

**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

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**MOTION RECORD**  
(Returnable April 12, 2010)

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April 6, 2010

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**TO: THE SERVICE LIST**

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)

Applicants

CANWEST LP SERVICE LIST AS OF MARCH 4, 2010

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**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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APPLICANTS

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**TAB 1**

Court File No. CV-10-8533-00CL

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

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INC., AND CANWEST (CANADA) INC

APPLICANTS

**NOTICE OF MOTION  
(Returnable April 12, 2010)**

The Applicants will make a motion before a judge of the Ontario Superior Court of Justice presiding over the Commercial List on April 12, 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 substantially in the form attached to the Motion Record (the "Claims Procedure Order":
  - (a) abridging, if necessary the time for service of this Notice of Motion and dispensing with service on any person other than those served;
  - (b) approving a claims procedure (the "Claims Procedure") for the determination of affected creditors' voting and distribution rights in the event that a plan of arrangement or compromise is proposed by the Applicants and Canwest Limited Partnership/Canwest Société en Commandite (collectively, the "LP Entities"); and

2. A second Order substantially in the form attached to the Motion Record (the “Stay Extension Order”):

- (a) approving the activities of FTI Consulting Inc., as court-appointed monitor to the LP Entities (the “Monitor”) and approving the fees and disbursements of the Monitor and its counsel;
- (b) extending the Stay Period (as defined in the Initial Order) from April 14, 2010 to June 30, 2010; and
- (c) authorizing the LP Entities to make a payment of \$994,936.95 owing under the lease for the Edmonton Journal Building in respect of the period from October 1, 2009 to January 8, 2010; and

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

**THE GROUNDS FOR THE MOTION ARE:**

4. On January 8, 2010, the LP Entities filed for and obtained protection from their creditors under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”), pursuant to the Initial Order of the Honourable Justice Pepall dated January 8, 2010 (the “Initial Order”);

5. FTI Consulting Canada Inc. was appointed as monitor (the “Monitor”) of the LP Entities pursuant to the Initial Order;

**Claims Procedure**

6. The Initial Order authorized the LP Entities to file a plan of compromise or arrangement with their Senior Lenders (as defined in the Initial Order) (the “Senior Lenders’ CCAA Plan”), and authorized the LP Entities to file other plans of compromise or arrangement (each an “LP Plan”) between the LP Entities and one or more classes of their secured or unsecured creditors upon further Order of the Court;

7. The Initial Order also authorized the LP Entities to commence a sale and investor solicitation process (the “SISP”) to be conducted in two phases: Phase 1, in which the LP

Entities would seek non-binding indications of interest for the acquisition of, or an investment in, the LP Entities; and Phase 2, in which the LP Entities would seek bids for the acquisition of, or an investment in, the LP Entities;

8. The SISP has proceeded to Phase 2;

9. In order to properly negotiate the definitive terms of any transaction arising out of a Superior Offer, if any, received pursuant to the SISP, the LP Entities require a better understanding of the scope and nature of the claims made against them;

10. There is a reasonable prospect that, depending upon the ultimate outcome of the SISP, the LP Entities may be in a position to propose an LP Plan to their creditors (other than the Senior Lenders);

11. In order to hold a meeting of creditors to approve any LP Plan, and to establish the procedure for identifying and valuing creditor claims for voting and distribution purposes at such a meeting, it is necessary to implement a claims process and bar procedure;

12. Accordingly, it is in the best interests of the overall restructuring of the LP Entities that the LP Entities proceed with a claims procedure at this time;

13. The Claims Procedure is a fair and reasonable method of determining the voting and distribution rights of affected creditors under the Plan;

#### **Approval of Monitor's Activities and Fees**

14. The Monitor has substantially assisted the LP Entities in carrying out their restructuring objectives;

15. The fees and disbursements of the Monitor appear to be reasonable under the circumstances;

#### **The Extension of the Stay Period**

16. The stay of proceedings (the "Stay Period") granted in the Initial Order and subsequently extended will expire on April 14, 2010;

17. The SISP is currently underway and will not conclude until April 30, 2010 or soon thereafter;

18. The stability and certainty provided by the Stay Period are required for the conduct of the SISP and the negotiation and closing of a Superior Offer (as defined in the Procedures for the Sale and Investor Solicitation Process, as amended), if any, or the support transaction with the Senior Lenders, as applicable;

19. The LP Entities have acted and are continuing to act in good faith and with due diligence in carrying out the SISP and the terms of the Initial Order;

