

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF CANWEST PUBLISHING INC./
PUBLICATIONS CANWEST INC., CANWEST BOOKS
INC., AND CANWEST (CANADA) INC.

NINETEENTH REPORT OF FTI CONSULTING CANADA INC.,
in its capacity as Monitor of the Applicants

September 22, 2011

INTRODUCTION

1. By Order of this Court dated January 8, 2010 (the “**Initial Order**”), Canwest Publishing Inc. / Publications Canwest Inc. (“**CPI**”), Canwest Books Inc. (“**CBI**”), and Canwest (Canada) Inc. (“**CCI**”, and together with CPI and CBI, the “**Applicants**”) obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the “**CCAA**”). The Initial Order also granted relief in respect of Canwest Limited Partnership / Canwest Societe en Commandite (the “**Limited Partnership**”, and together with the Applicants, the “**LP Entities**”) and appointed FTI Consulting Canada Inc. (“**FTI**”) as monitor (the “**Monitor**”) of the LP Entities. The proceedings commenced by the LP Entities under the CCAA will be referred to herein as the “**CCAA Proceedings**”.

TERMS OF REFERENCE

2. In preparing this report, FTI has relied upon unaudited financial information of the LP Entities, the LP Entities' books and records, certain financial information prepared by, and discussions with, the LP Entities' management. FTI has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information and accordingly expresses no opinion or other form of assurance on the information contained in this report.
3. Capitalised terms not defined in this report shall have the meanings assigned to them in the AHC Plan (as defined and described below). Unless otherwise stated, all monetary amounts contained in this report are expressed in Canadian dollars.

BACKGROUND

4. Relief in the CCAA Proceedings was obtained on January 8, 2010 by the Canwest entities which carried on, *inter alia*, newspaper and online publishing and digital media businesses.
5. As described in greater detail in the Seventh Report of the Monitor, following review of the bids received during a sale and investor solicitation process, the bid (the "AHC APA") submitted by the *ad hoc* committee of holders of 9.25% senior subordinated notes issued by the Limited Partnership was selected and obtained Court approval on May 17, 2010.
6. As reported in the Tenth Report of the Monitor, on June 14, 2010, affected creditors of the LP Entities voted overwhelmingly in support of the LP Entities' plan of compromise

or arrangement, as amended (the “**AHC Plan**”) and a majority in number and greater than two-thirds in value of the affected creditors present and voting at the creditors’ meeting voted in favour of the AHC Plan.

7. By Order dated June 18, 2010 (the “**AHC Plan Sanction Order**”) this Court sanctioned the AHC Plan. The AHC Transaction was successfully closed and all of the operating assets of the LP Entities were transferred to the purchaser, Postmedia Network Inc. (“**Postmedia**”), on July 13, 2010.
8. On July 6, 2010, Justice Pepall granted an Administrative Reserve and Transition Order (the “**Administrative Reserve Order**”) which, among other things, established the Administrative Reserve and expanded certain powers of the Monitor following the implementation of the AHC Plan.
9. Further background information regarding the LP Entities and the CCAA Proceedings is provided in, among other things, the Pre-filing Report of the Proposed Monitor dated January 7, 2010 and in the affidavit of Thomas Strike sworn January 7, 2010, copies of which (together with other relevant materials, including a copy of the Initial Order) have been posted on the Monitor’s website for the CCAA Proceedings at <http://cfcanada.fticonsulting.com/clp>.

PURPOSE OF THIS REPORT

10. The purpose of this nineteenth report of the Monitor (the “**Nineteenth Report**”) is to inform this Honourable Court of the following:

- a) The status of the Claims Procedure (as defined in the Seventeenth Report) and the Monitor's request for an extension of the Final Distribution Date to December 31, 2011;
- b) The Monitor's request for an extension of the Stay Period to December 31, 2011;
- c) The Monitor's activities since May 25, 2011;
- d) The Monitor's and its legal counsel's professional fees; and
- e) The Monitor's conclusions and recommendations.

CLAIMS PROCEDURE AND REQUEST TO EXTEND THE FINAL DISTRIBUTION DATE

Claims of the Retired Typographers

11. As described in greater detail in the Seventeenth Report (the "**Seventeenth Report**") of the Monitor dated May 12, 2011 and the Eighteenth Report (the "**Eighteenth Report**") of the Monitor dated May 25, 2011 (copies of which (without appendices) are attached as **Appendices "A"** and **"B"**), the claims of the Retired Typographers (as defined in the Seventeenth Report) are the only remaining unresolved claims submitted against the LP Entities in the Claims Process. For the reasons outlined in the Seventeenth Report, the Monitor and CEP have been unable to settle the claims of the Retired Typographers.
12. Also as described in the Seventeenth Report and the Eighteenth Report, on April 19, 2011, Postmedia brought a motion for an Order declaring, *inter alia*, that the method of calculation of the claims of the Retired Typographers has previously been determined in

a commercial arbitration award dated January 21, 2009 (the “**Arbitral Award**”) and certain other relief (as described in greater detail in Postmedia’s notice of motion dated April 19, 2011) (“**Postmedia’s Motion**”).

13. Justice Pepall heard Postmedia’s Motion on May 16, 2011 and released her decision with respect to same on July 28, 2011. A copy of Justice Pepall’s Reasons for Decision is attached hereto as **Appendix “C”**.
14. Following release of Justice Pepall’s decision, the Monitor engaged counsel for the Retired Typographers and Postmedia as well as the Honourable Coulter Osborne in his capacity as a Claims Officer appointed under the Amended Claims Procedure Order in discussions with respect to determination of the Retired Typographers’ claims in accordance with the directions given by Justice Pepall.. The parties held numerous discussions and two telephone case conferences with the Claims Officer to establish procedure and timetable for the resolution of the Retired Typographers’ claims. The parties are currently in the process of dealing with extensive document translation activities, which are expected to take to be completed by end of October 2011.
15. A hearing on a preliminary issue in the Retired Typographers’ Claims as required in Justice Pepall’s decision is currently scheduled for November 15, 2011 before the Honourable Coulter Osborne.

