TAB 36

September 27, 2010

WITHOUT PREJUDICE

Celia K. Rhea
Goodmans LLP
333 Bay Street suite 3400
Toronto, Ontario
M5H 2S7

Re: Claims submitted by Eriberto Di Paolo and Rita Blondin against The Montreal Gazette.

Dear Ms. Rhea

I wish to thank you for the letter dated September 23, 2010 pertaining to the refusal of that the new owners have no responsibility to honour our claim. We totally disagree on their position.

Given as reasons not to honour our claim is Section 3.2 of the APA, and also excluded liabilities in schedule 1.1(62) letter k.

First we will tackle Section 3.2 of the APA.

The paragraph begins with (Except as specifically provided in this Agreement). One must read the paragraph in its entirety to make sense of section 3.2 Excluded Liabilities.

Section 5.4 Unionized Employees

(1) The provisions of this Article 5 insofar as they relate to unionized employees shall be subject and subordinate to the provisions of the relevant collective agreements (including expired collective agreements that continue by operation of law) and PURCHASER SHALL BE BOUND as a successor employer to such collective agreements to the extent required by Applicable Law.
A quick analysis of this last paragraph certainly confirms the responsibility of the new purchaser. If the new purchaser is bound as a successor employer to the extent required by applicable law, then Article 37 of the Quebec Labour Code which states that my tripartite agreement is valid when there is no collective agreement was in effect, And this was also the findings of the Court of Appeal decision of December 15, 1999.

Second we will tackle The Excluded liabilities in schedule 1.1 (62) letter k.

(k) LITIGATION. All Liabilities in respect of any litigation proceedings, lawsuits, court proceedings or proceedings before any Governmental Authority against any of the LP Entities....
We have 46 judgements already rendered, these 46 decisions are not in the proceeding stage, obviously. There are numerous decisions that back up our claims, including 4 major decisions from the Quebec Court Of Appeal, that has established the fault committed by The Gazette. The highest court in Quebec said that what was left to do is to quantify the magnitude of the indemnity.

I also would like to point out in the Initial order of January 8, Schedule B page 68, ARTICLE 3 - TREATMENT OF UNAFFECTED CLAIMS
Section 3.1 Claims Unaffected by the Plan letter (g)

(g) Claims for any fine, penalty, RESTITUTION ORDER or other order similar in nature to a fine, penalty or RESTITUTION ORDER, imposed by a court in respect of an OFFENCE and any interest owed in relation thereto.

So the fault has been clearly established by the decision of the Court Of Appeal of December 15, 1999, and the Court Of Appeal's decision of March 17, 2008 in paragraph 24, stated that RESTITUTION was to take place for the offence committed by the Gazette. Also on paragraph 31, the Court Of Appeal stated that because of their previous Court Of Appeal's decision of August 6, 2003, that decision made arbitrator Sylvestre;s decision of October 11, 2000 a final decision. And in that decision he awarded us salary as damages.

Also the new owners in conjunction with the FTI seem to have two sets of standards. What I mean by this is that the Robertson class action lawsuit, launched in 2003 has been settled.
(Robertson Judgement and settlement approval order June 16-2010)
How come they didn't fall under excluded Litigation (k), the FTI lawyers and Postmedia lawyers brought the case before Judge Pepall and it was settled.
The purpose of my letter is not to try and convince you of the merits of my case, it has been for me an exercise in futility. We merely want to state to you that we know our case, We know what our recourse is. And We know that after 8 months of going nowhere with the FTI and now with council for the new owners, this will only be resolved before Judge Pepall.

Your office and the FTI will be contacted in the near future by our council from Toronto.
We are going to be requesting a hearing before judge Pepall to have the new owners respect the APA (asset purchase agreement) in its entirety, the non-respect by the Gazette of our individual contracts, for the non respect of the Court Of Appeals decisions, and The Supreme Court of Canada's decision of October 5, 2000, where the court denied the Gazette leave to appeal the Court Of Appeal decision of December 15, 1999. At that time the Gazette were in the process of changing owners from Hollinger to Canwest. And especially for the non respect of the Quebec Labour Code article 37, which states that our tripartite agreements are valid and were in effect for the duration of the lockout imposed by the Gazette between May 1993 to May 2002.