#### **Authorization to Make Edmonton Journal Building Rent Payment**

20. The LP Entities currently lease a building in Edmonton, Alberta pursuant to a capital lease with London Life Insurance Company (the "Lease");

21. Rent is payable semi-annually in arrears and was owing on March 31, 2010 for the period from October 1, 2009 to March 31, 2010;

22. The LP Entities made a payment under the Lease of approximately \$839,139, which was the portion of the rent attributable to the period from January 8, 2010 to March 20, 2010;

23. The LP Entities require authorization from this Honourable Court to make the Edmonton Journal Building Rent Payment of the balance of \$994,936.95 that is owed under the Lease in respect of the pre-filing period;

24. The maintenance of the Lease in good standing is important to the successful and stable operations of the LP Entities;

25. The Monitor, the LP CRA and the LP Administrative Agent all support the relief requested herein;

26. It is just and convenient and in the interests of all creditors and interested parties that the order sought herein be granted;

27. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
28. Rules 1.04, 1.05, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
29. 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 Douglas E.J. Lamb, sworn April 6, 2010 and the Exhibits thereto;
2. The Sixth Report of the Monitor (to be filed);
3. The Affidavit of Paul Bishop (to be filed);
4. The Affidavit of Daphne MacKenzie (to be filed);
5. The Initial Order dated January 8, 2010; and
6. Such further and other materials as counsel may advise and this Honourable Court may permit.

April 6, 2010

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Lawyers for the Applicants

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Court File No: CV-10-8533-00CL

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

Proceeding commenced at Toronto

**NOTICE OF MOTION**

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**TAB 2**

Court File No. CV-10-8533-00CL

**ONTARIO  
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IN THE MATTER OF THE *COMPANIES' CREDITORS  
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APPLICANTS

**AFFIDAVIT OF DOUGLAS E.J. LAMB  
(Sworn April 6, 2010)**

I, Douglas E.J. Lamb, of the City of Toronto, in the Province of Ontario, MAKE  
OATH AND SAY:

1. I am a senior employee of Canwest Publishing Inc./Publications Canwest Inc. (“CPI”). 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, where necessary I have also consulted with members of the senior management teams of CPI, Canwest Books Inc. and Canwest (Canada) Inc. (collectively, the “**Applicants**”) and Canwest Limited Partnership/Canwest Societe en Commandite (the “**Limited Partnership**” and, together with the Applicants, the “**LP Entities**”).

2. This affidavit is sworn in support of a motion by the LP Entities seeking two  
Orders:

(a) the first Order (the “**Claims Procedure Order**”), substantially in the form attached at Tab 3 to the Motion Record, establishing a procedure for the identification and quantification of certain claims against the LP Entities (the “**Claims Procedure**”); and

(b) the second Order (the “**Stay Extension Order**”), substantially in the form attached at Tab 4 to the Motion Record: (i) approving the activities of the Monitor

and the fees and disbursements of the Monitor and counsel to the Monitor for the period from January 8, 2010 through March 20, 2010; (ii) extending the Stay Period (as defined below) to June 30, 2010; and (iii) authorizing the LP Entities to make a payment of approximately \$1,000,000 of that portion of the rent owing under a building lease with London Life Insurance Company that is attributable to the period between October 1, 2009 and January 8, 2010.

3. For the reasons set out below, I believe that the LP Entities have acted and are continuing to act in good faith and with due diligence in an effort to ensure the best available going concern outcome for the businesses and stakeholders of the LP Entities. The establishment of the Claims Procedure and an extension of the Stay Period are required to allow the LP Entities to continue their restructuring efforts and to allow the implementation of further steps contemplated by the Initial Order.

4. Capitalized terms not defined in this affidavit are as defined in the affidavit of Thomas C. Strike sworn January 7, 2010 (the “**Initial Order Affidavit**”). A copy of the Initial Order Affidavit (without exhibits) is attached as Exhibit “A” to this Affidavit.

## **Background and the Conduct of the SISP**

5. On January 8, 2010, the Applicants were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to an initial order (the “**Initial Order**”) of this Honourable Court. The Initial Order also extended relief to the Limited Partnership and appointed FTI Consulting Canada Inc. as monitor (the “**Monitor**”) of the LP Entities. A copy of the Initial Order (without schedules) is attached as Exhibit “B” to this Affidavit. On February 2, 2010, the LP Entities obtained an Order, *inter alia*, extending the Stay Period until April 14, 2010. A copy of the February 2, 2010 Stay Extension Order and Order Amending the Initial Order and the Procedures for the Sale and Investor Solicitation Process (without schedules)(the “**Stay Extension Order**”) is attached as Exhibit “C” to this Affidavit.

