

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

APPLICANTS

FACTUM OF THE APPLICANTS

(Representative Counsel Motion returnable October 27, 2009)

October 23, 2009

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 T. Irving (LSUC#: 50035U)
Tel: (416) 862-4733

Fax: (416) 862-6666

Lawyers for the Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

APPLICANTS

FACTUM OF THE APPLICANTS

(Representative Counsel Motion returnable October 27, 2009)

PART I – NATURE OF THIS MOTION

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 an Order (the "**Representation Order**"), substantially in the form attached to the Motion Record, appointing:

- (a) David Cremasco, Rose Stricker and Lawrence Schnurr (the "**Representatives**") as representatives of the following persons, whether or not the applicable former employees were represented by a union when they were so employed:
 - (i) all former employees of the CMI Entities (or their predecessors, as applicable), or the surviving spouses of such former employees if applicable, who are in receipt of a pension from a registered or unregistered pension plan sponsored by a CMI Entity,
 - (ii) all former employees of the CMI Entities (or their predecessors, as applicable), or the surviving spouses of such former employees if applicable, who are entitled to receive a deferred vested pension from a registered or unregistered pension plan sponsored by a CMI Entity, and

(iii) all former employees of the CMI Entities (or their predecessors, as applicable), or the surviving spouses of such former employees if applicable, who were, immediately before October 6, 2009, entitled to receive non-pension benefits from a CMI Entity,

but excluding the CEP Retirees (as defined below) (collectively, the “**Retirees**”), in this CCAA proceeding, including without limitation, for the purpose of settling or compromising claims by the Retirees in this CCAA proceeding. For these purposes, CEP Retirees are former employees of the CMI Entities (or their predecessors, as applicable) who were represented by the Communications, Energy and Paper-workers Union of Canada (“**CEP**”) when they were so employed and who are not entitled to benefits under the CH Employees Plan (as defined below) or the surviving spouses of such former employees, if applicable; and

(b) Cavalluzzo Hayes Shilton McIntyre & Cornish LLP (“**Cavalluzzo LLP**”) as counsel (“**Representative Counsel**”) to represent the Retirees in this CCAA proceeding.

2. The CMI Entities recognize the efficiencies of having a single counsel representing the interests of all the Retirees. Cavalluzzo LLP is experienced in this area and can adequately represent the Retirees. Representation of the Retirees by Cavalluzzo LLP does not create a conflict of interest. Moreover, the Monitor, the *ad hoc* committee of holders of 8% senior subordinated notes issued by Canwest Media Inc. (the “**Ad Hoc Committee**”) and CIT Business Credit Canada Inc. (the “**DIP Lender**”) has indicated that they support Cavalluzzo LLP acting as Representative Counsel.

PART II – FACTS

3. The facts with respect to this Motion are more fully set out in the Affidavit of John E. Maguire sworn on October 22, 2009 (the “**Maguire Affidavit**”). Capitalized terms in this Factum not otherwise defined have the same meanings as in the Maguire Affidavit.

Background

4. The CMI Entities were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), pursuant to 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 this CCAA proceeding.¹

5. Later in the day on October 6, 2009, the Monitor obtained a Temporary Restraining Order from the United States Bankruptcy Court (Southern District of New York) under Chapter 15 of the *U.S. Bankruptcy Code* temporarily enjoining certain suppliers, including television production studios, distributors and other key suppliers, from taking certain actions against the CMI Entities who are party to the Chapter 15 proceedings.²

6. On October 14, 2009, the CMI Entities obtained an Order (the "**Claims Procedure Order**") from the Court establishing a claims procedure for the identification and quantification of certain claims against the CMI Entities and the directors and officers of the Applicants (the "**Claims Procedure**").³

Obligations to Active Employees and Retirees

7. As at the date of the Initial Order, the CMI Entities employed approximately 1,700 active employees. Based on information disclosed in the last filed valuation reports, the aggregate number of retirees and surviving spouses in receipt of a pension from a pension plan sponsored by the CMI Entities was at least 280. In addition, as at the date of the Initial Order, the CMI Entities had approximately 180 former employees who were receiving non-pension benefits from the CMI Entities, of which approximately 100 were represented by a union when they were employed by the CMI Entities, and approximately 80 who were not represented by a union when they were employed by the CMI Entities.⁴

¹ Affidavit of John E. Maguire sworn October 22, 2009 (the "Maguire Affidavit"), para. 3, Motion Record of the Applicants (the "Motion Record"), Tab 2, p. 12-13.