Yours very truly

Eriberto Di Paolo
Rita Blondin

cc: Paul Godfrey (Postmedia Network Canada Corp.)
Me. Charles Guay (Montreal lawyer for Eriberto Di Paolo and Rita Blondin)
Paul Bishop FTI Consulting Inc.
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Gmail
by Google

claims

1 message

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To: eriberto.dipaolo@gmail.com

WITHOUT PREJUDICE

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October 24. 2010
E-Mailed

Dear Ms. Rhea

Again, thank you for responding to my letter of September 27. We totally disagree with your arguments on how Postmedia has no responsibility to assume our contracts, and therefore our claims. We will again, give you the facts on why we are an assumed liability, and therefore all our claims are payable by the new owners.

Section 3.2 of the APA
We disagree on when you say that the purchaser shall not assume and shall have no obligations in respect whatsoever of any of the Excluded Liabilities or any Claims relating thereto. We have facts, that we are not Excluded, but Assumed.
We disagree with what you say on page 2 of your letter, Section 5.4 of the APA. We will address all these issues with facts.

FACT: **Court of Appeal April 25, 1991, (500-09-000712-877), page 13, 14.** This Court of Appeal decision was based on the 1982 Tripartite agreement on which I will elaborate later on in my letter, in relation to the term that you used "Legal Lockout".
Was the Entente a "Civil Contract?"

In my respectful opinion, the Entente was not merely a "civil contract" as the Superior Court suggests. It was negotiated and signed by The Gazette and the Union that had been certified to represent the composing room employees and **it was specifically stated to form part of the Collective Agreement to which it was annexed. If the Entente was valid, it would have been legally binding on all of the employees whether or not they signed it.**
In my view, the Entente formed part of the Collective Agreement and any of the Employees who did not sign were nonetheless bound by it. The Entente was negotiated on behalf of all of the composing room employees by a Union that was certified to represent them. **It covered conditions of employment and it was expressly stated to form part of the Collective Agreement.**
The Critical question, however, is not whether The Gazette and the Union were in good faith in negotiating the Entente but whether the Entente they concluded contravened the requirements of the Labor Standards Act and the Quebec Charter.
In my respectful opinion, it did not.

FACT: **Court of Appeal December 15, 1999, (500-09-007384-985). pages 11, 12, 18, 23, 24, 25, 29, 30.**
Page 11. The present grievance is filed under the collective labour agreement and each of the tripartite agreements signed on or about November 12, 1982 and March 5, 1987.
Page 12. It is clear that when they signed the 1982 and 1987 agreements **and appended them to the**

collective agreements concluded at the time, the parties intended them to continue until 2017.
At the same date, the union and the employer agreed to **reproduce the agreement as an integral part of the collective agreement they were signing**....They declared that it was their intention that the said agreement remain in full force.
Page 18. The present grievance is filed under the collective agreement and each of the tripartite agreements concluded on or about November 12, 1982 and March 5, 1987.
The 1982 and 1987 tripartite agreements stipulated in the clause on grievance procedures that: In case of a disagreement over the interpretation, application and/or alleged violation of this agreement, the matter will be deemed a grievance and settled in the manner provided for in the grievance and arbitration procedures of the collective agreement.
Page 23, 24, 25. The state of the law on the duration of collective agreements and the working conditions that they could cover is clearly established. **Our Court, in *Parent v. The Gazette and Journal de Montreal, division du groupe Quebecor inc. v. Hamelin,* recognized the validity of tripartite agreements incorporated into collective agreements, whose duration extends beyond the duration of the collective agreement itself. The *Labour Code* was actually amended in 1994 to allow collective agreements to run for more than three years.**
The survival of certain obligations and working conditions established by collective agreement was also recognized. The Supreme Court, in ***Caimaw v. Paccar of Canada Ltd.,*** recalled that the obligation to bargain collectively in good faith could not be limited to cases where the collective agreement was in force. **The expiry of the collective agreement does not affect this obligation and, as long as this obligation remained, then the tripartite relationship of union, employer and employee brought about by the Labour Code displaced common law concepts.**
Quebec's Labour Code also makes it possible to maintain certain working conditions after a collective agreement has expired and even during a strike or lock-out. In Consolidated Bathurst v. Syndicat national des pates et papiers de Port-Alfred, the union asked that certain employees who belonged to the bargaining unit on strike be returned to work and paid accordingly. **Lebel J. recognized the validity of a clause in the collective agreement that maintained the working conditions and salary of security guards during a legal strike.** Not only did the arbitrators have the jurisdiction to decide this point during the post-collective agreement period, but, in addition, the agreement was lawful.
The 1987 agreement, which, essentially, reiterates that of 1982, contains a number of clauses that provide for the survival of the working conditions when a collective agreement expires. To clause II, quoted above, was added:
III. - DURATION OF AGREEMENT This agreement will remain in force until all the employees contemplated by it have stopped working...
IV .- JOB SECURITY...
VI. - LOSS OF PROTECTION...
VII. RIGHT TO FOLLOW. This Agreement will remain in force despite any change in owner of The Gazette (even if the corporate name were to change). Therefore, this Agreement shall bind any purchaser, successor or assigns of the Company.
Moreover, **the reproduction of these clauses in the collective agreements was preceded by an introductory text stating that the agreements were part of the collective agreement** without that fact affecting their civil effects outside the agreement and that it was the intention of the parties that they remain in full force,...
Page 29. These agreements are not individual work contracts. They are tripartite contracts that exist only through the will of the signatories even if their incorporation into the collective agreement may have extended their effects to an employee who had not signed them. These agreements deal with vested rights, **collectively speaking**, and cannot be changed by the union and the employer without the consent of the employees. **Otherwise, the duration of the agreements desired by all the parties would be repudiated and the employees would then have signed a fool's agreement.**
....When they signed those agreements, which they appended to the collective agreements, the parties intended to make job security, the guaranteed salary, the agreement not to renegotiate and the renewal process for the collective agreement last until 2017....

