

COURT OF APPEAL FOR ONTARIO

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

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

Applicants

**FACTUM OF THE APPLICANTS/MOVING PARTIES
(Motion to Expedite a Motion for Leave to Appeal
and the Proposed Appeal -Returnable March 24, 2010)**

March 19, 2010

OSLER, HOSKIN & HARCOURT LLP
P.O. Box 50
1 First Canadian Place
Toronto, ON M5X 1B8

Lyndon A.J. Barnes (LSUC#: 13350D)
Tel: (416) 862-6679
Jeremy E. Dacks (LSUC#: 41851R)
Tel: (416) 862-4923
Shawn Irving (LSUC#:50035U)
Tel: (416) 862-4733

Fax: (416) 862-6666

Lawyers for the Applicants

TO: **THE SERVICE LIST**

COURT OF APPEAL FOR ONTARIO

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

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

APPLICANTS

FACTUM OF THE APPLICANTS/MOVING PARTIES

(Motion to Expedite a Motion for Leave to Appeal and the Proposed Appeal)

PART I – OVERVIEW

1. This factum is filed by Canwest Global Communications Corp. ("**Canwest Global**") and the other Applicants listed on Schedule "A" hereto (the "**Applicants**") and the Partnerships listed on Schedule "B" hereto (the "**Partnerships**" and, together with the Applicants, the "**CMI Entities**") seeking, *inter alia*, to expedite the determination of the motion for leave to appeal (the "**Leave Motion**") brought by GS Capital Partners VI Fund L.P., GSCP VI AA One Holding S.ar.l and GS VI AA One Parallel Holding S.ar.l (collectively, "**GSCP**") in File No. M38600 of this Court and, if leave is granted, the appeal itself.

2. The motion brought by GSCP seeks leave to appeal from the Orders of the Honourable Madam Justice Pepall dated February 19, 2010 in the CMI Entities' *Companies' Creditors Arrangement Act* (Canada) ("**CCAA**") proceedings: (i) dismissing GSCP's request for an adjournment (the "**Adjournment Request**") of the CMI Entities' motion seeking court approval of a subscription agreement (the "**Subscription Agreement**") and related documentation between Shaw Communications Inc. ("**Shaw**") and Canwest Global and others (the "**Shaw Approval Motion**") to which, if consummated, Shaw will become an equity investor

in Canwest Global; and (ii) granting the Order sought in the Shaw Approval Motion. Madam Justice Pepall delivered written reasons on March 1, 2010.

3. The CMI Entities submit that it is essential to their restructuring that the Leave Motion, and if leave is granted, the appeal, be heard on an expedited basis. While the Leave Motion and the possible appeal remain outstanding, the CMI Entities are unable to materially advance their restructuring efforts and finalize a plan of compromise or arrangement (a “**Plan**”) to put to their creditors. The Leave Motion is creating uncertainty in the market regarding the CMI Entities’ restructuring efforts and amongst the CMI Entities’ approximately 1,700 employees. The outstanding Leave Motion and possible appeal could also jeopardize the Shaw Transaction itself. The CMI Entities submit that they will be substantially prejudiced if an order expediting the Leave Motion and the possible appeal is not made and GSCP will not be prejudiced if the requested order is made.

PART II – FACTS

4. The CMI Entities were granted protection from their creditors under the CCAA, pursuant to an initial order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated October 6, 2009 (the “**Filing Date**”). FTI Consulting Canada Inc. was appointed at that time to act as monitor (the “**Monitor**”) in the CCAA proceeding.¹

5. The Initial Order granted, *inter alia*, a stay of proceedings until November 5, 2009, or such later date as the Court may order. The stay of proceedings has been extended on

¹ Affidavit of Thomas C. Strike sworn March 17, 2010 (the “**Strike Affidavit**”), para. 3, CMI Entities’ Motion Record, Tab 2, p. 12.

two separate occasions, most recently on January 21, 2010, at which time the stay of proceedings was extended from January 22, 2010 until March 31, 2010.²

6. Since the Initial Order was issued, all motions in the CCAA proceeding have been heard by Madam Justice Pepall, who is seized of this matter.

