TAB 7

TAB 7

Court File No. CV-10-8533-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	MONDAY, THE 17th DAY
	)	
MADAM JUSTICE PEPALL	)	OF MAY, 2010

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANWEST PUBLISHING INC./PUBLICATIONS CANWEST INC., CANWEST BOOKS INC. AND CANWEST (CANADA) INC.

APPLICANTS

AMENDED CLAIMS PROCEDURE ORDER

THIS MOTION made by Canwest Publishing Inc./Publications Canwest Inc. ("**CPI**"), Canwest Books Inc. and Canwest (Canada) Inc. (the "**Applicants**") and Canwest Limited Partnership/Canwest Societe en Commandite ("**Canwest LP**", collectively and together with the Applicants, the "**LP Entities**", and each an "**LP Entity**"), for an order amending the procedure for the identification and quantification of certain claims against the LP Entities that was established pursuant to an order dated April 12, 2010 was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Affidavit of Douglas E.J. Lamb sworn May 10, 2010, the Seventh Report of FTI Consulting Canada Inc. (the "**Monitor's Seventh Report**") in its capacity as Court-appointed monitor of the LP Entities (the "**Monitor**") and on hearing from counsel for the LP Entities, the Monitor, the ad hoc committee of holders of 9.25% notes issued by Canwest Limited Partnership, The Bank of Nova Scotia in its capacity as Administrative Agent (the "**Agent**") for the LP Senior Lenders (as defined below), the court-appointed representatives of the salaried employees and retirees and such other counsel as were

present, no one else appearing although duly served as appears from the affidavit of service, filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record herein be and is hereby abridged and that the motion is properly returnable today and service upon any interested party other than those parties served is hereby dispensed with.

DEFINITIONS AND INTERPRETATION

2. **THIS COURT ORDERS** that, for the purposes of this Order establishing and amending a claims process for the LP Entities (the "**LP Amended Claims Procedure Order**"), in addition to terms defined elsewhere herein, the following terms shall have the following meanings:

   (a) "**Assessments**" means Claims of Her Majesty the Queen in Right of Canada or of any Province or Territory or Municipality or any other taxation authority in any Canadian or foreign jurisdiction, including, without limitation, amounts which may arise or have arisen under any notice of assessment, notice of appeal, audit, investigation, demand or similar request from any taxation authority;

   (b) "**Business Day**" means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;

   (c) "**Calendar Day**" means a day, including Saturday, Sunday and any statutory holidays in the Province of Ontario, Canada;

   (d) "**CCAA**" means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;

   (e) "**CCAA Proceeding**" means the proceeding commenced by the LP Entities in the Court at Toronto under Court File No. CV-10-8533-00CL;

(f) "**Claim**" means:

(i) any right or claim of any Person against one or more of the LP Entities, whether or not asserted, in connection with any indebtedness, liability or obligation of any kind whatsoever of one or more of the LP Entities in existence on the Filing Date, and any accrued interest thereon and costs payable in respect thereof to and including the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation is based in whole or in part on facts which existed prior to the Filing Date, and includes any other claims that would have been claims provable in bankruptcy had the applicable LP Entity become bankrupt on the Filing Date (each, a "**Prefiling Claim**", and collectively, the "**Prefiling Claims**");

(ii) any right or claim of any Person against one or more of the LP Entities in connection with any indebtedness, liability or obligation of any kind whatsoever owed by one or more of the LP Entities to such Person arising out of the restructuring, disclaimer, resiliation, termination or breach on or after the Filing Date of any contract, lease or other agreement whether written or oral and whether such restructuring, disclaimer, resiliation, termination or breach took place or takes place before or after the date of this LP Amended Claims Procedure Order (each, a "**Restructuring Period Claim**", and collectively, the "**Restructuring Period Claims**");

(iii) any right or claim of any Person against one or more of the Directors or

Officers of one or more of the LP Entities or any of them, that relates to a Prefiling Claim or a Restructuring Period Claim howsoever arising for which the Directors or Officers of an LP Entity are by statute or otherwise by law liable to pay in their capacity as Directors or Officers or in any other capacity including, for greater certainty, any claim against a Director or Officer that may be secured by the LP Directors' Charge, but excluding any claims by the LP Senior Lenders (as defined herein) (each a "Director/Officer Claim", and collectively, the "**Directors/Officers Claims**");

other than Excluded Claims;

(g) "**Claims Officer**" means the individuals designated by the Court pursuant to paragraph 11 of this LP Amended Claims Procedure Order and such other Persons as may be designated by the LP Entities and consented to by the Monitor;

(h) "**Court**" means the Superior Court of Justice (Commercial List) in the City of Toronto in the Province of Ontario;

(i) "**Creditors' Meeting Order**" means the Order of this Honourable Court dated May 17, 2010 establishing procedures for the call and conduct of a meeting of creditors of the LP Entities;

(j) "**Director**" means anyone who is or was, or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or *de facto* director of any of the Applicants;

(k) "**Distribution Claim**" means the amount of the Claim of a Creditor to the extent that such claim is finally determined for distribution purposes, in the event that an LP Plan is filed, in accordance with the provisions of this LP Amended Claims Procedure Order or the Creditors' Meeting Order, as applicable, and the CCAA;

(l) "**Employee Claim**" any claim by an employee or former employee of the LP Entities arising out of the employment of such employee or former employee by

the LP Entities that relates to a Prefiling Claim or a Restructuring Period Claim other than an Excluded Claim or any employee-related liabilities that are being assumed by the Purchaser pursuant to the Purchase Agreement (each, an "**Employee Claim**");

(m) "**Excluded Claim**" means (i) claims secured by any of the Charges as defined in the Initial Order, (ii) Insured Claims, (iii) all Grievances or claims that can only be advanced in the form of a Grievance pursuant to the terms of a collective bargaining agreement, (iv) all claims by the LP Senior Lenders (as defined herein), including Director/Officer Claims (v) all claims of the LP DIP Lenders against the LP Entities pursuant to the LP DIP Definitive Documents, (vi) Intercompany Claims, and (vii) all claims of The Bank of Nova Scotia arising from the provision of cash management services to the LP Entities;

(n) "**Filing Date**" means January 8, 2010;

(o) "**Grievance**" means all grievances filed by bargaining agents (the "**Unions**") representing unionized employees of the LP Entities, or their members, under applicable collective bargaining agreements;

(p) "**Initial Order**" means the Initial Order of the Honourable Madam Justice Pepall made January 8, 2010, as amended, restated or varied from time to time;

(q) "**Insured Claim**" means that portion of a Claim, other than a Director/Officer Claim, arising from a cause of action for which the applicable LP Entities are insured to the extent that such claim, or portion thereof, is insured;

(r) "**Intercompany Claim**" means any claim by Canwest Global Communications Corp. ("**Canwest Global**") or an affiliate or subsidiary of Canwest Global against one or more of the LP Entities including, for greater certainty, a claim by an LP Entity against another LP Entity;

(s) "**LP Claims Bar Date**" means 5:00 p.m. on May 7, 2010;

(t) "**LP Claims Package**" means the materials to be provided by the LP Entities to

Persons who may have a Claim which materials shall consist of a blank LP Proof of Claim, an LP Proof of Claim Instruction Letter, and such other materials as the LP Entities may consider appropriate or desirable;

(u) "**LP Claims Procedure Order**" means the Order of this Honourable Court dated April 12, 2010 that is hereby amended by this LP Amended Claims Procedure Order

(v) "**LP Claims Process**" means the call for claims process to be administered by the LP Entities with the assistance of the Monitor pursuant to the terms of this Order;

(w) "**LP CRA**" means CRS Inc. in its capacity as the court-appointed Chief Restructuring Advisor of the LP Entities;

(x) "**LP Creditor**" means any Person having a Claim including, without limitation and for greater certainty, the LP Noteholders, the LP Subordinated Lenders, the transferee or assignee of a transferred Claim that is recognized as an LP Creditor in accordance with paragraph 38 hereof or a trustee, executor, liquidator, receiver, receiver and manager, or other Person acting on behalf of or through such Person;

(y) "**LP Director/Officer Claims Bar Date**" means 5:00 p.m. (Toronto time) on June 3, 2010;

(z) "**LP Hedging Creditor**" means the various counterparties to certain foreign currency, interest rate and commodity hedging agreements with the LP Entities whose obligations rank *pari passu* to the claims of the LP Secured Lenders (as defined below);

(aa) "**LP Note Indenture**" means the note indenture dated July 13, 2007 with CanWest MediaWorks Limited Partnership as issuer, CanWest MediaWorks Publications Inc. and Canwest Books Inc. as guarantors, the Bank of New York as U.S. Trustee, and BNY Trust Company of Canada as Canadian Trustee that was entered into in connection with the issuance of US$400 million of senior subordinated notes that bear interest at 9.25%;

(bb) "**LP Notes**" means the US$400 million of senior subordinated notes that bear interest at 9.25% that were issued pursuant to the LP Note Indenture;

(cc) "**LP Noteholders**" means the holders of the LP Notes;

(dd) "**LP Notice of Dispute of Revision or Disallowance**" means the notice referred to in paragraph 28 hereof, substantially in the form attached as Schedule "E" hereto, which may be delivered to the Monitor by an LP Creditor disputing an LP Notice of Revision or Disallowance, with reasons for its dispute;

(ee) "**LP Notice of Revision or Disallowance**" means the notice referred to in paragraphs 26 and 27 hereof, substantially in the form of Schedule "D" advising an LP Creditor that the LP Entities have revised or rejected all or part of such LP Creditor's Claim as set out in its LP Proof of Claim;

(ff) "**LP Notice to Creditors**" means the notice for publication by the LP Entities or the Monitor as described in paragraph 16 hereof, substantially in the form attached hereto as Schedule "A", calling for any and all Claims of LP Creditors;

(gg) "**LP Notice of Amended Claims Procedure**" means the notice for publication by the LP Entities or the Monitor as described in paragraph 16.1 hereof, substantially in the form attached hereto as Schedule "F", advising of the amendments to the LP Claims Procedure;

(hh) "**LP Plan**" means, as further defined in the Initial Order, any proposed plan of compromise or arrangement that may be filed by any or all of the LP Entities (in consultation with the Monitor and the LP CRA) pursuant to the CCAA as the same may be amended, supplemented or restated from time to time in accordance with the terms thereof other than the LP Senior Lenders' CCAA Plan;

(ii) "**LP Proof of Claim**" means the Proof of Claim referred to in paragraphs 22, 23 and 24 hereof to be filed by LP Creditors, in order to establish a Claim, substantially in the form attached hereto as Schedule "C";

(jj) "**LP Proof of Claim Instruction Letter**" means the instruction letter to LP

Creditors, substantially in the form attached as Schedule "B" hereto, regarding the completion of an LP Proof of Claim and the claims procedure described herein and stating the amount of the Claim of the particular LP Creditor receiving the LP Proof of Claim Instruction Letter, as evidenced by the books and records of the LP Entities;

(kk) "**LP Restructuring Period Claims Bar Date and Employee Claims Bar Date**" means 5:00 p.m. (Toronto time) on June 3, 2010;

(ll) "**LP Secured Lenders**" means the syndicate of lenders from time to time party to the credit agreement dated as of July 10, 2007 between CanWest MediaWorks Limited Partnership, The Bank of Nova Scotia, as Administrative Agent, the LP Secured Lenders and CanWest MediaWorks (Canada) Inc., CanWest MediaWorks Publications Inc. and Canwest Books Inc., as guarantors;

(mm) "**LP Senior Lenders**" means the LP Hedging Creditors and the LP Secured Lenders;

(nn) "**LP Senior Lenders' CCAA Plan**" means the plan of compromise or arrangement between the LP Entities and the LP Senior Lenders that was accepted for filing by this Honourable Court pursuant to the Initial Order and was approved by the LP Senior Lenders at a meeting on January 27, 2010;

(oo) "**LP Senior Lenders' Claims**" means the claims of the LP Senior Lenders as determined pursuant to the LP Senior Lenders' Claim Procedure (as described below);

(pp) "**LP Senior Lenders' Claims Procedure**" means the claims procedure approved in the Initial Order by which the LP Senior Lenders' Claims were determined in the context of the LP Senior Lenders' CCAA Plan;

(qq) "**LP Senior Subordinated Credit Agreement**" means the senior subordinated credit agreement dated as of July 10, 2007 between CanWest MediaWorks Limited Partnership, the Subordinated Agent, the LP Subordinated Lenders, and

CanWest MediaWorks (Canada) Inc., CanWest MediaWorks Publications Inc. and Canwest Books Inc., as guarantors;

(rr) **"LP Subordinated Lenders"** means the syndicate of lenders that are parties to the LP Senior Subordinated Credit Agreement;

(ss) **"Meeting"** means any meeting of LP Creditors called for the purpose of considering and voting in respect of an LP Plan, if one is filed;

(tt) **"Meeting Materials"** means those materials prepared by the LP Entities and in advance of a Meeting and including, among other things, copies of a notice of the Meeting, the Plan, the Creditors' Meeting Order and a form of proxy;

(uu) **"Monitor"** means FTI Consulting Canada Inc., as court-appointed Monitor in the CCAA proceeding of the LP Entities;

(vv) **"Officer"** means anyone who is or was, or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of any of the LP Entities;

(ww) **"Pension Claim"** means any claim under the pension plans of the LP Entities as identified in the Initial Order Affidavit;

(xx) **"Person"** means any individual, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, government or any agency or instrumentality thereof or any other entity;

(yy) **"Prefiling Claim"** has the meaning ascribed to that term in paragraph 2(f)(i) of this LP Amended Claims Procedure Order;

(zz) **"Proven Claim"** means the Claim of an LP Creditor as established and determined pursuant to the terms of this LP Amended Claims Procedure Order for purposes of voting and distribution under any Plan;

(aaa) "**Purchase Agreement**" means the asset purchase agreement dated as of May 10, 2010 between 7535538 Canada Inc., CW Acquisition Limited Partnership, Canwest Books Inc., Canwest (Canada) Inc., Canwest Publications Inc./Publications Canwest Inc. and Canwest Limited Partnership/Canwest Societe en Commandite;

(bbb) "**Purchaser**" means CW Acquisition Limited Partnership pursuant to the AHC APA;

(ccc) "**Restructuring Period Claim**" has the meaning ascribed to that term in paragraph 2(f)(ii) of this LP Amended Claims Procedure Order;

(ddd) "**SERA Claim**" means any claim by a current or former employee of the LP Entities for payments or benefits arising out of a Southam Executive Retirement Arrangement (a "**SERA**") that were discontinued after the Filing Date;

(eee) "**SISP**" means the Sale and Investor Solicitation Process being carried out pursuant to the terms of the SISP Procedures;

(fff) "**SISP Procedures**" means the Procedures for the Sale and Investor Solicitation Process, as amended, in the form attached as Schedule "A" to the Initial Order, as amended;

(ggg) "**Subordinated Agent**" means The Bank of Nova Scotia, as Administrative Agent under the LP Senior Subordinated Credit Agreement;

(hhh) "**Termination and Severance Claim**" means any claim by a former employee of the LP Entities with an effective date of termination on or before January 8, 2010 who was in receipt of salary continuance from the LP Entities that has been discontinued as a result of the commencement of the LP Entities' CCAA proceeding; for greater certainty, Termination and Severance Claims do not include any employee claims that could be advanced as a Grievance pursuant to the terms of an applicable collective bargaining agreement;

(iii) "**Trustees**" means the Bank of New York as U.S. Trustee and BNY Trust

Company of Canada as Canadian Trustee under the LP Note Indenture;

(jjj) **"Voting Claim"** means the amount of the Claim of an LP Creditor to the extent that such claim has been finally determined for voting at a Meeting, in accordance with the provisions of this LP Amended Claims Procedure Order, and the CCAA.

3. **THIS COURT ORDERS** that all capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Initial Order.

4. **THIS COURT ORDERS** that all references as to time herein shall mean local time in Toronto, Ontario, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day unless otherwise indicated herein.

5. **THIS COURT ORDERS** that all references to the word "including" shall mean "including without limitation".

6. **THIS COURT ORDERS** that all references to the singular herein include the plural, the plural include the singular, and any gender includes the other gender.