Shares Held by the Monitor

16. The Monitor is currently holding certain shares in capital of Postmedia on account of employee claim withholdings, an obligation which was subsequently satisfied upon

payment in cash of the required withheld amount to Canada Revenue Agency ("CRA") in January 2011. The Monitor has also set aside certain shares on account of CRA's accepted Claim against the LP Entities. Commencing on June 14, 2011, Postmedia shares have been publicly traded on the Toronto Stock exchange, however, the volume of shares traded is insufficient to allow for the public sale of shares held by the Monitor. Accordingly the Monitor has commenced discussions with Postmedia with respect to the return of the withheld shares and the possible sale of the other shares and is seeking additional time to explore and complete such transactions.

Request to Extend Final Distribution Date

17. Under the provisions of the AHC Plan and the Plan Sanction Order, any Disputed Claims that remain unresolved as at the Final Distribution Date will be forever discharged, barred and released without any compensation therefor. Final Distribution Date is defined in the AHC Plan as "*the earlier of (i) December 31, 2010; and (ii) the date which is ten (10) Business Days following the resolution of all Disputed Claims.*" By Orders dated December 30, 2010, February 28, 2011, March 21, 2011, and May 30, 2011, the Final Distribution Date was extended to September 30, 2011.
18. The Monitor seeks additional time to have the claims of the Retired Typographers settled or adjudicated by the Claims Officer and to deal with the return of the withheld shares and the possible sale of the shares held by the Monitor in respect of the CRA Claim. Accordingly, the Monitor is requesting an extension of the Final Distribution Date until December 31, 2011. The Monitor intends to proceed expeditiously and intends to proceed with the final distribution as soon as possible after the Claims of the Retired

Typographers are settled or determined by the Claims Officer.

REQUEST FOR AN EXTENSION OF THE STAY OF PROCEEDINGS

19. Pursuant to the Initial Order, Order dated February 2, 2010 and Order dated April 12, 2010, a stay of proceedings was granted and extended until, and including, June 30, 2010 (the “**Stay Period**”). Pursuant to the Sanction Order, the Stay Period was extended until, and including, the Final Distribution Date. By Orders dated December 30, 2010, February 28, 2011, March 21, 2011, and May 31, 2011, the Final Distribution Date was extended to May 31, 2011.
20. Final distribution to Affected Creditors cannot be completed until such time as the claims of the retired Typographers are resolved. Accordingly, the Monitor seeks additional time to administer and attend to distributions to Affected Creditors. The continuation of the stay of proceedings is necessary to provide the stability needed during that time.
21. Accordingly, the Monitor is seeking an extension of the Stay Period until, and including, December 31, 2011.
22. As all of the operating assets were transferred to Postmedia Networks Inc., the LP Entities have ceased operations on the Plan Implementation Date. Accordingly, they do not have liquidity requirements that need to be satisfied during the requested extension of the Stay Period. The costs of administering the AHC Plan and the estates of the LP Entities continue to be paid out of the Administrative Reserve Account in accordance with the AHC Plan and the Administrative Reserve Order.
23. Based on the information presently available, the Monitor believes that creditors will not

be materially prejudiced by an extension of the Stay Period to December 31, 2011.

24. The Monitor believes that the LP Entities have acted, and are continuing to act, in good faith and with due diligence and that circumstances exist that make an extension of the Stay Period appropriate.
25. Accordingly, the Monitor respectfully recommends that the Stay of Proceedings be extended until December 31, 2011.

MONITOR'S ACTIVITIES

26. Since its appointment, the Monitor has been involved with numerous aspects of the CCAA Proceedings with a view to fulfilling its statutory and court-ordered duties and obligations. The Monitor has described some of the more significant matters that it was involved in since commencement of the CCAA Proceedings until May 25, 2011 in its previous reports. Since then, the more significant matters the Monitor has undertaken include, but are not limited to, the following:
 - a) posting various materials relating to the CCAA Proceedings on its website <http://cfcanada.fticonsulting.com/clp> and continuing to update the website by posting, *inter alia*, the Monitor's reports, motion materials, and Orders granted in the CCAA Proceedings;
 - b) maintaining a toll free hotline number 1 888-310-7627 and a dedicated email inbox (CanwestLP@fticonsulting.com) to allow creditors and other interested parties to contact the Monitor to obtain additional information concerning the

CCAA Proceedings and responding in a timely manner to over 1,383 calls and approximately 1,735 e-mails received by the Monitor as of the date of this report;

- c) discussions with various government authorities and representative counsel for some of the LP Entities' former employees with respect to withholding arrangements relating to distributions to employees under the AHC Plan and entering into such arrangements;
- d) effecting distributions pursuant to the AHC Plan, including discussions with the transfer agent with respect to delivery of shares;
- e) resolution of outstanding claims inside of the Claims Procedure; and
- f) responding to enquiries from creditors regarding the Claims Procedure, distributions of shares under the AHC Plan and other issues relating to the CCAA Proceedings.

PROFESSIONAL FEES

27. The Monitor and its counsel have maintained detailed records of their professional costs and time during the course of the CCAA Proceedings (as detailed in the Affidavit of Paul Bishop sworn September 22, 2011 and the Affidavit of Daphne MacKenzie sworn September 21, 2011 (collectively, the "**Fee Affidavits**"). Copies of the Fee Affidavits are attached to this report as **Appendices "D" and "E"**).

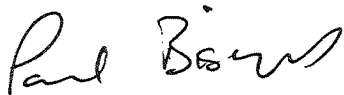
CONCLUSIONS

28. For the reasons described above, the Monitor recommends that the Stay Period and the Final Distribution Date be extended to December 31, 2011.
29. The Monitor respectfully requests that the Court approve its Nineteenth Report and the activities described therein, as well as the fees and disbursements of the Monitor and its counsel (as particularized in the Fee Affidavits).

All of which is respectfully submitted this 22nd day of September, 2011.

FTI Consulting Canada Inc.,
in its capacity as the Monitor of Canwest Publishing Inc. / Publications Canwest Inc., Canwest Books Inc., Canwest (Canada) Inc., and Canwest Limited Partnership / Canwest Societe en Commandite

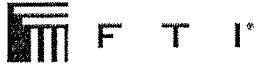
Per



Paul Bishop
Senior Managing Director

A

APPENDIX "A"



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

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

May 12, 2011

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
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INC., CANWEST BOOKS INC., AND CANWEST
(CANADA) INC.

