TAB 13

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No. 500-17-049725-099

SUPERIOR COURT
(Civil chamber)

COMMUNICATIONS, ENERGIE AND PAPERWORKERS UNION OF CANADA, LOCAL 145, (CEP), an employee association that is certified under the Labour Code, L.R.Q., c, C-27. and having its main place of business located at 4555, Metropolitain East, office 201 in St-Leonard, district of Montreal, province of Quebec, H1R 1ZA;

-and-

ROBERT DAVIES, typographer, domiciled and residing at 1471A, Giovannie-Caboto street, Ville Lasalle, district of Montreal, province of Quebec, H8N 3E1;

-and-

UMED GOHIL, typographer, domiciled et residing at 7809, Thelma street, Lasalle, district of Montreal, province of Quebec, H8P 1W8;

-and-

JEAN-PIERRE MARTIN, typographer, domiciled and residing at 7100, boul. Cousineau, app. 7, Saint-Hubert, district of Longueuil, province of Quebec, J3Y 9K8;

-and-

LESLIE STOCKWELL, typographer, domiciled et residing at 160, Cloutier street, app.4107, Rosemère, district of Terrebonne, province of Quebec, J7A 3Y5 ;

-and-

MARC-ANDRÉ TREMBLAY, typographer, domiciled and residing at 184, Gouin, Châteauguay, district of Beauharnois, province of Quebec, J6J 5L5;

-and-

JOSEPH BRAZEAU, typographer, domiciled et residing at 18, Robitaille street, Notre-Dame de l'Ile Perrot, district of Beauharnois, province of Québec, J7V 6S7;

-and -

HORACE HOLLOWAY, typographer, domiciled and residing at 601, Blaise street, Fabreville, district of Laval, province of Québec, H7P 5M7;

-and-

PIERRE REBETEZ, typographer, domiciled et residing at 3205, Appleton street, Montreal, district of Montreal, province of Quebec, H3S 1L6;

-and-

MICHAEL THOMSON, typographer, domiciled and residing at 4015, Brahms street, Brossard, district of Longueuil, province of Quebec, J4Z 2W9 ;

PLAINTIFFS

V.

ME ANDRÉ SYLVESTRE, in his quality as arbitrator, having his office at 1300, Notre-Dame street, Berthierville, district of Joliette, province of Quebec, J0K 1A0;

DEFENDANT

-and-

THE GAZETTE, A DIVISION OF CANWEST PUBLISHING INC. **(previously known as** « THE GAZETTE, A DIVISION OF SOUTHAM INC. »), legally constituted corporation, having its place of business at 1010, Ste-Catherine street West, suite 200, Montreal, district of Montreal, province of Quebec, H3B 5L1;

-and-

Postmedia Network inc., successor of THE GAZETTE, A DIVISION OF CANWEST PUBLISHING INC. **(previously known as** « THE GAZETTE, A DIVISION OF SOUTHAM INC. »), legally constituted corporation, having its place of business at 1010, Ste-Catherine street West, suite 200, Montreal, district of Montreal, province of Quebec, H3B 5L1 ;

-and-

ERIBERTO DI PAOLO, typographer, residing and domiciled at 6752, Jean-Milot, Montreal, district of Montreal, province of Quebec, H1M 2Y9;

-and-

RITA BLONDIN, typographer, residing and domiciled at 588, boul. Antoine-Séguin,

Saint-Eustache, district of Terrebonne, province of Quebec, J7P 5N6;

IMPLEADED PARTIES

MOTION TO INTRODUCE PROCEEDINGS IN ANNULMENT
(Art. 947 and following of the C.p.c.)
AFFIDAVIT AND NOTICE OF PRESENTATION

The Plaintiff states that:

1. The Plaintiff (Union) is certified under the Labour Code in order to represent the typographers in the employ of the impleaded party Postmedia and The Gazette (Employer), and constitutes an employee association, such as it appears from the certificate issued under section 60 of the C.p.c. **(P-1)**;

Preamble

2. The Union and the Employer have been bound in the past by successive collective agreements governing the work conditions of the typographers represented by the Union ;

3. They have also been bound, and are still bound, by tripartite Civil Agreements (1982 et 1987) between the Union, the Employer and each of the employees that were in the employ of The Gazette;

4. These agreements guaranteed, for the employees that were in the employ of the Employer at the time of the signing of the agreements, that their regular employment would be maintained in the composing room, until each of them reached the age of 65;

5. Moreover, the 1987 Agreement provided in its article XI that each of the parties agreed to transmit to the other upon request its best final offers within the framework of the negotiation of a new collective agreement; the idea was to incorporate into the agreement a mandatory arbitration scheme in case the negotiations between the Employer and the Union for the renewal of the collective agreement failed;

6. Once the decision of the arbitrator was rendered, it would be final and binding for the parties and constitute their collective agreement;

7. The guarantees provided in the 1987 Agreement aimed to ensure the perennial nature of the Employer's contractual obligations (employment security and the maintaining of the standard of life);

8. The original guarantees of 1982 as well as the additional guarantees of 1987 were obtained following fundamental concessions with regards to the provisions

of the collective agreement concerning the Union's exclusive jurisdiction over the tasks carried out by its members;

9. The Employer obtained the right to introduce technological changes that it desired to make and the employees represented by the Union obtained guaranteed job security and the maintaining of the standard of life until the age of 65; on the date of the signing of the tripartite agreements of 1982, there were 200 typographers in the employ of the employer whereas in 1987, at the time of the signing of the new tripartite agreements, there were 132 left;

10. On May 17th 1993, whereas there were only 70 some employees left in the composing room, all of whom being signatories to the Agreements of 1982 and 1987, the Employer declared the first lock-out concerning the 11 employees that are implicated in the present legal proceedings;

11. The ruling of the arbitrator seized of the mandatory arbitration was rendered on August 18th, 1994;

12. At the expiry of the 1993-1996 collective agreement, the Employer, who had still not called back to work the employees in its employ in the fall of 1994, decided to impose upon them on June 3rd 1996 a second lock-out;

13. At the expiry of the 1993-1996 collective agreement, the Employer received from the Union a request for the parties to exchange their best final offers in view of a mandatory arbitration within the meaning of the Agreement in 1987;

14. The Employer refused to proceed to such an exchange which led to the filing of two (2) disagreements under both the expired collective agreement and the 1982 and 1987 Agreements;

The right to mandatory arbitration as well as damages

15. Following a hearing on the disagreements in front of arbitrator Sylvestre, he rendered his arbitration decision on February 5th, 1988;

16. In his decision, arbitrator Sylvestre ordered among others the exchange of the best final offers and the submission to mandatory arbitration for the purposes of imposing a collective agreement as well the payment of salary and benefits as provided for in the collective agreement for the whole duration of the lock-out ;

17. This arbitration decision was annulled in judicial review by the Superior Court on October 30th 1998;

18. This Superior Court judgment was the subject of an appeal at the Quebec Court of Appeal which rendered judgment **(P-2)** on December 15th 1999, judgment by which the Court of Appeal ordered the following:

> *« Therefore, I would ALLOW the appeal in part, ORDER the employer to submit to the process of exchanging best final offers within the 30 days following this decision, QUASH the two orders on payment and reimbursement of*

the salaries and benefits lost because of the lock-out and RETURN the file to the arbitrator, who will determine whether any damages should be awarded the 11 employees as a result of the employer's failure to respect article Xi of the 1987 agreement. »;
(Underlined by us.)

The arbitration of the damages

19. Following this judgment by the Court of Appeal, the hearings began again in front of Arbitrator Sylvestre *for him to determine, if such is the case, the damages that can be awarded to the 11 employees as a result of the Employer's failure to respect article XI in the 1987 agreement;*

20. As of March 18th 2005, Arbitrator Sylvestre rendered its decision **(P-3)**; this decision was rendered following the referral of the Court of Appeal and according to the powers provided by the Code of civil procedure in sections 940 and following;

21. In his decision, the arbitrator rejects the entire request for damages filed by the employees stating that there was no fault other than the failure to respect section XI of the 1987 Agreement, whereas the Court of Appeal specifically referred to this fault;

22. As such, five years after the Court of Appeal judgment, the arbitrator disregards the judgment of the Court of Appeal and refuses to exercise his mandate;

The annulment of the arbitration (P-3) by the Court of Appeal

23. As of June 14th 2005, the plaintiffs have filed a motion for annulment for the main reason that the arbitrator had refused to apply the Court of Appeal order provided in its decision of December 15th 1999 **(P-2);**

24. After the Superior Court refused to annul the arbitration decision (P-3), the Court of Appeal rendered judgment on March 17th, 2008 **(P-4)**, cancelling this decision by rendering the following rulings:

> *« **[4] GRANTS** the appeal with costs against the respondent, The Gazette, A Division of Southam Inc., except for the costs relative to the books of authorities;*
>
> ***[5] QUASHES** the Superior Court judgment; and, proceeding to render the judgment that should have been rendered:*
>
> > ***GRANTS** the petitioners' motion for annulment of arbitrator André Sylvestre's arbitration award of March 18th 2005 with costs against the impleaded party, The Gazette, a division of Southam Inc.;*
> >
> > ***ORDERS** that the case be remanded to arbitrator Sylvestre so that he may comply with the Court of Appeal judgments of December 15, 1999 and August 6, 2003.*

25. The reasons of the Court, given by Justice Pelletier, are particularly clear as to the arbitrator's mandate. He must, among other things, determine the period during which damages must be awarded taking into account the following question (provided for in paragraph 30, a) :

> *« [30 a)] If the exchange of offers had taken place normally, after the sending of the April 30, 1996 notice, when would the collective agreement have been finalized or, in other words, when would the lock-out have ended? »*;

The new arbitration decision concerning the damages

26. The arbitrator, after having started the hearing of the dispute again, rendered on January 21st 2009, a new arbitration decision **(P-5)** which determines the period during which the employees have the right to damages;

27. This decision provides that :

> *« [59] In the circumstances, the salaries and benefits owed by The Gazette to the complainants cover the period from the month of May 1999 to January 2000. (...). »*

The new arbitration decision is illegal in that it does not respect the decisions of the Court of Appeal rendered on December 15th 1999, August 6th 2003 and March 17th 2008

28. The plaintiffs are requesting the annulment of the arbitration decision for the main reason that it does not respect the decisions of the Court of Appeal rendered on December 15th 1999, August 6th 2003 and March 17th 2008, the last one aiming to specify the scope of the previous decisions;

