

**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*.

WARRANT 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

**44 Frid Street
Hamilton, Ontario
L8N 3G3**

UPON the application of Pierre-Yves Guay, an authorized representative of the Commissioner of Competition (the "**Commissioner**"), appointed under the *Competition Act* (the "**Act**");

AND UPON reading the Information on oath of Pierre-Yves Guay;

AND UPON being satisfied that the requirements of sections 15 and 16 of the Act have been met;

IT IS ORDERED that this warrant be issued authorizing the Commissioner and the persons named in or authorized by this warrant to enter the premises described in this warrant, search for records or other things described in this warrant, and copy them or seize them for examination and copying.

1. **THE FOLLOWING PERSONS ARE AUTHORIZED TO ENTER THE PREMISES DESCRIBED IN PART 3 OF THIS WARRANT, SEARCH FOR ANY RECORDS OR OTHER THINGS DESCRIBED IN PART 5 OF THIS WARRANT AND COPY THEM OR SEIZE THEM FOR EXAMINATION AND COPYING, IN ACCORDANCE WITH THIS WARRANT:**

- 1.1 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.

- 1.2 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.

2. **THE OFFENCES WITH RESPECT OF WHICH THIS WARRANT IS ISSUED ARE THE FOLLOWING:**

- 2.1 That Postmedia and Torstar, 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 available to individuals and businesses 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 available to individuals and businesses in specific geographic areas, and did thereby commit an indictable offence contrary to paragraph 45(1)(c) of the Act.

3. THE PREMISES TO BE SEARCHED ARE:

**The Hamilton Spectator
44 Frid Street
Hamilton, Ontario
L8N 3G3**

including all storage, record-keeping areas and any other additional office space used by Metroland that are located in and about 44 Frid Street, Hamilton, Ontario L8N 3G3

4. DEFINITIONS:

"Acquired Properties" means the following paid daily, free and paid community, and free daily commuter newspapers:

1. *24 Hours Toronto* (free daily commuter)
2. *24 Hours Vancouver* (free daily commuter)
3. *Barrie Examiner* (paid daily)
4. *Belleville News* (free weekly)
5. *Bradford Times* (free weekly)
6. *Brant News* (free weekly)
7. *Central Hastings News* (free weekly)
8. *Collingwood Enterprise Bulletin* (free and paid weekly)
9. *Exeter Times-Advocate* (and the *Exeter Weekender*) (paid weekly)
10. *Fort Erie Times* (free weekly)
11. *Frontenac Gazette* (free weekly)
12. *Innisfil Examiner* (free weekly)
13. *In Port News* (Port Colborne) (free weekly)
14. *Kanata Courier-Standard* (free weekly)
15. *Kingston Heritage* (free weekly)
16. *Meaford Express* (paid weekly)
17. *Metro Ottawa* (free daily commuter)
18. *Metro Winnipeg* (free daily commuter)
19. *Nepean/Barrhaven News* (free weekly)
20. *Niagara Advance* (free weekly)
21. *Niagara Falls Review* (paid daily)
22. *Norfolk News* (free weekly)
23. *Northumberland Today* (paid daily)
24. *Orillia Packet and Times* (paid daily)

25. *Orleans News* (free weekly)
26. *Ottawa East News* (free weekly)
27. *Ottawa South News* (free weekly)
28. *Ottawa West News* (free weekly)
29. *Our London* (free weekly)
30. *Pelham News* (free weekly)
31. *Peterborough Examiner* (paid daily)
32. *Quinte West News* (free weekly)
33. *St. Catharines Standard* (paid daily)
34. *St. Lawrence News* (free weekly)
35. *St. Mary's Journal-Argus* (and *The St. Mary's Weekender*) (paid weekly)
36. *St. Thomas/Elgin Weekly News* (free weekly)
37. *Stittsville News* (free weekly)
38. *Stratford City Gazette* (free weekly)
39. *Thorold Niagara News* (free weekly)
40. *Welland Tribune* (paid daily)
41. *West Carleton Review* (free weekly)

"*Asset Purchase Agreement*" means the agreement of purchase and sale and related schedules to transfer ownership of the Acquired Properties between Postmedia and Torstar dated November 27, 2017;