² Maguire Affidavit, para. 5, Motion Record, Tab 2, p. 13.

³ Maguire Affidavit, para. 6, Motion Record, Tab 2, p. 13.

⁴ Maguire Affidavit, para. 9, Motion Record, Tab 2, p. 14.

8. Since filing for CCAA protection, the CMI Entities have made every effort to honour their obligations to their active employees. This includes payment of salaries, commissions, bonuses and outstanding employee expenses. In addition, compensation programs for active employees have continued since the Filing Date. The CMI Entities' cash flow projections, based on the recapitalization term sheet negotiated with the Ad Hoc Committee, contemplate the continued payment of obligations to active employees in the ordinary course going forward. These cash flow projections also contemplate the continued payment of current service and special payments with respect to the active defined benefit pension plans registered under the federal *Pensions Benefits Standards Act*, 1985, c. 32 (2nd Supp.) (the "PBSA") and the *Ontario Pension Benefits Act*, R.S.O. 1990 c. P.8. (collectively, the "DB Pension Plans") based on currently filed valuation reports for the DB Pension Plans, and the continued payment of post-employment and post-retirement benefit payments to former employees who were represented by a union when they were employed by the CMI Entities (or their predecessors).⁵

9. As of the Filing Date, approximately 80 former non-unionized employees were entitled to receive post-employment and post-retirement benefits, most notably health, dental and term life insurance benefits. The CMI Entities have recently advised these former non-unionized employees that the CMI Entities will cease making all post-employment and post-retirement benefits payments in relation to claims incurred after November 13, 2009.⁶

10. In addition, prior to the Filing Date, the CMI Entities were responsible for certain top-up pension obligations to approximately 15 former employees pursuant to the Canwest Global Communications Corp. and Related Companies Retirement Compensation Arrangement Plan (the "CGCC RCA").⁷

11. Prior to its termination, the CGCC RCA was secured by an irrevocable letter of credit and was terminated by Canwest Global in May 2009. A partial distribution of assets was made to beneficiaries under the CGCC RCA in September 2009 and a second distribution will take place after refundable taxes are refunded by the Canada Revenue Agency. As a result, once the second distribution occurs, all but two of the beneficiaries of the CGCC RCA will have been

⁵ Maguire Affidavit, para. 10, Motion Record, Tab 2, p. 14.

⁶ Maguire Affidavit, para. 11, Motion Record, Tab 2, p. 15.

⁷ Maguire Affidavit, para. 12, Motion Record, Tab 2, p. 15.

provided with a payment representing the entire present value of their entitlement under that program.⁸

Retirees under CH Employees Plan

12. In conjunction with the sale of *CHCH-TV* to Channel Zero Inc., the CMI Entities terminated the Global Communications Limited Retirement Plan for CH Employees (the “**CH Employees Plan**”) effective August 31, 2009. The CH Employees Plan was a defined benefit pension plan registered under the PBSA. As at August 31, 2009, there were approximately 120 former employees (or their surviving spouses, where applicable) who were in receipt of a pension or entitled to a deferred vested pension under the CH Employees Plan.⁹

13. On August 10, 2009, the CMI Entities received a letter from the Office of the Superintendent of Financial Institutions (“**OSFI**”) directing Canwest Media Inc. (“**CMI**”) to prepare a valuation report for the CH Employees Plan effective as of December 31, 2008 in order to establish additional amounts to accrue from January 1, 2009 which may need to be funded through special payments. CMI responded to OSFI by letter dated August 27, 2009, advising that it was not feasible to prepare and file a valuation report in 21 days as requested, and that the need to prepare such a report would delay completion of the termination report for the CH Employees Plan. By letter dated September 15, 2009, OSFI acknowledged the length of time it would take to prepare a valuation report but still required that CMI “immediately” prepare a valuation report for the CH Employees Plan as of December 31, 2008. On October 13, 2009, OSFI sent another letter directing CMI to file the valuation report “without delay”. The CMI Entities had, prior to the Filing Date, instructed the actuary for the CH Employees Plan to give top priority to the completion of the December 31, 2008 valuation in order to comply with the OSFI request. The CMI Entities anticipate that the December 31, 2008 valuation will be completed shortly and will identify an unfunded liability. Currently, any special payments in respect of that unfunded liability are not contemplated in the CMI Entities’ cash flow projections.¹⁰

⁸ Maguire Affidavit, para. 13, Motion Record, Tab 2, p. 15.