29. The arbitrator, after having stated the facts that were relevant according to him, analyzes the questions that were submitted by the parties, which are the Union and the 11 typographers, two of which being M. DiPaolo and Ms. Blondin who represent themselves personally;

30. The question that the arbitrator had to rule on was not related to the evaluation of the employees' behaviour but the fault of the employer, such as it was underlined by the Court of Appeal in its decision **P-4:**

> « [24] *That clarification having been made, it is important to recall that our Court's 1999 judgment very clearly identified the contractual fault committed by The Gazette in violation of the provisions of Article XI of the 1987 version of the tripartite agreement. Under a notice sent on April 30, 1996, the very date on which the collective agreement imposed by arbitrator Leboeuf in 1993 expired, The Gazette was required to exchange its last best final offers with the union no later than May 2, 1996. The Gazette did not do so and it is that fault that our Court pointed to as having possibly caused the damage. That being so, what the arbitrator had to do was determine whether the contractual*

breach had had that effect in reality and, if so, determine the appropriate amount of compensation. »;

31. His analysis of the question begins on paragraph 52 and ends on paragraph 56 of the decision;

32. The only paragraph that deals with the fault in question is paragraph 56, the previous paragraphs constitute an evaluation by the arbitrator of certain facts, an evaluation that is tainted by partiality against the typographers;

33. The arbitrator begins by underlining that the Union and the plaintiffs have *acted in an intransigent manner, and this, since arbitrator Leboeuf was seized of the file* :

> « [52] *The whole of the evidence showed that if The Gazette never intended to acquiesce to all of the demands made by the union and the complainants, the latter demonstrated no willingness to compromise, from the time the matter was before arbitrator Leboeuf. Indeed, the employer imposed a lock-out in May 1993 after negotiations begun the previous February failed to produce an agreement. The union filed a grievance requesting that the 11 complainants be maintained in their jobs and that their working conditions as provided under the collective agreement be respected. On November 18 of that year, Me Leboeuf dismissed this grievance, noting that the right to lock-out was recognized and could be exercised at any time after it had been acquired. The same arbitrator, in his final award rendered on August 18, 1994, accepted the employer's final best offers. Four days later, Mr McKay informed management that "we now have a new contract". The parties signed the renewed collective agreement in October 1994.* »

34. Which intransigence is at issue and on whose part?

35. It is true that the employer could not come to an agreement with the Union in 1993 and that he triggered a lock-out to force the Union and its members into accepting its position. But we have to remember that the Employer, at that moment, was putting into question the perennial nature of the 1982 and 1987 agreements by demanding, among other things, that mandatory arbitration on the collective agreement become optional in the event of a disagreement concerning the renewal of the collective agreement;

36. However, the Court of Appeal had decided that these agreements and the rights that are provided within have to be considered as being acquired rights for the employees, since its decision on December 15th 1999:

> « *These agreements are not individual work contracts. They are tripartite contracts that exist only through the will of the signatories even if their incorporation info the collective agreement may have extended their effects to an employée who had not signed them[21]. These agreements deal with vested rights, collectively speaking, and cannot be changed by the union and the employer without the consent of the employees. Otherwise, the duration of the agreements desired by all*

the parties would be repudiated and the employees would then have signed a fool's agreement. »
(Underlined by us)

37. As we can see, the Court of Appeal decided that these agreements could not be amended by the decision of Arbitrator Leboeuf who, by his arbitration decision, illegally amended the collective agreement by rendering the arbitration of the agreement optional;

38. The Arbitrator avoids mentioning that before the other arbitrator, the employer contested his competence to rule on the dispute as well as the legality of the obligatory arbitration clause;

39. Arbitrator Leboeuf rendered three decisions on questions relating to his competence and to the legality of the process which are the September 28th 1993 **(P-6)**, the November 18th 1993 **(P-7)** and January 7th 1994 **(P-8)** decisions;

40. The Arbitrator continues his tally of what he calls a *short truce* on the part of the Union and the employees underlining in paragraph 53 that :

> *« [53] However, the truce was short-lived. On February 8, 1995, the union filed a grievance against the employer for failing to recall the 11 complainants, seeking as remedy that they be recalled forthwith. The dispute was sent to arbitration before Me Claude H. Foisy, who ruled in the union's favour on April 25, 1996. ».*

41. There as well, the arbitrator presents the current file as though the Union and its members were intransigent whereas the employer, despite the fact that the arbitrator had accepted its position as being the collective convention, paid his employees without making them work when all they wanted was to provide work in exchange for the payment of the salary;

42. Finally, in paragraph 55 of his decision, the arbitrator underlines the entanglements concerning the period after the one for which he had to decide if he should award damages;

43. Incidentally, the employees have had, until this day, no compensation for the period after January 21st 2000;

The hypothesis retained by the arbitrator to determine the period of compensation

44. After having tried to show the intransigence of the employees, the arbitrator finally comes to the determination of the period during which the employees would have the right to compensation by choosing one of the hypotheses proposed by employer's attorneys. He expresses himself in the following manner:

> *« [56] In order to answer question (a), determining a date on which the collective agreement would have been finalized and the lock-out would have ended had the employer agreed to exchange final best offers, the arbitrator had to consider several different scenarios. The most logical stems from the claim by counsel for the employer that, on April 30,*

1996, the union was not ready to exchange its final best offers. Indeed, in 2000 and 2008, the union offers could not be located and no reason for this was ever given by the union or the complainants. The arbitrator concludes from this that the latter preferred to opt for their disagreement to be heard by the grievance arbitrator to obtain adjudication of their rights. This first stage was eventually to be followed by a second, interest arbitration of final best offers. In these circumstances, the undersigned considers the scenario proposed by counsel for the employer to be the least flawed. Therefore, to answer the question, he has added the time he took to settle the disagreement, from June 1996 to February 1998, and the 15 months it took Me Leboeuf to render his award. Under this optimistic scenario, an arbitral award deciding the dispute would have been rendered in May 1999, followed a few days later by the signing of a renewed collective agreement and the end of the lock-out »;

45. As such, the arbitrator, relying in all appearance on his previous comments, confirms that the Union *was not ready to exchange best final offers* and they *preferred to choose arbitration of their dispute by a grievance arbitrator in order to have their rights adjudicated*;

46. The Court of Appeal, in its decision on March 17th 2008 **(P-4)** ment ions at paragraph 25 that:

« [25] *Unfortunately, and by his own admission, the arbitrator lost the thread of the reasoning that, in December 1999, had led the Court to remand the case to him for a ruling on the matter. In all likelihood, Mtre. Sylvestre was disconcerted by the fact that, at that time, the Court had set aside his order to pay the wages and benefits under the 1987 version of the tripartite agreement.* (...). ».

47. The Court adds in paragraphs 26, 27 and 28 that:

« [26] *Faced with what he considered an enigma, the arbitrator began looking for a separate fault that the employer might have committed during the lock-out period*[1] *:*

[103] In other words, based on what the arbitrator understands from its directives, the Court of Appeal conferred on him the power to award damages if he found that the employer had engaged in the abusive exercise of its right to lock-out. However, apart from the extremely long duration of the lock-out, the arbitrator was unable to find evidence of a specific tie after June 3, 1996 when the employer should have terminated the lock-out. In standing firm until January 21, 2000, by its refusal to exchange its last final best offers, it did not demonstrate clemency toward its 11 typographers. But, as confirmed by Messrs. Di Paolo and Thomson, the typographers were

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> *so confident of being right that they had no intention of making any concessions. .*
>
> [27] *Not having found one, he concluded as follows*[2] *:*
>
> *[104] Given the picture as a whole, the arbitrator cannot find, on the basis of the evidence, that the employer unduly prolonged the lock-out. Therefore, he cannot order it to pay the damages claimed by the 11 complainants for the period from June 3, 1996 to January 21, 2000.*
>
> [28] *With respect, I believe that there was a misunderstanding and that the arbitrator's confusion led him to distort the dispute of which he was seized.*
>
> [29] *In finding that a lock-out could not be unduly continued, the arbitrator did not answer the question asked by the Court in its 1999 judgment. In so doing, he did not exercise the jurisdiction ascribed to him.*»;

48. The plaintiffs submit here that once again here the arbitrator distorted the dispute he was seized of by trying via another way to find another fault, this time on the part of the Union and the employees, in order to avoid determining correctly the period of compensation;

49. Indeed, the Arbitrator criticizes the Union for not having been ready to exchange their best final offers;

50. However, this was neither the question nor the evidence filed in front of the arbitrator, evidence on the basis of which the Court of Appeal rendered its decisions;

51. In its decision dated December 15th 1999 **(P-2)**, the Court of Appeal, on page 30 states that:

> *« In interpreting the texts submitted to him, the arbitrator was justified in concluding that the obligatory process for renewing the collective agreement provided for in article XI of the 1987 had not been terminated by arbitrator Leboeuf's award, and that the employer failed to meet its obligations when it did not respond to the union's request, on April 30, 1996, that it submit its best final offers. »*;
> (Underlined by us)

52. The evidence is to the effect that the Union transmitted a notice on April 30th 1996 to the employer so that it proceeds to the exchange of the offers. However, the employer refused by a letter dated May 3rd 1996 by invoking that he did not have any obligation in this regard since the arbitration had become optional;

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53. The question is not to know if the Union had or did not have a draft of final offers since the employer refused to proceed by advising the Union. Incidentally, we note paragraph 24 of the Court of Appeal decision **(P-4) :**

> « [24] *That clarification having been made, it is important to recall that our Court's 1999 judgment very clearly identified the contractual fault committed by The Gazette in violation of the provisions of Article XI of the 1987 version of the tripartite agreement. Under a notice sent on April 30, 1996, the very date on which the collective agreement imposed by arbitrator Leboeuf in 1993 expired, The Gazette was required to exchange its last best final offers with the union no later than May 2, 1996. The Gazette did not do so and it is that fault that our Court pointed to as having possibly caused the damage. That being so, what the arbitrator had to do was determine whether the contractual breach had had that effect in reality and, if so, determine the appropriate amount of compensation.* »; (underlined by us)

54. The arbitrator opted for the employer's hypothesis by invoking that :

> « [56] (...)*The arbitrator concludes from this that the latter preferred to opt for their disagreement to be heard by the grievance arbitrator to obtain adjudication of their rights. This first stage was eventually to be followed by a second, interest arbitration of final best offers.* (...). » ;

55. There is a fundamental mistake on the part of the arbitrator concerning the notions that are at issue which were a part of his mandate. Indeed, considering the categorical refusal of the employer to participate in the process of arbitration, the only recourse the Union had was in accordance with the very text of the 1982 and 1987 agreements to proceed to the filing of the disagreements as though it was a grievance in order to obtain from the arbitrator an order for the employer to submit to the process of exchanging the best offers in accordance with the Agreements;