***FACT: Court of Appeal September 16, 1996. (500-09-000566-943). Page* 21, 22, 23.**
Il n'y a pas d'erreur de droit à reconnaître la validité d'une entente particulière prévoyant des garanties par lesquelles d'une convention collective à l'autre, cette entente particulière se prolongerait en quelque sorte par nécessaire reconduction au-delà du terme de trois ans.
Dans l'affaire The Gazette c. Parent, bien que mon collègue, M. le juge Rothman, devait se prononcer sur la validité d'une entente similaire en regard de la Charte des droits et libertés et de la Loi sur les normes du travail, ses propos sont fort pertinents à ce pourvoi :

...
L'appelante souligne la récente modification à l'article 65 du Code du travail. Cet article, en vigueur depuis le 19 mai 1994, dispose : ``Une convention collective doit être d'une durée déterminée d'au moins un an.`` La durée maximale de trois ans a été supprimée et il n'y a maintenant aucune limite quant à la durée maximale d'une convention collective qui n'est pas la première entre les parties.
Cet article a été introduit par la Loi modifiant le Code du travail dont l'article 37 valide rétroactivement les conventions collectives conclues avant l'entrée en vigueur de la loi, le 19 mai 1994 et se lit comme suit :

> Une convention collective d'une durée de plus de trois ans conclue avant le 19 mai 1994 et déposée conformément à l'article 72 du Code du travail est valide quant à sa durée.
> Elle est régie pour l'avenir par les dispositions du Code du travail telles que modifiées par la présente loi.
> Est également valide quant à sa durée une convention collective reconduite en vertu d'une disposition spécifique à cet effet contenue dans une convention collective conclue avant le 19 mai 1994.

L'appelante prétend que l'article 37 est inapplicable au présent litige. Elle allègue que l'entente n'est pas en soi une convention collective, que l'entente n'a pas une durée déterminée au sens de l'article 65 C.T., que l'entente a une durée différente de celle des conventions collectives successives auxquelles elle est annexée et que sa durée n'est pas fixe et certaine au sens de l'article 66 du Code du travail.
À mon avis l'article 37 est applicable en l'espèce. Il est exact que l'entente en soi n'est pas une convention collective, *mais elle en fait partie intégrante;* d'ailleurs les parties l'ont elles-mêmes stipulé dans l'entente :

> ***Les parties conviennent que la présente entente fera partie intégrante de toutes les conventions collectives à intervenir entre elles.***