The Recapitalization Transaction

7. On October 5, 2009, immediately prior to the Filing Date, the CMI Entities agreed to enter into a Support Agreement with members of an *ad hoc* committee (the “**Ad Hoc Committee**”) representing over 70% of the holders of CMI’s 8% Senior Subordinated Notes due 2012. The Support Agreement had attached to it a Restructuring Term Sheet that set out the summary terms and conditions of a consensual Recapitalization Transaction. The Support Agreement and Restructuring Term Sheet represented the culmination of many months of arm’s length negotiations between the CMI Entities and the Ad Hoc Committee.³

8. The Support Agreement provided that the CMI Entities would pursue a Plan on the terms set out in the Restructuring Term Sheet in order to implement the Recapitalization Transaction as part of this CCAA proceeding. The Support Agreement, as amended by the Shaw Transaction Documents (as defined below), currently contemplates a creditors’ meeting to vote on a Plan being held by April 15, 2010.⁴

9. Among other things, the Restructuring Term Sheet provided, *inter alia*, that one or more Canadians (the “**New Investors**”) (as defined in the *Direction to the CRTC (Ineligibility*

² Strike Affidavit, para. 4, CMI Entities’ Motion Record, Tab 2, pp. 12-13.

³ Strike Affidavit, para. 6, CMI Entities’ Motion Record, Tab 2, p. 13.

⁴ Strike Affidavit, para. 7, CMI Entities’ Motion Record, Tab 2, p. 13.

of *Non-Canadians*)) would invest at least \$65 million in a restructured Canwest Global (“**Restructured Canwest Global**”). The New Investors would need to qualify as “Canadians” in order to satisfy ownership requirements that apply to television broadcasters operating under licences from the Canadian Radio-television and Telecommunications Commission (the “**CRTC**”).⁵

The Equity Investment Solicitation Process

10. In early November 2009, the CMI Entities, with the assistance of their financial advisor, RBC Capital Markets (“**RBC**”), commenced a comprehensive publicly announced equity investment solicitation process in order to identify the New Investors. The equity investment solicitation process was conducted in two phases over the course of three months.⁶

11. Ultimately, two formal offers were received by the January 27, 2010 deadline, one of which was from Shaw. It was the CMI Entities’ view that the formal offer submitted by Shaw, as documented by the Subscription Agreement and related documentation (the “**Shaw Transaction Documents**”), was the best overall offer received by the CMI Entities.⁷

12. On February 11, 2010, on the recommendation of the Special Committee of Canwest Global and RBC, the board of directors of Canwest Global approved the entering into of the Shaw Transaction Documents.⁸

13. Canwest Global covenanted and agreed in the Subscription Agreement to use its commercially reasonable efforts to obtain court approval of the Shaw Transaction Documents by

⁵ Strike Affidavit, para. 8, CMI Entities’ Motion Record, Tab 2, p. 13.

⁶ Strike Affidavit, para. 9, CMI Entities’ Motion Record, Tab 2, pp. 13-14.

⁷ Strike Affidavit, para. 10, CMI Entities’ Motion Record, Tab 2, p. 14.

no later than February 19, 2010. The remainder of the Shaw Transaction Documents would not become legally binding unless and until the Order sought in the Shaw Approval Motion was granted.⁹

Shaw Approval Motion

14. The motion materials in respect of the Shaw Approval Motion were served by the CMI Entities in the early evening on February 12, 2010. The motion was returnable on February 19, 2010.¹⁰

15. GSCP served motion materials opposing the relief sought in the Shaw Approval Motion and seeking an adjournment of the Shaw Approval Motion in the afternoon of February 18, 2010.¹¹

16. At 3:38AM on February 19, 2010, counsel for Catalyst Capital Group Inc. (“**Catalyst**”) served an affidavit in opposition to the Shaw Approval Motion. The affidavit served by Catalyst enclosed a term sheet contemplating an equity investment by Catalyst and others in Restructured Canwest Global (the “**Catalyst Term Sheet**”).¹²

17. The Shaw Approval Motion was heard by Madam Justice Pepall on February 19, 2010. At the commencement of the Shaw Approval Motion, Madam Justice Pepall entertained submissions from GSCP and Catalyst regarding the Adjournment Request. GSCP and Catalyst argued, among other things, that an adjournment was required to allow the Monitor, and the

⁸ Strike Affidavit, para. 11, CMI Entities’ Motion Record, Tab 2, p. 14.