56. Incidentally, the Court of Appeal analyzed this question in order to conclude that the disagreement requesting an order to force the employer to submit to the process had been duly filed in accordance with the Agreements; the Court reminds the relevant texts on page 18 of its decision from December 15th 1999 :

> « 1) *The grievance of June 4th 1996 provided that:*
> *The present grievance is filed in under the collective labour agreement and each of the tripartites agreements concluded on or about November 12, 1982 and March 5th, 1987.*
>
> *2) The 1982 and 1987 tripartite agreements stipulated in the clause on grievance procedures that:*
>
> *In case of a disagreement over the interpretation, application and/or alleged violation of this agreement, the matter will be deemed a grievance and settled in the manner provided for in the grievance and arbitration procedures of the collective agreement. (emphasis added)*

57. The grievance that had been allowed by the arbitrator in February 1998 and maintained for the process by the Court of Appeal included the demand that the arbitrator issue an order for the employer to submit to the exchange process (see paragraphs 8 and 9 in **P-5**);

58. It is incidentally this demand that was reiterated by the Court of Appeal. The ruling from the Court only concerned the employer and not the Union:

> *« order the employer to submit to the process of exchanging the best final offers within 30 days of the present decision ».*

59. The exchange finally took place, after this ruling, on January 21st 2000;

60. Considering these events and the decisions of the Court of Appeal, the decision by the arbitrator to attribute to the Union the fault of, when faced with an interpretation of the Agreements, using the recourse provided by these Agreements in order to have them be respected, cannot be justified and is contrary to his mandate which is to make a determination within the context of the respect of the process and not its violation and the recourse that it led to;

The duration of the arbitration process

61. The evidence showed that the lock-out began on June 3rd 1996, that the Employer accepted to respect the order by the Court of Appeal to participate in the mandatory arbitration on January 21st 2000, and that the arbitration tribunal seized of the dispute on the renewal of the collective agreement pronounced its decision on June 4th 2001 and, finally, that the lock-out ended by the homologation of this decision in May 2002, homologation which allowed the return to work for the employees;

62. As we have seen, the arbitrator should have taken for granted that the process had been engaged without contestation in May 1996;

63. In such a context, there can only be two possibilities: after the exchange the parties agree or the arbitration proceeds for the imposition of a collective agreement;

64. The evidence revealed that in 1990 after the exchange of the offers, the parties settled the collective agreement in the days that followed;

65. When there was an arbitration in 1993 in front of Leboeuf, he was seized of various objections or contestations as to his competence or the legality of the process; he rendered his last decision on these questions on January 7th 1994 **(P-8)** by mentioning on page 6 that:

> *« Consequently, we are of the view that the argument raised by the employer should not be retained and that we should now examine the merits of the "best final offers" of the parties».*

66. This evaluation took place between January 7th and August 18th 1994, which is the date of the decision imposing the collective agreement **(P-9)** ;

67. The arbitrator chose this arbitration as a point of reference for the duration of the process. If this had to be the decision, then the process took from January 7th to August 18th, which is a little over 7 months;

68. The only possible durations according to the evidence were a few days if there was an agreement or, failing which, a little over 7 months;

69. In respecting his mandate, the arbitrator could not have arrived to any other conclusions. This is not what he has done and he has, as such, once again refused to accomplish the mandate that the Court of Appeal had given him a second time;

70. The plaintiffs submit that, as decided by the Court in its decision dated March 17th 2008 **(P-4)** the decision falls under the fourth paragraph of section 946 of the *Code of civil procedure*, which is applicable in a matter of annulment by the referral that the legislator provides for in section 947.2 C.p.c.;

The Pension Plan issue

71. The arbitrator decides that the demand related to the Pension Plan is not admissible; he analyses this question in paragraphs 47 and 48 of his decision **(P-5)** ;

72. We have to relocate this issue in the context of the debate on the nature of the damages that can be claimed by the plaintiffs;

73. Upon the return of the file in front of the arbitrator after the hearing of the Court of Appeal in 1999, the parties had convened to file in the file a summary account of their claims;

74. The Union and the plaintiffs filed these accounts on March 15th 2000; the arbitrator, in its decision dated October 11th 2000 **(P-10)**, refers to them on page 30 :

> *« (...)*
> *5. The employees claim;*
> *a) the equivalent of the salary lost between May 3rd 1996 and January 21st 2000*
> *b) the benefits related to employment (such as the pension plan, collective insurance plan, etc.) and this, on May 3rd 1996 and January 21st 2000;.*
>
> *6. The employees also claim compensation for other monetary damages such as : (...) » ;*

75. The plaintiffs were thereafter represented by another attorney who claimed other damages, but maintains the one related to the pension plan;

76. The arbitrator decides that the damages can only concern the damages related to salary and other benefits provided for by the collective agreement;

77. During a hearing referred to by the arbitrator in his reasons (par. 47 and 48, decision **P-5**), there is an agreement on the capital due to the employees as compensation;

78. When the hearings in July 2008 resumed, prior to the contested decision, the attorney for the plaintiffs requested, as it had been done before, that an order be rendered for the applicable period to the effect that the Employer proceed to give the employees recognition for the purposes of the application of the pension plan for this period as being service to be credited and used to accumulate rights in the Pension Plan. The rehabilitation of the rights of the employees in the Pension Plan was not a sum to be paid to the employees and cannot be considered as being part of the capital mentioned in paragraph 77; the pension plan is integrated into section 18 of the collective agreement **(Extract, P-12)** ;

79. This claim is provided for in the decision **(P-10)** and the judgment of the Court of Appeal on August 6th 2003 **(P-11);**

80. Consequently, the arbitrator refused to apply his own decision and especially the mandate that was confirmed to him by the Court of Appeal judgment dated March 17th 2008 **(P-4)** ;

The question of the employer's claim for the salary paid from February 5th to October 30th 1998

81. The employer filed a suit against the 11 plaintiffs to claim the reimbursement of the salary paid after the February 5th 1998 arbitration decision which allowed the employees whole claim;

82. The employer had stopped paying the salary on October 30th 1998, date on which the Superior Court had annulled this decision and, by its claim, contends that the employees had no right to their salary and must reimburse it;

83. This claim was the subject of a judgment by the Superior Court on a motion to dismiss based on competence; the Court transferred the file to the arbitrator for him to decide **(P-13)**;

84. The arbitrator seized of this claim decides to not adjudicate (par. 59 and 60, decision **(P-5);**

85. The plaintiffs submit that this claim must now be rejected, since the period for which the salary was paid coincides with that during which the arbitrator should have ordered compensation including the salary;

The disagreement of July 14th 2000

86. The arbitrator is also seized of a disagreement **(P-14)** filed by the Union and the plaintiffs in order to obtain compensation for salary and benefits lost following the filing by the employer of a better offer on January 21st 2000;

The referral of the file to another arbitrator

87. The plaintiffs submit that, for what has to be done following the annulment of the contested decision, the files should be sent in front of another arbitrator ;

88. Indeed, this is the second time that the arbitrator refuses to respect the mandate given by the Court of appeal and the plaintiffs submit that it is no longer possible for this arbitrator to adjudicate; the respect of the rule that justice must not only be served, but must appear to have been demands that a new arbitrator be put in charge;

89. Moreover, since the contested decision, the two individual impleaded plaintiffs sued the arbitrator for contempt of court in front of the Superior Court which rendered judgment, this case is the subject of a recourse in front of the Court of Appeal **(P-15)**;

90. In these circumstances, the plaintiffs submit that the arbitrator cannot act with the serenity that is required and he must be relieved of these files;

For these reasons, the plaintiff requests that this present Court:

Allow the motion for annulment;

Annul the arbitration decision of arbitrator André Sylvestre dated January 21st 2009 **(P-5)**;

Declare that the period between June 3rd 1996 and January 21st 2000 can only be reduced, for the purposes of compensation, by 7 months and that all the rest of this period must be the subject of payment of salaries and the rehabilitation of the rights of the employees of the pension plan;

Declare that the employer's claim is rejected;

Order that the file be returned to an arbitrator chosen by the parties or failing which to be named under sections 941 and 942 C.p.c. so that he may award damages accordingly;

Order that the file concerning the disagreement of July 14th 2000 be returned to an arbitrator chosen by the parties or failing which to be named under sections 941 and 942 C.p.c.;

Render any other order that it will deem appropriate under the circumstances;

The whole with fees awarded against the parties that will contest.

Montréal, April 16th 2009

MELANÇON, MARCEAU, GRENIER ET SCIORTINO, s.e.n.c.
Attorneys for the plaintiffs

TAB 14

TAB 14

[TRANSLATION]

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT

No.: 500-17-049725-099

LA SECTION LOCALE 145 DU SYNDICAT CANADIEN DES COMMUNICATIONS, DE L'ÉNERGIE ET DU PAPIER,

and

ROBERT DAVIES

UMED GOHIL

JEAN-PIERRE MARTIN

LESLIE STOCKWELL

MARC-ANDRÉ TREMBLAY

JOSEPH BRAZEAU

HORACE HOLLOWAY

PIERRE REBETEZ

MICHAEL THOMSON

Plaintiffs

v.

M^tre^ ANDRÉ SYLVESTRE,

Defendant

and

THE GAZETTE, A DIVISION OF CANWEST PUBLISHING INC.

Mise en cause of the First Part

and

ERIBERTO DI PAOLO

RITA BLONDIN

Mis en Cause of the Second Part

CONTESTATION

OF THE MISE EN CAUSE OF THE FIRST PART

THE GAZETTE, A DIVISION OF CANWEST PUBLISHING INC.

