

EYB 2009-157231 – Texte intégral – SVA

COUR SUPÉRIEURE

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

NO : 500-06-000035-978

DATE : 31 mars 2009

DATE D'AUDITION : 25 février 2008

EN PRÉSENCE DE :
EVA PETRAS, J.C.S

**The Electronic-Rights Defence Committee ERDC
Petitioner**

v.

**Southam inc., Cedrom-SNI inc., Infomart Dialog Limited, Southam Business Communications Inc.,
Montreal Gazette Group Inc. - Groupe Montréal Gazette inc., Can West Global Communications
Corporation, Hollinger Canadian Publishing Holdings Inc., and Can West Interactive Inc.
Respondents**

Petras J.C.S :-

1 The Petitioner is requesting, on behalf of freelance writers who write for the Montreal Gazette, authorization to institute a class action suit against the Respondents for damages, cancellation of contracts and for injunctive relief arising from the alleged infringement of rights under the *Copyright Act*.

Factual Context

2 The Petitioner (« ERDC ») is a non-profit association, duly incorporated in 1997 under Part III of the *Quebec Companies Act*.

3 ERDC comprises approximately 160 members who are freelance writers. The purpose of ERDC is to promote and protect the electronic copyrights of freelance writers.

4 ERDC is seeking authorization to institute a class action on behalf of the members of a group identified as follows:

4 » All persons residing in Quebec or having resided in Quebec or residing in Canada, who have been freelance writers or creators for the Southam Inc. daily newspaper The Gazette in Montreal, and whose articles or works have been reproduced without authorization or consent in the electronic database named INFOMART or in other electronic databases or in any form whatsoever and who have not obtained compensation for these illegal reproductions, as well as all assignees or transferees of copyrights of these persons, or if these persons are deceased, their heirs or legal representatives. «

5 ERDC, as a legal person and as permitted in article 999 C.C.P., wishes to institute a class action on behalf of

the group and to be ascribed the status of representative in accordance with article 1003 C.C.P.

6 Mr. David Homel, a professional freelance writer and award-winning author, is a member of the group and of ERDC. He is willing and able to act as the designated representative or spokesperson of ERDC and pilot the class action recourse on behalf of ERDC.

7 ERDC also has the support of various Canadian writers associations.

8 ERDC wishes to obtain financial compensation for the allegedly illegal electronic publication or reproduction, through an electronic database, of articles written by members of the group of freelance writers for the Montreal Gazette («The Gazette»).

9 The protection of the electronic copyrights of freelance authors who wrote articles for The Gazette is the *raison d'être* of the proceedings.

10 The present Amended Motion for the authorization to issue a class action (amended four times) was first instituted in April 1997.

11 Prior to David Homel, writers Nancy Lyon and then David Fennario were acting as the designated representative or spokesperson of ERDC.

12 One can understand that such a long period of time between 1997 and 2008, when this Motion was pleaded, would have had an impact on the ability of the spokesperson to continue to represent and act on behalf of ERDC (such as health and other valid reasons) and, as a result, it is now Mr. Homel who is the designated member representative of ERDC.

13 The proposed class action is intended to address the issue of compensation for copyright infringement during two different time periods.

Previous to 1996:

14 Before 1996, Mr. David Homel and other freelance authors who wrote articles for The Gazette were compensated on the basis of verbal contracts by which they assigned their copyright for a one-time publication in print in The Gazette.

15 However, Petitioner alleges that the Respondents then reproduced articles written by freelancers without their consent and knowledge and without compensation, even though the usual practice was to pay an additional fee for each additional publication.

1996 and subsequently:

16 Beginning in March 1996, Respondent Southam Inc., the then owner and publisher of The Gazette, required freelancers to sign a written contract transferring to Southam Inc. a non-exclusive licence to reproduce or sublicense the reproduction of the freelancer's written material, by any means or technology, as part of the database of the relevant newspapers or in products derived from it. Without such a signed contract, Southam Inc. would no longer do business with the freelancer in question and the writer's articles would not be published in The Gazette.