⁹ Strike Affidavit, para. 12, CMI Entities’ Motion Record, Tab 2, p. 14.

¹⁰ Strike Affidavit, para. 13, CMI Entities’ Motion Record, Tab 2, p. 14.

¹¹ Strike Affidavit, para. 14, CMI Entities’ Motion Record, Tab 2, p. 14.

¹² Strike Affidavit, para. 15, CMI Entities’ Motion Record, Tab 2, p. 14.

board of directors of Canwest Global, an opportunity to analyze the Catalyst Term Sheet. The Adjournment Request was opposed by the CMI Entities (supported by the CMI Chief Restructuring Advisor (the “CMI CRA”)), the Ad Hoc Committee, the Special Committee of Canwest Global, and Shaw. The Monitor took no position.¹³

Decision of Justice Pepall

18. During the course of a lengthy oral hearing that lasted into the evening on February 19, 2010, Madam Justice Pepall (a) dismissed the Adjournment Request; and (b) granted the Order sought in the Shaw Approval Motion.¹⁴

19. All aspects of the Shaw Transaction Documents became effective and legally binding on the parties thereto upon the granting of the Order sought in the Shaw Approval Motion.¹⁵

GSCP Seeks Leave to Appeal

20. On March 9, 2010, GSCP filed a notice of motion seeking leave to appeal from the Orders of Madam Justice Pepall. GSCP served its motion record and factum at the same time.¹⁶

21. On March 12, 2010, Catalyst served a responding factum in support of GSCP’s motion for leave to appeal.¹⁷

¹³ Strike Affidavit, para. 16, CMI Entities’ Motion Record, Tab 2, p. 16.

¹⁴ Strike Affidavit, para. 17, CMI Entities’ Motion Record, Tab 2, p. 16.

¹⁵ Strike Affidavit, para. 20, CMI Entities’ Motion Record, Tab 2, p. 17.

¹⁶ Strike Affidavit, para. 21, CMI Entities’ Motion Record, Tab 2, p. 17.

¹⁷ Strike Affidavit, para. 22, CMI Entities’ Motion Record, Tab 2, p. 17.

The CMI Entities and other Respondents Intend to File Responding Materials by March 22nd

22. Due to the need for an expeditious resolution of the GSCP leave motion in the context of the overall restructuring of the CMI Entities, the CMI Entities intend to serve their responding materials to GSCP's leave to appeal motion by no later than March 22, 2010. The Monitor, the Ad Hoc Committee and the Special Committee of Canwest Global have advised that, if any of them intend to respond to GSCP's leave motion, they will also serve their respective responding materials by no later than March 22, 2010.¹⁸

PART III – ISSUES AND THE LAW

23. The only issue to be addressed on this motion is whether GSCP's motion for leave to appeal and, if leave is granted, the appeal, should be heard on an expedited basis.

24. Rule 3.02 of the Ontario *Rules of Civil Procedure* allows a judge of the Court of Appeal to extend or abridge a time relating to an appeal:

3.02 (1) Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just.

(2) A motion for an order extending time may be made before or after the expiration of the time prescribed.

(3) An order under subrule (1) extending or abridging a time prescribed by these rules and relating to an appeal to an appellate court may be made only by a judge of the appellate court.

(4) A time prescribed by these rules for serving, filing or delivering a document may be extended or abridged by filing a consent.

25. The Court of Appeal has held that it is appropriate to grant an order to expedite a motion for leave to appeal and, if leave is granted, the appeal itself, where there is a certain degree of "urgency". In a CCAA proceeding, "urgency" is to be given a generous interpretation.

¹⁸ Strike Affidavit, para. 23, CMI Entities' Motion Record, Tab 2, p. 17.

As the Ontario Court of Appeal stated in *Re Stelco* in a decision dealing with the removal of directors:¹⁹

CCAA proceedings are invariably fast-moving, and often unpredictable. In this context, the court should strive where it can to achieve a measure of stability and certainty. To me, that means taking a generous view of “urgency”. Indeed, if “real time” litigation – the speedy handling of restructurings – is to be meaningful, it must occur not just in the “commercial list”, but also in this court when rulings affecting the restructuring are challenged. Otherwise, the corporate community, the commercial bar and the public will lose confidence in the ability of this court to deliver justice.