IN RESPONSE TO THE ALLEGATIONS CONTAINED IN THE MOTION IN ANNULMENT, THE MISE EN CAUSE OF THE FIRST PART THE GAZETTE, A DIVISION OF CANWEST PUBLISHING INC., (HEREINAFTER "THE GAZETTE") HEREBY AFFIRMS THE FOLLOWING:

1. It admits the allegations contained in paragraphs 1 and 2 of the Motion in Annulment; however, the parties have not only been bound by collective agreements "in the past"; there is currently a collective agreement in force with the Plaintiff La Section locale 145 du Syndicat canadien des communications de l'énergie et du papier (hereinafter the "Union");

2. It denies the allegations as drafted in paragraph 3 of the Motion in Annulment, adding that the Civil Agreements do not apply when a collective agreement is in force;

3. It denies the allegations as drafted in paragraph 4 of the Motion in Annulment, and adds that the guarantee provided in the 1982 and 1987 agreements is a guarantee only against the loss of employment due to technological changes, the whole as appears from a copy of the said 1982 agreements filed in support hereof as Exhibit **M-1** and from a copy of the 1987 agreements filed in support hereof as Exhibit **M-2**;

4. At paragraph 5 of the Motion in Annulment, it takes note of the Plaintiffs' admission that Section XI of the 1987 agreements in their original form were created to provide for arbitration "[TRANSLATION] should negotiations to renew the collective agreement break down between the employer and the Union" and adds that the Plaintiffs and the Mis en Cause of the Second Part Mr. Eriberto Di Paolo and Ms. Rita Blondin (hereinafter referred to as "Mis en Cause Di Paolo and Blondin" or the "Mis en Cause") suddenly requested, on April 30, 1996, the arbitration of best and final offers without even making any kind of proposal to renew the collective agreement that was still in force at the time;

5. At paragraphs 6 and 7 of the Motion in Annulment, it refers to the 1987 agreements and their subsequent interpretation by various arbitrators and tribunals, and adds that the Union has already, at the very least, recognized the necessity of duly signing a new collective agreement in 1994 and of homologating any arbitration award in 2001 after the arbitration of best and final offers;

6. It denies the allegations contained in paragraphs 8 and 9 of the Motion in Annulment, save and except the number of typographers working for The Gazette in 1982 and 1987 and, for the rest, refers to the 1982 and 1987 agreements, **M-1** and **M-2**;

7. It admits the allegations contained in paragraph 10 of the Motion in Annulment, but adds that The Gazette declared a lock-out on May 17, 1993 because of a total breakdown in the collective bargaining talks that began in February of 1993 and unfolded over the

course of approximately ten (10) meetings, including conciliation meetings at the Ministry of Labour;

8. It admits the allegations contained in paragraph 11 of the Motion in Annulment, and adds that there were at least fifteen (15) days of hearings in front of Arbitrator M^tre^ Raymond Leboeuf between September 1993 and July 1994, at the end of which process Arbitrator Leboeuf, in an arbitration award dated August 18, 1994, notably abolished the compulsory nature of the best and final offer process at a party's request and made it optional, the whole as appears from a copy of Arbitrator Leboeuf's arbitration award already filed by the Plaintiffs as Exhibit **P-9** and that the Union fully endorsed on behalf of the Plaintiffs and the Mis en Cause the changes made by Arbitrator Leboeuf by signing a new collective agreement on October 3, 1994 with The Gazette, the whole as appears from a copy of the 1993-1996 collective agreement and from the agreements reached in August and October 1994 filed in support hereof *en liasse* as Exhibit **M-3**;

9. It denies the allegations as drafted in paragraph 12 of the Motion in Annulment, and adds that The Gazette had to declare a lock-out on June 3, 1996 because of the impossibility of reaching an agreement with the Plaintiffs and the Mis en Cause Di Paolo and Blondin on future working conditions and because of the total breakdown of collective bargaining;

10. It denies the allegations as drafted in paragraph 13 of the Motion in Annulment, and adds that the Plaintiffs and the Mis en Cause sent The Gazette a request on April 30, 1996 (while the 1993-1996 collective agreement was still in force) that invoked both the collective agreement and the 1987 agreements **M-2** before even having submitted any kind of proposal to renew the collective agreement, the whole as appears from a copy the April 30, 1996 request filed in support hereof as Exhibit **M-4**;

11. It admits the allegations contained in paragraph 14 of the Motion in Annulment, but adds that The Gazette replied to the Union on May 3, 1996 that the best and final offer process was now optional pursuant to both the P-9 arbitration award of Arbitrator Leboeuf and the 1993-1996 collective agreement M-3 freely signed by The Gazette and the Union, the whole as appears from a copy of the May 3, 1996 letter filed in support hereof as Exhibit **M-5**, and that the Union initially challenged The Gazette's position by filing a grievance on May 8, 1996 and the Plaintiffs subsequently submitted a dispute on June 4, 1996, as appears from a copy of the said grievance and dispute filed *en liasse* in support hereof as Exhibit **M-6**;

12. It denies the allegations as drafted in paragraph 15 of the Motion in Annulment, and adds that after six (6) days of hearings between December 5, 1996 and July 9, 1997, Arbitrator M^tre^ André Sylvestre (hereinafter "Arbitrator Sylvestre") rendered an arbitration award on February 5, 1998 in which he dismissed the May 8, 1996 grievance but allowed the June 4, 1996 dispute, the whole as appears from a copy of the conclusions of the February 5, 1998 award filed in support hereof as Exhibit **M-7**;

13. At paragraph 16 of the Motion in Annulment, it refers to the conclusions of the February 5, 1998 award filed in support hereof as Exhibit **M-7**, and denies anything that does not comply therewith;

14. It admits the allegations contained in paragraph 17 of the Motion in Annulment;

15. It admits the allegations contained in paragraph 18 of the Motion in Annulment, and refers to the Court of Appeal judgment already filed by the Applicants as Exhibit **P-2**;

16. It denies the allegations as drafted in paragraph 19 of the Motion in Annulment, and adds that there was a case management conference before Arbitrator Sylvestre on February 25, 2000 and that hearings were held to argue certain legal issues on June 9 and 13, 2000 and it refers, with regard to the representations and commitments made by the parties involved, to the stenographic notes of the case management conference of February 25, 2000 filed in support hereof as Exhibit **M-8**, to Arbitrator Sylvestre's October 11, 2000 award on these legal issues already filed by Plaintiffs as Exhibit **P-10**, as well as to the Court of Appeal judgment upholding the arbitrator's award already filed as Exhibit **P-11**;

17. At paragraph 20 of the Motion in Annulment, it admits that Arbitrator Sylvestre rendered an award dated March 18, 2005 and adds that this award was rendered after three (3) days of hearings on August 24 and 25, 2004 and October 14, 2004;

18. It denies the allegations contained in paragraphs 21 and 22 of the Motion in Annulment, and adds that the Plaintiffs and the Mis en Cause have themselves, on various occasions in the past and during the most recent hearings before Arbitrator Sylvestre, taken positions which disregard the Court of Appeal's judgment;

19. At paragraph 23 of the Motion in Annulment, it admits that the Plaintiffs filed a Motion in Annulment against the award of March 17, 2005, but adds that this fact is irrelevant to this case;

20. At paragraph 24 of the Motion in Annulment, it refers to the Court of Appeal judgment dated March 17, 2008, already filed as Exhibit **P-4**;

21. At paragraph 25 of the Motion in Annulment, it refers to the March 17, 2008 judgment, Exhibit **P-4**, and adds that Arbitrator Sylvestre has effectively answered this question in his January 21, 2009 award already filed as Exhibit **P-5;** it adds that, contrary to what the Plaintiffs allege, the Honourable Justice Pelletier of the Court of Appeal never concluded that "[TRANSLATION] damages must be awarded";

22. It admits the allegations contained in paragraphs 26 and 27 of the Motion in Annulment and prays act of the admission contained in paragraph 26 that the Arbitrator has determined the period of time for which the employees are entitled to damages;

23. It denies the allegations contained in paragraph 28 of the Motion in Annulment;

24. At paragraph 29 of the Motion in Annulment, it refers to the arbitration award dated January 21, 2009 already filed as Exhibit **P-5**;

25. It denies the allegations contained in paragraph 30 of the Motion in Annulment;

26. At paragraphs 31, 32, 33, 34 and 35 of the Motion in Annulment, it denies that the Arbitrator's assessment is biased and, as for the rest, it refers to the arbitration award dated January 21, 2009 already filed as Exhibit **P-5,** which must be read in its entirety, and denies anything that does not comply therewith;

27. At paragraphs 36 and 37 of the Motion, it refers to the Court of Appeal judgment dated December 15, 1999 and denies anything that does not comply therewith;

28. It denies the allegations contained in paragraph 38 of the Motion in Annulment, and adds that Arbitrator Sylvestre has duly and faithfully fulfilled his mandate;

29. At paragraph 39 of the Motion in Annulment, it admits that Arbitrator Lebœuf rendered awards P-6, P-7 and P-8 ruling on preliminary objections, issues of law and questions of jurisdiction, and adds that this is part of the mandate of the arbitrator of best and final offers in the context of the normal process;

30. As for the allegations set forth in paragraphs 40, 41 and 42 of the Motion in Annulment, it refers to the January 21, 2009 award, Exhibit **P-5**, and denies anything that does not comply therewith;

31. It denies the allegations set forth in paragraph 43 of the Motion in Annulment, adding that the Plaintiffs have been receiving their full wages and benefits since early May of 2002, that they filed a dispute on July 14, 2000 claiming wages and benefits for the period beginning January 21, 2000 and ending June 5, 2001, and that they filed a grievance for the period beginning June 6, 2001 and ending May 12, 2002, which grievance was dismissed by Arbitrator Marc Gravel, as appears at greater length at pages 9 and 10 of the arbitration award **P-5**;

32. At paragraphs 44 and 45 of the Motion in Annulment, it refers to the January 21, 2009 award, Exhibit **P-5**, and denies anything that does not comply therewith;

33. At paragraphs 46 and 47 of the Motion in Annulment, it refers to the Court of Appeal judgement dated March 17, 2008, and denies anything that does not comply therewith;

34. It denies the allegations set forth in paragraph 48 of the Motion in Annulment, and adds that Arbitrator Sylvestre duly and faithfully fulfilled his mandate;

35. It denies the allegations set forth in paragraph 49 of the Motion in Annulment, adding that Arbitrator Sylvestre simply concluded, as a question of fact, that neither the Plaintiffs nor the Mis en Cause were ready to effectively proceed with the exchange of best and final offers in May of 1996, the whole as appears at greater length from the January 21, 2009 award;

36. It denies the allegations set forth in paragraph 50 of the Motion in Annulment, adding that ample evidence was adduced before Arbitrator Sylvestre that neither the Plaintiffs nor the Mis en Cause were ready to proceed with the exchange of best and final offers in the spring of 1996, and were therefore not ready to proceed with the arbitration process at issue;

37. At paragraph 51 of the Motion in Annulment, it refers to the Court of Appeal judgement **P-2**, and denies anything that does not comply therewith;

38. At paragraph 52 of the Motion in Annulment, it reiterates its allegations set forth in paragraphs 10 and 11 of this Contestation;