SEVENTEENH REPORT OF
FTI CONSULTING CANADA INC.,
in its capacity as Monitor of the Applicants

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TAB DOCUMENT

1. Seventeenth Report of the Monitor
 - A. Letter dated July 14, 2010 with all enclosures

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

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

SEVENTEENTH REPORT OF FTI CONSULTING CANADA INC.,
in its capacity as Monitor of the Applicants

May 12, 2011

INTRODUCTION

1. By Order of this Court dated January 8, 2010 (the “**Initial Order**”), Canwest Publishing Inc. / Publications Canwest Inc. (“**CPI**”), Canwest Books Inc. (“**CBI**”), and Canwest (Canada) Inc. (“**CCI**”, and together with CPI and CBI, the “**Applicants**”) obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the “**CCAA**”). The Initial Order also granted relief in respect of Canwest Limited Partnership / Canwest Societe en Commandite (the “**Limited Partnership**”, and together with the Applicants, the “**LP Entities**”) and appointed FTI Consulting Canada Inc. (“**FTI**”) as monitor (the “**Monitor**”) of the LP Entities. The proceedings commenced by the LP Entities under the CCAA will be referred to herein as the “**CCAA Proceedings**”.

TERMS OF REFERENCE

2. In preparing this report, FTI has relied upon unaudited financial information of the LP Entities, the LP Entities' books and records, certain financial information prepared by, and discussions with, the LP Entities' management. FTI has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information and accordingly expresses no opinion or other form of assurance on the information contained in this report.
3. Capitalised terms not defined in this report shall have the meanings assigned to them in the AHC Plan (as defined and described below). Unless otherwise stated, all monetary amounts contained in this report are expressed in Canadian dollars.

BACKGROUND

4. Relief in the CCAA Proceedings was obtained on January 8, 2010 by the Canwest entities which carried on, *inter alia*, newspaper and online publishing and digital media businesses.
5. As described in greater detail in the Seventh Report, following review of the bids received during a sale and investor solicitation process, the bid (the "AHC APA") submitted by the *ad hoc* committee of holders of 9.25% senior subordinated notes issued by the Limited Partnership was selected and obtained Court approval on May 17, 2010.
6. As reported in the Tenth Report of the Monitor, on June 14, 2010, affected creditors of the LP Entities voted overwhelmingly in support of the LP Entities' plan of compromise or arrangement, as amended (the "AHC Plan") and a majority in number and greater

than two-thirds in value of the affected creditors present and voting at the creditors' meeting voted in favour of the AHC Plan.

7. By Order dated June 18, 2010 (the "**AHC Plan Sanction Order**") this Court sanctioned the AHC Plan. The AHC Transaction was successfully closed and all of the operating assets of the LP Entities were transferred to the purchaser, Postmedia Network Inc. ("**Postmedia**"), on July 13, 2010.
8. On July 6, 2010, Justice Pepall granted an Administrative Reserve and Transition Order (the "**Administrative Reserve Order**") which, among other things, established the Administrative Reserve and expanded certain powers of the Monitor following the implementation of the AHC Plan.
9. Further background information regarding the LP Entities and the CCAA Proceedings is provided in, among other things, the Pre-filing Report of the Proposed Monitor dated January 7, 2010 and in the affidavit of Thomas Strike sworn January 7, 2010, copies of which (together with other relevant materials, including a copy of the Initial Order) have been posted on the Monitor's website for the CCAA Proceedings at <http://cfcanada.fticonsulting.com/clp>.

PURPOSE OF THIS REPORT

10. The limited purpose of this report is to provide information to this Honourable Court in connection with certain issue raised in the motion brought by Postmedia for an Order declaring, *inter alia*, that the method of calculation of the claims of the Retired Typographers (as defined below) has previously been determined in a commercial

arbitration award dated January 21, 2009 and certain other relief (as described in greater detail in Postmedia's notice of motion dated April 19, 2011) ("**Postmedia's Motion**").

CEP TYPOGRAPHERS' CLAIMS

11. On April 12, 2010, the LP Entities obtained an Order (the "**Claims Procedure Order**") establishing a claims procedure for the identification and quantification of certain claims against the LP Entities (the "**Claims Procedure**"). For reasons described in the Monitor's Seventh Report, the Claims Procedure Order was amended by Order of Justice Pepall dated May 17, 2010 (the "**Amended Claims Procedure Order**") to call for certain additional claims, including claims against the directors and officers of the Applicants.
12. On July 14, 2010, the Communications, Energy and Paperworkers Union of Canada ("**CEP**") filed a proof of claim (the "**Proof of Claim**") on behalf of nine of the LP Entities' former typographers (the "**CEP Typographers**"). In the Proof of Claim, CEP claimed \$500,000 in respect of each of the CEP Typographers and did not provide any additional details in connection with their claims (the "**CEP Typographers' Claims**").
13. In the cover letter dated July 14, 2010 enclosing the Proof of Claim, CEP's counsel stated, in part as follows:

Our clients are employees of the Gazette and are owed money for unpaid salary. Please note that an arbitrator is seized of the claim. His latest decision in this regard is enclosed with the present letter. Please note however that this decision is being contested in front of the Superior Court of Quebec.

14. The letter enclosed the decision of arbitrator Andre Sylvestre dated January 21, 2009 which adjudicates a grievance filed by CEP on behalf of the CEP Typographers on June 4, 1996 with respect to the *Montreal Gazette's* refusal to exchange last final and best offers following a breakdown of negotiations for a new collective agreement (the "**1996 Greivance**"). A copy of the letter dated July 14, 2010 with all enclosures is attached as **Appendix "A"**.
15. CEP asserted that the CEP Typographers' Claims were Excluded Claims (as defined in the Amended Claims Procedure Order) and constituted Assumed Liabilities under the AHC APA.
16. The CEP Typographers brought a motion seeking the Court's instructions and directions with respect to the proper characterization of their claims. In his Affidavit sworn December 2, 2010 filed by CEP in support of that motion (a copy of which is attached at Tab "F" of Postmedia's Supplementary Motion Record), Don McKay stated, among other things, as follows:

*On July 14, 2010, the Union filed a claim in accordance with the Amended Claims Procedure Order on behalf of 9 typographers employed or formerly employed by the Montreal Gazette (the "**Employer**") with respect to salary and other benefits lost under the applicable collective bargaining agreement as a result of the Employer's refusal to submit to compulsory arbitration for the renewal of a collective agreement and consequent improper lockout in or around June 3, 1996 (the "**Claim**").*

17. The CEP Typographers' motion was heard on December 10, 2010¹.

¹ The CEP Typographers' motion was heard at the same time as a motion brought by two other LP Entities' former typographers (Eriberto Di Paolo and Rita Blondin) seeking related relief.