26. In that case, Laskin J.A. noted, among other things, the following in granting the order to expedite the hearing of the motion for leave to appeal:²⁰

- (a) the current situation was critical;
- (b) the decision was important to the restructuring process; and
- (c) the original order was urgent.

27. In *Re Air Canada*²¹, the moving parties sought to expedite the hearing of their motion for leave to appeal and the appeal (if leave is granted) from the order of Farley J. dated May 7, 2003 in Air Canada’s CCAA proceeding. In ordering the leave motion and, if leave was granted, the appeal, be expedited, Laskin J.A. stated, “certainty and stability in the CCAA proceedings warrant having both the leave motion and, if leave is granted, the appeal itself heard promptly”.²²

¹⁹ (2005), 8 C.B.R. (5th) 150 (Ont. C.A.) at para 4.

²⁰ *Ibid.*

²¹ (2003), 173 O.A.C. 154 (C.A.).

²² *Ibid.*, at para 14.

28. In addition to urgency and the need for certainty and stability, courts considering whether to grant a request to expedite have also considered whether the respondents will be prejudiced if the order is granted and whether the leave motion or appeal will be rendered moot if it is not decided prior to a particular event.²³

Ordinary Course Timelines are Inadequate in these Circumstances

29. In accordance with the ordinary timelines of this Court, the decision in the Leave Motion could be released several months from now, and if leave is granted, the appeal would be scheduled for hearing four to five months thereafter.²⁴ A decision with respect to the appeal could be released months after that. The ordinary course timelines would generally result in a decision approximately 6 to 12 months from now. For the following reasons, it is submitted that the ordinary course timelines are inadequate for the determination of the Leave Motion and possible appeal.

Urgency of the Leave Motion and the Appeal if Leave is Granted

30. In the present case, it is essential that the Leave Motion, and if leave is granted, the appeal, be heard on an expedited basis. The CMI Entities are involved in a complex CCAA proceeding. If an order expediting the Leave Motion and the possible appeal is not made, the CMI Entities will be substantially prejudiced.

31. As noted above, the Recapitalization Transaction, as contemplated by the Restructuring Term Sheet, was contingent, among other things, upon the CMI Entities

²³ *Canadian Wheat Board v. Canada (Attorney General)*, [2007] F.C.J. No. 92 at para. 13. This was an application in the Federal Court by the Canadian Wheat Board for an order to set an expedited hearing date and a timetable for its judicial review.

²⁴ *Re Stelco*, supra, at para 2. In a recent leave to appeal motion brought by the Communications, Energy and Paperworkers' Union of Canada ("CEP") in this CCAA proceeding (Court of Appeal Court File No. M38188), this Court released its decision dismissing the leave motion approximately three months after the CEP filed its Notice of Motion seeking leave to appeal. The CEP leave motion followed the ordinary course timelines.

identifying one or more New Investors that would invest at least \$65 million in Restructured Canwest Global. After a comprehensive equity investment solicitation process that lasted several months, the CMI Entities successfully found an investor which satisfied a crucial requirement of the Restructuring Term Sheet. The Shaw Transaction was approved by Madam Justice Pepall.²⁵

32. It is submitted, therefore, that the Shaw Transaction, as approved by the presiding judge in the CCAA proceedings, represents an important step in the path towards the development of a viable going concern restructuring plan for the CMI Entities to put to their creditors. The Shaw Transaction will provide a going concern solution that preserves enterprise value and employment for the CMI Entities' employees.

33. However, while the Leave Motion and a possible appeal remain outstanding, the CMI Entities are unable to materially advance their restructuring efforts and finalize a Plan. In fact, instead of being one step closer to successfully emerging from CCAA protection as a going concern entity, the Leave Motion is creating uncertainty in the market regarding the CMI Entities' restructuring efforts. Such uncertainty could cause some of the CMI Entities' critical suppliers and other trade creditors to seek alterations to the terms of their customary contractual arrangements with the CMI Entities. With certain of next season's foreign television programming rights to be determined in or around May 2010, the CMI Entities need certainty regarding whether the Shaw Transaction will proceed as soon as possible.²⁶

34. The possibility that the Order approving the Shaw Transaction Documents may be overturned is also causing uncertainty and concern amongst the CMI Entities' approximately 1,700 full-time equivalent employees. Since the Filing Date, a number of the CMI Entities'

²⁵ Strike Affidavit, para. 25, CMI Entities' Motion Record, Tab 2, pp. 17-18.