GENERAL PROVISIONS

7. **THIS COURT ORDERS** that the LP Entities and the Monitor are hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which forms delivered hereunder are completed and executed and the time in which they are submitted, and may, where they are satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this LP Amended Claims Procedure Order, including in respect of completion, execution and time of delivery of such forms and request any further documentation from an LP Creditor that the LP Entities or the Monitor may require in order to enable them to determine the validity of a Claim.

8. **THIS COURT ORDERS** that any Claims denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada noon exchange rate in effect at the Filing Date. U.S. dollar denominated claims shall be converted at the Bank of Canada Canadian/U.S. dollar noon exchange rate in effect at the Filing Date, which rate was

CDN$1.0344:$1 U.S.

9. **THIS COURT ORDERS** that interest and penalties that would otherwise accrue after the Filing Date shall not be included in any Claim.

10. **THIS COURT ORDERS** that copies of all forms delivered by or to an LP Creditor hereunder, as applicable, and determinations of Claims by a Claims Officer or the Court, as the case may be, shall be maintained by the LP Entities and, subject to further order of the Court, such LP Creditor will be entitled to have access thereto by appointment during normal business hours on written request to the LP Entities or the Monitor.

CLAIMS OFFICER

11. **THIS COURT ORDERS** that The Honourable Edward Saunders, The Honourable Coulter Osborne and such other Persons as may be appointed by the Court from time to time on application of the LP Entities (in consultation with the LP CRA), or such other Persons designated by the LP Entities (in consultation with the LP CRA) and consented to by the Monitor, be and they are hereby appointed as Claims Officers for the claims procedure described herein.

12. **THIS COURT ORDERS** that, subject to the discretion of the Court, a Claims Officer shall determine the validity and amount of disputed Claims in accordance with this LP Amended Claims Procedure Order and to the extent necessary may determine whether any Claim or part thereof constitutes an Excluded Claim. A Claims Officer shall determine all procedural matters which may arise in respect of his or her determination of these matters, including the manner in which any evidence may be adduced. A Claims Officer shall have the discretion to determine by whom and to what extent the costs of any hearing before a Claims Officer shall be paid.

13. **THIS COURT ORDERS** that the Claims Officers shall be entitled to reasonable compensation for the performance of their obligations set out in this Claims Order on the basis of the hourly rate customarily charged by the Claims Officers in performing comparable functions to those set out in this Claims Order and any disbursements incurred in connection therewith. The fees and expenses of the Claims Officers shall be

borne by the LP Entities and shall be paid by the LP Entities forthwith upon receipt of each invoice tendered by the Claims Officers.

14. **THIS COURT ORDERS** that, notwithstanding anything to the contrary herein, an LP Entity may in its sole discretion refer an LP Creditor's Claim for resolution to a Claims Officer or the Court for voting and/or distribution purposes, where in the LP Entity's view such a referral is preferable or necessary for the resolution of the valuation of the Claim.

MONITOR'S ROLE

15. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA and under the Initial Order, shall assist the LP Entities in connection with the administration of the claims procedure provided for herein, including the determination of Claims of LP Creditors and the referral of a particular Claim to a Claims Officer, as requested by the LP Entities from time to time, and is hereby directed and empowered to take such other actions and fulfill such other roles as are contemplated by this LP Amended Claims Procedure Order.

NOTICE OF CLAIMS

16. **THIS COURT ORDERS** that forthwith after April 12, 2010 and in any event on or before April 20, 2010, the LP Entities or the Monitor shall publish the LP Notice to Creditors, for at least two (2) Business Days in the *National Post*, *The Globe and Mail* (National Edition), *La Presse* and *The Wall Street Journal*.

16.1 **THIS COURT ORDERS** that forthwith after the date of this LP Amended Claims Procedure Order, the LP Entities or the Monitor shall publish the LP Notice of Amended Claims Procedure, for at least two (2) Business Days in the *National Post*, *The Globe and Mail* (National Edition) and *La Presse*.

17. **THIS COURT ORDERS** that the Monitor shall send an LP Claims Package to each LP Creditor with a Claim (other than a Restructuring Period Claim, an Employee Claim or a Director/Officer Claim) as evidenced by the books and records of the LP Entities in

accordance with paragraph 39 before 11:59 p.m. on April 16, 2010. The LP Proof of Claim Instruction Letter for each such LP Creditor shall provide general information and instructions in respect of the filing of Claims. The LP Claims Package as sent to LP Creditors will also include an individualized letter setting forth the amount of the Claim of such LP Creditor as evidenced by the books and records of the LP Entities.

18. **THIS COURT ORDERS** that the LP Entities are authorized to send an LP Claims Package to the Trustees and that the LP Entities shall not be required to send LP Claims Packages to the individual LP Noteholders.

19. **THIS COURT ORDERS** that the LP Entities are authorized to send an LP Claims Package to the Subordinated Agent and that the LP Entities shall not be required to send LP Claims Packages to the individual LP Subordinated Lenders.

20. **THIS COURT ORDERS** that to the extent any LP Creditor requests such documents, the Monitor shall forthwith send an LP Claims Package, direct the LP Creditor to the documents posted on the Monitor's website or otherwise respond to the request for the LP Claims Package as may be appropriate in the circumstances.

NOTICE OF RESTRUCTURING PERIOD CLAIMS, EMPLOYEE CLAIMS AND DIRECTOR/OFFICER CLAIMS

21. **THIS COURT ORDERS** that to the extent that an LP Claims Package has not already been delivered to such LP Creditor pursuant to paragraph 17 hereof, the LP Entities shall deliver an LP Claims Package to each LP Creditor with a Restructuring Period Claim and each LP Creditor with an Employee Claim as soon as practicable after the LP Entities have knowledge of the Restructuring Period Claim or the Employee Claim and, in any event, no later than May 21, 2010.

FILING OF PROOFS OF CLAIM

22. **THIS COURT ORDERS** that any LP Creditor asserting a Claim against the LP Entities or any Director or Officer thereof shall file an LP Proof of Claim with the Monitor on or before the LP Claims Bar Date, the LP Restructuring Period Claims Bar Date and

Employee Claims Bar Date or the LP Director/Officer Claims Bar Date, as applicable.

23. **THIS COURT ORDERS** that the Trustees are authorized to file one or more LP Proofs of Claim on or before the LP Claims Bar Date on behalf of all of the LP Noteholders indicating that amount owing on an aggregate basis for all of the LP Notes. Notwithstanding any other provisions in this Order, the LP Noteholders are not required to file individual LP Proofs of Claim in respect of claims relating solely to the debt evidenced by the LP Notes.

24. **THIS COURT ORDERS** that the Subordinated Agent is hereby authorized to file one or more LP Proofs of Claim on or before the LP Claims Bar Date on behalf of all of the LP Subordinated Lenders, indicating that amount owing on an aggregate basis under the LP Senior Subordinated Credit Agreement. Notwithstanding any other provisions in this Order, the LP Subordinated Lenders are not required to file individual LP Proofs of Claim in respect of claims relating solely to the obligations under the LP Senior Subordinated Credit Agreement.

25. **THIS COURT ORDERS** that any LP Creditor that does not file an LP Proof of Claim as provided for in paragraph 22 herein so that such LP Proof of Claim is received by the Monitor on or before the LP Claims Bar Date, the LP Restructuring Period Claims Bar Date and Employee Claims Bar Date or the LP Director/Officer Claims Bar Date, as applicable, or such later date as the Monitor and the Applicants may agree in writing or the Court may otherwise agree:

(a) shall be and is hereby forever barred from making or enforcing any Claim against the LP Entities and/or the Directors or Officers thereof and the Claim shall be forever extinguished;

(b) shall not be entitled to further notice of any action taken by the LP Entities pursuant to this Order; and

(c) shall not be entitled to participate as an LP Creditor in these proceedings.

ADJUDICATION OF CLAIMS

26. **THIS COURT ORDERS** that with the assistance of the Monitor and in consultation with the LP CRA, the LP Entities shall review all LP Proofs of Claim received by the LP Claims Bar Date, the LP Restructuring Period Claims Bar Date and Employee Claims Bar Date or the LP Director/Officer Claims Bar Date, as applicable, and shall accept, revise or reject each Claim. If the LP Entities intend to revise or reject a Claim, other than a Restructuring Period Claim, an Employee Claim or a Director/Officer Claim, the LP Entities shall by no later than May 31, 2010, or such other date as may be agreed to by the Monitor, notify each LP Creditor who has delivered an LP Proof of Claim whether such LP Creditor's Claim as set out therein has been revised or rejected and the reasons therefor, by sending an LP Notice of Revision or Disallowance. If the LP Entities intend to revise or reject a Restructuring Period Claim, an Employee Claim or a Director/Officer Claim, the LP Entities shall by no later than June 21, 2010, or such other date as may be agreed to by the Monitor, notify each LP Creditor who has delivered an LP Proof of Claim in respect of a Restructuring Period Claim, Employee Claim or Director/Officer Claim whether such LP Creditor's Claim as set out therein has been revised or rejected and the reasons therefore, by sending an LP Notice of Revision or Disallowance. Where the LP Entities do not send by such dates, or such other dates as may be agreed to by the Monitor, an LP Notice of Revision or Disallowance to an LP Creditor, the LP Entities shall be deemed to have accepted such LP Creditor's Claim in the amount set out in that LP Creditor's LP Proof of Claim.

27. **THIS COURT ORDER** that, where the LP Entities intend to revise or reject an LP Proof of Claim filed by the Trustees on behalf of the LP Noteholders or an LP Proof of Claim filed by the Subordinated Agent on behalf of the LP Subordinated Lenders, the LP Entities shall send the LP Notice of Revision or Disallowance to the Trustees or the Subordinated Agent, as applicable.

28. **THIS COURT ORDERS** that, except in the case of an LP Creditor with a Restructuring Period Claim, an Employee Claim or a Director/Officer Claim, any LP Creditor, and in the case of the LP Noteholders and the LP Subordinated Lenders, the Trustees and the

Subordinated Agent, respectively, who intends to dispute an LP Notice of Revision or Disallowance sent pursuant to the immediately preceding paragraphs shall deliver an LP Notice of Dispute of Revision or Disallowance to the Monitor before June 10, 2010, or such other date as may be agreed to by the Monitor. In the case of an LP Creditor with a Restructuring Period Claim, an Employee Claim or a Director/Officer Claim, such LP Creditor shall deliver an LP Notice of Dispute of Revision or Disallowance before June 30, 2010.

RESOLUTION OF CLAIMS

29. **THIS COURT ORDERS** that where an LP Creditor that receives an LP Notice of Revision or Disallowance pursuant to paragraphs 26 and 27 above does not file an LP Notice of Dispute of Revision or Disallowance by the time set out in paragraph 28 above, such LP Creditor's Claim shall be deemed to be as set out in the LP Notice of Revision or Disallowance.

30. **THIS COURT ORDERS** that in the event that an LP Entity, with the assistance of the Monitor and in consultation with the LP CRA and any Director or Officer if the Claim is asserted as against them, is unable to resolve a dispute regarding any Claim with an LP Creditor, the LP Entity or the LP Creditor shall so notify the Monitor, and the LP Creditor or the LP Entity, as the case may be. The decision as to whether the LP Creditor's Claim should be adjudicated by the Court or a Claims Officer shall be in the sole discretion of the LP Entity. To the extent a Claim is referred under this paragraph to the Court or a Claims Officer, the Court or a Claims Officer, as the case may be, shall resolve the dispute between the LP Entity, any Director or Officer to the extent that a Claim is asserted as against them, and such LP Creditor, as soon as practicable.

31. **THIS COURT ORDERS** that where the value of an LP Creditor's Voting Claim has not been finally determined by the Court or the Claims Officer by the date of a Meeting, if any, the relevant LP Entity shall (in consultation with the LP CRA and the Monitor) either:

(a) accept the LP Creditor's determination of the value of the Voting Claim as set out in the applicable LP Proof of Claim only for the purposes of voting and conduct the vote of the Creditors on that basis subject to a final determination of such LP Creditor's Voting Claim, and in such case the Monitor shall record separately the value of such LP Creditor's Voting Claim and whether such LP Creditor voted in favour of or against the LP Plan;

(b) subject to the written consent of the Purchaser, adjourn the Meeting until a final determination of the Voting Claim(s) is made; or

(c) deal with the matter as the Court may otherwise direct or as the LP Entities, the Monitor and the LP Creditor may otherwise agree.

32. **THIS COURT ORDERS** that either any of LP Creditor, a Director or Officer to the extent that a Claim is asserted as against them, or an LP Entity may, within two (2) Business Days of notification of a Claims Officer's determination in respect of an LP Creditor's Claim, appeal such determination to the Court by filing a notice of appeal, and the appeal shall be initially returnable within five (5) Business Days of the filing of such notice of appeal, such appeal to be an appeal based on the record before the Claims Officer and not a hearing de novo.

33. **THIS COURT ORDERS** that if no party appeals the determination of a Claim by a Claims Officer within the time set out in paragraph 32 above, the decision of the Claims Officer in determining the value of an LP Creditor's Claim shall be final and binding upon the relevant LP Entity, the Monitor and the LP Creditor and there shall be no further right of appeal, review or recourse to the Court from the Claims Officer's final determination of a Claim.

SUSPENSION OF THE CLAIMS PROCESS

34. **THIS COURT ORDERS** that no steps for the purposes of adjudicating or resolving the Claims (as described in paragraphs 26 through 32 herein) shall be taken unless:

(a) Phase 2 of the SISP is completed and the Monitor, the LP CRA, the LP Entities and the Agent make a determination that such steps are reasonably required to close the AHC Transaction (as defined in the Monitor's Seventh Report);

(b) after the closing of the AHC Transaction (or such earlier date as may be agreed to by the Monitor, the LP CRA, the LP Entities and the Agent), the Monitor, the LP CRA and the LP Entities make a determination that the resolution of Claims is reasonably required to facilitate a distribution of proceeds from such Successful Bid; or

(c) directed by further Order of the Court.

For greater certainty, in the event that the AHC Transaction is not approved or is otherwise terminated, no further steps shall be taken for the purpose of adjudicating or resolving the Claims.

35. **THIS COURT ORDERS** that if a determination is made under paragraph 34 above, the Monitor shall as soon as reasonably possible thereafter post notice of such determination on the website maintained for this proceeding at: http://cfcanada.fticonsulting.com/clp, and such posting shall constitute notice of such determination.

SET-OFF

36. **THIS COURT ORDERS** that the LP Entities may set-off (whether by way of legal, equitable or contractual set-off) against payments or other distributions to be made pursuant to the LP Plan to any LP Creditor, any claims of any nature whatsoever that any of the LP Entities may have against such LP Creditor, however, neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the LP Entities of any such claim that the LP Entities may have against such LP Creditor.

NOTICE OF TRANSFEREES

37. **THIS COURT ORDERS** that leave is hereby granted from the date of this LP Amended Claims Procedure Order until May 27, 2010 to permit an LP Creditor to provide notice of assignment or transfer of a Claim to the Monitor.

38. **THIS COURT ORDERS** that if, after the Filing Date, the holder of a Claim transfers or assigns the whole of such Claim to another Person, neither the Monitor nor the LP Entities shall be obligated to give notice or otherwise deal with the transferee or assignee of such Claim in respect thereof unless and until actual notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received and acknowledged by the relevant LP Entity and the Monitor in writing and thereafter such transferee or assignee shall for the purposes hereof constitute the "Creditor" in respect of such Claim. Any such transferee or assignee of a Claim shall be bound by any notices given or steps taken in respect of such Claim in accordance with this LP Amended Claims Procedure Order prior to receipt and acknowledgement by the relevant LP Entity and the Monitor of satisfactory evidence of such transfer or assignment. A transferee or assignee of a Claim takes the Claim subject to any rights of set-off to which an LP Entity may be entitled with respect to such Claim. For greater certainty, a transferee or assignee of a Claim is not entitled to set-off, apply, merge, consolidate or combine any Claims assigned or transferred to it against or on account or in reduction of any amounts owing by such Person to any of the LP Entities. No transfer or assignment shall be received for voting purposes unless such transfer shall have been received by the Monitor no later than 5:00 p.m. (Toronto time) on May 27, 2010, failing which the original transferor shall have all applicable rights as the "Creditor" with respect to such Claim as if no transfer of the Claim had occurred. Reference to transfer in this LP Amended Claims Procedure Order includes a transfer or assignment whether absolute or intended as security.

