

**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

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**MOTION RECORD OF THE APPLICANTS**  
(Authorizing the Calling of a Meeting of Affected Creditors)

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June 7, 2010

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# Tab 1

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

**ONTARIO  
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APPLICANTS

**NOTICE OF MOTION  
(Authorizing the Calling of a Meeting of Affected Creditors)**

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 June 22, 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, *inter alia*:
  - (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) accepting the filing of a plan of compromise or arrangement with the Affected Creditors (as defined below) of the CMI Entities (the "Plan") based on the Amended Shaw Transaction (as defined below);
- (c) authorizing the CMI Entities to call, hold and conduct meeting(s) (the "Creditors' Meeting") of certain of their creditors, whose claims are proposed to be compromised under the Plan (the "Affected Creditors"), to consider and vote on a resolution to approve the Plan;
- (d) approving the procedures to be followed with respect to the calling and conduct of the Creditors' Meeting;
- (e) approving the Amended Shaw Transaction Documents (as defined below);  
and

2. 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 this Honourable Court dated October 6, 2009;

2. The Initial Order granted a stay of proceedings until November 5, 2009, or such later date as this Honourable Court may order. The Stay Period has been extended on three subsequent occasions, most recently on March 29, 2010, with the Stay Period now scheduled to expire on June 15, 2010. The CMI Entities have brought a motion returnable June 8, 2010 seeking to extend the Stay Period to August 31, 2010;

3. On October 5, 2009, the CMI Entities agreed to enter into a support agreement (the "Support Agreement") with the members of an *ad hoc* committee (the "Ad Hoc Committee") representing holders (the "8% Senior Subordinated Noteholders") of over 70% of the outstanding principal amount of Canwest Media Inc.'s ("CMI") 8% Senior Subordinated Notes due 2012. The Support Agreement had attached to it a term sheet (the "Original Recapitalization Term Sheet") that set out the summary terms and conditions of a consensual

recapitalization transaction involving the CMI Entities. The Support Agreement provided that the CMI Entities would pursue a plan of compromise or arrangement on the terms set out in the Original Recapitalization Term Sheet as part of this CCAA proceeding;

4. The Original Recapitalization Term Sheet was contingent upon, *inter alia*, (i) the CMI Entities identifying one or more “Canadians” within the meaning of the CRTC Direction (the “Equity Investor”) that would agree to invest at least \$65 million in a restructured Canwest Global; and (ii) the CW Investments Shareholders Agreements (the “Shareholders Agreement”) between CMI, 4414616 Canada Inc. (“4414616”), Goldman Sachs Capital Partners and certain of its affiliates (together, “Goldman Sachs”), and CW Investments Co. (“CW Investments”) being amended and restated or otherwise dealt with in a manner acceptable to CMI and the Ad Hoc Committee, subject to CRTC approval if required;
5. In early November 2009, Canwest Global commenced a comprehensive equity investment solicitation process in order to identify the Equity Investor(s);
6. On February 11, 2010, the Board of Directors of Canwest Global approved the entering into of a subscription agreement with Shaw Communications Inc. (“Shaw”) pursuant to which Shaw agreed to subscribe for, and Canwest Global, as restructured, agreed to issue, equity shares in the capital of a restructured Canwest Global (the “Shaw Transaction”), subject to Court approval;
7. The Shaw Transaction was approved by this Honourable Court on February 19, 2010;
8. The Shaw Transaction contemplated that, rather than restructure Canwest Global as a public company as was contemplated in the Original Recapitalization Term Sheet, Canwest Global would become a private company the shareholders of which would be comprised of Shaw and those 8% Senior Subordinated Noteholders and other participating creditors of the CMI Entities that elected to receive equity shares of a restructured Canwest Global and that would hold at least 5% of the equity of a restructured Canwest Global following the completion of the proposed recapitalization transaction;

9. It was a condition of the Shaw Transaction that, *inter alia*, (i) the Shareholders Agreement be amended and restated or otherwise addressed; or (ii) the Shareholders Agreement be disclaimed or resiliated in accordance with the provisions of the CCAA and the Claims Procedure Order granted by this Honourable Court on October 14, 2009;

10. Following the approval of the Shaw Transaction, the CMI Entities engaged in discussions with Shaw, the Monitor, the Ad Hoc Committee and Goldman Sachs in an attempt to reach a mutually agreeable resolution of the treatment of the Shareholders Agreement and other issues that divided the parties in respect of these CCAA proceedings;

11. Negotiations with Goldman Sachs eventually reached an impasse;

12. In light of the impasse, the CMI Entities and the Monitor requested that this Honourable Court direct the parties to a confidential court-supervised mediation (the "Mediation") in a final effort to avoid lengthy and very costly litigation;

13. This Honourable Court directed the CMI Entities, Goldman Sachs, Shaw and the Ad Hoc Committee to attend the Mediation, to be conducted by the Chief Justice of Ontario, the Honourable Mr. Warren Winkler;

14. The Mediation was commenced on March 29, 2010;

15. On March 31, 2010, Chief Justice Winkler directed an adjournment of the Mediation for two weeks. On April 14, 2010, the adjournment of the Mediation was continued at the direction of Chief Justice Winkler;

16. On April 16, 2010, Chief Justice Winkler advised the parties through the Monitor's counsel that Goldman Sachs, Shaw and the Ad Hoc Committee had negotiated a framework to permit the CMI Entities to effect a consensual restructuring transaction and to resolve the treatment of the Shareholders Agreement and all of the existing and potential litigation and disputes with Goldman Sachs;

17. The CMI Entities, Shaw, the Ad Hoc Committee and Goldman Sachs then proceeded to negotiate the definitive documents among them following the framework that had



been agreed to, including the value that would be paid to the Affected Creditors (other than the 8% Senior Subordinated Noteholders) as part of the Plan;

18. When initially advised of the framework of the transaction, the CMI Entities were not informed whether there would be a recovery for Canwest Global's existing shareholders, as had been contemplated in the Original Recapitalization Term Sheet and the Shaw Transaction. The CMI Entities subsequently asked Shaw and the Ad Hoc Committee as to their intentions with respect to Canwest Global's existing shareholders and the CMI Entities were advised that neither party was prepared to make value available to the existing shareholders, given that there was not enough value available to pay the general unsecured creditors of the CMI Entities in full.

19. In addition, the Monitor indicated that it was not prepared to support a plan of arrangement or compromise that would see value provided to existing shareholders out of the restructuring of the CMI Entities in circumstances where other Affected Creditors would not be repaid in full, if such value would not be coming out of the recovery of the 8% Senior Subordinated Noteholders.

20. Definitive documentation (the "Amended Shaw Transaction Documents") amending the Shaw Transaction was signed by the parties on May 3, 2010 (the "Amended Shaw Transaction");

21. The result of the Settlement is a going private transaction proposed to be implemented under the Plan based upon the Amended Shaw Transaction whereby Shaw will be the sole shareholder of a restructured Canwest Global;

22. The Amended Shaw Transaction represents the best available outcome for the businesses of the CMI Entities and their stakeholders. If implemented, it will provide significant value for the CMI Entities' unsecured creditors, enable the businesses operated by the CMI Entities to continue on a going concern basis as viable and competitive participants in the Canadian television broadcasting industry, and maintain for the general public broad access to and choices of television news and other information and entertainment programming.

23. Canwest Global has agreed to use commercially reasonable efforts to obtain a sanction order in respect of the Plan from this Honourable Court by no later than August 27, 2010;

24. The CMI Entities intend to call the Creditors' Meeting in respect of the Plan;

25. In advance of the Creditors' Meeting, it is necessary to establish procedures for the calling and conduct of the Creditors' Meeting including, among other things, classification of creditors, voting in person or by proxy, the call for a vote on the resolution to approve the Plan, the required majority and the effect of the vote;

26. It is just and convenient and in the interests of the CMI Entities and their stakeholders that the requested Order be granted;

27. The motion is supported by Shaw, the Ad Hoc Committee, the Monitor and the CMI Entities' Chief Restructuring Advisor;

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

29. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

30. 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 June 7, 2010 and the exhibits thereto and further affidavit(s) to be provided by the CMI Entities;

2. The Report of the Monitor and the appendices thereto; and

3. Such further and other materials as counsel may advise and this Honourable Court may permit.

June 7, 2010

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TO: THE SERVICE LIST

**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)
18. CGS International Holdings (Netherlands)
19. CGS Debenture Holding (Netherlands)
20. CGS Shareholding (Netherlands)
21. CGS NZ Radio Shareholding (Netherlands)
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

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

**NOTICE OF MOTION**  
(Returnable June 22, 2010)

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# Tab 2

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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IN THE MATTER OF THE *COMPANIES' CREDITORS  
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Applicants

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

I, Thomas C. Strike, of the City of Winnipeg, in the Province of Manitoba,  
MAKE OATH AND SAY:

1. I am the President, Corporate Development & Strategy Implementation and Recapitalization Officer of Canwest Global Communications Corp. ("**Canwest Global**"). I am also a director of Canwest Media Inc. ("**CMI**") and an officer and/or director of certain of the Applicants listed in Schedule "A" hereto (the "**Applicants**" and together with the Partnerships listed in Schedule "B", the "**CMI Entities**"). As such, I have personal knowledge of the matters deposed to herein. Where I have relied upon other sources for information, I have specifically referred to such sources and verily believe them to be true.

2. The CMI Entities intend to bring a motion, returnable on June 22, 2010, seeking an Order, *inter alia*, (i) accepting the filing of a plan of compromise or arrangement (the "**Plan**") based on the Amended Shaw Transaction (as defined below); and (ii) authorizing the CMI Entities to call and conduct meeting(s) (the "**Creditors' Meeting**") of Affected Creditors (as defined below) to consider and vote on a resolution approving the Plan. As part of that motion, the CMI Entities will also be seeking approval of the Definitive Documentation (as defined below) in respect of the Amended Shaw Transaction.



3. The basis of the Plan are amendments to an agreement (the “**Original Shaw Subscription Agreement**”) between Canwest Global and Shaw Communications Inc. (“**Shaw**”) and an agreement (the “**Original Shaw Support Agreement**”) between Canwest Global, certain members of an *ad hoc committee* (the “**Ad Hoc Committee**”) representing holders of CMI’s 8% senior subordinated notes due 2012 (the “**8% Senior Subordinated Noteholders**”) and Shaw, both entered into on February 11, 2010 and approved by this Honourable Court on February 19, 2010, whereby the parties in each case have now agreed to pursue a recapitalization transaction that will see Shaw or a wholly-owned subsidiary of Shaw become the sole shareholder of Restructured Canwest Global (as defined below) (the “**Amended Shaw Transaction**”). The Amended Shaw Transaction provides that US\$440 million of the aggregate subscription price will be allocated to satisfy all of the claims of the 8% Senior Subordinated Noteholders against the CMI Entities and an additional \$38 million will be allocated to satisfy all of the claims of the CMI Entities’ other Affected Creditors, subject to a *pro rata* increase for restructuring period claims in certain circumstances. The claims of Affected Creditors (other than the 8% Senior Subordinated Noteholders) will not be paid in full and are being compromised. The existing shareholders of Canwest Global will not receive any compensation under the Plan.

4. The purpose of this Affidavit is to detail the sequence of events that resulted in the CMI Entities entering into the Amended Shaw Transaction and to describe the details of such transaction and the framework of the CMI Entities’ proposed going concern restructuring plan. A further affidavit will be filed with this Honourable Court prior to the June 22, 2010 motion addressing the proposed Plan and proposed procedures for the Creditors’ Meeting.

5. The Amended Shaw Transaction represents the culmination of a comprehensive restructuring effort that was commenced by the CMI Entities in 2009. It is the immediate result of a successful Court-ordered mediation conducted by the Chief Justice of Ontario, the Honourable Mr. Justice Warren Winkler. Importantly, and as described in greater detail below, the Amended Shaw Transaction satisfies two significant conditions necessary to ensure that the CMI Entities will be able to emerge as going concern entities – namely that (i) Restructured Canwest Global (as defined below) will be owned by a “Canadian” within the meaning of the Direction (as defined below), and (ii) by virtue of the Share and Option Purchase Agreement (as defined below) that was entered into by Shaw and Goldman Sachs Capital Partners and certain of its affiliates (together, “**Goldman Sachs**”) concurrently with the Amended Shaw Transaction,

that the Shareholders Agreement (as defined below) has been addressed in a manner satisfactory to the CMI Entities, Shaw and the Ad Hoc Committee. It also avoids protracted and very expensive litigation with Goldman Sachs in respect of the Shareholders Agreement, the Shaw Approval Order (as defined below) and the 4414616 Transaction (as defined below).

6. The CMI Entities are firmly of the view that the Amended Shaw Transaction represents the best available outcome for the businesses of the CMI Entities and their stakeholders. The Amended Shaw Transaction will provide stability for the CMI Entities' employees, pensioners, suppliers, customers and other stakeholders. It will also provide significant value for the CMI Entities' unsecured creditors, enable the businesses operated by the CMI Entities to continue on a going concern basis as viable and competitive participants in the Canadian television broadcasting industry, and maintain for the general public broad access to and choice of television news and other information and entertainment programming.

7. The Amended Shaw Transaction is supported by the Monitor (as defined below) and the CMI Entities' Chief Restructuring Advisor (the "CMI CRA").

## **BACKGROUND**

8. Canwest Global is a leading Canadian media company with interests in free-to-air television stations and subscription-based specialty television channels. Canwest Global also has interests in newspaper publishing and digital and online media operations (which are the subject of separate proceedings commenced under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA")).

9. With respect to its television operations, Canwest Global, principally through its indirect wholly-owned subsidiary Canwest Television Limited Partnership ("CTLP"), owns and operates the *Global Television Network*, which is comprised of 12 free-to-air television stations and covers approximately 98% of Canada's English-language television market. In addition, Canwest Global, through its subsidiaries, also owns interests in a portfolio of leading subscription-based national specialty television channels, including interests in 17 leading specialty television channels through CW Investments Co. ("CW Investments") and its affiliates. Until recently (and as described below), CW Investments was owned jointly with Goldman Sachs.

### ***The CCAA Proceedings***

10. The CMI Entities were granted protection from their creditors under the CCAA, pursuant to an initial order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated October 6, 2009. FTI Consulting Canada Inc. was appointed at that time to act as monitor (the “**Monitor**”) in this CCAA proceeding.

11. The Initial Order, a copy of which is attached as Exhibit “A” to this Affidavit, granted, *inter alia*, a stay of proceedings (the “**Stay Period**”) until November 5, 2009, or such later date as this Honourable Court may order. The Stay Period has been extended on three subsequent occasions, most recently on March 29, 2010, with the Stay Period now scheduled to expire on June 15, 2010. The CMI Entities have filed a motion returnable on June 8, 2010 seeking an extension of the Stay Period to August 31, 2010. A copy of the Order dated March 29, 2010 extending the Stay Period to June 15, 2010 is attached as Exhibit “B” to this Affidavit.

12. Further details regarding the background to this CCAA proceeding are set out in the affidavits sworn by John E. Maguire on October 5, 2009 (the “**Initial Order Affidavit**”), October 22, 2009, October 27, 2009, November 27, 2009, January 18, 2010, March 1, 2010, March 23, 2010 and June 3, 2010 and in the affidavits sworn by me on November 24, 2009 and February 12, 2010 (the latter addressing the proposed equity investment by Shaw) and, unless relevant to the present motion, are not repeated herein. A copy of the Initial Order Affidavit, without exhibits, is attached as Exhibit “C” to this Affidavit.

### ***The Shareholders Agreement***

13. In or about August 2007, Canwest Global and Goldman Sachs jointly acquired (subject to Canadian Radio-television and Telecommunications Commission (“**CRTC**”) approval which was granted in December 2007), through CW Investments and its affiliates, interests in a portfolio of subscription-based specialty television channels (the “**Specialty TV Portfolio**”) from Alliance Atlantis Communications Inc. (“**Alliance Atlantis**”). The Specialty TV Portfolio consisted of: (i) 13 wholly-owned and partially-owned specialty television channels including *Showcase*, *Slice*, *HGTV Canada*, *History Television* and *Food Network Canada*; and (ii) 4 other specialty television channels in which CW Investments and its subsidiaries have 50% or lesser ownership interests and do not operate (consisting of *Historia*, *Series +*, *DUSK* and *One: The Body, Mind and Spirit Channel*).

14. The manner in which the affairs of CW Investments were to be (and continue to be) governed is set out in an amended and restated shareholders agreement (the “**Shareholders Agreement**”) between CMI, 4414616 Canada Inc. (“**4414616**”), Goldman Sachs (now replaced by Shaw as described below) and CW Investments. The Shareholders Agreement also sets out the holdings of the common and voting preferred shares in the capital of CW Investments. Prior to October 5, 2009, Canwest Global held its approximate 35% equity interest and approximate 67% voting interest in CW Investments through its indirect wholly-owned subsidiary, 4414616. Since October 5, 2009, Canwest Global has held its equity and voting interests in CW Investments through CMI.

15. Prior to May 3, 2010, the remaining approximately 33% voting interest and approximately 65% equity interest in CW Investments were held by Goldman Sachs. As described in greater detail below, on May 3, 2010, Shaw entered into a share and option purchase agreement (the “**Share and Option Purchase Agreement**”) with Goldman Sachs pursuant to which Shaw acquired on that date from Goldman Sachs approximately 29.9% of the total voting preferred shares of CW Investments and approximately 49.9% of the total common equity shares of CW Investments. Shaw also obtained an option to purchase the remaining voting preferred and equity shares of CW Investments held by Goldman Sachs at a later date, subject to CRTC approval. Shaw now effectively holds (or will hold) the position under the Shareholders Agreement previously held by Goldman Sachs. Shaw has, with the consent of CMI and CW Investments, replaced Goldman Sachs as a party to the Shareholders Agreement.

16. The Shareholders Agreement contemplates that CMI will combine the Specialty TV Portfolio with the portfolio of free-to-air television stations and subscription-based specialty television channels currently owned by CTLP in 2011 (the “**Vend-in Transaction**”). It also provides for put and call rights for Goldman Sachs (now Shaw) and the CMI Entities, respectively, as well as providing Goldman Sachs (now Shaw) with certain other liquidity rights. The call and put options and other liquidity mechanisms were originally inserted in the Shareholders Agreement to facilitate the exit of Goldman Sachs from its investment in CW Investments by permitting Goldman Sachs to require a sale of CW Investments or effect an initial public offering of the shares of CW Investments owned by Goldman Sachs if, following the exercise in full of Goldman Sachs’ put rights, CW Investments was unable to acquire all of Goldman Sachs’ voting and equity interests in CW Investments. The call and put rights are

exercisable in 2011, 2012 and 2013, subject to certain restrictions. The Shareholders Agreement also provides for certain “drag-along” rights which, when the Shareholders Agreement was originally entered into, permitted Goldman Sachs to effect a sale of its interest in CW Investments, and require a concurrent sale of CMI’s interest in CW Investments, in the event that an Insolvency Event (as defined therein) occurred. The put options, other liquidity mechanisms and the “drag-along” rights are now exercisable by Shaw, and CMI’s call rights are now exercisable in respect of Shaw’s interests in CW Investments, following the entering into of the Share and Option Purchase Agreement and Shaw becoming a party to the Shareholders Agreement in place of Goldman Sachs.

17. The Shareholders Agreement was negotiated and entered into at the peak of the financial markets and economic cycle in 2007.

18. As noted above, on October 5, 2009, CMI caused 4414616 to transfer all the voting and equity shares of CW Investments held by 4414616 to CMI (the “**4414616 Transaction**”). The 4414616 Transaction was carried out by the CMI Entities with a view to preventing Goldman Sachs from effecting a forced sale of the CMI Entities’ interest in CW Investments pursuant to the “drag along” rights provided to Goldman Sachs under section 6.10 of the Shareholders Agreement in the aftermath of the CMI Entities’ intended filing for CCAA protection on October 6, 2009. The CMI Entities had given careful consideration to the effect that an uncontrolled sale of the Specialty TV Portfolio would have on all of their stakeholders and concluded that such a sale would have materially prejudiced any hope of a successful restructuring of the CMI Entities. Further details in respect of the 4414616 Transaction are set out in my affidavit sworn on November 24, 2009.

19. On or about November 2, 2009, Goldman Sachs brought a motion, subsequently amended on November 19, 2009, seeking, *inter alia*, to set aside the 4414616 Transaction. The CMI Entities responded by bringing a motion, *inter alia*, for an Order declaring that the relief sought by Goldman Sachs was stayed by the terms of the Initial Order (the “**Stay Motion**”). Goldman Sachs, in turn, brought a cross-motion to lift the stay of proceedings, if necessary.

20. The Stay Motion by the CMI Entities and the cross-motion to lift the stay of proceedings by Goldman Sachs was heard on December 8, 2009. On December 15, 2009, this

Honourable Court found that the relief sought by Goldman Sachs was stayed and that the stay of proceedings should not be lifted at that time.

### ***Original Recapitalization Transaction***

21. Immediately prior to filing for creditor protection, the CMI Entities agreed to enter into a Support Agreement (the “**Support Agreement**”) with the members of the Ad Hoc Committee. Due to the size of the indebtedness owing to the 8% Senior Subordinated Noteholders and the continued forbearance of the members of the Ad Hoc Committee with respect to certain defaults under the note indenture governing the 8% Senior Subordinated Notes, the CMI Entities recognized that any consensual recapitalization transaction would necessarily require the support of the members of the Ad Hoc Committee. The Support Agreement had attached to it a recapitalization transaction term sheet (the “**Original Recapitalization Term Sheet**”) that set out the summary terms and conditions of a proposed consensual going concern recapitalization transaction involving the CMI Entities (the “**Original Recapitalization Transaction**”). The Support Agreement provided that the CMI Entities would pursue a plan of arrangement or compromise on the terms set out in the Original Recapitalization Term Sheet in order to implement the Original Recapitalization Transaction as part of this CCAA proceeding.

22. Under the Original Recapitalization Term Sheet, it was proposed, *inter alia*, that creditors of the CMI Entities whose claims were to be compromised, including the 8% Senior Subordinated Noteholders, would receive shares of a restructured Canwest Global which would be a publicly-listed company on the Toronto Stock Exchange. The Original Recapitalization Transaction contemplated that no more than 18.5% of the outstanding equity shares of a restructured Canwest Global would be issued to Affected Creditors (other than the 8% Senior Subordinated Noteholders) and that the existing shareholders of Canwest Global would receive in the aggregate 2.3% of the shares of a restructured Canwest Global. Section 5 of the Original Recapitalization Term Sheet specifically provided that the equity shares of a restructured Canwest Global that were to be issued to the Affected Creditors (other than the 8% Senior Subordinated Noteholders) would not be diluted by the equity shares that would be issued to Canwest Global’s existing shareholders. In other words, it was contemplated at the time that the recovery for Canwest Global’s existing shareholders would be funded out of the recovery that was to otherwise be allocable to the 8% Senior Subordinated Noteholders.

23. The Original Recapitalization Transaction was contingent upon the satisfaction of several conditions. Among the fundamental, business-critical conditions that needed to be resolved as part of these CCAA proceedings were the following:

- (a) identifying one or more “Canadians” within the meaning of the *Direction to the CRTC (ineligibility of Non-Canadians)* (the “**Direction**”) that would invest at least \$65 million in a restructured Canwest Global representing an equity interest that was acceptable to CMI and the Ad Hoc Committee (the “**Equity Investor**”); and
- (b) the Shareholders Agreement being amended and restated or otherwise dealt with in a manner acceptable to CMI and the Ad Hoc Committee, subject to CRTC approval if required.

Unless both of those conditions, among others, could be satisfied, the Original Recapitalization Transaction could not proceed and the Support Agreement could be terminated by the 8% Senior Subordinated Noteholders party thereto, permitting them to call an event of default pursuant to the Use of Cash Collateral and Consent Agreement between the CMI Entities and the 8% Senior Subordinated Noteholders party thereto dated as of September 23, 2009 (as amended, the “**Cash Collateral and Consent Agreement**”). Upon an event of default under the Cash Collateral and Consent Agreement, the applicable 8% Senior Subordinated Noteholders could seek to obtain an assignment of the Secured Intercompany Note issued by CMI to Canwest MediaWorks Ireland Holdings (“**CMIH**”) and the Unsecured Intercompany Note issued by CMI to CMIH in the amounts of \$190 million and \$430 million, respectively, from CMIH. Such an assignment would be extremely detrimental to the liquidity of the CMI Entities.

24. The Support Agreement, Original Recapitalization Term Sheet and the Cash Collateral and Consent Agreement represented the culmination of many months of arm’s length negotiations between the CMI Entities and the Ad Hoc Committee and represented the best prospect of a going concern recapitalization of the CMI Entities available at that time.

### ***The Shaw Transaction***

25. In early November 2009, Canwest Global, with the assistance of its financial advisor, RBC Capital Markets, commenced a comprehensive equity investment solicitation

process in order to identify the Equity Investor(s), as contemplated in the Support Agreement and the Original Recapitalization Term Sheet. The equity investment solicitation process was conducted in two phases over the course of three months. Strategic and financial investors were initially solicited to determine whether they would be interested in making a minimum 20% equity investment in a restructured Canwest Global for at least \$65 million. During the first phase of the equity investment solicitation process, potential investors were advised by RBC Capital Markets that alternative proposals would be considered. Potential Investors that proceeded to the second phase of the equity investment solicitation process were clearly advised that they should specifically raise significant modifications to the proposed subscription agreement (including a proposed subscription term sheet) which was provided to them by the Canwest Global. Ultimately, two formal binding offers were received from potential investors by the January 27, 2010 deadline, one of which was from Shaw. The binding offer from Shaw was, in fact, an alternative proposal, in that it represented a significant modification from the investment contemplated in the proposed subscription agreement and subscription term sheet which were provided to it by Canwest Global. It was Canwest Global's view, which was supported by RBC Capital Markets and the CMI CRA, that the formal offer submitted by Shaw was the best overall offer received by the CMI Entities as a consequence of the comprehensive equity investment solicitation process which had been conducted.

26. On February 11, 2010, on the recommendations of the Special Committee of Canwest Global and RBC Capital Markets, the board of directors of Canwest Global (the "**Board**") approved, subject to approval by this Honourable Court, the entering into of the Original Shaw Subscription Agreement (with an attached subscription term sheet) with Shaw pursuant to which Shaw agreed to subscribe for, and Canwest Global, as restructured, agreed to issue, equity shares in the capital of a restructured Canwest Global. The Board also approved the entering into of certain other agreements relating to the proposed equity investment in a restructured Canwest Global by Shaw (the "**Shaw Transaction**"), including, *inter alia*, the Original Shaw Support Agreement and an amendment to the Support Agreement (the "**Amended Support Agreement**") attaching an amended and restated recapitalization term sheet (the "**Amended Recapitalization Term Sheet**"). The Shaw Transaction would not have binding effect until the approval of this Honourable Court had been obtained.