17 The evidence before the Court showed that most freelance writers who wrote for The Gazette, except for approximately fifteen, signed the written contracts from 1996 onward.

18 The present claims initially arose because of the publication on an electronic database, Infomart, of articles by freelancers, including David Homel, without their permission and without compensation.

19 Infomart is a business information service offering its service through various electronic means controlled by Infomart Dialog Inc., which has since changed its name and amalgamated with the Respondent Can West Interactive Inc.

20 The Petitioner alleges that this practice infringes the *Copyright Act* and the rights of the freelancers.

21 Respondent Cedrom-SNI Inc. acts as a sales distributor of articles on the electronic database Infomart. Cedrom-SNI Inc. charges a membership fee, additional monthly fees, and connection fees to permit users to reproduce articles.

22 Prior to 1996, ERDC claims that all publications of articles by members of the group on Infomart were illegal. After 1996, ERDC claims that the freelancers were not paid an appropriate compensation for the reproduction of articles on Infomart because they were unfairly, and against their will, obliged to sign abusive contracts.

23 The Petitioner claims that since The Gazette and Southam Inc., refused to negotiate the terms of the written contracts required from 1996 onward, which had to be accepted more or less «as is», therefore these contracts must be considered as standard form or adhesion contracts as defined by article 1379 C.C.Q.. ERDC claims that the clauses of the contracts are abusive because the freelancers had to sign away their copyrights without fair and appropriate compensation.

24 The Court does not need to determine, at the stage of the authorisation of a class action, whether these contracts correctly qualify as contracts of adhesion and will therefore not address this issue, save in order to say that it appears, on the face of the limited evidence presented, that these were standard form contracts prepared by Southam Inc. and that, in fact, very little was negotiable by the freelance writers.

The Petitioner's Claims

25 ERDC claims that all of the freelance writers, both prior to 1996 and from 1996 onward, are in a similar situation and that their recourses raise identical, similar or related questions of fact and of law, as required by article 1003 (a) C.C.Q.

26 ERDC alleges that all of the members of the group envisioned in the request for authorization of a class action are or were freelance writers for the same daily newspaper, The Gazette.

27 Before 1996, the members had not consented to or authorized the reproduction of their articles, beyond the one-time only print publication in The Gazette, and therefore republication of their articles on Infomart constitutes a copyright infringement.

28 From 1996 onward, the members have had no choice but to sign written contracts with The Gazette and Southam Inc. and have therefore not freely assigned their electronic copyrights to the Southam Respondents and The Gazette Respondents without the right to obtain additional fair compensation.

29 Respondents Southam Business Communication Inc. and Infomart Dialog Limited are companies in the business of information services, including the distribution of information on the electronic database Infomart;

30 The Respondents Montreal Gazette Group Inc., Can West Global Communications Corporation, Hollinger Canadian Publishing Holdings Inc. and Can West Interactive Inc., are the legal successors of Respondents Southam Inc. and Infomart Dialog Limited.

31 For the purposes of the present proceedings the Respondents have been divided into two groups as follows:

A. *The Southam Group* is comprised of Southam Inc., Cedrom-SNI Inc., Infomart Dialog Limited, Southam Business Communication Inc. and Hollinger Canadian Publishing Holdings Inc.

B. *The Gazette Group* is comprised of the Montreal Gazette Group Inc. - Groupe Montréal Gazette Inc., Can West Global Communications Corporation and Canwest Interactive Inc.

32 The Gazette Group and Hollinger Canadian Publishing Holdings Inc. are the legal successors of Southam Inc. or Infomart Dialog Limited. Can West Global Communications Corporation is the parent company of Montreal Gazette Group Inc., and is involved with Montreal Gazette Group Inc. in the business activity of publishing The Gazette. Hollinger Canadian Publishing Holdings Inc. assumed the liabilities of Southam Inc.

33 More specifically, Southam Business Communication Inc. and Infomart Dialog Limited are companies engaged in the business of information services, including the distribution of information on the electronic database Infomart.

34 The Gazette Group has become the owner/publisher of The Gazette, which was formerly the property of the Respondent Southam Inc.