SERVICE AND NOTICES

39. **THIS COURT ORDERS** that the LP Entities and the Monitor may, unless otherwise specified by this LP Amended Claims Procedure Order, serve and deliver the LP Claims Package, the Meeting Materials, any letters, notices or other documents to LP Creditors or any other interested Person by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or email to such Persons at the physical or electronic address, as applicable, last shown on the books and records of the LP Entities or set out in such LP Creditor's LP Proof of Claim. Any such service and

delivery shall be deemed to have been received: (i) if sent by ordinary mail, on the third Business Day after mailing within Ontario, the fifth Business Day after mailing within Canada (other than within Ontario), and the tenth Business Day after mailing internationally; (ii) if sent by courier or personal delivery, on the next Business Day following dispatch; and (iii) if delivered by facsimile transmission or email by 6:00 p.m. on a Business Day, on such Business Day and if delivered after 6:00 p.m. or other than on a Business Day, on the following Business Day.

40. **THIS COURT ORDERS** that any notice or communication required to be provided or delivered by an LP Creditor to the Monitor or the LP Entities under this LP Amended Claims Procedure Order shall be in writing in substantially the form, if any, provided for in this LP Amended Claims Procedure Order and will be sufficiently given only if delivered by prepaid registered mail, courier, personal delivery, facsimile transmission or email addressed to:

FTI Consulting Canada Inc., Court-appointed Monitor of Canwest Publishing Inc./Publications Canwest Inc. et al
Claims Process
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON
M5K 1G8

Attention: Pamela Luthra
Telephone: 1 888- 310-7627
Fax: 416-649-8101
Email: CanwestLP@fticonsulting.com

Any such notice or communication delivered by an LP Creditor shall be deemed to be received upon actual receipt by the Monitor thereof during normal business hours on a Business Day or if delivered outside of normal business hours, the next Business Day.

41. **THIS COURT ORDERS** that if during any period during which notices or other communications are being given pursuant to this LP Amended Claims Procedure Order a postal strike or postal work stoppage of general application should occur, such notices or other communications sent by ordinary mail and then not received shall not, absent further Order of this Court, be effective and notices and other communications given

hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery, facsimile transmission or email in accordance with this LP Amended Claims Procedure Order.

42. **THIS COURT ORDERS** that in the event that this LP Amended Claims Procedure Order is later amended by further Order of the Court, the LP Entities or the Monitor may post such further Order on the Monitor's website and such posting shall constitute adequate notice to LP Creditors of such amended claims procedure.

MISCELLANEOUS

43. **THIS COURT ORDERS** that notwithstanding any other provisions of this LP Amended Claims Procedure Order, the solicitation by the Monitor or the LP Entities of LP Proofs of Claim, and the filing by any LP Creditor of any LP Proof of Claim shall not, for that reason only, grant any person any standing in these proceedings or rights under any proposed LP Plan.

44. **THIS COURT ORDERS** that nothing in this LP Amended Claims Procedure Order shall (i) constitute or be deemed to constitute an allocation or assignment of Claims or Excluded Claims by the LP Entities into particular affected or unaffected classes for the purpose of an LP Plan; or (ii) authorize or require the LP Entities to file an LP Plan.

45. **THIS COURT ORDERS** that in the event that no LP Plan is approved by this Court, the LP Claims Bar Date, LP Restructuring Period Claims Bar Date and Employee Claims Bar Date or LP Director/Officer Claims Bar Date, as the case may be, shall be of no effect in any subsequent proceeding or distribution with respect to any and all Claims made by LP Creditors.

46. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada (including the assistance of any court in Canada pursuant to section 17 of the CCAA) and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial regulatory body of the United States and the states

or other subdivisions of the United States and of any other nation or state, to act in aid of and to be complementary to this Court in carrying out the terms of this LP Amended Claims Procedure.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAY 17 2010

PER / PAR:

SCHEDULE "A"

NOTICE TO CREDITORS OF Canwest Publishing Inc./Publications Canwest Inc., Canwest Books Inc., Canwest (Canada) Inc. (collectively, the "Applicants") and Canwest Limited Partnership ("Canwest LP" and, together with the Applicants, the "LP Entities")

RE: NOTICE OF CLAIMS PROCEDURE AND CLAIMS BAR DATE IN COMPANIES' CREDITORS ARRANGEMENT ACT ("CCAA") PROCEEDINGS

NOTICE IS HEREBY GIVEN that pursuant to an Order of the Ontario Superior Court of Justice made April 12, 2010 (the "Order"), a claims procedure was approved for the determination of certain claims against the LP Entities.

PLEASE TAKE NOTICE that the claims procedure applies only to Claims of Creditors described in the Order. No other claims are being compromised. A copy of the Order and other public information concerning the CCAA Proceedings can be found at the Monitor's website: http://cfcanada.fticonsulting.com/clp.

THE LP CLAIMS BAR DATE is 5:00 p.m. (Toronto Time) on May 7, 2010 or, if you have a Restructuring Period Claim, 21 days after you are deemed to have received the LP Claims Package pursuant to the Order. Any creditor who has not received an LP Claims Package and who believes that it has a Claim against one or more of the LP Entities must contact the Monitor in order to obtain an LP Proof of Claim. LP Proofs of Claim must be filed with the Monitor on or before the LP Claims Bar Date or the LP Restructuring Period Claims Bar Date, as the case may be.

HOLDERS OF CLAIMS that do not file an LP Proof of Claim by the LP Claims Bar Date or the LP Restructuring Period Claims Bar Date, as the case may be, shall not be entitled to

vote at any meeting of creditors regarding any plan of compromise or arrangement proposed by the LP Entities or participate in any distribution under such plan, and any Claims such Creditor may have against any of the LP Entities shall be forever extinguished and barred.

FORMER EMPLOYEES WITH SERA CLAIMS OR TERMINATION AND SEVERANCE CLAIMS, as defined in the Order, may contact Court-appointed representative counsel for further information at CSER@nelligan.ca or 1-888-565-9912.

CREDITORS REQUIRING INFORMATION or claim documentation may contact the Monitor at the following address or facsimile:

FTI Consulting Canada Inc., Court-appointed Monitor of Canwest Publishing Inc./Publications Canwest Inc. et al
Claims Process
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON
M5K 1G8

Attention: Pamela Luthra

Telephone: 1 888- 310-7627
Fax: 416-649-8101
Email: **CanwestLP@fticonsulting.com**

SCHEDULE "B"

LP PROOF OF CLAIM INSTRUCTION LETTER FOR THE CLAIMS PROCEDURE FOR LP CREDITORS OF CANWEST PUBLISHING INC./PUBLICATIONS CANWEST INC., CANWEST BOOKS INC., CANWEST (CANADA) INC. AND CANWEST LIMITED PARTNERSHIP/CANWEST SOCIETE EN COMMANDITE (collectively, the "LP ENTITIES")

PLEASE NOTE THAT THIS IS A SEPARATE AND DISTINCT CLAIMS PROCESS FROM THE CLAIMS PROCESS GOVERNING THE CMI ENTITIES. ALL CREDITORS THAT BELIEVE THEY HAVE A CLAIM AGAINST CANWEST PUBLISHING INC./PUBLICATIONS CANWEST INC., CANWEST BOOKS INC., CANWEST (CANADA) INC. AND CANWEST LIMITED PARTNERSHIP/CANWEST SOCIETE EN COMMANDITE MUST FILE A PROOF OF CLAIM FORM

LP CLAIMS PROCESS

By Order of the Honourable Madam Justice Pepall dated April 12, 2010, as amended by the Order of Madam Justice Pepall dated May 17, 2010 (and as may be further amended from time to time, the "Amended Claims Procedure Order") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA"), the LP Entities have been authorized to conduct a claims process (the "LP Claims Process") pursuant to a claims procedure (the "Claims Procedure"). A copy of the Amended Claims Procedure Order and other public information concerning these proceedings can be obtained from the website of FTI Consulting Canada Inc., the Court-appointed Monitor of the LP Entities, at http://cfcanada.fticonsulting.com/clp.

This letter provides general instructions for completing the LP Proof of Claim forms. Capitalized terms not defined within this instruction letter shall have the meanings ascribed to them in the Order.

The LP Claims Process is intended for any Person with a claim of any kind or nature whatsoever, other than an Excluded Claim, arising on or prior to January 8, 2010, whether unliquidated, contingent or otherwise. In addition, the LP Claims Process is intended for any Person with any Claim arising after January 8, 2010 against any or all of the LP Entities or a Director or Officer thereof as the result of the restructuring, disclaimer, resiliation, termination or breach of any

contract, lease or other type of agreement. Please review the Order for the complete definitions of Claim, Prefiling Claim, Restructuring Period Claim, Employee Claim, Director/Officer Claim and Excluded Claim.

All notices and inquiries with respect to the LP Claims Process and the Claims Procedure should be directed to the Monitor by prepaid registered mail, courier, personal delivery, facsimile transmission or email at the address below:

FTI Consulting Canada Inc., Court-appointed Monitor of Canwest Publishing Inc./Publications Canwest Inc. et al
Claims Process
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON
M5K 1G8
Attention: Pamela Luthra

Telephone: 1 888- 310-7627
Fax: 416-649-8101
Email: **CanwestLP@fticonsulting.com**

YOU MUST FILE A PROOF OF CLAIM BY THE CLAIMS BAR DATE, THE LP RESTRUCTURING PERIOD CLAIMS BAR DATE AND EMPLOYEE CLAIMS BAR DATE OR THE DIRECTOR/OFFICER CLAIMS BAR DATE, AS MAY THE CASE MAY BE, IN ORDER TO ESTABLISH YOUR CLAIM. THE LP CLAIMS BAR DATE is 5:00 p.m. (Toronto Time) on May 7, 2010 or, **IF YOU HAVE A RESTRUCTURING PERIOD CLAIM, AN EMPLOYEE CLAIM OR A DIRECTOR/OFFICER CLAIM, THE LP RESTRUCTURING PERIOD CLAIMS BAR DATE AND EMPLOYEE CLAIMS BAR DATE AND THE LP DIRECTOR/OFFICER CLAIMS BAR DATE IS 5:00 (Toronto Time) on June 3, 2010,** unless the Monitor and the LP Entities agree in writing or the Court Orders that the LP Proof of Claim be accepted after that date. **IF YOU DO NOT FILE AN LP PROOF OF CLAIM BY THE LP CLAIMS BAR DATE, THE LP RESTRUCTURING PERIOD CLAIMS BAR DATE AND EMPLOYEE CLAIMS BAR DATE OR THE DIRECTOR/OFFICER CLAIMS BAR DATE, AS THE CASE MAY BE,** you will not be entitled to vote at any meeting of creditors regarding any plan of compromise or arrangement proposed by the LP Entities or participate in any distribution under such plan, and any Claims

you may have against any of the LP Entities or any Director or Officer thereof will be forever extinguished and barred.

Claims denominated in a foreign currency other than U.S. dollars shall be converted to Canadian dollars at the Bank of Canada noon exchange rate in effect at the Filing Date. U.S. dollar denominated claims shall be converted at the Bank of Canada Canadian/U.S.dollar noon exchange rate in effect at the Filing Date which rate was Cdn $1.0344: $1 U.S.

Please refer to the Amended Claims Procedure Order for further details.

If you decide to submit an LP Proof of Claim and the LP Entities disagree with the value or status that you have ascribed to your Claim, or the validity of your Claim as set out in your LP Proof of Claim, and such disagreement cannot be resolved consensually, you will receive an LP Notice of Revision or Disallowance from the LP Entities (as set out in paragraph 22 of the Claims Procedure Order).

ADDITIONAL FORMS

Additional LP Proof of Claim forms can be obtained from the Monitor's website at http://cfcanada.fticonsulting.com/clp or by contacting the Monitor and providing the particulars as to your name, address, facsimile number, email address and contact person. Once the LP Entities have this information, you will receive, as soon as practicable, additional LP Proof of Claim forms.

SCHEDULE "C"

Court File No. CV-10-8533-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANWEST PUBLISHING INC./PUBLICATIONS CANWEST INC., CANWEST BOOKS INC. AND CANWEST (CANADA) INC.

APPLICANTS

LP PROOF OF CLAIM

---

1. **PARTICULARS OF CREDITOR:**

(a) Full Legal Name of Creditor:

_____(the "Creditor").

(Full legal or Corporate name should be the name of the original Creditor. ***Do not file separate Proofs of Claim for divisions of the same Creditor.)***

(b) Full Mailing Address of Creditor:

_____

_____

_____

_____

(c) *Telephone Number of Creditor: _____

(d) *Facsimile Number of Creditor: _____

(e) *E-mail Address of Creditor: _____

(f) *Attention (Contact Person): _____

(g) Has the Claim been sold or assigned by Creditor to another party?

Yes _____ No _____ (If yes please completed section 5)

***In order to ensure that all claims are processed in an expedited manner you must provide one (1) or more of your telephone number, fax number or email address.**

2. **PROOF OF CLAIM**

THE UNDERSIGNED CERTIFIES AS FOLLOWS:

(a) That I am a Creditor of/hold the position of _____ of the Creditor and have knowledge of all the circumstances connected with the Claim described herein;

(b) That I have knowledge of all the circumstances connected with the Claim described and set out below;

(c) That the LP Entity/Director or Officer was and still is indebted to the Creditor as follows (*Claims denominated in a foreign currency other than U.S. dollars shall be converted to Canadian dollars at the Bank of Canada noon exchange rate in effect at the Filing Date. U.S. dollar denominated claims shall be converted at the Bank of Canada Canadian/U.S.dollar noon exchange rate in effect at the Filing Date which rate was Cdn $1.0344: $1 U.S.*)

	Prefiling Claims	Restructuring Period Claims	Employee Claims	Total Claims
Canwest Publishing Inc./Publications Canwest Inc.	$	$	$	$
Canwest Books Inc.	$	$	$	$
Canwest (Canada) Inc.	$	$	$	$
Canwest Limited Partnership	$	$	$	$
Directors/Officers	$	$	$	$
Total Claims	$	$	$	$

3. **NATURE OF CLAIM**

(CHECK AND COMPLETE APPROPRIATE CATEGORY)

☐ Unsecured Claim of $_____

☐ Secured Claim of $_____

In respect of this debt, I hold security over the assets of the LP Entity valued at $_____, the particulars of which security and value are attached to this Proof of Claim form.

(Give full particulars of the security, including the date on which the security was given, the value that you ascribe to the assets charged by your security and the basis for such valuation, and attach a copy of the security documents evidencing the security.)

4. **PARTICULARS OF CLAIM:**

The Particulars of the undersigned's total Claim are attached.

(Provide full particulars of the Claim and supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim, name of any guarantor(s) that has guaranteed the Claim, and amount of Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed).

5. **PARTICULARS OF ASSIGNEE(S) (only to be completed if your claim has been sold or assigned to another party):**

(a) Full Legal Name of Assignee(s) of Claim (if all or a portion of the Claim has been sold). If there is more than one assignee, please attach separate sheets with the following information:

_____

(the "Assignee(s)")

Amount of Total Claim Assigned $ _____

Amount of Total Claim Not Assigned $ _____

Total Amount of Claim $ _____
(should equal "Total Claim" as entered in Section 2)

(b) Full Mailing Address of Assignee(s):

_____

_____

_____

_____

(c) Telephone Number of Assignee(s): _____

(d) Facsimile Number of Assignee(s): _____

(e) Attention (Contact Person): _____

6. **FILING OF CLAIM**

This LP Proof of Claim must be returned to and received by the Monitor by **5:00 p.m. (Toronto Time) on May 7, 2010** or, **IF YOU HAVE A RESTRUCTURING PERIOD CLAIM, AN EMPLOYEE CLAIM OR A DIRECTOR/OFFICER CLAIM, 5:00 (Toronto Time) on June 3, 2010** (unless the Monitor and the LP Entities agree in writing or the Court Orders that the LP Proof of Claim be accepted after that date) at the following address:

FTI Consulting Canada Inc., Court-appointed Monitor of Canwest Publishing Inc./Publications Canwest Inc. et al
Claims Process
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON
M5K 1G8

Attention: Pamela Luthra

Telephone: 1 888- 310-7627
Fax: 416-649-8101
Email: **CanwestLP@fticonsulting.com**

Dated at _____ this _____ day of _____, 2010.