6. The LP Entities sought protection under the CCAA in order to create a more stable financial and operational environment that would help them to obtain the highest possible value for a going concern sale of – or equity investment in and recapitalization of – their businesses. Pursuant to the Initial Order, the LP Entities were authorized and directed to

commence the Sale and Investor Solicitation Process (the “SISP”) under the supervision of the Monitor and with the assistance of RBC Capital Markets, as financial advisor (the “**Financial Advisor**”), on the terms set out in the Procedures for the Sale and Investor Solicitation Process (as amended, the “**SISP Procedures**”).<sup>1</sup>

7. Pursuant to the SISP Procedures, the SISP is being conducted in two phases. During Phase 1, which has concluded, the Financial Advisor contacted strategic and financial parties about investing in and/or acquiring all or substantially all of the assets of the LP Entities. A significant number of those strategic and financial parties executed confidentiality agreements and were provided with copies of a confidential information memorandum containing detailed, non-public information about the businesses and financial affairs of the LP Entities and National Post Inc. All Potential Bidders were required to submit Non-Binding Indications of Interest (as defined in the SISP Procedures) prior to the Phase 1 bid deadline on March 5, 2010.

8. On March 5, 2010, the Financial Advisor received a number of Non-Binding Indications of Interest from both Qualified Bidders (as defined in the SISP Procedures) and non-Qualified Bidders. Following the Phase 1 Bid Deadline, the Monitor, in consultation with the Financial Advisor, the LP CRA and the LP Administrative Agent (collectively, the “**Consulting Parties**”), assessed the Qualified Non-Binding Indications of Interest<sup>2</sup> and non-Qualified Non-Binding Indications of Interest to determine, in the Monitor’s sole discretion, whether there was a reasonable prospect of obtaining a credible, reasonably certain and financially viable offer that would result in a cash distribution to the LP Secured Lenders on closing of the amount owed to them less a discount of \$25 million (a “**Superior Cash Offer**”).

9. As reported in the Fourth Report of the Monitor filed March 12, 2010, based on its review of the Non-Binding Indications of Interest pursuant to the terms of the SISP Procedures, the Monitor determined that there was a reasonable prospect of obtaining a Superior Cash Offer. Accordingly, on March 12, 2010, the Monitor recommended to the Special Committee that the SISP continue for a further seven weeks. The Special Committee accepted the Monitor’s recommendation, and Phase 2 of the SISP commenced on March 12, 2010.

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<sup>1</sup> The Procedures for the Sale and Investor Solicitation Process, as approved in the Initial Order, were subsequently amended by the Stay Extension Order and the Order Amending the Initial Order and the Procedures for the Sale and Investor Solicitation Process dated February 2, 2010.

<sup>2</sup> Qualified Non-Binding Indications of Interest are Non-Binding Indications of Interest from Qualified Bidders.

10. During Phase 2 of the SISP, Qualified Bidders (or their authorized representatives) that were not eliminated from the SISP have been granted access to an electronic data room that was set up by the LP Entities with the assistance of their counsel, the Financial Advisor and the Monitor. The LP Entities have also prepared and conducted management presentations in which senior management of the LP Entities have provided Qualified Bidders and/or their authorized representatives with insight into the businesses of the LP Entities including descriptions and analysis of:

- (a) the newspaper publishing and online media industry generally;
- (b) all of the newspaper publishing and online media operations of the LP Entities, including specific information on each of the metro newspapers;
- (c) the strategic direction and growth opportunities and initiatives of the LP Entities;
- (d) content services and the LP Entities' business model;
- (e) print and digital advertising models and tactics;
- (f) sales growth initiatives;
- (g) the community newspaper publishing business;
- (h) the human resources of the LP Entities;
- (i) consolidated and recent financial performance of the LP Entities;
- (j) financial projections and business plan;
- (k) key facilities; and
- (l) the LP Entities' restructuring, including an overview of the CCAA proceeding and the SISP.

11. Facility tours are being arranged for Qualified Bidders and/or their authorized representatives, and follow up questions from the management presentations are being addressed.

12. Pursuant to the terms of the SISP Procedures, Qualified Bidders must deliver final, binding proposals to the Financial Advisor on or before April 30, 2010 (the “**Phase 2 Bid Deadline**”). Following the Phase 2 Bid Deadline, the Monitor, in consultation with the Consulting Parties, will make a determination as to whether any of the final, binding proposals is a Superior Offer (as defined in the SISP Procedures).