27. The details of the equity investment solicitation process are more specifically set out in my affidavit sworn on February 12, 2010 (the “**Shaw Approval Affidavit**”). A copy of the Shaw Approval Affidavit (without exhibits) is attached as Exhibit “D” to this Affidavit.

28. The Shaw Transaction contemplated that, rather than restructure Canwest Global as a public company as was contemplated in the Original Recapitalization Term Sheet, Canwest Global would become a private company the shareholders of which would be comprised of Shaw and those 8% Senior Subordinated Noteholders and other participating creditors of the CMI Entities that elected to receive equity shares of a restructured Canwest Global and that would hold at least 5% of the equity of a restructured Canwest Global following the completion of the Shaw Transaction, as then contemplated. If completed, the Shaw Transaction would have satisfied one of the two above-noted critical conditions of the Support Agreement – namely an equity investment of at least \$65 million in a restructured Canwest Global by a new investor that was “Canadian” within the meaning of the Direction. The principal elements of Shaw Transaction were as follows:

- (a) an investment by Shaw, or a wholly-owned direct or indirect subsidiary of Shaw, in the amount of \$95 million in a restructured Canwest Global, representing a 20% equity interest and an 80% voting interest in a restructured Canwest Global immediately following completion of the proposed recapitalization transaction (the “**Minimum Shaw Commitment**”);
- (b) a portion of the net cash proceeds received from the Minimum Shaw Commitment would be distributed to the 8% Senior Subordinated Noteholders pursuant to a plan of arrangement or compromise in connection with the partial payment of the Secured Intercompany Note and the balance would be used by restructured Canwest Global for working capital purposes; and
- (c) in addition to the Minimum Shaw Commitment, Shaw would subscribe for an additional amount of equity shares of a restructured Canwest Global at the same price per equity share (the “**Additional Commitment**”) in order to fund cash payments which would be made to Affected Creditors that would otherwise hold less than 5% of the equity shares of a restructured Canwest Global upon completion of the proposed recapitalization transaction, and to the existing

shareholders of Canwest Global, subject to the right of the members of the Ad Hoc Committee to elect to participate *pro rata* with Shaw in funding the Additional Commitment.

29. In addition, the Original Shaw Subscription Agreement provided that each of the existing shareholders of Canwest Global would, in exchange for their existing shares of Canwest Global, receive a cash payment equal to such shareholder's *pro rata* entitlement to the amount obtained by multiplying (i) the implied equity value of restructured Canwest Global (\$475 million) by (ii) the percentage of the implied equity value that was to be allocated to the existing shareholders of Canwest Global as set out in the Original Recapitalization Term Sheet (*i.e.*, 2.3%).
30. In connection with the entering into of the Original Shaw Subscription Agreement, the CMI Entities and the members of the Ad Hoc Committee amended the original terms of the Support Agreement in order to reflect the modified terms of the Shaw Transaction. In addition, Canwest Global, Shaw and the members of the Ad Hoc Committee agreed to support the amended terms of the proposed recapitalization transaction, including the proposed equity subscription by Shaw, under the Original Shaw Support Agreement. Section 9.5(e) of the Original Shaw Subscription Agreement provided that it may be modified, amended or supplemented as to any matter by Canwest Global and Shaw. Similar amendment provisions were included in the Amended Support Agreement and the Original Shaw Support Agreement.
31. Pursuant to the Original Shaw Support Agreement, it was a condition of each party's obligation to consummate the Shaw Transaction that, *inter alia*,:
- (a) the Shareholders Agreement be amended and restated or otherwise addressed in a manner to be agreed by Shaw, Canwest Global and the Ad Hoc Committee, subject to CRTC approval, if required; or
  - (b) the Shareholders Agreement be disclaimed or resiliated in accordance with the provisions of the CCAA and the Order of this Honourable Court dated October 14, 2009 establishing a claims process for the CMI Entities (the "**Claims Procedure Order**") and, if applicable, the Court issue an Order that such agreement be disclaimed or resiliated, and such Order not having been amended,

varied or stayed and all appeal periods having expired or, in the event of an appeal, a final determination dismissing such appeal would have been made.

32. In order to satisfy the condition pertaining to the Shareholders Agreement, Shaw, Canwest Global and the Ad Hoc Committee jointly agreed to pursue in good faith an amendment and restatement of the Shareholders Agreement. It was also a condition of the Shaw Transaction that approval of the Shaw Transaction be obtained from this Honourable Court by no later than February 19, 2010.

33. To that end, the CMI Entities served materials in support of a motion (to be heard on February 19, 2010) seeking approval of the Shaw Transaction on February 12, 2010. In the afternoon of February 18, 2010, Goldman Sachs served motion materials opposing the relief sought, citing concerns about the integrity of the CMI Entities' equity investment solicitation process and whether the best available transaction had emerged from that process. At 3:38 a.m. on February 19, 2010, the day of the hearing of the approval motion in respect of the Shaw Transaction, the CMI Entities were served with an affidavit by counsel for Catalyst Capital Group Inc. ("**Catalyst**") enclosing a competing offer to make an equity investment in a restructured Canwest Global. The Catalyst offer contemplated that, among other things, the Asper Family, who are significant shareholders of Canwest Global, would participate in the proposed equity investment.

34. By Order dated February 19, 2010 (the "**Shaw Approval Order**"), this Honourable Court approved the Shaw Transaction. At the time of its approval, the Shaw Transaction was opposed by Goldman Sachs and Catalyst. Counsel for the Asper Family was also in attendance but did not make submissions. In reasons for decision dated March 1, 2010 (the "**Written Reasons**"), this Honourable Court made, among others, the following findings of fact:

- (a) during the course of initial discussions between RBC Capital Markets and potential investors, "it was recognized that alternative proposals would be considered";
- (b) the list of potential investors "included both strategic and financial investors and qualified high net worth individuals in Canada";

- (c) in the conduct of the equity investment solicitation process, RBC Capital Markets had “fully canvassed the market”;
- (d) there was “overwhelming evidence of an extensive market canvas”;
- (e) there was a “fair and thorough canvassing of the market and a level playing field”;
- (f) the CMI Entities made a “sufficient effort to obtain the best offer”;
- (g) “the interests of all parties were considered”; and
- (h) subject to closing, “a major objective underpinning the initial CCAA filing [had] now been accomplished”.

A copy of the Shaw Approval Order dated February 19, 2010 is attached at Exhibit “E” to this Affidavit. A copy of the Written Reasons is attached at Exhibit “F” to this Affidavit.

35. On March 9, 2010, Goldman Sachs filed a notice of motion and factum seeking leave to appeal from, *inter alia*, the Shaw Approval Order (the “**Leave Motion**”). On March 12, 2010, Catalyst served a responding factum in support of the Leave Motion. On March 17, 2010, the CMI Entities brought a motion to expedite (the “**Motion to Expedite**”) the Leave Motion, and, if leave was granted, the appeal. The relief sought in the Motion to Expedite was granted by the Honourable Mr. Justice LaForme of the Ontario Court of Appeal on March 24, 2010. On March 22, 2010, the CMI Entities and the Ad Hoc Committee served responding facta in opposition to the Leave Motion. As described below, the Leave Motion was ultimately abandoned by Goldman Sachs following the Mediation (as defined below).

### ***Negotiations with Goldman Sachs***

36. As noted above, it was a condition of the Support Agreement that the Shareholders Agreement be amended and restated or otherwise addressed in a manner agreeable to the CMI Entities and the members of the Ad Hoc Committee. Similarly, the completion of the Shaw Transaction was conditional, among other things, upon the Shareholders Agreement being amended and restated or otherwise addressed in a manner agreeable to Shaw, Canwest Global and the members of the Ad Hoc Committee, or being disclaimed or resiliated in accordance with the provisions of the CCAA and the Claims Procedure Order.

37. The CMI Entities and all of their stakeholders had known for many months that, as part of the CMI Entities' restructuring efforts, the Shareholders Agreement would need to be amended and restated or otherwise addressed. As early as February 2009, it became clear to management of the CMI Entities that if the CMI Entities were going to be able to successfully refinance or recapitalize themselves, they would, among other things, have to address the Shareholders Agreement in a satisfactory manner, partially as a result of the commercial realities of the dramatically different economic and financial market environment compared to the environment that existed when the Specialty TV Portfolio was acquired by CW Investments from Alliance Atlantis in 2007. The CMI Entities' balance sheet and liquidity challenges and certain covenant restrictions under the note indenture governing the 8% Senior Subordinated Notes that prevented CMI from completing the Vend-In Transaction without first refinancing or repaying the 8% Senior Subordinated Notes or obtaining the consent of the requisite majority of the 8% Senior Subordinated Noteholders also necessitated the renegotiation of the Shareholders Agreement.

38. The CMI Entities have been entirely transparent during these CCAA proceedings in respect of their need to renegotiate or otherwise deal with the Shareholders Agreement. In particular, both the Initial Order Affidavit and the Support Agreement (appended as an exhibit to the Initial Order Affidavit) disclosed that it was a condition of the Original Recapitalization Transaction that the Shareholders Agreement needed to be amended and restated or otherwise addressed. In addition, the Shaw Approval Affidavit described all of the material, non-financial terms of the Original Shaw Subscription Agreement, including the fact that the completion of the Shaw Transaction was conditional, among other things, upon the Shareholders Agreement being amended and restated or otherwise addressed in a manner agreeable to the CMI Entities, Shaw and the members of the Ad Hoc Committee or being disclaimed or resiliated.

39. Commencing shortly after the issuance of the Initial Order, the CMI Entities, the CMI CRA, and the Ad Hoc Committee, with the assistance of the Monitor, encouraged and participated in direct and indirect, bi-lateral and multi-lateral negotiations with Goldman Sachs in a continued attempt to reach a consensual resolution with Goldman Sachs regarding the treatment of the Shareholders Agreement. The CMI Entities were, at all times, conscious of the direction given by this Honourable Court in the written reasons issued in respect of the Stay Motion that "a commercial resolution was the best way to resolve the [Goldman Sachs] issues".

Following the approval of the Shaw Transaction, Shaw also engaged in discussions with the CMI Entities, the CMI CRA, the Monitor, the Ad Hoc Committee and Goldman Sachs in an attempt to reach a mutually agreeable resolution of the treatment of the Shareholders Agreement and issues surrounding the approval of the Shaw Transaction. Once again, the CMI Entities took direction from this Honourable Court in the form of the Written Reasons wherein this Honourable Court stated that it continued “to be of the view that a commercial and negotiated resolution of that issue [in respect of the Shareholders Agreement] is in the best interests of all concerned”. Despite the best efforts of the CMI Entities, negotiations proved unsuccessful and eventually the discussions reached an impasse.

### ***The Mediation***

40. In light of the impasse that was reached in respect of the bi-lateral and multi-lateral negotiations, the CMI Entities and the Monitor requested that this Honourable Court direct the parties to a confidential court-supervised mediation in a final effort to reach a consensual resolution with Goldman Sachs that would permit the CMI Entities’ restructuring to proceed without lengthy and very costly litigation. The CMI Entities and the CMI CRA had unsuccessfully expended all commercially reasonable efforts to achieve a consensual renegotiation of the Shareholders Agreement with Goldman Sachs. Moreover, the CMI Entities and their stakeholders required certainty with respect to the path forward, particularly as the time to negotiate new programming agreements with the U.S. television studios was approaching, as was the period for upfront selling to advertisers of the 2010-2011 program schedules of the television channels and stations of CTLP and CW Investments.

41. The CMI Entities, the CMI CRA and the Monitor also recognized that if the parties continued to proceed down a litigation track in respect of any or all of (i) a potential request to disclaim or resiliate the Shareholders Agreement, (ii) the Leave Motion and, if leave was granted, the appeal of the Shaw Approval Order itself, and/or (iii) the 4414616 Transaction, the CMI Entities would be required to incur significant litigation costs, divert many hundreds of hours of senior management time to the litigation effort at one of the most critical times of the restructuring and, based upon even the most optimistic view, would likely not be able to complete a going concern recapitalization transaction for a significant period of time, likely well into 2011, if at all (assuming all lower court decisions were appealed). This would have put the Shaw Transaction in jeopardy as, under the terms of the Amended Support Agreement, the

Original Shaw Support Agreement and the Original Shaw Subscription Agreement, creditor approval of the proposed plan of arrangement or compromise was required to be obtained by April 15, 2010, and the plan of arrangement or compromise itself was required to be implemented by no later than August 11, 2010 (unless such dates were extended by Shaw and Canwest Global). It would also have put the DIP facility provided by CIBC Asset-Based Lending Inc. (formerly CIT Business Credit Canada Inc.) in jeopardy, which, if terminated, would have had a detrimental effect on the CMI Entities' ongoing liquidity.

42. After discussing with the parties their willingness to attend, this Honourable Court directed the CMI Entities, Goldman Sachs, Shaw and members of the Ad Hoc Committee, together with the parties' respective legal counsel, to attend a confidential mediation (the "**Mediation**"), to be conducted by the Chief Justice of Ontario, the Honourable Mr. Warren Winkler, to address the future treatment of the Shareholders Agreement and to resolve the other issues between the parties. The Monitor and its legal counsel also attended and participated in the Mediation.

43. The Mediation commenced on March 29, 2010 at the Hilton Hotel in Toronto, Ontario. I attended the Mediation on behalf of the CMI Entities, along with their legal counsel and the CMI CRA. On March 31, 2010, Chief Justice Winkler directed an adjournment of the Mediation for two weeks and requested that each of Shaw, Goldman Sachs, the Ad Hoc Committee and the CMI Entities report to him on or before April 14, 2010 concerning their respective views on whether there was merit in pursuing the Mediation any further. On April 14, 2010, the Monitor's counsel advised the parties that Chief Justice Winkler had directed that the adjournment would be further continued. It is my understanding that between March 31, 2010 and April 16, 2010, Chief Justice Winkler continued to work with the other parties to the Mediation towards a possible settlement. The CMI Entities were not directly involved in these discussions.

44. On April 16, 2010, Chief Justice Winkler advised the parties through the Monitor's counsel that Shaw, the Ad Hoc Committee and Goldman Sachs had negotiated a framework to permit the CMI Entities to effect a consensual restructuring transaction and to resolve the treatment of the Shareholders Agreement and all of the existing and potential litigation and disputes with Goldman Sachs. The framework involved, *inter alia*, (a) the value that

would be paid in cash by Shaw to Goldman Sachs for the acquisition of all of its shares in CW Investments which would satisfy the conditions in the Shaw Transaction and the Amended Support Agreement with respect to the Shareholders Agreement, and (b) the value that would be paid to the 8% Senior Subordinated Noteholders to satisfy all of their claims against the CMI Entities as part of the proposed recapitalization transaction (the “**Recapitalization Transaction**”). The CMI Entities were also advised that, if consummated, the framework would see the discontinuance by Goldman Sachs of the litigation in respect of the 4414616 Transaction and the Shaw Approval Order.

45. Chief Justice Winkler’s involvement in the Mediation essentially concluded on April 16, 2010. The CMI Entities, Shaw, the Ad Hoc Committee and Goldman Sachs subsequently proceeded to negotiate the definitive documents among them following the framework that had been agreed to by Shaw, the Ad Hoc Committee and Goldman Sachs, including the value that would be paid to the Affected Creditors (other than the 8% Senior Subordinated Noteholders) as part of the Plan.

46. When the CMI Entities were initially advised of the framework on April 16, 2010, the Monitor’s counsel did not indicate whether there would be, as part of the negotiated resolution, a recovery for Canwest Global’s existing shareholders, as had been contemplated in the Original Recapitalization Transaction and in the original Shaw Transaction. When the CMI Entities subsequently asked what the intentions of Shaw and the Ad Hoc Committee were in respect of Canwest Global’s existing shareholders, the CMI Entities were advised that neither Shaw nor the Ad Hoc Committee were prepared to make value available to Canwest Global’s existing shareholders, given that there was not enough value available to pay the general unsecured creditors of the CMI Entities in full. The CMI Entities and the CMI CRA subsequently approached Shaw, the Ad Hoc Committee and the Monitor and advocated that they reconsider including provision for a recovery for Canwest Global’s existing shareholders (to come out of the recovery that would otherwise have been obtained by the 8% Senior Subordinated Noteholders). Neither Shaw nor the members of the Ad Hoc Committee were willing to do so. In addition, the Monitor indicated that it was not prepared to support a plan of arrangement or compromise that would see value provided to existing shareholders of Canwest Global in circumstances where other Affected Creditors would not be repaid in full, if such value would not be coming out of the recovery that would otherwise be allocable to the 8% Senior



Subordinated Noteholders. In other words, the Monitor was not prepared to see the recovery of Affected Creditors (other than the 8% Senior Subordinated Noteholders) diluted by the movement of the shareholder recovery that was contemplated in the Original Recapitalization Term Sheet and original Shaw Transaction (*i.e.*, 2.3%) from the recovery of the 8% Senior Subordinated Noteholders to the recovery of those other Affected Creditors.

47. A second significant issue that required negotiation during this time was the sufficiency of the amount (the “**Remaining Creditor Pool**”) that would be allocated by Shaw to satisfy all of the claims of the CMI Entities’ creditors whose claims are proposed to be compromised under the Plan (the “**Affected Creditors**”) (other than the 8% Senior Subordinated Noteholders). The CMI Entities were strongly advocating during this time, as they have throughout this CCAA proceeding, for enhanced recovery for the Affected Creditors as part of the Amended Shaw Transaction. Numerous discussions were held between the CMI Entities and Shaw and their respective legal and financial advisors, the Monitor and its legal counsel and the CMI CRA in an effort to reach agreement on what was, by that point in time, one of the final hurdles in the way of finalizing the framework that had been agreed to with Chief Justice Winkler. Once it became apparent that there would be no value allocated to Canwest Global’s existing shareholders, the CMI Entities used that fact to negotiate for a greater recovery for the Affected Creditors (other than the 8% Senior Subordinated Noteholders). Ultimately, these negotiations led to an allocation of \$38 million to the Remaining Creditor Pool, subject to a *pro rata* increase in that amount for any restructuring period claims directly referable to the Amended Shaw Transaction, in certain circumstances. As the Remaining Creditor Pool represents an amount that is greater than the amount that would have been made available to Affected Creditors (other than the 8% Senior Subordinated Noteholders) under the Support Agreement or the Amended Support Agreement (assuming that those agreements could have been implemented), the CMI Entities and the CMI CRA advised that they were prepared to proceed based upon that allocation.

48. Final transaction terms were established and definitive documentation amending the Shaw Transaction (the “**Definitive Documentation**”) was ultimately signed by the parties, following respective board approvals by Canwest Global and Shaw, on May 3, 2010. The Definitive Documentation consists of the following:

- (a) an amendment agreement dated as of May 3, 2010 to the Original Shaw Subscription Agreement (the “**Amended Shaw Subscription Agreement**”) between Shaw and Canwest Global, including the amended and restated subscription term sheet appended thereto (the “**Amended Subscription Term Sheet**”);
- (b) an amendment agreement dated as of May 3, 2010 to the Amended Support Agreement, including the second amendment and restatement of the Original Recapitalization Term Sheet (the “**Further Amended Support Agreement**”) made between the 8% Senior Subordinated Noteholders party thereto (the “**Consenting Noteholders**”) and the CMI Entities; and
- (c) an amendment agreement dated as of May 3, 2010 to the Original Shaw Support Agreement (the “**Amended Shaw Support Agreement**”) between Shaw, Canwest Global and the Consenting Noteholders;

49. Concurrently with the execution of the Definitive Documentation, Shaw and Goldman Sachs entered into the Share and Option Purchase Agreement pursuant to which Shaw acquired on that date from Goldman Sachs 299 Class A preferred shares in the capital of CW Investments, representing approximately 29.9% of the total voting shares of CW Investments, and 499,000 Class B common shares, representing approximately 49.9% of the total equity shares of CW Investments. Shaw also obtained an option, subject to CRTC approval, to purchase the remaining 34 Class A preferred shares and 148,014 Class B common shares in the capital of CW Investments held by Goldman Sachs, representing 3.4% of the total voting shares of CW Investments and 14.8% of the total equity shares of CW Investments. The aggregate cash consideration paid and payable by Shaw for Goldman Sachs’ shares of CW Investments (including the option shares) was \$709 million.

50. It is my understanding that the Share and Option Purchase Agreement was entered into concurrently with the Amended Shaw Transaction as a result of the negotiating position taken by Goldman Sachs that it was only prepared to sell its interest in CW Investments if was paid, in part, by no later than May 3, 2010. It was on that basis, and in light of the successful Mediation conducted by Chief Justice Winkler, that the CMI Entities consented to the transaction contemplated in the Share and Option Purchase Agreement and certain related agreements (the

“**CW Investments Transaction**”) between Shaw and Goldman Sachs. In other words, having concluded that the Amended Shaw Transaction was in the best interests of the CMI Entities and their stakeholders, the CMI Entities consented to the CW Investments Transaction because the alternative was that there would be no other transaction or resolution to their impasse in their restructuring, and because the CW Investments Transaction, the Amended Shaw Transaction and the Mutual Release (as defined below) were being entered into concurrently.

51. As a result of the CW Investments Transaction, Shaw has, with the consent of CMI and CW Investments, replaced Goldman Sachs as a party to the Shareholders Agreement. The CW Investments Transaction is a private transaction between two arm’s-length parties. As CW Investments is not an Applicant in this CCAA proceeding, approval of this Honourable Court was not required in order for Shaw to acquire Goldman Sachs’ voting and equity shares in CW Investments and its interest in the Shareholders Agreement.

52. In addition, Canwest Global, CMI, CW Investments, Shaw and Goldman Sachs executed a full and final mutual release dated May 3, 2010 (the “**Mutual Release**”) with respect to the following matters that had been the subject of litigation between the parties, including:

- (a) the 4414616 Transaction;
- (b) the sale of Canwest Global’s indirect interest in Ten Network Holdings Limited by CMIH and the subsequent use of the proceeds thereof by the CMI Entities and CMIH, including pursuant to the Cash Collateral and Consent Agreement; and
- (c) the equity investment solicitation process leading up to, and the entry into by Canwest Global, Shaw and the other parties thereto of, the Shaw Transaction, and the granting of the Shaw Approval Order, including the Leave Motion (which was subsequently abandoned by Goldman Sachs).

53. News releases were issued by Canwest Global and Shaw on the same day. Copies of the news releases issued by Canwest Global and Shaw are attached at Exhibit “G” to this Affidavit.

54. The result of the successful Mediation is a transaction proposed to be implemented under the Plan to give effect to the Amended Shaw Transaction whereby Shaw or a

wholly-owned subsidiary of Shaw will be the sole shareholder of a restructured Canwest Global (“**Restructured Canwest Global**”). Shaw will pay US\$440 million in cash to satisfy all of the claims of the 8% Senior Subordinated Noteholders against the CMI Entities and \$38 million to satisfy the claims of the CMI Entities’ other Affected Creditors, subject to a *pro rata* increase in that amount for any restructuring period claims directly referable to the Amended Shaw Transaction, in certain circumstances. The Amended Shaw Transaction will see Shaw own outright all of the interests in the free-to-air television stations and subscription-based specialty television channels currently owned by CTLP and its subsidiaries and all of the interests in the Specialty TV Portfolio currently owned by CW Investments and its subsidiaries, as well as certain other assets of the CMI Entities.

55. The material terms of the definitive documentation are as follows:

### ***Amended Shaw Subscription Agreement***

56. The Amended Shaw Subscription Agreement provides that Shaw will own, on the closing of the Amended Shaw Transaction and subject to the conditions set out in the Amended Shaw Subscription Agreement, all of the common shares of Restructured Canwest Global, representing a 100% voting interest and a 100% equity interest in Restructured Canwest Global. If agreed by each of Canwest Global and Shaw, (i) Restructured Canwest Global will be a newly created corporation, incorporated under the *Canada Business Corporations Act*, and/or (ii) Shaw will purchase all of the shares of Restructured Canwest Global from Canwest Global, CMI or another wholly-owned direct or indirect subsidiary of Canwest Global, and/or (iii) Shaw will purchase CMI’s equity and voting shares of CW Investments directly from CMI. Approximately US\$440 million of the aggregate cash subscription price is to be allocated to satisfy all of the Claims (as defined therein) of the 8% Senior Subordinated Noteholders against the CMI Entities under the Plan. In the event that the implementation of the Plan occurs after September 30, 2010, an additional cash amount, referred to as the Continued Support Payment, of US\$2.9 million per month will be allocated to the 8% Senior Subordinated Noteholders. An additional \$38 million of the aggregate cash subscription price is to be allocated to the Remaining Creditor Pool to satisfy all of the Claims of the Affected Creditors (other than the 8% Senior Subordinated Noteholders), subject to a *pro rata* increase in that cash amount for Restructuring Period Claims (as defined therein) resulting from the Amended Shaw Transaction in certain circumstances.

57. The Amended Shaw Subscription Agreement contains the same customary deal protection provisions as were contained in the Original Shaw Subscription Agreement approved by this Honourable Court, including an “exclusivity” provision pursuant to which Canwest Global, among other things, cannot solicit, initiate or knowingly facilitate any inquiries or proposals regarding an Acquisition Proposal (as defined therein), or participate in any substantive discussions regarding an Acquisition Proposal. Canwest Global is also required, with limited exception, to terminate any existing solicitations, discussions or negotiations with any person (other than Shaw) that has made or may make, an Acquisition Proposal.

58. A further benefit of the Amended Shaw Transaction is that Shaw has agreed to allow an amount to be agreed with the Monitor to be used to fund wind-up costs with respect to the estates of the CMI Entities.

59. The Amended Shaw Subscription Agreement also contains the same “termination fee” provision in favour of Shaw that was contained in the Original Shaw Subscription Agreement. Specifically, the Amended Shaw Subscription Agreement provides for a termination fee in the amount of \$5 million (the “**Termination Fee**”) to be paid by Canwest Global to Shaw in the event that the Amended Shaw Subscription Agreement is terminated by Shaw at any time prior to the implementation of the Recapitalization Transaction (the “**Effective Time**”) as a result of a failure by Canwest Global to satisfy certain closing conditions (relating to the “bring-down” of representations and warranties and the performance of covenants) and the closing not occurring on or before September 30, 2010, or such other date as Shaw, Canwest Global and the Ad Hoc Committee may agree in writing (the “**Outside Date**”) solely because of a failure to satisfy such condition (a “**Termination Event**”).

60. In the event that a Termination Event has occurred, the Amended Shaw Subscription Agreement provides that, in addition to the Termination Fee, Canwest Global will reimburse Shaw for 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 Amended Shaw Subscription Agreement and the Recapitalization Transaction (the “**Expense Reimbursement**”). The Expense Reimbursement is also payable to Shaw upon closing of the Amended Shaw Transaction. The Termination Fee and Expense Reimbursement are already

secured against the property of the CMI Entities pursuant to the Investor Charge created by the Shaw Approval Order.