***FACT: Court of Appeal decision of August 6, 2003.* (500-05-061257-000). Pages 4, 15.**
Paragraph 12. April 30, 1993 marked the expiry of a collective agreement that contemplated the respondents' bargaining unit and of which **the agreements of 1982 and 1987 were an integral part.** The bargaining that followed engendered a dispute within the meaning of the *Labour Code* and a lockout, ordered on May 17, 1993. On August 8, 1994 arbitrator Leboeuf settled the dispute through the submission of an arbitration award (hereinafter, the Leboeuf award), which served as a collective agreement until April 30, 1996. The validity of the award was not legally contested but, because of The Gazette (No. 1), **it is now accepted in the debate that the award in question violates the agreements of 1982 and 1987,** particularly because it makes the mandatory final offer arbitration procedure provided for in Article XI of the agreement of 1987 optional and because it allows the appellant to transfer its staff for the purpose of eventually closing its composing room.
Paragraph 14. On April 25, 1996, arbitrator Foisy rendered a decision regarding a disagreement considered a **"grievance"** resulting from the closure of the composing room by the appellant. **The arbitrator concluded that the closure violated Article III of the agreement of 1982 and he ordered the appellant to reopen the composing room in order to reinstate the 11 complainants.**
***(My own comments:)* what did the Gazette do, they imposed a second lockout starting June 3, 1996, 5 weeks after arbitrator Foisy ordered them to reopen the department.)**

Paragraph 43. (The wording in the last 6 lines of this paragraph states the complete opposite of what you stated on page 2 of your letter, in your third paragraph.
You state; Rather, they are separate agreements containg a commercial arbitration clause....
The Court of Appeal says. I am aware that other considerations of legal policy may come into play in the case of an "interim" award of an international commercial arbitration court, as illustrated by the recent decision in Compagnie nationale *Air France v. Mbaye*. But those considerations **do not apply in a case like this one,** which is characterized by a labour relations dynamic wholly governed by internal law and already highly subject to judicial control.

You state that it was a legal lockout on page 2 of your letter.
Please refer to the 1982 Tripartite agreement. If you haven't already, you will notice that there is no provision for a lockout.

I. - COVERAGE.
II. - TERM OF 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....

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IV. - LOSS OF COVERAGE.
V. - EMPLOYER'S EXISTENCE.
VI. - JOB TRANSFERS.
VII. GRIEVANCE PROCEDURE.
IN WITNESS WHEREOF, the parties have signed this 15, April 1983.
That is what the parties signed in 1983, there is no other condition in the 1983 Tripartite Agreement, it was a no strike or lockout tripartite agreement.

I will explain the effects of the 1987 Tripartite agreement.
In the 1987 Tripartite agreement, the employer obtained the control of the composing room's jurisdiction, and in return we got our wages indexed to the cost of living every July 1st. And, yes there was a lockout clause. But the lockout is a sham, as stated by an expert senior labor lawyer in Montreal, the only condition that the Company could have deprived me under the 1987 Tripartite agreement is that they did not have to index my salary every July 1st. But, because of my 1982 Tripartite agreement that had no lockout clause, they were bound to honor my employment and my salary.
I have documented **11 references** from the decisions of the Court of Appeal, that clearly states that the Tripartite agreements are an **Integral Part of the Collective Agreement.** They are juxtaposed to the Collective Agreement, that part of the collective agreement that is our Tripartite agreement does not get extinguished, it continues until each and everyone has reached their 65th birthday.
You are wrong in stating that the Tripartite Agreements came into effect precisely because there was no longer any collective agreement and therefore, they are not themselves collective agreements.

Your above argument was precisely answered in the Court of Appeal's Decision of September 16, 1996, where the Journal de Montreal, used the jurisprudence decision of our Court of Appeals Decision of April 25, 1991.
The decision of September 16, 1996, stated that the Tripartite agreement is not a collective agreement, but it is a part of the Collective Agreement, an integral part of the collective agreement, and the job and salary continues until their stated duration. So under Section 5.4 of the APA, it states.

(1) The provisions of this Article 5 insofar as they relate to unionized Employees shall be subject and subordinate to the provisions of the relevant collective agreements (including expired collective agreements that continue by operation of law) and Purchaser shall be bound as a successor employer to such collective agreements to the extent required by Applicable Law.
Unless the new Purchaser does not want to respect the wording (the extent required by Applicable Law). Which in this case is the Quebec Labor Code article 37, that was enacted in May of 1994, specifically to prevent what was taking place at that time, with the lockout of the Gazette employees, and the Journal de Montreal employees.