Per: _____

SCHEDULE "D"

Court File No. CV-10-8533-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANWEST PUBLISHING INC./PUBLICATIONS CANWEST INC., CANWEST BOOKS INC. AND CANWEST (CANADA) INC.

APPLICANTS

LP NOTICE OF REVISION OR DISALLOWANCE

TO: **[insert name and address of creditor]**

The LP Entities have disallowed in full or in part, your Claim, as set out in your LP Proof of Claim, as set out below:

Prefiling Claim:

Claim Against	Claim per Proof of Claim	Allowed Amount	Disallowed Amount
Canwest Publishing Inc./Publications Canwest Inc.	$	$	$
Canwest Books Inc.	$	$	$
Canwest (Canada) Inc.	$	$	$
Canwest Limited Partnership	$	$	$
Directors/Officers	$	$	$
Total Claims	$	$	$

Restructuring Period Claim:

Claim Against	Claim per Proof of Claim	Allowed Amount	Disallowed Amount
Canwest Publishing Inc./Publications Canwest Inc.	$	$	$
Canwest Books Inc.	$	$	$
Canwest (Canada) Inc.	$	$	$
Canwest Limited Partnership	$	$	$
Directors/Officers	$	$	$
Total Claims	$	$	$

Employee Claim:

Claim Against	Claim per Proof of Claim	Allowed Amount	Disallowed Amount
Canwest Publishing Inc./Publications Canwest Inc.	$	$	$
Canwest Books Inc.	$	$	$
Canwest (Canada) Inc.	$	$	$
Canwest Limited Partnership	$	$	$
Directors/Officers	$	$	$
Total Claims	$	$	$

REASONS FOR DISALLOWANCE:

_____

_____

_____

_____

_____

_____

_____

IF YOU INTEND TO DISPUTE THIS NOTICE OF REVISION OR DISALLOWANCE:

IN THE CASE OF AN LP CREDITOR WITH A PREFILING CLAIM, you must, no later than **5:00 p.m. (Toronto Time)** before the June 10, 2010 notify the Monitor of such intent by delivering an LP Notice of Dispute of Revision or Disallowance (a copy of which can be found on the Monitor's website at http://cfcanada.fticonsulting.com/clp) in accordance with the LP Amended Claims Procedure Order to the following address or facsimile:

FTI Consulting Canada Inc., Court-appointed Monitor of Canwest Publishing Inc./Publications Canwest Inc. et al
Claims Process
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON
M5K 1G8

Attention: Pamela Luthra

Telephone: 1 888- 310-7627
Fax: 416-649-8101
Email: **CanwestLP@fticonsulting.com**

IN THE CASE OF AN LP CREDITOR WITH A RESTRUCTURING PERIOD CLAIM, AN EMPLOYEE CLAIM OR A DIRECTOR/OFFICER CLAIM, you must, no later than **5:00 p.m. (Toronto Time)** before June 30, 2010 notify the Monitor of such intent by delivering an LP Notice of Dispute of Revision or Disallowance in accordance with the LP Amended Claims Procedure Order to the following address or facsimile:

FTI Consulting Canada Inc., Court-appointed Monitor of Canwest Publishing Inc./Publications Canwest Inc. et al
Claims Process
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON
M5K 1G8

Attention: Pamela Luthra

Telephone: 1 888- 310-7627
Fax: 416-649-8101
Email: **CanwestLP@fticonsulting.com**

If you do not deliver an LP Notice of Dispute of Revision or Disallowance (a copy of which can be found on the Monitor's website at http://cfcanada.fticonsulting.com/clp) by the time and date set out above, as applicable, the value of your Claim shall be deemed to be as set out in this LP Notice of Revision or Disallowance.

DATE

SCHEDULE "E"

Court File No. CV-10-8533-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANWEST PUBLISHING INC./PUBLICATIONS CANWEST INC., CANWEST BOOKS INC. AND CANWEST (CANADA) INC.

APPLICANTS

LP NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE

---

7. **PARTICULARS OF CREDITOR:**

(a) Full Legal Name of Creditor: _____

(b) Full Mailing Address of Creditor: _____

_____

_____

_____

(c) *Telephone Number of Creditor: _____

(d) *Facsimile Number of Creditor: _____

(e) *E-mail Address of Creditor: _____

(f) Attention (Contact Person): _____

***In order to ensure that all claims are processed in an expedited manner you must provide one (1) or more of your telephone number, fax number or email address.**

8. **PARTICULARS OF ORIGINAL CREDITOR FROM WHOM YOU ACQUIRED CLAIM, IF APPLICABLE:**

(a) Have you acquired this Claim by assignment? Yes ☐ No ☐
(if yes, attach documents evidencing assignment)

(b) Full Legal Name of original creditor(s): _____

9. **DISPUTE OF REVISION OR DISALLOWANCE OF CLAIM FOR VOTING AND/OR DISTRIBUTION PURPOSES:**

We hereby disagree with the value of our Claim as set out in the LP Notice of Revision or Disallowance dated _____, as set out below:

PreFiling Claim:

Claim Against	Claim per Proof of Claim	Allowed Amount	Disallowed Amount
Canwest Publishing Inc./Publications Canwest Inc.	$	$	$
Canwest Books Inc.	$	$	$
Canwest (Canada) Inc.	$	$	$
Canwest Limited Partnership	$	$	$
Directors/Officers	$	$	$
Total Claims	**$**	**$**	**$**

Restructuring Period Claim:

Claim Against	Claim per Proof of Claim	Allowed Amount	Disallowed Amount
Canwest Publishing Inc./Publications Canwest Inc.	$	$	$
Canwest Books Inc.	$	$	$
Canwest (Canada) Inc.	$	$	$
Canwest Limited Partnership	$	$	$
Directors/Officers	$	$	$
Total Claims	$	$	$

Employee Claim:

Claim Against	Claim per Proof of Claim	Allowed Amount	Disallowed Amount
Canwest Publishing Inc./Publications Canwest Inc.	$	$	$
Canwest Books Inc.	$	$	$
Canwest (Canada) Inc.	$	$	$
Canwest Limited Partnership	$	$	$
Directors/Officers	$	$	$
Total Claims	$	$	$

REASONS FOR DISPUTE:

(Provide full particulars of the Claim and supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim, name of any guarantor(s) that has guaranteed the Claim, and amount of Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed.)

_____

_____

_____

_____

_____

_____

_____

If you intend to dispute an LP Notice of Revision or Disallowance, you must,

IN THE CASE OF AN LP CREDITOR WITH A PREFILING CLAIM, no later than **5:00 p.m. (Toronto Time) on June 10, 2010** notify the Monitor of such intent by delivering an LP Notice of Dispute of Revision or Disallowance in accordance with the LP Amended Claims Procedure Order to the following address or facsimile:

FTI Consulting Canada Inc., Court-appointed Monitor of Canwest Publishing Inc./Publications Canwest Inc. et al
Claims Process
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON
M5K 1G8

Attention: Pamela Luthra

Telephone: 1 888- 310-7627
Fax: 416-649-8101
Email: **CanwestLP@fticonsulting.com**

IN THE CASE OF AN LP CREDITOR WITH A RESTRUCTURING PERIOD CLAIM, AN EMPLOYEE CLAIM OR A DIRECTOR/OFFICER CLAIM, you must, no later than **5:00 p.m. (Toronto Time) on June 30, 2010** notify the Monitor of such intent by delivering an LP Notice of Dispute of Revision or Disallowance in accordance with the LP Amended Claims Procedure Order to the following address or facsimile:

FTI Consulting Canada Inc., Court-appointed Monitor of Canwest Publishing Inc./Publications Canwest Inc. et al
Claims Process
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON
M5K 1G8

Attention: Pamela Luthra

Telephone: 1 888- 310-7627
Fax: 416-649-8101
Email: **CanwestLP@fticonsulting.com**

If you do not deliver an LP Notice of Dispute of Revision or Disallowance by the time and date set out above, as applicable, the value of your Claim shall be deemed to be as set out in the LP Notice of Revision or Disallowance.

Dated at _____ this _____ day of _____, 2010.

Per: _____

SCHEDULE "F"

NOTICE TO CREDITORS OF Canwest Publishing Inc./Publications Canwest Inc., Canwest Books Inc., Canwest (Canada) Inc. (collectively, the "Applicants") and Canwest Limited Partnership ("Canwest LP" and, together with the Applicants, the "LP Entities")

RE: NOTICE OF AMENDED CLAIMS PROCEDURE IN COMPANIES' CREDITORS ARRANGEMENT ACT ("CCAA") PROCEEDINGS

NOTICE IS HEREBY GIVEN that pursuant to an Order of the Ontario Superior Court of Justice made May 17, 2010 (the "**Amended Claims Procedure Order**"), certain amendments were made to the Order dated April 12, 2010 that established procedures (the "**Claims Procedure**") for the determination of certain claims against the LP Entities.

PLEASE TAKE NOTICE that the Claims Procedure applies only to Claims of LP Creditors described in the Amended Claims Procedure Order. No other claims are being compromised. A copy of the Amended Claims Procedure Order and other public information concerning the CCAA Proceedings can be found at the Monitor's website: http://cfcanada.fticonsulting.com/clp.

THE AMENDED CLAIMS PROCEDURE ORDER calls for additional claims against the LP Entities, including certain claims (i) by employees or former employees of the LP Entities arising out of the employment of such employee by the LP Entities (the "**Employee Claims**") and (ii) against the directors and officers of the LP Entities (the "**Director/Officer Claims**").

THE CLAIMS BAR DATE for LP Restructuring Period Claims and Employee Claims Bar Date and Director/Officer Claims Bar Date is **5:00 p.m. (Toronto Time) on June 3, 2010.** Any creditor who has not received an LP Claims Package and who believes that it has a Claim

against one or more of the LP Entities must contact the Monitor in order to obtain an LP Proof of Claim. LP Proofs of Claim must be filed with the Monitor on or before the LP Claims Bar Date, the LP Restructuring Period Claims and Employee Claims Bar Date or the Director/Officer Claims Bar Date.

HOLDERS OF CLAIMS that do not file an LP Proof of Claim by the applicable claims bar date shall not be entitled to vote at any meeting of creditors regarding any plan of compromise or arrangement proposed by the LP Entities or participate in any distribution under such plan, and any Claims such Creditor may have against any of the LP Entities shall be forever extinguished and barred.

EMPLOYEES OR FORMER EMPLOYEES that may have claims against the LP Entities pursuant to the Amended Claims Procedure Order, may contact Court-appointed representative counsel for further information at CSER@nelligan.ca or 1-888-565-9912.

CREDITORS REQUIRING INFORMATION or claim documentation may contact the Monitor at the following address or facsimile:

FTI Consulting Canada Inc., Court-appointed Monitor of Canwest Publishing Inc./Publications Canwest Inc. et al
Claims Process
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON
M5K 1G8

Attention: Pamela Luthra

Telephone: 1 888- 310-7627
Fax: 416-649-8101
Email: **CanwestLP@fticonsulting.com**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANWEST PUBLISHING INC./PUBLICATIONS CANWEST INC., CANWEST BOOKS INC. AND CANWEST (CANADA) INC.

APPLICANTS

Court File No: CV-10-8533-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

AMENDED CLAIMS PROCEDURE ORDER

OSLER, HOSKIN & HARCOURT LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

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Lawyers for the Applicants

F. 1117119

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TAB 8

8 BAT

AGREEMENT

BETWEEN

THE GAZETTE, a division of Southam Inc., a legally incorporated company, having its head office and its principal place of business at 250 St-Antoine St. West, Montreal, Quebec. (hereinafter called the Company);

AND:

LE SYNDICAT QUEBECOIS DE L'IMPRIMERIE ET DES COMMUNICATIONS, SECTION LOCALE 145, an association of employees organized in the Province of Quebec and duly accredited by the Minister of Labour and Manpower to represent the employees hereunder mentioned, and having its principal place of business for the Province of Québec at 627 Faillon Street East, Montreal, Québec (hereinafter called The Union);

AND:

Aime Alarie et al, employees of the employer, numbering 200, whose names appear in the appendix to the present document (hereinafter called the employees).

AGREEMENT entered into this _____ day of 12 NOV 1982, 1983 between The Gazette, a division of Southam Inc., and Le Syndicat Québécois de l'Imprimerie et des Communications, section locale 145, acting on behalf of the 200 employees whose names appear on Appendix I attached hereto, hereinafter called the employees.

I. — COVERAGE. — This agreement covers the 200 employees of the Composing Room who are named in the attached Appendix I. The named employees are covered by this Agreement only if they remain members in good standing of the Union.

The present agreement will come into effect only at the time when the collective agreement between the employer and the Union as mentioned below, similarly in the case of future collective agreements, shall end, disappear, become without value or, for any other reason become null and void or inapplicable.

II. — TERM OF AGREEMENT. — This agreement shall remain in effect until the employment of all the persons named in the attached Appendix I has ceased. Neither party shall raise any matter dealt with in this Agreement in future negotiations for any new collective agreement.

III. — JOB GUARANTEE. — In return for the right to continue to move ahead with technological changes, the Company undertakes to guarantee and guarantees to protect the employees named in the attached Appendix I from the loss of regular full-time employment in the Composing Room due to technological changes. The full-time employment provided by this guarantee shall be at full pay at not less than the prevailing Union rate of pay as agreed to in the collective agreements which will be negotiated between the parties from time to time.

Technological change is defined as a change brought about by the introduction of any new equipment or new processes which function as a substitute for, or evolution of the work presently performed or under the jurisdiction of the Union in the department.

IV. — LOSS OF COVERAGE. — This agreement will cease to apply to an employee for only one or other of the following reasons:

1. Death of the employee.
2. Voluntary resignation by a regular full-time employee.
3. Termination of employment at the date stipulated in Appendix I for each employee.
4. Final permanent discharge from the Company. Permanent discharge can only occur for major offence and only then, if the discharge is grieved, and is upheld in arbitration. This is the standard to be used in interpreting permanent discharge and can be varied solely by mutually agreed to amendments to the collective agreement.

V. — EMPLOYER'S EXISTENCE. — This agreement will be applicable for its terms, irrespective of the owner(s) of The Gazette (even if the name is later changed). Therefore, it will be binding on purchasers, successors, or assigns of the Company. Similarly, it will be binding even if The Gazette newspaper permanently ceases publication but the production facilities continue in such activities as commercial printing. It will no longer be binding if the Company permanently ceases to exist. But in the event publication or operation of the production facilities is begun again, the full terms and conditions of this agreement will be reinstated.

This agreement shall be binding on the successors of Le Syndicat Québécois de l'Imprimerie et des Communications, section locale 145 as provided by Quebec Law.

VI. — JOB TRANSFERS. — If an employee is transferred to another department, he will continue to be covered by this agreement. Such a transfer shall have the mutual agreement of the parties, the employee and, if required by the applicable collective agreement, any other union involved.

In the case of a transfer, the employee will be subject to the provisions of the applicable collective agreement if any (other than referred to in Paragraph III — Job Guarantee of this Agreement), including permanent discharge. In the case of retirement or permanent discharge, coverage by this agreement will cease.

If an employee, working outside the department as a result of a transfer, is laid off in another jurisdiction by operation of seniority or other provisions, that employee shall be transferred back to his or her original department with priority originally held at time of transfer, as a regular full-time employee of the Company.

This employee may be transferred to a further jurisdiction within the Company, if mutually agreed between the parties, the employee and, if required by the applicable collective agreement, any other union involved.

VII. — GRIEVANCE PROCEDURE — In the event of a dispute as to the interpretation, application, or breach of this agreement, the grievance procedure to be followed shall be that laid out in the collective agreement between the Company and the Union, which is in effect at the time that the grievance is initiated.

In the case where the Union ceases to exist, or if the Union is no longer the accredited bargaining agent, an employee who is named in Appendix I may have recourse to the procedure for the resolution of grievances provided by the Labour Code.

The parties to this agreement intend and consent that the present agreement be in the English language.

IN WITNESS WHEREOF, the parties have signed this 15 APR 1983 day of _____ 1983.