61. The Amended Shaw Subscription Agreement may be terminated by the parties thereto in substantially the same circumstances as set out in the Original Shaw Subscription Agreement. A copy of the Amended Shaw Subscription Agreement with the attached Amended Subscription Term Sheet (without signature pages) is attached as Exhibit "H" to this Affidavit.

### ***Amended Subscription Term Sheet***

62. The principal terms of the Recapitalization Transaction are set out in the Amended Subscription Term Sheet. It contemplates that on completion of the Recapitalization Transaction, Shaw will be the sole shareholder of Restructured Canwest Global. Following the Recapitalization Transaction, Restructured Canwest Global will be a private company directly or indirectly wholly-owned by Shaw and will apply to terminate the listings of its subordinated voting shares and non-voting shares on the TSX Venture Exchange and will also apply to applicable securities regulatory authorities to cease to be a reporting issuer. As noted above, unlike the original Shaw Transaction, which contemplated that Participating Creditors (as defined therein) would obtain shares of Restructured Canwest Global, under the Amended Subscription Term Sheet, all Affected Creditors (including the 8% Senior Subordinated Noteholders) will instead receive cash in satisfaction of all of their Claims in accordance with the Plan.

63. Another difference between the original Shaw Transaction and the transaction contemplated by the Amended Subscription Term Sheet is the treatment of Canwest Global's existing shareholders. As noted above, under the original Shaw Transaction, existing shareholders of Canwest Global were to have received cash payments in an amount equal to 2.3% of the implied equity value of a restructured Canwest Global to extinguish their equity interests pursuant to a plan of compromise or arrangement. As was the case in the Original Recapitalization Term Sheet, it was contemplated that the recovery for Canwest Global's existing shareholders was to have been funded out of the recovery that was to be otherwise allocable to the 8% Senior Subordinated Noteholders. Under the Amended Subscription Term Sheet, the existing shareholders of Canwest Global will not receive any recovery. Furthermore, all equity compensation plans of Canwest Global will be terminated on closing of the Amended

Shaw Transaction and any outstanding options, restricted share units or other equity-based awards outstanding thereunder will be terminated and cancelled without compensation to the plans' participants.

64. Under the original Shaw Transaction there were certain milestone dates that were required to be satisfied. Under the terms of the Amended Subscription Term Sheet, these milestone dates have either been amended or eliminated. In particular, pursuant to the Amended Shaw Transaction, the CMI Entities have agreed to use their commercially reasonable efforts to obtain an order from this Honourable Court sanctioning the Plan on or before August 27, 2010. Further, it is contemplated that the Amended Shaw Transaction will be completed no later than September 30, 2010, subject to extension by Shaw for up to an additional three months in the event that the closing of the Amended Shaw Transaction has not occurred by that date solely as a result of the requisite regulatory approvals not having been obtained by September 30, 2010.

65. The Amended Subscription Term Sheet is scheduled to the Amended Shaw Subscription Agreement, which is attached as Exhibit "H" to this Affidavit.

### ***Further Amended Support Agreement***

66. In conjunction with the entering into of the Amended Shaw Transaction, and in recognition of the CW Investments Transaction, the Amended Support Agreement between Canwest Global and the Consenting Noteholders was further amended by the parties thereto as of May 3, 2010. The Further Amended Support Agreement reflects modifications to the original structure of the Shaw Transaction and their effect on the contemplated structure of the Recapitalization Transaction. These terms are consistent with the amendments made contemporaneously to the Amended Shaw Subscription Agreement (including the Amended Subscription Term Sheet) and the Amended Shaw Support Agreement. A copy of the Further Amended Support Agreement (without signature pages) is attached as Exhibit "I" to this Affidavit.

### ***Amended Shaw Support Agreement***

67. The Amended Shaw Support Agreement formalizes the multi-party agreement between Canwest Global, Shaw and members of the Ad Hoc Committee party thereto with respect to the subscription by Shaw in Restructured Canwest Global and its effect on the Recapitalization Transaction, as amended by the parties, including as a result of the CW

Investments Transaction. The Amended Shaw Support Agreement also provides for the continued support of the Amended Shaw Transaction by the members of the Ad Hoc Committee party thereto on the terms set out in the Amended Shaw Subscription Agreement, subject to certain conditions. The Amended Shaw Support Agreement requires that the Amended Shaw Subscription Agreement not be further amended without the prior written consent of the members of the Ad Hoc Committee party thereto, and also provides that the Amended Subscription Term Sheet attached to the Further Amended Support Agreement may not be amended in a manner that materially adversely affects the terms of the Shaw Transaction without the prior written consent of Shaw.

68. The Amended Shaw Support Agreement contains representations, warranties and covenants of Canwest Global, Shaw and the members of the Ad Hoc Committee party thereto, many of which are substantially similar to those contained in the Support Agreement (as amended by the Amended Support Agreement and the Further Amended Support Agreement). In particular, each of the 8% Senior Subordinated Noteholders that is a party to the Amended Shaw Support Agreement has covenanted to vote in favour of and otherwise support the approval, consent, ratification and adoption of the Recapitalization Transaction and the Plan and to do all things necessary and appropriate in furtherance of the Recapitalization Transaction. Similarly, Shaw has agreed to pursue, support and use its commercially reasonable efforts to complete the Recapitalization Transaction and implement the Plan in good faith, as well as to perform all of its covenants under the Amended Shaw Subscription Agreement.

69. Each of Canwest Global, Shaw and the members of the Ad Hoc Committee party thereto have the right to terminate the Amended Shaw Support Agreement in specified circumstances, including by mutual agreement, in the event that the Further Amended Support Agreement is terminated, if the Shaw Transaction is not consummated by the Outside Date or if the closing conditions or covenants are not satisfied or complied with.

70. One of the differences between the Amended Shaw Support Agreement and the Original Shaw Support Agreement (as approved by this Honourable Court) is the deletion of those provisions concerning the treatment of the Shareholders Agreement, in light of the CW Investments Transaction. A copy of the Amended Shaw Support Agreement (with signature pages redacted) is attached as Exhibit "J" to this Affidavit.



### **Shareholder Recovery**

71. As noted above, both the Original Recapitalization Transaction and the original Shaw Transaction contemplated a recovery for Canwest Global's existing shareholders of approximately 2.3% of the anticipated implied equity value of a restructured Canwest Global (the "**Shareholder Recovery**"). The Shareholder Recovery was to have been funded out of the recovery that was to otherwise be allocable to the 8% Senior Subordinated Noteholders and was, at all times, subject to successfully completing the Original Recapitalization Transaction (and thereafter the original Shaw Transaction) and obtaining approval of this Honourable Court in implementing a recovery for Canwest Global's existing shareholders in circumstances when Affected Creditors would not be paid in full.

72. The concept of a recovery for Canwest Global's existing shareholders was first raised by the CMI Entities in the summer of 2009 when they were negotiating the original Support Agreement with members of the Ad Hoc Committee. At the time, it was the view of the CMI Entities that a shareholder recovery could be beneficial to a successful recapitalization transaction for the following reasons:

- (a) it was thought that a broad distribution of shareholders constituting the public "float" for a restructured Canwest Global would be necessary to implement the original Support Agreement given that, at that time, it was contemplated that a restructured Canwest Global would be a public company listed on the TSX; and
- (b) co-operation from Canwest Global's existing shareholders, particularly the Asper Family, could potentially assist the CMI Entities in obtaining CRTC approval in connection with the implementation of the original Support Agreement, in part, based upon the fact that most of the 8% Senior Subordinated Noteholders were not "Canadian" for purposes of the Direction.

73. When the parties were first negotiating the terms of the original Support Agreement, I am advised by Osler, Hoskin & Harcourt LLP ("**Osler**"), counsel to the CMI Entities, and believe that the CCAA was silent as to whether there could be recovery for shareholders if the claims of all other affected creditors whose claims are being compromised under a plan of compromise or arrangement were not to be paid in full. However, I am also advised by Osler, and believe that on September 18, 2009 certain amendments to the CCAA

were brought into force which call into question whether there could be recovery for shareholders in circumstances where affected creditor claims would not be satisfied in full.

74. Accordingly, it was agreed among the CMI Entities and the members of the Ad Hoc Committee prior to signing the original Support Agreement that, if a recapitalization transaction as then contemplated was implemented, the Shareholder Recovery would come out of the recovery otherwise allocable to the 8% Senior Subordinated Noteholders (*i.e.*, by contract) such that the Shareholder Recovery would not dilute the recovery for Affected Creditors which was capped at 18.5% of the equity of a restructured Canwest Global.

75. In the months following the entering into of the Support Agreement and in every phase of the negotiations necessary to achieve a viable plan, the CMI Entities maintained the requirement for the Shareholder Recovery. It is for that reason that the Shareholder Recovery was maintained in the original Shaw Transaction. However, despite the efforts of the CMI Entities and the CMI CRA, the Shareholder Recovery did not form part of the negotiated resolution that resulted in the Amended Shaw Transaction. Shaw and the Ad Hoc Committee made it clear that they were unwilling to see any recovery of value for Canwest Global's existing shareholders included in the Definitive Documentation formalizing the Amended Shaw Transaction. Among other reasons, the parties were not prepared to include any shareholder recovery in the Amended Shaw Transaction because:

- (a) all Affected Creditors will not have their Claims satisfied in full;
- (b) there is no need for a public "float" to implement the Amended Shaw Transaction as Restructured Canwest Global will be a private company which will be wholly-owned by Shaw, which is a "Canadian" under the Direction;
- (c) there is no benefit to be derived from the cooperation of the existing shareholders of Canwest Global to implement the Recapitalization Transaction; and
- (d) the CCAA amendments which recently came into force disentitling recoveries for shareholders would have made confirmation of the Plan questionable.

76. As noted above, the Monitor also indicated to the CMI Entities that it was not prepared to support a Plan that would see the recovery of the Affected Creditors (other than the

8% Senior Subordinated Noteholders) diluted by the movement of the 2.3% Shareholder Recovery from the recovery that is to be paid to the 8% Senior Subordinated Noteholders to the recovery to the other Affected Creditors.

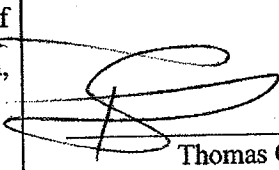
77. As a result, there is no Shareholder Recovery contemplated in the Amended Shaw Transaction.


### ***Amended Shaw Transaction is the Best Possible Outcome in the Circumstances***

78. The CMI Entities are firmly of the view that the Amended Shaw Transaction represents the best available outcome for the businesses of the CMI Entities and all of their stakeholders generally. It is the only transaction available to the CMI Entities that satisfies both of the principal conditions necessary to ensure that the CMI Entities will be able to emerge from this CCAA proceeding as going concern entities. Put another way, subject to closing of the Amended Shaw Transaction, both of the major objectives underpinning the initial CCAA filing have now been accomplished. Restructured Canwest Global will be owned by a “Canadian” investor within the meaning of the Direction and, by virtue of the CW Investments Transaction, the Shareholders Agreement has been addressed in a manner satisfactory to the CMI Entities, the Ad Hoc Committee and Shaw. In addition, the implied equity value under the Amended Shaw Transaction is greater than the implied equity value that was contemplated in the original Shaw Transaction. The Amended Shaw Transaction will provide long-term stability for the CMI Entities’ employees, pensioners, suppliers, customers and other stakeholders. It will also provide significant value for CMI Entities’ Affected Creditors, enable the businesses operated by the CMI Entities to continue on a going concern basis as viable and competitive participants in the Canadian television broadcasting industry, and maintain for the general public in Canada broad access to and choice of television news, public and other information and entertainment programming. If the Amended Shaw Transaction does not proceed, the CMI Entities will be effectively back to “square one”, without an Equity Investor in circumstances where Shaw will be standing in the shoes formerly occupied by Goldman Sachs. It also has the potential to re-open many of the claims of Affected Creditors that have now been settled by the CMI Entities as part of this CCAA proceeding, thereby causing the CMI Entities to have to renegotiate those settlements, and could imperil the Further Amended Support Agreement that has been entered into with the members of the Ad Hoc Committee.

79. The inability of the CMI Entities, the Ad Hoc Committee and later Shaw to renegotiate the Shareholders Agreement with Goldman Sachs led to the real possibility of costly, protracted and uncertain litigation necessary to address the Shareholders Agreement. Such uncertainty required the CMI Entities and the Monitor to request the Mediation. The agreements that were reached at the Mediation cleared significant roadblocks in the CMI Entities' restructuring efforts. It was within that contextual matrix that the path forward was obtained.

SWORN BEFORE ME at the City of  
Winnipeg, in the Province of Manitoba,  
on June 7, 2010.

  
\_\_\_\_\_  
Thomas C. Strike

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

**RICHARD MARC LEIPSIC**  
A NOTARY PUBLIC  
IN AND FOR THE PROVINCE OF MANITOBA

**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)
18. CGS International Holdings (Netherlands)
19. CGS Debenture Holding (Netherlands)
20. CGS Shareholding (Netherlands)
21. CGS NZ Radio Shareholding (Netherlands)
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

# Exhibit “A”

**This is Exhibit "A"**

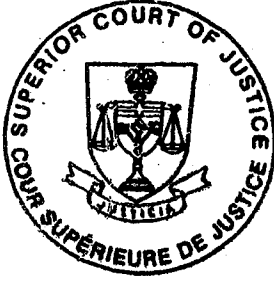
referred to in the Affidavit of **Thomas C. Strike**

Sworn before me this 7<sup>th</sup> day of June, 2010

  
\_\_\_\_\_  
A Commissioner for Taking Affidavits

**RICHARD MARC LEIPSIC**  
A NOTARY PUBLIC  
IN AND FOR THE PROVINCE OF MANITOBA





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<sup>(e)</sup>, 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;
- (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>MP</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>if any,</sup> in respect of <sup>any of</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

sup

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://cfcanda.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 Media Works Turkish Holdings (Netherlands) B.V.
18. CGS International Holdings (Netherlands) B.V.

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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**

**OSLER, HOSKIN & HARCOURT LLP**  
Box 50, 1 First Canadian Place  
Toronto, Ontario, Canada M5X 1B8

Lyndon A.J. Barnes (LSUC#: 13350D)

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Lawyers for the Applicants

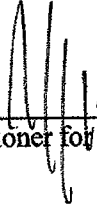
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# Exhibit “B”

**This is Exhibit "B"**

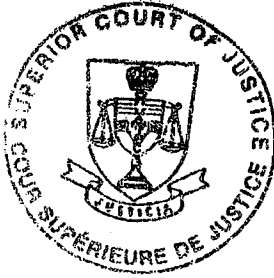
**referred to in the Affidavit of Thomas C. Strike**

**Sworn before me this 7<sup>th</sup> day of June, 2010**



**A Commissioner for Taking Affidavits**

**RICHARD MARC LEPSIC  
A NOTARY PUBLIC  
IN AND FOR THE PROVINCE OF MANITOBA**



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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) MONDAY, THE 29<sup>th</sup> DAY  
)  
MADAM JUSTICE PEPALL ) OF MARCH, 2010

IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF CANWEST GLOBAL  
COMMUNICATIONS CORP. AND THE OTHER APPLICANTS  
LISTED ON SCHEDULE "A"

Applicants

**ORDER  
(Stay Extension Motion)**

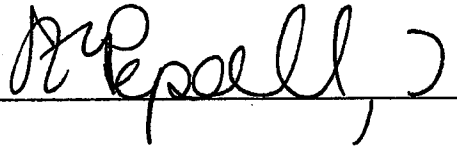
**THIS MOTION**, made by Canwest Global Communications Corp. ("Canwest Global") and the other Applicants listed on Schedule "A" hereto (collectively, the "Applicants") and the Partnerships listed on Schedule "B" hereto (the "Partnerships" and, together with the Applicants, the "CMI Entities"), pursuant 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 Notice of Motion of the CMI Entities, the Affidavit of John E. Maguire sworn March 23, 2010, the 12<sup>th</sup> Report of FTI Consulting Canada Inc. in its capacity as court-appointed monitor of the CMI Entities (the "Monitor"), and on hearing from counsel for the CMI Entities, the Monitor, the *ad hoc* committee of holders of 8% senior subordinated notes issued by Canwest Media Inc., ~~CIT Business Credit Canada Inc.~~, Shaw Communications Inc., and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service, filed.

STP

- 2 -

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this Motion is properly returnable today and any further service of the Notice of Motion and the Motion Record is hereby dispensed with.
2. **THIS COURT ORDERS** that the Stay Period, as defined in the Initial Order dated October 6, 2009, and as subsequently extended, is hereby extended from March 31, 2010 until June 15, 2010.



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

MAR 29 2010

PER / PAR: JSN

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.
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8. Global Centre Inc.
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21. CGS NZ Radio Shareholding (Netherlands)
22. 4501063 Canada Inc.
23. 4501071 Canada Inc.
24. 30109, LLC
25. CanWest MediaWorks (US) Holdings Corp.

- 4 -

**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"

APPLICANTS

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER**

(Stay Extension Motion)

**OSLER, HOSKIN & HARCOURT LLP**  
Box 50, 1 First Canadian Place  
Toronto, Ontario, Canada M5X 1B8

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Fax: (416) 862-6666

Lawyers for the Applicants

F. 1114233




# Exhibit “C”

**This is Exhibit "C"**

referred to in the Affidavit of **Thomas C. Strike**

Sworn before me this 7<sup>th</sup> day of June, 2010

  
A Commissioner for Taking Affidavits  
**RICHARD MARC LEIPSIC**  
A NOTARY PUBLIC  
IN AND FOR THE PROVINCE OF MANITOBA

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

APPLICANTS

**AFFIDAVIT OF JOHN E. MAGUIRE  
(Sworn October 5, 2009)**

I, John E. Maguire, of the City of Winnipeg, in the Province of Manitoba, the Chief Financial Officer of the Applicant, Canwest Global Communications Corp. ("Canwest Global"), MAKE OATH AND SAY:

**INTRODUCTION**

1. This Affidavit is made in support of an Application by Canwest Global and the other Applicants listed on Schedule "A" hereto (together, the "Applicants") for relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"). While the partnerships listed on Schedule "B" hereto (the "Partnerships") are not Applicants in this proceeding, the Applicants seek to have a stay of proceedings and other benefits of an Initial Order under the CCAA extended to the Partnerships as they carry on operations integral to the business of the Applicants.

2. I am the Chief Financial Officer of Canwest Global and its principal operating subsidiary Canwest Media Inc. ("CMI"). I am also a director of CMI and an officer of certain of the Applicants listed on Schedule "A", including CMI and Canwest Television GP Inc. ("Canwest Television GP"). As such, I have personal knowledge of the matters deposed to herein. Where I have relied upon other sources for information, I have specifically referred to such sources and verily believe them to be true. In preparing this Affidavit, I have also consulted

with other members of Canwest Global's senior management team and, where necessary, members of the senior management teams of Canwest Global's subsidiaries.

3. Canwest Global is a leading Canadian media company with interests in (i) free-to-air television stations and subscription-based specialty television channels and (ii) newspaper publishing and digital media operations. With respect to its television operations, Canwest Global, principally through its subsidiary Canwest Television Limited Partnership ("CTLP"), owns and operates the *Global Television Network* (as defined below), which is comprised of 12 free-to-air television stations and covers approximately 98% of Canada's English-language television market. Canwest Global, through its subsidiaries, also owns and operates a portfolio of leading subscription-based national specialty television channels, including 17 leading specialty television channels which are held jointly with Goldman Sachs Capital Partners ("Goldman Sachs") and which include *Food Network Canada*, *HGTV Canada*, *Slice* and *History Television*.

4. With respect to its newspaper publishing operations, Canwest Global, principally through its subsidiary Canwest Limited Partnership (the "**Limited Partnership**"), is the largest publisher of daily English-language newspapers in Canada which have an estimated average daily circulation of approximately 1.0 million copies and an estimated average weekly readership of approximately 4.1 million people. Canwest Global, through the Limited Partnership, also publishes a number of community newspapers and other publications and has extensive online and digital media operations. In addition, Canwest Global, through its indirect ownership interest in The National Post Company/La Publication National Post (the "**National Post Company**"), publishes the *National Post* national newspaper and related online operations.

5. Until recently, Canwest Global, indirectly through its subsidiary CanWest MediaWorks Ireland Holdings ("CMIH"), was also the majority and controlling shareholder of Ten Network Holdings Limited ("**Ten Holdings**"), which is the owner and operator of various businesses in Australia, including *Ten Television Network*, a free-to-air television network, and Eye Corp Pty. Limited, a multi-national out-of-home advertising business. As described in greater detail below, CMIH recently sold its interest in Ten Holdings.

6. The entities seeking relief in this CCAA proceeding do not comprise the entire Canwest Global enterprise. Relief is sought only on behalf of Canwest Global, CMI, CTLP, the National Post Company and certain of their respective subsidiaries (all of whom are guarantors

under CMI's 8% Senior Subordinated Notes (as defined below) and are parties to the Support Agreement (as defined below)). The businesses operated by the Applicants and Partnerships seeking CCAA protection (collectively, the "CMI Entities") include (i) Canwest's free-to-air television broadcast business (*i.e.*, the *Global Television Network* stations); (ii) certain subscription-based specialty television channels that are wholly owned and operated by CTLP (defined below as the "CMI Owned Specialty Channels"); and (iii) the *National Post*.

7. For greater certainty, the following entities and businesses are not included in this CCAA proceeding, nor is a stay of proceedings sought in respect of them: (i) Canwest Global's Canadian subscription-based specialty television channels which are held jointly with Goldman Sachs (acquired from Alliance Atlantis Communications Inc. ("Alliance Atlantis") in August 2007) and which are now operated by Canwest Global's indirect subsidiary CW Investments Co. ("CW Investments") and its subsidiaries; (ii) Canwest Global's subscription-based specialty television channels which are held in the Canadian Television Segment (as defined below) but not wholly owned by CTLP (*i.e.*, *TVtropolis*, *MysteryTV* and *MenTV*); and (iii) the entities in Canwest's publishing and digital media business in Canada (with the exception of the *National Post*), namely the Limited Partnership, Canwest Publishing Inc./Publications Canwest Inc. ("CPI"), Canwest Books Inc. ("CBI"), and Canwest (Canada) Inc. ("CCI") (collectively, the "LP Entities").

8. Hereinafter, where reference is made to the Canwest Global enterprise as a whole, which includes all of the CMI Entities, together with Canwest Global's other subsidiaries which are not Applicants or Partnerships in this CCAA proceeding, the term "Canwest" will be used.

9. As of October 1, 2009, Canwest employed the full-time equivalent ("FTE") of approximately 7,400 employees around the world. Of that number, approximately 1,700 FTE employees are employed by the CMI Entities, the vast majority of whom work in Canada, with approximately 850 FTE employees working in Ontario.

10. Over the past year, the CMI Entities have experienced significant and sudden declines in their advertising revenues reflecting the weakening economic environment in Canada. The weakening economy has caused many of the CMI Entities' advertising customers to reduce the amounts that they spend on advertising, resulting in decreased demand for advertising and lower advertising rates. The decrease in advertising revenue (which accounts for approximately

77% of Canwest's total Canadian revenues) has had a significantly negative impact on the cash flow positions of the CMI Entities, causing them to be at various times in default of their credit facilities, note indenture and guarantee obligations.

11. In particular, in February 2009, CMI breached, for the first time, certain financial covenants set out in its then current senior secured credit facility. Following the initial default, CMI received a waiver of the borrowing conditions from its then current senior lenders to allow the CMI Entities an opportunity to pursue a possible refinancing or recapitalization transaction. The waiver was extended on six separate occasions over the following three months.

12. On March 15, 2009, CMI failed to make an interest payment in the amount of US\$30.4 million which was due in respect of its US\$761,054,211 aggregate principal amount of 8% senior subordinated notes due 2012 (the "**8% Senior Subordinated Notes**"). Under the terms of the applicable note indenture, CMI had 30 days to "cure" its default and make the required interest payment to the holders of the 8% Senior Subordinated Notes (the "**8% Senior Subordinated Noteholders**"). On April 14, 2009, immediately before the "cure" period was set to expire, CMI entered into the first of a series of extension agreements with an *ad hoc* committee of the 8% Senior Subordinated Noteholders holding approximately 72% of the 8% Senior Subordinated Notes (the "**Ad Hoc Committee**"), wherein the parties agreed that the 8% Senior Subordinated Noteholders who were party to that extension agreement would not demand immediate payment of the principal amount of the outstanding 8% Senior Subordinated Notes during the applicable extension period. Had the waiver agreements and extension agreements not been provided, and had a demand for immediate payment been made by either The Bank of Nova Scotia ("**BNS**"), as Administrative Agent, on behalf of CMI's then current senior lenders, or on behalf of the 8% Senior Subordinated Noteholders, neither CMI nor any of the guarantors under the then current senior secured credit facility or note indenture would have been in a position to repay the amounts owing under the then current senior secured credit facility or the 8% Senior Subordinated Notes.

13. On May 20, 2009, after a series of lengthy negotiations with the Ad Hoc Committee, CMI announced that it had entered into an agreement (as amended, the "**Note Purchase Agreement**") with certain members of the Ad Hoc Committee wherein CMI and its subsidiary CTLP agreed to issue the U.S. dollar equivalent of \$105 million principal amount of

12% senior secured notes (the "12% Secured Notes") to those members of the Ad Hoc Committee (the "12% Secured Notes Purchasers") for an aggregate purchase price of \$100 million. On the same day, CMI announced that it would be entering into an agreement with CIT Business Credit Canada Inc. ("CIT") wherein CIT would provide a senior secured revolving asset-based loan ("ABL") facility in an amount up to \$75 million to CMI (the "CIT Facility"). Both transactions closed on May 22, 2009. These transactions were entered into to provide CMI with sufficient cash to operate its business in the ordinary course until it could enter into further agreements to effect a consensual recapitalization transaction for the CMI Entities. CMI also used the proceeds from the issue and sale of the 12% Secured Notes and from the CIT Facility to, among other things, repay its then current senior lenders all amounts owing under the then current senior credit facility and to settle certain related swap obligations.

14. Due to the size of the indebtedness owing to the 8% Senior Subordinated Noteholders, the continued forbearance of the members of the Ad Hoc Committee with respect to CMI's interest payment default and as a result of the additional liquidity provided to the CMI Entities as a result of the Note Purchase Agreement, the Ad Hoc Committee was provided with the opportunity to negotiate with the CMI Entities a creditor-sponsored "pre-packaged" recapitalization transaction for the CMI Entities. The CMI Entities recognized that any consensual recapitalization transaction would necessarily require the support of the members of the Ad Hoc Committee. In that regard, the Note Purchase Agreement and the CIT Facility contained certain milestones for the achievement of an agreement in principle and the execution of definitive documents with respect to a restructuring or recapitalization transaction involving the CMI Entities. The time frames for satisfying these milestones were extended on numerous occasions while the parties negotiated a possible recapitalization transaction.