35 As mentioned above, ERDC alleges that Cedrom-SNI Inc. participated and cooperated in the illegal publishing articles by distributing and selling them on the electronic database Infomart on behalf of Southam Inc., without compensation to the freelance writers.

36 In its class action, ERDC wishes, to seek compensatory damages for copyright infringement, an accounting of revenues and/or profits resulting from the copyright infringement, a percentage of said revenues and/or profits, punitive or exemplary damages, judicial and extra-judicial legal fees, costs and disbursements and a permanent injunction.

37 The Petitioner also intends to ask that all written contracts with freelance writers entered into since 1996, and illegally transferring to the Respondents a non-exclusive licence to reproduce or sublicense articles, be declared null and void and cancelled.

38 ERDC is claiming that the recourse can encompass as many as 800 freelance writers over the past years and for approximately 37,000 articles.

39 ERDC is claiming \$600 per article as compensatory damages for the illegal or unauthorized publication or worldwide electronic distribution of their articles, for a total of \$22,255,200.

40 Following the accounting of all revenues or profits, Petitioner is requesting that the Respondents, jointly and severally, pay 65% of the revenues or profits that the Respondents earned from the illegal reproduction of the articles.

41 The additional monetary conclusions sought by ERDC are as follows:

- An additional amount of \$ 11,127,600 as punitive damages;
- All judicial and extra judicial legal fees, costs and disbursements, including all expert fees and costs, etc.

42 ERDC also seeks a permanent injunction against the Respondents, permanently enjoining them from reproducing any articles authored by the members of the group in the electronic database Infomart or any other such electronic database or in any other form whatsoever.

The Respondents' Position

43 The Respondents argue that the Petitioner does not meet any of the requirements of article 1003 C.C.P. They also argue that the pre 1996 verbal contracts contained an implicit consent to reproduction on an electronic database.

44 The Respondents claim that a substantial portion of the claim is prescribed, that is, any claim arising before April 7, 1994.

45 The Respondents also insist that by the time that the claim for nullity of contract was introduced in the August 2004 amendment to the Motion, it was prescribed.

46 There are additional and different arguments presented by some of the Respondents and the Court will deal with them when it analyses the legal and factual foundations of the Motion.

47 In particular, certain Respondents raise the lack of any *lien de droit* or legal connection between themselves and the Petitioner.

Analysis and Discussion

48 The principles governing class action suits and the requirements necessary to obtain authorization are well established.

49 The very wording of article 1003 C.C.P. confers upon the court the discretion to evaluate and decide with respect to each of the four conditions of article 1003 C.C.P.

50 The four requirements set out in the subparagraphs of articles 1003 C.C.P are cumulative.

51 The Court must distinguish between the facts alleged and the arguments as to procedural issues, opinion and law.

52 As to the questions of law there are serious *prima facie* legal issues but it will be up to the judge on the merits to decide as to the validity of the Petitioner's claims.

53 Given that the Motion for authorization was issued pursuant to the old rules, the facts revealed in the affidavits, examinations, and exhibits were also considered, as well as those in the written Contestations that do not contradict the facts alleged in ERDC's Motion.

Article 1003 (a) C.C.P.

(a) the recourses of the members raise identical, similar or related questions of law or fact;

54 While the four subparagraphs of article 1003 C.C.P. are cumulative, this is not the case with subparagraph (a). The recourses must raise identical, similar *or* related questions of fact and of law.

55 The freelance writers, members of ERDC, all raise the question of copyright infringement for the publication of articles on electronic databases, in particular Infomart, without their knowledge or consent. They all raise the issue that the writers contracts they were then obliged to sign from 1996 onward, were adhesion contracts and that the clauses were abusive because they did not provide for additional fair remuneration. Instead they were obliged, against their will, to assign unlimited additional print and electronic publishing rights to The Gazette and Southam Inc..

56 The Court believes that sufficient details have been provided and information filed with respect to the Infomart publications or reproductions, as well as with respect to the issue of the obligatory written contracts, to meet the requirements of article 1003 (a).

