

**CITATION:** Canwest Global Communications Corp., 2010 ONSC 3324  
**COURT FILE NO.:** CV-09-8241-00CL / CV-10-8533-00CL  
**DATE:** 20100608

**ONTARIO**

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

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

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

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

**COUNSEL:** *Lyndon Barnes and Jeremy Dacks* for the CMI Entities and the LP Entities  
*Hilary Clarke* for the Administrative Agent of the Senior Secured Lenders  
Syndicate  
*Chris Burr* for CIBC Asset Backed Lending Inc.  
*Logan Willis* for the Ad Hoc Committee of 8% CMI Noteholders  
*Jay Swartz* for the Ad Hoc Committee of 9.25% Canwest LP Noteholders  
*M.P. Gottlieb* for Shaw Communications Inc.  
*David Byers and Maria Konyukhova* for the Monitor, FTI Consulting Canada Inc.

**PEPALL J.**

**ENDORSEMENT**

[1] For many years the businesses of the CMI Entities and the LP Entities were integrated and shared critical business and support functions. On October 30, 2009, I granted an order approving the Transition and Reorganization Agreement ("TRA") (which attached the New Shared Services Agreement and the National Post Transition Agreement). The TRA set forth the terms of a reorganization and realignment of shared services between the CMI Entities and the LP Entities and addressed the transfer of the assets and business of the National Post newspaper.

Since that approval, the CMI Entities and the LP Entities have determined that it is necessary to take additional steps in furtherance of their separation and the TRA by entering into the Omnibus Transition and Reorganization Agreement ("OTRA").

[2] The CMI Entities and the LP Entities now move for orders approving the OTRA between Canwest Global Communications Corp. ("Canwest Global"), Canwest Media Inc. ("CMI"), Canwest Television Limited Partnership ("CTLP"), The National Post Company/La Publication National Post ("The National Post Company"), Canwest Limited Partnership/Canwest Société en Commandite ("Canwest LP"), National Post Inc. ("NPI"), and Canwest Publishing Inc./Publications Canwest Inc. ("CPI").

[3] The OTRA has three main functions:

- (i) the transfer, assignment or realignment of certain misaligned contracts, trademarks, domain names, IT and interests in real estate;
- (ii) the extension and/or amendment of certain provisions in the New Shared Services Agreement; and
- (iii) the entering into of new arm's length arrangements between certain of the CMI Entities and the LP Entities.

[4] The key elements of the OTRA are:

- a) the realignment of certain misaligned contracts and other interests including the assignment of contracts, the realignment of intellectual property, the realignment of IT hardware, joint ownership of certain proprietary software, termination of certain pension and benefit plan participation arrangements, and certain property realignments;
- b) the extension of certain provisions in the New Shared Services Agreement;
- c) the entering into of new intercompany agreements; and
- d) the assignment of case management responsibility for the National Post insured litigation.

[5] The OTRA is principally an extension and continuation of the TRA. It is designed to rationalize the business structure. The realignment consists of steps in the larger reorganization of the relationship between the CMI Entities and the LP Entities. OTRA provides the framework

for these entities to properly restructure their inter-entity arrangements. It provides for the continuing internal reorganization of the CMI Entities and the LP Entities and is within the ordinary course of business. Accordingly, section 36 of the CCAA does not apply to the OTRA.

[6] There is no suggestion of any prejudice to creditors that arises from the OTRA and no one appeared to oppose the relief requested. As set out in the reports of the Monitors, it is supported by the Monitors, the CRAs and other major stakeholders. The OTRA was made after consultation and notice of the motion has been given to secured creditors. There is little or no marketable or independent value to the contracts and other interests being assigned or assets being transferred. No additional monetary consideration will flow in respect of these arrangements. The realignment process facilitates the restructuring objectives of both the CMI Entities and the LP Entities and the ultimate emergence of these Entities as going concerns. In my view, the OTRA is fair and reasonable and ought to be approved. The approval requested and the relief related thereto are granted.

[7] The moving parties also seek a sealing order of the Confidential Supplement which contains the unredacted Sales Agency Agreement, the Advertising Agreement, the Term Sheet relating to the provision of business services by the LP Entities to the CMI Entities in connection with certain financial reporting processes and information relating to shared employee costs.

[8] In *Sierra Club of Canada v. Canada (Minister of Finance)*<sup>1</sup>, Iacobucci J. adopted the following test to determine whether a sealing order should be made:

A confidentiality order under Rule 151 should only be granted when:

(a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and

---

<sup>1</sup> [2002] 2 S.C.R. 522.

(b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

[9] In *Sierra Club*, Iacobucci J. stated that the risk in question must be real and substantial, and pose a serious threat to the commercial interest in question. In this case, the confidential supplement contains documents that are commercially sensitive and their public disclosure would place the CCAA Entities at a competitive disadvantage as well as impair their ongoing restructuring efforts. The preservation of this confidential and commercially sensitive information constitutes a sufficiently important commercial interest to pass the first branch of the *Sierra Club* test.

[10] With respect to the second branch of the *Sierra Club* test, it is submitted that the salutary effect of sealing the Confidential Supplement outweighs the possible deleterious effects. In the normal course, absent these proceedings, the proprietary and confidential information contained in the Confidential Supplement would remain confidential and would not be in the public domain. Keeping this information confidential will not have any deleterious effects. In the circumstances, I am satisfied that the Confidential Supplement should be sealed pending any further order of this court.

[11] The CMI Entities request an extension of the stay of proceedings until August 31, 2010. This date was changed by me to September 8, 2010, subject to Monitor filing a satisfactory updated cash flow by June 15, 2010. I am satisfied that the granting of an extension of the stay period is appropriate and that the CMI Entities have acted in good faith and with due diligence. They have sufficient available cash resources and have made significant progress in the CCAA proceedings. The order requested should be granted.

Page: 5

[12] I am also approving the Ninth, Tenth, Eleventh, Twelfth, Thirteenth and Fourteenth Reports of the Monitor, the Supplement to the Tenth Report, and the activities of the Monitor described in those documents as well as the fees and disbursements of the Monitor and its counsel. No one opposed the request and in my view the approval requested is fair and reasonable in the circumstances.



\_\_\_\_\_ J. P. Papp  
Papp J.

**Released:** June 8, 2010

**CITATION:** Canwest Global Communications Corp., 2010 ONSC 3324  
**COURT FILE NO.:** CV-09-8241-00CL / CV-10-8533-00CL  
**DATE:** 20100608

**ONTARIO**

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

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

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

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

---

**ENDORSEMENT**

---

Pepall J.

**Released:** June 8, 2010