

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(EAST REGION)**

**IN THE MATTER OF** the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

**AND IN THE MATTER OF** an inquiry under subparagraph 10(1)(b)(iii) of the *Competition Act*, concerning alleged activities between Postmedia Network Inc., a wholly owned subsidiary of Postmedia Network Canada Corp. (collectively, "**Postmedia**"), and Metroland Media Group Ltd. ("**Metroland**") and Free Daily News Groups Inc., affiliates of Torstar Corporation (collectively, "**Torstar**"), and other persons known and unknown, contrary to paragraphs 45(1)(b) and (c); and under subparagraph 10(1)(b)(ii) of the Act relating to a transaction between Postmedia and Torstar, pursuant to section 92 of the *Competition Act*;

**AND IN THE MATTER OF** an *ex parte* application by an authorized representative of the Commissioner of Competition for the issuance of warrants to enter, search and copy or seize for examination or copying certain records or other things pursuant to sections 15 and 16 of the *Competition Act*.

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**INFORMATION OF PIERRE-YVES GUAY**

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**INFORMATION TO OBTAIN ADDITIONAL WARRANTS TO ENTER, SEARCH AND COPY OR SEIZE FOR EXAMINATION OR COPYING CERTAIN RECORDS OR OTHER THINGS PURSUANT TO SECTIONS 15 AND 16 OF THE *COMPETITION ACT*.**



## 1. INTRODUCTION

This is the Information of Pierre-Yves Guay (the "Affiant") of the municipality of Cantley, in the Province of Quebec, an authorized representative of the Commissioner of Competition (the "Commissioner") for the purposes of obtaining warrants to enter, search and copy or seize for examination or copying certain records or other things pursuant to sections 15 and 16 of the *Competition Act* (the "Act").

La présente constitue la dénonciation de Pierre-Yves Guay (le « dénonciateur ») de la municipalité de Cantley dans la province de Québec, un représentant autorisé du Commissaire de la concurrence (le « commissaire »), visant à obtenir des mandats pour pénétrer dans des locaux, y perquisitionner, y obtenir des documents ou autres choses, et prendre copie, ou les emporter pour examen ou pour en prendre copies conformément aux articles 15 et 16 de la *Loi sur la concurrence* (ci-après la « Loi »).

### (A) THE AFFIANT

I, PIERRE-YVES GUAY, MAKE OATH AND SAY AS FOLLOWS:

- 1.1 I am Acting Associate Deputy Commissioner of Competition in the Cartels Directorate of the Cartels and Deceptive Marketing Practices Branch (the "Cartels Directorate") of the Competition Bureau (the "Bureau"). I am an authorized representative of the Commissioner, appointed and designated to administer and enforce the Act. I have been employed by the Bureau since December 1999.
- 1.2 As an Acting Associate Deputy Commissioner of Competition and previously as an Assistant Deputy Commissioner and a Senior Competition Law Officer, I have participated in and have been responsible for examinations and inquiries including: assessing complaints, analyzing evidence, conducting interviews and recommending the initiation of court proceedings. I have also executed numerous search warrants, including in the role of search leader.



- 1.3 I hold an LL.L degree from the University of Ottawa (1996) and a Master of European Affairs/Law degree (LL. M) from the University of Lund in Sweden (1998). I was called to the Quebec Bar in 1999.
- 1.4 I have extensive experience investigating domestic and international conspiracies under the Act. On the international front, I have been the lead investigator and case manager on files involving major companies in various industries ranging from pharmaceuticals to textile products. On the domestic front, I have been the lead investigator and case manager on a retail gasoline cartel case involving several local Quebec markets, a case that included the extensive use of wiretaps and the execution of search warrants at more than 80 premises, the largest search undertaken by the Bureau to date. I have participated in more than 20 searches throughout my career at the Bureau.