THE GAZETTE

LE SYNDICAT QUEBECOIS DE L'IMPRIMERIE ET DES COMMUNICATIONS, section locale 145

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I, the undersigned, being one of the employees covered by the agreement between The Gazette and Le Syndicat Québécois de l'Imprimerie et des Communications, section locale 145, dated November 12, 1982, declare I have read and understood the said agreement and, in particular, that my employment will terminate at the date shown hereunder. I agree to be bound by the terms and conditions of this agreement equally with the other parties to this agreement, the whole as witnessed by my signature placed below:

APPENDIX "1"

Name	Date of termination of employment	Signature of employee	Signature of witness	Date
ALARIE, Aimé	30-09-91			
ALARIE, Fernand	31-08-93			
ALARIE, Jean-Charles	28-02-83			
AUBRY, Roland	31-10-92			
BANTON, Peter	28-02-17			
BATSFORD, Kenneth	28-02-89			
BEAUCHAMP, André	30-04-09			
BENNETT, Douglas	31-05-97			
BENTON, William	31-05-05			
BERNARD, Lloyd	30-09-89			
BIENVENUE, Fernand	31-01-99			
BILLINGTON, Keith	31-05-09			
BLONDIN, Rita	30-06-13			
BOGLE, William	31-07-90			
BOWEN, Leonard	31-03-90			
BRALEY, Leslie	30-09-86	R.J. Brazeau		1st APRIL 83
~~BRAZEAU, Joseph~~	~~31-07-15~~			
BRETON, Jean-Paul	30-09-96			
BROWN, Renn	30-09-89			
BROWN-URE, William	28-02-90			
BRUCE, John	28-02-89			
BUCHANAN, Stanley	30-11-05			
BURNETT, Margaret	31-01-87			
CAVE, Brian	31-10-09			
CECCHINI, Ray	31-10-94			
CHARRON, Francois	30-04-10			
CHEVRETTE, Roger	31-05-89			
CHRISTOFFER, Harry	31-07-03			
CLARKE, Winston	31-12-02			
CLEMENTS, Robert	30-11-07			
CONSTANDIS, Kyriacos	31-12-90			
CORBEIL, André	31-07-92			
CORBEIL, Guy	30-09-05			
CORRIVEAU, Claude	31-01-00			
COTE, Gaétan	31-08-11			
COULOMBE, Arthur	31-12-92			
COUSINEAU, Jean-Pierre	31-05-90			
COWAN, Douglas	30-06-96			
CRAWFORD, Donald	30-04-07			
CROWLEY, John	30-04-04			
DAIGNEAULT, Robert	30-06-08			
DAVIES, Robert	31-08-07			
DAWSON, John	30-06-89			
DELEON, Marian	31-08-11			
DESJARDINS, Yvon	31-10-19			
DESORMEAUX, Marcel	30-06-01			
DI PAOLO, Eriberto	31-12-10			
DUBEY, Jacques	30-11-11			
DUMONT, Nicole	31-07-25			
DUPUIS, Yvon	28-02-93			
DURANLEAU, Jean	31-03-15			
DUROSEAU, Fritzner	31-08-10			
DUTEMPLE, Norman	31-07-95			
EHRENSPERGER, David	28-02-98			
FAILLE, Paul	30-09-84			
FARKAS, Zoltan	30-09-86			
FORGET, Roger	30-11-90			
FOUCAULT, Guy	30-06-00			
FOUCAULT, Roger	31-03-96			
FRANCIS, Cyril	31-03-93			
FREITAG, Harry	31-07-84			

APPENDIX "I"

Name	Date of termination of employment	Signature of employee	Signature of witness	Date
NAETS, François	31-10-95			
NAYMAN, Morris	30-04-82			
NIVEN, Alexander	31-12-92			
OSTIGUY, Marcel	31-08-01			
OVERALL, Charles	31-01-86			
PARENT, Ernest	31-10-84			
PARENT, Oller	31-08-96			
PAYNE, Robert	30-11-98			
PELLEGRINI, Anacleto	30-04-12			
PERREAULT, Rolland	31-12-93			
PERRIN, Roger	30-04-01			
PLOUFFE, André	28-02-94			
POIRIER, Gary	31-07-08			
POIRIER, Jean-Yves	30-11-01			
POIRIER, Michelle	31-01-00			
POIRIER, Normand	31-12-83			
POWERS, Herbert	31-08-91			
QUESNEL, Rhéal	28-02-91			
QUINN, Gerald	31-01-89			
RAMAT, Aurelio	30-09-91			
RASMUS, Helmut	31-05-82			
REBETEZ, Pierre	31-05-17			
RITCHIE, James	31-12-85			
ROSS, Robert	31-05-02			
ROSS, Roméo	30-11-06			
ROUND, George	31-05-95			
ROUSSEAU, Maurice	30-09-87			
ROY, Paul	31-12-94			
RUSSELL, Carl	31-03-97			
SAAD, Antoine	30-04-93			
SAMUEL, Brian	31-05-06			
SANTINI, James	31-08-86			
SHAND, David	31-03-97			
SHIRLOW, Warren	31-08-16			
SINEL, Robert	29-02-88			
SMEALL, Brian	31-05-17			
SMITH, Michael	31-03-18			
SNELGROVE, Bruce	31-08-91			
ST-DENIS, Pierre	31-07-02			
STE-MARIE, Guy	31-03-07			
STENHOUSE, David	30-09-20			
STEWART, Alan	30-04-84			
STIEBEL, John	30-09-13			
STIEBEL, Robert	30-06-89			
STOCKWELL, Leslie	31-12-07			
STOUTE, Joseph	31-03-91			
STREET, Clayton	31-12-01			
STREET, John	31-12-02			
STRIKE, Donald	30-11-05			
SUTAK, John	31-05-93			
SZEPLABI, John	31-08-13			
SZITASI, Edward	31-01-04			
TESSIER, Maurice	31-10-93			
THOMAS, Frederick	31-07-91			
THOMSON, Michael	31-08-13			
TIMMONS, Patrick	31-07-05			
TODD, James	30-06-09			
TREMBLAY, Marc	31-07-08			
VEITCH, Gary	31-03-13			
VICKERS, Douglas	30-11-15			
WARD, Donald	31-05-00			
WHEELER, Norman	30-09-86			
WHELAN, Thomas	30-03-95			
WILDING, Peter	31-12-18			
WILSON, Donald	31-10-03			
WILTSHIRE, Bruce	30-04-93			

TAB 9

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M-2 *(suite)*

AGREEMENT

BETWEEN

THE GAZETTE, a division of Southam Inc., a legally incorporated company, having its head office and its principal place of business at 250 St. Antoine St. West, Montreal, Quebec (hereinafter called the Company);

AND:

LE SYNDICAT QUEBECOIS DE L'IMPRIMERIE ET DES COMMUNICATIONS, LOCAL 145, an association of employees organized in the Province of Quebec and duly accredited by the Minister of Labour and Manpower to represent the employees hereunder mentioned, and having its principal place of business for the Province of Quebec at 627 Fallion St. East, Montreal, Quebec (hereinafter called the Union);

AND:

Aimé Alarie et al, employees of the Company, whose names appear in the appendix to the present document (hereinafter called the employees).

I. — INTENT — A. The undersigned parties agree that Section 4 (Jurisdiction) in the collective agreement between the Company and Union signed on March 5th, 1987 and for the period May 1, 1987 to April 30, 1990 contains substantial, intended modifications and changes from Section 4 (Jurisdiction) in the preceding collective agreement (1984-87) between the same parties and more specifically by such modifications and changes intend as follows:

a) deletion of Section 4 (Jurisdiction) contained in the 1984-87 collective agreement and all other references to "jurisdiction" in such collective agreement;

b) jurisdiction is limited to existing Composing Room work performed within the confines of the existing Composing Room;

c) the Company may transfer any work, equipment and/or process, in whole or in part, out of the Composing Room and/or out of the jurisdiction of the Composing Room bargaining unit without violating the provisions of Section 4 (Jurisdiction) and therefore shall be free from Jurisdictional claims;

d) only members of the Composing Room bargaining unit shall perform traditional bargaining unit work as described in the 1984-87 collective agreement within the confines of the Composing Room. However, it is understood that work performed by foremen and assistant-foremen, work presently performed by editorial employees in the Composing Room and any other non-bargaining unit work including, but not limited to, janitorial services, building maintenance, and so forth, is excluded from such jurisdiction.

B. For so long as the above agreements and understandings as well as the provisions of the present agreement generally shall be in full force and effect, the Company agrees to maintain, as fully described in Article V of the present agreement, the standard of living of Composing Room employees who are parties to the present agreement and who meet the conditions of Article II, COVERAGE, of the present agreement.

II. — COVERAGE — This agreement covers all Composing Room employees (and Mailroom transfers) as of March 5th, 1987 who sign the agreement and also signed the previous agreement (Job security - Technological changes) and whose names appear in the attached Appendix "II". The named employees are covered by this agreement only if they remain members in good standing of the Union. The agreement will apply to transferred employees only when such employees are working in the Composing Room.

The present agreement will come into effect only at the time when the collective agreement between the Employer and the Union as mentioned below, similarly in the case of future collective agreements, shall end, disappear, become without value or, for any other reason become null and void or inapplicable.

III. — TERM OF AGREEMENT — This agreement shall remain in effect until the employment of all the persons covered by this agreement has ceased in accordance with Article VI hereof. Subject to Articles V and X hereof, neither party shall raise any matter dealt with in this agreement in future negotiations for any new collective agreement.

IV. — JOB GUARANTEE — All terms and conditions of "Job security and redundancy" (Section 25 and Letters of Understanding, re: Notice of redundancy and : Redundancies) of the 1987-1990 collective agreement shall be maintained unless mutually agreed by the Company and its employees' representatives.

V. — COST OF LIVING FORMULA: — As stated above, Composing Room employees who signed the present agreement shall have their hourly wages adjusted annually in accordance with the following formula:

DEFINITIONS:

Consumer Price Index (C.P.I.)
(Re: Statistics-Canada, 1981: 100, Montreal area)

a: C.P.I. at the end of the period (March 31st of every year)
b: C.P.I. at the beginning of the first period of reference (April 1, 1986)
c: Prevailing hourly rate of pay for the duration of the present agreement: $25.00/hr (or $26.67 for night, split or lobster shifts)

Formula: $\frac{a - b}{b} \times c$ = **Cost of living adjustment**

Cost of living adjustment + $25.00/hr (or $26.67 for night, split or lobster shifts) = **Hourly rate for the period.**

Such wage adjustments shall be made once a year, the hourly rate for the period being effective from July 1st of each year.

Should the C.P.I. base year (1981:100) be changed, it is agreed that the formula shall be adjusted accordingly by mutual agreement.

It is also agreed that should Statistics-Canada discontinue C.P.I. figures required for the formula, an alternative and equivalent formula shall be adopted by mutual agreement of the parties.

VI. — LOSS OF COVERAGE — This agreement will cease to apply to an employee for only one or other of the following reasons:

1. Death of the employee.
2. Voluntary resignation by a regular full-time employee.
3. The date stipulated in Appendix "II" for each employee regardless of his/her employment status after such date.
4. Final permanent discharge from the Company. Permanent discharge can only occur for major offence and only then if the discharge is grieved, and is upheld in arbitration. This is the standard to be used in interpreting permanent discharge and can be varied solely by mutually agreed to amendments to the collective agreement.

VII. — EMPLOYER'S EXISTENCE — This agreement will be applicable for its terms, irrespective of the owner(s) of the Gazette (even if the name is later changed). Therefore, it will be binding on purchasers, successors, or assigns of the Company. Similarly, it will be binding even if The Gazette newspaper permanently ceases publication but the production facilities continue in such activities as commercial printing. It will no longer be binding if the Company permanently ceases to exist. But in the event publication or operation of the production facilities is begun again, the full terms and conditions of this agreement will be reinstated.

This agreement shall be binding on the successors of Le Syndicat Quebecois de l'Imprimerie et des Communications, Local 145 as provided by Quebec Law.

VIII. — JOB TRANSFERS — In the case of a transfer to another department, which shall be on a voluntary basis, the employee will be subject to the provisions of the collective agreement in that department, if any, or to any other provisions agreed upon by the parties.

However, if an employee working outside the department as a result of a transfer is laid off in another jurisdiction by operation of seniority or other provision, that employee shall be transferred back to the Composing Room with priority originally held at time of transfer as a regular full-time employee of the Company, and shall once again be covered by the provisions of the present agreement.

IX. — GRIEVANCE PROCEDURE — In the event of a disagreement with respect to the interpretation, application and/or alleged violation of this agreement, the matter shall be deemed to be a grievance and shall be submitted and disposed of in accordance with the grievance and arbitration procedures in the collective agreement between the Company and the Union, which is in effect at the time that the grievance is initiated. The parties agree that the decision of the arbitrator shall be final and binding.

In the case where the Union ceases to exist, or if the Union is no longer the accredited bargaining agent, an employee who is named in Appendix "II" may have recourse to the procedure for the resolution of grievances provided by the Quebec Labour Code.

X. — AMENDMENTS — The parties acknowledge that all of the provisions of the present agreement are essential terms and conditions necessary to the validity of the agreement.

Therefore, should any clause of the present agreement in whole or in part, be declared invalid, inoperative or inapplicable by any tribunal of competent jurisdiction or by legislation, the Company and the Union agree to meet forthwith for the purpose of concluding an amended agreement binding upon all parties. It is agreed in principle that the essential elements of the agreement shall be maintained through amended formulas, by providing equivalent provisions or through any other agreement the parties may reach in their negotiations.

If, within ninety (90) days following such a decision from a tribunal or by legislation as referred to above, the parties are unable to conclude such an amended agreement, the parties agree that the provisions of the present agreement and the collective agreement shall apply until one or the other of the parties exercises its right to strike or lock-out as provided by Section 107 of the Quebec Labour Code or until a decision is rendered by an arbitrator as provided by the next section of the present agreement.

XI. — RENEWAL OF COLLECTIVE AGREEMENTS AND SETTLEMENT OF DISPUTES — Within ninety (90) days before the termination of the collective agreement, the Employer and the Union may initiate negotiations for a new contract. The terms and conditions of the agreement shall remain in effect until an agreement is reached, a decision is rendered by an arbitrator, or until one or the other of the parties exercises its right to strike or lock-out.

Within the two weeks preceding acquiring the right to strike or lock-out, including the acquisition of such right through the operation of Article X of the present agreement, either of the parties may request the exchange of "Last final best offers," and both parties shall do so simultaneously and in writing within the following forty-eight (48) hours or another time period if mutually agreed by the parties. The "Last final best offers" shall contain only those clauses or portions of clauses upon which the parties have not already agreed. Should there still not be agreement before the right to strike or lock-out is acquired, either of the parties may submit the disagreement to an arbitrator selected in accordance with the grievance procedure in the collective agreement. In such an event, the arbitrator, after having given both parties the opportunity to make presentations on the merits of their proposals, must retain in its entirety either one or the other of the "Last final best offers" and reject, in its entirety, the other. The arbitrator's decision shall be final and binding on both parties and it shall become an integral part of the collective agreement.

The parties to this agreement intend and consent that the present agreement be in the English language.

IN WITNESS WHEREOF, the parties have signed this 1 APR day of 1987.

THE GAZETTE, A DIV. OF SOUTHAM INC.