⁹ Maguire Affidavit, para. 14, Motion Record, Tab 2, p. 15.

¹⁰ Maguire Affidavit, para. 15, Motion Record, Tab 2, p. 15-16.

14. In addition, the CMI Entities anticipate that when the termination report in respect of the CH Employees Plan is completed (which cannot occur until the December 31, 2008 report is completed), the assets of the CH Employees Plan as of the termination date will not be sufficient to cover the liabilities as of the termination date. The PBSA does not require an employer to fund such a shortfall. Accordingly, the CMI Entities anticipate that there may be an issue between the CMI Entities and the former employees of *CHCH-TV* as to what happens with respect to special payments, and whether there is a claim by the former employees of *CHCH-TV* for the shortfall that will exist in the CH Employees Plan upon filing of the termination report.¹¹

Cavalluzzo LLP

15. Cavalluzzo LLP was retained in July 2009 to act for certain Retirees who are participants of the CH Employees Plan (the “**CH Retirees**”) following the announcement by the CMI Entities that the CH Employees Plan would be terminated effective August 31, 2009. Cavalluzzo LLP represents approximately 100 CH Retirees, approximately 60% to 70% of whom were represented by the CEP or its predecessors when they were employed by the CMI Entities. The other CH Retirees who have retained Cavalluzzo LLP were not represented by a union when they employed by the CMI Entities.¹²

16. At present, with the exception of the CH Retirees who have retained Cavalluzzo LLP, most of the Retirees are not represented by counsel in this CCAA proceeding. All Retirees who were not represented by a union when they were employed by the CMI Entities (or their predecessors, if applicable), or, for surviving spouses, the applicable former employee was not a member of a union when he/she was employed by the CMI Entities (or their predecessors, if applicable), are creditors of the CMI Entities and therefore have a claim against the CMI Entities and will participate in the Claims Procedure.¹³

¹¹ Maguire Affidavit, para. 16, Motion Record, Tab 2, p. 16.

¹² Maguire Affidavit, para. 17, Motion Record, Tab 2, p. 16.

¹³ Maguire Affidavit, para. 18, Motion Record, Tab 2, p. 17.

PART III – ISSUES

17. The issue on this Motion is whether it is appropriate for the Court to appoint counsel to represent the interests of the Retirees in this CCAA proceeding.

PART IV – THE LAW

18. The Court's authority to appoint representative counsel derives from Rule 10.01 of the Ontario Rules of Civil Procedure. Rule 10.01 provides as follows:

10.01(1) In a proceeding concerning,

...

(f) any other matter where it appears necessary or desirable to make an order under this subrule,

a judge may by order appoint one or more persons to represent any person or class of persons ... who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served.

19. In *Dugal v. Research In Motion*¹⁴, the Honourable Justice Colin Campbell stated that the test for a Rule 10 representation order is a “simple balance of convenience test”:¹⁵

...the court is to consider the inconvenience that would be experienced by each party if the order were or were not granted.

20. In that case, the Honourable Justice Campbell decided that a representation order was appropriate, particularly given the opt-out provision that was included in the Order. In his analysis, Campbell J. referred to *Police Retirees of Ontario v. Ontario Municipal Employees' Retirement Board*¹⁶, a leading case on representation orders as follows:¹⁷

...the test to be applied in considering a request for a representation order is not whether the individual members of the group can be ascertained or found, but rather whether the balance of convenience favours granting of a representation

¹⁴ *Dugal v. Research in Motion Ltd.* (2007), 87 O.R. (3d) 721 (S.C.J.) [Commercial List]. [Hereinafter *Research in Motion*]

¹⁵ *Ibid.*, at para. 21.