**(B) BACKGROUND**

- 1.5 On March 6, 2018, I sworn and signed an Information to Obtain three search warrants. A copy of the March 6, 2018 Information to Obtain, exhibits and signed warrants can be found as Exhibit A for ease of reference.
- 1.6 On March 8, 2018, Justice Julianne A. Parfett authorized three search warrants.
- 1.7 On March 12, 2018, the Competition Bureau Officers executed three search warrants at the following locations:
- 1.7.1 The corporate head office of Postmedia located at  
365 Bloor Street East, 12th Floor  
Toronto, Ontario  
M4W 3L4



1.7.2 The corporate head office of **Torstar** located at  
1 Yonge Street,  
Toronto, Ontario  
M5E 1E5

1.7.3 The corporate head office of Metroland located at  
3715 Laird Road, Unit 6  
Mississauga, Ontario  
L5L 0A3

1.8 The searches at these locations are on-going.

## **2. OFFENCES – INFRACTIONS**

**The Affiant says that he has reasonable grounds to believe and does believe that the following offences under the Act have been committed by the following named persons or entities:**

**Le dénonciateur affirme qu'il a des motifs raisonnables de croire que les infractions suivantes à la Loi ont été commises par les personnes ou les entités suivantes, à savoir :**

2.1 That Postmedia, Torstar and other persons known and unknown, during the Relevant Time Period, did conspire, agree or arrange with each other and with others known and unknown, (i) to allocate sales, territories, customers or markets for the production or supply of Advertising Services and/or Flyer Distribution Services in specific geographic areas, and did thereby commit an indictable offence contrary to paragraph 45(1)(b) of the Act, and/or (ii) to fix, maintain, control, prevent, lessen or eliminate the production or supply of Advertising Services and/or Flyer Distribution Services in specific geographic areas, and did thereby commit an indictable offence contrary to paragraph 45(1)(c) of the Act.



### 3. REASONABLE GROUNDS – MOTIFS RAISONNABLES

The following information constitutes the reasonable grounds for the Affiant's belief supporting his information to obtain warrants:

Les renseignements suivants contiennent les motifs raisonnables qui fondent ma croyance, afin que soient décernés les mandats de perquisition demandés dans cette dénonciation:

- 3.1 I have reviewed my Information to Obtain of March 6, 2018 and, subject to some additions made below, I continue to believe its contents to be true and I rely on its contents in support of this application as well as the contents of this Information. A true copy of the first Information is attached as Exhibit "A".
- 3.2 On March 12, 2018, David Wolinsky and Nadejda Roy, both Competition Law Officers searching the corporate head office of Metroland located at 3715 Laird Road, Unit 6 Mississauga, Ontario ("**Search Site**") contacted me to provide information relating to additional potential locations to be searched.
- 3.3 On March 12, 2018, at approximately 9:30 am, Ms. Laurie Kovach, Director of Human Resources, Administration at Metroland took the search team on a tour of the Search Site and informed Officer Roy of the following:
- 3.3.1 Ms. Dana Robbins, VP & Regional Publisher, Central, works out of the Metroland Media office located at 3125 Wolfedale Road, Mississauga, Ontario.
- 3.4 On March 12, 2018, I did a google map search and observed that the building located at 3125 Wolfedale Road, Mississauga, Ontario looks like a warehouse and does not appear to include office space dedicated to Metroland.



- 3.5 On March 13, 2018, at my request, Officer Roy verified if Metroland still has offices at 3125 Wolfedale Road, Mississauga, Ontario.
- 3.6 Officer Roy spoke to Ms. Anita Albanese, Executive Assistant to Mr. Ian Oliver, President of Metroland. Ms. Albanese informed Officer Roy of the following:
- 3.6.1 Ms. Dana Robbins, Vice President & Regional Publisher, Central works out of the Metroland Media office located at **3145 Wolfedale** Road, Mississauga, Ontario.
- 3.7 While on the Search Site, Officer Dana Taylor found several documents designating the transaction between Torstar / Postmedia and Metroland as "Project LeBron".
- 3.8 While on the Search Site, Officer Wolinsky found an undated indicating "Positive execution of LeBron" with Ms. Dana Robbins name on it. I understand this statement to mean that Ms. Robbins was one of the persons responsible for the execution of the Transaction as described in Exhibit A.
- 3.9 According to Officer Wolinsky, the undated document was found on Mr. Ian Oliver's desk folded in half. The document describes performance indicators for Ms. Dana Robbins.
- 3.10 According to the Torstar website, Mr. Neil Oliver is Executive Vice President Torstar and President of Daily News Brands. Neil Oliver was appointed Executive Vice President and President of Daily News Brands in October, 2017. Prior to this, Mr. Neil Oliver was Group Publisher and Vice President with Metroland Media Group, where he was responsible for Metroland's daily newspapers; The Hamilton Spectator and The Waterloo Region Record as well as several Metroland Community Newspapers and media assets across south western Ontario.