15. On September 22, 2009, the board of directors of Canwest Global (the "Board") authorized the sale of all of the shares of Ten Holdings owned by CMIH (the "Ten Shares") on the recommendation of a Special Committee of the Board struck to explore strategic alternatives for Canwest (the "Special Committee"), and with the consent of CIT, the Ad Hoc Committee and the 12% Secured Notes Purchasers. Canwest pursued a sale of the Ten Shares in order to enhance the ability of the CMI Entities to enter into a consensual recapitalization transaction with the Ad Hoc Committee by: (i) providing additional liquidity to CMI for general corporate purposes and to fund the CMI Entities' operations pending completion of a recapitalization

transaction; (ii) repaying all outstanding amounts owing under the CIT Facility, excluding outstanding letters of credit in the amount of approximately \$10.7 million; (iii) repaying all of the amounts owing to the 12% Secured Notes Purchasers; and (iv) depositing amounts with the trustee for the 8% Senior Subordinated Notes (the "**Indenture Trustee**") for the purpose of reducing the aggregate principal amount owing under the 8% Senior Subordinated Notes. Pursuant to an underwriting agreement dated September 24, 2009 (the "**Underwriting Agreement**"), the sale of the Ten Shares was effected in a block trade executed on the Australian Stock Exchange on September 25, 2009 and settled on October 1, 2009, realizing gross proceeds of approximately \$634 million (the "**Ten Proceeds**").

16. In light of the sale of the Ten Shares, the CMI Entities and the members of the Ad Hoc Committee (representing approximately 72% of the aggregate principal amount of the outstanding 8% Senior Subordinated Notes) executed a Use of Cash Collateral and Consent Agreement (the "**Cash Collateral and Consent Agreement**") dated September 23, 2009 that set out, among other things, the manner in which the Ten Proceeds would be used by the CMI Entities.

17. In accordance with the terms of the Cash Collateral and Consent Agreement, after satisfying certain transactional costs associated with the sale of the Ten Shares, the Ten Proceeds were loaned by CMIH to CMI in exchange for a secured promissory note (the "**Secured Intercompany Note**") in the amount of \$187,263,126 and an unsecured promissory note (the "**Unsecured Promissory Note**") in the amount of \$430,556,189. The Ten Proceeds advanced to CMI pursuant to the Secured Intercompany Note were applied as follows: (i) US\$94,916,583 to repay in full all amounts outstanding under the 12% Secured Notes; and (ii) \$85,000,000 to fund general liquidity and operating costs of CMI, including repaying the full balance outstanding under the CIT Facility of approximately \$23 million, excluding outstanding letters of credit in the amount of approximately \$10.7 million which are currently cash collateralized. The balance of the net Ten Proceeds, US\$399,625,199, was advanced to CMI pursuant to the Unsecured Promissory Note and was then deposited by CMI with the Indenture Trustee in payment of outstanding interest (other than an interest payment due September 15, 2009) and to reduce the principal outstanding under the 8% Senior Subordinated Notes. Following the distribution of the Ten Proceeds, the outstanding remaining principal amount owing under the 8% Senior Subordinated Notes is US\$393,197,106.



18. Coincidentally with entering into the Underwriting Agreement for the sale of the Ten Shares and the execution of the Cash Collateral Agreement, the members of the Ad Hoc Committee delivered an offer in respect of a recapitalization transaction to the CMI Entities in the form of a Support Agreement executed by approximately 72% of the 8% Senior Subordinated Noteholders (the "**Support Agreement**"). The Support Agreement had attached to it a Restructuring Term Sheet (the "**Term Sheet**") which contained the summary terms and conditions of a going concern recapitalization transaction involving the CMI Entities (the "**Recapitalization Transaction**"). Pursuant to the conditions of this offer, the Support Agreement was not capable of being accepted by the CMI Entities until the Ten Proceeds were distributed in accordance with the Cash Collateral and Consent Agreement. On October 5, 2009, after the completion of the distribution of the Ten Proceeds, on the recommendation of the Special Committee, the Board approved (and the boards of the other CMI Entities as applicable also approved) the acceptance of the Support Agreement. The Support Agreement and Term Sheet represent the culmination of many months of arm's length negotiations between the CMI Entities and the Ad Hoc Committee.

19. The Support Agreement provides that the CMI Entities will pursue a plan of arrangement or compromise on the terms set out in the Term Sheet (the "**Plan**") in order to implement the Recapitalization Transaction as part of this CCAA proceeding. The Support Agreement also provides that each 8% Senior Subordinated Noteholder that is a signatory thereto (the "**Consenting Noteholders**") will vote its 8% Senior Subordinated Notes in favour of the Plan at any meeting of creditors. Under the Recapitalization Transaction, it is proposed, *inter alia*, that creditors of the CMI Entities whose claims are compromised under the Plan, including the 8% Senior Subordinated Noteholders, will receive common shares of a restructured Canwest Global ("**Restructured Canwest Global**"). It is proposed that existing shareholders of Canwest Global will receive in aggregate 2.3% of the shares of Restructured Canwest Global.

20. The Support Agreement provides that the CMI Entities will make the within application under the CCAA in order to implement the Recapitalization Transaction. The Consenting Noteholders who executed the Support Agreement and the Cash Collateral and Consent Agreement executed such agreements on the basis that a restructuring of the CMI Entities as proposed would be undertaken pursuant to the CCAA. Without the liquidity provided by the Consenting Noteholders under the Cash Collateral and Consent Agreement, which is

intended to allow the CMI Entities to continue to operate pending completion of a recapitalization and which is only available within a CCAA proceeding, the CMI Entities would be unable to continue as going concerns and are thus insolvent. In addition, CMI did not make, and does not have the necessary liquidity to make, an interest payment in the amount of US\$30.4 million that was due and payable on September 15, 2009 under the 8% Senior Subordinated Notes and therefore cannot satisfy its debts as they become due. None of the other CMI Entities which are guarantors of the 8% Senior Subordinated Notes can make such payment and are thus insolvent. Further, the assets of the CMI Entities are not sufficient to discharge all of their liabilities and the CMI Entities are thus also insolvent on a balance sheet basis.

21. Accordingly, and for the reasons set out herein, the CMI Entities are insolvent and a restructuring of their long-term debt and balance sheets is urgently required and should be pursued in order to preserve their enterprise value.

22. The CMI Entities have reached an agreement on a consensual restructuring transaction with the Ad Hoc Committee. The CMI Entities are seeking a stay of proceedings under the CCAA in order to allow them to proceed to develop the Plan in order to implement the Recapitalization Transaction which, if approved by the creditors and this Honourable Court, would significantly reduce the amount of their indebtedness, allow for a going concern emergence for a substantial number of the businesses operated by the CMI Entities and maintain employment for as many as possible of their approximately 1,700 employees in Canada.

23. As set out below, pursuant to the terms of the CIT Credit Agreement (as defined below) and subject to the conditions therein, the CIT Facility increases from up to \$75 million to up to \$100 million and converts into a debtor-in-possession financing arrangement for the CMI Entities upon a CCAA filing (the "DIP Facility"). Based upon the additional liquidity provided by the Ten Proceeds that have been loaned to CMI by CMIH and the CMI Entities' cash flow projections, the CMI Entities do not expect to draw on the DIP Facility during the early stages of this CCAA proceeding. However, should the need arise, the DIP Facility will be available to be accessed to provide additional liquidity to allow the CMI Entities to develop and implement the Plan.

24. The CMI Entities are also seeking this Honourable Court's authorization for the proposed Monitor to apply for recognition of this CCAA proceeding as "Foreign Main

Proceedings” under Chapter 15 of the United States Bankruptcy Code (the “**Bankruptcy Code**”), initially only in respect of certain of the Applicants (the “**Chapter 15 Proceedings**”), to ensure, *inter alia*, that a continued supply of television programming from certain U.S. entities is not interrupted.

### **CORPORATE STRUCTURE OF CANWEST GLOBAL**

25. Canwest Global is a public company continued under the *Canada Business Corporations Act*, R.S., 1985, c. C-44 (the “**CBCA**”).

26. Canwest Global’s authorized capital consists of an unlimited number of preference shares, multiple voting shares, subordinate voting shares and non-voting shares. The multiple voting shares carry ten votes per share and the subordinate voting shares carry one vote per share. Non-voting shares do not carry voting rights, except at meetings where the holders of such shares would be entitled, by law, to vote separately as a class.

27. The multiple voting shares are convertible into subordinate voting shares or non-voting shares on a one-for-one basis at any time at the option of the holder. The subordinate voting shares are convertible into non-voting shares on a one-for-one basis at any time at the option of the holder. The non-voting shares are convertible into subordinate voting shares on a one-for-one basis provided that the holder is Canadian.

28. Canwest Global is a “constrained-share company” which means that at least 66 2/3% of its voting shares must be beneficially owned by persons who are Canadian. There is no limit on the number of non-voting shares that non-Canadians may hold. Canwest Global’s subordinate voting shares are publicly traded on the Toronto Stock Exchange (“**TSX**”) under the symbol “**CGS**” and its non-voting shares are currently listed for trading on the **TSX** under the symbol “**CGS.A**”. Canwest Global’s multiple voting shares are not listed for trading.

29. As at September 28, 2009, Canwest Global had the following shares issued and outstanding: 76,785,976 multiple voting shares; 99,250,614 subordinate voting shares; and 1,609,949 non-voting shares. Canwest Global had no preference shares outstanding as at that date.

30. Mr. David A. Asper, Ms. Gail S. Asper and Mr. Leonard J. Asper (collectively, the "Aspers"), each of whom is an officer and director of Canwest Global, each beneficially own 25,595,325 multiple voting shares of Canwest Global, representing in aggregate all of the multiple voting shares of the company. In addition, the Aspers collectively own 6,995,546 subordinate voting shares of Canwest Global (approximately 7%). An additional 246,359 subordinate voting shares are held by the Asper Charitable Trust, doing business as The Asper Foundation.

31. The Aspers and certain of their respective wholly-owned holding corporations have entered into a shareholders' agreement under which the parties have granted certain rights and undertaken certain obligations to each other with respect to the holding and disposition of securities in Canwest Global (the "Shareholders' Agreement"). In addition, each of the parties to the Shareholders' Agreement has agreed to, *inter alia*, vote such securities held by it in favour of individuals nominated by the Aspers (or their representatives) as directors of Canwest Global and who together constitute at least a majority (but as close to a simple majority as possible) of the directors of Canwest Global.

32. According to its public disclosure, as at November 5, 2008, Fairfax Financial Holdings Limited, through its subsidiaries, owned approximately 22% of the total outstanding subordinate voting shares of Canwest Global.

33. Canwest Global owns 100% of CMI. CMI has direct or indirect ownership interests in all of the other CMI Entities. Until recently, CMI also directly held 99.999% of the partnership units of the Limited Partnership. On or about October 5, 2009, CMI transferred its entire interest in the Limited Partnership to 4501071 Canada Inc. ("4501071 Canada"), a wholly-owned subsidiary of CMI, in return for nominal consideration. The transfer of CMI's partnership units in the Limited Partnership was effected to give greater flexibility and certainty to both CMI and the Limited Partnership in light of the fact that the recapitalization of the CMI Entities is not occurring at the same time as the recapitalization or restructuring of the LP Entities (described below).

34. A copy of Canwest's corporate organization chart dated October 5, 2009 is attached as Exhibit "A" to this Affidavit. The CMI Entities are located at pages 1, 2, 3, and 7 of Exhibit "A".

### **CORPORATE DECISION MAKING**

35. In April and May 2009, Canwest Global and certain of the CMI Entities, in addition to certain of Canwest Global's other subsidiaries, took steps to consolidate and streamline corporate decision making in the Canwest enterprise. To do so, the shareholder of each of CMI, 4501071 Canada, CCI, CPI, National Post Holdings Ltd. ("**National Post Holdings**"), 4501063 Canada Inc. ("**4501063 Canada**") and Canwest Television GP entered into unanimous shareholder declarations which removed the rights, powers and duties of the directors of the relevant subsidiary to manage, or supervise the management, of the business and affairs of the subsidiary companies. By executing the unanimous shareholder declarations, the applicable shareholder of each subsidiary company has assumed managerial responsibilities from the subsidiary's directors. To complete the corporate initiative, Canwest Global concurrently executed a unanimous shareholder declaration which removed the directorial powers from the directors of CMI. The ultimate effect of the various unanimous shareholder declarations was to consolidate decision making of the CMI Entities and the LP Entities with Canwest Global through the Board.

### **CHIEF PLACE OF BUSINESS**

36. The chief place of business of the CMI Entities is the Province of Ontario. The CMI Entities' television business, which includes the *Global Television Network* and the CMI Owned Specialty Channels (and all of Canwest's specialty television channels owned by CW Investments) is based principally at 121 Bloor Street East and 81 Barber Greene Road in Toronto, Ontario. The National Post Company is headquartered at 1450 Don Mills Road in Toronto, Ontario. All national advertising rates, and national sales policies and guidelines for Canwest's Canadian television operations are managed from Canwest's central national sales offices at 121 Bloor Street East in Toronto, Ontario. The *Global Television Network's* national television newscast, *Global National* is located in Ottawa, Ontario. In addition, Canwest Global's Chief Executive Officer resides in Toronto.

37. Moreover, as at October 1, 2009, the CMI Entities employed approximately 850 FTE employees in Ontario, which was more people than the CMI Entities employed in any other province at that date.

## **CANWEST'S BUSINESS OPERATIONS**

38. Since the completion of the sale of the Ten Shares, Canwest's business operations consist solely of its (a) television business and (b) newspaper publishing and digital media business.

### **A. TELEVISION BUSINESS**

#### **i. Description of Industry**

39. The Canadian television broadcasting market is comprised of a number of English and French language networks, stations and channels that operate in different market segments. These networks include free-to-air or broadcast networks, including government-owned or "public" networks, such as the *Canadian Broadcasting Corporation (CBC)*, as well as privately-owned networks, such as *CTV* and the *Global Television Network*. In addition, the Canadian television market includes subscription-based specialty television channels, such as *Showcase*, *TSN* and *Space*, and premium pay television channels, such as *The Movie Network* and *Movie Central*, which provide special interest programming, such as news, sports, arts, lifestyle, children's and other entertainment and information programming. The television stations of Canadian broadcast networks and certain U.S. broadcast networks are available over-the-air to substantially all Canadian households. Pay television, specialty television and certain U.S. stations are only available to households that subscribe to cable, direct-to-home satellite, multi-point distribution systems or telephony television services for subscription fees.

40. Companies operating in the market for the distribution of television signals (other than over-the-air) are known in Canada as Broadcast Distribution Undertakings ("BDUs"). A relatively small number of dominant BDUs, including Rogers Communications, Shaw Communications, Bell TV (formerly Bell ExpressVu), StarChoice, Videotron and Cogeco, currently hold a combined BDU market share of approximately 90%. Specialty television broadcasters, such as Canwest, enter into carriage agreements with BDUs in order to distribute their specialty television channels to the public.

41. As of February/March 2009, approximately 11.1 million Canadian households subscribed to cable or satellite television services. Of those 11.1 million Canadians, approximately 32% or 3.6 million subscribers received analog television services and

approximately 68% or 7.5 million subscribers received digital television services via digital set-top boxes provided by their BDUs.

42. As of August 31, 2009, there were approximately 158 specialty television channels available in Canada, including approximately 50 analog and 108 digital television channels.

## ii. Regulatory Environment

43. Canadian television broadcasting, including both free-to-air and specialty television broadcasting, is regulated principally by the *Broadcasting Act (Canada)*, 1991, c.11 (the “**Broadcasting Act**”) and the regulations made thereunder. The Canadian Radio-television and Telecommunications Commission (“**CRTC**”) administers the Broadcasting Act, grants and reviews television broadcasting licences and approves certain changes in corporate ownership and control. In addition, the CRTC establishes and oversees compliance with regulations and policies concerning television broadcasting, including various programming requirements.

44. Typically, the CRTC issues television licences for terms of up to seven years. All television licences are subject to certain conditions, including minimum Canadian content requirements. The current free-to-air television licence renewals have been shortened to one-year transitional licences, given the economic environment and the uncertainty surrounding the future of the current free-to-air television business model in Canada.

45. Under the Broadcasting Act, the CRTC is authorized to issue, amend, renew, suspend or revoke television licences. The CRTC will only issue, amend or renew television licences to eligible “Canadian” entities. A corporation is deemed to be a “Canadian” entity if: (a) it is incorporated or continued under the laws of Canada or a province thereof; (b) its chief executive officer is a resident Canadian; (c) not less than 80% of its directors are resident Canadians; (d) Canadian persons beneficially own and control not less than 80% of its issued and outstanding voting shares and not less than 80% of the votes attached to those shares; and (e) it is not otherwise effectively controlled by non-Canadian persons.

46. If a television licensee is a subsidiary corporation, its parent corporation must also be incorporated or continued under the laws of Canada or a province thereof, and Canadian persons must beneficially own and control not less than 66 2/3 % of its issued and outstanding

voting shares and not less than 66 2/3 % of the votes attached to those shares. In addition, unless Canadian persons own and control not less than 80% of the issued and outstanding voting shares and not less than 80% of the votes of the parent corporation, and unless its chief executive officer and 80% of its directors are resident Canadians, neither the parent corporation, nor its directors, may exercise any control or influence over any programming decisions of the CRTC-licensed subsidiary.

47. The CRTC similarly imposes restrictions on the transfer of ownership and control of television licences. A holder of a television licence must obtain approval from the CRTC prior to any act, agreement or transaction that directly or indirectly would result in a material change in ownership or effective control of the licensee, or of a person who has, directly or indirectly, effective control of the licensee. Transferees of ownership or control of a licensee must demonstrate to the CRTC that the transfer is in the public interest.

### iii. Overview of Canwest's Television Business

48. Canwest is one of the largest owners and operators of commercial free-to-air television stations and specialty television channels in Canada. Canwest's television broadcast business is notionally divided between the Canadian Television Segment (as defined below) and the CW Media Segment (as defined below).

#### (a) Canadian Television Segment

49. Canwest's Canadian television segment consists of the following television stations and specialty channels (collectively, the "Canadian Television Segment"):

- (a) 12 free-to-air television stations which are wholly-owned and operated by CTLP which comprise the *Global Television Network*;
- (b) three subscription-based specialty television channels which are wholly-owned and operated by CTLP (*DejaView*, *MovieTime* and *Fox Sports World*) (collectively, the "CMI Owned Specialty Channels");
- (c) two subscription-based specialty television channels which are partially-owned and operated by CTLP (*TVtropolis*, *Mystery TV*); and



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- (d) one subscription-based specialty television channel which is partially-owned but not operated by CTLP (*MenTV*).

The CMI Owned Specialty Channels are included among the businesses seeking relief in this CCAA proceeding. Conversely, the three above-noted subscription-based specialty television channels which are not wholly-owned by CTLP (namely *TVtropolis*, *MysteryTV* and *MenTV*) are not part of this CCAA proceeding.

50. Until recently, CTLP was also the owner of five free-to-air television stations which operated under the *E!* brand (the "*E!* Stations"). The *E!* Stations delivered *E!*-branded entertainment programming and targeted a younger audience than did the *Global Television Network*. After engaging in a comprehensive sales and marketing process with the assistance of RBC Capital Markets, Canwest's financial advisor, on August 31, 2009, CTLP completed the sale of two of the five *E!* Stations (*CHCH-TV* in Hamilton and *CJNT-TV* in Montreal) to Channel Zero Inc. ("**Channel Zero**"), and permanently closed a third *E!* Station (*CHCA-TV* in Red Deer) after concluding that there were no viable options for that station. The fourth *E!* Station (*CHBC-TV* in Kelowna) was rebranded into a *Global Television Network* affiliate effective September 1, 2009. On September 4, 2009, Canwest Global announced that CTLP had entered into an agreement to sell the remaining *E!* Station (*CHEK-TV* in Victoria) to a local investor group.

51. The *Global Television Network* broadcasts to the major metropolitan areas in Canada, including Toronto/Hamilton, Montreal, Vancouver/Victoria, Kelowna, Ottawa, Calgary, Edmonton, Quebec City, Halifax, Regina, Saskatoon and Winnipeg. It is estimated that the *Global Television Network* reaches approximately 32.2 million individuals (which comprise approximately 98% of the total Canadian television audience). In each of the markets in which it operates, the *Global Television Network* ranked second in its extended market area for the Spring 2009 ratings season with audience shares ranging from 4.3% to 9.3%.

52. The *Global Television Network* broadcasts many of the most popular television programs in Canada. Among the many "hit" shows in its current program schedule are established programs such as *House*, *Lie to Me*, *Survivor*, *Heroes*, *The Simpsons*, *Family Guy*, *The Office*, *NCIS*, *Brothers and Sisters*, *24*, and *Bones*. The *Global Television Network* also broadcasts world class sporting events such as the *Masters Golf Tournament*, the *PGA Tour*, and the *Wimbledon Tennis Championships* and produces and broadcasts *Global National*, Canada's

only dinner-hour national newscast. *Global National's* base of operations is in Ottawa, Ontario. The *Global Television Network's* headquarters is located in Toronto, Ontario.

53. Substantially all of the non-Canadian produced television programming rights acquired for broadcast on stations held in the Canadian Television Segment have been purchased by either CMI (prior to January 1, 2009) or CTLP (since January 1, 2009). Programming rights are purchased from major television studios, distributors and other suppliers in the United States (or their related Canadian entities), such as, among others, Sony Pictures Television Canada (a branch of Columbia Pictures Industries, Inc.), Twentieth Century Fox/Incendo Television Distribution Inc. (as agent for Twentieth Century Fox Film Corporation, carrying on business in Canada as Twentieth Century Fox Television Canada), and CBS International Television Canada (a division of CBS Canada Holdings Co.). As at January 1, 2009, all programming rights previously acquired by CMI were assigned by CMI to CTLP pursuant to the transactions contemplated by the shareholders agreement with Goldman Sachs that governs CW Investments.

54. By purchasing exclusive Canadian broadcasting rights to non-Canadian produced programming, Canwest is able to control the distribution and exhibition of those programs in Canada. Programming is often purchased for exhibition on multiple media platforms, including telecast rights for Canwest's analog and digital specialty television channels as well as its free-to-air television stations. Some of Canwest's programming agreements with the major U.S. television studios and distributors are for multi-year program supply. These programming agreements (called, amongst other things, "output" agreements) generally require suppliers to provide, and Canwest to buy, pre-agreed amounts of programming over one or more years. First-run foreign programming (mostly U.S. broadcast network primetime programming) is purchased and/or selected principally in May of each year with payment due when the shows are broadcast on a U.S. broadcast network and within 30 days of receipt of invoice.

55. In addition to first run television programming, CTLP also purchases strips (also known as "reruns") from many of the same U.S. distributors or their related Canadian affiliates. Strips are available in respect of television series that have aired for several seasons. Payments are made over multiple years commencing with the start of the term. Movies are also purchased from certain of the U.S. distributors through "output" deals. Prices are determined by box-office

revenue for blockbuster hits, and at negotiated prices for non-blockbuster titles. Payment is generally made in quarterly instalments over two to three year periods.

56. As opposed to first run foreign programming, Canadian-produced television programming is either commissioned by CTLP for production from outside producers, produced internally in the case of news programming, or acquired after production, whether directly from producers or distributors or as part of an existing library. Acquired Canadian television program rights are typically paid for in equal quarterly installments commencing when CTLP takes delivery of the program. In the case of commissioned programs (*i.e.*, those originally produced programs where CTLP works with the program's producer to create the television program), CTLP typically pays a program licence fee in accordance with a standard templated payment schedule that matches payment installments with the producer's achievement of specified production and delivery milestones, generally with 85-95% of the payments made prior to completion and delivery of the program. The cost of internally-produced news programming is incurred as the programming is made.

57. The free-to-air television stations in the Canadian Television Segment derive their revenue primarily from the sale of commercial air time to national, regional and local advertisers. Demand for television advertising is driven primarily by advertisers in the packaged goods, automotive, retail and entertainment industries and is strongly influenced by general economic conditions. For fiscal 2008 (year-ended August 31, 2008), the CMI Entities derived approximately 88% of the advertising revenue relating to its Canadian free-to-air television stations from sales to national advertisers and the balance from sales to regional and local advertisers. National sales are driven predominantly (94%) from Canwest's national television sales office in Toronto, Ontario. All national rates, sales policies and guidelines are managed from this office. The CMI Owned Specialty Channels derive their revenue from a combination of the sale of national advertising airtime and subscriber fees. Subscriber fee revenue is received from the BDUs pursuant to carriage agreements and recorded monthly based upon subscriber levels.

#### **(b) CW Media Segment**

58. The other segment in Canwest's television business is comprised of a portfolio of 17 specialty television channels which were acquired jointly with Goldman Sachs from Alliance

Atlantis in August 2007 (hereinafter "CW Media" or the "CW Media Segment"). In particular, the CW Media Segment consists of: (i) 13 wholly-owned and partially-owned specialty television channels that are operated by CW Investments and its subsidiaries (including *Showcase*, *Slice*, *HGTV Canada*, *History Television* and *Food Network Canada*); and (ii) 4 other specialty television channels in which CW Investments has 50% or lesser ownership interests and does not operate (consisting of *Historia*, *Series +*, *DUSK* (formerly *Scream*) and *One: the Body, Mind and Spirit Channel*).

59. Until recently, CMI held its interest in CW Investments, consisting of a 67% voting interest and a 35% equity interest, directly through its 100% ownership interest in 4414616 Canada Inc. ("4414616 Canada"). On or about October 5, 2009, the shares of CW Investments held by 4414616 Canada were distributed to CMI pursuant to a liquidation and dissolution of 4414616 Canada. Goldman Sachs holds the remaining 33% voting interest and 65% equity interest in CW Investments. Neither CW Investments nor any of its subsidiaries are Applicants in this CCAA proceeding, nor is a stay sought in respect of any of those entities.

60. As discussed in greater detail below, subject to regulatory approval and prior contractual restrictions, Canwest has committed to Goldman Sachs that it will use commercially reasonable efforts to combine the Canadian Television Segment with the CW Media Segment (together being the "Combined Operations") in 2011. In 2011, Canwest's ownership interest in the Combined Operations is to be determined based upon a formula which will be derived from the segmented operating profit of the Combined Operations at the time of combination less the indebtedness of the CW Media Segment at that time. Goldman Sachs' share will be determined based upon a specified rate of return which varies based on the segmented operating profit of the Combined Operations.

## **B. PUBLISHING BUSINESS**

61. Canwest, principally through its subsidiary the Limited Partnership, owns, operates and publishes ten major metropolitan daily newspapers (nine broadsheets and one tabloid), two small market daily newspapers (broadsheets), 22 non-daily newspapers and certain community newspapers. The average age of Canwest's daily newspapers is 125 years.