²⁶ Strike Affidavit, para. 26, CMI Entities' Motion Record, Tab 2, p. 18.

senior and middle management have resigned or announced their intention to resign as a result of the time involved and uncertainty surrounding the CMI Entities' restructuring efforts. The uncertainty created by the outstanding Leave Motion and possible appeal will only exacerbate this increased employee attrition. The CMI Entities' stakeholders and employees have a vital interest in knowing as soon as reasonably possible whether the Shaw Transaction will proceed.²⁷

35. Furthermore, all of those involved in the restructuring of the CMI Entities, including management and the professional advisors to the CMI Entities, need certainty in order to advise and make ongoing decisions affecting the restructuring process.²⁸

36. In addition, due to the pending expiry of various inter-entity agreements that govern the provision and sharing of certain administrative, advisory and other business critical services between the CMI Entities and Canwest Global's publishing business (the "**LP Entities**"), the CMI Entities are in the process of attempting to establish replacement arrangements in respect of those services that are currently provided to the CMI Entities by the LP Entities. While the Leave Motion and possible appeal remain outstanding, the ability of the CMI Entities to negotiate and enter into contractual arrangements with prospective service providers is negatively affected.²⁹

Leave Motion and Possible Appeal Could Jeopardize the Shaw Transaction

37. The outstanding Leave Motion and possible appeal could also jeopardize the Shaw Transaction itself, causing the Leave Motion and possible appeal to be moot.

²⁷ Strike Affidavit, para. 27, CMI Entities' Motion Record, Tab 2, p. 18.

²⁸ Strike Affidavit, para. 28, CMI Entities' Motion Record, Tab 2, p. 18. See *Re Stelco*, supra, at para 4, where Laskin J.A. stated, "Inevitably, the Board will be making ongoing decisions affecting the restructuring process. The Stelco Board ought to know quickly whether Woolcombe and Keiper are going to play a role in that decision-making. I agree with the submission of Mr. Griffin, counsel for the Board, that the Board needs certainty."

38. In particular, the Subscription Term Sheet (which is attached to the Subscription Agreement) provides that it will terminate and be at an end in the event that the Recapitalization Transaction is not completed on or before August 11, 2010 (or such later date as Shaw and Canwest Global may agree) (the “**Outside Date**”). Matters that must be completed before the Outside Date include: (i) the finalization of the Plan; (ii) the holding of a creditors’ meeting; (iii) obtaining court approval of the Plan; (iv) obtaining CRTC approval pursuant to its customary public hearing process; and (v) the preparation of all corporate documentation required to implement the Recapitalization Transaction. Decisions need to be taken in the short term, and well before August 11, 2010, in order to complete all required matters before the Outside Date. In addition, irrespective of the CMI Entities’ desire to extend the Outside Date, if the Leave Motion or, if leave is granted, the appeal, remains outstanding as of August 11, 2010, Shaw may not agree to extend the Outside Date and the Shaw Transaction would automatically terminate. In the event that was to occur, the CMI Entities would effectively be “back to square one”, no further ahead towards a Recapitalization Transaction.³⁰

39. Similarly, under the terms of the Amended and Restated Support Agreement that was entered into between Canwest Global and the Ad Hoc Committee (which amends and restates a number of the terms of the Support Agreement and the Restructuring Term Sheet), the Plan must be implemented by no later than August 11, 2010 (unless such dates are extended by the parties). Again, if the Leave Motion remains outstanding as of August 11, 2010, or, if leave is granted, and the appeal remains outstanding as of August 11, 2010, the Ad Hoc Committee may

²⁹ Strike Affidavit, para. 29, CMI Entities’ Motion Record, Tab 2, p. 18.