18. On January 5, 2011, Justice Pepall released her decision with respect to the claims of the CEP Typographers and the claims of Eriberto Di Paolo and Rita Blondin (the “**January 5 Reasons**”) and held that the claims of four of the CEP Typographers and the claims of Eriberto Di Paolo and Rita Blondin constituted Assumed Liabilities under the AHC APA (the “**Assumed Typographers**”) and the claims of the remaining five CEP Typographers did not (the “**Retired Typographers**”).
19. Subsequent to the release of the January 5 Reasons, counsel for Postmedia and CEP’s counsel engaged in settlement discussions regarding all of the CEP Typographers’ Claims. Any settlement involving the claims of the Retired Typographers was to be subject to the approval of the Monitor. At the request of Postmedia and CEP, the Monitor had agreed to delay commencing separate settlement discussions with respect to the Claims of the Retired Typographers.
20. On or about March 10, 2011, the Monitor was advised by counsel for Postmedia that they had been unable to settle the CEP Typographers’ Claims. CEP’s counsel confirmed same on or about March 14, 2011. Accordingly, the Monitor and CEP commenced settlement discussions with respect to the claims of the Retired Typographers. Failing successful settlement through these direct discussions, the claims of the Retired Typographers must be referred by the Monitor to a claims officer or the Court for resolution.
21. As at the date of this report, the Monitor and CEP have been unable to settle the claims of the Retired Typographers. The outcome of Postmedia’s Motion will determine whether the previous determination of the method of calculation of the claims of the Retired Typographers is binding on the Retired Typographers and whether their claims are to be

determined in Quebec together with the claims of the Assumed Typographers. Accordingly, the Monitor has not referred the claims of the Retired Typographers to a claims officer or the Court for resolution pending the hearing and determination of Postmedia's Motion.

2000 GRIEVANCE

22. On April 5, 2011, during the course of the settlement discussions between the Monitor and CEP commenced in or around March 2011, CEP's counsel delivered a breakdown of the quantum of the Retired Typographers' claims (a copy of which is attached as Exhibit "G" to the Affidavit of Don McKay sworn May 2, 2011 in connection with Postmedia's Motion) ("**CEP Claim Description**").
23. The CEP Claim Description makes reference to two grievances – the 1996 Grievance and another grievance submitted on July 14, 2000 (the "**2000 Grievance**"). According to the CEP Claim Description, CEP is claiming \$417,864 for each of the Retired Typographers in respect of the 1996 Grievance and \$143,208 for each of the Retired Typographers in respect of the 2000 Grievance for a total claim of \$561,072 for each Retired Typographer (in excess of the amount claimed for each CEP Typographer by CEP in its Proof of Claim).
24. The reference to the 2000 Grievance in the CEP Claim Description delivered to the Monitor on a without prejudice basis on April 5, 2011 is first time CEP had mentioned the 2000 Grievance in the context of their claim of \$500,000 per typographer.

25. Based on the Proof of Claim and materials submitted by CEP, among other things, in connection with the December 10, 2010 motion, the Monitor is of the view that the claims of the Retired Typographers in the LP Entities' Claims Process are limited to claims arising from the 1996 Grievance and that any claims related to the 2000 Grievances are claims barred by the provisions of the Amended Claims Procedure Order.

THE DISPUTED CLAIMS RESERVE

26. As mentioned above, CEP claimed \$500,000 in respect of each of the Retired Typographers in the Proof of Claim. CEP did not at any time seek to amend the Proof of Claim.
27. In accordance with the AHC Plan, the Monitor reserved 55,490 Shares in the Disputed Claims Reserve with respect to the claims of the Retired Typographers in the submitted maximum amount of \$500,000 each.
28. As at the date of this report, the claims of the Retired Typographers are the only remaining unresolved claims submitted against the LP Entities in the Claims Process and the Shares reserved in respect of their claims are the only Shares remaining in the Disputed Claims Reserve. The Monitor has effected distributions of all other Shares to Affected Creditors holding Proven Claims over \$1,000 that had not made valid cash elections.

CONCLUSIONS

29. As stated above, since the outcome of Postmedia's Motion will determine whether the previous determination of the method of calculation of the claims of the Retired

Typographers is binding on the Retired Typographers and whether their claims are to be determined in Quebec together with the claims of the Assumed Typographers, the Monitor has not referred the claims of the Retired Typographers to a claims officer or the Court for resolution pending the hearing and determination of Postmedia's Motion.

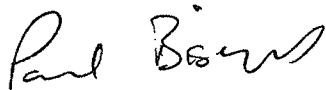
30. The Monitor is of the view that the claims of the Retired Typographers in the LP Entities' Claims Process are limited to claims arising from the 1996 Grievance and that any claims related to the 2000 Grievances are claims barred by the provisions of the Amended Claims Procedure Order. If Postmedia is unsuccessful in obtaining the relief sought in Postmedia's Motion and the Monitor and CEP are unsuccessful in reaching a settlement of the claims of the Retired Typographers, the Monitor will refer the claims of the Retired Typographers to a claims officer or the Court and will be advancing a claims bar defense with respect to the Retired Typographers' claims related to the 2000 Grievance at that time.
31. Under the provisions of the AHC Plan and the Plan Sanction Order, any Disputed Claims that remain unresolved as at the Final Distribution Date will be forever discharged, barred and released without any compensation therefor. Final Distribution Date is defined in the AHC Plan as "*the earlier of (i) December 31, 2010; and (ii) the date which is ten (10) Business Days following the resolution of all Disputed Claims.*" By Orders dated December 30, 2010, February 28, 2011, and March 21, 2011, the Final Distribution Date was extended to May 31, 2011.
32. Depending on the outcome of Postmedia's motion, the Monitor may need to seek an extension of the Final Distribution Date before May 31, 2011 in order to allow the

Monitor time to have the claims of the Retried Typographers referred to and adjudicated by a claims officer or the Court.