57 The Court of Appeal has held:

Article 1003 (a) does not require that all of the questions of law or of fact in the claims of the members be

identical or similar or related. Nor does the article even require that the majority of these questions be identical or similar or related. From the text of the article it is sufficient if the claims of the members raise some questions of law or of fact that are sufficiently similar or sufficiently related to justify a class action».¹

58 With respect to the issue of prescription raised by the Respondents, it may very well be that a portion of the claims before 1996, that is before April 7, 1994, is prescribed, but certainly the balance of the claim is not. As established by the jurisprudence, prescription is an argument that is appropriately dealt with on the merits of the action when this question requires a deeper analysis².

59 By the same token, the question of whether the claim or part of the claim relating to the nullity of the written contracts is time-barred is also an issue that should appropriately be dealt with on the merits and not at the authorization stage.

60 The Court concludes that the questions of fact and of law raised by the Petitioner meet the requirements of article 1003 (a) C.C.P.

Article 1003 (b) C.C.P.

(b) the facts alleged seem to justify the conclusions sought.

61 This paragraph again leaves great discretion to the Court. As stated, the facts alleged must merely seem to justify the conclusions.

62 As in *Robertson v. Thomson*³, the appearance of right is what is required. At the authorization necessary stage only the appearance of a legal foundation on a procedural level is required. The Petitioner does not have to prove the justice or correctness of its suit. The Court does not have to evaluate the chances of success of an eventual class action. Such an evaluation properly occurs during the hearing on the merits of a class action.

63 The focus of the claim by ERDC is the protection of copyrights and revenues flowing from them.

64 Whereas the publication of articles on electronic databases have presumably generated income for Infomart and other parties, they have generated no income or very little for the freelance writers. In fact, an infringement under the *Copyright Act* does not even require revenues by the infringing party; illegal reproduction is sufficient.

65 The Supreme Court in *Robertson v. Thomson Corp.* has decided that the copyrights belong to the authors and that newspaper publishers are not entitled to republish freelance articles, acquired for publication in their newspapers, on an electronic database without compensating the authors and obtaining their consent.

66 The Court cannot ignore the Supreme Court of Canada and the *Robertson* class action case. The Court cannot ignore the fact that this class action is currently in process in Ontario.

67 The Court also cannot ignore cases concerning electronic rights in other jurisdictions nor the fact of various negotiated settlements in this domain, such as were submitted to the Court by the Petitioner.

68 The issue of electronic rights is a sensitive and timely one.

69 The Respondents raise the argument that an individual detailed inquiry will be required to determine whether each member of the proposed group has expressly or implicitly authorized the reproduction of his or her works on Infomart.

70 The Court cannot agree. This is a much larger issue. The case is not one to hinge on each individual writer's contractual relations with The Gazette or on his or her individual state of mind regarding the reproduction of his

or her work on Infomart (i.e. knowledge or consent thereto).

71 This case deals with the question of whether or not individual copyrights should be given extended protection to cover the expansion of the media into cyberspace. The issue is whether freelance writers' electronic rights are appropriately protected.

72 The principles of fair remuneration of copyrights and of fair and bilateral negotiations for the reproduction on electronic databases of articles sold to The Gazette, these are at issue.

73 The issue of an individual and subjective evaluation, raised by the Respondents, has been held not to be an insurmountable obstacle, especially in cases of consumer contracts⁴.

74 In this case, the fact that these contracts appear to be adhesion contracts, which the majority of authors were obliged to sign in order to be published in The Gazette, is sufficient for the Court to surmount any of the obstacles raised by the Respondents. It is the general principle of such contracts that is at stake.

75 This case deals with a general across-the-board practice covering freelance writers. Only a few appear to have managed to negotiate some minor changes to the written agreements.

76 Any individual examination concerning compensation can occur at the stage of the filing of an individual claim following any positive judgment.