¹⁶ (1997), 35 O.R. (3d) 177 (Ont. Gen. Div.) at para. 18.

¹⁷ *Research in Motion.*, at para. 21.

order instead of individual service upon each member of the group and individual participation in the proceedings. Such an interpretation is consistent with the legislative purpose behind this provision, which is designed to encourage an expeditious means of resolving contentious issues without the cost and expense associated with a Rule 12 order. In analyzing the balance of convenience test, I must consider the inconvenience that would be experienced by each party if the representation order were or were not granted.

21. CCAA Courts have more generally recognized the jurisdiction to appoint representative counsel where it will “simplify the process” for the purpose of facilitating the administration of the estate.¹⁸

22. In addition, the Court has wide discretion under section 11 of the CCAA to appoint representatives to act on behalf of a group of individuals with like interests in CCAA proceedings. Section 11 of the CCAA provides as follows:

11(1) General power of court

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.

23. In *Re Fraser Papers Inc.*¹⁹, Pepall J. recently stated that section 11 of the CCAA and the *Rules of Civil Procedure* provide the Court with broad jurisdiction in respect of a representative counsel motion:²⁰

No one challenges either of these propositions. The employees and retirees not otherwise represented are a vulnerable group who require assistance in the restructuring process and it is beneficial that representative counsel be appointed. The balance of convenience favours the granting of such an order and it is in the interests of justice to do so.

24. In *Re Nortel Networks Corp.*²¹, the Court was asked to appoint representative counsel to represent the interests of the present and former employees of Nortel, which was under CCAA protection. In his reasons, Justice Morawetz highlighted three critical principles

¹⁸ *Muscletech Research and Development Inc. (Re)* [2006] O.J. No. 3300 (C.L.) at paras. 34-37, and 41; *Dylex Ltd. (Re)* [2002] O.J. No. 1505 (S.C.J.) at para 14.

¹⁹ *Fraser Papers (Re)* 2009 CanLII 55115 (Ont. S.C.J.) [Commercial List].

²⁰ *Ibid.*, at para 7.

²¹ *Nortel Networks Corp. (Re)* (2009) 53 C.B.R. (5th) 196 (Ont. S.C.J.) [Commercial List].

that provide the fundamental rationale for the appointment and funding of representative counsel in the CCAA process:²²

- (a) Representative counsel should be appointed where vulnerable creditors have little means to pursue a claim in a complex CCAA proceeding;
- (b) Representative counsel should be appointed where there is a social benefit by assisting vulnerable creditors, and that representative counsel would provide a reliable resource for former employees for information about the CCAA process; and,
- (c) Representative counsel would provide a benefit to the overall CCAA process by introducing efficiency to the process for all parties involved.

25. In terms of covering the cost of legal representation, CCAA Courts have stated that an order may be made in respect of the funding of representative counsel where it is “fair and just” to do so. The onus is on the requesting party to establish the benefit.²³

As was recognized in *Eron Mortgage Corp. (Trustee of) v. Eron Mortgage* [citation omitted], to succeed in this application Ladner Downs **must establish that the legal work it is doing for the Greenhills Mine Suppliers Group is work that will either benefit the Westar estate or is work that is necessary for the management and preservation of the assets of the Estate.** Eron, *supra*, also recognized that:

Implicit in the statement that the work be necessary for the management and preservation of the trust assets is that another person would have been required to perform the work if the party claiming compensation had not done it.

The Court should proceed cautiously to ensure that it is just and equitable for the owners of the trust property to bear the expense of a third party who has not been engaged by them. [Emphasis Added.]

26. In granting such funding, courts have considered factors relating to “what practicality demands”, including the size of the estate and the size, substance and coherence of the proposed class of creditors and structural conflicts.²⁴

²² *Ibid.*, at paras 13 and 14.

²³ *Westar Mining Ltd. (Re)* [1999] B.C.J. No. 2169 (S.C.J.) at para. 23 [hereinafter *Re Westar*].

²⁴ *Re Westar*, *supra*, at para. 23; *OSC. v. Portus Alternative Asset Management Inc.*, 2005 Carswell Ont 7446.