39. At paragraph 53 of the Motion in Annulment, it refers to the Court of Appeal judgement **P-4**, and denies anything that does not strictly comply therewith;

40. At paragraph 54 of the Motion in Annulment, it refers to the January 21, 2009 award, Exhibit **P-5**, adding that the obvious choice made by the Union and the Plaintiffs to submit a grievance and a dispute to arbitration entails an obvious and material impact on the length of the collective agreement renewal process by means of arbitration of the best and final offers;

41. It denies the allegations set forth in paragraph 55 of the Motion in Annulment, adding that Arbitrator Sylvestre duly and faithfully fulfilled his mandate;

42. At paragraphs 56, 57 and 58 of the Motion in Annulment, it refers to the Court of Appeal judgement **P-2** and denies anything that does not comply therewith;

43. It admits the allegations set forth in paragraph 59 of the Motion in Annulment, adding that the exchange of best and final offers only took place on January 21, 2000 owing to a second order issued by the Court of Appeal on January 13, 2000;

44. It denies the allegations set forth in paragraph 60 of the Motion in Annulment, adding that Arbitrator Sylvestre in no way attributed a fault to the Union but simply reported the facts relevant to the mandate assigned to him, namely to determine the "[TRANSLATION] *actual*" (in French, the Court of Appeal said "dans la réalité") length of the best and final offers arbitration process had the fault identified by the Court of Appeal not occurred; in that regard, the conduct and choices of the Plaintiffs are relevant;

45. It denies the allegations set forth in paragraphs 61, 62 and 63 of the Motion in Annulment, adding that it was not the homologation that allowed the employees to return to work on May 12, 2002, but rather the waiver of the rights to appeal, the Honourable Justice Frappier having explicitly refused to declare the homologation judgement dated May 2, 2002 enforceable notwithstanding appeal owing to the aggressive conduct of the Plaintiffs and the Mis en Cause, as appears from a copy of the Superior Court judgement filed in support hereof at Exhibit **M-9**;

46. It admits the allegations set forth in paragraph 64 of the Motion in Annulment, adding that no best and final offers arbitration took place in 1990 because the Union had accepted the best and final offer submitted by The Gazette, which was not the case in 1993 or during the process that took place on January 21, 2000, and this owing to the obvious intransigence of the Plaintiffs and the Mis en Cause;

47. At paragraphs 65, 66, 67 and 68 of the Motion in Annulment, it refers to the January 21, 2009 award, Exhibit **P-5**, and denies anything that does not comply therewith, adding that the Plaintiffs or the Mis en Cause never raised these arguments before Arbitrator Sylvestre;

48. It denies the allegations set forth in paragraph 69 of the Motion in Annulment;

49. It denies the allegations set forth in paragraph 70 of the Motion in Annulment, adding that Arbitrator Sylvestre duly and faithfully fulfilled his mandate;

50. At paragraphs 71, 72, 73, 74, 75 and 76 of the Motion in Annulment, it refers to the January 21, 2009 award, P-5, and denies anything that does not comply therewith;

51. It denies the allegations set forth in paragraph 77 of the Motion in Annulment, adding that during the hearing of October 19, 2000 before Arbitrator Sylvestre there was an admission between the parties as to the total amount of wages and benefits that would have been earned had the employees worked during the period beginning June 4, 1996 and ending January 21, 2000, as appears from the stenographic notes of the hearing filed in support hereof as Exhibit **M-10**;

52. It denies the allegations as worded in paragraph 78 of the Motion in Annulment, adding that, on the one hand, the admission of the parties at the October 19, 2000 hearing dealt both with wages and benefits, including the retirement plan and, on the other hand, that the Union and the Plaintiffs raised new arguments in paragraph 78 regarding the scope of the October 19, 2000 admission, which arguments were never submitted before Arbitrator Sylvestre and would, at any rate, run contrary to the Court of Appeal decisions dated December 15, 1999, August 6, 2003 and March 17, 2008, which limit the Plaintiffs' claims to damages for wages and benefits lost during the specified period ending January 21, 2000 and do not provide for the possibility of retroactively crediting years of employment for the purposes of a retirement plan;

53. It denies the allegations set forth in paragraphs 79 and 80 of the Motion in Annulment, adding that Arbitrator Sylvestre duly and faithfully fulfilled his mandate as prescribed by the Court of Appeal;

54. It admits the allegations set forth in paragraph 81 of the Motion in Annulment, but adds that The Gazette is also claiming reimbursement of the benefits offered for the same period;

55. It admits the allegations set forth in paragraph 82 of the Motion in Annulment;

56. At paragraphs 83 and 84 of the Motion in Annulment, it refers to the judgment of the Superior Court, Exhibit **P-13,** and the January 21, 2009 award, Exhibit **P-5,** and adds that Arbitrator Sylvestre did not refuse to pronounce himself, but rather decided to suspend his decision;

57. It denies the allegations set forth in paragraph 85 of the Motion in Annulment;

58. It denies the allegations as worded in paragraph 86 of the Motion in Annulment, adding that the **P-14** dispute constitutes a distinct dispute and a completely different case from the dispute that gave rise to the January 21, 2009 award, Exhibit **P-5**;

59. It denies the allegations set forth in paragraphs 87 and 88 of the Motion in Annulment;

60. It admits the allegations set forth in paragraph 89 of the Motion in Annulment, adding that this involves Mis en Cause Di Paolo and Blondin;

61. It denies the allegations set forth in paragraph 90 of the Motion in Annulment;

AND NOW, TO RE-ESTABLISH THE FACTS, IT AFFIRMS THE FOLLOWING:

(a) Labour dispute and best and final offers arbitration before Arbitrator Raymond Lebœuf

62. On May 17, 1993, The Gazette ordered a lock-out in light of the complete breakdown of the collective bargaining process that began in February of 1993 and occurred over approximately ten (10) meetings, including the conciliation meetings at the Ministry of Labour;

63. The best and final offers process was initiated in 1993 at the Union's request, the whole as appears from a copy of the May 4, 1993 letter filed in support hereof as Exhibit **M-11**, and gave rise to Arbitrator Leboeuf's final arbitration award dated August 18, 1994, Exhibit **P-9**;

64. At that time, despite the fact that it was contesting the validity of the best and final offers mechanism, The Gazette had to file its best and final offer "under protest" since the Union had called a meeting and had, at any rate, presented its best and final offer to the conciliator on May 6, 1993 at 1 p.m. at the Ministry of Labour, the whole as appears from Exhibit **M-11** and from the response of The Gazette also dated May 6, 1993, filed in support hereof as Exhibit **M-12**;

65. Moreover, in the context of this labour dispute, the Union filed grievance #93-02 contesting The Gazette's right to order a lock-out and, on November 18, 1993, Arbitrator Lebœuf ruled that The Gazette was perfectly entitled to order and maintain a lock-out during the exchange and the arbitration of the best and final offers, the whole as appears from Exhibit **P-7** already filed by the Plaintiffs;

66. The Gazette received the arbitration award **P-9** from Arbitrator Raymond Lebœuf on Monday, August 22, 1994 and, that same day, The Gazette received a copy of a letter from the national representative of the Union, Mr. Don Mackay, in which he declared the following:

> [ORIGINAL ENGLISH] *We now have a new contract. Union representatives are available now to complete the necessary formalities with their counterparts at The Gazette. Our members are available to return to work now.*
>
> *We offer you our cooperation in implementing Mtre. Leboeuf's decision and normalising relations between the parties in a timely and efficient manner.*

the whole as appears from a copy of a letter dated August 22, 1994 from the Union's national representative, Mr. Don Mackay, filed in support hereof as Exhibit **M-14**; [*handwritten: M-13*]

67. Afterwards, The Gazette and the Union settled the labour dispute resulting from the lock-out on May 17, 1993 by providing for the Plaintiffs' and the Mis en Cause's integration into the payroll journal and, on October 3, 1994, The Gazette and the Union duly signed a collective agreement completely enshrining the arbitration award of M^{tre} Lebœuf dated August 18, 1994, including the optional best and final offers mechanism, the whole as appears at greater length in the 1993-1996 collective agreement, already filed in support hereof as Exhibit **M-3**;

(b) Labour dispute beginning in 1996 and Arbitrator Sylvestre's decision dated February 5, 1998

68. On January 31, 1996, The Gazette served on the Union a notice of meeting pursuant to the Labour Code confirming its intent to renegotiate the collective agreement **M-3** upon its expiry and, on April 25, 1996, The Gazette submitted to the Union its first written proposal to renew the agreement;

69. On April 30, 1996, without prior notice and even before having presented a proposal to renew the collective agreement, the Plaintiffs and the Mis en Cause asked The Gazette to proceed with the exchange of best and final offers in accordance with the collective agreement and the 1987 Agreement, the whole as appears from a copy of the request of the Plaintiffs and the Mis en Cause and the Union dated April 30, 1996, already filed in support hereof as Exhibit **M-4**;

70. Neither the Union, the Plaintiffs or the Mis en Cause indicated throughout the term of the collective agreement **M-3** that they considered the provisions thereof or of the August 18, 1994 arbitration award, Exhibit **P-9,** to be illegal, null, void or contrary to the 1982 and 1987 Agreements;

71. On May 3, 1996, The Gazette responded by letter to the **M-4** request by declaring to the Union that the process of exchanging best and final offers was henceforth optional, the whole as appears from a copy of the said letter already in support hereof as Exhibit **M-5**;

72. On May 8, 1996, the Union filed a grievance to contest The Gazette's refusal to proceed with the exchange of best and final offers and reported that it considered the renewal provisions of the **M-3** agreement to be null and void, the whole as appears from a copy of the said grievance already filed *en liasse* in support hereof as Exhibit **M-6**;

73. Faced with a total breakdown of collective bargaining and a stalemate between the parties, The Gazette ordered a lock-out on June 3, 1996 in accordance with the provisions of the Labour Code;

74. On June 4, 1996, the Plaintiffs and the Mis en Cause filed a "dispute" specifically contesting The Gazette's right to order a lock-out and requesting that The Gazette be ordered to pay their wages and benefits for the entire term of the lock-out, the whole as appears from a copy of the said dispute already filed *en liasse* in support hereof as Exhibit **M-6**;

75. The May 8, 1996 grievance and the June 4, 1996 M-6 dispute, *en liasse*, were submitted to Arbitrator Sylvestre, who held six (6) days of hearings between December 5, 1996 and July 9, 1997 to adjudicate on the rights and obligations of the parties under the circumstances;