### **PROPOSED CLAIMS PROCEDURE**

13. Among other things, the Initial Order authorized the LP Entities to enter into a plan of compromise or arrangement (the “**Senior Lenders’ CCAA Plan**”) with:

- (a) the syndicate of lenders (the “**LP Secured Lenders**”) from time to time party to the credit agreement dated as of July 10, 2007 between CanWest MediaWorks Limited Partnership (now the Limited Partnership), The Bank of Nova Scotia, as Administrative Agent, the LP Secured Lenders and CanWest MediaWorks (Canada) Inc. (now Canwest (Canada) Inc.), CanWest MediaWorks Publications Inc. (now Canwest Publications Inc.) and Canwest Books Inc., as guarantors; and
- (b) the various counterparties to certain foreign currency, interest rate and commodity hedging agreements with the LP Entities whose obligations rank *pari passu* with the claims of the LP Secured Lenders (the “**LP Hedging Creditors**”).

Together, the LP Secured Lenders and the LP Hedging Creditors are referred to as the “**LP Senior Lenders**”.

14. The Initial Order also authorized the LP Entities, subject to further Order of the Court and with the consent of the Monitor and the LP CRA, to file other plans of compromise or arrangement (each an “**LP Plan**”) with one or more classes of their secured or unsecured creditors.

15. The Monitor’s recommendation that the SISP proceed to Phase 2 – and the Special Committee’s acceptance thereof – was based on the Monitor’s determination that there was and is a reasonable prospect that the proceeds from the sale of or investment in the LP Entities could exceed the amount of the LP Senior Lenders’ claim (less a discount of \$25 million). Depending upon the outcome of the SISP, if a Superior Offer is received that could

provide some realization to the unsecured creditors of the LP Entities, the LP Entities may be in a position to propose an LP Plan to their unsecured creditors.

16. The early commencement of a claims process (the “**LP Claims Process**”) may be required to facilitate the negotiation and settlement of a definitive agreement in respect of a Superior Offer as well as the closing of a Superior Offer. It may be necessary for the LP Entities to understand the scope and nature of potential claims against them in order to consummate a sale or recapitalization transaction. To the extent that a Superior Offer is identified that potentially holds value for the unsecured creditors of the LP Entities, the establishment of the LP Claims Process will also facilitate the development of an LP Plan. In addition, in order to hold a meeting of creditors to approve any LP Plan, and to establish the procedure for identifying and valuing creditor claims for voting and distribution purposes at such a meeting, it is necessary to implement the LP Claims Process.

17. Accordingly, the LP Entities wish to implement a “call for claims” pursuant to the terms of the draft Claims Procedure Order. The proposed Claims Procedure will provide the LP Entities with more definitive information about the scope and aggregate size of the claims. Because the outcome of the SISP is currently uncertain, the LP Entities have not developed or proposed an LP Plan or established a date for any meeting of LP Creditors called for the purpose of considering and voting in respect of an LP Plan (a “**Meeting**”).

18. Pursuant to the terms of the Support Agreement, the LP Administrative Agent may terminate the Support Agreement if, among other things, the Support Transaction is not completed by June 30, 2010. It is therefore critical that the LP Entities identify the universe of claims and be in a position to move forward with an LP Plan, if one is required, prior to the expiration of the Support Agreement. The LP Entities, the LP CRA and the Monitor have discussed the proposed timeline and do not believe that its length will materially prejudice stakeholders and/or creditors. The LP Entities do not propose to engage in any review, evaluation or adjudication of any claims until the results of Phase 2 are known.

19. The proposed Claims Procedures have been developed by the LP Entities in consultation with the Monitor, the LP CRA and the LP Administrative Agent. The Monitor, the LP CRA and the LP Administrative Agent have all indicated that they support the proposed Claims Procedure.

### A. Overview of Proposed Claims Procedure Order

20. The proposed Claims Procedure establishes terms for the collection and quantification of Claims against the LP Entities. The claims that are the subject of the proposed Claims Procedure (collectively, the “**Claims**”) include: (i) Claims against one or more of the LP Entities in connection with any indebtedness, liability or obligation of any kind whatsoever that were in existence on the Filing Date (each, a “**Pre-Filing Claim**”); and (ii) Claims against one or more of the LP Entities in connection with any indebtedness, liability or obligation of any kind whatsoever that arise out of the restructuring (each, a “**Restructuring Period Claim**”). The proposed Claims Procedure contemplates that there will be certain categories of Excluded Claims (as described below) that will not be subject to the Claims Procedure.