All of which is respectfully submitted this 12th day of May, 2011.

FTI Consulting Canada Inc.,
in its capacity as the Monitor of Canwest Publishing Inc. / Publications Canwest Inc., Canwest Books Inc., Canwest (Canada) Inc., and Canwest Limited Partnership / Canwest Societe en Commandite

Per



Paul Bishop
Senior Managing Director

B

APPENDIX "B"

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**EIGHTEENTH REPORT OF FTI CONSULTING CANADA INC.,
in its capacity as Monitor of the Applicants**

May 25, 2011

INTRODUCTION

1. By Order of this Court dated January 8, 2010 (the “**Initial Order**”), Canwest Publishing Inc. / Publications Canwest Inc. (“**CPI**”), Canwest Books Inc. (“**CBI**”), and Canwest (Canada) Inc. (“**CCI**”, and together with CPI and CBI, the “**Applicants**”) obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the “**CCAA**”). The Initial Order also granted relief in respect of Canwest Limited Partnership / Canwest Societe en Commandite (the “**Limited Partnership**”, and together with the Applicants, the “**LP Entities**”) and appointed FTI Consulting Canada Inc. (“**FTI**”) as monitor (the “**Monitor**”) of the LP Entities. The proceedings commenced by the LP Entities under the CCAA will be referred to herein as the “**CCAA Proceedings**”.

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6. As reported in the Tenth Report of the Monitor, on June 14, 2010, affected creditors of the LP Entities voted overwhelmingly in support of the LP Entities' plan of compromise

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7. By Order dated June 18, 2010 (the “**AHC Plan Sanction Order**”) this Court sanctioned the AHC Plan. The AHC Transaction was successfully closed and all of the operating assets of the LP Entities were transferred to the purchaser, Postmedia Network Inc. (“**Postmedia**”), on July 13, 2010.
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PURPOSE OF THIS REPORT

10. The purpose of this eighteenth report of the Monitor (the “**Eighteenth Report**”) is to inform this Honourable Court of the following:

- a) The Monitor's request for an extension of the Final Distribution Date to September 30, 2011;
- b) The Monitor's request for an extension of the Stay Period to September 30, 2011;
- c) The Monitor's activities since February 22, 2011;
- d) The Monitor's and its legal counsel's professional fees; and
- e) The Monitor's conclusions and recommendations.

EXTENSION OF THE FINAL DISTRIBUTION DATE

11. As described in greater detail in the Seventeenth Report (the "**Seventeenth Report**") of the Monitor dated May 12, 2011 (a copy of which (without appendices) is attached as **Appendix "A"**), as at the date of this report, the claims of the Retired Typographers (as defined in the Seventeenth Report) are the only remaining unresolved claims submitted against the LP Entities in the Claims Process. For the reasons outlined in the Seventeenth Report, the Monitor and CEP have been unable to settle the claims of the Retired Typographers.
12. Also as described in the Seventeenth Report, on April 19, 2011, Postmedia brought a motion for an Order declaring, *inter alia*, that the method of calculation of the claims of the Retired Typographers has previously been determined in a commercial arbitration award dated January 21, 2009 and certain other relief (as described in greater detail in Postmedia's notice of motion dated April 19, 2011) ("**Postmedia's Motion**").
13. Justice Pepall heard Postmedia's Motion on May 16, 2011 and reserved her decision with

respect to same.

14. The outcome of Postmedia's Motion will determine whether the previous determination of the method of calculation of the claims of the Retired Typographers is binding on the Retired Typographers and whether their claims are to be determined in Quebec together with the claims of the Assumed Typographers (as defined in the Seventeenth Report). Accordingly, the Monitor has not referred the claims of the Retired Typographers to a claims officer or the Court for resolution pending the hearing and determination of Postmedia's Motion.
15. Under the provisions of the AHC Plan and the Plan Sanction Order, any Disputed Claims that remain unresolved as at the Final Distribution Date will be forever discharged, barred and released without any compensation therefor. Final Distribution Date is defined in the AHC Plan as "*the earlier of (i) December 31, 2010; and (ii) the date which is ten (10) Business Days following the resolution of all Disputed Claims.*" By Orders dated December 30, 2010, February 28, 2011, and March 21, 2011, the Final Distribution Date was extended to May 31, 2011.
16. Depending on the outcome of Postmedia's motion, the Monitor requires additional time to either (a) have the claims of the Retired Typographers settled or referred to be adjudicated by a claims officer or the Court, or (b) bring a motion to put the Shares reserved for the Retired Typographers into escrow and terminate these CCAA Proceedings. Accordingly, the Monitor is requesting an extension of the Final Distribution Date until September 30, 2011. The Monitor intends to proceed expeditiously and intends to return to Court as soon as possible after determination of the

Claims of the Retired Typographers is made or transferred to Quebec.

REQUEST FOR AN EXTENSION OF THE STAY OF PROCEEDINGS

17. Pursuant to the Initial Order, Order dated February 2, 2010 and Order dated April 12, 2010, a stay of proceedings was granted and extended until, and including, June 30, 2010 (the “**Stay Period**”). Pursuant to the Sanction Order, the Stay Period was extended until, and including, the Final Distribution Date. By Orders dated December 30, 2010, February 28, 2011, and March 21, 2011, the Final Distribution Date was extended to May 31, 2011.
18. The Monitor requires additional time to administer and attend to distributions to Affected Creditors, as well as attend to other post-plan implementation matters as outlined in the AHC Plan and CCAA. The continuation of the stay of proceedings is necessary to provide the stability needed during that time.
19. Accordingly, the Monitor is seeking an extension of the Stay Period until, and including, September 30, 2011.
20. As all of the operating assets were transferred to Postmedia Networks Inc., the LP Entities have ceased operations on the Plan Implementation Date. Accordingly, they do not have liquidity requirements that need to be satisfied during the requested extension of the Stay Period. The costs of administering the AHC Plan and the estates of the LP Entities continue to be paid out of the Administrative Reserve Account in accordance with the AHC Plan and the Administrative Reserve Order.
21. Based on the information presently available, the Monitor believes that creditors will not

be materially prejudiced by an extension of the Stay Period to September 30, 2011.