76. On February 5, 1998, Arbitrator Sylvestre handed down his arbitration award on the merits, **M-7**, in which he ordered The Gazette to proceed with the exchange of best and final offers and to:

- continue, throughout the lock-out, to pay to each of the Plaintiffs and the Mis en Cause the wages and other benefits stemming from the 1982 and 1987 tripartite agreements;

- reimburse any wages and benefits lost after or owing to the June 3, 1996 lock-out;

the whole as appears from the conclusions of the arbitration award already filed in support hereof as Exhibit **M-7**, at page 113;

(c) December 15, 1999 intervention of the Court of Appeal and best and final offer arbitration before Arbitrator Jean-Guy Ménard

77. The arbitration award **M-7** was quashed by the October 30, 1998 decision of the Superior Court;

78. On September 15, 1999, the Court of Appeal ordered The Gazette to submit to the best and final offers process within thirty (30) days but reaffirmed that it was necessary to set aside Arbitrator Sylvestre's orders regarding the payment of the wages and benefits during the lock-out, the whole as appears at greater length from the Court of Appeal decision already filed by the Plaintiffs as Exhibit **P-2**;

79. Moreover, in its decision P-2, the Court of Appeal returned the matter to Arbitrator Sylvestre so that he could determine the damages, if any, that might be awarded to the Plaintiffs following the refusal to proceed with the best and final offers process in 1996;

80. Following the suspension of proceedings order issued by the Court of Appeal of Québec on January 13, 2000, The Gazette and the Union finally exchanged their best and final offers on January 21, 2000;

81. On March 6, 2000, the parties agreed to the appointment of Arbitrator M^{tre} Jean-Guy Ménard to act as the arbitrator of the best and final offers;

82. On May 17, 2000, the Union submitted before Arbitrator Ménard a preliminary application for the dismissal of the best and final offer submitted by The Gazette, the whole as appears at greater length from a copy of the statement of facts and the letter dated May 17, 2000, filed in support hereof as Exhibit **M-15**;

83. As appears from Exhibit **M-14**, the Union argued, among other things, that the best and final offer of The Gazette was null and void because it contained, according to the Union amendments, additions and withdrawals to the 1982 and 1987 Agreements and that

Arbitrator Ménard essentially had to accept the best and final offer of the Union by default;

84. On May 23, 2000, the Plaintiffs and the Mis en Cause, through the intermediary of their counsel at the time, M^tre Robert Côté, fully subscribed to the preliminary objections raised by the Union before Arbitrator Ménard, the whole as appears from a copy of the letter dated May 23, 2000 filed in support hereof as Exhibit **M-16**;

85. The Gazette specifically asserted, in response to the Union's preliminary application for dismissal, that the best and final offer filed by the Union on January 21, 2000 contained the same alleged defects that the Union accused The Gazette of, the whole as appears from pages 3 and 4 of The Gazette's response dated June 1, 2000 filed in support hereof as Exhibit **M-17**;

86. Having taken the preliminary objections under advisement, Arbitrator Ménard handed down his award on June 5, 2001; Arbitrator Ménard retained the best and final offers of The Gazette, though he struck out some of the provisions deemed not to have been written, the whole as appears from Arbitrator Ménard's June 5, 2001 award filed in support hereof as Exhibit **M-18**;

(d) Plaintiffs' contestation of the results of the best and final offers arbitration and the eventual return to work on May 12, 2002

87. On August 2, 2001, the Plaintiffs and the Mis en Cause filed a motion to annul the award of Arbitrator Ménard;

88. On August 30, 2001, The Gazette also filed a motion to annul the award of Arbitrator Ménard;

89. On December 21, 2001, the Union filed a motion to homologate the award of Arbitrator Ménard;

90. Meanwhile, on August 24 and September 24, 2001, The Gazette presented a settlement and return-to-work proposal to the Plaintiffs and the Mis en Cause based on Arbitrator Ménard's award; they refused the offer, however, on November 8, 2001, the whole as appears from the correspondence between the parties filed *en liasse* in support hereof as Exhibit **M-19**;

91. On May 2, 2002, Honourable Justice Jean Frappier, of the Superior Court, dismissed the two (2) motions in annulment of the Plaintiffs and the Mis en Cause and of The Gazette, and homologated Arbitrator Ménard's award, the whole as appears from the Superior Court judgment already filed in support hereof as Exhibit **M-9**;

92. However, even if he homologated Arbitrator Ménard's award, the Honourable Justice Frappier of the Superior Court did not order the provisional execution of his judgment for the following reasons :

> [TRANSLATION] *Regarding the motion for execution notwithstanding appeal, the Tribunal would have been inclined to grant it given that the lock-out has been in effect since May of 1996.*
>
> *However, the 11 employees chose to present a motion to annul the arbitration award of respondent Ménard and to object to the motion for homologation by raising grounds of nullity.*
>
> *They decided to pursue the legal dispute instead of submitting to the arbitration award, as did the Union.*

the whole as appears at greater length from the judgment already filed as Exhibit **M-9**;

93. Afterwards, the parties exchanged correspondence regarding the Plaintiffs' and the Mis en Cause's right to appeal and the return to work in May of 2002, and that correspondence effectively ended the lock-out that had lasted since June 3, 1996, the whole as appears from the said correspondence filed *en liasse* in support hereof as Exhibit **M-20**;

94. The Plaintiffs and the Mis en Cause returned to work for The Gazette on May 12, 2002; no labour dispute ensued and the new collective agreement that the parties entered into after Arbitrator Ménard's award will end on June 4, 2010;

(e) The Gazette's claim for the reimbursement of wages and benefits

95. On February 1, 2001, The Gazette filed an action against the Plaintiffs and the Mis en Cause seeking reimbursement of the wages and benefits paid for the period beginning February 5, 1998 and ending October 30, 1998;

96. On February 22, 2001, the Union filed a motion for declinatory exception against The Gazette's action under article 164 of the *Code of Civil Procedure*;

97. On August 14, 2001, the Honourable Justice Louise Lemelin of the Superior Court partially allowed the Union's motion and referred to Arbitrator Sylvestre The Gazette's claim for reimbursement of the wages and benefits it allegedly overpaid for the period beginning February 5, 1998 and ending October 30, 1998, the whole as appears from the judgment of the Superior Court already filed in support hereof as Exhibit **P-13**;

98. In its August 14, 2001 , the Superior Court writes:

> [TRANSLATION] *To authorize this matter to proceed before the Superior Court is to prevent the arbitrator from fully adjudicating in an area of jurisdiction that the Court of Appeal has explicitly recognized him to have.*

the whole as appears from page 7 of judgment **P-13**;

99. On September 25, 2001, counsel for The Gazette asked Arbitrator Sylvestre to seize himself of the action for reimbursement of the wages and benefits paid as decreed by the

Superior Court, the whole as appears from the correspondence of The Gazette filed in support hereof as Exhibit **M-21**, and the arbitrator did in fact seize himself of the case;

100. However, in the January 21, 2009 award, **P-5**, Arbitrator Sylvestre decided on his own initiative to suspend his decision regarding The Gazette's claim and indicated that he will rule "[TRANSLATION] *should the parties fail to reach an agreement to settle their dispute once and for all*";

(f) Definition of Arbitrator Sylvestre's mandate: Court of Appeal's August 6, 2003 and March 17, 2008 decisions

101. On October 11, 2000, Arbitrator Sylvestre ruled on the issues of law that had been preliminarily argued by the parties on June 9 and 13, 2000, the whole as appears at greater length from the decision already filed in support hereof as Exhibit **P-10**;

102. Arbitrator Sylvestre specifically concluded that the Plaintiffs and the Mis en Cause could only claim damages for the wages and social benefits lost during the lock-out, and this for the period beginning June 3, 1996 and ending January 21, 2000;

103. Afterwards, following the arbitration award **P-10** dated October 11, 2000, correspondence was exchanged between M^{tre} James Duggan, counsel for the Plaintiffs and the Mis en Cause, and counsel for The Gazette regarding the communication of information pertaining to the amount claimed by the Plaintiffs and the Mis en Cause, the whole as appears from a copy of the said correspondence filed *en liasse* in support hereof as Exhibit **M-22**;

104. On October 19, 2000, the hearings for damages before Arbitrator Sylvestre resumed without the least bit of objection or opposition on the part of the Plaintiffs or the Mis en Cause through the intermediary of their counsel M^{tre} Duggan;

105. Quite the contrary, the Plaintiffs and the Mis en Cause, through the intermediary of their counsel M^{tre} James Duggan, themselves wanted to begin adducing evidence on the issue of wages and benefits lost, the whole as appears at greater length from the stenographic notes dated October 19, 2000 already filed in support hereof as Exhibit **M-10**;

106. Moreover, as appears at greater length from pages 25 to 36 of the stenographic notes, **M-10**, of the October 19, 2000 hearing, the parties made admissions before Arbitrator Sylvester on what the value of the lost wages and benefits would have been had the employees worked throughout the period beginning June 3, 1996 and ending January 21, 2000, and the total amount of wages and benefits per employee was set at one hundred and sixty-three thousand six hundred eleven dollars and fifty-one cents ($163,611.51).