³⁰ Strike Affidavit, paras. 30-32, CMI Entities’ Motion Record, Tab 2, p. 19.

not agree to extend the Plan Implementation Date (as defined therein), in which case the Amended and Restated Support Agreement would automatically terminate on August 11, 2010.³¹

No Prejudice to GSCP

40. The CMI Entities submit that an Order expediting the Leave Motion and, if leave is granted, the appeal, will not unfairly prejudice GSCP. GSCP has already served and filed its factum and motion record in respect of its leave to appeal motion. As noted above, the CMI Entities (and any other respondents that intend to respond to the Leave Motion) have indicated they will serve their respective responding materials (including facta) on or before March 22, 2010. If this Honourable Court grants the Order that is sought in the present motion, GSCP will only be required to deliver its reply factum, if any, three days before the *Rules of Civil Procedure* require. In the event that leave is granted, the parties will be expected to agree to a schedule for the delivery of materials in respect of the appeal, based upon a hearing date that is fixed by the Registrar.³²

Motion to Expedite was Commenced Promptly

41. As noted above, the Written Reasons were delivered on March 1, 2010. GSCP served its materials in respect of the Leave Motion on March 9, 2010. Catalyst served a responding factum on March 12, 2010. The CMI Entities served their motion record with respect to the present motion seeking to expedite the Leave Motion and possible appeal a mere five days later, on March 17, 2010, returnable on March 24, 2010. In the meantime, the CMI

³¹ Strike Affidavit, para. 33, CMI Entities' Motion Record, Tab 2, pp. 19-20.

³² Strike Affidavit, para. 34, CMI Entities' Motion Record, Tab 2, p. 20.

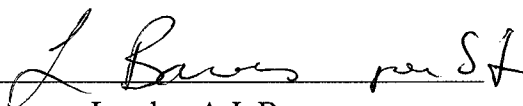
Entities have been expeditiously preparing their response to the Leave Motion and have committed to serving their responding factum by no later than March 22, 2010.³³

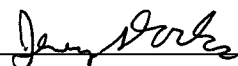
42. Accordingly, the CMI Entities submit that they have brought their motion to expedite the Leave Motion and possible appeal promptly.

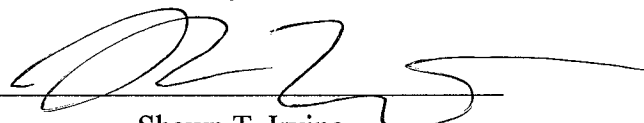
PART IV – NATURE OF THE ORDER SOUGHT

43. The CMI Entities therefore request an Order substantially in the form of the draft Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:


Lyndon A.J. Barnes


Jeremy Dacks


Shawn T. Irving

³³ Strike Affidavit, para. 23, CMI Entities' Motion Record, Tab 2, p. 17.

Schedule "A"

Applicants

1. Canwest Global Communications Corp.
2. Canwest Media Inc.
3. MBS Productions Inc.
4. Yellow Card Productions Inc.
5. Canwest Global Broadcasting Inc./Radiodiffusion Canwest Global Inc.
6. Canwest Television GP Inc.
7. Fox Sports World Canada Holdco Inc.
8. Global Centre Inc.
9. Multisound Publishers Ltd.
10. Canwest International Communications Inc.
11. Canwest Irish Holdings (Barbados) Inc.
12. Western Communications Inc.
13. Canwest Finance Inc./Financiere Canwest Inc.
14. National Post Holdings Ltd.
15. Canwest International Management Inc.
16. Canwest International Distribution Limited
17. Canwest MediaWorks Turkish Holdings (Netherlands) B.V.
18. CGS International Holdings (Netherlands) B.V.
19. CGS Debenture Holding (Netherlands) B.V.
20. CGS Shareholding (Netherlands) B.V.
21. CGS NZ Radio Shareholding (Netherlands) B.V.
22. 4501063 Canada Inc.
23. 4501071 Canada Inc.
24. 30109, LLC
25. CanWest MediaWorks (US) Holdings Corp.

Schedule "B"

Partnerships

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

Schedule "C"

LIST OF AUTHORITIES

1. *Canadian Wheat Board v. Canada (Attorney General)*, [2007] F.C.J. No. 92
2. *Re Air Canada* (2003), 173 O.A.C. 154 (C.A.)
3. *Re Stelco* (2005), 8 C.B.R. (5th) 150 (Ont. C.A.)

Schedule "D" - Statutory References

COMPANIES' CREDITORS ARRANGEMENT ACT

R.S.C. 1985, c. C-36, as amended

General power of court

11. Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Leave to appeal

13. Except in Yukon, any person dissatisfied with an order or a decision made under this Act may appeal from the order or decision on obtaining leave of the judge appealed from or of the court or a judge of the court to which the appeal lies and on such terms as to security and in other respects as the judge or court directs.