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LE SYNDICAT QUEBECOIS DE L'IMPRIMERIE ET DES COMMUNICATIONS, LOCAL 145

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M-2 *(suite)*

I, the undersigned, being one of the employees covered by this agreement between The Gazette and Le Syndicat Québécois de l'Imprimerie et des Communications, Local 145 dated April 1 1987, declare I have read and understood the said agreement and, in particular, that it shall terminate at the date shown hereunder or as otherwise stated in the said agreement. I agree to be bound by the terms and conditions of this agreement equally with the other parties to this agreement, the whole as witnessed by my signature below:

APPENDIX "ii"

Name of employee	Expiry date	Employee's signature	Witness' signature	Date
ALARIE, Aimé	30-09-91			
ALARIE, Fernand	31-08-93			
AUBRY, Roland	31-10-92			
BANTON, Peter	28-02-17			
BATSFORD, Kenneth	29-02-89			
BEAUCHAMP, André	30-04-09			
BENNETT, Douglas	31-05-97			
BENTON, William	31-05-05			
BERNARD, Lloyd	30-09-89			
BEINVENUE, Fernand	31-01-99			
BILLINGTON, Keith	31-05-09			
BLONDIN, Rita	30-04-13	R.J. Brazeau	Colin Griffith	01/04/87
BRAZEAU, Joseph	31-07-15			
BRETON, Jean-Paul	30-09-96			
BROWN, Renn	30-09-89			
BROWN-URE, William	28-02-90			
BUCHANAN, Stanley	30-11-05			
CAVE, Brian	31-10-09			
CHARRON, François	30-04-10			
CHEVRETTE, Roger	31-05-89			
CHRISTOFFER, Harry	31-07-03			
CLARKE, Winston	31-12-02			
CORBEIL, André	31-07-92			
CORBEIL, Guy	30-09-05			
CORRIVEAU, Claude	31-01-00			
COULOMBE, Arthur	31-12-92			
COUSINEAU, Jean-Pierre	31-05-90			
CRAWFORD, Donald	30-04-07			
CROWLEY, John	30-04-04			
DAVIES, Robert	31-08-07			
DELEON, Marian	31-08-11			
DESJARDINS, Yvon	31-10-19			
DI PAOLO, Eriberto	31-12-10			
DUMONT, Nicole	31-07-25			
DURANLEAU, Jean	31-03-15			
DUROSEAU, Fritzner	31-08-10			
DUTEMPLE, Norman	31-07-95			
FORGET, Roger	30-11-90			
FOUCAULT, Guy	30-06-00			
FOUCAULT, Roger	31-03-96			
FRANCIS, Cyril	31-03-93			
GAGNON, Gilles	28-02-01			
GALARDO, Alfredo	31-03-98			
GANDEY, William	30-06-15			
GARNEAU, Fernand	30-11-97			
GAUTHIER, Jacques	31-12-97			
GENDRON, Rodrigue	31-12-03			
GEOFFROY, Claude	31-10-03			
GINGRAS, Charles	30-11-92			
GODBEER, Charles	31-03-16			
GOHIL, Umed	31-10-10			
GOODHAND, Gerald	30-06-08			
GRIFFITH, Calvin	30-04-05			
GRONDIN, Marie-Andrée	31-10-25			
GUILFOYLE, John	30-11-92			
GUILLEMETTE, Jean-Paul	31-08-91			
HALL, Llewellyn	31-08-01			
HALLAS, Kenneth	31-07-89			

M-2 *(suite)*

HOGUE, Ernest	30-04-91
HOLFORD, Henry	31-07-93
HOLLOWAY, Horace	30-09-03
HOWELL, Arthur	31-07-06
ILLESCAS, William	31-03-92
JENNER, William	30-09-11
JOWLE, David	31-01-15
KAROVITCH, Morris	31-10-00
KELLY, Ian	30-04-07
KENT, Laurence	31-05-04
KERWIN, Kenneth	30-09-03
KERWIN, Timothy	31-03-99
LACAS, Gilles	31-08-00
LANGLOIS, Jules	31-03-91
LARSEN, Edwin	30-09-10
LATOUR, Claude	30-06-92
LAURENDEAU, Yvon	31-10-06
LAVERY, Ronald	30-11-02
LAWSON, Peter	31-12-99
LEBLANC, Gilles	31-05-90
LEDUC, Marcel	31-12-06
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MacKAY, Neil	30-09-07
MANFIELD, Harold	31-07-06
MARTIN, Jean-Pierre	28-02-10
MAUCOTEL, Michel	30-06-98
McCREADY, Robert	29-02-04
McHENRY, Robert	31-05-89
McNAMARA, Arthur	28-02-99
MILOT, Richard	31-01-15
MONGRAIN, Jean-Guy	30-06-00
MYERSON, Arnold	31-05-92
NAETS, François	31-10-95
NIVEN, Alexander	31-12-92
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PELLEGRINI, Anacleto	30-04-12
PERRAULT, Rolland	31-12-93
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POWERS, Herbert	31-08-91
QUESNEL, Rhéal	28-02-91
RAMAT, Aurelio	30-09-91
REBETEZ, Pierre	31-05-17
ROSS, Robert	31-05-02
ROUND, George	31-05-95
ROY, Paul	31-12-94
RUSSELL, Carl	31-03-97
SAAD, Antoine	30-04-93
SAMUEL, Brian	31-05-06
SHAND, David	31-03-97
SHIRLOW, Warren	31-08-16
SMEALL, Brian	31-05-17
SNELGROVE, Bruce	31-08-91
ST-DENIS, Pierre	31-07-02
STE-MARIE, Guy	31-03-07
STENHOUSE, David	30-09-20
STIEBEL, John	30-09-13
STIEBEL, Robert	30-06-89
STOCKWELL, Leslie	31-12-07
STREET, John	31-12-02
STRIKE, Donald	30-09-13
SUTAK, John	31-05-93
SZITASI, Edmund	31-01-04
THOMAS, Frederick	31-07-91
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TREMBLAY, Marc	31-07-08
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WARD, Donald	31-05-00
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WILDING, Peter	31-12-18
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TAB 10

01 BAT

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April 6, 2011

I, Valerie Kennedy, a Certified Translator and member of the Association of Translators and Interpreters of Ontario since 1991 (member #1785), certify that the attached document, Exhibit N - Arbitral Award of André Sylvestre dated January 21, 2009, is to the best of my knowledge and belief a true and accurate translation of the original document from French to English.

Valerie Kennedy

Valerie Kennedy

ARBITRATION BOARD

CANADA
PROVINCE OF QUEBEC

Docket N°:

Date: January 21, 2009

PRESIDING: **ANDRÉ SYLVESTRE, Lawyer**

THE COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA (CEP), LOCAL 145

and

RITA BLONDIN, ROBERT DAVIES, UMED GOBIL, JEAN-PIERRE MARTIN, LESLIE STOCKWELL, MARC-ANDRÉ TREMBLAY, JOSEPH BRAZEAU, HORACE HOLLOWAY, PIERRE REBETEZ, MICHAEL THOMSON and ERIBERTO DI PAOLO,

and

THE GAZETTE, A DIVISION OF SOUTHAM INC.

Ms. Rita Blondin and
Mr. Eriberto Di Paolo,
Representing themselves,

M[e] Pierre Grenier,
Counsel for the Union and the other nine complainants,

M[es] Ronald McRobie and Dominique Monet,
Counsel for the Employer.

ARBITRAL AWARD

THE FACTS

[1] The origins of this entire matter date back to 1982, when the parties and the 200 typographers then employed by The Gazette signed tripartite agreements under which these employees were granted wage protection and job security to the age of 65. By 1987, 132 typographers remained in The Gazette's employ. At that time, the two parties and the remaining typographers signed a further series of agreements incorporating the provision that, within the two weeks preceding the acquisition of the right to strike or lock-out, either party could request the exchange of "last final best offers". Both parties would be required to submit their offers simultaneously and in writing within 48 hours. Should no agreement be reached before the right to strike was acquired, either party could submit the disagreement to an arbitrator. The arbitrator's mandate, after having heard both parties, was to retain in their entirety the final offers with the most merit and reject in their entirety the others.

[2] The collective agreement then in force expired in 1993. Despite a dozen or so meetings between February and May 1993, some in the presence of a conciliator, the parties failed to reach an agreement. On May 17, 1993, the employer declared a lock-out. The union filed a grievance challenging The Gazette's right to make this decision, alleging that it was bound to retain all of its typographers on staff and respect the working conditions provided under the expired collective agreement throughout the process of exchanging and arbitrating final best offers. M^{e} Leboeuf was appointed arbitrator. In an interim decision on November 18, 1993, arbitrator Leboeuf ruled that the employer was fully within its rights to maintain a lock-out during this exchange process. In his words, [TRANSLATION] *"given that the right to strike or lock-out is a recognized right in the field of labour relations, it follows that this right may be exercised at any time from the moment it is acquired."*

[3] On May 4, 1993, the union initiated the process of exchanging last final best offers. When the parties failed to reach an agreement, M^{e} Leboeuf was mandated to arbitrate the

[TRANSLATION]

The 11 typographers could hardly today invoke the fact that their Union enjoys a monopoly of representation to argue that, as of June 5, 2001, the Employer should have ended the lock-out and recalled them to work with no further discussion. They are in a situation of "estoppel by conduct" and none of them was available to return to work unconditionally, or so the legal proceedings would certainly lead one to conclude, unless they recognized the validity and legality of the "Ménard" award, their collective agreement as of June 5, 2001. This is not a case of good faith betrayed, deceit or even misrepresentation on the part of the Employer or the Union, because both parties, throughout this matter, were advised by competent professionals. If they decided, with the approval of their advisors, to continue bargaining after the Ménard award was signed, to not return to work in the case of the Union and employees, and to not offer the option of returning to work in the case of the Employer, it was a right they felt entitled to at that time. It is certainly not my place to say that the bargaining should have ended on June 5, 2001, although in retrospect that certainly would have been preferable; rather, I must acknowledge that this is what the parties wanted. On one hand, a final discharge is being sought, be it justified or not, and on the other hand, clear guarantees are being sought. This is legitimate in bargaining and even if arbitrator Ménard's decision had applied as of June 5, 2001, there was nothing preventing the parties from seeking accommodations satisfactory to each before making it effective.

However, it flies in the face of the principle of fairness, of which the parties were not thinking at the time, to try to turn back the clock and claim the benefits of a collective agreement that they did not want to make effective at the moment it should have been.

The Union cannot today claim on behalf of the 11 typographers the application of a collective agreement they refused to have applied to them as long as certain conditions, legitimate or not, had not been met by the Employer to their satisfaction. Throughout this period, they were unavailable, refusing to return to work as long as the conditions sought had not been accepted by the Employer and their claim to this effect must not be allowed. The Union cannot now adopt a legal position that would give the 11 typographers more rights than they themselves wanted during the period in question. They did not want the Ménard award to take effect and they did not make themselves unconditionally available to report to work and perform their duties.

[17] In the meantime, the matter had been referred back to the arbitrator. At a hearing on June 9, 2000, M^{e} Duggan, then counsel for the complainants, presented a claim listing additional heads of damages sought by the complainants:

1. *Loss of wages and benefits for the period commencing June 4th, 1996 to the effective date of resumption of work.*

2. *Lost benefits for the same period.*

3. *Restitution of the pension plan contributions and earnings for the same period.*

4. *Compensation for loss of RRSP contributions and earnings for the same period.*

5. *Compensation for losses incurred for cashing in RRSP prematurely for the same period.*

6. *Compensation for cost of loans and mortgages.*

7. *Compensation for damages due to stress and anxiety and inconvenience as well as loss of enjoyment of life, impact on family and damages to health for the same period.*

8. *Moral damages and damages for abuse of rights.*

9. *Exemplary and punitive damages for the same period.*

10. *Compensation for all fiscal prejudice.*

11. *Compensation for job search costs and business losses for the same period.*

12. *Legal fees and costs.*

13. *Interest and the additional indemnity provided for under article 100.12 of the Labour Code.*

14. *Reserve of jurisdiction for arbitrator M^e Andre Sylvestre.*

[18] The arbitrator dismissed this claim in an interim award issued October 11, 2000, reasoning as follows (pp. 28 and 31):

> [TRANSLATION]
> *From the (Court of Appeal) judgment as a whole, it must be understood that the damages referred to in the disposition cover only the salaries and benefits provided for under the collective agreement. The undersigned would be acting* ultra petita *were he to allow the additional damages sought by the*

11 complainants, which are identified in the documents filed by Me Côté and Me Duggan.

...

The arbitrator must therefore conclude that the damages were incurred up to January 21, 2000.

[19] The union and the complainants referred the matter to the Superior Court. On September 4, 2001, Justice Duval-Hesler granted in part the motion to quash the arbitral award, inasmuch as the arbitrator had declared himself without jurisdiction to award damages other than salaries and benefits lost, and referred the matter back to the arbitrator, instructing him to assume full jurisdiction with respect to the whole of the damages the applicants may be entitled to claim up to January 21, 2000.

[20] The employer appealed this judgment. On August 6, 2003, the Court of Appeal allowed the appeal, with Justice Yves-Marie Morissette reasoning as follows (p.18):

[TRANSLATION]
If we focus on the result, that is, the arbitrator's specific findings in Sylvestre award no. 2, we cannot conclude that the issue decided by the arbitrator here has no direct connection to the dispute before him; on the contrary, it is at the very core of the dispute between the parties. Perhaps a detailed consideration of the arbitrator's reasons might show that another arbitrator would have dealt differently with one or more of the issues before arbitrator Sylvestre. However, that is not the question. Let it be recalled that, on a motion to vacate pursuant to Article 947, a court cannot consider the merits of the case. Perhaps the question would appear in a different light had the arbitrator failed to comply with the order issued in "Gazette No. 1", but this was not the case here.

For these reasons, I would allow the appeal with costs, set aside the judgment quashing in part arbitrator André Sylvestre's award of October 11, 2000, dismiss the respondents' motion with costs, and refer the matter back to the arbitrator so that he may continue hearing the disagreement between the appellant and the respondents and decide the issues on their merits.

[21] The arbitrator resumed the proceedings, hearing the parties on October 14, 2004. The following March 18, he rendered an award in which he concluded as follows:

[TRANSLATION]
(103) In other words, as the arbitrator understands his instructions, the Court of Appeal has empowered him to decide to award damages should he find that the employer improperly exercised its right to declare a lock-out. Other than the prolonged duration of the lock-out, the arbitrator finds nothing in the evidence to indicate a specific time after June 3, 1996 at which the Employer should have ended the lock-out. By holding firm to its position, until January 21, 2000, in refusing to exchange its final best offers, the Employer showed no leniency toward its 11 typographers. However, the latter, as confirmed by Messrs. Di Paolo and Thomson, were so confident they were in the right that they had no intention of making any concessions.

(104) Given these circumstances, the arbitrator cannot conclude from the evidence that the employer unduly prolonged the lock-out. For these reasons, he cannot order the employer to reimburse the damages being claimed by the 11 complainants for the period from June 3, 1996 to January 21, 2000.

[22] The union and the complainants challenged this award in the Superior Court. On March 31, 2006, Justice Claude Larouche dismissed their motion to vacate.

[23] The union and the complainants appealed this judgment. On March 18, 2008, the Court granted the appeal, with Justice Pelletier reasoning as follows:

[TRANSLATION]
(28) In my opinion, with respect, there was a misunderstanding and the confusion in the arbitrator's mind led him to misconstrue the dispute before him.

(29) In concluding that a lock-out could not be unduly prolonged, the arbitrator neglected to deal with the question put by the Court in its 1999 judgment. In so doing, he failed to exercise the jurisdiction he had been assigned.

(30) It is important to bear in mind that when our Court rendered its judgment, in mid-December 1999, there were four major unknowns in the matter, as follows:

a) If the process of exchanging offers had proceeded normally after the notice of April 30, 1996, when would the collective agreement have been finalized, in other words, on what date would the lock-out have ended?

b) In the event that the evidence to come were to show that the lock-out would have ended prior to December 15, 1999 (date of the judgment), how much in salaries and social benefits would the 11 typographers have been entitled to at the end of the lock-out?

> *c) Would the said salaries and social benefits have amounted to less than the minimum guaranteed by the 1987 tripartite agreement?*
>
> ...

[24] The Court of Appeal, in this manner, strictly defined the arbitrator's mandate, directing him to answer these three questions and determine any damages to which the complainants may be entitled for the period from June 1996 to January 2000. However, the Court held that the redress sought by the appellants went too far by asking the arbitrator to consider, with no latitude, the entire period from June 3, 1996 to January 21, 2000 as the period during which the lock-out was unduly prolonged and to assess their compensation accordingly. Indeed, the 1999 judgment had held that the tripartite agreement recognized the employer's right to legally decree a lock-out, which carries with it the right to stop paying the typographers their salaries and benefits.
Justice Pelletier went on to say:

> [TRANSLATION]
> *(37) It is far from certain that the process intended to culminate in an arbitral award putting an end to the lock-out, initiated on April 30, 1996, would have been concluded before June 3 of that year, the date on which the lock-out was declared, even if The Gazette had not committed the wrong identified by our Court. In other words, it is in no way established that, throughout the entire period of the lock-out, the typographers suffered unduly the loss of the salaries and benefits they were otherwise guaranteed under the tripartite agreement. In this regard, it is the evidence to be heard by the arbitrator with respect to the three questions I identified above, labelled "a", "b" and "c", that will hold the solution to the problem.*

[25] The matter was referred back to the arbitrator. At a hearing on July 28, 2008, M[es] McRobie, Monet and Grenier announced they had no witnesses to be heard and confined themselves to producing a few documents to conclude their evidence. For their part, Ms. Blondin and Mr. Di Paolo did have evidence to submit in support of their claims for damages, including an actuary to be heard as a witness. Mr. Di Paolo maintained that the March 2008 judgment had quashed the arbitrator's earlier awards, in particular, the October 11, 2000 award limiting the damages the complainants were entitled to claim to salaries and social benefits lost between June 4, 1996 and January 21,

2000. Mr. Di Paolo then produced a report showing actuarial calculations for the sums claimed, an excerpt of which follows:

[TRANSLATION]
5. Summary table

The table below summarizes the calculations for each of the items considered.