3.11 Mr. Neil Oliver maintains an office at 1 Yonge Street in Toronto. However, Officer Daniel Campeau found a record dated January 19, 2018 stating that Mr. Neil Oliver is Vice President of TorStar, President of Daily News Brands and Publisher of the Hamilton Spectator with an office located at 44 Frid Street in Hamilton, Ontario L8N 3G3.

3.12 Given the position of Mr. Neil Oliver, I believe that relevant documents will be found in his office located at 44 Frid Street in Hamilton, Ontario L8N 3G3.

#### 4. PREMISES TO BE SEARCHED – LOCAUX VISÉS PAR LA PERQUISITION

The Affiant says that he has reasonable grounds to believe, and does believe, that the records or other things to be searched for, referred to in Part 5 below, are located at the following premises:

Le dénonciateur affirme qu'il a des motifs raisonnables de croire que les documents ou autres choses décrits en partie 5, se trouvent dans les locaux suivants :

4.1 The **Metroland** offices located at:  
3145 Wolfedale Road,  
Mississauga, Ontario L5C 3A9

4.2 The **Hamilton Spectator** offices located at:  
44 Frid Street  
Hamilton, Ontario L8N 3G3

including all storage, record keeping areas and any other additional office space located in or about the premises that form part of each of the premises (collectively, the "**premises to be searched**").

4.3 Section 15(4) of the Act provides that a warrant issued under the Act may be executed anywhere in Canada.



My experience as a Competition Law Officer

4.2 Based on my experience in dealing with business records or other things in my various positions at the Bureau, I believe that records or other things to be searched for, described in Part 5 below, are the kinds of records or other things that would have been created by Postmedia, Torstar and Metroland in the ordinary course of their businesses. I believe that these kinds of records or other things to be searched for would exist and would be found on the premises to be searched.

**5. RECORDS OR OTHER THINGS TO BE SEARCHED FOR – DOCUMENTS ET AUTRES CHOSSES QUI FONT L'OBJET DE LA PERQUISITION**

**The Affiant says that he has reasonable grounds to believe and does believe that the following records or other things exist at the premises as described Part 4 above and will afford evidence with respect to the offences in Part 2 above, or will assist in retrieving, copying, reading, deciphering or acquiring the substance or meaning or any data contained therein:**

**La dénonciateur affirme de plus qu'il a des motifs raisonnables de croire et croit que les documents ou autres choses suivants se trouvent dans les locaux décrits en partie 4 et qu'ils fourniront la preuve de la commission des infractions décrites en partie 2, ou contribueront à la copie, la lecture, le décodage ou la compréhension de toute information ou donnée contenues dans ces documents:**

5.1 Based on my experience in dealing with business records or other things in my various positions at the Bureau and based on the information disclosed hereafter, I believe that the records or other things to be searched for are the sorts of records or other things that would be located at the premises, referenced in Part 4 above. I have reasonable grounds to believe, and do believe, that the following records or other things, whenever created, are linked directly or indirectly to the commercial activities of Postmedia, Torstar and Metroland, their employees, representatives or agents and will afford evidence with respect to the offences described in Part 2 of this Information.



### Corporate Records or Other Things

- 5.2 All records or other things relating to the corporate structure of Postmedia, Torstar and Metroland and the ownership control or management of Postmedia, Torstar and Metroland by their owners, officers, directors, managers, employees, representatives and agents.
- 5.3 All records or other things relating to the ownership control or management of each of the Acquired Properties.
- 5.4 I believe the records or other things, referenced in paragraphs 5.2 and 5.3 above, will afford evidence of the corporate structure of Postmedia, Torstar, as well as evidence of the ownership, control or management of Postmedia, Torstar, Metroland, and the Acquired Properties.

