

TAB 2

**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

**AFFIDAVIT OF ERIBERTO DI PAOLO
(Sworn December 2nd, 2010)**

I, Eriberto Di Paolo, of the City of Montreal, in the Province of
Quebec, MAKE OATH AND SAY:

1. I am currently employed as a typographer of the Gazette and have been an employee of the Gazette, in the capacity of typographer since 1980. As such, I have personal knowledge of the matters deposed to herein. Where I have relied upon other sources for information, I have specifically referred to such sources and verily believe them to be true;
2. I am one of the signatory parties of a tripartite Agreement, entered into in November 1982, (The "1982 Agreement") between the Gazette, Le Syndicat canadien de l'Imprimerie et des Communications, section locale 145. A copy of the 1982 Agreement is attached as **Exhibit "A"** to this Affidavit;
3. As can be seen from Article I of the 1982 Agreement, the 1982 Agreement was to come into effect: **"(...) only at the time when the collective agreement between the employer and the Union (...), 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."**

4. Further, the 1982 Agreement was incorporated into the 1981-1984 Collective Agreement, as well as subsequent Collective Agreements in order to form an integral part of such Collective Agreements, as can be seen from sections 5(a), 6(a), and 30 of the 1981-1984 Collective Agreement. A copy of the 1981-1984 Collective Agreement is attached as **Exhibit "B"** to this Affidavit;
5. As appears from the preamble found at page 37 of the 1981-1984 Collective Agreement, Exhibit B: **"The parties agree to duplicate hereunder the text of an agreement entered into between them the 12th day of November, 1982. This agreement forms an integral part of the present labour agreement without affecting its civil status beyond the collective agreement. Therefore, the parties declare that it is their intent that said agreement remains fully in force, subject to the terms and conditions contained therein, notwithstanding the expiry of the present labour agreement."**
6. As well, according to article VII of the 1982 Agreement: **" (...) 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. "**
7. In 1987, in my capacity of employee of the Gazette, I became once more a signatory party to a tripartite agreement, entered into in March 1987, (The "1987 Agreement") between the Gazette, Le Syndicat Canadien de l'Imprimerie et des Communications, section locale 145. A copy of the 1987 Agreement is attached as **Exhibit "C"** to this Affidavit;
8. The 1982 Agreement stipulates at its Article V that the agreement would survive a change of ownership of the Gazette and that it would be binding on purchasers, successors or assigns of the Company;
9. The 1987 Agreement stipulates the same terms and conditions, as can be seen from its article VII;

10. The 1987 Agreement also contains a clause relating to a grievance procedure in case of a disagreement as to the interpretation, application, or breach of this agreement, as can be seen from Article IX;
11. In a litigation involving the Gazette and two of its former employees, the Gazette had petitioned the Court of Appeal to recognize the validity of the 1982 Agreement, as can be seen from the Court of Appeal decision, dated April 25th, 1991. A copy of the Court of Appeal decision is attached as **Exhibit "D"** to this Affidavit;
12. The Bench of the Court of Appeal, composed of Justice McCarthy, Rothman and Proulx decided that these "entente" were not only valid and binding, but as well, formed part of the Collective Agreement;
13. Despite the unequivocally clear terms of the 1982 and 1987 Agreements, the Gazette opted to lock the typographers out, including myself, which lock-out begun on May 17th, 1993;
14. On August 18th, 1994, Arbitrator Leboeuf rendered his award; a Collective agreement was signed on October 3rd, 1994;
15. However, of the 200 employees which initially formed the composing room, only 62 such employees were still employed with the Gazette and out of these 62 employees, 51 of them opted for an early retirement scheme offered by the Gazette;
16. Therefore, despite the clauses contained in both the 1982 and 1987 Agreement, guaranteeing against job loss resulting from technological changes, the Gazette was successful in reducing the work force in the composing room by 94.5 percent;
17. Despite the signing of the 1993-1996 Collective Agreement following Arbitrator Leboeuf's decision, I was not allowed back to work, however, the Gazette began paying my wages as of August 1994;
18. Given the fact that I was deprived of the effect of the "Job Guarantee"

clauses found at article III and IV of the 1982 and 1987 Agreements, a formal grievance was filed on February 8th, 1995, and Me Foisy was named as arbitrator to resolve this grievance;



19. On April 25th, 1996, Arbitrator Foisy, ruled against the Gazette and ordered it to re-open the composing room and recall the relevant typographers, myself included, no later than April 30th, 1996. A copy of Arbitrator Foisy's decision is attached as **Exhibit "E"** to this Affidavit
20. In accordance with the provisions stated in Article XI of the 1987 Agreement, on April 30th, 1996, the Communications Energy and Paperworkers Union of Canada, local 145, (the "Union"), requested from the Gazette, its last final best offers, given that the 1993-1996 Collective Agreement expired on April 30th, 1996;
21. Although the provisions found at article XI of the 1987 requested the Gazette to forward to the Union, within forty-eight hours its last final best offer, the Gazette refused to submit to the Union its last final best offer;
22. On May 9th, 1996, the Union and the Gazette agreed to delay until May 29th, 1996, the implementation of Arbitrator Foisy's award, to re-open the "Composing Room" and to postpone until June 3rd, 1996, the date on which both, the Union and the Gazette, acquired the right to strike or to a lock-out;
23. Despite Arbitrator Foisy's ruling, and the 1982 and 1987 Agreements, the Gazette admittedly recognized its violation of these Agreements by openly stating that the: "Composing Room" had completely disappeared from their operations, and along with its disappearance, all of the positions which existed in that department. A copy of the Gazette's letter, dated May 24th, 1996, is attached as **Exhibit "F"** to this Affidavit;
24. In an effort to circumvent Arbitrator Foisy's ruling, as well as the 1982 and 1987 Agreements, the Gazette purported to affect a call back to work, by advising the typographers that we were called back to work and had to report on June 3rd, 1996, at 10:00 a.m., as can be seen