62. The Limited Partnership also owns and operates over 80 websites, including the web portal *canada.com*, *FPinfomart.ca* and *FP DataGroup*, in addition to certain other internet and digital online operations. Canwest's online operations are used, *inter alia*, to leverage Canwest's entertainment, news and editorial content across multiple media platforms.

63. Included in Canwest's overall publishing business, but not owned or operated by the Limited Partnership or any of the other LP Entities, is the National Post Company, which publishes the *National Post*, one of Canada's two national daily newspapers. The National Post Company is a general partnership with units held by CMI and National Post Holdings.

64. As a national newspaper, the *National Post* is second in its market position to *The Globe and Mail*. Nadbank 2008 estimated that the *National Post* average weekly readership was approximately 1.1 million people. In Toronto, the *National Post* also competes with the *Toronto Star* and the *Toronto Sun*. The *National Post* is printed at Canwest's facilities in Ottawa, Calgary and Montreal, and by third-party printing contractors in Toronto and Vancouver.

65. The National Post Company and National Post Holdings are the only entities in Canwest's newspaper and online publishing business that are guarantors under the 8% Senior Subordinated Notes and the CIT Facility and are therefore included in this CCAA proceeding.

## **THE FINANCIAL POSITION OF CANWEST**

66. Canwest Global reports its financial results on a consolidated basis. Canwest Global released Canwest's interim consolidated financial statements for the three and nine months ended May 31, 2009 ("Q3 2009") (with comparables for the same period in fiscal 2008) on July 10, 2009 (the "Q3 2009 Report"). A copy of the Q3 2009 Report is attached as Exhibit "B" to this Affidavit. A copy of Canwest's audited consolidated financial statements for the fiscal year-ended August 31, 2008 is attached as Exhibit "C" to this Affidavit.

### **A. Assets**

67. As at May 31, 2009, Canwest Global had total consolidated assets with a net book value of \$4.855 billion (decreased from \$6.515 billion as at August 31, 2008) (unless specified otherwise, all amounts noted herein are in Canadian dollars). This included consolidated current assets of \$1.103 billion and consolidated non-current assets of \$3.752 billion.

### **i. Current Assets**

68. As at May 31, 2009, Canwest Global's consolidated current assets consisted of the following:

- Cash and cash equivalents - \$118,997,000
- Restricted cash - \$46,918,000
- Accounts receivable - \$549,960,000
- Inventory - \$8,177,000
- Investment in broadcast rights - \$324,487,000
- Future income taxes - \$15,607,000
- Other current assets - \$38,916,000

69. Broadcast rights represent the right to exhibit various forms of television programming. In accordance with its accounting policy, Canwest Global amortizes its investment in broadcast rights over the programs' anticipated periods of use. As such, the portion of Canwest Global's investment in broadcast rights which it anticipates will be broadcast over the succeeding 12 months is recorded as a current asset and the remaining portion is recorded as a non-current asset.

70. As at May 31, 2009, the restricted cash held in accounts (the "Collateral Accounts") at BNS totalled approximately \$46.9 million. Currently, the only restricted cash in the BNS Collateral Accounts consists of \$2.5 million to secure BNS against any unfunded obligations related to its provision of banking and cash management services to CMI (discussed below under "The Cash Management System"). The draft Initial Order provides that the Collateral Accounts shall, while any cash management obligations to BNS remain, not form part of the "CMI Property" as defined in the draft Initial Order and shall be excluded from the Court-ordered charges proposed to be created by the Initial Order.

### **ii. Non-Current Assets**

71. As at May 31, 2009, Canwest Global's consolidated non-current assets consisted of the following:

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- Other investments - \$8,983,000
- Investment in broadcast rights - \$208,913,000
- Property and equipment - \$655,011,000
- Future income taxes - \$230,573,000
- Other assets - \$32,398,000
- Intangible assets - \$1,479,640,000
- Goodwill - \$1,136,692,000

72. With respect to property and equipment, Canwest Global held the following consolidated long-term assets as at May 31, 2009:

Land	\$59,277,000	-	\$59,277,000
Buildings	\$211,286,000	\$63,436,000	\$147,850,000
Machinery and equipment	\$929,737,000	\$514,144,000	\$415,593,000
Leasehold and land improvements	\$55,334,000	\$23,043,000	\$32,291,000
<b>TOTAL</b>	<b>\$1,255,634,000</b>	<b>\$600,623,000</b>	<b>\$655,011,000</b>

73. As at May 31, 2009, the net book value of property and equipment located in Canada was \$568,857,000 and in Australia was \$86,154,000.

74. Intangible assets consisted primarily of assets which have indefinite lives. They included broadcasting licences, site licences, newspaper mastheads, brands, circulation lists, and subscriber and customer relationships.

75. As at May 31, 2009, goodwill (the portion of the book value of the company not directly attributable to its otherwise identifiable assets) consisted of the following:

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Publishing	\$541,619,000
Television – Canadian Television Segment	-
Television – CW Media Segment	\$477,547,000
Television – Australia	\$30,752,000
Out-of-Home – Australia	\$86,774,000
<b>TOTAL</b>	<b>\$1,136,692,000</b>

## **B. Liabilities**

76. As at May 31, 2009, Canwest Global had total consolidated liabilities of \$5.846 billion (decreased from approximately \$5.948 billion as at August 31, 2008). These liabilities consisted of consolidated current liabilities of \$3.217 billion and consolidated non-current liabilities of \$2.629 billion.

### **i. Current Liabilities**

77. As at May 31, 2009, Canwest Global's consolidated current liabilities included the following:

- Accounts payable and Accrued liabilities - \$600,437,000
- Income taxes payable - \$28,839,000
- Broadcast rights payable - \$139,320,000
- Deferred Revenue - \$39,789,000
- Future income taxes - \$49,338,000
- Current portion of long-term debt and obligations under capital leases - \$2,339,337,000
- Current portion of hedging derivative instruments - \$20,269,000

78. The current portion of long-term debt consisted of the debt obligations of the CMI Entities and the LP Entities. As described herein, as at May 31, 2009, CMI was a party to the CIT Facility and the Note Purchase Agreement, both of which matured within 12 months. CMI was also in default of the 8% Senior Subordinated Notes. The Limited Partnership was in default



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of its senior secured credit facilities and senior subordinated credit facility, which defaults resulted in a default under its note indenture, permitting the lenders under those facilities and/or the holders of the Limited Partnership's 9.25% senior subordinated notes to take steps to demand immediate payment of those debts. As a result, an aggregate principal amount of \$2.334 billion of indebtedness (\$954 million for CMI and \$1.38 billion for the Limited Partnership) was due within one year and accordingly was categorized as "current" for accounting purposes.

## ii. Non-Current Liabilities

79. As of May 31, 2009, Canwest Global's consolidated non-current liabilities consisted of the following:

- Long-term debt - \$1,359,849,000
- Hedging derivative instruments - \$83,456,000
- Derivative instruments - \$16,004,000
- Obligations under capital leases - \$3,950,000
- Other long-term liabilities - \$188,534,000
- Future income taxes - \$147,285,000
- Deferred gain - \$164,727,000
- Puttable interest in a subsidiary - \$604,422,000
- Minority interest - \$60,613,000

80. Canwest's "puttable interest in a subsidiary" reflects the carrying amount according to Generally Accepted Accounting Principles for certain put and call options that have been agreed to by CMI and Goldman Sachs with respect to Goldman Sachs' interest in the common shares of CW Investments. The put and call options are designed to allow Goldman Sachs to exit from its investment in CW Investments and are exercisable in 2011, 2012 and 2013, subject to certain contractual restrictions.

81. Specifically, in each of 2011, 2012 and 2013, CMI will have the right to purchase (or at its option, it may cause CW Investments to purchase) up to 100% of Goldman Sachs' interest in CW Investments (determined based upon a formula which varies based upon the

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adjusted operating profit of the Combined Operations at that time, less CW Media Segment's financial indebtedness at that time), subject to CW Investments remaining below a specified maximum consolidated leverage ratio if less than 100% of the Goldman Sachs interest is acquired by CW Investments (the "call right"). In the event that CMI does not exercise the call right with respect to at least 50% of Goldman Sachs' interest in 2011, Goldman Sachs will have the right to require CW Investments to acquire interests, which, together with any interests purchased pursuant to CMI's call right in 2011, would equal up to 50% of Goldman Sachs' interest, subject to CW Investments remaining below a specified maximum consolidated leverage ratio (the "put right"). If, because of this maximum leverage ratio, CW Investments is unable to purchase all of the interests that Goldman Sachs elects to sell pursuant to this put right in 2011, Goldman Sachs will have the right to require CW Investments to acquire any such remaining interests (referred to as the "put shortfall shares") in 2012, subject to CW Investments remaining below a specified maximum consolidated leverage ratio. Finally, Goldman Sachs will have a further put right to require CW Investments to purchase any remaining interests that it holds (including any remaining put shortfall shares) in 2013, subject to CW Investments being financially able to purchase such interest.

82. In addition, in the event that CMI or CW Investments has not acquired 100% of the Goldman Sachs' interest by the expiry date of the last put-right in 2013, then Goldman Sachs will be entitled to sell all of the shares of CW Investments, subject to a right of first offer in favour of CMI, failing which Goldman Sachs will have the right to require CW Investments to effect an initial public offering of CW Investments in respect of its shares in order to effect its exit.

### **C. Revenues**

83. Canwest has been experiencing deteriorating financial results over the past several months. For the nine months ended May 31, 2009, Canwest Global's consolidated revenues decreased by \$163 million, or 7%, to \$2.243 billion as compared to \$2.406 billion for the same period in fiscal 2008. Consolidated revenues for the nine months ended May 31, 2008 did not include revenues from the CW Media Segment for September 1, 2007 to December 31, 2007, the period during which it was equity accounted, pending the CRTC approval of the transfer of effective control of the assets that were acquired from Alliance Atlantis in August 2007. On a "same store" basis (*i.e.*, including the operations of the CW Media Segment), consolidated

revenues decreased by \$272 million or 11%. Canwest Global's consolidated operating income before amortization decreased by \$209 million, or 42%, to \$285 million for the nine months ended May 31, 2009 as compared to \$494 million for the same period in fiscal 2008. On a "same store" basis (*i.e.*, including the operations of the CW Media Segment), operating income before amortization decreased by \$253 million, or 47%. For the nine months ended May 31, 2009, Canwest Global reported a consolidated net loss of \$1.578 billion, or a loss of \$8.89 per share, compared to a consolidated net loss of \$22 million, or \$0.12 per share, for the same period in fiscal 2008.

84. With respect to Canwest Global's most recent Q3 2009 consolidated financial results (*i.e.*, three months ended May 31, 2009), consolidated revenues decreased by \$119 million, or 14%, from \$846 million in Q3 2008 to \$727 million in the same period in fiscal 2009. Consolidated operating income before amortization declined by 63% from \$178 million in Q3 2008 to \$66 million in Q3 2009. Canwest suffered a consolidated net loss of \$110 million in Q3 2009 as compared to a consolidated net loss of \$28 million in Q3 2008. This quarterly consolidated net loss amounted to \$0.62 per share as compared to a year-earlier loss of \$0.16 per share.

85. During the three months ended May 31, 2009, Canwest Global recorded an impairment charge of \$247 million for goodwill in its publishing business. During the nine months ended May 31, 2009, Canwest Global recorded a goodwill impairment charge of \$1.158 billion. The impairment charge was primarily due to an impairment of goodwill in Canwest's publishing (\$1.142 billion) business due to lower future profit expectations as a result of the current outlook for the advertising market for these operations. In addition, Canwest Global recorded other impairment charges of \$99 million for mastheads in its publishing business and \$86 million for broadcast licences in the Canadian Television Segment. The goodwill impairment charges are a preliminary assessment that will be finalized in Canwest Global's fiscal 2009 year-end financial statements. As a result, the goodwill impairment could change and the change could be material.

86. With respect to the CMI Entities in particular, CMI reported that revenues for its Canadian television operations decreased by \$8 million, or 4%, to \$175 million during Q3 2009, as compared to \$183 million for the same period in fiscal 2008. This reflected a 5% decline in

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free-to-air television advertising revenue resulting from the current economic downturn. Operating profit in Q3 2009 was \$21 million, as compared to \$39 million in the same period of the previous fiscal year.

#### **D. Secured Debt and Credit Facilities**

87. As more fully described below, as at May 31, 2009, the CMI Entities had indebtedness (excluding accrued and unpaid interest) totalling approximately \$954 million:

CMI	2005 Credit Facility**	2011	-	-	-	-
	12% Senior Secured Notes	2010	US\$93,959,000	US\$93,959,000	\$96,792,000	-
	CIT Facility - revolver	2009	\$75,000,000	\$16,121,000	\$16,121,000	-
	8% Senior Subordinated Notes	2012	US\$761,054,000	US\$761,054,000	\$841,209,000	\$828,755,000
<b>TOTAL</b>					<b>\$954,122,000</b>	<b>\$828,755,000</b>

\* reflects the effect of debt issuance costs and certain fair value and hedging adjustments

\*\* as described below, all amounts owing under the 2005 Credit Facility were repaid by CMI on May 22, 2009.

88. By way of background, as at May 31, 2009, the other subsidiaries of Canwest Global which are not Applicants in this CCAA proceeding had short-term and long-term indebtedness totalling approximately \$2.742 billion. This consisted of short-term and long-term indebtedness at (i) the Limited Partnership totalling approximately \$1.377 billion; (ii) CW Media totalling approximately \$829 million; and (iii) Ten Holdings totalling approximately \$536 million.

89. As of the date of this Affidavit and after the application of the Ten Proceeds in accordance with the Cash Collateral and Consent Agreement, there are: (i) no amounts owing

under the 12% Secured Notes; (ii) no amounts owing under the CIT Facility, other than outstanding letters of credit in the amount of approximately \$10.7 million, (iii) US\$393,197,106 principal amount owing under the 8% Senior Subordinated Notes, and (iv) US\$30.4 million interest payment due September 15, 2009 owing under the 8% Senior Subordinated Notes.

***i. The 2005 CMI Credit Facility***

90. As noted above, until recently, CMI was a party to a credit agreement (executed in October 2005) with a syndicate of lenders, BNS, as Administrative Agent, and certain guarantors, which initially provided CMI with access to a revolving credit facility of up to \$500 million (the “2005 CMI Credit Facility”). In early 2009, availability under the 2005 CMI Credit Facility was permanently reduced to \$112 million.

91. In the first quarter of fiscal 2009, CMI announced that it may not be able to comply with certain of the financial covenants contained in the 2005 CMI Credit Facility. On February 2, 2009, Canwest Global announced that the Administrative Agent, on behalf of the syndicate of lenders, had agreed to waive certain borrowing conditions under the 2005 CMI Credit Facility until February 27, 2009. The waiver was extended on six separate occasions.

92. As described below, in May 2009, CMI entered into an agreement with certain members of the Ad Hoc Committee wherein CMI and CTLP agreed to issue the 12% Secured Notes to the 12% Secured Notes Purchasers for an aggregate purchase price of \$100 million. CMI also entered into the CIT Facility. CMI used the proceeds from the issue and sale of the 12% Secured Notes and from the CIT Facility, to, among other things, repay its then current senior lenders all amounts owing under the 2005 CMI Credit Facility and to settle certain related foreign currency and interest rate swap obligations.

***ii. 8% Senior Subordinated Notes***

93. CMI (through its predecessor 3815668 Canada Inc.) is a party to a trust indenture, (as amended and supplemented, the “CMI Indenture”) dated as of November 18, 2004 with certain guarantors (the “CMI Indenture Guarantors”) and The Bank of New York (now The Bank of New York Mellon) as Indenture Trustee in connection with the issuance of the 8% Senior Subordinated Notes in an aggregate principal amount of US\$761,054,211. The 8% Senior Subordinated Notes bear interest of 8% (paid semi-annually) and mature in September

2012. The 8% Senior Subordinated Notes can be redeemed at par at CMI's option on or after September 15, 2011 and have been guaranteed by the CMI Indenture Guarantors (which include all of the CMI Entities other than Canwest Global and 30109, LLC ("30109")). A list of the CMI Indenture Guarantors is attached as Exhibit "D" to this Affidavit. Of the CMI Indenture Guarantors, CMIH and Canwest Ireland Nominee Limited are not Applicants in this CCAA proceeding.

94. Upon signing the CMI Indenture, CMI entered into a foreign currency and interest rate swap (the "CMI Foreign Currency and Interest Rate Swap") in the amount of US\$761 million until September 2012 resulting in a fixed currency exchange rate of US\$1:\$1.1932 and a floating interest rate based upon 90-day banker's acceptance rates from time to time plus a margin. In June 2008, CMI amended the CMI Foreign Currency and Interest Rate Swap resulting in a floating interest rate based upon 90-day banker's acceptance rates plus a margin on a notional amount of US\$601 million and a fixed interest rate of 7.9% on a notional amount of US\$160 million. The CMI Foreign Currency and Interest Rate Swap was unwound on March 9, 2009, realizing net proceeds in the amount of approximately \$105 million, which were used, in part, to reduce then outstanding amounts owing under the 2005 CMI Credit Facility. As a result, the 8% Senior Subordinated Notes are no longer hedged against foreign currency fluctuations and have reverted to a fixed rate of interest of 8% per annum.

95. The 8% Senior Subordinated Notes are unsecured obligations of CMI and the CMI Indenture Guarantors. They are expressly subordinated to all Senior Indebtedness (as defined in the CMI Indenture) of CMI and the CMI Indenture Guarantors, which would include Indebtedness (as defined in the CMI Indenture) under the CIT Facility, all hedging obligations of CMI and the CMI Indenture Guarantors, all reimbursement obligations of CMI and the CMI Indenture Guarantors in respect of amounts paid under letters of credit, banker's acceptances, or other similar instruments, and any other Indebtedness that does not by its terms provide that such Indebtedness is to rank *pari passu* with, or subordinate to, the 8% Senior Subordinated Notes. The 8% Senior Subordinated Notes rank *pari passu* to all other Indebtedness of CMI that does not constitute Senior Indebtedness.

96. An event of default under the CMI Indenture occurs when CMI or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation S-X under the *U.S. Securities*

*Act of 1933*) commences a voluntary insolvency proceeding. Consequently, the commencement of this CCAA proceeding constitutes an event of default under the CMI Indenture. Absent a stay of proceedings, the result of this event of default is stated to be that all principal, premium, if any, and interest now outstanding with respect to the 8% Senior Subordinated Notes would be due and payable immediately without any declaration or other act.

97. Under the terms of the CMI Indenture, CMI is required to make interest payments to the 8% Senior Subordinated Noteholders twice annually. On March 11, 2009, Canwest Global announced that CMI would not be making an interest payment of approximately US\$30.4 million owing to the 8% Senior Subordinated Noteholders on March 15, 2009. Under the terms of the CMI Indenture, CMI had a 30-day window to “cure” the default, failing which the 8% Senior Subordinated Noteholders would be entitled to take steps to demand payment of the principal amount of the outstanding notes, totalling approximately US\$761 million, plus unpaid interest and default interest thereon.

98. On April 14, 2009, immediately before the “cure” period was to expire, CMI entered into an extension agreement (the “**Extension Agreement**”) with 8% Senior Subordinated Noteholders who are members of the Ad Hoc Committee. Under the terms of the Extension Agreement, the members of the Ad Hoc Committee agreed not to demand payment of the principal amount of the outstanding 8% Senior Subordinated Notes for a 7-day period ending on April 21, 2009. Subsequent extension agreements were entered into by the parties on April 22, 2009, May 5, 2009, May 19, 2009, June 15, 2009, June 30, 2009, July 17, 2009, July 31, 2009, August 14, 2009, August 28, 2009, September 11, 2009 and September 23, 2009. The most recent extension agreement (dated September 23, 2009) expires on the date by which a Definitive Agreement (as defined in the Cash Collateral and Consent Agreement) is required to be entered into pursuant to the Cash Collateral and Consent Agreement and is attached (without signature pages) as Exhibit “E” to this Affidavit.

99. CMI has also not made the interest payment of approximately US\$30.4 million which was due pursuant to the CMI Indenture on September 15, 2009. As set out herein, CMI and the CMI Indenture Guarantors do not have sufficient liquidity to make such payment prior to the expiry of the 30-day cure period.

100. Following the public announcement of the sale of the Ten Shares, CMI conducted a consent solicitation to solicit consents from the 8% Senior Subordinated Noteholders to amend certain sections of the CMI Indenture in order to permit the sale of the Ten Shares and the application of the Ten Proceeds as set out in the Cash Collateral and Consent Agreement. The requisite level of approval with respect to these matters under the CMI Indenture is 8% Senior Subordinated Noteholders holding a majority of the principal amount of outstanding 8% Senior Subordinated Notes. The members of the Ad Hoc Committee agreed in advance to provide their consents so that the success of the consent solicitation was assured. The consent solicitation was outstanding for a period of five business days and it concluded before the time of settlement of the sale of the Ten Shares. Upon receipt of the requisite consents, a tenth supplemental indenture to the CMI Indenture was executed to effect the amendments necessary to permit the sale of the Ten Shares and the use of the Ten Proceeds as contemplated in the Cash Collateral and Consent Agreement.

101. In order to facilitate the deposit of the applicable Ten Proceeds to the Indenture Trustee on behalf of the 8% Senior Subordinated Noteholders, the Ad Hoc Committee agreed to deliver a notice of acceleration in respect of the 8% Senior Subordinated Notes and make a demand for immediate repayment of all amounts owing. It was agreed in advance of the delivery of the notice of acceleration that the acceleration would be rescinded immediately after the deposit to the Indenture Trustee was complete. To that end, a notice of acceleration was delivered to the Indenture Trustee effective October 1, 2009 and the aforementioned deposit was made to the Indenture Trustee, on behalf of the 8% Senior Subordinated Noteholders, by CMI on the same day. After the deposit was made, the acceleration was rescinded.

102. Following the distribution of the Ten Proceeds in accordance with the Cash Collateral and Consent Agreement, the outstanding remaining principal amount owing under the 8% Senior Subordinated Notes is US\$393,197,106.

### ***iii. The May 2009 Refinancing Transactions***

#### ***(a) The 12% Secured Notes***

103. As noted above, CMI and CTLP entered into the Note Purchase Agreement with the 12% Secured Notes Purchasers on May 20, 2009. The transactions contemplated by the Note



Purchase Agreement closed on May 22, 2009. Pursuant to the terms of the Note Purchase Agreement, CMI and CTLP issued the 12% Secured Notes (which at the time had a face value of the U.S. dollar equivalent of \$105 million) for net proceeds of the U.S. dollar equivalent of \$100 million (approximately US\$89 million). The subsidiaries of CMI who are guarantors under the CMI Indenture, in addition to Canwest Global and 30109, also guaranteed the obligations of CMI and CTLP under the Note Purchase Agreement (the "CMI Secured Notes Guarantors"). The 12% Secured Notes bore interest at a rate of 12% per annum.

104. The proceeds from the 12% Secured Notes were used to (i) repay any outstanding obligations under the 2005 CMI Credit Facility, which repayment included the replacement or cash collateralization of any letters of credit issued thereunder and the repayment of related hedging obligations; (ii) pay legal fees and expenses incurred in connection with issuance of the 12% Secured Notes; (iii) provide cash collateral to BNS to be held in the Collateral Accounts in connection with cash management obligations; and (iv) provide for the CMI Entities' short-term working capital liquidity needs and general operating expenses.

105. Among other things, CMI and CTLP agreed in the Note Purchase Agreement to comply with certain milestones in connection with a possible recapitalization transaction of the CMI Entities within certain time frames. The milestones included the following time frames (which dates were extended pursuant to the amending agreements):

- (a) to reach an agreement in principle with members of the Ad Hoc Committee on or before October 6, 2009, pursuant to which such members agree to a restructuring transaction that would address the treatment of the 8% Senior Subordinated Noteholders and other related matters; and
- (b) to execute and deliver a definitive restructuring agreement on or before October 6, 2009.

Failure to meet either of these deadlines would have resulted in an Event of Default (as defined therein) under the Note Purchase Agreement.

106. As described below, all amounts owing to the 12% Secured Noteholders under the 12% Secured Notes were paid and satisfied following the sale of the Ten Shares and the distribution of the Ten Proceeds in accordance with the Cash Collateral and Consent Agreement.

**(b) The CIT Facility**

107. CMI entered into a credit agreement with CIT, the same entities who are guarantors under the CMI Indenture, in addition to Canwest Global and 30109 (collectively, the "CIT Facility Guarantors"), and certain lenders from time to time (the "CIT Facility Lenders") on May 22, 2009, as amended on June 15, 2009, June 30, 2009, July 17, 2009, July 31, 2009, August 14, 2009, August 28, 2009, September 11, 2009 and September 23, 2009 (the "CIT Credit Agreement"). The CIT Credit Agreement provides CMI with a revolving ABL credit facility of up to \$75 million, bears interest at prime rate or base rate plus an applicable margin and matures (a) on October 15, 2009, if the Restructuring Event Date (defined as the date on which CMI and the CIT Facility Guarantors apply for relief via an Initial Order under the CCAA) has not occurred; and (b) if the Restructuring Event Date has occurred, the date which is the earliest of (i) the date which is 12 months after the Restructuring Event Date; (ii) the date on which a plan of arrangement under the CCAA has been implemented, having regard to all requisite CRTC approvals being in place; and (iii) the date of termination of the CIT Credit Agreement. Availability under the CIT Facility is calculated based upon the value of the assets that are included in the borrowing base set out in the CIT Credit Agreement. A copy of the CIT Credit Agreement and the amendments are attached (without schedules and signature pages) as Exhibit "F" to this Affidavit.

108. Similar to the Note Purchase Agreement, the CIT Credit Agreement provides that CMI will complete certain milestones in connection with a possible recapitalization transaction of the CMI Entities within certain time frames. It is an Event of Default (as defined therein) if any of the milestones are not achieved within the time frames contemplated. The milestones and time frames required to be met in the CIT Credit Agreement are substantially similar to those set out in the Note Purchase Agreement with some additional milestones set out in the CIT Credit Agreement.

109. Subject to certain conditions set out in the CIT Credit Agreement, including the issuance of an Initial Order under the CCAA which is approved by the CIT Facility Lenders, the CIT Facility will increase from up to \$75 million to up to \$100 million and will convert to a debtor-in-possession facility in the event that CMI seeks relief under the CCAA. The amount of the outstanding borrowings under the revolving CIT Facility fluctuates. As at October 1, 2009,

prior to the distribution of Ten Proceeds, approximately \$23 million was owing under the CIT Facility, excluding letters of credit in the amount of approximately \$10.7 million.