"*Advertising Services*" means the production or supply of print advertising, digital advertising and related services available to businesses and individuals through Print Newspapers and their respective digital platforms;

"*Closing Date*" means November 27, 2017, as per the Asset Purchase Agreement;

"*communication*" means any discussion, conversation, inquiry, disclosure or exchange of information, however made, whether in person, by telephone, in writing, electronically, by facsimile or by any other means;

"*computer password*" has the same meaning as in subsection 342.1(2) of the *Criminal Code*;

"*computer program*" has the same meaning as in subsection 342.1(2) of the *Criminal Code*;

"*computer service*" has the same meaning as in subsection 342.1(2) of the *Criminal Code*;

"*computer system*" has the same meaning as in subsection 342.1(2) of the *Criminal Code*;

"coverage" means the percentage of individuals in a specific target group/geographic area reached by a publication/combination of publications;

"data" has the same meaning as set out in section 2 of the Act and means representations, including signs, signals or symbols, that are capable of being understood by an individual or processed by a computer system or other device;

"flyer" means unaddressed, targeted advertising vehicle;

"Flyer Distribution Services" refers to insert/flyer packaging and/or distribution and related services;

"free community newspaper" means a free publication that is published one (1) to three (3) times per week, generally delivered to all deliverable households in its coverage area;

"free daily commuter newspaper" means a free publication that is published five (5) to seven (7) days per week, traditionally in tabloid format, generally available to commuters in various locations in its coverage area;

"Free Daily News" means Free Daily News Group Inc., an affiliate of Torstar;

"including" means including, but not limited to;

"information" has the meaning provided in the amended section 2 of the Act and is defined as including data;

"Metroland" means Metroland Media Group Ltd., an affiliate of Torstar;

"Non-Compete Agreement" means the Confidentiality and Non-Competition Agreement and related schedules between Postmedia and Torstar (1) to maintain the confidentiality of trade secrets, know-how and other non-public, confidential or proprietary information, and (2) to establish non-competition terms and conditions in specific geographic areas, dated November 27, 2017;

"paid community newspaper" means a paid publication that is published one (1) to three (3) times per week and distributed to subscribers or through single copy sales the coverage area of that publication;

"paid daily newspaper" means a paid publication that is published five (5) to seven (7) days per week, traditionally in broadsheet format; it is distributed to subscribers or through

single copy sales, and some may have extended market coverage available to non-subscribers;

"person" means any individual, partnership, limited partnership, firm, corporation, association, trust, unincorporated organization, or other entity;

"Print Newspapers" refers to print publications that include free and paid community newspapers, free daily commuter newspapers, and paid daily newspapers, but excludes nationally distributed newspapers;

"Postmedia" means Postmedia Network Canada Corp. and Postmedia Network Inc., their domestic and foreign parents, predecessors, successors, affiliates, divisions and other related entities in Canada;

"reach" means a measurement of the cumulative unduplicated target audience potentially exposed one or more times to a particular publication in a given time frame;

"record" has the meaning provided in section 2 of the Act and means a medium on which information is registered or marked;

"Relevant Time Period" includes the calendar year 2017 and January 2018, the exact dates being unknown;

"Senior Officer" means the chairperson, president, chief executive officer, vice-president, secretary, treasurer, chief financial officer, chief operating officer, general manager, managing director, or any individual who performs their functions;

"target audience/market" means a population segment toward whom advertising is specifically directed and measured against; may be defined by demographics, lifestyle, media usage and product usage;

"Torstar" means Torstar Corporation, its domestic and foreign parents, predecessors, successors, affiliates, divisions and other related entities in Canada;

"transition period" means a period of up to eight (8) weeks following the Closing Date, which could be extended by either Postmedia or Torstar for up to an additional eight (8) weeks, as per the Transaction documents; and,

"Transitional Services Agreement" means Exhibit 8.10(c) attached to the Asset Purchase Agreement, dated November 27, 2017, which sets out which services relating to the

Acquired Properties are to be provided by Postmedia and Torstar during the transition period.