22. The Monitor believes that the LP Entities have acted, and are continuing to act, in good faith and with due diligence and that circumstances exist that make an extension of the Stay Period appropriate.
23. Accordingly, the Monitor respectfully recommends that the Stay of Proceedings be extended until September 30, 2011.

MONITOR'S ACTIVITIES

24. Since its appointment, the Monitor has been involved with numerous aspects of the CCAA Proceedings with a view to fulfilling its statutory and court-ordered duties and obligations, as well as assisting the LP Entities and their stakeholders in addressing restructuring issues. The Monitor has described some of the more significant matters that it was involved in since commencement of the CCAA Proceedings until February 22, 2011 in its previous reports. Since then, the more significant matters the Monitor has undertaken include, but are not limited to, the following:
 - a) posting various materials relating to the CCAA Proceedings on its website <http://cfcanada.fticonsulting.com/clp> and continuing to update the website by posting, *inter alia*, the Monitor's reports, motion materials, and Orders granted in the CCAA Proceedings;
 - b) maintaining a toll free hotline number 1 888-310-7627 and a dedicated email inbox (CanwestLP@fticonsulting.com) to allow creditors and other interested parties to contact the Monitor to obtain additional information concerning the

CCAA Proceedings and responding in a timely manner to over 1,363 calls and approximately 1,725 e-mails received by the Monitor as of the date of this report;

- c) discussions with various government authorities and representative counsel for some of the LP Entities' former employees with respect to withholding arrangements relating to distributions to employees under the AHC Plan and entering into such arrangements;
- d) effecting distributions pursuant to the AHC Plan, including discussions with the transfer agent with respect to delivery of shares;
- e) resolution of outstanding claims inside of the Claims Procedure; and
- f) responding to enquiries from creditors regarding the Claims Procedure, distributions of shares under the AHC Plan and other issues relating to the CCAA Proceedings.

PROFESSIONAL FEES

25. The Monitor and its counsel have maintained detailed records of their professional costs and time during the course of the CCAA Proceedings (as detailed in the Affidavit of Paul Bishop sworn May 25, 2011 and the Affidavit of Daphne MacKenzie sworn May 25, 2011 (collectively, the "**Fee Affidavits**"). Copies of the Fee Affidavits are attached to this report as **Appendices "B"** and **"C"**).

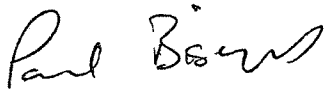
CONCLUSIONS

26. For the reasons described above, the Monitor recommends that the Stay Period be extended to September 30, 2011 and the Final Distribution Date be extended to September 30, 2011.
27. The Monitor respectfully requests that the Court approve its Sixteenth Report, Seventeenth Report and Eighteenth Report and the activities described therein, as well as the fees and disbursements of the Monitor and its counsel (as particularized in the Fee Affidavits).

All of which is respectfully submitted this 25th day of May, 2011.

FTI Consulting Canada Inc.,
in its capacity as the Monitor of Canwest Publishing Inc. / Publications Canwest Inc., Canwest Books Inc., Canwest (Canada) Inc., and Canwest Limited Partnership / Canwest Societe en Commandite

Per



Paul Bishop
Senior Managing Director

C

APPENDIX "C"

CITATION: Canwest Publishing Inc., 2011 ONSC 4518
COURT FILE NO.: CV-10-8533-00CL
DATE: 20110728

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
CANWEST PUBLISHING INC./PUBLICATIONS CANWEST INC., CANWEST BOOKS
INC., AND CANWEST (CANADA) INC.

Applicants

COUNSEL: *Fred Myers and Caroline Descours*, counsel for Postmedia Networks Inc.
Douglas J. Wray, Jesse B. Kugler and P. Grenier, counsel for the
Communications, Energy and Paperworkers Union of Canada, Local 145
Maria Konyukhova, for the Monitor

REASONS FOR DECISION

PEPALL J.

Relief Requested

- [1] Postmedia Network Inc. ("Postmedia") requests an order:
- (a) declaring that the method for the calculation of the claims of J.P. Martin, Marc Tremblay, Leslie Stockwell, Robert Davies and Horrace Holloway (the "Retired Typographers") against the Applicants has previously been determined in a commercial arbitration award dated January 21, 2009 and that the Retired Typographers are bound by that award which establishes and limits their claim entitlement to the payment of salary and benefits for the period between May, 1999 and January 21, 2000 subject to the overpayment of salary and benefits that were paid to the Retired Typographers by The Gazette for the period between February 5, 1998 and October 30, 1998;
 - (b) declaring that as a result, the only issues to be determined by the Claims Officer under the Amended Claims Procedure Order dated May 17, 2010 are the

quantification of the Retired Typographers' salary and benefits for the period between May, 1999 and January 21, 2000; the quantification of the applicable set off of The Gazette's overpayment; and the net amounts, if any, remaining due to the Retired Typographers or due from them; or

- (c) in the alternative, in the event that the award is held not to be determinative of the valuation of the claims, an order pursuant to, *inter alia*, s. 11 and s. 17 of the *Companies' Creditors Arrangement Act* ("CCAA") referring all questions of liability and quantum in respect of the Retired Typographers' claims to the Quebec Superior Court and the arbitration proceedings already underway in Quebec to be heard in conjunction with the ongoing litigation by six other Typographers ("the Assumed Typographers") whose claims against The Gazette were assumed by Postmedia pursuant to court order dated January 5, 2011; provided, however, that the referred proceeding shall not result in a judgment or enforceable claim against Postmedia but shall only form the quantification of the Retired Typographers' claims as filed in these proceedings.

Factual Background

[2] My reasons for decision of January 5, 2011 provided details of the history of the dispute between the Typographers and The Montreal Gazette which I do not propose to recite for the purposes of this motion although through necessity, some facts will be repeated.

(a) Court Orders

[3] The Applicants, Canwest Publishing Inc., Canwest Limited Partnership, and certain related entities (the "LP Entities") filed for CCAA protection and on January 8, 2010, I granted an Initial Order.

[4] On June 18, 2010, I granted an order sanctioning the Plan proposed by the LP Entities. All of the operating assets of the LP Entities were transferred to the Purchaser, Postmedia, on July 13, 2010.

[5] On July 6, 2010, I granted an Administrative Reserve and Transition Order which, amongst other things, established an administrative reserve and expanded certain powers of the Monitor following the implementation of the Plan.