The arguments that you use to arrive at the conclusion that the new Purchaser is not liable, and does not have to assume our claims is a **sophism,** a clever but misleading or specious argument; an argument based on false or unsound reasoning. (Gage Canadian Dictionary)

Let us go to the part of your letter on Excluded Liabilities listed on Schedule 1.1(62)(k) of the APA.
You state that by my own admission the LP Claims remain subject to litigation for purposes of determining the quantum of the claims. One must remember that the Court of Appeal in December 1999 stated that we were owed damages for the Gazette's contractual fault.

I will refer to The Tripartite Agreement of 1987. **V. - COST OF LIVING FORMULA: Consumer Price Index (C.P.I.)**
Cost of living adjustment + $25.00./hr....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.
Now we definitely have a base to work with. And that is exactly what our actuary did.
On October 11, 2000, the arbitrator rendered an award. The court of Appeal reproduced the part of his decision where the arbitrator awards us salary and social benefits as damages. On page 10 of the Court of Appeals Decision of August 6, 2003.
4 - each of the complainant shall, within a reasonable period of time, submit a document containing a breakdown of the amounts he claims in wages and benefits lost during the period from June 6, 1996 to January 21, 2000 and the employment income he received during the same period, in order to thereby mitigate his damages.
On Paragraph 34 the court of Appeal says. Lastly, note that the respondents are seeking confirmation

of the judgment of first instance from which they have not appealed. Like the Sylvestre No. 2 award, that judgment set January 21, 2000 as the date on which the period for claiming damages owed the respondents ended.
Also, the Court of Appeal's decision of March 17, 2008, **in paragraph 31,** says that by the Court of Appeals decision of August 6, 2003, it made the October 11, 2000 decision a final one. And in that decision the arbitrator had awarded us salary and social benefits. The arbitrator told us to quantify the amounts. And now you are telling us that there is no quantum.
The above description clearly shows that yes there is a quantum, the arbitrator said so, backed by the Court of Appeals. Because we have a salary guarantee, it was very easy for an actuary to calculate the salary amount and the social benefits amount, as requested by arbitrator Sylvestre. So, yes the quantum for those damages are done, and backed up by the Court of Appeals decision.
To answer to what you wrote on page 3, Schedule B to Initial Order, again I will reiterate again that you use Sophism writing, You just don't want to assume our claim, so anything that you say, is supposed to make sense. Well it makes no sense.
Whether the LP Claims are Unaffected Claims for purposes of the LP Entities restructuring, or is separate and distinct from the issue of whether the LP Claims were assumed by the Purchaser does not in anyway change the wording of Section 5.4 of the APA. You either respect what is in 5.4 or you don't. Either you respect all applicable laws, or you don't respect all applicable laws. In my previous letter dated September 27, 2010, I never said that the new owners had to pay all Unaffected claims, I never said that they had to Assume all of the Excluded Liabilities. And when you say, that even if the LP Claims were proven to be Unaffected Claims, the Purchaser would not thereby be liable for them. I don't disagree with your last statement. But our claims do not fall in that category.

Judge Pepall is eventually going to decide whether the lawyers for Postmedia are right, or all the jurisprudences of all the major Court of Appeals decisions, coupled with our opinions of our expert labour lawyer is right.

A hearing before judge Pepall is certainly going to take place in the near future. Our claim was produced by an actuary, who will also be coming to Toronto to testify on its accuracy. An expert labour lawyer will also come to testify and explain to Judge Pepall why the new owners have the responsibility to assume our claims.

As far as the Robertson lawsuit is concerned, my point of view was that their case was settled very quickly, the FTI was not addressing my issues, and my case was barely making any progress. The FTI wanted us to sign a letter, that we had to give up our claims in the Claims Process, which we had never agreed to be in the first place. And now with an opinion from CaleyWray, lawyer Jesse Kugler, says it would be prudent to seek clarification from the Monitor and/or the Court prior to withdrawing the Claim. And that is exactly what we wanted to do, but nobody seemed to be listening.

The February 5, 1998 decision of arbitrator Sylvestre, by the way, that is the decision where he awarded us everything that we had asked in our grievance of June 4, 1996. The last paragraph of his decision, he paraphrased what a financial writer had said in an article that he had written in the Gazette.

"Trust is the bedrock on which good labor relations or any other kind of human relations are built...once a deal is made, you stick to it. Otherwise, your word is worth nothing."

Please let us know if you have any questions about the matters addressed in this letter.

514-256-8617

Yours truly,
Eriberto Di Paolo
Eriberto Di Paolo
for Rita Blondin

cc: Steve Pastern (Postmedia Network Canada Corp.)
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