Damages	*Professional fees*	*REER buy-backs*	*Salaries*	*RRSP*	*Pension Fund*	*Quebec Pension Plan*	*Total*
DI PAOLO							
$4,749,526	*$109,178*	*$72,147*	*$975,891*	*$58,440*	*$20,373*	–	*$5,985,555*
BLONDIN							
$4,737,856	*$19,304*		*$975,891*	*$6,077*	*$23,691*	*$4,609*	*$5,817,428*

[26] Counsel for The Gazette objected to this evidence on the basis that the issue of damages in excess of the loss of salaries and social benefits had long since been settled. Firstly, the Court of Appeal's August 6, 2003 judgment had allowed the employer's appeal and quashed the Superior Court judgment granting the judicial motion ordering the arbitrator to assume full jurisdiction with respect to the whole of the damages claimed. Secondly, counsel for The Gazette raised the agreement reached with M[e] Duggan, at the October 19, 2000 hearing, to the effect that the total claim for lost salary and social benefits for each of the 11 complainants was $163,611.50. Mr. Di Paolo responded that the March 2008 judgment had voided these facts, that he was totally opposed to the employer's position and, lastly, that he had never consented to M[e] Duggan's acceptance of this amount.

[27] The arbitrator chose to deal with the disputed interpretation of the effect of the March 18, 2008 judgment before hearing evidence on the merits of the claim filed by Ms. Blondin and Mr. Di Paolo. These two complainants agreed to postpone submission of this evidence and to begin by presenting their arguments on the salaries and social benefits they felt were owing to them and their entitlement to the whole of the damages summarized on the above table.

POSITION OF THE PARTIES

[28] M[e] Grenier was the first to address the Board. He began by reiterating that the period covered by the claim began on June 4, 1996 and ended on January 21, 2000. He maintained that in the present matter, the arbitrator should be guided by the abuse of rights doctrine to order the employer to pay the 11 complainants the whole of the damages claimed throughout this period. In support of this argument, he produced precedents, the first being *Houle v. Canadian National Bank, [1990] 3 S.C.R. 122,* in which Madam Justice L'Heureux-Dubé wrote (p. 145):

> *But more fundamentally, the doctrine of abuse of contractual rights today serves the important social as well as economic function of a necessary control over the exercise of contractual rights. While the doctrine may represent a departure from the absolutist approach of previous decades, consecrated in the well-known maxim "la volonté des parties fait loi" (the intent of the parties is the governing factor), it inserts itself into today's trend towards a just and fair approach to rights and obligations (by way of example of this trend: consumer protection legislation, family law as regards the disposition of family assets upon divorce and death, the notion of "lesion between persons of full age" in the proposed reforms to the Quebec Civil Code, etc.). Such uncertainty which the doctrine of abuse of rights may bring to contractual relationships, besides being worth that price, may be counterbalanced by the presumption of good faith which remains basic in contractual relationships.*

[29] She went on to say (pp. 150 and 154):

> *This theory holds that an abuse of rights occurs when the right is not exercised in a reasonable manner or in a manner consistent with the conduct of a prudent and diligent individual. This makes it unnecessary either to determine whether the user of the right acts in good faith or to examine the social function of the right in question.*
>
> ...
>
> *In accordance with the evolution of the Quebec doctrine and jurisprudence on this issue, the time has come to assert that malice or the absence of good faith should no longer be the exclusive criteria to assess whether a contractual right has been abused.*

[30] In the matter at hand, the evidence showed that on June 3, 1996, the employer contravened the agreements guaranteeing its typographers job security and protecting the salary and benefits provided for in the collective agreement as well as its obligation to submit to the mandatory process of final best offer arbitration, imposing instead a lock-out to try to force agreement to its bargaining position. It clearly used its right to lock-out for a purpose other than that intended by the parties, that is, for the purpose of compelling the union and the complainants to forgo mandatory arbitration, wage protection and job security. This amounts to a typical abuse of rights. The arbitrator need not determine whether The Gazette was acting in good faith. He need only establish the context in which the employer exercised this right. By abusing the right from the outset, it follows that the employer improperly used it.

[31] Moreover, if, in April or May 1996, the employer had filed a position in accordance with the agreements, it would not have resorted to the lock-out and would have avoided arbitration. M^{e} Grenier proposed, as a remedy for this second instance of abuse of rights, the refusal to submit to final best offer arbitration, that the entire period from May 1996 be considered in awarding damages to the complainants.

[32] Thirdly, the 11 complainants had challenged the refusal to submit to mandatory arbitration and had eventually won their case. From January 2000 to June 2001, the arbitration process took place, but the employer maintained the lock-out. The employer could have ended the lock-out knowing that this arbitration would lead to a renewed collective agreement. But this did not happen, even though the Court of Appeal, in its 1999 judgment, made it clear that the lock-out would necessarily end once a new collective agreement was imposed by the arbitrator.

[33] Raising a further issue, M^{e} Grenier submitted that the complainants were entitled to pension plan benefits as part of the damages to be awarded by the arbitrator. This plan is an integral part of the employee's remuneration and must be incorporated in the collective agreement. Thus, the arbitrator should allow the request to compensate the length of service lost during the lock-out.

[34] Counsel for the employer responded, first addressing the pension plan issue. They began by noting that, in the tables filed by the union at the October 19, 2000 hearing, the heads of damages were identified as salaries and social benefits. The claim was limited to these sums, which represented the maximum amount. Secondly, they held that M[e] Grenier's proposal was not admissible because it came after the dispute was sent to arbitration. Indeed, it was dated January 21, 2000. Lastly, the pension plan was never produced before the undersigned, although it had been submitted to arbitrator Ménard. The complainants had not included this plan in their claim and the 11 tables reflected this, since the claim was before M[e] Ménard. Therefore, they could not claim the same benefit twice before two separate authorities.

[35] They went on to argue that M[e] Grenier's allegation that there had been an abuse of rights was baseless. The March 2005 arbitral award found that The Gazette had done nothing to unduly prolong the lock-out. In its March 2008 judgment, the Court of Appeal did not find that the arbitrator had erred in determining there was no abuse of rights; instead it held that the question to be decided by the arbitrator was altogether different. Moreover, this issue had been raised by M[es] Grenier and Côté as early as 1996, in arguing the original case, and this argument had never been admitted. Lastly, and more importantly, this argument in no way addressed the three questions posed by the Court of Appeal.

[36] The Court of Appeal's first question asks the arbitrator to decide on what date the collective agreement would have been finalized and the lock-out would have ended had the exchange of final best offers taken place. According to M[e] McRobie, the duration of the process of exchanging and arbitrating final best offers up to the signing of the collective agreement was within the normal time frame. The process would have taken the same amount of time if The Gazette had filed its final offers in June 1996. Indeed, in 1996, the union and the complainants wanted nothing to do with final best offer arbitration and were instead seeking a way to circumvent the Leboeuf award. Their strategy was to do indirectly what they could not do directly. They had to avoid interest

arbitration because the appointed arbitrator would have recognized the failure to follow due process, given that the request would have come from the union alone. Therefore, it was best to opt for another forum, grievance arbitration, to obtain an adjudication of their rights before entering interest arbitration.

[37] Therefore, the union and the complainants had to bear the consequences of this strategic choice, which delayed final best offer arbitration by the time necessary for adjudication of their rights. In any event, according to their position, they had no need to worry about time limits because they were to continue receiving their salaries for the duration of the labour dispute. Lastly, their strategy worked, because in February 1998 the arbitrator found fully in their favour and his award was upheld in part by the Court of Appeal, which ordered the parties to proceed with final best offer arbitration.

[38] Counsel for the employer further noted that the 1994 award was never challenged by the union. On the contrary, following receipt of M[e] Leboeuf's award, Mr. McKay wrote on August 22, 2004, "*we have a new contract*". Subsequently, the parties signed this new collective agreement, article 2 of which provided that the process of exchanging final best offers required the consent of both parties. On April 30, 1996, the union requested that the employer enter into the exchange process. On May 3rd, Mr. Tremblay replied that the process had become optional. Mr. Tremblay committed a wrong, according to the Court of Appeal, but he had nevertheless relied on the collective agreement signed by the parties following M[e] Leboeuf's award. Regardless, this wrong had no effect on the time frames. Indeed, if the union and the complainants had wanted to engage in final best offer arbitration, they had only to invite the employer to exchange offers, and if the employer failed to accept, to then proceed by default. This might have been the case in 1993. However, the employer, while maintaining that the process was illegal, did not take the risk of not appearing before the conciliator. It therefore submitted to the process, but under protest. The union did not adopt the same strategy in 1996, deciding instead to address the grievance arbitrator. A fact worth noting is that the union was not even prepared to enter into the exchange, given that its final best offers could not be found in either 2000 or 2008, proof that they never existed. It was not in the complainants'

interests to do so, because they had less chance of success before the interest arbitrator. According to the employer, The Gazette's failure to submit its final best offers actually had the effect of shortening time frames, because the union and the complainants would have proceeded by default had they wanted arbitration of their offers. The employer would never have gone ahead under protest, as it had done in 1993, but would have instead confined itself to filing objections on the legality of the process. The union and the complainants did not want to take the risk that the arbitrator might find he lacked jurisdiction, given that the employer had refused to submit to the exchange process.

[39] However, following the first Court of Appeal judgment, the parties submitted to the process. While The Gazette made more generous offers than in 1996, the union took a more radical stance. Finally, with no agreement being reached after four years, the arbitration was referred to M^{e} Ménard, who made his determination 16 months later. It would have been no faster to proceed directly before an interest arbitrator instead of first passing through a grievance arbitrator followed by an interest arbitrator, since the union challenged the collective agreement imposed by M^{e} Ménard in June 2001. It was several months before the union agreed to confirmation of this award.

[40] If the employer committed a wrong, it was of no consequence since it had no effect on time frames. The Gazette could not be held responsible for any aggravated hardship the complainants may have suffered. As a first step, in 1996 and 1997, the union and the 11 complainants presented their case to the undersigned and he made a determination in February 1998. It took M^{e} Leboeuf 15 months to render his award. Arbitrator Ménard took 18 months to reach his decision. Thus, combining the time taken by the undersigned to make an award, from June 1996 to February 1998, and the time taken by M^{e} Ménard, from January 2000 to June 2001, would put the renewal of the collective agreement and the end of the lock-out at August 1999. The complainants would therefore be entitled to six months of lost salaries and social benefits. However, they had already received these over a period of nine months, from February to October 1998. For his part, M^{e} Leboeuf took more than 15 months to render his award. Adding this period to the time taken by

the undersigned would put the date at May 1999, or eight months prior to January 21, 2000.

[41] The second question the Court of Appeal has asked the arbitrator to answer is how much in salaries and social benefits the complainants would be entitled to from the end of the lock-out if it had ended before January 21, 2000. The answer is simple. For example, if the lock-out had ended in July 1999, payment of salaries and social benefits should have commenced as of that date.

[42] Lastly, question (c) asks whether the salaries and social benefits would have been less than the minimum guaranteed by the 1987 tripartite agreement. According to counsel for the employer, if an affirmative answer were possible, the main reason would be the complainants' lack of effort in mitigating their damages. But the arbitrator also had to consider the union's wrong as co-signatory, in October 1994, of a collective agreement deemed illegal by the Court of Appeal in 1999.

[43] The two complainants presented their arguments in turn. Essentially, Ms. Blondin maintained that the tripartite agreements were contracts providing for specific conditions designed to protect the interests of the typographers up to 2017. She went on to say (pp. 36 and 37 of the transcript of stenographic notes from the July 29, 2008 hearing):

> [TRANSLATION]
> *The function of an arbitrator is to restore the wronged party to the situation that existed before the right was infringed. It therefore follows that the arbitrator may order that damages be paid if it is impossible to ensure the execution of the right claimed. The administration of justice must not be brought into disrepute.*
>
> *At this time, you have everything you need before you to establish the harm caused: three (3) decisions relevant to the grievance at hand, which will lead you to a binding decision, a legal decision, a decision that respects our rights.*
>
> ...
>
> *You must make a determination on each of the damages suffered. The Court of Appeal does not say:* "Damages awarded must be equal to salaries lost"; *no, it does not stop at salaries.*

> *Even compensation of a substantial nature would not make up for the pain and suffering experienced, the years of financial insecurity, the loss of enjoyment of life, but it would at least ease our hurt.*

[44] For his part, Mr. Di Paolo argued that the March 2008 judgment had rendered nul and void the arbitrator's decision regarding damages in his October 11, 2000 award. Thus, the damages he was legally entitled to claim covered not only the salary and benefits lost but also all the items listed on the actuarial report summary. For example, he explained (pp. 123 and 124 of the transcript of stenographic notes):

> *What was the dispute that was submitted to the Arbitrator? It was global damages. We went to the Appeal Court, we wanted global damages. Has much to the contrary, it is at the very least of the dispute between the parties ... we weren't talking about global damages. So, what are we to make of what he just said?*
>
> *We're not talking about salary, the Court here is not talking about salary, we're there, because one purpose, we were there, because we believed that we had to get, it was our duty to get global damages, because the Court of Appeal, in 1999 says,* "no, you're not going to get salary, but damages it may be" *and when you bring in the word "damages", if you look at the word damages, it constitutes an array everything that you've been subject to.*

REASONS AND DECISION

[45] Firstly, the arbitrator must rule on the union's proposal that he allow the complainants' entire claim for salaries and social benefits lost from June 4, 1996 to January 21, 2000, on the basis that the complainants had suffered as a result of the employer's improper use of its right to lock-out.

[46] Respectfully, the arbitrator cannot accept this argument. The Court of Appeal judgments did not consider this proposal because it ran counter to the December 19, 1999 judgment, which criticized the arbitrator for deciding to this effect and thereby denying the employer the right to impose the lock-out. Thus, the complainants could not be entitled to salaries and social benefits retroactive to June 1996. Regardless, the union

proposal sheds no light on question (a) posed by the Court of Appeal asking the arbitrator to determine the date on which the lock-out would have ended if the exchange of final offers had proceeded normally, while noting that the redress sought by the appellants went too far.

[47] As regards the pension plan, the arbitrator notes that, at the October 19, 2000 hearing, counsel for the employer and M[e] Duggan, then counsel for the complainants, agreed on the contents of tables showing the sums claimed by the complainants in terms of salaries and social benefits lost during the period from June 4, 1996 to January 21, 2000. This amount totalled $163,611.51. M[e] Duggan then wanted to produce an additional claim, for four complainants (Ms. Blondin and Messrs. Di Paolo, Rebetez and Thomson) seeking to join the employer's pension plan retroactively to May 1[st], 1996. Counsel for The Gazette objected to this claim, dated January 21, 2000, on the grounds that it was not included in the tables filed by M[e] Duggan and, furthermore, it was pending before arbitrator Ménard.

[48] At the October 19, 2000 hearing, the arbitrator allowed this objection. Counsel for the complainants had agreed at that time on the quantum of damages due to his clients in the event the arbitrator found the employer liable for the whole of the damages. Therefore, M[e] Duggan could not add this head of damages without altering his prior acceptance. In any event, this claim had been submitted to arbitrator Ménard, who had dismissed it. The undersigned finds no reason to revisit this decision, eight years later. For these reasons, he dismisses the claim.