Court of appeal

14. (1) An appeal under section 13 lies to the highest court of final resort in or for the province in which the proceeding originated.

Practice

(2) All appeals under section 13 shall be regulated as far as possible according to the practice in other cases of the court appealed to, but no appeal shall be entertained unless, within twenty-one days after the rendering of the order or decision being appealed, or within such further time as the court appealed from, or, in Yukon, a judge of the Supreme Court of Canada, allows, the appellant has taken proceedings therein to perfect his or her appeal, and within that time he or she has made a deposit or given sufficient security according to the practice of the court appealed to that he or she will duly prosecute the appeal and pay such costs as may be awarded to the respondent and comply with any terms as to security or otherwise imposed by the judge giving leave to appeal.

Courts of Justice Act

R.S.O. 1990, c. C-43

7(2) A motion in the Court of Appeal and an appeal under clause 6(1)(c) shall be heard and determined by one judge.

RULES OF CIVIL PROCEDURE

Courts of Justice Act
R.R.O. 1990, REGULATION 194

General Principle

1.04 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

Court May Dispense with Compliance

2.03 The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time.

Extension or Abridgment

General Powers of Court

3.02 (1) Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just.

(2) A motion for an order extending time may be made before or after the expiration of the time prescribed.

Times in Appeals

(3) An order under subrule (1) extending or abridging a time prescribed by these rules and relating to an appeal to an appellate court may be made only by a judge of the appellate court.

Consent in Writing

(4) A time prescribed by these rules for serving, filing or delivering a document may be extended or abridged by filing a consent.

Notice of Motion

37.01 A motion shall be made by a notice of motion (Form 37A) unless the nature of the motion or the circumstances make a notice of motion unnecessary.

Motion for Leave to Appeal to Court of Appeal

Motion in Writing

61.03.1 (1) Where an appeal to the Court of Appeal requires the leave of that court, the motion for leave shall be heard in writing, without the attendance of parties or lawyers.

Notice of Motion

(2) The notice of motion for leave to appeal shall state that the court will hear the motion in writing, 36 days after service of the moving party's motion record, factum and transcripts, if any, or on the filing of the moving party's reply factum, if any, whichever is earlier.

(3) The notice of motion,

(a) shall be served within 15 days after the making of the order or decision from which leave to appeal is sought, unless a statute provides otherwise; and

(b) shall be filed with proof of service in the office of the Registrar within five days after service..

Perfecting Appeals

Time for Perfecting

61.09 (1) The appellant shall perfect the appeal by complying with subrules (2) and (3),

(a) where no transcript of evidence is required for the appeal, within thirty days after filing the notice of appeal; or

(b) where a transcript of evidence is required for the appeal, within 60 days after receiving notice that the evidence has been transcribed.

Motions in Appellate Court

Rule 37 Applies Generally

61.16 (1) Rule 37, except rules 37.02 to 37.04 (jurisdiction to hear motions, place of hearing, to whom to be made) and rule 37.17 (motion before commencement of proceeding), applies to motions in an appellate court, with necessary modifications.

PRACTICE DIRECTION CONCERNING CIVIL APPEALS IN THE COURT OF APPEAL

(Dated October 7, 2003)

Motions to the Court of Appeal in Civil Matters

5.1. 7. - Motions to expedite appeals may be brought to a judge in Chambers.

11.2 Expedited Appeals

11.2. 6. - Other appeals may be expedited by a judge of the court on being satisfied, on motion, that the urgency of the matter is such that an early hearing date is necessary.

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

Court File No: M38600

APPLICANTS

COURT OF APPEAL FOR ONTARIO

**FACTUM OF THE
APPLICANTS/MOVING PARTIES**
(Motion to Expedite a Motion for Leave to Appeal and the
Proposed Appeal-Returnable March 24, 2010)

OSLER, HOSKIN & HARCOURT LLP

Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

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

Tel: (416) 862-6679

Jeremy E. Dacks (LSUC#: 41851R)

Tel: (416) 862-4923

Shawn Irving (LSUC#:50035U)

Tel: (416) 862-4733

Fax: (416) 862-6666

Lawyers for the Applicants

F. 1114233