

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"**

**RESPONDING FACTUM OF THE MONITOR
FTI CONSULTING CANADA INC.**

(Motion for Leave to Appeal)

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TO: THE SERVICE LIST

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FACTUM OF THE MONITOR, FTI CONSULTING CANADA INC.

PART I - OVERVIEW

1. The Monitor¹ files this factum for the limited purpose of responding to certain factual allegations raised in the factum of GS Capital Partners VI Fund L.P. ("**GS**" and the "**GS Factum**") and the factum of Catalyst Capital Group Inc. ("**Catalyst**" and the "**Catalyst Factum**").

PART II - THE FACTS

2. There are two factual errors in the GS Factum, and repeated to some extent in the Catalyst Factum, in relation to the position taken by the Monitor on the request for an adjournment of the motion before Madam Justice Pepall. It is stated in the GS Factum, paragraph 64, "Further supporting an adjournment, the Monitor advised the

¹ All capitalized terms used but not defined herein shall have the meaning ascribed to them in the Supplement to the Tenth Report of the Monitor dated February 19, 2010 (the "**Supplement**").

Court that it would require 2 days to review the Catalyst Offer, compare it to the Shaw Agreement and report to the Court”. In paragraph 98 of the GS Factum it is stated “The Monitor advised it would need two days to review the Catalyst Offer, compare it to the Shaw Agreement and report to the Court”. In the Catalyst Factum, paragraph 28, it is stated: “The Monitor advised the Motions Judge that it would need two days to review the Second Catalyst Proposal and report back to the Court”.

3. It is not accurate to suggest that the Monitor supported the request for an adjournment. Madam Justice Pepall accurately stated the position of the Monitor with respect to the requested adjournment in paragraph 5 of her Reasons, as follows: “The Monitor took no position”.
4. It is also inaccurate to say that the Monitor advised the Court that it would require two days to review the Catalyst Proposal and report to the Court.
5. The submission of the Monitor was that it took no position with respect to the adjournment request and was limiting its submissions to an outline of the report it could prepare, and limitations with respect to the same, **if** the motion were adjourned to the following Monday and it had two days over the weekend to prepare the same.
6. The Monitor was merely acknowledging the reality that the Tenth Report did not deal with the Catalyst Proposal as it had not been delivered as at the time the Tenth Report was prepared.

7. The intention of the Monitor was to provide the Court with an outline of the type of Report it could prepare over the weekend, and the limitations of the same, so that the Court could weigh the benefit of adjourning to allow preparation of a further report as against the consequences of delay, i.e., the expiry of the Shaw Subscription Agreement. The Monitor did not say “that it would require two days to review the Catalyst offer, compare it to the Shaw Agreement and report to the Court”.
8. It is also incorrectly stated in paragraph 99 of the GS Factum that “Justice Pepall required the Monitor to produce the Report in two hours”.
9. After the lunch break, at approximately 2:00 p.m., Madam Justice Pepall first asked Shaw if it was prepared to extend the deadline in for Court approval contained in the Shaw Subscription Agreement. Shaw advised that it was not. Justice Pepall then stated that she was denying the adjournment request and asking the Monitor to prepare a Supplement to its Tenth Report on the issue of whether its recommendation continued in the face of the Catalyst Proposal.
10. The Shaw Subscription Agreement did not expire until midnight of February 19, 2010. The Monitor understood that the Court was asking it to prepare a Supplement as expeditiously as possible, but that the Court would sit as late as needed to allow the Monitor to deliver its Supplement sometime prior to midnight.
11. The Monitor was able to complete its Supplement within approximately three and a half hours and to deliver it to the Court just after 5:30 p.m.

12. The Supplement delivered by the Monitor generally followed the outline of the submissions that had been made to the Court as to the topics that could be covered in a report if the Monitor had the weekend to prepare the same.
13. The last paragraph to the Supplement states: “The Monitor’s conclusion to support the Shaw Subscription Agreement remains unaffected by the submission of the Catalyst proposal”.
14. While the Supplement to the Tenth Report was prepared on an expedited basis, the Monitor does not believe that the conclusion reached therein would have been any different had an adjournment been granted to allow the Monitor the two days of the weekend to prepare the Supplement.
15. The allegation in paragraphs 66 and 99 of the GS Factum that the Supplement was “hastily prepared, incomplete and ill-considered” is unfair and simply rhetoric. The GS Factum does not identify any particulars in which the Supplement is said to be either incomplete or ill-considered.

PART III - ISSUES

16. Should leave to appeal be granted?

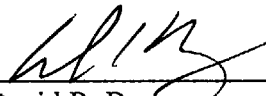
PART IV - LAW AND ARGUMENT

17. The Monitor makes no submissions with respect to law and argument.

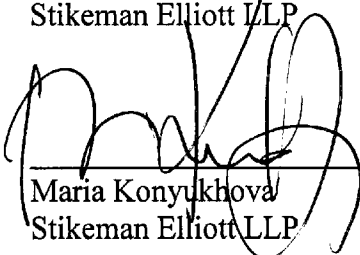
PART V - ORDER REQUESTED

18. The Monitor takes no position on whether leave to appeal should be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of March, 2010.



David R. Byers
Stikeman Elliott LLP



Maria Konyukhova
Stikeman Elliott LLP

**Lawyers for the Monitor, FTI Consulting
Canada Inc.**

Schedule "A"

The Applicants

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

Schedule "B"

Partnerships

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

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Court of Appeal File No: M38600
SCJ Court File No. CV-09-8396-00-CL

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