aggregate principal amount of all borrowings under the CMI DIP Facility shall not exceed \$100,000,000. The CMI DIP Facility shall be on the terms and subject to the conditions set forth in the CIT Credit Agreement as attached to the Maguire Affidavit as Exhibit "F", as the CIT Credit Agreement may be amended from time to time upon the written agreement of the parties thereto. CIT, in its capacity as lender under the CMI DIP Facility, shall be referred to herein as the CMI DIP Lender.

44. THIS COURT ORDERS that CMI is hereby authorized and empowered to obtain and borrow the amounts previously or hereinafter advanced pursuant to the CMI DIP Facility in order to finance the CMI Entities' working capital requirements and other general corporate purposes and capital expenditures as contemplated by the CMI DIP Definitive Documents,



provided that borrowings under the CMI DIP Facility shall not exceed \$100,000,000 unless approved by the CMI CRA and permitted by further Order of this Court.

45. THIS COURT ORDERS that the CMI Entities shall notify counsel to the Ad Hoc Committee and the Monitor of any requested advance under the CMI DIP Facility.

46. THIS COURT ORDERS that the CMI DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**CMI DIP Charge**") on the CMI Property, as security for any and all obligations of the CMI Entities under the CMI DIP Facility and the CMI DIP Definitive Documents (including on account of principal, interest, fees and expenses), which charge shall not exceed the aggregate amount owed to the CMI DIP Lender under the CMI DIP Definitive Documents advanced on or after the date of this Order. The CMI DIP Charge shall have the priority set out in paragraphs 55 and 57 hereof.

47. THIS COURT ORDERS that the deposit accounts containing cash collateral pledged to The Bank of Nova Scotia and referred to in Section 6.11 of the Collateral Agency Agreement (as defined below) as the "Cash Management Collateral Account" (the "**Excluded Accounts**") shall not form part of the CMI Property, shall be excluded from the CMI DIP Charge, the KERP Charge, the Directors' Charge and the Administration Charge, except as provided in paragraph 48 hereof, and shall remain subject to the existing liens in favour of The Bank of Nova Scotia in connection with the CMI Entities' obligations to The Bank of Nova Scotia in connection with overdrafts and related liabilities arising from cash consolidation, electronic funds transfer arrangements, treasury, depository and cash management services or in connection with any automated clearing house transfers of funds in an aggregate amount not to exceed \$2,500,000 (the "**BNS Cash Management Obligations**").

48. THIS COURT ORDERS AND DECLARES that notwithstanding any stay of proceedings imposed by this Order, The Bank of Nova Scotia shall be entitled to seize and dispose of any collateral on deposit in the Excluded Accounts and apply such proceeds to any and all outstanding BNS Cash Management Obligations, provided that, notwithstanding anything herein, upon payment and satisfaction of the BNS Cash Management Obligations in full and the

return of any remaining collateral in the Excluded Accounts to the CMI Entities, such collateral shall then form part of the CMI Property charged by the Directors' Charge, the Administration Charge, the KERP Charge and the DIP Lender's Charge.

49. THIS COURT ORDERS that the CMI DIP Charge is in addition to the existing security (the "**Existing Security**") in favour of CIBC Mellon Trust Company (the "**Collateral Agent**") pursuant to the Intercreditor and Collateral Agency Agreement dated as of October 13, 2005 among the CMI Entities and the Collateral Agent, as amended by the Credit Confirmation and Amendment to Intercreditor and Collateral Agency Agreement dated as of May 22, 2009, and as further amended by the Credit Confirmation and Amendment to Intercreditor and Collateral Agency Agreement dated as of October 1, 2009 (the "**Collateral Agency Agreement**"). All liabilities and obligations of the CMI Entities under the CIT Credit Agreement and the \$187,263,126 principal amount secured promissory note issued to Canwest MediaWorks Ireland Holdings ("**Irish Holdco**") by CMI (the "**Secured Note**") shall be secured by the Existing Security.

50. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the CMI DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the CMI DIP Charge or any of the CMI DIP Definitive Documents;
- (b) upon the occurrence of an event of default under the CMI DIP Definitive Documents (including, without limitation, the Existing Security solely to the extent that such Existing Security secures existing and future obligations under the CIT Credit Agreement) or the CMI DIP Charge, the CMI DIP Lender may cease making advances to the CMI Entities, and upon three (3) days notice to the CMI Entities and the Monitor, may exercise any and all of its rights and remedies against the CMI Entities or the CMI Property under or pursuant to the CMI DIP Definitive Documents and the CMI DIP Charge, including without limitation, to set off and/or consolidate any amounts owing by the CMI DIP Lender to any of

the CMI Entities against the obligations of any of the CMI Entities to the CMI DIP Lender under the CMI DIP Definitive Documents or the CMI DIP Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against any of the CMI Entities and for the appointment of a trustee in bankruptcy of any of the CMI Entities, and upon the occurrence of an event of default under the terms of the CMI DIP Definitive Documents, the CMI DIP Lender shall be entitled to seize and retain proceeds from the sale of the CMI Property and the cash flow of the CMI Entities to repay amounts owing to the CMI DIP Lender in accordance with the CMI DIP Definitive Documents and the CMI DIP Charge, but subject to the priorities as set out in paragraphs 55 and 57 of this Order; and

- (c) the foregoing rights and remedies of the CMI DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of any CMI Entity or the CMI Property.

51. THIS COURT ORDERS AND DECLARES that, in respect of the CMI DIP Facility, the CMI DIP Definitive Documents, the CIT Credit Agreement and amounts borrowed under the CIT Credit Agreement, the CMI DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the CMI Entities, or any of them, under the CCAA, or any proposal filed by the CMI Entities, or any of them, under the BIA. Further, the stays of proceedings provided for herein shall not apply to the CMI DIP Lender or its rights under or in respect of the CIT Credit Agreement, the CMI DIP Facility or the CMI DIP Definitive Documents.

52. THIS COURT ORDERS that the CMI Entities are hereby authorized and empowered to take all steps and actions in respect of, and to comply with all of their obligations pursuant to, the Secured Note, the \$430,556,189 unsecured promissory note dated October 1, 2009 granted by CMI to Irish Holdco in respect of the amounts advanced by Irish Holdco to CMI (the “**Unsecured Note**”), the Use of Cash Collateral and Consent Agreement between certain of the

CMI Entities and certain members of the Ad Hoc Committee (the “**Consenting Noteholders**”) dated September 23, 2009 (the “**Use of Collateral and Consent Agreement**”), the CCAA Support Agreement between certain of the CMI Entities and the Consenting Noteholders dated October 5, 2009 (the “**Support Agreement**”) and such other agreements, security documents, guarantees and other definitive documents as may be executed in connection with any such matters.

53. THIS COURT ORDERS that notwithstanding anything to the contrary herein, the CMI Entities shall be required to comply with their obligations under the Use of Collateral and Consent Agreement and the Support Agreement. Prior to exercising any and all rights and remedies they may have against the CMI Entities under or in respect of the Use of Cash Collateral Agreement and the Support Agreement, in accordance with the terms of such agreements, the Consenting Noteholders shall be required to obtain a further order of the Court, other than in respect of contractual termination rights under the Support Agreement.

54. THIS COURT ORDERS that, upon reasonable notice to the CMI Entities, the advisors to the Ad Hoc Committee, CIT and CIT’s advisors shall, subject to books and records that are privileged, have clear and unfettered access to the books and records of the CMI Entities and such other information that the Ad Hoc Committee and/or CIT reasonably requests.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

55. THIS COURT ORDERS that the priorities of the CMI Directors’ Charge, the CMI Administration Charge, the CMI KERP Charge (as defined below) and the CMI DIP Charge, as among them and the Existing Security, solely to the extent that such Existing Security secures existing and future obligations under the CIT Credit Agreement, shall be as follows:

First – CMI Administration Charge;

Second – The Existing Security, solely to the extent that such Existing Security secures existing and future obligations under the CIT Credit Agreement;

Third – CMI DIP Charge; and

Fourth – CMI Directors' Charge and CMI KERP Charge, save and except that these Charges shall be postponed in right of payment to the extent of the first \$85,000,000 payable under the Secured Note.