[6] On April 12, 2010 and May 17, 2010, I granted a Claims Procedure Order and an Amended Claims Procedure Order respectively. Amongst other things, the Orders called for

claims and established the claims procedure for the identification and quantification of claims against the LP Entities.

(b) CEP Proof of Claim and the Decision

[7] On July 14, 2010, the Communications, Energy and Paperworkers Union of Canada ("CEP") filed a proof of claim on behalf of nine of the LP Entities' Typographers. CEP claimed \$500,000 in respect of each of the Typographers and did not provide any additional details in connection with their claims. In the cover letter dated July 14, 2010 enclosing the proof of claim, CEP's counsel stated:

"Our clients are employees of The Gazette and are owed money for unpaid salary. Please note that an arbitrator is seized of the claim. His latest decision in this regard is enclosed with the present letter. Please note however that this decision is being contested in front of the Superior Court of Quebec."

The letter enclosed the decision of Arbitrator Andre Sylvestre dated January 21, 2009 (the "Decision").

[8] The Decision addressed a June 4, 1996 grievance filed by CEP on behalf of the Typographers relating to The Gazette's refusal to exchange last, final and best offers following a breakdown of negotiations for a new collective agreement. Arbitrator Sylvestre had to determine whether the lockout of the Typographers was unduly prolonged as a result of The Gazette's refusal to submit its last final best offers as requested by the union before a certain deadline. He determined The Gazette's liability to the Typographers under the legal test established by the Quebec Court of Appeal in its earlier decisions. While Arbitrator Sylvestre found and ruled that the Typographers were entitled to damages for the nine month period from May, 1999 to January, 2000, he did not order this amount to be paid. The reason he gave was that while various court proceedings were being pursued, The Gazette had overpaid salaries and benefits between February 5 and October 30, 1998 and in February 2001, it had commenced a civil action to be reimbursed for these amounts. Its claim had been referred to Arbitrator Sylvestre for adjudication. As The Gazette's claim for reimbursement was outstanding, Arbitrator Sylvestre wished to give the parties an opportunity to settle their issues. As such, in his Decision,

Arbitrator Sylvestre did not order the Gazette to pay the nine months of damages he had determined were due to the Typographers.

[9] A settlement did not occur and on April 16, 2009, CEP brought a proceeding before the Quebec Superior Court to set aside the Decision. The proceeding is referred to as a motion in annulment and, based on the evidence before me, is similar to a motion to set aside an arbitration award pursuant to section 46 of Ontario's Arbitration Act, 1992. The proceeding is not an appeal on the merits of Arbitrator Sylvestre's Decision. In the 2003 Quebec Court of Appeal decision, the Court wrote that on a request for annulment of an award, a judge "cannot enquire into the merits of the dispute, and it is impossible for the parties to an arbitration agreement to contract out of this rule...By establishing that these legal decisions are final and without appeal, the Code reinforces the autonomy of the arbitration procedure and its conduct. By limiting the grounds for annulling or refusing the homologation of an award, the Code reinforces the autonomy of the arbitration process and its outcome." ¹

[10] The motion in annulment was stayed as a result of the operation of the CCAA Initial Order. No one ever moved to lift the stay so as to pursue the motion in annulment nor did The Gazette pursue its claim.

(c) Court Directions Order

[11] In December, 2010, the Typographers sought this Court's instructions and directions with respect to the proper characterization of the Typographers' claims. On January 5, 2011, I released Reasons for Decision on whether claims of Typographers who worked at The Gazette were excluded from the claims process in the CCAA proceedings. I determined that liabilities relating to active employees or transferred employees (the "Assumed Typographers") had been assumed by the Purchaser, Postmedia, and were excluded from the claims process and that liabilities relating to the five Typographers who were retired or who had resigned (the "Retired Typographers") were not. Those claims were encompassed by the claims procedure in the

¹ At para 43.

CCAA proceedings. This meant that the Assumed Typographers would continue with whatever proceedings they felt were appropriate in the Province of Quebec and that the CEP would pursue the Retired Typographers' proof of claim that was filed in July, 2010, in the CCAA proceedings. Leave to appeal that decision was not sought by anyone.

[12] As part of the LP Entities' Plan transaction, The Gazette's claim was acquired by Postmedia. Additionally, the Plan contained releases of the Applicants. Accordingly, if the Retired Typographers were to seek to proceed with the motion in annulment in Quebec, an argument could be advanced that they were precluded from doing so as a result of the releases. As noted by counsel for Postmedia, the Assumed Typographers are not bound by the Plan or the releases.

[13] The claims of the Retired Typographers have not yet been referred to a Claims Officer or to the Court for resolution as provided for in paragraph 14 of the Amended Claims Procedure Order.

(d) Settlement Discussions

[14] Subsequent to the release of the January 5, 2011 Reasons for Decision, counsel for Postmedia and CEP engaged in settlement discussions with respect to all Typographers represented by CEP². Any settlement involving the claims of the Retired Typographers was subject to approval by the Monitor. The settlement efforts were unsuccessful. Subsequently, the Monitor and CEP commenced settlement discussions with respect to the claims of the Retired Typographers. As of the date of the motion, the claims of the Retired Typographers had not been settled but counsel for the Monitor advised the Court that settlement negotiations were ongoing.

[15] On April 5, 2011, during the course of settlement discussions between the Monitor and CEP, CEP's counsel delivered a breakdown of the quantum of the Retired Typographers' claims. The description referred to two grievances: the 1996 grievance and another grievance submitted on July 14, 2000. The reference to the 2000 grievance delivered to the Monitor on April 5, 2000

² Some of the Assumed Typographers are not represented by CEP.

was the first time CEP had expressly mentioned the 2000 grievance in the context of the proof of claim of \$500,000 per Typographer. CEP is claiming \$417,864 for each of the Retired Typographers in respect of the 1996 grievance and \$143,208 for each of the Retired Typographers in respect of the 2000 grievance for a total claim of \$561,072 per Retired Typographer. This is in excess of the \$500,000 amount claimed for each Typographer by CEP in its original proof of claim filed in July, 2010.

[16] In accordance with the Plan, the Monitor reserved 55,490 shares in the Disputed Claims Reserve for the claims of the Retired Typographers. This reflected the amount of the claims of \$500,000 per Retired Typographer as submitted in the proof of claim of July, 2010. These are the only shares now remaining in the Disputed Claims Reserve, all other distributions having been effected.