110. The CIT Facility is secured by first-priority perfected liens in all of the property, assets, and undertaking of CMI and CTLP and the guarantors (including the CMI Entities) of such facilities (the "CMI Collateral"). The security for the 2005 CMI Credit Facility granted in favour of CIBC Mellon Trust Company ("CIBC Mellon") (the "Existing Security"), including under a General Security Agreement, pursuant to an Intercreditor and Collateral Agency Agreement dated October 13, 2005 (the "Collateral Agency Agreement") setting out the terms of such agency for the benefit of the creditors noted therein, is now held by CIBC Mellon to secure the CIT Facility and the obligations under the Secured Intercompany Note. A copy of the Collateral Agency Agreement made as of October 13, 2005 (without signature pages) is attached as Exhibit "G" to this Affidavit. A copy of the Credit Confirmation and Amendment to Intercreditor and Collateral Agency Agreement dated as of May 22, 2009 (without signature pages) is attached as Exhibit "H" to this Affidavit.

111. CMI has also entered into a blocked account agreement with CIT, which provides that all deposits of the CMI Entities subject to the CIT Credit Agreement are deposited in blocked accounts and at the end of each day, the amounts in these accounts are applied against the amounts outstanding under the CIT Facility. This arrangement is discussed below under the heading "Cash Management System".

112. As described below, all outstanding amounts owing under the CIT Facility (excluding outstanding letters of credit in the amount of approximately \$10.7 million) were repaid following the sale of the Ten Shares and the distribution of the Ten Proceeds in accordance with the Cash Collateral and Consent Agreement. In the event that this Honourable Court grants the Initial Order, the CIT Facility increases to up to \$100 million and converts to a DIP Facility to be available to the CMI Entities.

#### ***iv. The September 2009 Transactions***

##### **(a) Distribution of Ten Proceeds**

113. The sale of the Ten Shares was announced in a news release dated September 23, 2009, which is attached as Exhibit "I" to this Affidavit. As noted above, pursuant to the

Underwriting Agreement, the sale of the Ten Shares was effected in a block trade that was completed on September 25, 2009, settled on October 1, 2009 and resulted in the Ten Proceeds of approximately \$634 million accruing to CMIH, which owned the Ten Shares prior to their sale. CMI and the members of the Ad Hoc Committee (representing approximately 72% of the aggregate principal amount of the outstanding 8% Senior Subordinated Notes, which are guaranteed by CMIH) executed the Cash Collateral and Consent Agreement on September 23, 2009 that, among other things, set out the manner in which CMIH would be permitted to apply the Ten Proceeds notwithstanding the 8% Senior Subordinated Noteholders' direct claim against CMIH for such proceeds on account of CMIH's guarantee of the 8% Senior Subordinated Notes.

114. In accordance with the terms of the Cash Collateral and Consent Agreement, after satisfying certain transactional costs associated with the sale of the Ten Shares, the net Ten Proceeds were loaned by CMIH to CMI in exchange for the Secured Intercompany Note and the Unsecured Promissory Note. The Ten Proceeds advanced by CMIH to CMI under the Secured Intercompany Note were applied as follows: (i) US\$94,916,583 to repay in full all amounts outstanding under the 12% Secured Notes; and (ii) \$85 million to fund general liquidity and operating costs of CMI, including repaying the full balance outstanding under the CIT Facility of approximately \$23 million, excluding outstanding letters of credit in the amount of approximately \$10.7 million which are currently cash collateralized. The balance of the Ten Proceeds, US\$399,625,199, was advanced by CMIH to CMI pursuant to the Unsecured Promissory Note and then deposited by CMI with the Indenture Trustee on account of certain outstanding interest and to reduce the principal outstanding under the 8% Senior Subordinated Notes.

115. The Cash Collateral and Consent Agreement includes certain covenants of Canwest with respect to reporting to the Ad Hoc Committee and various restrictive covenants, including in respect of compliance with cash flow forecasts attached thereto. In addition, the Cash Collateral and Consent Agreement includes events of default similar to the covenants and events of default set out in the Note Purchase Agreement in recognition of the fact that the Consenting Noteholders are permitting \$85 million of the Ten Proceeds to be used by the CMI Entities for liquidity purposes, notwithstanding their direct claim against CMIH for such proceeds on account of CMIH's guarantee of the 8% Senior Subordinated Notes. A copy of the

Cash Collateral and Consent Agreement is attached (without signature pages) as Exhibit "J" to this Affidavit.

**(b) The Secured Intercompany Note**

116. The Secured Intercompany Note issued by CMI to CMIH is in the amount of \$187,263,126 and bears interest at a rate of 3% per annum, which is payable in arrears on the first anniversary date of the Secured Intercompany Note and each subsequent anniversary date thereafter. The Secured Intercompany Note has been guaranteed by the same parties that guaranteed the CIT Facility and the 12% Secured Notes other than CMIH. A copy of the Secured Intercompany Note is attached (without signature pages) as Exhibit "K" to this Affidavit.

117. Under the terms of the Secured Intercompany Note, CMI has promised to pay CMIH, upon the earlier of a demand made by CMIH and the date on which an "Event of Default" (as defined therein) is declared under the Use of Cash Collateral Agreement, all amounts owing under the Secured Intercompany Note. In the event that CMI or one of the other CMI Entities issues new equity for valuable consideration to a third party that is not an "affiliate", CMI is required to make a repayment of the Secured Intercompany Note in an amount equal to the lesser of the "Principal Amount" (as defined therein) and the net proceeds raised through the issuance of such new equity.

118. The Secured Intercompany Note is secured by a perfected lien in all of the CMI Collateral, including pursuant to the terms of the Existing Security granted in favour of CIBC Mellon, but subject to the interests of CIT and the Revolving Credit Lenders (as defined therein) on the terms set forth in the additional Credit Confirmation and Amendment to Intercreditor and Collateral Agency Agreement dated as of October 1, 2009. A copy of the Credit Confirmation and Amendment to Intercreditor and Collateral Agency Agreement dated as of October 1, 2009 (without signature pages) is attached as Exhibit "L" to this Affidavit.

**(c) The Unsecured Promissory Note**

119. The Unsecured Promissory Note issued by CMI to CMIH in the amount of \$430,556,189 and bears interest at 3% per annum which is payable in arrears on the first anniversary of the Unsecured Promissory Note and each subsequent anniversary date thereafter. The Unsecured Promissory Note has been guaranteed by the same parties that guaranteed the

CIT Facility and the 12% Secured Notes other than CMIH. A copy of the Unsecured Promissory Note is attached (without signature pages) as Exhibit "M" to this Affidavit.

120. Under the terms of the Unsecured Promissory Note, CMI has promised to pay CMIH, upon the earlier of a demand made by CMIH and the date on which an "Event of Default" (as defined therein) is declared under the Use of Cash Collateral Agreement, all amounts owing under the Unsecured Promissory Note. The obligations under the Unsecured Promissory Note may not be prepaid.

121. CMI has covenanted and agreed, and CMIH has agreed, that the payment of all amounts owing under the Unsecured Promissory Note is expressly and irrevocably subordinated and postponed in right of payment to the prior payment in full of all amounts owing under the CIT Credit Agreement. However, CMI is permitted to pay interest owing in arrears (as described above) under the Unsecured Promissory Note.

122. In the event that any insolvency or bankruptcy proceedings, or any receivership, liquidation, reorganization or other similar proceeding relating to the CMI Entities are commenced, including this CCAA proceeding, it is agreed that CIT will first be entitled to receive payment in full of any amounts owing under the CIT Facility before CMIH is entitled to receive any payment or distribution of any kind, which may be payable or deliverable in respect of the amounts owing under the Unsecured Promissory Note.

### ***E. Distributions***

123. CMI had historically received distributions from the Limited Partnership and Ten Holdings. Distributions from the Limited Partnership were historically made monthly and distributions from Ten Holdings were historically made semi-annually in January and July of each year. In the first four months of fiscal 2009, CMI received \$45 million in distributions from the Limited Partnership and in January 2009, Ten Holdings distributed the Australian dollar equivalent of \$9 million to CMI. However, based upon the current defaulted status of the Limited Partnership's secured and subordinated credit facilities, CMI does not expect to receive any further distributions for the Limited Partnership for the foreseeable future and, as a result of the sale of the Ten Shares, CMI will not receive any further distributions from Ten Holdings.

**EMPLOYEES**

124. As noted above, as of October 1, 2009, Canwest employed approximately 7,400 FTEs employees around the world. Of that number, the CMI Entities employed approximately 1,700 FTE employees, with approximately 850 FTE employees located in Ontario. As employees of a federally regulated entity, the employees in Canwest's Canadian television broadcasting business are subject to the provisions of the *Canada Labour Code*.

125. Over 50% of the employees in the Canadian Television Segment are unionized and are employed under a total of 12 collective agreements. None of the approximately 250 employees of the National Post Company are unionized. Eleven of the 12 Canadian television collective agreements are negotiated with the Communications, Energy and Paper-workers Union of Canada ("CEP"). These 11 collective agreements are all in expired status. On November 6, 2007, the Canadian Industrial Relations Board ("CIRB") amalgamated these 11 bargaining units into three new geographical bargaining units: British Columbia (Vancouver and Kelowna), Alberta (Calgary, Edmonton and Lethbridge) and Eastern Canada (Saskatoon to Halifax). New collective agreements have not been concluded for any of these three bargaining units. The other Canadian television bargaining unit is at *CKMI-TV* in Montreal and is represented by the Canadian Union of Public Employees ("CUPE"). This agreement expires December 31, 2010.

126. As at October 1, 2009, the unionized employees in the Canadian Television Segment had filed approximately 95 separate grievances against Canwest, 20 of which are currently at the arbitration stage. In addition, Canwest is involved in proceedings with the CEP at the *Canada Industrial Relations Board* regarding the scope of certain bargaining rights.

**PAYROLL OBLIGATIONS**

127. The CMI Entities' gross payroll obligations (including salaries for full-time and part-time workers, salaries for freelancers and temporary workers, commissions and bonuses) for their Canadian employees for their 2008 fiscal year were approximately \$176 million.

128. The CMI Entities also offer benefits to their eligible salaried and hourly employees, including benefits provided through group insurance programs. These benefits include, but are not limited to, employee medical, dental, disability, life insurance and similar

benefit plans, share compensation plans, automobile allowances, and employee assistance programs. The total amounts paid by the CMI Entities for group benefits (excluding share compensation plans and employee assistance programs) for hourly and salaried employees during its 2008 fiscal year (excluding all statutory withholdings) totalled approximately \$28 million.

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

129. The CMI Entities currently maintain in the aggregate for their unionized and non-unionized Canadian employees 10 defined benefit pension plans registered under the federal *Pension Benefits Standards Act, 1985, c. 32 (2<sup>nd</sup> Supp.)* (the “**PBSA**”) (the “**Federal DB Pension Plans**”) and 1 defined benefit pension plan registered under the *Ontario Pension Benefits Act, R.S.O., 1990, c. P.8* (the “**Ontario DB Pension Plans**”) (collectively, the “**DB Pension Plans**”). As noted below, one of the Federal DB Pension Plans (CH Employees Plan) is currently being terminated. The DB Pension Plans are as follows:

#### Federal DB Pension Plans

- Global Communications Limited Retirement Plan for BCTV Senior Management (“**BCTV Senior Management Plan**”)
- Global Communications Limited Retirement Plan for BCTV Staff (“**BCTV Staff Plan**”)
- Global Communications Limited Retirement Plan for CHBC Executives (“**CHBC Executives Plan**”)
- Global Communications Limited Retirement Plan CHBC Management (“**CHBC Management Plan**”)
- Global Communications Limited Retirement Plan for CHBC Staff (“**CHBC Staff Plan**”)
- Global Communications Limited Retirement Plan for WIC Designated Executives (“**WIC Plan**”)
- Global Communications Limited Retirement Plan for CH Employees (“**CH Employees Plan**”)
- Global Communications Limited Retirement Plan for CICT and CISA Employees (“**CICT Plan**”)
- Global Communications Limited Employees’ Pension Plan (“**Global Plan**”)



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- CanWest Maritime Television Employees Pension Plan (“**Maritime T.V. Plan**”)

Ontario DB Pension Plan

- National Post Retirement Plan (“**National Post Plan**”)

130. In addition, the CMI Entities maintain and contribute to the following four defined contribution pension plans (collectively, the “**DC Pension Plans**”):

- Retirement Plan for Bargaining Unit Employees of Global Communications Limited
- Retirement Plan for Management and Non-Bargaining Unit Employees of Global Communications Limited
- Global Communications Limited Retirement Plan for Former WIC-Allarcom Employees
- Pension Plan for Employees of CanWest Interactive Inc.

131. Mercer (Canada) Limited (“**Mercers**”) is the actuary for the DB Pension Plans. Using the numbers from the last filed actuarial valuation for each DB Pension Plan, excluding plan participants at the recently closed *CHCA-TV* and sold *CHCH-TV* and *CHEK-TV*, the DB Pension Plans had, in the aggregate, approximately 1,237 active members, approximately 121 pensioners (*i.e.*, persons receiving a pension), and approximately 313 deferred vested and other members.

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

Plan Name	Special Payments	Current Service Costs	Estimated Liability	Valuation Date	Estimated Liability
1. BCTV Senior Management Plan**	\$506,837	NIL	NIL <sup>o</sup>	12/31/06	\$516,837
2. BCTV Staff Plan <sup>o</sup>	\$3,689,850 $\psi$	\$902,376	\$674,073	12/31/08	\$5,729,912
3. CHBC Executives Plan*	\$101,556	\$55,692	NIL*	12/31/08	\$220,489

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4. CHBC Management Plan**	\$418,057	\$278,460	\$64,557	12/31/08	\$1,268,384
5. CHBC Staff Plan	\$845,670	\$317,136	\$163,403	12/31/08	\$1,541,770
6. WIC Plan	NIL	NIL	NIL*	12/31/08	NIL
7. CH Employees Plan <sup>o</sup> †	NIL <sup>v</sup>	NIL	\$515,000	12/31/06	\$2,290,994
8. CICT Plan <sup>o</sup>	\$2,322,215 $\psi$	\$511,944	\$451,327	12/31/08	\$4,703,824
9. Global Plan <sup>*</sup>	\$3,041,860 $\psi$	\$2,119,080	\$2,498,617	01/01/09	\$12,644,621
10. Maritime T.V. Plan <sup>*</sup>	\$909,068 $\psi$	\$438,192	\$118,204	01/01/09	\$2,279,749
11. National Post Plan <sup>*</sup>	\$1,512,244	\$360,468	\$662,000	12/31/06	\$1,627,566
<b>TOTAL</b>	<b>\$13,347,357</b>	<b>\$4,983,348</b>	<b>\$5,147,181</b>		<b>\$32,824,146</b>

- ⊕ The Solvency Deficiencies assume that the solvency assets include the present value of 5 years of previously established special payments (with the exception of the four plans marked  $\psi$ )
- $\psi$  These plans have applied for the solvency relief funding measures recently enacted under the Regulations to the *Pension Benefits Standards Act, 1985* (Canada). Under these solvency relief measures, the amortization period for payment of solvency deficits is extended from five to ten years for 2009.
- Estimated Annual Current Service Cost is based on the rule for computing the Employer's current service costs (as reflected in the valuation report) updated to reflect a recent estimate of active membership in the plan, and corresponding current payroll and employee contribution levels
- \* No current service costs because plan has no active members accruing benefits
- \*\* Designated Plan for *Income Tax Act* (Canada) purposes and hence special funding rules apply
- ⊗ The value of benefits that will accrue on behalf of active members (current service cost) can be estimated as 9.26% of 2009 pensionable earnings determined in accordance with the most recent funding valuation. Due to Designated Plan rules, the employer is currently not permitted to remit contributions in respect of current service cost
- † The CMI Entities have terminated this plan.
- Plans have going concern unfunded liability in addition to solvency deficiency. Special payments include payments towards going concern unfunded liability and solvency deficiency
- ◇ Wind-up deficiencies include the maximum liabilities payable upon wind-up as if the Company continues operations
- ∇ These plans have a solvency/wind-up excess as of the last funding valuation date

133. The DB Pension Plans are valued on a regular basis, in accordance with the requirements of their respective governing legislation. Eight of the DB Pension Plans filed

valuations in July 2009, effective as of either December 31, 2008 or January 1, 2009. As a result of the recent economic decline, the corresponding negative results in the financial markets, and the decline in long-term bond rates, the new valuations reflected an increase in the aggregate solvency deficiencies for the eight DB Pension Plans of approximately \$7.7 million dollars and an increase in the aggregate annual special payments for those plans of approximately \$2 million.

134. Four of the eight DB Pension Plans that filed valuation reports in July 2009 have applied for the solvency relief funding measures recently enacted under Regulations to the PBSA. Under these solvency relief measures, the amortization period for payment of solvency deficits is extended from five to ten years for 2009. For years following 2009, the ten year solvency amortization period can only be continued if either (i) the CMI Entities obtain the consent of the members and former members of the plan – consent is deemed to be obtained if no more than one-third of members and no more than one-third of former members object to the ten year amortization, or (ii) the CMI Entities are able to obtain an irrevocable letter of credit to cover the difference in solvency payments between the five and ten year amortization periods. If the CMI Entities are not able to meet either of these conditions, then the DB Pension Plans would have to revert to solvency funding using a five year amortization schedule commencing in 2010, which would increase the CMI Entities total annual special payments to these plans by approximately \$1.7 million, assuming no other changes to the plans' funded status.

135. Canwest Global maintained the Canwest Global Communications Corp. and Related Companies Retirement Compensation Arrangement Plan (the "CGCC RCA") for certain of its current and former management employees. A November 2008 valuation (the "CGCC RCA Valuation") estimated that the settlement liabilities under the CGCC RCA for the period ending December 31, 2009 were approximately \$47 million. The CGCC RCA Valuation estimated that net assets (after provision for expenses) available to provide benefits would be approximately \$5.7 million. Until recently, the difference between the net assets and estimated settlement liabilities (approximately \$41 million) had been secured by an irrevocable letter of credit (the "CGCC RCA Letter of Credit") held by Royal Trust Corporation of Canada ("Royal Trust") – the trustee of the CGCC RCA. In May 2009, CGCC terminated the CGCC RCA, causing active participants to cease earning any further benefits. In June 2009, Royal Trust demanded payment under the CGCC RCA Letter of Credit and after payment was made

the process of distributing the assets of the CGCC RCA to those persons who were entitled to benefits under the CGCC RCA commenced. On September 4, 2009, a partial distribution of assets was made to various individuals who were entitled to benefits under the CGCC RCA. A second distribution of assets will take place after refundable taxes held by the Canada Revenue Agency in relation to the CGCC RCA are refunded to Royal Trust.

136. The CMI Entities also provide post-employment and post-retirement benefits to certain of their employees, most notably health, dental and term life insurance benefits. The aggregate annual cash contribution in the 2008 fiscal year to provide these post-employment and post-retirement benefits was approximately \$0.4 million. The aggregate accrued benefit obligation relating to these benefits as at the end of the fiscal 2008 year totalled approximately \$16.7 million.

#### **TERMINATION OF THE CH EMPLOYEES PLAN**

137. As noted above, following the sale of *CHCH-TV* to Channel Zero, the CMI Entities commenced terminating the CH Employees Plan. On June 30, 2009, CMI notified the Office of the Superintendent of Financial Institutions ("OSFI") of CMI's intention to do so effective August 31, 2009. The CH Employees Plan was terminated effective August 31, 2009.

138. In a letter dated August 10, 2009, OSFI directed CMI to prepare a valuation report for the CH Employees Plan effective as of December 31, 2008 and to file such report by August 31, 2009. CMI responded to OSFI in a letter dated August 27, 2009, advising that it was not feasible to prepare a file a valuation report in 21 days as requested and that the need to prepare such a report would delay completion of the termination report for the CH Employees Plan. CMI accordingly asked OSFI to advise whether OSFI still required a valuation report to be prepared for the CH Employees Plan as of December 31, 2008. By letter dated September 15, 2008, OSFI acknowledged the length of time it would take to prepare a valuation report but still required that CMI prepare a valuation report for the CH Employees Plan as of December 31, 2008, as this report would establish additional amounts to accrue from January 1, 2009 that would need to be funded. OSFI stated that CMI was required to file the valuation report immediately. CMI has instructed the actuary for the CH Employees Plan to give top priority to the completion of the December 31, 2008 valuation so that CMI can comply with the OSFI request as soon as possible.

## **CASH MANAGEMENT SYSTEM**

139. In the ordinary course of their businesses, the CMI Entities use a centralized cash management system which is maintained at BNS to monitor account activity and account balances for each entity (the “Cash Management System”).

140. The Cash Management System consists of 55 Canadian dollar accounts and 8 U.S. dollar accounts. Until recently, 35 of the Canadian dollar accounts and 7 of the U.S. dollar accounts in the Cash Management System operated under a mirror netting arrangement (the “Mirror Netting Arrangement”), which was supported by a swingline facility connected to the 2005 CMI Credit Facility. The Mirror Netting Arrangement allowed the balances in the accounts operating under that arrangement to be automatically (rather than manually) netted on a daily basis. The net position was used to determine the daily surplus or overdraft position. The overdraft position resulted in a swingline facility drawdown. The non-mirror netting accounts were, and continue to be, maintained in a surplus position.

141. Since entering into the CIT Facility in May 2009, a number of CMI’s Canadian and U.S. dollar accounts have been moved outside of the Mirror Netting Arrangement. Under the new arrangement with CIT, the Canadian and U.S. dollar deposit accounts maintained at BNS are consolidated on a daily basis into one of two concentration accounts maintained at BNS. CIT withdraws funds from the concentration accounts on a daily basis to reduce the revolving loan balance under the CIT Facility. When CMI requires cash to fund operations, a drawdown from the CIT Facility is made. All funds drawn from the CIT Facility are deposited into Canadian and U.S. dollar operating accounts maintained at BNS. The Mirror Netting Arrangement continues to operate, but is no longer supported by a swingline facility. As a result, all remaining accounts in the Mirror Netting Arrangement must be maintained in a net cash surplus position.

142. The Cash Management System is managed centrally using oversight procedures and controls implemented by CMI’s treasury department located in Winnipeg, Manitoba. On a daily basis, the treasury department and the accounting department reviews the account balances and activity, inter-entity fund transfers, and availability under the CIT Facility. Based upon this information, CMI’s treasury department is able to assess whether any drawdown under the CIT Facility is required and prepares the required drawdown notice.

143. By centralizing control over its cash management arrangements, the CMI Entities are able to facilitate cash forecasting and reporting, monitor collection and disbursement of funds, and maintain control over the administration of various bank accounts required to effect the collection, disbursement and movement of cash.

### **SHARED SERVICES**

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

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

146. In particular, CMI provides CTLP, CW Media and the Limited Partnership with, *inter alia*, the following Shared Services based upon various fee and cost allocation agreements and practices:

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

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147. The total amount paid to CMI by the Limited Partnership in fiscal 2008 in respect of these services was approximately \$6.1 million. The actual cost for fiscal 2009 was \$6.5 million.

148. The Limited Partnership provides CMI, CTLP, and CW Media with, *inter alia*, the following Shared Services:

- financial and accounting support services, including accounts payable, accounts receivable, payroll services, cash flow management, and accounting services;
- corporate services, including human resources consulting, pension services, and other employee benefits administration;
- IT infrastructure and support services, including information technology and processing and website development and maintenance services;
- support and reporting services including making available senior officers and other key personnel to participate in investor relations functions, assisting in public relations and government relations initiatives, preparing and delivering financial information, and assisting in the preparation of reporting documentation, including regulatory and tax filings and prospectuses;
- certain cross-promotional activities, such as providing advertising space in its newspapers and online media; and
- content from Canwest News Service and other editorial services.

In fiscal 2008, the aggregate amount received by the Limited Partnership from CMI, CTLP, and CW Media, in respect of these services was approximately \$14.8 million. The actual cost for fiscal 2009 was approximately \$16.2 million.

149. The Limited Partnership also provides the National Post Company with, *inter alia*, the following Shared Services:

- financial and accounting support services, including accounts payable, accounts receivable, payroll services, cash flow management, and accounting services;
- corporate services, including human resources consulting, pension services, and employee benefits administration;
- IT infrastructure and support services, including information technology and processing and website development and maintenance services (*FPinfomart.com*; *NationalPost.com*);

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

In fiscal 2008, the total amount received by the Limited Partnership from the National Post Company in respect of these services was approximately \$22.6 million. The actual cost for fiscal 2009 was \$21.5 million.

150. In addition to the above, the Limited Partnership manages, invoices and collects certain advertising and circulation revenues on behalf of the National Post Company, CW Media and CTLP. The Limited Partnership is required to make payment to the applicable Canwest entity based on gross actual sales and collections. The total amount payable by the Limited Partnership in respect of these services for fiscal 2009 was approximately \$40 million (approximately \$35 million to the National Post Company, \$1.9 million to CTLP and \$3.1 million to CW Media).

151. With respect to other Canwest entities, Canwest Global grants to CMI and the Limited Partnership a non-exclusive, royalty-free, non-transferable licence to use some or all of the Canwest trademarks in Canada and to sublicense the use of the Canwest trademarks to its subsidiaries. CTLP provides a variety of management services, including program acquisition and scheduling, to the various operating units within the CW Media Segment and to certain of the entities in the Canadian Television Segment that are not Applicants in this CCAA proceeding.

152. During the course of this CCAA proceeding, it is proposed that the CMI Entities and the LP Entities continue to provide, receive, collect and pay for the Shared Services in the ordinary course and in accordance with current arrangements, payment terms and business



practices, except as to payment terms which may be amended to provide for revised timing of reconciliations. The CMI Entities have taken steps to bring amounts owing to the LP Entities for Shared Services current and regularize payment terms to net 30 days. It is proposed in the draft Initial Order that the CMI Entities and the LP Entities be prohibited from modifying, ceasing to provide or terminating 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 the Court, except with respect to portions of the CMI Entities' business which may be shut down or reorganized in the manner contemplated by the Term Sheet.

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

### **ISSUES IN THE MEDIA INDUSTRY**

154. The CMI Entities generate the majority of their revenue from the sale of advertising (approximately 77% of Canwest's Canadian total revenue on a consolidated basis). In recent months, many segments of the media industry have experienced significant and sudden declines in advertising revenues reflecting the weakening economic environment in Canada and the other countries in which Canwest operated until recently. These conditions have caused many advertising customers to reduce the amounts that they spend on advertising, resulting in a decrease in demand for advertising and lower advertising rates.

155. At present, the outlook for the advertising market in Canada remains difficult and the weakness in advertising revenues is resulting in an increasingly challenging operating environment.

156. The CMI Entities expect the difficult advertising market to continue into fiscal 2010. Since the CMI Entities' businesses are characterized by generally high fixed operating costs, primarily for television programming and staffing, a decline in advertising revenue has had a disproportionately negative effect on their consolidated operating results.

## **EFFORTS TO RESPOND TO DETERIORATING ECONOMIC CONDITIONS**

157. Over the past several years, the CMI Entities have undertaken a number of steps to improve operational efficiencies and the strength of their respective balance sheets. For example, in 2007, Canwest Global announced that the CMI Entities would centralize certain broadcast functions by developing four state of the art broadcast centres to support the production needs of their free-to-air television stations and to enable the transition to high definition television broadcasting.