77 The Court therefore finds that the facts alleged by the ERDC do seem to justify the conclusions sought.

Article 1003 (c) C.C.P

(c) the composition of the group makes the application of article 59 or 67 difficult or impracticable

78 Although ERDC currently has approximately 160 members, the Petitioner's representative, David Homel, estimates that the group the ERDC wishes to represent may actually comprise 800 or more freelance writers who would have contributed articles or material to The Gazette.

79 It is impossible to contact all members of the group as many are unidentified or have unknown addresses and telephone numbers. It is also clear that it would be impracticable and unrealistic to have some 160 individual lawsuits, let alone 800.

80 The purpose of the 2002 reform of the *Code of Civil Procedure* was to improve and facilitate access to justice and to simplify the debate at the authorisation stage.

81 The fact that between 160 and 800 freelance writers may be part of the group, the whereabouts of many unknown, brings it within the purview of article 1003 (c).

82 Obtaining a mandate, for even as few as 160 writers, would be impracticable if not impossible. Joinders of such suits would also be cumbersome and impracticable. Both situations would also clearly not be within the spirit and purview of articles 4.1 and 4.2 C.C.P.

83 This is clearly not a situation where the application of article 59 or 67 C.C.P would be either practicable or in the interests of justice.

84 The fact that many of the freelance writers would have limited financial means to fund such a legal battle brings this case directly within the scope of the stated goal of the reform, access to justice.

85 The duty of the Court is to ensure access to justice.

86 Therefore, the Court concludes that the requirement of article 1003 (c) has been met.

Article 1003 (d) C.C.P.

(d) the member to whom the Court intends to ascribe the status of representative is in a position to represent the members adequately.

87 ERDC has approximately 160 members. Although members may fluctuate from time to time, certainly there is a core group that is fervently interested and committed to pursuing the class action. The Court does not agree with the Respondents' assertion that ERDC is a hollow sham.

88 The Respondents contend that ERDC is not the appropriate member to be ascribed the status of representative, because it is not in a position to represent the members adequately. They argue lack of diligence and base their reasoning mainly on the fact that it took from 1997 until 2008 to arrive at the authorization stage.

89 The Respondents also argue that ERDC does not have a proper membership roster, that it is difficult to determine with pinpoint accuracy the members at any given time, that it has been represented by three different writers, and that this group is in conflict with the interests of a majority of writers who have expressly through contracts, or implicitly through their conduct, agreed to the reproduction of their work in the database.

90 The Court notes that there are enough regular or core members to make ERDC a viable legal person and member in accordance with article 999 C.C.P. The presence in the Courtroom of a number of them, while not determinant, demonstrated this fact to the Court.

91 Furthermore, any freelance writers who do not wish to be part of the group may request their exclusion from the group as provided for in the *Code of Civil Procedure*.

92 With respect to the argument concerning the length of time taken to get to the authorization stage, the Court does not know all the reasons for the delay, but was able to judge that many of them were due to the lengthy and various examinations conducted by the Respondents pursuant to the old rules.

93 The fact that through illness and attrition, Ms. Lyon and subsequently Mr. Fennario were subsequently unable to continue to act as the representative of ERDC during the entire previous eleven years is not surprising.

94 Mr. David Homel is a professional freelance writer and author. He has written articles and even columns on a regular freelance basis for The Gazette. He has been the spokesperson of ERDC for some time.

95 The Court is satisfied that Mr. David Homel is ready, willing and able to act as ERDC's representative, but more to the point, ERDC has a stable of members who are supporting the efforts of ERDC (and Mr. David Homel) and from whom another representative could eventually be chosen in the event that Mr. Homel is incapacitated or otherwise unable to continue.

96 Certainly the great efforts expended by ERDC over the last years have convinced the Court that ERDC meets the requirements of article 1003 (d) C.C.P.

Summary of the decision concerning 1003 C.C.P.

97 It is clear that once it has been determined that ERDC has met all four of the criteria in article 1003, the Court must grant the authorization to exercise a class action.

97 *Conclusion*

98 Given the Court's decision to authorize the class action the Court wishes to briefly address certain other

arguments.