[17] The Monitor takes the position that any claims relating to the 2000 grievance are claims that are barred by the provisions of the Amended Claims Procedure Order. The Monitor states that if Postmedia is unsuccessful in its request for relief and the Monitor and CEP are unsuccessful in reaching a settlement of the Retired Typographers' claims, the Monitor will refer the claims of the Retired Typographers to a Claims Officer or the Court and at that time will be advancing a claims bar defence with respect to the Retired Typographers' claims relating to the 2000 grievance.

Positions of Parties

[18] Although the Retired Typographers' claims have not yet been referred to a Claims Officer, Postmedia requests that I define the mandate of the Claims Officer. It submits that the scope and extent of the Retired Typographers' damages has been determined in proceedings that are binding upon them and all that remains is an arithmetical exercise of calculating the damages and applying any available setoff. It argues that the nature and scope of the damages and the duration of the period for which they are due have been finally determined by the Quebec arbitrator and courts and cannot be relitigated. The only matters to be determined by the Claims Officer are the exact amount of those damages and the amount owed by setoff or counterclaim.

Alternatively, Postmedia submits that the proceedings should be referred to the Quebec courts and heard with the claims of the Assumed Typographers.

[19] CEP is the representative of all of the Retired Typographers. It opposes the relief on the grounds that: Postmedia lacks standing; the motion is premature and constitutes an improper collateral attack on the Typographers' April 2009 motion for annulment of the arbitral award; and the liability and quantum issues underlying the claims filed have not been finally decided and *res judicata* is inapplicable.

[20] The Monitor takes no position.

[21] During argument of this motion, I enquired as to whether those appearing were interested in a judicial settlement conference to help in resolving their dispute. Based on the response, I did arrange for a judge to assist in this regard. Many days after the motion was argued, I was advised that not all of the stakeholders wished to participate at this stage of the proceedings. If they should change their view, the Monitor's counsel should contact me and I will renew the settlement initiative.

Discussion

[22] The practical issue before me is to ensure a process that reduces the risk of inconsistent results but which is fair and expeditious for those remaining in the CCAA process. I must also be mindful of the objectives that underlie a CCAA proceeding.

[23] The Ontario proceeding could be stayed pending the outcome of the Assumed Typographers' claims and the claim of The Gazette. This would avoid inconsistent results but would compel the Retired Typographers to wait for resolution of their CCAA claims and any distribution. The CCAA claims procedure is summary in nature – in stark contrast to the proceedings in which the Typographers and The Gazette had been involved. While clearly inconsistent results would be avoided by staying the Ontario claim pending resolution of the dispute between the Assumed Typographers and Postmedia in Quebec, in my view it would be unfair to thrust the remaining Retired Typographers into that maelstrom. They are retired or have resigned from their employment with The Gazette, are entitled to have their claims addressed

summarily, and to rely on my directions order which authorized them to proceed with their proof of claim. For the same reasons, I am not prepared to refer the matter to the Quebec Superior Court and Arbitrator Sylvestre. The dispute between Postmedia and the Assumed Typographers, some of whom are not represented by CEP, may well be protracted which would be consistent with the history of the dealings between The Gazette and the Typographers. I have no confidence that the claims of the Retired Typographers would be dealt with expeditiously if addressed in conjunction with those of the Assumed Typographers.

[24] I accept CEP's submission that this motion is premature as the claims of the Retired Typographers have not yet been submitted to a Claims Officer or to the Court for determination. In addition, clearly the Monitor's report contemplates the possibility of further settlement discussions between the Monitor and the Retired Typographers. That said, in the interests of judicial economy, it makes sense to provide some direction on the mandate of the Claims Officer if appointed. As such, I will consider the issues of standing and issue estoppel. Lastly, I will address the appropriate procedure for CEP's claim relating to the July 14, 2000 grievance.

(a) Standing

[25] Postmedia owns the set off claim of The Gazette and section 36 of the Claims Procedure Order allows for setoff against payments or other distributions to be made pursuant to the Plan. Postmedia's shares are the value being distributed to creditors under the Plan. Lastly, pursuant to the provisions of the Plan, the treatment of the Retired Typographers' claims are final and binding for all purposes and enure to the benefit of Postmedia. In these circumstances, Postmedia does have standing to bring this motion.

(b) Issue Estoppel

[26] The Supreme Court of Canada in *Danyluk v. Ainsworth Technologies Inc.*³ established the three preconditions to the operation of issue estoppel:

- (i) the same question has been decided;

³ [2001] 2 S.C.R. 460 at p. 477.

- (ii) the judicial decision which is said to create the estoppel was final; and
- (iii) the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.

[27] Even if the three preconditions are met, a court must still decide whether, as a matter of discretion, issue estoppel ought to be applied.

[28] With reference to administrative decisions, Binnie J. in *Danyluk* wrote that the objective is to balance fairness to the parties with the protection of the administrative decision-making process, whose integrity would be undermined by too readily permitting collateral attack or relitigation of issues once decided.⁴

[29] The issue engaged by this case is the second precondition which relates to finality. In *The Doctrine of Res Judicata in Canada*⁵, the author, Donald J. Lange, writes that there is an unresolved conflict in the law relating to the effect of the appeal process on the finality of a decision for the purpose of issue estoppel. He reviews numerous decisions that hold that a pending appeal does not preclude the application of issue estoppel and others that do. He also refers to Supreme Court of Canada *obiter dicta* and particularly *Toronto (City) v. CUPE, Local 79*⁶, in which Arbour J. wrote:

“A decision is final and binding on the parties only when all available reviews have been exhausted or abandoned.”

[30] In 2008, in *R. v. Mahalingan*⁷, Charron J. for the minority wrote:

Determining whether a decision is final for the purpose of issue estoppel has raised some controversy in the case law, even in the context of civil litigation. For example, the law does not appear settled concerning the effect of the appeal process on the question of finality.

⁴ *Ibid.*, at p. 475.

⁵ LexisNexis Canada Inc. 2010 (3d) at p.98.

⁶ [2003] 3 S.C.R. 77 at p. 107.

⁷ [2008] S.C.J. No. 64 at para. 134.