27. In *Re Fraser Papers*, supra, Pepall J. stated that “funding by the Applicants should only be provided for the benefit of those who otherwise would have no legal representation”.²⁵

28. In the present case, representative counsel is sought to “simplify the process” on the basis that the proposed Representative Counsel can:

- (a) inform the Retirees, both as a whole and with regard to each person’s particular situation, of their rights and of the progression of the CMI Entities’ restructuring efforts;
- (b) provide the advice needed by the Retirees to protect their interests and participate in the CMI Entities’ restructuring process;
- (c) represent the interests of the Retirees for the purpose of all decisions which might affect their rights in the course of this CCAA proceeding and, if necessary, bring to the Court’s attention any matters to be dealt with; and
- (d) advise the Retirees on matters related to any plan of compromise or arrangement that will be put forward by the CMI Entities.²⁶

29. In addition, in light of the Claims Procedure, whereby the CMI Entities are responsible for identifying and quantifying known creditor claims against the CMI Entities and/or the directors and officers of the Applicants based on the books and records of the CMI Entities, it is anticipated that Representative Counsel (with the assistance of experts as necessary) will be able to assist the Retirees in reviewing any CMI General Notices of Claim (as defined in the Claims Procedure Order) that are received by those Retirees and in determining whether to submit a CMI Notice of Dispute of Claim (as defined in the Claims Procedure Order) based on the quantification of the claims by the CMI Entities. In particular, because the claims of the Retirees for lost benefits will be valued based on actuarial assumptions and methodologies, it is likely that the Retirees will require the assistance of actuarial and/or benefit experts to confirm those calculations. Most individual Retirees likely do not have the means to obtain such expert

²⁵ *Fraser Papers (Re)*, supra, at para 10.

²⁶ Maguire Affidavit, para. 20, Motion Record, Tab 2, p. 17.

advice in a cost effective and timely manner. It is equally likely that the CH Retirees will require the assistance of Representative Counsel and its pension expert in order to review the funding position of the CH Employees Plan and to advance the interests of those CH Retirees.²⁷

30. Moreover, if the Retirees are not represented by Representative Counsel there could be the following:

- (a) multiplicity of representations for various Retirees;
- (b) impediment to the orderly course of the CMI Entities' restructuring process;
- (c) inability of many of the Retirees to be represented due to lack of financial means; and
- (d) potential stress and inconvenience for certain of the Retirees.²⁸

31. The totality of these factors gives rise to the practical benefit of streamlining and simplifying the restructuring process, and will also benefit the Retirees.

32. In recognition of the breadth of its current mandate and the persons it is prepared to represent, and the fact that it currently represents CH Retirees who were both unionized when they were employed by the CMI Entities and not represented by a union when they were employed by the CMI Entities, Cavalluzzo LLP is acceptable to the CMI Entities, the Monitor, the Ad Hoc Committee and the DIP Lender as Representative Counsel. It is the CMI Entities' belief that representation of the Retirees by a single firm does not create a conflict of interest, as the interests of the unionized and non-unionized Retirees are not divergent, and will assist in the efficient operation of this CCAA proceeding. Cavalluzzo LLP has been previously involved in the Air Canada and Canadian Press restructurings and in various other matters relating to retiree benefits and pension plans.²⁹ Accordingly, the CMI Entities believe that Representative Counsel has sufficient experience and demonstrated expertise in dealing with insolvency proceedings.

²⁷ Maguire Affidavit, para. 21, Motion Record, Tab 2, p. 17-18.

²⁸ Maguire Affidavit, para. 22, Motion Record, Tab 2, p. 18.

²⁹ Maguire Affidavit, para. 23, Motion Record, Tab 2, p. 18.