158. In response to the current economic conditions, Canwest's television business and Canwest's publishing business have recently commenced workforce reductions of their operations, through voluntary buyouts, attrition and reductions. With respect to Canwest's television business in particular, Canwest has eliminated certain activities non-core to the Canadian television business. The National Post Company has also instituted changes to accelerate profitability, including focussing on profitable markets, reducing unproductive and deeply discounted circulation and utilizing new technology to better target key high value readers while increasing web engagement with its brands. These combined initiatives are expected to reduce annualized operating costs by approximately \$61 million across the Canwest enterprise and reduce head count by approximately 540 employees, or 5% of the workforce.

159. Other cost savings initiatives have also been implemented by the CMI Entities, including the elimination of positions across all departments, hiring and salary freezes, freezes on discretionary spending (including travel, meals, entertainment, and training) and a review and decrease of broadcast capital spending.

160. On March 9, 2009, Canwest Global completed the sale of *The New Republic*, an American magazine which is focused upon politics and the arts. Prior to the sale, *The New Republic* was Canwest's principal enterprise in the United States.

161. On May 28, 2009, CMI sold its indirect interest in certain Turkish radio stations to Spectrum Medya A.S.

162. As set out above, as of September 4, 2009, Canwest no longer operates the *E!* Stations in Canada and on October 1, 2009, CMIH completed the sale of its interest in Ten Holdings.

163. In terms of regulatory initiatives, the CMI Entities have been engaged in efforts to encourage the CRTC to, among other things, require BDUs to pay fees to free-to-air television broadcasters for the carriage of their channels in local markets (known as “fee-for-carriage”), similar to the current CRTC requirement that BDUs pay fees to specialty television broadcasters to carry their specialty television channels. It is anticipated that CRTC hearings on this issue will commence prior to the end of 2009.

### **APPOINTMENT OF SPECIAL COMMITTEE, RESTRUCTURING ADVISOR AND RECAPITALIZATION OFFICER**

164. In addition to the above, on February 19, 2009, the board of directors of Canwest Global struck a special committee of directors (the “**Special Committee**”) with a mandate to explore and consider strategic alternatives in order to maximize value in light of the financial difficulties being experienced by Canwest. The Special Committee is comprised of Mr. Derek Burney (Chair), Mr. David Kerr, Mr. David Drybrough, Ms. Margot Micallef and Mr. Frank King.

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

166. On or about April 21, 2009, Mr. Thomas Strike was appointed by the Special Committee as Canwest Global’s Recapitalization Officer (“**Recapitalization Officer**”). Mr. Strike is also the President, Corporate Development & Strategy Implementation of Canwest Global. Mr. Strike’s responsibilities as Recapitalization Officer include, among other things, (i) developing, for consideration by the Special Committee, strategic alternatives for the operational and financial restructuring of Canwest Global and its subsidiaries; (ii) developing a restructuring plan or plans for presentation to lenders, creditors and other stakeholders; and (iii) negotiating all necessary agreements with equity sponsors, lenders, creditors, stakeholders and other interested parties that may be necessary or desirable in connection with any restructuring. In this role, Mr. Strike reports directly and exclusively to the Special Committee.

167. The mandate of the Special Committee was revised to include selecting one or more individuals who would provide advisory services to the Recapitalization Officer and the

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Special Committee with respect to the formulation and implementation of a restructuring and/or recapitalization plan for the CMI Entities. To that end, on June 30, 2009, Mr. Hap S. Stephen, Chairman and Chief Executive Officer of Stonecrest Capital Inc. (“**Stonecrest**”), was appointed to serve as the Restructuring Advisor for Canwest other than the LP Entities (the “**Restructuring Advisor**”). The Restructuring Advisor reports directly and exclusively to the Special Committee. It is proposed that the Restructuring Advisor will be named as the CMI Entities’ Chief Restructuring Advisor (the “**CMI CRA**”) in the event that this Honourable Court grants the Initial Order. Upon the occurrence of that event, Mr. Stephen, as the CMI CRA, will assume primary responsibility for the development and implementation of the Recapitalization Transaction. The draft Initial Order sets out certain matters that will require the approval of the CMI CRA or consultation with the CMI CRA during this CCAA proceeding. Mr. Strike will continue to act as the Recapitalization Officer for the CMI Entities and will report directly to the CMI CRA. A copy of the retainer agreement signed by Mr. Stephen, on behalf of Stonecrest, as amended, is attached as Exhibit “N” to this Affidavit.

### **RECENT FINANCIAL PRESSURES EXPERIENCED BY THE CMI ENTITIES**

168. Notwithstanding the proactive steps which have been taken to improve their respective balance sheets, over the past several months, the CMI Entities have experienced significant tightening of credit from critical suppliers and other trade creditors as a result of the continued and publicized uncertainty surrounding the stability of the Canwest business. Certain of these creditor actions are detailed below:

- CMI has learned that a number of the financial institutions that normally provide financing for the production of Canadian television programs that the Canadian Television Segment and/or the CW Media Segment have committed to broadcast upon completion have been refusing to provide interim financing to the programs’ producers. It is CMI’s understanding that these financial institutions are reluctant to provide financing because they are uncertain whether the Canadian Television Segment and/or the CW Media Segment will be in a financial and/or operational position to meet their licence fee commitments.

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- Certain Canadian television producers/studios have recently asked the CMI Entities to put funds in escrow or to make advance payments or issue them letters of credit prior to moving forward on productions that have been committed to air on Canwest's Canadian television stations or channels. Certain producers have also requested other alterations to existing contracts. In the event that these Canadian production studios refuse to move forward on productions, the Canadian Television Segment and/or the CW Media Segment will not have programs to broadcast on its television stations and channels to meet their respective Canadian content requirements. Certain productions have been put on hold by their producers pending a resolution of the current issues surrounding the Canwest enterprise.
- Major U.S.-based television studios amended customary contractual terms by demanding that, as a condition precedent to renewing certain output agreements for the 2009/2010 television season, the CMI Entities deliver and maintain in full irrevocable standby letters of credit to secure payments owing under the renewed output agreements. These actions caused a significant strain on the CMI Entities' cash flow as it forced the CMI Entities to in effect pre-pay for a portion of this season's television programming months before receiving any advertising revenues associated with such programming. Certain U.S.-based studios have also required that the CMI Entities pay in full or in part all amounts past due, currently due or to become due under its existing output agreements on or before a specified date.
- The CMI Entities have received calls from a number of major advertising agencies which represent their major advertising clients expressing concerns about the stability of Canwest's Canadian businesses and advising that their clients' plans to reduce their advertising spending with the CMI Entities based upon the current financial uncertainty. In fact, the CMI Entities have recently learned that at least two of their significant long-term advertising customers have decided not to renew their existing advertising sales contracts because of the uncertainty surrounding the CMI Entities.

- One of the companies that prints the *National Post* unilaterally decided to cease printing the newspaper effective July 1, 2009.
- Certain of Canwest's credit card processors (companies responsible for processing credit card payments received from, *inter alia*, subscribers and advertisers) have requested that they be allowed to hold back amounts in reserve or, in certain cases, extend the payment cycle. Collectively these companies process approximately \$350 million in annual revenue on Canwest's behalf.
- Petro-Canada has cancelled all credit cards that it had issued to employees of the CMI Entities in Kelowna, Toronto and Montreal.

169. Standard & Poor's Ratings Services ("S&P") has lowered its long-term corporate credit rating for CMI from 'CCC' to 'D' due to the financial difficulties noted above. The 'D' rating category is used when payments on an obligation are not made on the date due even if the applicable grace period has not expired.

## **THE RECAPITALIZATION TRANSACTION**

### **(i) The Support Agreement**

170. As set out above, the Support Agreement provides that the CMI Entities will pursue the Plan on the basis set out in the Term Sheet. It also provides that the Consenting Noteholders will vote their 8% Senior Subordinated Notes in favour of the Plan at any meeting of creditors. The obligation of the Consenting Noteholders to support the Recapitalization Transaction is subject to certain conditions set out in the Support Agreement and the Term Sheet.

171. The Support Agreement may be terminated by Consenting Noteholders holding a majority of the aggregate principal amount of the 8% Senior Subordinated Notes held by all Consenting Noteholders, in their sole discretion, upon the occurrence of certain events, including:

- (a) failure of the CMI Entities to initiate proceedings under the CCAA by October 15, 2009 or failure to file the Plan with the Court within 30 days after filing under the CCAA;

- (b) if the Plan is not implemented by April 15, 2010;
- (c) failure of the CMI Entities to comply in all material respects with their covenants or upon breach of any representation or warranty by the CMI Entities;
- (d) if the Ad Hoc Committee determines, acting reasonably, that the conditions precedent to the implementation of the Recapitalization Transaction cannot reasonably be expected to be satisfied;
- (e) an event of default under the CIT Credit Agreement; and
- (f) an event of default under the Cash Collateral and Consent Agreement.

172. The Support Agreement may be terminated by Canwest Global, on behalf of the CMI Entities, in its sole discretion upon the occurrence of certain events, including if Canwest Global determines, acting reasonably, that the conditions precedent to the implementation of the Recapitalization Transaction cannot reasonably be expected to be satisfied. A copy of the Support Agreement, including the Term Sheet, is attached (without signature pages) as Exhibit "O" to this Affidavit.

## **(ii) The Restructuring Term Sheet**

173. The Recapitalization Transaction, as set out in the Term Sheet, provides for a comprehensive corporate restructuring of the CMI Entities and the satisfaction of certain creditor claims against the CMI Entities. As set out in the Term Sheet, "the purpose of the Recapitalization Transaction is, among other things, to restructure CMI into a viable and competitive industry participant able to deal with the current issues facing the broadcasting industry and other competitive factors."

174. Under the Recapitalization Transaction, it is proposed, *inter alia*, that creditors of the CMI Entities whose claims are compromised under the Plan (the "Affected Creditors") will receive percentages of the shares of Restructured Canwest Global based on the percentage of such creditors' claims relative to the total claims proven against CMI or CTLP, as applicable.

175. Other essential elements of the proposed Recapitalization Transaction include the following:

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- the share capital of Restructured Canwest Global will be comprised of the following four classes of shares: (i) multiple voting shares (the “**Multiple Voting Shares**”) issued to the New Investors (as described below), (ii) class A subordinated voting shares (the “**Class A Subordinated Voting Shares**”) issued to the New Investors, Affected Creditors and existing shareholders of Canwest Global that are Canadians within the meaning of the *Direction to the CRTC (ineligibility of Non-Canadians)* (the “**Direction**”), (iii) non-voting shares (the “**Non-Voting Shares**”) issued to Affected Creditors and existing shareholders of Canwest Global that are not Canadians within the meaning of the Direction, and (iv) class B subordinated voting shares (the “**Class B Subordinated Voting Shares**”) issued to Affected Creditors and existing shareholders of Canwest Global that are not Canadians within the meaning of the Direction;
- it is intended that the Class B Subordinated Voting Shares and Non-Voting Shares, together as a stapled security, and the Class A Subordinated Voting Shares of Restructured Canwest Global, will be listed on the Toronto Stock Exchange;
- one or more Canadians (the “**New Investors**”) will invest at least \$65 million in Restructured Canwest Global in consideration for Class A Subordinated Voting Shares in the capital of Restructured Canwest Global or a combination of Class A Subordinated Voting Shares and Multiple Voting Shares, in each case, representing an equity interest in Restructured Canwest Global that is acceptable to CMI and the Ad Hoc Committee;
- on completion of the Recapitalization Transaction, the CIT Facility will be extended or replaced by a similar facility on terms to be agreed by CMI and the Ad Hoc Committee;
- the terms and conditions of any arrangement or agreement with respect to the Shared Services between the CMI Entities and the LP Entities, either in current form or as amended or replaced, shall be satisfactory to the Ad Hoc Committee and CMI and there shall be no material adverse effect on CMI’s operations in



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connection with any disposition, recapitalization or restructuring of the LP Entities;

- as a result of the guarantee of the 8% Senior Subordinated Notes executed by CMIH and having regard to the Secured Intercompany Note and the Unsecured Promissory Note, the 8% Senior Subordinated Noteholders shall be entitled to claim recovery for the full amount of principal (approximately US\$761 million) and accrued interest of the 8% Senior Subordinated Notes from CMI without deduction for amounts recovered from the sale of the Ten Shares;
- the 8% Senior Subordinated Noteholders shall be entitled to claim against CTLP, as guarantor, the amount of \$800 million, an amount which reflects the 8% Senior Subordinated Noteholders' full claim less an estimated recovery from CMI of \$100 million (without deduction for amounts recovered from other guarantors);
- no more than 18.5% of the outstanding equity shares of Restructured Canwest Global will be issued to Affected Creditors (other than the 8% Senior Subordinated Noteholders);
- existing shareholders of Canwest Global will receive in aggregate 2.3% of the shares of Restructured Canwest Global;
- Restructured Canwest Global will, upon completion of the Recapitalization Transaction, own at least 35.33% of the shares of CW Investments and the shareholders agreement with Goldman Sachs relating to CW Investments shall have been revised in a manner agreed to by CMI and the Ad Hoc Committee, subject to CRTC approval if required;
- a definitive agreement in respect of the transfer of the business of *The National Post* to the LP Entities shall have been entered into on terms agreed to by CMI and the Ad Hoc Committee by no later than October 15, 2009;
- there shall have been no default or event of default under the CIT Facility or the Cash Collateral and Consent Agreement;

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- there shall not exist or have occurred any material adverse effect to the business, affairs, results of operations or financial condition of the CMI Entities;
- the size and composition of the board of directors of Restructured Canwest Global shall be acceptable to the Ad Hoc Committee;
- the 8% Senior Subordinated Noteholders that executed the Support Agreement in favour of the Recapitalization Transaction shall receive additional consideration, in the form of additional Non-Voting Shares and Class B Subordinated Voting Shares or Class A Subordinated Voting Shares, as applicable, of Restructured Canwest Global, representing, in aggregate, the Canadian dollar equivalent of US\$5 million, in consideration for entering into the Support Agreement; and
- the key elements of the Recapitalization Transaction shall have occurred by the following dates set out in the Term Sheet:
  - (i) CCAA initial hearing date – no later than October 15, 2009
  - (ii) Claims process hearing date – no later than October 22, 2009
  - (iii) Creditor approval – no later than January 30, 2009; and
  - (iv) Plan implementation date – no later than April 15, 2010.

### ***INSOLVENCY OF THE CMI ENTITIES***

176. As discussed above, as a result of the significant decline in advertising revenues, in February 2009 CMI breached certain of the financial covenants set out in the 2005 CMI Secured Credit Facility and in March 2009 failed to make a US\$30.4 million interest payment which was due in respect of the 8% Senior Subordinated Notes. CMI subsequently received a series of waivers of the borrowing conditions from its then current secured lenders and entered into a series of extension agreements with the Ad Hoc Committee wherein the parties agreed that the 8% Senior Subordinated Noteholders who were parties to that agreement would not demand immediate payment of the principal amount of the outstanding 8% Senior Subordinated Notes during the extension periods in order to allow the CMI Entities to pursue a recapitalization transaction. Had a demand for immediate payment been made by either the then current CMI

senior lenders or on behalf of the 8% Senior Subordinated Noteholders in lieu of entering into waiver and extension agreements, neither CMI nor any of the other CMI Entity guarantors would have been in a position to repay the amounts owing under the 2005 CMI Credit Facility or under the 8% Senior Subordinated Notes.

177. In May 2009, CMI and CTLP issued the 12% Secured Notes. On the same day, CMI entered into the CIT Facility. CMI used the proceeds from the issue and sale of the 12% Secured Notes and from the CIT Facility, to, among other things, repay its then current senior lenders all amounts owing under the 2005 CMI Credit Facility and to settle related foreign currency and interest rate swap obligations.

178. In late September 2009, the Ten Shares were sold and the net Ten Proceeds were used to retire the 12% Secured Notes and to repay the full balance outstanding under the CIT Facility of approximately \$23 million, excluding outstanding letters of credit in the amount of approximately \$10.7 million which are currently cash collateralized.

179. The Support Agreement provides that the CMI Entities will make the within application under the CCAA in order to implement the Recapitalization Transaction. The Consenting Noteholders who executed the Support Agreement and the Cash Collateral and Consent Agreement executed such agreements on the basis that a restructuring of the CMI Entities would be undertaken pursuant to the CCAA. Without the liquidity provided by the Consenting Noteholders under the Cash Collateral and Consent Agreement, which is intended to allow the CMI Entities to continue to operate pending a restructuring under the CCAA and which is only available within a CCAA proceeding, the CMI Entities would be unable to continue as going concerns and are thus insolvent. In addition, CMI did not make and does not have the necessary liquidity to make an interest payment in the amount of US\$30.4 million that was due and payable on September 15, 2009 under the 8% Senior Subordinated Notes and therefore cannot satisfy its debts as they become due. None of the other CMI Entities, which are guarantors of the 8% Senior Subordinated Notes, can make such payment and are thus insolvent. Further, the assets of the CMI Entities are not sufficient to discharge all of their liabilities and the CMI Entities are thus insolvent on a balance sheet basis.

### ***The DIP Facility***

180. Subject to certain conditions in the CIT Credit Agreement, the CIT Facility converts into the DIP Facility for the CMI Entities upon a CCAA filing. As set out above, the CIT Facility will increase from up to \$75 million to up to \$100 million upon such conversion. Prior to entering into the CIT Facility, the CMI Entities sought proposals from other third party lenders for a credit facility that would convert to a DIP facility should the CMI Entities be required to file for creditor protection under the CCAA. The CIT Facility was the best proposal submitted and was entered into accordingly.

181. The DIP Facility is to be secured by a Court-ordered security interest, lien and charge on the CMI Collateral (the "DIP Charge"). It is a condition precedent to the conversion to the DIP Facility that the Initial Order under the CCAA be in form and substance satisfactory to CIT. The DIP Charge is to have priority over all other security interests, charges and liens other than the Administration Charge (defined below) and the Existing Security (to the extent that the Existing Security secures existing and future obligations under the CIT Credit Agreement), except for any validly perfected purchase money security interests in favour of a secured creditor and statutory encumbrances in favour of any entity which is a secured creditor as set out in the draft Initial Order.

182. Based upon the CMI Entities' cash flow forecasts and the additional liquidity provided pursuant to the Cash Collateral and Consent Agreement, the CMI Entities do not anticipate drawing on the DIP Facility during the early stages of this CCAA proceeding. However, the CMI Entities' cash flow projections indicate that the total amount of cash on hand will be down to approximately \$10 million by late December 2010. This is not a sufficient cushion for an enterprise of this magnitude. Accordingly, the CMI Entities are seeking approval of the proposed DIP Facility to accommodate any additional liquidity requirements during this CCAA proceeding. The proposed DIP Facility will provide additional assurances to the creditors of the CMI Entities that they will be able to operate as going concerns while pursuing the implementation and completion of a viable Plan.

183. As the proposed DIP Facility is simply a conversion of the pre-existing CIT Facility, it is the CMI Entities' belief that there will be no material prejudice to any of their creditors. Moreover, in the circumstances, conversion of the CIT Facility into the DIP Facility is the only viable funding mechanism for the CMI Entities during this CCAA proceeding should

the net Ten Proceeds advanced to CMI pursuant to the Cash Collateral and Consent Agreement provide insufficient liquidity during this CCAA proceeding. In addition, creditors are benefiting from the full paydown of amounts owing under the CIT Facility, other than the outstanding letters of credit.

184. There are currently approximately \$10.7 million in outstanding letters of credit issued pursuant to the CIT Facility. These letters of credit are secured by the Existing Security in favour of CIBC Mellon pursuant to the Collateral Agency Agreement. It is proposed in the Initial Order that the Existing Security, solely to the extent that such Existing Security secures existing and future obligations under the CIT Credit Agreement, rank subsequent to the Administration Charge and in priority to the DIP Charge, the Directors Charge, and the KERP Charge (all as defined below).

### ***THE LIMITED PARTNERSHIP'S FINANCIAL SITUATION***

185. The Limited Partnership is currently in default of its debt obligations due to a significant decline in the advertising revenues of it and its subsidiaries, in addition to an increase in certain of their operating costs.

186. In particular, on May 29, 2009, the Limited Partnership failed, for the first time, to make certain interest and principal reduction payments and related swap payments aggregating approximately \$10 million in respect of its senior secured credit facilities. On the same day, the Limited Partnership announced that it would be in breach of certain financial covenants set out in its senior secured credit facilities as of May 31, 2009. Since that time, the Limited Partnership has failed on make principal, interest and fee payments which were due and payable in respect of its senior secured credit facilities on several additional occasions.

187. The defaults under the Limited Partnership's senior secured credit facilities, in addition to the failure of the Limited Partnership to make certain interest and principal reduction payments that were due and owing under the Limited Partnership's senior subordinated credit facility in May 2009, have caused the Limited Partnership's senior subordinated credit facility to be in default, entitling the lenders under that facility to take steps to demand immediate payment of all amounts owing under that facility.

188. Further, the defaults occurring in respect of the Limited Partnership's senior secured credit facilities have caused the Limited Partnership's related hedging arrangements to be in default. These swaps have now been terminated by the swap counterparties and, as a result, settlement (early termination) payments totalling approximately \$70 million are owed by the Limited Partnership to the swap counterparties. Demands for immediate payment have been made by the swap counterparties in that regard. The Limited Partnership has not satisfied these demands and the unpaid amounts are accruing interest daily.

189. In addition, the termination and demand for payment in respect of the Limited Partnership's hedging arrangements caused the Limited Partnership's 9.25% senior subordinated notes (the "LP Notes") to be in default. On August 1, 2009, the Limited Partnership failed to make a payment of interest totalling approximately US\$18.5 million in respect of the LP Notes, which also resulted in an Event of Default (as defined therein) under the applicable indenture.

190. On September 10, 2009, Canwest Global announced the Limited Partnership had entered into an agreement with certain of its senior lenders wherein those lenders agreed not to take any steps to demand immediate payment or enforce the security held in support of the Limited Partnership's senior secured credit facilities in order to afford the Limited Partnership and the senior lenders an opportunity to attempt to negotiate a consensual pre-packaged restructuring, recapitalization or reorganization of the LP Entities (the "LP Forbearance Agreement"). The LP Forbearance Agreement is subject to the satisfaction of certain milestones including reaching an agreement on the principal terms of a recapitalization transaction. A copy of news releases dated September 10, 2009 and September 30, 2009 dealing with the LP Forbearance Agreement are attached as Exhibit "P" to this Affidavit.

### **COST SHARING ARRANGEMENT**

191. The CMI Entities and the LP Entities have agreed that it is appropriate for the CMI Entities to bear the costs and expenses of the restructuring of the businesses operated by the CMI Entities and for the LP Entities to bear the costs and expenses of the restructuring of the businesses operated by the LP Entities. Although no formal cost sharing agreement has been executed, the CMI Entities and the LP Entities are operating under this principle and the draft Initial Order provides that 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 Shared Services.

### **FOREIGN SUBSIDIARY APPLICANTS**

192. As reflected in the organization chart previously attached at Exhibit "A", certain of the CMI Entities are foreign wholly-owned subsidiaries of CMI, namely: Canwest Irish Holdings (Barbados) Inc., Canwest International Communications Inc., Canwest MediaWorks Turkish Holdings (Netherlands) B.V., CGS International Holdings (Netherlands) B.V., Canwest International Management Inc., Canwest International Distribution Limited, CGS Debenture Holding (Netherlands) B.V., CGS Shareholding (Netherlands) B.V., CGS NZ Radio Shareholding (Netherlands) B.V., Canwest MediaWorks (US) Holdings Corp. and 30109 (collectively, the "Foreign Subsidiary Applicants"). Each of the Foreign Subsidiary Applicants has assets situated in Canada. Specifically, on April 3, 2009, the majority of the Foreign Subsidiary Applicants opened Canadian dollar bank accounts at BNS in Toronto, Ontario and deposited funds in those accounts. Canwest MediaWorks (US) Holdings Corp. and 30109 opened Canadian dollar bank accounts at BNS on October 2, 2009 in Toronto, Ontario and deposited funds in those accounts. The Foreign Subsidiary Applicants continue to maintain funds on deposit in those accounts.

193. The Foreign Subsidiary Applicants are seeking relief under the CCAA because each is a guarantor under the 8% Senior Subordinated Notes, the CIT Credit Agreement (and thus the DIP Facility) and are parties to the Support Agreement and the Cash Collateral and Consent Agreement.

### **PAYMENTS DURING THIS CCAA PROCEEDING**

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

195. As discussed above, employees of the CMI Entities are compensated in various ways, including by way of salaries, commissions and bonuses. It is contemplated in the cash flow projections that arrears of salaries, commissions, bonuses and outstanding employee expenses will be paid or reimbursed in the ordinary course and that compensation programs for

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active employees will continue in the ordinary course post-filing. The cash flow projections also contemplate the continued payment of current service and special payments with respect to the active DB Pension Plans. The cash flow projections do not contemplate termination and severance payments, salary continuance or benefits being paid to previously terminated employees or non-union retirees.

196. It is also contemplated in the cash flow projections that the CMI Entities will have the ability, with the consent of the Monitor, to continue to make payments, including payments in arrears, to independent contractors and freelancers who provide services post-filing, as independent contractors and freelancers are integral to the CMI Entities' operations.

197. In addition, the CMI Entities are proposing in the Initial Order that they be authorized, with the consent of the Monitor, but not required, to make certain payments, including payments owing in arrears, to third parties that provide goods or services that are integral to their businesses.

#### **A. Television Programming Suppliers**

198. As noted above, the CMI Entities are dependent, in part, upon programming that it acquires from various distributors, production studios and other suppliers in the United States (or through their Canadian affiliates, agents, branches or divisions) and elsewhere. It is also dependent on programming acquired from Canadian production studios, in part, to fulfil Canadian content requirements. Programming rights represent a significant cost for the CMI Entities and are crucial to the success of any television enterprise.