[49] The arbitrator must also rule on the claim filed by Ms. Blondin and Mr. Di Paolo. His first consideration is the fact that at the October 19, 2000 hearing, the parties had accepted the cash settlement calculated for each of the complainants' claims to be $163,611.51. This is far from the claim recently submitted by Ms. Blondin and Mr. Di Paolo, in the order of six million dollars. Their claim is intended to reignite a debate closed by the Court of Appeal judgment of August 6, 2003. In this judgment, the Court granted the appeal of a Superior Court judgment quashing the award of the

undersigned, which limited the 11 typographers' claim for damages to salaries and benefits provided under the collective agreement for the period ending January 21, 2000.

[50] Lastly, it remains for the arbitrator to determine how much the 11 complainants lost in terms of salaries and benefits due to The Gazette's wrong in refusing to submit to final best offer arbitration in response to the union's request of April 30, 1996. In the December 15, 1999 judgment, Justice Rousseau-Houle found that the arbitrator had made a reviewable error by granting the union's request to maintain payment of salaries and other social benefits and ordering the employer to continue making these payments and to reimburse salaries and benefits lost as a result of the lock-out. By finding that Article XI preserved these rights during the lock-out, the arbitrator had given the provisions of the agreement a meaning they could not reasonably bear. However, Justice Rousseau-Houle concluded by saying the lock-out may well have been unduly prolonged by the employer's refusal to exchange its final best offers and that the employees may well be entitled to damages, which would be a matter for the arbitrator to decide.

[51] Moreover, in the March 17, 2008 judgment, after noting that the arbitrator had decided the wrong question, Justice Pelletier went on to say that the redress sought by the complainants went too far in asking that the entire period from June 1996 to January 2000 be categorically considered the period during which the lock-out had been unduly prolonged, and that compensation be granted accordingly.

[52] The whole of the evidence showed that while 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, M[e] 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.

[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 M[e] Claude H. Foisy, who ruled in the union's favour on April 25, 1996.

[54] This date, which was about the time the collective agreement expired, marked the beginning of a long legal saga. The employer decreed a lock-out early in June 1996, which ended in 2002 with Justice Frappier's ruling.

[55] For their part, the complainants could not invoke the employer's wrong to cast all the blame on the employer for the considerable monetary losses they suffered. To a large extent, they were the authors of their own misfortune. The following excerpt from arbitrator Gravel's November 24, 2003 award gives an indication of their attitude (p. 29):

> [TRANSLATION]
> *It is true that the union, upon being apprised of arbitrator Ménard's award, fully supported it and its immediate application effective June 5, 2001. On the other hand, the only remaining union members from the composition room, specifically the 11 typographers who were the complainants in all previous proceedings, categorically rejected M[e] Ménard's award, which, had it been unconditionally accepted, would necessarily have led, at the end of the lock-out, to the recognition of a valid and acceptable collective agreement, the "Ménard" agreement, for whatever duration this arbitrator would have decreed.*

[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 M[e] 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.

[57] It follows that the answer to question (b) is that the complainants would have been entitled to the salaries and social benefits lost as of May 1999.

[58] Lastly, question (c) raises the issue of mitigation of damages. The arbitrator does not think it appropriate to reduce the sums due to the complainants. Their small group's involvement in union business prevented them from engaging in other activities. Indeed, to survive on the union's strike pay, they would have had to participate in union business or risk losing this pay. Therefore, the salaries and social benefits owing to the complainants could not be less than the minimum guaranteed by the 1987 tripartite agreement.

[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. However, the arbitrator's mandate does not end with this finding, because he has yet to dispose of the employer's claim for reimbursement of overpayments made to the complainants between February and October 1998.

[60] For these reasons, should the parties fail to reach a basis of agreement to settle their dispute once and for all, the undersigned will hear them on a date to be arranged with counsel for the parties, Ms. Blondin and Mr. Di Paolo.

ANDRÉ SYLVESTRE, Lawyer

TAB 11

BOOK VII
ARBITRATIONS

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TITLE I
ARBITRATION PROCEEDINGS

CHAPTER I
GENERAL PROVISIONS

940. The provisions of this Title apply to an arbitration where the parties have not made stipulations to the contrary. However, articles 940.2, 941.3, 942.7, 943.2, 945.8 and 946 to 947.4, as well as article 940.5 where the object of the service is a judicial proceeding, are peremptory.

1965 (1st sess.), c. 80, a. 940; 1986, c. 73, s. 2.

940.1. Where an action is brought regarding a dispute in a matter on which the parties have an arbitration agreement, the court shall refer them to arbitration on the application of either of them unless the case has been inscribed on the roll or it finds the agreement null.

The arbitration proceedings may nevertheless be commenced or pursued and an award made at any time while the case is pending before the court.

1986, c. 73, s. 2.

940.2. Except in the case of article 940.1 or matters under the exclusive jurisdiction of the Superior Court, the court or judge referred to in this Title is the court or judge having jurisdiction to decide the matter in dispute submitted to the arbitrators.

1986, c. 73, s. 2.

940.3. A judge or the court cannot intervene in any question governed by this Title except in the cases provided for therein.

1986, c. 73, s. 2.

940.4. A judge or the court may grant provisional measures before or during arbitration proceedings on the motion of one of the parties.

1986, c. 73, s. 2.

940.5. The service of documents shall be made in accordance with this Code.

1986, c. 73, s. 2.

940.6. Where matters of extraprovincial or international trade are at issue in an arbitration, the interpretation of this Title, where applicable, shall take into consideration

(1) the Model Law on International Commercial Arbitration as adopted by the United Nations Commission on International Trade Law on 21 June 1985;

(2) the Report of the United Nations Commission on International Trade Law on the work of its eighteenth session held in Vienna from 3 to 21 June 1985;

(3) the Analytical Commentary on the draft text of a model law on international commercial arbitration contained in the report of the Secretary-General to the eighteenth session of the United Nations Commission on International Trade Law.

1986, c. 73, s. 2.

CHAPTER II
APPOINTMENT OF ARBITRATORS

941. There shall be three arbitrators. Each party shall appoint one arbitrator, and the two so appointed shall appoint the third.

1965 (1st sess.), c. 80, a. 941; 1986, c. 73, s. 2.

941.1. If one of the parties fails to appoint an arbitrator within 30 days after having been notified by the other party to do so, or if the arbitrators fail to concur on the choice of the third arbitrator within 30 days after their appointment, a judge shall make the appointment on the motion of one of the parties.

1986, c. 73, s. 2.

941.2. If the procedure of appointment contained in the arbitration agreement proves difficult to put into practice, a judge may on the motion of one of the parties take any necessary measure to bring about the appointment.

1986, c. 73, s. 2.

941.3. The decision of the judge under articles 941.1 and 941.2 is final and without appeal.

1986, c. 73, s. 2.

CHAPTER III
INCIDENTAL CESSATION OF ARBITRATOR'S APPOINTMENT

942. In addition to the grounds set forth in articles 234 and 235, an arbitrator may be recused if he does not have the qualifications agreed by the parties.

1965 (1st sess.), c. 80, a. 942; 1986, c. 73, s. 2.

942.1. An arbitrator must declare to the parties any ground of recusation to which he is liable.

1986, c. 73, s. 2.

942.2. The party having appointed an arbitrator may propose his recusation only on a ground of recusation which has arisen or been discovered since the appointment.

1986, c. 73, s. 2.

942.3. The party proposing recusation shall make a written statement of his reasons to the arbitrators within 15 days after becoming aware of the appointment of all the arbitrators or of a ground of recusation.

If the arbitrator whose recusation is proposed does not withdraw or the other party does not accept the recusation, the other arbitrators shall come to a decision on the matter.

1986, c. 73, s. 2.

942.4. If the recusation cannot be obtained under article 942.3, a party may within 30 days of being so advised apply to a judge to decide the matter.

The arbitrators, including the arbitrator whose recusation is proposed, may continue the arbitration proceedings and make their award while such a case is pending.

1986, c. 73, s. 2.

942.5. If an arbitrator is unable to perform his duties or fails to perform them in reasonable time, a party may apply to a judge to have his appointment revoked.

1986, c. 73, s. 2.

942.6. If the procedure of recusation or revocation of appointment of an arbitrator contained in the arbitration agreement proves difficult to put into practice, a judge may on the motion of one of the parties decide the matter of the recusation or revocation of appointment.

1986, c. 73, s. 2.

942.7. The judge's decision on the matter of recusation or revocation of appointment is final and without appeal.

1986, c. 73, s. 2.

942.8. The prescribed procedure for the appointment of an arbitrator applies for his replacement.

1986, c. 73, s. 2.

CHAPTER IV
COMPETENCE OF ARBITRATORS

943. The arbitrators may decide the matter of their own competence.

1965 (1st sess.), c. 80, a. 943; 1986, c. 73, s. 2.

943.1. If the arbitrators declare themselves competent during the arbitration proceedings, a party may within 30 days of being notified thereof apply to the court for a decision on that matter.

While such a case is pending, the arbitrators may pursue the arbitration proceedings and make their award. 235

1986, c. 73, s. 2.

943.2. A decision of the court during the arbitration proceedings recognizing the competence of the arbitrators is final and without appeal.

1986, c. 73, s. 2.

CHAPTER V
ORDER OF ARBITRATION PROCEEDINGS

944. A party intending to submit a dispute to arbitration must notify the other party of his intention, specifying the matter in dispute.

The arbitration proceedings commence on the date of service of the notice.

1965 (1st sess.), c. 80, a. 944; 1986, c. 73, s. 2.

944.1. Subject to this Title, the arbitrators shall proceed to the arbitration according to the procedure they determine. They have all the necessary powers for the exercise of their jurisdiction, including the power to appoint an expert.

1986, c. 73, s. 2.

944.2. The arbitrators may require each of the parties to produce a statement of his claims with the supporting documents within an allotted time.

Each of the parties shall transmit a copy of the statement and documents to the opposite party within the same time.

Every expert's report or other document which the arbitrators may invoke in support of their decision must be transmitted to the parties.

1986, c. 73, s. 2.

944.3. Proceedings are oral. A party may nevertheless produce a written statement.

1986, c. 73, s. 2.

944.4. The arbitrators must give notice to the parties of the date of the hearing and, where such is the case, the date on which they will inspect the property or visit the place.

1986, c. 73, s. 2.

944.5. The arbitrators shall record the default and may continue the arbitration proceedings if one of the parties fails to state his claims, to appear at the hearing or to produce the evidence in support of his claims.

If the party having submitted the dispute to arbitration fails to state his claims, the arbitrators shall terminate the proceedings unless one of the other parties objects.

1986, c. 73, s. 2.

944.6. Witnesses are summoned in accordance with articles 280 to 283.

Where a person who has been duly summoned and to whom a loss of time indemnity and travel, meal and overnight accommodation allowances have been advanced fails to appear, a party may request the judge to compel the person to appear in accordance with article 284.

1986, c. 73, s. 2; 2002, c. 7, s. 147.

944.7. The arbitrators have the power to administer oaths.

1986, c. 73, s. 2; 1999, c. 40, s. 56.

944.8. Where, without a valid reason, a witness refuses to answer or refuses to produce any real evidence in his possession which is connected with the dispute, a party may with leave of the arbitrators apply to a judge to issue a rule under article 53.

1986, c. 73, s. 2; 1994, c. 28, s. 39.

944.9. Articles 307, 308, 309, 316 and 317 apply to the hearing of witnesses.

1986, c. 73, s. 2.

944.10. The arbitrators shall settle the dispute according to the rules of law which they consider appropriate and, where applicable, determine the amount of the damages.

They cannot act as *amiables compositeurs* except with the prior concurrence of the parties.

They shall in all cases decide according to the stipulations of the contract and take account of applicable usage.

1986, c. 73, s. 2.

944.11. Every decision of the arbitrators shall be rendered by a majority of voices. One arbitrator, however, with authorization of the parties or of all the other arbitrators may decide questions of procedure.

Written decisions must be signed by all the arbitrators; if one of them refuses to sign or cannot sign, the others must record that fact and the decision has the same effect as if it were signed by all of them.

1986, c. 73, s. 2.

CHAPTER VI
ARBITRATION AWARD

945. The arbitrators are bound to keep the advisement secret. Each of them may nevertheless, in the award, state his conclusions and the reasons on which they are based.

1965 (1st sess.), c. 80, a. 945; 1986, c. 73, s. 2.

945.1. If the parties settle the dispute, the arbitrators shall record the agreement in an arbitration award.

1986, c. 73, s. 2.

945.2. The arbitration award must be made in writing by a majority of voices. It must state the reasons on which it is based and be signed by all the arbitrators; if one of them refuses to sign or is unable to sign, the others must record that fact and the award has the same effect as if it were signed by all of them.

1986, c. 73, s. 2.

945.3. The arbitration award must contain an indication of the date and place at which it was made.

The award is deemed to have been made at the indicated date and place.

1986, c. 73, s. 2.

945.4. The arbitration award binds the parties upon being made. A copy signed by the arbitrators must be remitted to each of the parties immediately.

1986, c. 73, s. 2.

945.5. The arbitrators may of their own motion, within 30 days after making the arbitration award, correct any error in writing or calculation or any other clerical error in the award.

1986, c. 73, s. 2.

945.6. The arbitrators may, on the application of a party made within 30 days after receiving the arbitration award,

(1) correct any error in writing or calculation or any other clerical error in the award;

(2) interpret a specific part of the award, with the prior agreement of the parties;

(3) render a supplementary award on a part of the application omitted in the award.

The interpretation forms an integral part of the award.

1986, c. 73, s. 2.

945.7. Any decision of the arbitrators correcting, interpreting or supplementing the award pursuant to an application contemplated in article 945.6 must be rendered within 60 days after the application. Articles 945 to 945.4 apply to the decision.

If the arbitrators do not render their decision before the expiry of the prescribed time, a party may apply to a judge to make any order for the protection of the rights of the parties.

1986, c. 73, s. 2.

945.8. The decision of the judge under article 945.7 is final and without appeal.

1986, c. 73, s. 2.

CHAPTER VII
HOMOLOGATION OF THE ARBITRATION AWARD

946. An arbitration award cannot be put into compulsory execution until it has been homologated.

1965 (1st sess.), c. 80, a. 946; 1986, c. 73, s. 2.

946.1. A party may, by motion, apply to the court for homologation of the arbitration award.

1986, c. 73, s. 2.

946.2. The court examining a motion for homologation cannot enquire into the merits of the dispute.

1986, c. 73, s. 2.

946.3. The court may postpone its decision on the homologation if an application has been made to the arbitrators by virtue of article 945.6.

If the court acts pursuant to the first paragraph, it may, on the application of the party applying for homologation, order the other party to provide security.

1986, c. 73, s. 2.

946.4. The court cannot refuse homologation except on proof that

(1) one of the parties was not qualified to enter into the arbitration agreement;

(2) the arbitration agreement is invalid under the law elected by the parties or, failing any indication in that regard, under the laws of Québec;

(3) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings or was otherwise unable to present his case;

(4) the award deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement, or it contains decisions on matters beyond the scope of the agreement; or

(5) the mode of appointment of arbitrators or the applicable arbitration procedure was not observed.

In the case of subparagraph 4 of the first paragraph, the only provision not homologated is the irregular provision described in that paragraph, if it can be dissociated from the rest.

1986, c. 73, s. 2.

946.5. The court cannot refuse homologation of its own motion unless it finds that the matter in dispute cannot be settled by arbitration in Québec or that the award is contrary to public order.

1986, c. 73, s. 2.

946.6. The arbitration award as homologated is executory as a judgment of the court.

1986, c. 73, s. 2.

CHAPTER VIII
ANNULMENT OF THE ARBITRATION AWARD

947. The only possible recourse against an arbitration award is an application for its annulment.

1965 (1st sess.), c. 80, a. 947; 1986, c. 73, s. 2.

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947.1. Annulment is obtained by motion to the court or by opposition to a motion for homologation.

1986, c. 73, s. 2.

947.2. Articles 946.2 to 946.5, adapted as required, apply to an application for annulment of an arbitration award.

1986, c. 73, s. 2.

947.3. On the application of one party, the court, if it considers it expedient, may suspend the application for annulment for such time as it deems necessary to allow the arbitrators to take whatever measures are necessary to remove the grounds for annulment, even if the time prescribed in article 945.6 has expired.

1986, c. 73, s. 2.

947.4. The application for annulment must be made within three months after reception of the arbitration award or of the decision rendered under article 945.6.

1986, c. 73, s. 2.