107. The admission of one hundred and sixty-three thousand six hundred eleven dollars and fifty-one cents ($163,611.51) per employee was determined, as appears from the notes **M-10**, based in part on the numbers that the Plaintiffs and the Mis en Cause provided themselves to establish the value of lost wages and benefits;

108. Moreover, the Plantiffs and the Mis en Cause, through the intermediary of their counsel M[tre] Duggan, specifically made the following representations before Arbitrator Sylvestre at the beginning of the October 19, 2000 hearing:

> [TRANSLATION] *Moreover, we have the benefit of your decision, which we say considerably narrows the scope of your jurisdiction, and it is within that framework that we intend to provide our evidence.*

the whole as appears from the stenographic notes for October 19, 2000, Exhibit **M-9**, at page 10;

109. However, on November 10, 2000, the Plaintiffs and the Mis en Cause, through the intermediary of their new counsel, M[tre] Jacques Castonguay, nevertheless served a motion to annul the arbitration award dated October 11, 2000, Exhibit **P-10**;

110. The proceedings undertaken by the Plaintiffs and the Mis en Cause to annul the arbitration award dated October 11, 2000 failed and the Court of Appeal upheld in its August 6, 2003 decision that Arbitrator Sylvestre had acted rightly and handed down a decision that was fully within the confines of his mandate;

111. On August 6, 2003, the Court of Appeal effectively ruled that the Plaintiffs and the Mis en Cause could not claim before Arbitrator Sylvestre anything other than damages for the wages and benefits lost during the lock-out, and this for the period beginning June 3, 1996 and ending January 21, 2000;

112. Although it did serve to better define the arbitrator's mandate, the ill-founded action of the Plaintiffs and the Mis en Cause against the October 11, 2000 decision of Arbitrator Sylvestre still delayed the examination of the merits of the rest of the case for several years;

113. Indeed, Arbitrator Sylvestre resumed his examination of the case in the summer of 2004 and, following hearings held August 24 and 25, 2004 and October 14, 2004, he handed down an arbitration award on March 18, 2005, Exhibit **P-3**, which, in turn, was attacked by the Plaintiffs and the Mis en Cause;

114. On March 17, 2008, the Court of Appeal annulled the March 18, 2005 award and returned the matter to Arbitrator Sylvestre, giving specifications on the issues he would have to rule on, including the following:

> [TRANSLATION] a) *If the best and final offers process had unfolded normally after the notice was sent on April 30, 1996, when would the collective agreement have been entered into or, in other words, when would the lock-out have ended?"*

the whole as appears from paragraph [30] of the March 17, 2008 decision, Exhibit **P-4**;

115. Moreover, the Court of Appeal does not fail to emphasize in its March 17, 2008 decision that the Plaintiffs and the Mis en Cause adopted an extreme position that is contrary to

the December 15, 1999 decision by requesting that damages be paid to them for the period beginning June 3, 1996 and ending January 21, 2000:

> [TRANSLATION] *However, the conclusions sought by the appellants go too far. In effect, they are asking that Arbitrator Sylvestre be ordered to consider, without nuance, the entire period beginning June 3, 1996 and ending January 21, 2001 (sic) as being the period for which the lock-out was unduly extended and grant an indemnity accordingly. However, the 1999 decision had already determined that the tripartite agreement acknowledged the employer's right to legally decree a lock-out, which included the right to cease paying the typographer's wages and benefits."* (pages 8 of P-4)

116. This specification that the Court of Appeal made in its March 17, 2008 decision was necessary, because the Plaintiffs and the Mis en Cause had argued before Arbitrator Sylvestre in 2004 that the lock-out was undue from the very first day and that The Gazette should be ordered to pay damages for the entire term covered by the claim, namely from June 3, 1996 to January 21, 2000;

(g) Resumption of hearings before Arbitrator Sylvestre on July 28 and 29, 2008 and position adopted by the Union and the Plaintiffs

117. In accordance with the March 17, 2008 decision, Arbitrator Sylvestre resumed his examination of the case and heard the parties once again on July 28 and 29, 2008;

118. The Gazette made representations bearing directly on the core issue identified by the Court of Appeal in the March 17, 2008 decision, namely "[TRANSLATION] if the best and final offer process had unfolded... when would the lock-out have ended?"

119. In order to answer this question, Arbitrator Sylvestre necessarily had to consider hypotheses regarding the length of the best and final offers process; in that respect, The Gazette validly emphasized the following relevant elements:

(a) the conduct of the Union, which in 1994 entered into a collective agreement and signalled that it accepted that the best and final offers process no longer be mandatory in the wake of the awards of Arbitrator Lebœuf and subsequently changed its position the very day of its expiry, which ensured that the parties would wind up in a complex and litigious legal situation thereafter;

(b) the choice, by the Union and the Plantiffs, to proceed by means of grievances and disputes to contest The Gazette's refusal to exchange its best and final offer following the expiry of the collective agreement on April 30, 1996, rather than summoning the employer and filing its own best and final offer, as it had done in 1993;

(c) furthermore, the evidence adduced before Arbitrator Sylvestre reveals without any doubt that such a best and final offer had not even been prepared at the time by

the Union, the Plantiffs and the Mis en Cause, since they were unable to produce one before Arbitrator Sylvestre despite The Gazette's repeated requests, a fact that necessarily would have prolonged the best and final offers process and delayed the end of the lock-out;

(d) the inherent delays of the best and final offers process and of the adjudicative process given the unusual legal situation in which the parties found themselves; and

(e) the intransigence of the Plaintiffs and the Mis en Cause, who were trying to perpetuate the legal battle instead of modifying their negotiating stance, which necessarily extended the best and final offers arbitration process;

120. For their part, the Union and the Plaintiffs did not submit any hypothesis in response to Arbitrator Sylvestre regarding the question formulated by the Court of Appeal in the March 17, 2008 decision, namely "[TRANSLATION] *if the best and final offers process had unfolded... when would the lock-out have ended?*"

121. Indeed, before Arbitrator Sylvestre, the Union and the Plaintiffs maintained the position that The Gazette had to pay damages for the entire period beginning June 3, 1996 and ending January 21, 2000, and this without in any way taking into consideration the teachings of the Court of Appeal, more specifically those found in paragraph 36 of the March 17, 2008 decision;

122. As appears from the following excerpts taken from the stenographic notes of the July 28, 2008 hearing, filed in support hereof as Exhibit **M-23**, the Plaintiffs relied on the doctrine of abuse of right to argue that they should be indemnified for the entire period:

[TRANSLATION]

P.140 *What must be determined today is whether or not the damages apply for the entire period. Our point of view is that the damages do indeed apply for the entire period. That, moreover, was the point of view we had adopted before you in two thousand and four (2004).*

[emphasis added]

I have submitted an excerpt of the theory of abuse of right in the field of labour, as well as the National Bank of Canada decision, so that you may use them as a tool for your consideration.

P.147 *So, from the start, from the beginning of the lock-out, we are in the presence of a blatant abuse of right (...)*

P.148 *Saying that the employer has abused its right from the very beginning, Mr. Arbitrator, is tantamount to saying that the lock-out was improperly used. "Improperly" obviously suggests the notion*

of an abuse of right. One cannot commit an abuse of right without using a right improperly.

P.149 *Therefore, this is the first point on which we base our request that the entire period be subject to damages.*

123. The legal stance adopted by the Plaintiffs before Arbitrator Sylvestre in July of 2008, that they had the right to receive damages for the entire period beginning June 3, 1996 and ending January 21, 2000, contradicts the mandate that the Court of Appeal entrusted to Arbitrator Sylvestre in the December 15, 1999 decision to adjudicate whether the lock-out had been unduly extended and, if appropriate, award damages to the Plaintiffs;

124. The Plaintiffs's position also flagrantly contradicts the additional specification made by the Court of Appeal in the March 17, 2008 decision that the Plaintiffs went too far by requesting an indemnification for the entire period in question, since The Gazette was fully entitled to impose a lock-out on June 3, 1996, with the usual effect of suspending its obligation to pay wages and grant access to the workplace;

(h) Position adopted by The Gazette at the July 28 and 29, 2008 hearings and merits of the dispute

125. For its part, The Gazette submitted several relevant hypotheses to Arbitrator Sylvestre regarding the date on which the lock-out would have ended had The Gazette immediately exchanged its best and final offer following the April 30, 1996 request, including the hypothesis retained by the Arbitrator:

> [TRANSLATION]
> *In the opinion of the undersigned, under these circumstances the scenario submitted by the employer's counsel appears to be the least imperfect. Consequently, to summarize the problem, he adds the period of time it took to dispose of the claim, from June 1996 to February 1998, and the 15 months it took M^tre Lebœuf to hand down his decision. Consequently, based on this optimistic scenario, an arbitration award adjudicating the dispute would have been handed down in May of 1999, followed by an agreement signed a few days later and the end of the lock-out.*
>
> [emphasis added]

126. Indeed, Arbitrator Sylvestre had to determine, in accordance with the Court of Appeal decisions, if and when a collective agreement would have been entered into and the lock-out would have ended between June 3, 1996 and January 21, 2000, by supposing the occurrence of an event that did not take place, in other words by supposing that the parties had instituted the best and final offers process immediately after the notice was sent on April 30, 1996;

127. In that respect, it is obvious that if the best and final offers process had begun after the notice was sent on April 30, 1996, the legal situation between the parties would have required debates on several preliminary objections, issues of law and questions of jurisdiction, as was the case moreover during the process of 1993-1994 and 2000-2001;

128. What is more, The Gazette would have filed its best offer, as it did during the 1993 process, "under protest" and argued that the arbitrator did not have jurisdiction over the best and final offers;

129. The parties' experience both during the 1993-1994 as well as the 2000-2001 best and final offer processes illustrates without any doubt that the preliminary objections, issues of jurisdiction and questions of law form an integral part of the normal best and final offers process;

130. In its representations, The Gazette therefore submitted various hypotheses to Arbitrator Sylvestre at the July 28 and 29, 2008 hearings in order to allow him to fulfill his mandate that had been entrusted to him by the Court of Appeal, including the three (3) following scenarios:

(a) that if the best and final offers process had taken place after the notice was sent on April 30, 1996, the process would have taken just as long and the lock-out would still have only ended in May of 2002 (see stenographic notes, Exhibit **M-22**, pages 203 to 208);

(b) subsidiarily, that if the best and final offers had been exchanged after the notice was sent on April 30, 1996, the process would have taken at least until August 1999, and this by adding the initial arbitration period for the June 4, 1996 dispute before Arbitrator Sylvestre from June 1996 to February 1998 (9 months) and the arbitration period before Arbitrator Ménard from January 2000 to June 2001 (18 months) (see stenographic notes, Exhibit **M-22**, at page 209);

(c) once again, subsidiarily, that if the best and final offers had been exchanged after the notice was sent on April 30, 1996, the process would have taken at least until May of 1999, and this by adding the initial arbitration period of the June 4, 1996 dispute before Arbitrator Sylvestre from June 1996 to February 1998 (9 months) and the arbitration period before Arbitrator Lebœuf from May 1993 to August 1994 (15 months) (see stenographic notes, Exhibit **M-22**, at page 209);

131. As appears from the arbitration award dated January 21, 2009, Exhibit **P-5**, Arbitrator Sylvestre chose the subsidiary scenario indicated in subparagraph (c) of paragraph 130 above, namely that the process would have ended in May of 1999, a scenario that Arbitrator Sylvestre himself describes as being "optimistic" under the circumstances;

132. Arbitrator Sylvestre specifically fulfilled the mandate that had been entrusted to him by the Court of Appeal when he responded that the collective agreement would have been entered into and the lock-out would have ended in May of 1999;

133. By deciding that the collective agreement would have been entered into and the lock-out would have ended in May of 1999, Arbitrator Sylvestre was adjudicating on the merits of the dispute;

134. Arbitrator Sylvestre's adjudication on the merits to the effect that the lock-out would have ended in May of 1999 fell fully within the scope of his mandate, as delineated by the Court of Appeal in the December 15, 1999, August 6, 2003 and March 17, 2008 decisions;

(i) Retirement Plan

135. When the hearing before Arbitrator Sylvestre resumed on July 28, 2008, the Plaintiffs tried to add a new claim, namely the loss of years of employment credited to their retirement plan at The Gazette.