### Records or Other Things Relating to Identities

- 5.5 All records or other things relating to the names, positions, duties, responsibilities, authority and compensation of the owners, officers, directors, managers, employees, representatives and agents of Postmedia, Torstar and Metroland.
- 5.6 All records or other things relating to the names, positions, duties, responsibilities, authority and compensation of the owners, officers, directors, managers, employees, representatives and agents of each of the Acquired Properties.
- 5.7 I believe these records or other things, referenced in paragraphs 5.5 and 5.6 above, will afford evidence of the identities and roles played by Postmedia, Torstar and Metroland's owners, officers, directors, managers, employees, representatives and agents with respect to their respective business operations including the production and supply of Advertising Services and/or Flyer Distribution Services.



- 5.8 All records or other things relating to business, entertainment, travel, and similar expenses incurred by Postmedia, Torstar and Metroland, including invoices for cellular phone communications and statements used for the purpose of reimbursement. I believe these records or other things will afford evidence to establish when and where Postmedia, Torstar and Metroland entered into an agreement or arrangement between themselves, and which persons from Postmedia, Torstar and Metroland had knowledge of the terms of the agreement or arrangement.

Records or Other Things Relating to the Transaction Documents

- 5.9 All records or other things relating to communications, meetings, telephone calls, agreements or arrangements, direct or indirect, between or among Postmedia, Torstar and Metroland and/or any other persons (including their respective owners, officers, directors, agents, representatives, members, employees or other persons) relating to the Asset Purchase Agreement and/or the Transitional Services Agreement and/or the Non-Compete Agreement and/or the closure of the Acquired Properties.
- 5.10 All records or other things relating to the concept, idea, plan, preparation, formulation, adoption, justification, revision, adjustment, rescission, continuation, implementation, or assessment of undertaking the Asset Purchase Agreement and/or the Transitional Services Agreement and/or the Non-Compete Agreement and/or the closure of the Acquired Properties.
- 5.11 All records or other things relating to the evaluation, analysis or assessment of the business rationale for the Asset Purchase Agreement and/or the Transitional Services Agreement and/or the Non-Compete Agreement and/or the closure of the Acquired Properties.



- 5.12 All records or other things relating to sales, revenues, expenses, market shares, profits, prices, discounts, rebates, pricing policies and strategies, price forecasts, and price zones, for the production, sale or supply of Advertising Services offered by the Acquired Properties.
- 5.13 All records or other things relating to sales, revenues, expenses, market shares, profits, prices, discounts, rebates, pricing policies and strategies, price forecasts, and price zones, for the production, sale or supply of Flyer Distribution Services offered by the Acquired Properties.
- 5.14 All records or other things relating to the Asset Purchase Agreement and/or the Transitional Services Agreement and/or the Non-Compete Agreement and/or the closure of the Acquired Properties prepared for review by Senior Officers of Postmedia, Torstar and Metroland.
- 5.15 All records or other things relating to which Print Newspapers and which geographic areas, distribution and/or circulation areas were contemplated for inclusion in and/or exclusion from the Asset Purchase Agreement and/or the Transitional Services Agreement.
- 5.16 All records or other things relating to which product categories and which geographic areas, distribution and/or circulation areas were contemplated for inclusion in and/or exclusion from the Non-Compete Agreement.
- 5.17 All records or other things relating to the Asset Purchase Agreement and/or the Transitional Services Agreement and/or the Non-Compete Agreement and/or the closure of the Acquired Properties in possession of Postmedia that were prepared by Torstar or Metroland.
- 5.18 All records or other things relating to the Asset Purchase Agreement and/or the Transitional Services Agreement and/or the Non-Compete Agreement and/or the



closure of the Acquired Properties in possession of Torstar that were prepared by Postmedia.

- 5.19 All records or other things relating to the Asset Purchase Agreement and/or the Transitional Services Agreement and/or the Non-Compete Agreement and/or the closure of the Acquired Properties in possession of Metroland that were prepared by Postmedia.
- 5.20 All records or other things relating to the methodologies applied to determine the value of the Acquired Properties of Postmedia relative to those of Torstar, as well as the final valuations arrived at for each of the Acquired Properties.
- 5.21 All records or other things relating to the evaluation, analysis or assessment of any impact of the Asset Purchase Agreement and/or the Transitional Services Agreement and/or the Non-Compete Agreement and/or the closure of the Acquired Properties as they relate to Advertising Services and/or Flyer Distribution Services.
- 5.22 All records or other things relating to the evaluation, analysis or assessment of any alternatives to the closure of the Acquired Properties.
- 5.23 I believe the records or other things, described in paragraphs 5.9 through 5.22 above, will afford evidence to establish the anti-competitive intent, conduct and any impact of the Asset Purchase Agreement and/or the Transitional Services Agreement and/or the Non-Compete Agreement and/or the closure of the Acquired Properties on the marketplace as it relates to Advertising Services and/or Flyer Distribution Services.