21. The draft Claims Procedure Order establishes the general terms for notice to creditors, the completion and filing of proofs of claim (each an “**LP Proof of Claim**”) and the Claims Bar Date (as defined below). The draft Claims Procedure Order also establishes a procedure for the resolution of disputes over such claims. Broadly speaking, the proposed Claims Procedure requires that creditors of the LP Entities (the “**LP Creditors**”) submit LP Proofs of Claim in order to participate in the vote on and distribution from an LP Plan, if any. LP Creditors that do not submit LP Proofs of Claim pursuant to the terms of the Claims Procedure Order will not be permitted to participate if an LP Plan is ultimately developed.

22. More specifically, the draft Claims Procedure Order provides that:

- (a) after the date of the Claims Procedure Order, the LP Entities or the Monitor shall publish notice to LP Creditors (the “**LP Notice to Creditors**”) in the form attached as Schedule “A” to the draft Claims Procedure Order for at least two business days in the *National Post*, *The Globe and Mail*, *La Presse* and *The Wall Street Journal*. The Monitor has advised that it anticipates that it will be able to publish notice in the Canadian newspapers on April 15 and 16 but that it may not be able to publish notice in *The Wall Street Journal* until April 19 and 20;
- (b) on or before 11:59 p.m. on April 16, 2010, the LP Entities will send to each LP Creditor with a Claim that is evidenced by the books and records of the LP Entities a package of materials including a blank proof of claim (the “**LP Proof of**



**Claim**”) in the form attached as Schedule “C” to the draft Claims Procedure Order, an instruction letter (the “**LP Proof of Claim Instruction Letter**”) in the form attached as Schedule “B” to the draft Claims Procedure Order and such other materials as the LP Entities may consider appropriate or desirable (collectively, the “**LP Claims Package**”). The LP Proof of Claim Instruction Letter will set out the value of the LP Creditor’s claim, based on the books and records of the LP Entities;

- (c) the “LP Claims Bar Date” is 5:00 p.m. on May 7, 2010;
- (d) the “LP Restructuring Period Claims Bar Date”, which applies to LP Creditors whose claims arise after January 8, 2010, is the date that is 21 days after the LP Creditor with a Restructuring Period Claim is deemed to have received the LP Claims Package pursuant to the terms of the Claims Procedure Order;
- (e) any LP Creditor that does not return an LP Proof of Claim to the Monitor before the LP Claims Bar Date or the LP Restructuring Claims Bar Date, as applicable, will not be entitled to attend or vote at any Meeting and will not be entitled to receive any distribution from any LP Plan, and any Claim of such creditor is forever extinguished and barred without any further act or notification by the LP Entities;
- (f) provided that the LP Claims Process has not been suspended as described in paragraph 31 below, if the LP Entities intend to revise or reject a Claim, other than a Restructuring Period Claim, the LP Entities shall by no later than 11:59 p.m. on the later of (i) May 28, 2010 or (ii) the date exactly three weeks after the Monitor posts notice on its website that a determination to proceed with the adjudication of claims, or such other date as may be agreed to by the Monitor, notify each LP Creditor who has delivered an LP Proof of Claim whether such LP Creditor’s Claim as set out therein has been revised or rejected and the reasons therefor, by sending a notice (the “**Notice of Revision or Disallowance**”) in the form attached as Schedule “D” to the draft Claims Procedure Order to such LP Creditor; and

- (g) except in the case of an LP Creditor with a Restructuring Period Claim, any LP Creditor who intends to dispute an LP Notice of Revision or Disallowance must deliver a notice (the “**LP Notice of Dispute of Revision or Disallowance**”) in the form attached as Schedule “E” to the draft Claims Procedure Order to the Monitor before the later of (i) June 11, 2010 or (ii) the date exactly five weeks after the Monitor posts notice on its website that a determination has been made to proceed with the adjudication of claims, or such other date as may be agreed to by the Monitor. In the case of an LP Creditor with a Restructuring Period Claim, such LP Creditor must deliver an LP Notice of Dispute of Revision or Disallowance within ten (10) Calendar Days of the date that the Notice of Revision or Disallowance is deemed to have been received pursuant to paragraph 34 of the Claims Procedure Order.

23. The draft Claims Procedure Order also provides that the Monitor, in addition to its duties, rights and obligations under the CCAA and the Initial Order, will assist the LP Entities in connection with the administration of the LP Claims Process.