56. THIS COURT ORDERS that the filing, registration or perfection of the CMI Directors' Charge, the CMI Administration Charge, the CMI KERP Charge and the CMI DIP Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

57. THIS COURT ORDERS that, the CMI Directors' Charge, the CMI Administration Charge, the CMI DIP Charge and the CMI KERP Charge shall constitute a charge on the CMI Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, notwithstanding the order of perfection or attachment, except for any validly perfected purchase money security interest in favour of a secured creditor or any statutory Encumbrance existing on the date of this Order in favour of any Person which is a "secured creditor," <sup>SRP</sup> if ~~any~~ <sup>any of</sup> ~~in respect of~~ <sup>SRP</sup> source deductions from wages, employer health tax, workers compensation, GST/QST, PST payables, vacation pay and banked overtime for employees, amounts under the Wage Earners' Protection Program that are subject to a super priority claim under the BIA. <sup>as defined in the CCAA</sup>

58. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the CMI Entities shall not grant any Encumbrances over any CMI Property that rank in priority to, or *pari passu* with, any of the CMI Directors' Charge, the CMI Administration Charge, the CMI KERP Charge or the CMI DIP Charge, unless the CMI Entities also obtain the prior consent of the Monitor, the CMI DIP Lender and the beneficiaries of the CMI Directors' Charge, the CMI KERP Charge and the CMI Administration Charge, or upon further Order of this Court.

59. THIS COURT ORDERS that the CMI Directors' Charge, the CMI Administration Charge, the CMI KERP Charge, the CMI DIP Definitive Documents and the CMI DIP Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**"), the rights and remedies of the CMI DIP Lender under the CMI DIP Definitive Documents, the rights and remedies of Irish Holdco under the Secured Note and the rights and remedies of the Consenting Noteholders under the Use of Collateral and Consent Agreement and the Support Agreement shall not otherwise be limited or impaired in any way, subject to the provisions of paragraph 53 herein, by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the CMI Entities, or any of them, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the CIT Credit Agreement, the CMI DIP Definitive Documents, the Use of Collateral and Consent Agreement, the Support Agreement, the Secured Note or the Unsecured Note, shall create or be deemed to constitute a breach by any of the CMI Entities of any Agreement to which they are a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the CMI Entities entering into the CIT Credit Agreement or any other CMI DIP Definitive Documents, the creation of the Charges, or the execution, delivery or performance of the CMI DIP Definitive Documents; and

- (c) the CIT Credit Agreement, the CMI DIP Definitive Documents, the Use of Collateral and Consent Agreement, the Support Agreement, the Secured Note and the Unsecured Note, the payments made by the CMI Entities pursuant to the foregoing or pursuant to the terms of this Order, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

60. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the relevant CMI Entity's interest in such real property leases.

#### **APPROVAL OF FINANCIAL ADVISOR AGREEMENT**

61. THIS COURT ORDERS that the letter agreement dated December 10, 2008 between Canwest Global and the Financial Advisor, as amended by a letter agreement dated January 20, 2009 and a further letter agreement dated October 5, 2009, in the form attached as Exhibit "U" to the Maguire Affidavit (the "Financial Advisor Agreement"), is hereby approved and the CMI Entities are authorized and directed to make the payments contemplated thereunder in accordance with the terms and conditions of the Financial Advisor Agreement.

#### **KEY EMPLOYEE RETENTION PLANS**

62. THIS COURT ORDERS that the key employee retention plans (the "CMI KERPs"), in the forms attached to the Confidential Supplement to the Monitor's Pre-Filing Report (the "Confidential Supplement"), are hereby approved and the CMI Entities are authorized and directed to make the payments contemplated thereunder in accordance with the terms and conditions of the CMI KERPs.