199. The going-concern enterprise value of Canwest's television business (including the CW Media Segment) is predicated on having a continuous and undisturbed flow of programming, including first-run prime-time programming provided by U.S. studios, distributors or other suppliers (or through their Canadian affiliates, agents, branches or divisions), and Canadian-produced programming to meet Canadian content requirements stipulated by the CRTC. It is crucial to the CMI Entities' audience and advertisers that acquired first-run programs are aired within their very limited "shelf-life" as first-run programs which, in the case of acquired primetime U.S. broadcast network programming, means that the CMI Entities must be able to procure and retain programming rights and procure and retain the rights to "simulcast"



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such programming with their initial U.S. broadcast network telecast. Simulcasting refers to the CRTC-mandated requirement that BDUs with over 2,000 subscribers substitute the Canadian network television signal, including commercials that air on such networks, for the signal of the identical programming broadcast by a U.S. station at the same time. If the CMI Entities lose access to television programming rights and thereby also loses the ability to simulcast one or more programs with their respective U.S. network airings, the going-concern enterprise value of Canwest's Canadian television business (including the CW Media Segment) will likely be materially negatively affected. CMI and CTLP expect that the U.S. and Canadian studios that provide them with their television programming will honour their contractual arrangements with the CMI Entities as long as all post-filing payments are made in the normal course. However, in order to ensure a continuous supply of programming, the CMI Entities are seeking in the Initial Order to be, with the consent of the Monitor, entitled but not required to pay pre-filing amounts owing in respect of television programming if, in the opinion of the CMI Entities, the supplier is critical to the business and ongoing operations of any of the CMI Entities. As of August 31, 2009, there was approximately \$50 million in commitments made to television distributors, production studios and other suppliers by CMI and CTLP in respect of television programming.

## **B. Newsprint Suppliers**

200. The National Post Company is dependant upon a continuous and uninterrupted supply of newsprint from its newsprint suppliers. The purchase of newsprint represents one of the National Post Company's most significant operating costs. A significant amount of the newsprint used by the National Post Company is acquired through rolling purchase orders as opposed to longer-term contractual arrangements. Should there be an interruption in the supply of newsprint, the National Post Company will not have sufficient inventory of newsprint on-hand to enable it to continue publishing until it is able to resource newsprint supply. It is therefore crucial that the National Post Company have access to a continuous flow of newsprint to enable it to continue publishing newspapers. A cessation of the supply of newsprint to the National Post Company, resulting in its inability to publish, would have a devastating effect on the National Post Company. As of September 29, 2009, there was approximately \$0.1 million owing to newsprint suppliers by the National Post Company in respect of newsprint purchases.

201. The National Post Company expects that its newsprint suppliers will honour their contractual arrangements as long as all post-filing payments are made in the normal course.

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However, in order to ensure a continuous supply of newsprint, the National Post Company is seeking in the Initial Order to be, with the consent of the Monitor, entitled but not required to pay pre-filing amounts owing in arrears, to its newsprint suppliers, if, in the opinion of the National Post Company, the newsprint supplier is critical to the business and ongoing operations of the National Post Company.

### **C. Newspaper Distributors**

202. The National Post Company is similarly dependent upon third parties to distribute its newspapers through its network of independent newspaper distributors. Generally speaking, newspapers are shipped from the printers to depot drop locations or single copy retail outlets by independent trucking companies in each market. Newspaper distribution is carried out primarily by independent carriers who deliver the newspapers to individual subscribers. The newspaper distributors handle all manners of delivery, including corporate delivery, home delivery, bulk drop offs and deliveries to vending boxes.

203. An interruption in the delivery of newspapers would significantly impair the enterprise value of the National Post Company. As a result, the National Post Company is seeking in the Initial Order to be, with the consent of the Monitor, entitled but not required to pay pre-filing amounts owing in arrears, to its newspaper distributors and other logistics suppliers if, in the opinion of the National Post Company, the distributor or logistic supplier is critical to the business and ongoing operations of the National Post Company.

### **D. American Express**

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

205. The American Express Corporate Card Program allows employees of the CMI Entities to use corporate cards to charge business related travel and entertainment expenses. It is

essential to the continued operation of the businesses of the CMI Entities that they be permitted to continue reimbursing employees for such expenses, whether such expenses were incurred before or after the commencement of this CCAA proceeding.

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

#### **E. Other Goods and Services Providers**

207. In addition to the above, the CMI Entities also maintain relationships with certain other goods and services providers which, while no less integral to the continued operations and viability of the enterprise as a whole, have not been formalized into contractual arrangements. There are also goods and services providers who may be beyond the reach of the stay of proceedings in this CCAA proceeding and the proposed Chapter 15 Proceedings.

208. In order to maintain enterprise value, the CMI Entities seek the ability to pay other suppliers, subject to the consent of the Monitor, any further amounts, costs or expenses whenever incurred, if in the opinion of the CMI Entities, the supplier is critical to the business and ongoing operations of the CMI Entities.

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

209. A successful restructuring of the CMI Entities will only be possible with the continued participation of their respective boards of directors, management and employees. These personnel are essential to the viability of the continuing businesses of the CMI Entities. With the exception of Canwest Global, the directors of the Applicants consist entirely of management directors (the "Management Directors") who have years of experience in the Canadian television and publishing industries and with the Canwest businesses. This specialized expertise and the relationships that the Management Directors have forged with the CMI Entities' suppliers, employees and other stakeholders cannot be easily replicated or replaced.

210. I am advised by Edward Sellers of Osler, Hoskin & Harcourt LLP, counsel for the CMI Entities, and believe that, in certain circumstances, directors can be held personally liable for certain obligations of a company owing to (i) employees, including unpaid wages, certain pension amounts and accrued vacation pay; and (ii) the federal and provincial governments, including payroll remittances, sales taxes, goods and services tax ("GST"), withholding taxes and workers' compensation remittances. In addition, because Canwest's Canadian television business is governed by the *Canada Labour Code* as a "federal undertaking", the directors of certain of the Applicants can also be personally liable for unpaid severance and termination pay in respect of employees who are employed in the television business. The Province of Saskatchewan has similar legislation regarding director liability for unpaid severance and termination pay. The CMI Entities have worked closely with independent counsel for the Management Directors and the proposed Monitor in an attempt to quantify these potential director liabilities. The CMI Entities estimate that the amount of the Directors' Charge (defined below) will not cover all of the directors' and officers' liabilities in the worst case scenario.

211. Canwest Global maintains directors' and officers' liability insurance (the "**D&O Insurance**") for the directors and officers of Canwest Global and its subsidiaries (including the directors and officers of the CMI Entities). The current D&O Insurance policy provides \$30 million in coverage plus \$10 million in excess coverage for a total of \$40 million in coverage. The D&O Insurance originally expired on August 31, 2009. The D&O Insurance policy was subsequently extended for two months in light of Canwest's current financial situation. As of the date of the swearing of this Affidavit, Canwest Global has been unable to obtain additional or replacement D&O Insurance coverage. In addition, there are also contractual indemnities which have been given to the directors by the CMI Entities. Canwest, on an enterprise basis, does not have sufficient funds to satisfy those indemnities should the directors of the Applicants be found responsible for the full amount of the potential directors' liabilities.

212. The directors of Canwest Global and the other Applicants, including the Management Directors, have indicated that, due to the potential for significant personal liability, they cannot continue their service and involvement in this restructuring unless the Initial Order under the CCAA grants a charge on the assets, property and undertaking of the CMI Entities (the "**CMI Property**"), in priority to all other charges except the Administration Charge and the DIP Charge (but postponed in right of payment to the first \$85 million payable under the Secured

Intercompany Note), *pari passu* with the KERP Charge (as defined below), as security for the Applicants' indemnification obligations for the potential liabilities imposed upon their directors and officers as set out above. In light of the agreed-upon Recapitalization Transaction for the CMI Entities, the Management Directors, CIT and the Ad Hoc Committee have agreed to a Directors' Charge (as defined below) that is less than the total potential liability on a total shutdown scenario. It is proposed that the directors and officers of the Applicants be granted a directors' and officers' charge in the amount of \$20,000,000 (the "**Directors' Charge**") over the CMI Property. The CMI Entities believe the Directors' Charge is fair and reasonable in the circumstances.

213. The Directors' Charge is necessary so that the Applicants may benefit from their directors' and officers' experience with the CMI Entities and, more generally, with the media industry, and so their directors can guide the CMI Entities' restructuring efforts. It is critical to these restructuring efforts that the Management Directors remain with the CMI Entities in order to continue their focus on achieving one or more restructuring transactions to benefit Canwest's stakeholders. The Directors' Charge will also provide a level of assurance to the employees of the CMI Entities that obligations for accrued wages, accrued vacation pay, pension benefits and severance and termination pay will be satisfied, in addition to those withholding and tax obligations owing to the federal and provincial authorities.

### **KEY EMPLOYEE RETENTION PLANS**

214. In order to facilitate and encourage the continued participation of certain of the CMI Entities' senior executives and other key employees who are required to guide the CMI Entities through a successful restructuring and preserve enterprise value, the CMI Entities have developed a "Key Employee Retention Plan" (the "**CMI Master KERP**"). The CMI Master KERP will provide the participants thereunder (the "**KERP Participants**") with payments as an incentive to continue their employment with the CMI Entities through the full term of this CCAA proceeding. In total, there are 20 KERP Participants comprised of the following: (i) three of the Management Directors (the "**Senior Management KERP Participants**"), (ii) four key executives employed by the CMI Entities (the "**Management KERP Participants**"), and (iii) 13 other key employees employed by the CMI Entities (the "**Key Employees**") who have extensive knowledge of the CMI Entities and expertise in corporate structuring transactions.

215. The payments to the KERP Participants (other than the Senior Management KERP Participants) will be calculated as a percentage of the KERP Participants' base compensation and will be paid in two tranches: the first payment will be made on the last regular payroll period occurring in December 2009 and the second and final payment will be made on the date upon which the CMI Entities emerge from this CCAA proceeding (the "**Emergence Date**"). The payments to the Senior Management KERP Participants will take the form of two lump sum payments which have been agreed to by the Senior Management KERP Participants and the CMI Entities and will be paid at the same time as the payments to the other KERP Participants.

216. It is proposed that the KERP Participants be granted a charge (the "**KERP Charge**") over the CMI Property in the amount of the financial obligation owing by the CMI Entities under the CMI Master KERP which will rank in priority after the Administration Charge, the Existing Security (solely to the extent that such Existing Security secures existing and future obligations under the CIT Credit Agreement) and the DIP Charge and *pari passu* with the Directors' Charge and ahead of all other liens and encumbrances (except for any validly perfected purchase money security interest in favour of a secured creditor and statutory encumbrances in favour of any entity which is a secured creditor as set out in the draft Initial Order), save and except that it shall be postponed in right of payment to the first \$85 million payable under the Secured Intercompany Note. The proposed KERP Charge has been calculated with reference to the amount payable by the CMI Entities to each of the KERP Participants under the CMI Master KERP and is calculated at \$5.9 million.

217. Within the auspice and authority of the CMI Master KERP, the CMI Entities have also developed independent retention plans for the Senior Management KERP Participants (the "**Senior Management KERPs**") and for the Management KERP Participants (the "**Management KERP**"). The Senior Management KERP Participants and the Management KERP Participants are responsible for providing services to, and overseeing and implementing the restructuring of, the CMI Entities (and the LP Entities).

218. The Senior Management KERPs and the Management KERP provide that the existing terms of employment shall continue for all of the participants thereunder during this CCAA proceeding. However, any incentives which are based upon restructuring transactions and

termination and severance entitlements pursuant to the Senior Management KERP Participants' or the Management KERP Participants' existing employment agreements and any bonus, incentive compensation plan, supplemental deferred compensation plan, savings plan, vacation pay, option or restricted share unit plan, or any similar arrangement that may be in effect between a Senior Management KERP Participant and CMI shall be terminated with effect as of the approval by this Honourable Court of the CMI Master KERP. With respect to Management KERP Participants, incentives based upon restructuring transactions are pursuant to the Management KERP, and termination and severance and other terms of their existing employment agreements remain in effect.

219. The Senior Management KERPs also provide that the employment of the Senior Management KERP Participants shall terminate on the Emergence Date, unless otherwise agreed to by the parties. It is contemplated that each of the Senior Management KERP Participants will, at Restructured Canwest Global's option, enter into a consulting agreement (each a "Consulting Agreement") with Restructured Canwest Global on certain terms set out in the Senior Management KERP, in which case the second and final payment under the Senior Management KERPs will be reduced by the amount of aggregate consulting fees provided for in the applicable Consulting Agreement. The Consulting Agreement shall commence on the Emergence Date and continue for a period of 12 months. The Senior Management KERP Participants will be entitled to an annual fee payable monthly on the last business day of each month. Restructured Canwest Global will not be required to enter into a Consulting Agreement with a Senior Management KERP Participant if it instead offers that Participant full-time employment on substantially similar terms for an indefinite term commencing immediately following the Emergence Date, on terms acceptable to the Senior Management KERP Participant, in his sole discretion.

220. As a condition of receiving the Senior Management KERPs, the three Senior Management KERP Participants will continue to serve as directors and/or officers of the CMI Entities on which they currently serve, subject to certain rights set out in the Senior Management KERP. The Senior Management KERP Participants will resign as a director and/or officer of all such entities on the Emergence Date and will be provided with a full release in respect of his/her acting as a director and/or officer.

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221. The Management KERP provides that the employment of the Management KERP Participants shall continue unamended with CMI or, in the alternative, be assigned to any other subsidiary of Restructured Canwest Global on terms and conditions (including salary, incentive compensation, benefits and termination and severance entitlements) substantially similar to those currently available to the Management KERP Participants, following the Emergence Date.

222. The CMI Master KERP, the Senior Management KERPs and the Management KERP have been approved in form and substance by the Ad Hoc Committee, the CMI CRA, the Board, the Special Committee, Canwest Global's Human Resources Committee of the Board, and FTI as proposed Monitor.

223. As noted above, because of the independent nature of the debt structure utilized by CMI and the Limited Partnership, this CCAA filing has necessitated a division between the CMI Entities and the LP Entities. Since all three Senior Management KERP Participants and certain of the Management KERP Participants and other Key Employees have provided, and will continue to provide, services to both the CMI Entities and the LP Entities, it is appropriate to provide for a fair sharing of the cost of the KERPs between the CMI Entities and the LP Entities. Accordingly, the LP Entities have agreed to contribute a net amount of \$3,946,022 to a trust to be administered by the CMI Entities and distributed to the KERP participants. This is more cost effective than establishing two parallel structures. Both the amounts and the structure have been agreed and approved by the Ad Hoc Committee, the CMI CRA, the Board, the Special Committee, Canwest Global's Human Resources Committee and the proposed Monitor.

224. All of the KERP Participants have been essential to the restructuring initiatives taken to date and all are critical to the completion of a successful restructuring of the CMI Entities. The three Senior Management KERP Participants are seasoned executives who have extensive experience in corporate and banking affairs, together with the broadcasting and publishing industries. It is likely that the Senior Management KERP Participants will consider other employment options if the Senior Management KERPs are not granted and secured by the KERP Charge. Doing so would undoubtedly distract from the restructuring process that is underway with respect to the CMI Entities. The Management KERP Participants and the other Key Employees are similarly crucial to the restructuring of the CMI Entities as they perform critical functions regarding operations and management of the CMI Entities on a day-to-day



basis. It would be extremely difficult at this stage of the restructuring process to find adequate replacements for those employees.

225. Accordingly, it is the belief of the CMI Entities that the CMI Master KERP, as structured, not only provides appropriate incentives for the KERP Participants to remain in their current positions, but also ensures that they are properly compensated for their assistance in the reorganization process. Copies of the CMI Master KERP, the Senior Management KERP funded by Canwest Global, the Senior Management KERP funded through the trust by the LP Entities (as described above) and the Management KERP, redacted to remove individually identifiable information and compensation information, are attached as Exhibits "Q", "R", "S" and "T" to this Affidavit, respectively. The compensation information related to specifically identifiable employees is commercially sensitive information and it would be harmful to the CMI Entities and its employees if it was publicly disclosed in the marketplace. Copies of the full unredacted CMI Master KERP, the Senior Management KERPs and the Management KERP will be attached to a Confidential Supplement to the proposed Monitor's pre-filing report.

### **FINANCIAL ADVISOR AGREEMENT APPROVAL**

226. On or about December 10, 2008, Canwest Global, on behalf of itself and its subsidiaries, entered into an agreement with RBC Dominion Securities Inc., a member company of RBC Capital Markets, relating to RBC Capital Markets' provision of investment banking services to Canwest Global and its subsidiaries. That agreement was amended by a letter agreement dated January 20, 2009 and a further letter agreement dated October 5, 2009 (the agreement, as amended, is referred to as the "Financial Advisor Agreement"). A copy of the Financial Advisor Agreement is attached as Exhibit "U" to this Affidavit (redacted in respect of the December 10, 2008 letter agreement). All current or future payment obligations as of the date of filing are as set out in the letter agreement dated October 5, 2009.

227. The Financial Advisor Agreement provides, *inter alia*, that if, during the term of RBC Capital Markets' engagement or during the period of 12 months following termination of its engagement, Canwest Global or any of its wholly-owned subsidiaries commences, or there are commenced against Canwest Global or any of its wholly-owned subsidiaries, proceedings under corporate, restructuring, arrangement, reorganization or similar laws of any jurisdiction, Canwest Global will, subject to the discretion of the relevant court, engage RBC Capital Markets

on terms and conditions identical to the terms and conditions set out in the Financial Advisor Agreement. As such, the draft Initial Order provides for the approval of the Financial Advisor Agreement.

228. It is my belief, and the belief of senior management of the CMI Entities, that RBC Capital Markets' significant investment banking experience and expertise, its extensive knowledge of the capital markets and its capabilities in the area of debt restructuring have greatly benefited the CMI Entities. The proposed Recapitalization Transaction set out in the Term Sheet would not have been achievable without the advice and assistance of RBC Capital Markets and in particular the enormous dedication of the time and resources of the RBC Capital Markets' team to the development of the strategic alternatives and the development and analysis of recapitalization proposals. RBC Capital Markets was also instrumental in assisting the CMI Entities in achieving the various waivers and extension agreements described herein and in the implementation of the disposition of certain assets as described in this Affidavit.

229. RBC Capital Markets has spent approximately ten months working closely with senior management of the CMI Entities and their other advisors. RBC Capital Markets has greatly assisted the CMI Entities in their restructuring efforts to date and has gained a thorough and intimate understanding of the businesses operated by the CMI Entities. If the CMI Entities were deprived of the benefit of RBC Capital Markets' continued advice and assistance and were required to retain a new financial advisor, it would likely take a significant period of time for such financial advisor to acquire a similar working knowledge of the business and would make it extremely difficult to implement the Recapitalization Transaction in the currently contemplated time frame. Thus, the CMI Entities believe that the continued involvement of RBC Capital Markets is essential to the completion of the Recapitalization Transaction.

230. It is also my belief that the quantum and nature of the remuneration provided for in the Financial Advisor Agreement is fair and reasonable. Specifically, the restructuring fees payable to RBC Capital Markets are only payable if a restructuring transaction is completed and the quantum of those fees is dependent on the amount of existing indebtedness that is restructured.

**MONITOR**

231. FTI Consulting Canada Inc. ("FTI") has consented to act as the monitor (the "Monitor") of the CMI Entities under the CCAA.

232. The CMI Entities, with the assistance of FTI, have prepared a consolidated 13-week cash flow projection (the "Cash Flow Projection"), as required by the CCAA. A copy of the Cash Flow Projection is attached as Exhibit "V" to this Affidavit.

233. FTI will also be filing an initial report with the Court as prospective monitor in conjunction with the CMI Entities' request for relief under the CCAA.

**ADMINISTRATION CHARGE**

234. It is contemplated in the draft Initial Order that the Monitor and its counsel, counsel to the CMI Entities, counsel and the financial advisor to the Special Committee, counsel to the Management Directors, the CMI CRA, RBC Capital Markets and counsel and the financial advisor to the Ad Hoc Committee will be granted the right to receive a first priority Court-ordered charge on the CMI Property for services rendered to the CMI Entities (the "Administration Charge") up to a maximum amount of \$15 million in respect of their respective fees and disbursements.

235. As such, it is proposed that the priorities of the Administration Charge, the DIP Charge, the Directors' Charge, the KERP Charge and the Existing Security (solely to the extent that such Existing Security secures existing and future obligations under the CIT Credit Agreement) be as follows:

First – 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 – DIP Charge; and

Fourth – Directors' Charge and 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 Intercompany Note.

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

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

### **POSTPONEMENT OF ANNUAL MEETING OF SHAREHOLDERS**

238. As noted above, Canwest Global is a public company continued under the CBCA. As such, Canwest Global is required pursuant to section 133(1)(b) of the CBCA to call an annual meeting of its shareholders by no later than February 28, 2010, being six months after the end of its preceding financial year which ended on August 31, 2009. Canwest Global generally strives to hold its annual meetings in January. Its last annual meeting was held on January 14, 2009.

239. The management of Canwest Global and the other CMI Entities are presently devoting their efforts to stabilizing the business of the CMI Entities with a view to implementing the Plan in accordance with the terms of the Support Agreement and the Term Sheet.

240. Preparing the proxy materials required for an annual meeting of shareholders (which must be commenced in early October 2009, sent to the Board in early November 2009 and mailed and received by shareholders by late November 2009) and holding the annual meeting of shareholders would divert the attention of senior management of the CMI Entities away from such tasks, would require significant resources and could impede the CMI Entities' ability to achieve their restructuring under the CCAA.

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241. Further, under section 106(6) of the CBCA, if directors of Canwest Global are not elected at an annual meeting, the incumbent directors will continue to hold office until their successors are elected.

242. Financial and other information is and will continue to be available to the public through the CMI Entities' court filings which will be easily accessible on the proposed Monitor's website (<http://cfcanada.fticonsulting.com/cmi>) and through other public records. For example, it is anticipated that Canwest Global will continue to issue and file with the securities regulatory authorities annual and quarterly financial statements, in accordance with past practice.

243. Under the circumstances, I believe it is impractical for Canwest Global to call and hold an annual meeting of shareholders during this CCAA proceeding.

## **CHAPTER 15 PROCEEDINGS**

244. As noted above, in order to obtain the exclusive rights to broadcast many of the most popular prime-time television programs in its current program schedule, CMI or its predecessor companies (as assigned to CTLP) and CTLP have entered into multi-year and other programming agreements and arrangements with certain production studios, distributors and other suppliers that produce and distribute such programs in the United States. Generally speaking, whether the CMI Entities' contractual counterparty is a U.S. entity or a Canadian affiliate or division of a U.S. entity, the CMI Entities receive the broadcast signal for a particular first-run prime-time U.S. broadcast network program by satellite feed from the United States shortly before the scheduled time of exhibition. In order to maintain the *status quo* with respect to these programming agreements and arrangements, and specifically to prevent any of the distributors, production studios or other suppliers from unilaterally terminating or attempting to terminate the programming agreements due to the commencement of this CCAA proceeding, the CMI Entities are seeking in the Initial Order to have the Monitor authorized to commence proceedings under Chapter 15 of the Bankruptcy Code with respect to the Applicants. It is contemplated that initially Chapter 15 recognition as "foreign main proceedings" will be sought only with respect to certain of the Applicants (the "Chapter 15 Proceedings"). It is proposed that the Monitor be authorized to file additional Chapter 15 Proceedings as to any of the other

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Applicants as, if and when such additional proceedings might be beneficial to protecting the CMI Entities and their businesses.

245. Specifically, the CMI Entities are seeking to initiate the Chapter 15 Proceedings at the outset with respect to Canwest Global, CMI, 4501063 Canada, Canwest Television GP, and Canwest Global Broadcasting Inc./Radiodiffusion Canwest Global Inc. (the “**Chapter 15 Entities**”). In addition, it is proposed that the Monitor will ask that this Honourable Court’s Initial Order be enforced in the United States as to the Chapter 15 Entities, including the portions of the Initial Order that protect CTLP (as it holds significant assets and programming procurement arrangements that are integral to the business of the Applicants and the CW Media Segment) and protect the officers and directors of the Chapter 15 Entities from being distracted by the types of claims that the Initial Order enjoins (each only to the extent and for the time that the Initial Order is a continuing Order of this Honourable Court). As stated above, the Chapter 15 Entities are generally the parties that entered into the programming agreements and arrangements which have now been assigned to CTLP. Canwest Television GP is the general partner of CTLP and 4501063 Canada is its direct parent.

246. The initial effect of the Chapter 15 Proceedings would be to give effect to the Initial Order in the United States as it relates to the Chapter 15 Entities and the protection of CTLP and stay any actions, including contractual termination rights by parties to the programming agreements and arrangements, that may be taken by any contractual counterparty against the Chapter 15 Entities and CTLP. It is proposed that the Monitor would be appointed as the foreign representative of the Chapter 15 Entities in respect of the Chapter 15 proceedings.

247. In all of the circumstances, including those set out below, the centre of main interest (the “**COMI**”) of each of the Chapter 15 Entities is in Canada:

- (a) each of the Chapter 15 Entities is incorporated or organized under the laws of Canada or provinces of Canada;
- (b) the registered office of each of the Chapter 15 Entities is located in Canada;
- (c) Canwest’s television operations operated by the Chapter 15 Entities are headquartered in Toronto, Ontario;

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- (d) the books and records of each of the Chapter 15 Entities are maintained in Winnipeg, Manitoba and Toronto, Ontario;
- (e) the assets of each of the Chapter 15 Entities are primarily located in Canada;
- (f) the corporate tax returns of each of the Chapter 15 Entities are filed in Canada;
- (g) corporate governance of each of the Chapter 15 Entities is conducted from Canada. Meetings of the Board are primarily held in Canada and all of the directors and executive management of each of the Chapter 15 Entities are resident in Canada;
- (h) substantially all of the employees of the Chapter 15 Entities are located in Canada and are paid on Canadian payroll;
- (i) the compensation and benefits paid to substantially all of the employees of the Chapter 15 Entities are regulated in Canada;
- (j) certain of the Chapter 15 Entities own real property assets located in Canada;
- (k) the human resources functions of the Chapter 15 Entities are administered in Canada;
- (l) Canwest Global's subordinate voting shares and its non-voting shares are publicly traded on the TSX;
- (m) 66 2/3% of each of the Chapter 15 Entities' voting shares must be held by Canadian persons; and
- (n) all of Canwest Global's multiple voting shares are held by Canadian persons.


## **CONCLUSION**


248. I am confident that granting the Initial CCAA Order sought by the CMI Entities is in the best interests of the CMI Entities and their respective stakeholders. The CMI Entities require the stay of proceedings to pursue and implement the Recapitalization Transaction in an attempt to complete a going concern restructuring for their businesses. The Ad Hoc Committee and CIT support this application and CMI's pursuit of a restructuring transaction in this CCAA proceeding. The funding available to CMI pursuant to the Cash Collateral and Consent Agreement is only available as part of this CCAA proceeding.

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249. Without the breathing space afforded by a stay of proceedings and the opportunity to effect the Recapitalization Transaction, the CMI Entities face a cessation of going concern operations, the liquidation of their assets and the loss of employment for the approximately 1,700 employees of the CMI Entities who work in Canada. The granting of the requested stay of proceedings will assist in permitting an orderly restructuring of the CMI Entities, with minimal short-term disruptions to their businesses.

SWORN BEFORE ME at the City of  
Toronto, in the Province of Ontario, on  
October 5, 2009.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits  
SHAWN T. IRVING

  
\_\_\_\_\_  
John E. Maguire



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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.

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**Schedule "B"**

**Partnerships**

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