#### **B. Restructuring Period Claims**

24. The Claims Procedure is designed to permit for a “rolling” claims bar date in respect of claims arising in connection with the restructuring, disclaimer, resiliation, termination or alleged breach by the LP Entities of any contract, lease or agreement that takes place on or after the commencement of the CCAA proceeding on January 8, 2010 (the “**Restructuring Period Claims**”). The Restructuring Period Claims Bar Date is intended to bring into the LP Claims Process those LP Creditors whose claims arise during the LP Entities’ CCAA proceeding. Restructuring Period Claims otherwise are to be disputed and adjudicated in accordance with the terms of paragraph 20 above.

#### **C. Resolution of Disputed Claims**

25. As noted above, the draft Claims Procedure Order establishes a process whereby LP Creditors may dispute their respective Notices of Revision or Disallowance by submitting to the Monitor Notices of Dispute of Revision or Disallowance. Although the LP Entities will endeavour to settle any disputes, it is proposed that the decision as to whether a Claim that

cannot be resolved should be adjudicated by the Court or a Claims Officer be in the sole discretion of the LP Entities.

26. I believe that the Claims Procedure will be an effective method of ascertaining and evaluating Claims against the LP Entities. The LP Entities have been working internally to develop information concerning known LP Creditors, and should be in a position to send out LP Claims Packages to known LP Creditors promptly after the Order, if granted, is issued. The proposed time lines, although compressed, are comparable to other time lines approved by this Court, and have been developed to be fair while still being responsive to the time lines for the overall restructuring.

**D. Excluded Claims**

27. The draft Claims Procedure Order provides that it does not apply to certain excluded claims (the “**Excluded Claims**”) and that, therefore, the holders of Excluded Claims are not required to file LP Proofs of Claim with respect to their Claims or to otherwise participate in the LP Claims Process. Excluded Claims are not subject to or affected by the LP Claims Bar Date or the LP Restructuring Claims Bar Date and are not subject to the consequences of not filing LP Proofs of Claim in advance of the LP Claims Bar Date or the LP Restructuring Period Claims Bar Date, as applicable.

28. Pursuant to the draft Claims Procedure Order, Excluded Claims include

- (a) Claims secured by any of the Charges as defined in the Initial Order;
- (b) all Claims against directors and officers of the LP Entities (including deemed or *de facto* directors and officers);
- (c) that portion of a Claim arising from a cause of action for which the applicable LP Entities are insured to the extent that such Claim, or portion thereof, is insured;
- (d) all Claims of Canwest Global or any of its subsidiaries and affiliates against one or more of the LP Entities including, for greater certainty, the Claim of an LP Entity against another LP Entity;

- (e) with the exception of SERA/RCA Claims and Termination and Severance Claims (as defined in the Claims Procedure Order), all claims by current or former employees of the LP Entities, including both unionized and non-unionized employees, arising out of the employment of such employees or former employees by the LP Entities including, without limitation, all Claims by current and former employees, both union and non-union, including grievances filed by bargaining agents (the “Unions”) representing unionized employees of the LP Entities, or their members, under applicable collective bargaining agreements, and all Claims under the pension plans of the LP Entities;
- (f) all Claims of the LP Senior Lenders;
- (g) all Claims of the LP DIP Lenders against the LP Entities pursuant to the LP DIP Definitive Documents; and
- (h) all Claims of The Bank of Nova Scotia arising from the provision of cash management services to the LP Entities.

#### **E. Suspension of the LP Claims Process**

29. Although the Monitor has indicated that there is a reasonable possibility that a Superior Offer will materialize in the SISF, there is a possibility that none of the Qualified Bidders will submit a bid that is determined to be a Superior Offer. If the LP Entities proceed with the Support Transaction (as defined in the Initial Order Affidavit), there will be no recovery for the unsecured creditors of the LP Entities. There is also a chance that the Superior Offer will be in a form and amount that provides limited or no reasonable prospect of realization for the unsecured creditors. In either case, there would be no reason to continue the LP Claims Process with no possibility of any meaningful recovery for unsecured creditors of the LP Entities and no need for an LP Plan.

30. In the event that there is no reasonable prospect of an LP Plan that would provide recovery for unsecured creditors, or no alternative scenario in which there would be recovery for unsecured creditors, the continuation of the LP Claims Process would not be an effective use of time or resources.

31. Accordingly, the LP Entities propose that no steps for the purposes of adjudicating or resolving the Claims be taken until:

- (a) Phase 2 of the SISP is completed and the Monitor, the LP CRA, the LP Entities and the Agent make a determination that such steps are reasonably required to close the Successful Bid (as defined in the SISP Procedures);
- (b) after the closing of the Successful Bid (or such earlier date as may be agreed to by the Monitor, the LP CRA, the LP Entities and the Agent), the Monitor, the LP CRA and the LP Entities make a determination that the resolution of Claims is reasonably required to facilitate a distribution of proceeds from such Successful Bid; or
- (c) further Order of the Court.