*Records or Other Things Relating to Customers of the Acquired Properties*



- 5.24 For each of the two (2) calendar years immediately preceding the date of this Information, all records or other things that identify customers of Advertising Services, their contact information, the terms and conditions of their contracts, contract negotiations, and annual Advertising Services revenues from each customer, for each of the Acquired Properties.
- 5.25 For each of the two (2) calendar years immediately preceding the date of this Information, all records or other things that identify customers of Flyer Distribution Services, their contact information, the terms and conditions of their contracts, contract negotiations, and annual Flyer Distribution Services revenues from each customer, for each of the Acquired Properties.
- 5.26 I believe that the records or other things, described in paragraphs 5.24 and 5.25 above, will afford evidence to assess any potential impact of the Asset Purchase Agreement and/or the Transitional Services Agreement and/or the Non-Compete Agreement, and/or the subsequent closure of the Acquired Properties on customers of Advertising Services and/or Flyer Distribution Services offered by the Acquired Properties.

Records or Other Things Available to Any Computer System

- 5.27 All records or other things described in paragraphs 5.2 through 5.25 above contained in, or available to, any computer system on the premises to be searched.

Other Things to be Searched For

- 5.28 Computer passwords, computer programs, computer services, computer systems, data storage devices and associated documentation, including operating instructions, manuals and service records, that may assist in retrieving, copying, reading, printing, deciphering or acquiring the substance or meaning of any data



seized, together with all passwords, log-on codes, encryption keys or other security devices relating to these things.

## **6. AUTHORIZED PERSONS – PERSONNES AUTORISÉES**

The Affiant therefore asks that warrants be issued authorizing the Commissioner and the following named persons to enter and search the premises described in Part 4 and seize the records or other things described in Part 5 in accordance with the warrants herein requested:

Le dénonciateur demande donc que des mandats soient décernées pour autoriser le commissaire et les personnes ci-après nommés à pénétrer dans les locaux décrits en partie 4, à y perquisitionner en vue d'obtenir des documents ou autres choses décrits en partie 5 et à en prendre copie ou à les emporter pour en faire l'examen ou en prendre des copies conformément aux mandats de perquisition demandés dans la présente dénonciation :

- 6.1 Authorized representatives of the Commissioner: Andrée Laflamme, Andrew Smyth, Dana Taylor, Daniel Campeau, Daniel Ikononov, David Wolinsky, Emily Earnshaw, Eric Buist, François Goulet, Frédérick LaBonté, Janna Hamilton, Jessica Novini, Jillian Bureau, Josiane Charbonneau, Katherine Raby, Kelan Ton, Lynne Charpentier, Manon Rivet, Mario Thibault, Mark Aylward, Melanie Crossman, Nadejda Roy, Oleg Shpetrik, Paula Lajeunesse, Robert Guilbeault, Simon Bessette, Valerie Parkinson, and any other authorized representative of the Commissioner.
- 6.2 Authorized representatives of the Commissioner trained in electronic search procedures (referred to as "**Electronic Evidence Officers**"): Clifford Smith, Éric D'Amours, Eric Daoust, Jeff Chamberlain, Matthew Kyrytow, Nicholas Saumure, and in order to assist the aforementioned officers, any person who, under the supervision of the aforementioned electronic evidence officers, can facilitate the electronic search of computer systems, data storage devices and media.



- 6.3 Any peace officer of the City of Toronto or the Province of Ontario or member of the Royal Canadian Mounted Police, in order to assist the authorized representatives of the Commissioner.