5. THE RECORDS OR OTHER THINGS TO BE SEARCHED FOR ARE THE FOLLOWING:

Corporate Records or Other Things

- 5.1 All records or other things relating to the corporate structure of Metroland and the ownership control or management of Metroland by its owners, officers, directors, managers, employees, representatives and agents.
- 5.2 All records or other things relating to the ownership control or management of each of the Acquired Properties.

Records or Other Things Relating to Identities

- 5.3 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 Metroland.
- 5.4 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.
- 5.5 All records or other things relating to business, entertainment, travel, and similar expenses incurred by Metroland, including invoices for cellular phone communications and statements used for the purpose of reimbursement.

Records or Other Things Relating to the Transaction Documents

- 5.6 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.
- 5.7 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.

- 5.8 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.
- 5.9 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.
- 5.10 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.
- 5.11 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 Metroland.
- 5.12 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.
- 5.13 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.
- 5.14 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 in possession of Metroland that were prepared by Postmedia.

- 5.15 All records or other things relating to the methodologies applied to determine the value of the Acquired Properties of Torstar relative to those of Postmedia, as well as the final valuations arrived at for each of the Acquired Properties.
- 5.16 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.
- 5.17 All records or other things relating to the evaluation, analysis or assessment of any alternatives to the closure of the Acquired Properties.

Records or Other Things Relating to Customers of the Acquired Properties

- 5.18 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.
- 5.19 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.

Records or Other Things Available to Any Computer System

- 5.20 All records or other things described in paragraphs 5.1 through 5.19 above contained in, or available to, any computer system on the premises to be searched.

Other Things to be Searched For

- 5.21 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. OPERATION OF COMPUTER SYSTEMS:

To search data contained in or available to any computer system for records or other things described in Part 5 of this warrant:

- 6.1 This warrant authorizes the Electronic Evidence Officers listed in paragraph 1.2 of this warrant, pursuant to sections 15 and 16(1) of the Act, to use or cause to be used any computer system on the premises to search any data contained in or available to the computer system; to reproduce the record or cause it to be reproduced from the data in the form of a printout or other intelligible output and to seize the printout or other output for examination or copying.
- 6.2 The Electronic Evidence Officers authorized to execute this warrant are authorized to do the following, to assist with accessing, searching, examining, copying, and seizing data found on computer systems, data storage devices or media:
 - 6.2.1 Use forensic practices and procedures for acquiring electronic evidence, while attempting to minimize the impact on business functions;
 - 6.2.2 Use or cause to be used, and/or seize, any computer system, data storage device, medium, computer programs or associated documentation, including operating instructions, manuals and service records present on the premises;
 - 6.2.3 Use or cause to be used, any computer system, data storage device, medium or computer program brought onto the premises by the persons authorized to execute the warrant;
 - 6.2.4 Require any person who is in possession or control of the premises, including, where applicable, a computer system administrator or other custodian of information of a computer system on the premises, to permit any person named in the warrant to use or cause to be used any computer system or part of it on the premises by making accessible all data contained in any computer system, computer program, data storage device or medium for the purposes of searching or seizing such data;
 - 6.2.5 Seize or produce an electronic copy of records or other things from which they are unable to acquire the substance or meaning at the premises, for further off-site examination; and,

6.2.6 Employ, retain, direct or engage other persons to assist in the search of the named premises including the services of computer consultants or diagnosticians, which persons would, in the presence of persons authorized in the warrant, attend at the premises and perform such tasks as may assist the persons authorized in the warrant to carry out their functions authorized by the warrant.

6.3 The following practices and procedures may be used as circumstances dictate:

6.3.1 Search any data contained in or available to the computer system, data storage device or medium and print or cause to be printed a copy of the records;

6.3.2 Search any data contained in or available to the computer system, data storage device or medium and produce an electronic copy of the records; and/or,

6.3.3 Seize the records or other things such as the computer system, data storage device or medium for examination or copying.