136. As already mentioned above, the total amounts claimed in damages for wages and benefits lost by the Plaintiffs and the Mis en cause for the period beginning June 3, 1996 and ending January 21, 2000 had already been established by admission at the October 19, 2000 arbitration session, the whole as appears from the stenographic notes already filed in support hereof as Exhibit **M-9**;

137. During the October 19, 2000 hearing, Arbitrator Sylvestre sustained from the bench an objection to the evidence regarding the retirement plan, the whole as appears from pages 39 to 43 of the stenographic notes, **M-9**;

138. Arbitrator Sylvestre effectively sustained the objection that was based on three grounds, namely (i) the parties had already admitted the total amount claimed in damages for lost wages and benefits (ii) the request to participate in the retirement plan was dated after January 20, 2000 and (iii) Arbitrator Jean-Guy Ménard was also seized of the same application in the context of the best and final offers process;

139. Had they wanted to do so, the Plaintiffs or the Mis en Cause could have challenged Arbitrator Sylvestre's October 19, 2000 decision to refuse the evidence regarding the retirement plan in the context of their motion in annulment dated November 10, 2000, but they did not;

140. The Plaintiffs and the Mis en Cause could not revisit this question when the hearings before Arbitrator Sylvestre resumed in July of 2008, since an uncontested final decision had been handed down by Arbitrator Sylvestre nearly eight (8) years earlier;

141. Moreover, the Plaintiffs' attempt to add a new claim runs contrary to the Court of Appeal decisions dated December 15, 1999, August 6, 2003 and March 17, 2008, which limit the Plaintiffs' recourses to damages for the period ending January 20, 2000;

142. The Plaintiffs' new claim requests a special order from Arbitrator Sylvestre sentencing The Gazette to pay capital into the retirement plan to buy back past services does not constitute a claim for damages;

143. Moreover, since the request to participate in the pension plan came after January 20, 2000, the new claim therefore contemplates an element that does not fall within the June 4, 1996 - January 20, 2000 timeframe;

144. Consequently, Arbitrator Sylvestre was perfectly right in dismissing the new claim in arbitration award **P-5** and was acting well within the terms of the arbitration clause;

(j) The Impartiality of Arbitrator Sylvestre

145. The Plantiffs and the Union do not allege any fact demonstrating a bias or reasonable fear of bias on the part of Arbitrator Sylvestre;

146. The Plaintiffs and the Union never asked, at any of the hearings before Arbitrator Sylvestre, that he recuse himself, nor did they even invoke at those hearings the possibility that he might be biased;

147. In fact, when hearings resumed in July of 2008, the Plaintiffs and the Union even asked Arbitrator Sylvestre to proceed immediately with his examination of the July 14, 2000 dispute, which is an entirely separate matter, the whole as appears from pages 13 to 17 of the stenographic notes, **M-22**;

148. Besides the fact that he is the consensual arbitrator selected by all of the parties, it is obvious that Arbitrator Sylvestre, having been involved since 1996 in the labour dispute between The Gazette, the Plaintiffs and the Mis en Cause, and having rendered five (5) awards on the subject, has an in-depth knowledge of this dispute and has all the expertise needed to hand down the January 21, 2009 award, which is well founded in fact and in law even if it does not accept the claims of the Plaintiffs and the Mis en Cause; indeed, it does not agree with the main position of The Gazette, but rather only its subsidiary arguments;

149. As for action P-15 instituted by the Mis en Cause before the Court of Appeal, it is a manifestly ill-founded proceeding and an *ad hominem* attack against Arbitrator Sylvestre; the Plaintiffs cannot invoke the turpitude of the Mis en Cause to question the jurisdiction of Arbitrator Sylvestre;

(k) The action in annulment instituted by the Union and the Plaintiffs against the January 21, 2009 arbitration award

150. In their motion in annulment, the Plaintiffs are deforming the mandate of Arbitrator Sylvestre and disregarding the teachings of the Court of Appeal in its December 15, 1999, August 6, 2003 and March 17, 2008 decisions;

151. What is more, the Plaintiffs are asking this honourable Court to examine and rule explicitly on the merits of the dispute between the parties, the whole contrary to the provisions of Article 946.2 of the *Code of Civil Procedure*;

152. Worse still, the Plaintiffs are raising arguments that were never submitted before Arbitrator Sylvestre and wish to introduce new debates before the Superior Court;

153. Within these new arguments, the Plaintiffs are completely deforming the arbitration of best and final offers process, of which Arbitrator Raymond Lebœuf was seized in 1993-1994, by alleging that that the process took only seven (7) months and supposedly began on January 7, 1994;

154. This is false, as the process of exchanging best and final offers began on May 6, 1993 and continued until August 18, 1994, namely a period of fifteen (15) months;

155. Arbitrator Raymond Lebœuf, as it appears from Exhibit **P-9**, began hearing the parties on October 22, 1993 and, though he had to render interlocutory decisions on preliminary objections, questions of jurisdiction and issues of law, any evidence submitted before Arbitrator Lebœuf from the moment the hearings began counted towards the arbitration of the best and final offers;

156. Nothing allows the Plaintiffs to contend that the evidence pertaining to the final offers was produced only starting January 7, 1994; at any rate, this specification is irrelevant since it is uncontested that between the process of exchanging best and final offers in May of 1993 and the arbitration award **P-9** imposing the 1994 collective agreement in August, a period of fifteen (15) months, not seven (7) months, had elapsed;

157. Finally, in their motion in annulment, the Union and the Plaintiffs essentially invite this Honourable Court to ignore the arguments that have already been made and Arbitrator Sylvestre's award and to purely and simply substitute itself for the arbitrator, since they are asking in the conclusions of their Motion in Annulment that the matter be referred to another arbitrator with the instruction that "[TRANSLATION] *for the period from June 3, 1996 to January 21, 2000, only 7 months can be subtracted for the purposes of compensation, and that the remainder of this period should be subject to payment of the wages and adjustment of the retirement plan*";

158. The Union and the Plaintiffs are therefore inviting this Honourable Court to hand down an arbitration award in lieu of Arbitrator Sylvestre, which the Court of Appeal has specifically always abstained from doing, as this is prohibited by the *Code of Civil Procedure*;

(l) Intervention criteria under Chapter VII of the *Code of Civil Procedure*

159. Arbitration award R-5 is a consensual arbitration award and, as such, enjoys a particular status under Québec law since the parties have agreed to settle their dispute other than through the common law courts;

160. The courts will only intervene in the cases provided for in Articles 943.1, 946.4 and 947 of the *Code of Civil Procedure*, and this matter does not fall within any of those cases;

161. By ruling that the lock-out ended in May of 1999, Arbitrator Sylvestre ruled on the merits of the dispute that was entrusted to him by the Court of Appeal, and his decision is unassailable;

162. Arbitrator Sylvestre rendered an arbitration award on January 21, 2009 dealing with the dispute contemplated by the arbitration agreement and falling well within the terms thereof;

163. Award **P-5** rendered by Arbitrator Sylvestre does not contain decisions on matters beyond the scope of the arbitration agreement between the parties;

164. Arbitrator Sylvestre did not commit any reviewable error in his award **P-5** dated January 21, 2009;

165. The Motion in Annulment is ill-founded in fact and in law;

166. The Gazette's contestation is well-founded in fact and in law;

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

DISMISS the Motion in Annulment;

THE WHOLE, with costs

Montreal, July 29, 2009

(s) Fasken Martineau DuMoulin

Fasken Martineau DuMoulin LLP
Counsel for Mis en Cause of the First Part

[STAMP] certified true copy
(s) *Fasken Martineau DuMoulin*
Fasken Martineau DuMoulin LLP

I, the undersigned, **JEAN-PIERRE TREMBLAY,** practicing my profession at 1010 Saint-Catherine Street West, Suite 200, Montreal, Québec, H3B 5L1, do hereby solemnly swear the following:

I. I am Vice-President, Human Resources of the Mise en Cause, whose exact corporate name is The Gazette, a division of Canwest Publishing Inc. (hereinafter "The Gazette");

II. I have been working for The Gazette since April 9, 1984;

III. As Vice-President, Human Resources, I am responsible at The Gazette for labour relations with three (3) separate unions representing thirteen (13) bargaining units, including labour relations with the Plaintiff Section locale 145 du Syndicat des communications, de l'énergie et du papier (hereinafter the "Union") for its bargaining units consisting exclusively of the Plaintiffs (hereinafter the "Plaintiffs") and Mis en Cause of the Second Part Eriberto Di Paolo and Rita Blondin (hereinafter the "Mis en Cause of the Second Part");

IV. I am also responsible for labour negotiations with the unions as well as for the employer's application and interpretation of the collective agreements that apply to the bargaining units within the corporation;

V. Within the performance of my duties, I acted as spokesperson for The Gazette during the labour negotiations held with the Union (or its predecessor) specifically in 1986, 1987, 1990, 1993 and 1996 with a view to renewing the collective agreement applicable to the bargaining unit that includes the Plaintiffs and the Mis en Cause of the Second Part;

VI. I was also The Gazette's spokesperson when the 1987 individual tripartite agreements were entered into (hereinafter the "1987 Agreements") containing provisions on maintaining standards of living and on the best and final offers process in order to renew the collective agreement;

VII. I also participated in the best and final offers arbitration process before Arbitrator Jean-Guy Ménard in 2000-2001;

VIII. I have examined the "Motion in Annulment (art. 947 and following c.c.p.), affidavit and notice of presentation" served by the Union and the Plaintiffs on April 17, 2009 in this case;

IX. I have examined the "Contestation of the Mise en Cause of the First Part The Gazette, a division of Canwest Publishing Inc." dated July 29, 2009 (hereinafter the "Contestation");

X. To my personal knowledge, all of the facts alleged in the "Contestation" are true.

AND I HAVE SIGNED

Montreal, July 30, 2009

(s) Jean-Pierre Tremblay
Jean-Pierre Tremblay

Sworn before me in Montreal
on July 30, 2009

(s) Lucie Côté #56046
Commissioner of Oaths
for the district of Montreal

[STAMP] Commissioner of Oaths
LUCIE CÔTÉ
#56,046
JUDICIAL DISTRIST OF LONGUEUIL AND MONTREAL