**7. DURATION OF THE WARRANT – DURÉE DU MANDAT**

**The Affiant requests that:**

**Le dénonciateur demande que:**

- 7.1 The warrants be valid from March 13, 2018, up to and including March 23, 2018. This period of validity is necessary to ensure that the authorized representatives of the Commissioner have a sufficient amount of time to search, copy, examine and seize a potentially large volume of records or other materials.
- 7.2 The execution of the warrants at the business premises listed in Part 4, taking place over a maximum of ten (10) days, will allow for:
- 7.2.1 Minimal disruption of Metroland's business activities;
- 7.2.2 The premises to be searched are occupied by large sophisticated corporations and, in my experience, companies of this type hold vast quantities of both paper and electronic records; and, I remain unaware of how paper and electronic records are organized and stored on-site;
- 7.2.3 Coding of the seized records on-site, thereby allowing for an accurate inventory of records seized pursuant to the warrants and facilitating an accurate and thorough report to the judge; and
- 7.2.4 Subsection 15(3) of the Act typically authorizes the search and seizure of records or other things only between the hours of 06:00 and 21:00. I ask that, where the discontinuance of the search at or before 21:00 may result in the loss of records, data or other things to be seized, the search



be allowed to continue after 21:00 in the evening on any day, to the extent necessary to avoid the loss of records, data or other things to be seized provided the particular search process commenced prior to 21:00. I also ask that the search may also continue after 21:00 to allow for the completion of a search process involving a computer system or the capture of data, which based on the length of the process, will extend after 21:00 in order to be successfully completed.

## **8. SEARCH AND ASSISTANCE – PERQUISITION ET ASSISTANCE**

**The Affiant further requests:**

**Le       dénonciateur       demande  
l'autorisation supplémentaire**

- 8.1 That the persons authorized to execute the warrants may enter the premises, leave them and return to them from time to time during the period of validity of the warrants for the purpose of executing them.
- 8.2 That the persons authorized to execute the warrants may be accompanied by one or more Peace Officers and/or locksmith for the purposes of facilitating access to the premises; and, of using such force as necessary to provide any assistance to facilitate access to the premises, if the premises are locked.
- 8.3 That the persons authorized to execute the warrants may be accompanied by one or more Peace Officers for the purposes of ensuring the safety of the authorized representatives of the Commissioner and for ensuring that no breaches of the peace occur. Peace Officers accompanying the persons authorized to execute this warrant may use such reasonable force as is necessary to ensure the peace is maintained.
- 8.4 That one or more of the authorized representatives of the Commissioner shall be allowed to videotape the events of the various searches in order to create a visual record of the manner in which the search was conducted, and to photograph or



videotape records or other things to be seized. Such visual recordings can assist in the resolution of any allegation respecting the conduct of the search, should such an allegation arise, and can provide a means of capturing records or other relevant information from the premises that cannot readily be physically seized (e.g., writings on a large white board or the layout of space).

- 8.5 That the warrants authorize the persons mentioned in Part 6 above to search anything found on the premises, including personal belongings for which they have reason to believe may contain records or other things to be searched for. Personal belongings include, but are not limited to, briefcases, bags, purses, backpacks, wallets, electronic devices such as: portable computers, mobile phones, removable storage media and other devices containing electronic data.
- 8.6 The persons authorized to execute the warrants be authorized to temporarily remove from the search premises any pre-selected records or other things identified to be searched at the end of any day of searching for the purposes of preserving its integrity or to prevent the loss or destruction of the said records or other things. These records or other things will remain sealed and will be kept in the custody of the authorized persons executing the warrants during this period of temporary removal. These records or other things will be returned to the premises on the day when the authorized persons next return to the search premises.

## **9. SOLICITOR-CLIENT PRIVILEGE – PRIVILÈGE AVOCAT-CLIENT**

**The following information constitutes the reasonable grounds to believe that a law office, or a part thereof, will be on the premises:**

**Les renseignements suivants contiennent les motifs raisonnables de croire qu'un bureau d'avocat se trouvera ou non, ou en partie, sur les lieux :**

- 9.1 I am not seeking records or other things that may be subject to a claim of solicitor-client privilege. Prior to the final removal of any seized records from the premises, a



reasonable opportunity will be afforded to the occupants of the premises and/or their counsel to claim solicitor-client privilege on any records.

- 9.2 On March 12, 2018, I used "Canada Law List" to determine whether a law office, or part thereof, may be located at the premises to be searched.
- 9.3 My search for "Metroland" returned no results.
- 9.4 I am not seeking authorization to search records or other things contained in law offices on the premises listed in Part 4 of this Information. Should the need to search a law office arise, I will seek a separate judicial authorization to do so.