from the Gazette May 27th, 1996, letter. A Copy of the Gazette's letter, dated May 27th, 1996 is attached as **Exhibit "G"** to this Affidavit;

25. On June 3rd, 1996, as of 11:30 a.m. the Gazette formally advised me of its decision to decree another lock-out, effective June 3rd, 1996 at 11:30 a.m. A copy of the Gazette's letter, dated June 3rd, 1996 is attached as **Exhibit "H"** to this Affidavit;
26. Needless to state that as of that date, the Gazette had not only failed to abide by the terms of the 1987 Agreement, and remit its last final best offer, but as well, it ceased to remit to me my salary and other benefits deriving from my Job Guarantee clause contained in the 1982 and 1987 Agreement;
27. This situation gave rise to another grievance which led to the Court of Appeal 1999 decision;
28. In this decision, the Court of Appeal ruled that the 1987 Agreement, and by way of inference, the 1982 Agreement contained a number of clauses which provided for the survival of the working conditions when a collective agreement expires;
29. The Court of Appeal further ruled, as can be seen on page 25 of the decision, that by reproducing these Agreements in the collective agreements, the parties intended for these Agreements to form part of the collective agreement and further, for the survival of these Agreements, despite and notwithstanding the expiry of the collective agreement. A copy of the 1999 Court of Appeal decision is attached as **Exhibit "I"** to this Affidavit;
30. The Court of Appeal then examined the position adopted by the Gazette in its refusal to submit to the Union's request and forward to the Union, its last best final offer, and deemed this position to constitute a fault which resulted in the employees suffering damages as a direct consequence of the Gazette's position;

31. The Court of Appeal deemed it to be within the Arbitrator's jurisdiction to decide of the damages suffered by the employees, as a result of the employer's failure to respect article XI of the 1987 Agreement, as can be seen at page 31 of Exhibit I.;
32. Following arbitration decisions were appealed culminating in the 2008 decision by the Court of Appeal of Quebec, which again, ordered the return of the file to the arbitrator directing him to decide of the damage award the typographers, myself included, were entitled to, in keeping with the 1999 and 2003 Court of Appeal decisions. A Copy of the Court of Appeal 2008 decision is attached as **Exhibit "J"** to this Affidavit;
33. On June 5th, 2001, Arbitrator Menard imposed upon the Union and the Gazette, its decision, which would, by the effect of the Quebec *Labour Code* as well as the 1987 Agreement, become the 2001-2006 Collective Agreement. A Copy of the Arbitrator Menard's decision is attached as **Exhibit "K"** to this Affidavit;
34. I was called back to work on May 2002;
35. While still involved in a battle with the Gazette to determine the exact quantum of damages suffered stemming from the fault the Gazette committed when violating the contractual obligations assumed under the collective agreements and the 1987 Agreement, I received a notice to stay all proceedings, given that the owners of the Gazette had filed CCAA proceedings with the Ontario Courts;
36. Unfamiliar with these proceedings and in order to safeguard any rights I had, deriving from the collective agreements and the 1982 and 1987 Agreements, I filed a proof of claim with the Monitor. A Copy of both proof of claims are attached as **Exhibit "L"** to this Affidavit.
37. I was made aware that pursuant to an Order of the Court made on May 17th, 2010, the court had approved a transaction to sell certain of the LP entities assets, pursuant to an asset purchase agreement dated as of May 10th, 2010, among 7535538 Canada Inc., CW Acquisition Limited Partnership (the "Purchaser") and the LP Entities;

38. I wish to emphasize that both the 1982 and 1987 Agreement clearly state that future purchasers are bound by the terms of these Agreements and furthermore, section 45 of the Quebec *Labour Code*, stipulates that: **“The new employer, notwithstanding the division, amalgamation, or changed legal structure of the undertaking, shall be bound by the (...) collective agreement as if he were named therein and shall become *ipso facto* a party to any proceeding relating thereto, in the place and stead of the former employer”**
39. In light of the above-mentioned facts and the provisions contained in the Asset Purchase Agreement and its Schedules as well as those contained in the 1982 and 1987 Agreements and the collective agreements which prevailed amongst the Gazette and myself, it flows that my claim against the Gazette is an Assumed Liability as per the above mentioned provisions;
40. In this motion, I am seeking an Order asserting that my claim is an Assumed Liability within the scope of the definition of Assumed Liabilities found in the Asset Purchase Agreement and its schedules;
41. I am swearing this affidavit in support of the motion;

SWORN BEFORE ME at the city of Laval, in the Province of Québec, On December 2 nd , 2010.	
 Commissioner of Oaths	ERIBERTO DI PAOLO