63. THIS COURT ORDERS that the Confidential Supplement be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice which sets out the title

*and the letter agreement dated December 19, 2008 referred to in*

*paragraph 61 herein*  
*JVP*

of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of the Court.

64. THIS COURT ORDERS that the key employees referred to in the CMI KERPs shall be entitled to the benefit of and are hereby granted a charge (the "**CMI KERP Charge**") on the CMI Property, which charge shall not exceed an aggregate amount of \$5,900,000, to secure amounts owing to such key employees under the CMI KERPs.

#### **POSTPONEMENT OF ANNUAL GENERAL MEETING**

65. THIS COURT ORDERS that Canwest Global be and is hereby relieved on any obligation to call and hold an annual meeting of its shareholders until further Order of the Court.

#### **FOREIGN PROCEEDINGS**

66. THIS COURT ORDERS that the Monitor is hereby authorized, as the foreign representative of the CMI Entities, to apply for recognition of these proceedings as "Foreign Main Proceedings" in the United States pursuant to Chapter 15 of the *U.S. Bankruptcy Code*.

67. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, Australia, Ireland or in any other foreign jurisdiction, to give effect to this Order and to assist the CMI Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the CMI Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the CMI Entities and the Monitor and their respective agents in carrying out the terms of this Order.

68. THIS COURT ORDERS that each of the CMI Entities and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and any other Order issued in these proceedings.



**SERVICE AND NOTICE**

69. THIS COURT ORDERS that the CMI Entities or the Monitor shall (i) without delay, publish a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against any of the CMI Entities of more than \$5,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a)(ii)(C) of the CCAA and the regulations made thereunder, provided that, for the purposes of this list, (i) with respect to the 8% senior subordinated notes issued by CMI, only the name and address of the indenture trustee of such notes and the aggregate amount owing in respect of such notes shall be listed and made publicly available and (ii) the Monitor shall not make the names and addresses of individuals who are creditors publicly available.

70. THIS COURT ORDERS that the CMI Entities and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the CMI Entities' creditors or other interested parties at their respective addresses as last shown on the records of the CMI Entities, and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

71. THIS COURT ORDERS that the CMI Entities, the Monitor, the CMI DIP Lender, the Ad Hoc Committee and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on its website at <http://cfcanada.fticonsulting.com/cmi>.

**GENERAL**

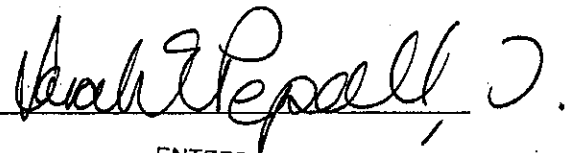
72. THIS COURT ORDERS that the CMI Entities or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

73. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the CMI Entities, the CMI Business or the CMI Property.

74. THIS COURT ORDERS that any interested party (including the CMI Entities, the CMI DIP Lender, the Ad Hoc Committee and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order, provided however that the CMI DIP Lender shall be entitled to rely on this Order as issued for all advances made under the CIT Credit Agreement and the CMI DIP Definitive Documents up to and including the date this Order may be varied or amended.

75. THIS COURT Orders that, notwithstanding the immediately preceding paragraph, no order shall be made varying, rescinding or otherwise affecting the provisions of this Order with respect to the CIT Credit Agreement or the CMI DIP Definitive Documents, unless notice of a motion for such order is served on the Monitor and the CMI Entities, the Ad Hoc Committee and the CMI DIP Lender, returnable no later than November 5, 2009.

76. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

OCT 06 2009

PER / PAR: 

Joanne Nicoara  
Registrar, Superior Court of Justice

**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

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:

APPLICANTS

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**INITIAL ORDER**

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

IN THE MATTER OF THE A PLAN OF COMPROMISE OR ARRANGEMENT OF  
CANWEST GLOBAL COMMUNICATIONS CORP. ET AL.

Court File No.

**COURT OF APPEAL FOR ONTARIO**

Proceeding commenced at Toronto

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