99 Three of the Respondents submit the lack of a *lien de droit* or legal connection between the Petitioner on the one hand and Hollinger Canadian Publishing Holdings Inc., Southam Business Communications Inc. and Cedrom-SNI Inc. on the other hand.

100 On a *prima facie* basis, from all the facts before the Court, there appears to be a sufficient legal connection, at the stage of the authorization of a class action, to include these parties as defendants. The tenuousness of any link should be more appropriately raised once the class action is instituted on the merits, since such tenuousness or lack of interest at particular points in time may have an impact on the issue of quantum or on the issue of proportion of liability, if any.

101 The legal connections between the group and the various Respondents, and the potential liability issues have been sufficiently set out in the Amended Motion and the various Contestations to justify the inclusion of all Respondents.

102 The argument raised alleging a lack of knowledge of any infringement or the details of any assignment of copyrights, is also not a bar to a copyright infringement suit.

103 Concerning the argument that there is no evidence of as many as 800 members, the Court believes that it is not in an appropriate position to substitute its estimate to that of the Petitioner and Mr. Homel with respect to the number of writers with a potential claim in the class action.

104 The Court understands that the number of members of the group may very well be far fewer than 800, but does not intend to modify, at this stage, the amounts that the Petitioner intends to seek as damages.

105 With respect to the argument against the claim for punitive damages, this issue together with the issue of the good faith or lack of bad faith of the Respondents is again within the purview of the action on the merits.

106 The Court dismisses these arguments at the stage of authorization of a class action.

107 Finally, as a last consideration, notwithstanding Respondents' arguments, the Court believes that authorizing a class action suit in this case best meets the requirements of article 4.2 C.C.P.

Judgment

108 *SEEING* the Petitioner's Motion for Authorization to bring a class action on behalf of the natural persons forming part of the following group, namely:

108 «All persons residing in Quebec or having resided in Quebec or residing in Canada, who have been freelance writers or creators for the Southam Inc. daily newspaper The Gazette in Montreal, and whose articles or works have been reproduced without authorization or consent in the electronic database named INFOMART or in other electronic databases or in any form whatsoever and who have not obtained compensation for these illegal reproductions, as well as all assignees or transferees of copyright rights of these persons, or if these persons are deceased, their heirs or legal representatives» ;

109 *SEEING* the affidavit and other evidence in support thereof;

110 *CONSIDERING* that the facts alleged seem to justify the exercise by the member Petitioner ERDC and by each member of the group, of personal suits against the Respondents;

111 *CONSIDERING* that the composition of the group makes the application of articles 59 or 67 of the Code of Civil Procedure difficult or impracticable;

112 *CONSIDERING* that the claims of the members raise identical, similar or related questions of law or fact;

113 *CONSIDERING* that the class action which the representative wishes to bring on behalf of the members is as follows:

113 That Petitioner, The Electronic-Rights Defence Committee ERDC, through its designated member David Homel, is hereby authorized on its behalf and on behalf of all members of the group hereinafter described to institute a class action against the Respondents for violation of the copyright rights of freelance writers or creators by illegally reproducing their works or articles in the electronic database INFOMART or other electronic database or in any form whatsoever;

114 *CONSIDERING* that the facts alleged appear to justify the conclusions sought;

115 *CONSIDERING* that the Petitioner ERDC is in a position to represent the members adequately and that David Homel as designated member of Petitioner is in the position to adequately act as the designated member or spokesperson of ERDC;

115 *FOR THESE REASONS*, the Court:

116 *GRANTS* the amended Motion for Authorization to Institute a Class Action;

117 *ASCRIBES* to Petitioner The Electronic-Rights Defence Committee ERDC, with David Homel as its designated member, the status of representative for the purpose of bringing a class action on behalf of the following group of natural persons:

All persons residing in Quebec or having resided in Quebec or residing in Canada, who have been freelance writers or creators for the Southam Inc. daily newspaper The Gazette in Montreal, and whose articles or works have been reproduced without authorization or consent in the electronic database named INFOMART or in other electronic databases or in any form whatsoever and who have not obtained compensation for these illegal reproductions, as well as all assignees or transferees of copyright rights of these persons, or if these persons are deceased, their heirs or legal representatives» ;