*Treatment of Solicitor-Client Privilege, Generally*

- 9.5 If an authorized representative of the Commissioner has reason to believe that a record located at the premises specified in Part 4 of this Information may be subject to solicitor-client privilege, the record will be sealed whether or not a claim of solicitor-client privilege is made, unless the representative of the client determines at that time, after examining the record in question, that no privilege applies or waives any privilege over the record; or, unless the authorized representative of the Commissioner desists from examining or copying the record. In making this determination, the authorized representative of the Commissioner makes a preliminary assessment only. He or she neither examines the record extensively nor decides whether the privilege applies.
- 9.6 Should a claim of solicitor-client privilege be made on any of the records seized by authorized representatives of the Commissioner, the records subject to that claim will be sealed and treated in the manner outlined in paragraph 9.9 below.
- 9.7 Records which are sealed will be placed in the custody of one of the following parties, as authorized by subsection 19(3) of the Act:



- 9.7.1 The registrar, prothonotary or other like officer of the Superior Court of Ontario or of the Federal Court;
- 9.7.2 A sheriff of the district or county in which the record was ordered to be produced or in which it was found; or,
- 9.7.3 Some person agreed on between the Commissioner's representative and the person who makes the claim of privilege.

## **10. JOURNALISTIC SOURCE PRIVILEGE – PRIVILÈGE SOURCE JOURNALISTIQUE**

**The following information constitutes the reasonable grounds to believe that records or other things that could be subject to a claim of journalistic source privilege will be on the premises:**

**Les renseignements suivants contiennent les motifs raisonnables de croire que les documents ou autres choses qui pourraient faire l'objet d'une revendication de privilège source journalistique seront sur les lieux :**

- 10.1 I believe that Metroland employ journalists, who may have offices on the premises, referenced in Part 4 above. I am not seeking records or other things that may be subject to a claim of journalistic source privilege. Prior to the final removal of any seized records from the premises, a reasonable opportunity will be afforded to the occupants of the premises and/or their counsel to claim journalistic source privilege on any records.

### **Treatment of Journalistic Source Privilege**

- 10.2 If an authorized representative of the Commissioner has reason to believe that a record located at the premises specified in Part 4 of this Information may be subject to journalistic source privilege, the record will be sealed whether or not a claim of journalistic source privilege is made, unless the representative Metroland



determines at that time, after examining the record in question, that no privilege applies or waives any privilege over the record; or, unless the authorized representative of the Commissioner desists from examining or copying the record. In making this determination, the authorized representative of the Commissioner makes a preliminary assessment only. He or she neither examines the record extensively nor decides whether the privilege applies.

- 10.3 Should a claim of journalistic source privilege be made on any of the records seized by authorized representatives of the Commissioner, the records subject to that claim will be sealed and treated in the manner that mirrors the process applicable to claims of solicitor-client privilege, described in Part 9 above.

## **11. CONCLUSION**

**The Affiant requests that warrants be granted to search the premises, described in Part 4, for the records or other things described in Part 5, and to copy them or seize them for examination and copying.**

**Le dénonciateur demande que des mandats soient décernés afin de perquisitionner les lieux mentionnés en partie 4 en vue d'obtenir les documents ou autres choses décrits en partie 5, et d'en prendre copie, ou de les emporter pour en faire l'examen ou en prendre des copies.**

- 11.1 As revealed in this Information and in Exhibit A, I have reasonable grounds to believe, and do believe, that:

11.1.1 Offences have been committed by Postmedia and Torstar during the Relevant Time Period, contrary to paragraphs 45(1)(b) and/or (c) of the Act;

11.1.2 The records or other things to be searched for are at the premises to be searched and will afford evidence respecting the commission of the offences; and



11.1.3 Searching computer systems will be necessary.

AFFIRMED BEFORE ME at the City  
of Gatineau, in the Province of Quebec,  
this 13 day of March 2018

*Jo. Gravelle-Lévesque*  
Commissioner of Oaths in and for the  
Province of Quebec and Canada *67.847*

*Pierre-Yves Guay*  
Pierre-Yves Guay (the Affiant)