6.4 Some of these forensic practices and procedures, specifically the steps described above in paragraphs 6.3.2 and 6.3.3 of this warrant, may result in the seizure of records or other things containing data that are not described in Part 5 of this warrant. Electronic Evidence Officers and anyone under their direction will take steps to ensure that such data, with the exception of data that falls within the provisions of section 489 of the *Criminal Code*, will not be accessible to anyone else. The following procedures will be followed in order to identify, search and reproduce records or other things described in Part 5 of this warrant, while minimizing access to data that contain records or other things that are not described in Part 5 of this warrant:

6.4.1 Where an electronic copy is produced as provided for in paragraph 6.3.2 of this warrant:

6.4.1.1. Two copies of the seized copy will be made;

6.4.1.2. The seized copy and one of the copies mentioned in subparagraph 6.4.1.1 will be sealed to protect the integrity of the records or other things;

6.4.1.3. The remaining copy from subparagraph 6.4.1.1 will be examined by Electronic Evidence Officers and anyone under their direction to identify records or other things described in Part 5 of this warrant;

6.4.1.4. Access to the copy mentioned in subparagraph 6.4.1.3 will thereafter remain under the control of Electronic Evidence Officers;

6.4.1.5. In order to minimize the examination of data contained in records or other things that are not described in Part 5 of this warrant, the persons examining the copy mentioned in subparagraph 6.4.1.3 will use electronic discovery practices and procedures to identify records or other things described in Part 5 of this warrant; and,

6.4.1.6. Electronic Evidence Officers and anyone under their direction will keep confidential all data found within the copy mentioned in subparagraph 6.4.1.3 containing records or other things that are not described in Part 5 of this warrant, with the exception of things that fall within the provisions of section 489 of the *Criminal Code*.

6.4.2 A similar process will be followed where a person authorized to execute the warrant, other than an Electronic Evidence Officer, considers it necessary to seize records such as a computer system, data storage device or medium (as described in paragraph 6.3.3). In such a case:

6.4.2.1. The records such as: computer system, data storage device or medium will be transferred to an Electronic Evidence Officer for examination or copying; and,

6.4.2.2. Further handling will be as described above in paragraph 6.4.1.

7. DURATION OF THIS WARRANT:

7.1 This warrant is valid from the 13th day of March 2018 up to and including the 23st day of March 2018 (ten (10) days, inclusive).

7.2 This warrant shall be executed between the hours of 06:00 and 21:00, except 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. In those circumstances, execution of the warrant may continue after 21:00 on any day, to the extent necessary to avoid loss of records, data or other things to be seized provided the particular search process commenced prior to 21:00. 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. THIS WARRANT FURTHER AUTHORIZES:

- 8.1 All persons authorized in Part 1 of this warrant to enter the premises, leave them and return to them from time to time during the period of validity of the warrant for the purpose of executing it.
- 8.2 The persons authorized to execute this warrant may be accompanied by one or more Peace Officers and/or a 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 The persons authorized to execute this warrant 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 listed in Part 1 of this warrant shall be allowed to videotape the events of the search 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.
- 8.5 This warrant authorizes the representatives of the Commissioner, listed in Part 1 of this warrant, 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, and electronic devices such as portable computers, mobile phones, removable storage medium and other devices containing electronic data.

- 8.6 This warrant authorizes the representatives of the Commissioner, listed in Part 1 of this warrant, 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 record or other thing. These records or other things will remain sealed and will be kept in the custody of the authorized persons executing the warrant 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:

It is further ordered that:

- 9.1 When a claim is made that a record about to be examined, copied or seized is subject to solicitor-client privilege or when a person authorized by Part 1 of this warrant has reason to believe that a record may be subject to solicitor-client privilege unless the authorized representative of the Commissioner desists from examining and copying the record, the record must be placed in a package, suitably sealed and placed in the custody of a person named in section 19 of the Act.
- 9.2 A further warrant will be sought if an office of in-house counsel needs to be searched.

10. JOURNALISTIC SOURCE PRIVILEGE:

It is further ordered that:

- 10.1 When a claim is made that a record about to be examined, copied or seized is subject to journalistic source privilege, or when a person authorized by Part 1 of this warrant has reason to believe that a record may be subject to journalistic source privilege, unless the authorized representative of the Commissioner desists from examining and copying the record, the record must be placed in a package, suitably sealed and placed in the custody of a person in a manner mirrored in Part 9 of this warrant.

DATED at the City of Ottawa, in the Province of Ontario,
this 14th day of March, 2018.



A Judge of the Ontario Superior Court of Justice
(East Region)