118 *AUTHORIZES* the Petitioner The Electronic-Rights Defence Committee ERDC, through its designated member David Homel, to institute a class action against Southam Inc., Cedrom-SNI Inc., as well as Montreal Gazette Group Inc. - Groupe Montréal Gazette Inc., Infomart Dialog Limited, Southam Business Communications Inc., Can West Global Communication Corporation, Hollinger Canadian Publishing Holdings Inc., Can West Interactive Inc., and other distributors for violation of the copyright rights of freelance writers or creators by illegally reproducing their works or articles in the electronic database INFOMART or other electronic databases or in any form whatsoever;

119 *IDENTIFIES* as follows the principal questions of law and fact to be dealt with collectively:

A) Do David Homel and the group of freelance writers or creators own copyright rights on the articles they have authored?

B) Did the Respondents Southam Inc., and Cedrom-Sni Inc., Infomart Dialog Limited and Southam Business Communication Inc., as well as Montreal Gazette Group Inc - Groupe Montréal Gazette Inc., Can West Global Communication Corporation, Hollinger Canadian Publishing Holdings Inc., Can West Interactive Inc., and other distributors through their illegal reproduction of articles by David Homel and the group on the electronic database named INFOMART violate copyright rights of David Homel and the group?

C) Does this violation entitle David Homel and the group to civil remedies, including: a) compensatory damages, b) accounting of receipts, revenues and profits, such as the portion of the revenues that the

Respondents have made from the infringement, as is just and proper, and c) punitive or exemplary damages, d) judicial and extra-judicial legal fees, costs and disbursements, e) permanent injunction and f) other remedies according to the law?

120 *IDENTIFIES* as follows the conclusions sought in relation to such questions:

121 *TO ORDER COLLECTIVE RECOVERY* of the claims and damages of David Homel and the claims and damages of each and every member of the group;

122 *TO CONDEMN* the Respondents Southam Inc., Cedrom-SNI Inc., Infomart Dialog Limited, Southam business Communications Inc., as well as Montreal Gazette Group Inc.–Groupe Montréal Gazette Inc., Can West Global Communication Corporation, Hollinger Canadian Publishing Holdings Inc. Can West Interactive Inc., jointly and severally, to pay to the Petitioner the global sum of twenty-two million two hundred fifty-five thousand two hundred dollars (\$22,255,200) as compensatory damages for the benefit of David Homel and all members of the group, subject to perfecting or increasing this amount according to the evidence to be obtained during the hearing in the Superior Court;

123 *TO ORDER* the Respondents Southam Inc., Cedrom-SNI Inc., Infomart Dialog Limited, Southam business Communications Inc., as well as Montreal Gazette Group Inc.– Groupe Montréal Gazette Inc., Can West Global Communication Corporation, Hollinger Canadian Publishing Holdings Inc., Can West Interactive Inc. and all other distributors *TO RENDER AN ACCOUNT* of all accounting or financial data with respect to revenues from the illegal reproduction on INFOMART or other electronic databases of articles authored by the group;

124 *TO CONDEMN* the Respondents Southam Inc., Cedrom-SNI Inc., Infomart Dialog Limited and Southam Business Communications Inc., as well as Montreal Gazette Group Inc. – Groupe Montreal Gazette Inc., Can West Global Communication Corporation, Hollinger Canadian Publishing Holdings Inc., Can West Interactive Inc., and other distributors, jointly and severally *TO PAY* to the Petitioner the global sum of eleven million one hundred twenty-seven thousand six hundred dollars (\$11, 127, 600) as punitive damages, for the benefit of David Homel and all members of the group, subject to perfecting or increasing this amount according to the evidence to be obtained during the hearing in the Superior Court;

125 *TO CONDEMN* the Respondents Southam Inc., Cedrom-SNI Inc., Infomart Dialog Limited and Southam Business Communications Inc., as well as Montreal Gazette Group Inc.–Groupe Montreal Gazette Inc., Can West Global Communication Corporation, Hollinger Canadian Publishing Holdings Inc., Can West Interactive Inc. and all other additional respondents, jointly and severally, to pay all judicial and extra-judicial legal fees, costs and disbursements, including all expert fees and costs, and other fees and costs provided for in the *Class Action Act*, the whole in accordance with the law;