32. In the event that a determination is made to proceed with the adjudication and resolution of claims, the Monitor will post notice of such determination on the website maintained for this CCAA proceeding on its website.

33. It is my belief that the Claims Procedure is fair and reasonable in the circumstances and that the timeline contained therein is necessary and appropriate. The proposed Claims Procedure has been developed in consultation with the Monitor, the LP CRA and the LP Administrative Agent, and I am advised that the Monitor and the LP CRA support the proposed Claims Procedure.

34. The Claims Procedure will facilitate and expedite the restructuring of the LP Entities by identifying and quantifying the Claims of the unsecured creditors of the LP Entities. In turn, the establishment of the proposed Claims Procedure now will hopefully hasten the emergence of the LP Entities from CCAA protection.

## **Stay Extension**

35. The Stay Period expires on April 14, 2010. The extension of the Stay Period to June 30, 2010 is required because the Phase 2 Bid Deadline, which marks the end of the SISP, is not until April 30, 2010. Moreover, the Support Agreement provides that the LP Administrative Agent may terminate the Support Agreement if the Support Transaction is not completed by June

30, 2010. As a result, it is the intention of the LP Entities to complete the implementation of the Support Transaction or a Superior Offer as soon as possible after the conclusion of the SISP and, in any event, no later than June 30, 2010. The stability provided by the stay of proceedings is essential to the conduct of the SISP and the implementation of either a Superior Offer or the Support Transaction.

36. Since the granting of the Initial Order the LP Entities have continued to operate their businesses as going concerns. The LP Entities have acted and continue to act in good faith and with due diligence in carrying out the terms of the Initial Order and in seeking to secure a going concern outcome for the businesses of the LP Entities through the conduct of the SISP.

37. The Monitor will be filing its Sixth Report in connection with this motion. Updated cash flow forecasts which demonstrate that the LP Entities can continue to fund this proceeding through the proposed extension to the Stay Period are attached as an appendix to the Sixth Report of the Monitor.

38. The LP Entities have consulted with the LP Administrative Agent and it is my understanding that the LP Secured Lenders do not oppose the request to extend the Stay Period. I have also been advised that the Monitor and the LP CRA support the request to extend the Stay Period.

39. It is my belief that the Stay Period should be extended to June 30, 2010 to allow the LP Entities to continue to conclude the SISP and work toward the implementation of a Superior Offer or the Support Transaction (depending upon the outcome of the SISP). The stability provided by the stay of proceedings is also critical to the LP Entities' ability to continue to operate their businesses in the ordinary course.

### **Authorization to Make Payment Pursuant to Lease**

40. CPI currently leases the Edmonton Journal Building at 10006-101 Street, Edmonton, Alberta (as legally described in Schedule "A" hereto)(the "**Property**") pursuant to the terms of a building lease dated as of April 1, 1991 (as amended, the "**Lease**") between London Life Insurance Company, as lessor, and Southam Inc., as lessee. The Lease was assumed by the Edmonton Journal Group when the Southam Inc. publishing assets were acquired by Canwest Global in 2000.

41. The original term of the Lease was fifteen years, and the Lease was renewed for an additional 35 year period that commenced April 1, 2006. The Lease provides that the tenant is required to pay to the landlord in unequal semi-annual instalments in arrears on March 31 and September 30 the amounts set out in Schedule "D" to the Lease ("**Minimum Rent**"). Under Schedule D of the Lease, Minimum Rent is equal to a stated amount plus "an amount equal to the Rate of Return on the outstanding balance of the capital invested by the landlord at the commencement of the semi-annual period in respect of which such minimum rent payment is being made".

42. Schedule E defines the Rate of Return as:

...the average of the two highest of three quotes obtained by the Tenant from recognized independent Canadian investment dealers selected by the Tenant of the annualized yield to maturity at which such investment dealers would be prepared to advance to the Tenant, for a term of 5 years, an amount equivalent to the cost to the Landlord of the Building and the Building Strata Parcel including, without limitation, any land transfer or other taxes, royalty fees and commissions paid or payable by the Landlord in connection with the acquisition by it of the Building and the Building Strata Parcel plus one-eighth of one percent.