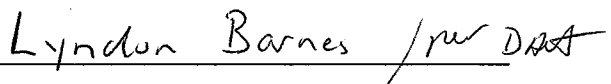
33. It is proposed in the draft Representation Order that, for the purpose of this CCAA proceeding, former members of the CEP who were employed by the CMI Entities, other than former members of the CEP who are participants of the CH Employees Plan, will be carved out of the Representation Order. In other words, it is proposed that the Representatives and Representative Counsel will not represent former unionized employees (or their surviving spouses, if applicable) who were represented by the CEP when they were active employees other than former employees who were entitled to benefits under the CH Employees Plan. The Representatives and the Representative Counsel will also represent all former employees (or their surviving spouses, if applicable) who were not members of a union when they were employed by the CMI Entities.³⁰

34. It is also proposed in the draft Representation Order that, subject to such fee arrangements as have been agreed to by the CMI Entities and Representative Counsel, reasonable legal, actuarial and financial expert and advisory fees and other incidental fees and disbursements incurred by the Representatives and Representative Counsel be paid by the CMI Entities on a monthly basis. The terms of the fee arrangement have been agreed upon by the CMI Entities and Representative Counsel and are acceptable to the CMI Entities and the Monitor. With the exception of the CH Retirees who had retained Cavalluzzo LLP, most of the Retirees are not represented by counsel in this CCAA proceeding.³¹

PART IV – NATURE OF THE ORDER SOUGHT

35. The CMI Entities therefore request an Order substantially in the form of the draft Order attached to the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:


Lyndon A.J. Barnes

³⁰ Maguire Affidavit, para. 26, Motion Record, Tab 2, p. 19-20.

³¹ Maguire Affidavit, para. 27, Motion Record, Tab 2, p. 20.

Jeremy Dacks / per DRA
Jeremy Dacks

Shawn Irving / per DRA
Shawn T. Irving

TAB A

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.

TAB B

Schedule "B"

Partnerships

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

TAB C

Schedule "C" - Statutory References

COMPANIES' CREDITORS ARRANGEMENT ACT

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

s. 11(1) General power of court

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. In respect of a company, the court, on the application of any person interested in the matter, may, subject to this Act, on notice to any other person or without notice as it may see fit, make an order under this section.

RULES OF CIVIL PROCEDURE

R.R.O. 1990, Regulation 194

s. 10.01 (1) In a proceeding concerning,

- (a) the interpretation of a deed, will, contract or other instrument, or the interpretation of a statute, order in council, regulation or municipal by-law or resolution;
- (b) the determination of a question arising in the administration of an estate or trust;
- (c) the approval of a sale, purchase, settlement or other transaction;
- (d) the approval of an arrangement under the *Variation of Trusts Act*;
- (e) the administration of the estate of a deceased person; or
- (f) any other matter where it appears necessary or desirable to make an order under this subrule,

a judge may by order appoint one or more persons to represent any person or class of persons who are unborn or unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served. R.R.O. 1990, Reg. 194, r. 10.01 (1).

Order Binds Represented Persons

(2) Where an appointment is made under subrule (1), an order in the proceeding is binding on a person or class so represented, subject to rule 10.03. R.R.O. 1990, Reg. 194, r. 10.01 (2).

TAB D

Schedule "D"

LIST OF AUTHORITIES

1. *Dugal v. Research in Motion Ltd.* (2007), 87 O.R. (3d) 721 (S.C.J.) [Commercial List]
2. *Dylex Ltd. (Re)* [2002] O.J. No. 1505 (S.C.J.)
3. *Fraser Papers (Re)* 2009 CanLII 55115 (Ont. S.C.J.) [Commercial List]
4. *Muscletech Research and Development Inc. (Re)* [2006] O.J. No. 3300 (Ont. S.C.J.) [Commercial List]
5. *Nortel Networks Limited (Re)* (2009), 55 C.B.R. (5th) 114 (Ont. S.C.J.) [Commercial List]
6. *OSC. v. Portus Alternative Asset Management Inc.*, 2005 Carswell Ont 7446
7. *Police Retirees of Ontario v. Ontario Municipal Employees' Retirement Board* (1997), 35 O.R. (3d) 177 (Ont. Gen. Div.)
8. *Westar Mining Ltd. (Re)* [1999] B.C.J. No. 2169 (S.C.J.)

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

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

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

APPLICANTS

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

FACTUM

(Representative Counsel Motion returnable October 27, 2009)

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 T. Irving (LSUC#: 50035U)
Tel: (416) 862-4733

Fax: (416) 862-6666

Lawyers for the Applicants