126 *TO ISSUE A PERMANENT INJUNCTION ORDER* against the Respondents Southam Inc., Cedrom-SNI Inc., Infomart Dialog Limited and Southam Business Communications Inc., as well as Montreal Gazette Group Inc.– Groupe Montreal Gazette Inc., Can West Global Communication Corporation, Hollinger Canadian Publishing Holdings Inc., Can West Interactive Inc. and all other additional respondents, to prohibit them from reproducing any articles authored by David Homel or members of the group in the electronic database INFOMART or in any other electronic database or any other form whatsoever;

127 *TO DECLARE NULL* and *VOID* and *TO RESCIND* and *ANNUL* all written contracts with freelance writers or creators since 1996 illegally transferring to Respondents Southam Inc., Cedrom-SNI Inc., Infomart Dialog Limited and Southam Business Communications Inc., as well as Montreal Gazette Group Inc. – Groupe Montreal Gazette Inc., Can West Global Communication Corporation, Hollinger Canadian Publishing Holdings Inc., Can West Interactive Inc. and all other additional respondents, a non-exclusive licence to reproduce or sublicense material, namely articles for the newspaper The Gazette;

128 *TO AWARD the whole* against the Respondents Southam Inc., Cedrom-SNI Inc., Infomart Dialog Limited and Southam Business Communications Inc., as well as Montreal Gazette Group Inc.– Groupe Montreal Gazette

Inc., Can West Global Communication Corporation, Hollinger Canadian Publishing Holdings Inc; Can West Interactive Inc. and all other additional respondents, jointly and severally, *with interest* since the demand letter and post judgment interest according to the *Courts of Justice Act*, with the additional indemnity provided for in article 1619 C.C.Q., with costs and disbursements of this lawsuit, and any other just and equitable remedies that the Court may grant to the Petitioner ERDC or members of the group;

129 *TO ORDER* the Respondents Southam Inc., Cedrom-SNI Inc., Infomart Dialog Limited and Southam Business Communications Inc., as well as Montreal Gazette Group Inc.– Groupe Montreal Gazette Inc., Can West Global Communication Corporation, Hollinger Canadian Publishing Holdings Inc., Can West Interactive Inc. and all other additional respondents, jointly and severally, *TO DEPOSIT* the sum of thirty-three million three hundred eighty-two thousand eight hundred dollars (\$33, 382, 800) with all other sums to be awarded, at the Office of the Clerk of the Superior Court of Montreal, within thirty (30) days of the final judgment;

130 *IN THE EVENT THAT THERE REMAINS A BALANCE* on the sums collectively recovered following the awards hereinabove requested:

- *TO RESERVE* the Petitioner's right and opportunity to make representations on the manner of disposing of said balance;

131 *DECLARES* that any member who does not request his exclusion from the group be bound by any judgment to be rendered on the class action, in accordance with the law;

132 *ESTABLISHES* the date after which a member may no longer request his exclusion from the group at sixty (60) days from the date of the notice to members and *CONFIRMS* that at the expiry of the 60 day period the members of the group who have not requested exclusion, shall be bound by any such judgment to be rendered on the class action;

133 *DIRECTS* the parties to communicate with the Court in order to determine and finalize the text, form and manner of the notice to members to be published in accordance with the provisions of the law;

134 *REFERS* the record to the Chief Justice so that he may fix the district in which the class action is to be brought and the judge before whom it will be heard;

135 *THE WHOLE* with costs to follow suit.

PETRAS J.C.S

Me François Fontaine, Me Sébastien Pigeon, Me Hilal El Ayoubi, Me Mark Bantey, Me Donna Milonopoulos, for Respondents
Me Mireille Goulet, for Petitioner

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Date de mise à jour : 7 mai 2009
Date de dépôt : 14 avril 2009

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