43. Under the Lease, the tenant is required to make relatively large rent payments during the term of the Lease but has the option to acquire the property for a nominal amount at the end of the lease term. Pursuant to the terms of the Lease, during the 30 day period immediately following the end of the 35<sup>th</sup> year of the renewal term, the tenant may elect to have title to the Property transferred to it upon written notice and delivery of a cheque in the amount of \$390,000. In order to exercise this election, CPI will have to pay the landlord's administrative costs incurred in connection with the maintenance of the Lease, which are estimated and agreed to be \$1,560,000 minus the \$390,000 received by the landlord in connection with notice of exercise of the option to acquire title to the Property. A copy of the Lease is attached as Exhibit "D" to this Affidavit.

44. The most recent rent payment, which was for the period from October 1, 2009 to March 31, 2010, in arrears, was due on March 31, 2010. By letter dated March 30, 2010 (the "**Landlord Letter**"), I informed the landlord of the three interest rate quotes obtained by the LP Entities to be used in calculation of the Rate of Return and the associated calculations of

Minimum Rent and Additional Rent. Specifically, Rent owing to the landlord by CPI, as Tenant, on March 31, 2010 equalled:

Minimum Rent	\$	1,745,172;
<u>Additional Rent</u>	\$	<u>83,904;</u>
Total Rent Payment	\$	1,829,076.

45. I further informed the landlord in the Landlord Letter of the commencement and effect of the CCAA proceeding of the LP Entities and calculated Rent of \$834,189.05 owing in respect of the period from January 8, 2010 to March 31, 2010. Pursuant to paragraph 13 of the Initial Order, the LP Entities are permitted to make all payments constituting rent under real property leases for the period commencing from and including the date of the Initial Order. I therefore informed the landlord that CPI would be making a Rent payment of \$834,189.05 on or before March 31, 2010.

46. The balance of \$994,936.95 that is owed in Rent pursuant to the terms of the Lease is the portion of the Rent attributable to the period from October 1, 2009 through January 7, 2010. There is no specific authorization in the Initial Order to make such payment and, in fact, the Initial Order contains a general prohibition against making payments in respect of pre-filing obligations. I advised in the Landlord Letter that the LP Entities would be making arrangements to seek Court authorization to pay the balance owing under the Lease. A copy of the letter is attached as Exhibit "E" to this Affidavit.

47. In the view of the LP Entities, it is important that the LP Entities continue to make payments and otherwise act in accordance with the terms of the Lease. The LP Entities intend to exercise their option to acquire the Property at the end of the Lease. The LP Entities wish to keep the Lease in good standing so as to preserve the option, as the value of the Property greatly exceeds the residual payments owed under the Lease. Making payment of \$994,936.95 in respect of that portion of the Rent attributable to the pre-filing period (the "**Edmonton Journal Building Rent Payment**") helps to advance the business and restructuring objectives of the LP Entities by ensuring the stability of a property – and a business - that is a critical part of the operations of the LP Entities.



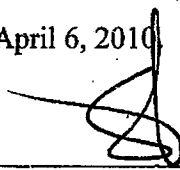
48. The request for authorization to make the Edmonton Journal Building Rent Payment has been discussed with the Monitor, the LP CRA and the LP Administrative Agent. I am advised that the Monitor, the LP CRA and the LP Administrative Agent support the Applicants' request.

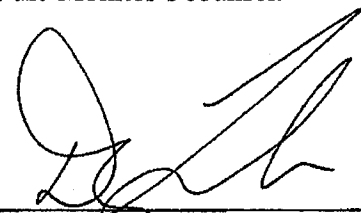
**Approval of Monitor's Activities and Fees**

49. The LP Entities are also seeking approval of the activities of the Monitor and the fees and disbursements of the Monitor and its counsel in this motion. In the opinion of the LP Entities, the Monitor's activities to date have substantially assisted the LP Entities in achieving their restructuring objectives.

50. I believe, and I am advised that the LP CRA is also of the view, that the fees and disbursements of the Monitor and its counsel are reasonable under the circumstances. As such, the LP Entities and the LP CRA support the approval of the Monitor's activities and the approval of the fees and disbursements of the Monitor and the Monitor's counsel.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, on April 6, 2010

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

  
\_\_\_\_\_  
DOUGLAS E.J. LAMB

**Schedule A**

## Description of Lands

**Building Strata Parcel**

STRATA BLOCK A

PLAN 9023628, EDMONTON

RESERVING THEREOUT ALL MINES AND MINERALS

**Ground Strata Lands**

LOT A, BLOCK 1

PLAN 9023625, EDMONTON

EXCEPTING THEREOUT STRATA BLOCKS A AND B AS SHOWN ON STRATA PLAN  
9023628 (HUDSON'S BAY RESERVE)

RESERVING THEREOUT ALL MINES AND MINERALS