Federal Court of Canada
Trial Division

Section de première instance de
la Cour fédérale du Canada

T-1273-93

BETWEEN:

THE MARTEL BUILDING LIMITED,

Plaintiff,

- and -

HER MAJESTY THE QUEEN,

Defendant.

REASONS FOR JUDGMENT

REED J.

The plaintiff claims that: (1) the defendant breached an implied term of an existing lease between the parties and of an agreement for the renewal of that lease which was reached on or about October 30, 1992; (2) the defendant acted negligently by failing to negotiate in good faith for a lease renewal; (3) the defendant acted negligently by failing to exercise a duty of care in the conduct followed in dealing with the plaintiff with respect to lease renewal negotiations, in the preparation of tender documents and in the evaluation of the plaintiff's bid.

The plaintiff is the owner of a building located at 270 Albert Street in the City of Ottawa ("the Martel building"). The property is currently under Power of Sale by the mortgagee. The building is the only asset of the plaintiff company. Mr. McMurray is President and Chief Executive Officer; Mr. Browning is the Secretary-Treasurer. They are both also owners. At the time relevant to this action, the defendant was lessee of most of the space in the Martel building. The defendant had been such since the building was

built in 1975. The main user of the rented space was the Atomic Energy Control Board ("AECB"). The lease that the defendant held had a ten year term and was due to expire on August 31, 1993.

The Department of Public Works[1] ("Public Works") is the government department that contracts for space needed for use by federal government departments and agencies; the AECB is one such agency. At the time in question, when office space was leased for federal government use in Ottawa, two branches of the National Capital Region Division of Public Works were involved: the Realty Services Branch and the Accommodations Branch.

The Accommodations Branch had several sections, two of which were the Asset Management Section and the Investment Management Section. The former determined the space requirements of a given agency or department. The latter (hereinafter "Accommodation(IM)") assessed which of several options it was most beneficial for the Crown to pursue to acquire the space: tender, lease renegotiation or the use of space already held under other unexpired leases (the lease inventory option). The Realty Services Branch, the main component of which is 'Leasing', was responsible for negotiating with landlords for the acquisition of space. It also assisted the Accommodations Branch by providing information about the rental market in the National Capital Region. The defendant is of course the largest user, by far, of rented office space in the downtown core of Ottawa.

Anticipating the August 1993 expiry of the lease of the Martel building space, Mr. McMurray and Ms. MacKillop, the building manager, sought in early 1991 a meeting with Mr. Séguin, Chief of Leasing, to discuss the possible renegotiation and renewal of that lease. A meeting was arranged

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1. See *Public Works Act*, R.S.C. 1985, c. P-38.

for March 28, 1991. Mr. Séguin could not attend; a subordinate, Mr. Bray, did so on his behalf. At that meeting, the plaintiff's representatives expressed their desire to commence negotiations for an early renewal of the lease. They had plans to retrofit the building in conjunction with such renewal. Ms. MacKillop and Mr. McMurray took with them preliminary drawings and a building systems report concerning the planned retrofit. The retrofit was designed to complement a recent fit-up that the AECB had done to much of the space occupied by it. Copies of the preliminary retrofit plans and the building systems report were given to Mr. Bray.

A "retrofit" is a renovation, undertaken by a landlord, typically every ten to fifteen years, to renew the common areas of a building, such as elevators, lobbies and corridors, and to upgrade the building, including its mechanical and electrical systems, to current standards. "Fit-up" is work undertaken by a tenant to the space it occupies, to meet its particular requirements. While fit-up is paid for by the tenant, the tenant usually engages the landlord to be the contractor for that work. The landlord has knowledge of the building systems and can assess how any proposed fit-up may impact on them. The plaintiff had been engaged in that capacity with respect to the then recent AECB fit-up.

Mr. McMurray wrote to Mr. Séguin, on May 1, 1991, reiterating what had been said to Mr. Bray, on March 28. The letter stated that Mr. McMurray was proposing a lease having a ten year term, on the same terms and conditions as the existing lease except for the rental rate. The proposed retrofit was again mentioned. Mr. McMurray enclosed copies of the retrofit documents he had previously left with Mr. Bray.

On May 23, Mr. McMurray met again with Mr. Bray (and possibly Mr. Séguin). Mr. Séguin then reported to Mr. Ratcliffe, the Acting

Director of Accommodation(IM), by memorandum dated June 17, 1991, that Mr. McMurray was interested in renegotiating the lease. Mr. Séguin provided to Mr. Ratcliffe a description of the information that Mr. McMurray had provided and asked whether Accommodation(IM) had any interest in the proposed renewal. Mr. Séguin received a response dated July 2, 1991, which informed him that the intent was that the tender process be followed but also asked him to advise what rental rate the owner had proposed. He was asked to forward a recommendation on whether it would be beneficial to the Crown to consider the owner's proposal. On July 16, Mr. Séguin sent a copy of this response to Mr. Bray and asked him to act on it. No action was taken. On September 20, Mr. Séguin again directed Mr. Bray to contact Mr. McMurray, "to find out if he is ready to make a formal proposal". No action was taken.

An internal committee comprising members of the Realty Services Branch and the Accommodations Branch, called the Lease Program Review Committee ("LPRC"), met monthly. One such meeting was held on October 18, 1991. The August 1993 expiry of the lease of the space in the Martel building was an agenda item. Minutes of this meeting indicate that Mr. Séguin was to report on the status of negotiations with the owner.[2] Mr. Séguin did not contact Mr. McMurray.

At the next LPRC meeting, on November 13, 1991, discussion again took place with respect to the lease of space in the Martel building. The minutes indicate that Accommodation(IM) was still not involved, that a mandate had not yet been received to negotiate a lease renewal or to go to tender. The evidence establishes that, as of that date, the lease of floors in a building not far from the Martel building (the Trebla Building at 473 Albert Street) had been approved for renegotiation. The space was approximately

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2. "Intention is to go to tender; owner wants to upgrade building. C. Séguin to confirm status re: owner negotiations".

the same size as that under lease in the Martel building and the existing lease of that space was to expire on October 10, 1993.

On December 17, 1991, Mr. McMurray, having heard nothing from Mr. Séguin or anyone on his behalf since the previous May, telephoned Mr. Séguin to arrange a meeting. He then wrote a letter, dated December 18, confirming that telephone conversation. In the letter Mr. McMurray stated that he awaited Mr. Séguin's "contact in January regarding a possible meeting to discuss the renewal" of the lease for the Martel building. He included a copy of his May 1, letter to Mr. Séguin in which he had asked to commence negotiations and to which he had not yet received a reply. When asked why he had not been more insistent with respect to overtures to the defendant's officials, Mr. McMurray replied that he had not wished to pester them and that he knew they sometimes took a rather long time to respond.

On February 10, 1992, another LRPC meeting was held and Mr. Séguin was specifically directed to obtain a proposal from the plaintiff and to report to the Accommodations Branch within two weeks, that is by February 24. Mr. Séguin was directed to discuss a lease for a five year term with three one year options. Mr. Séguin did nothing.

Sometime in February, Mr. Séguin, through the appraisal section of Public Works, arranged for an appraisal report to be prepared by a private contractor. The request was for an assessment of a fair market value rent for the Martel building and the Centennial Towers for the August 1993 date. The terms of reference for that report state that its purpose is to "assist representatives of Public Works Canada in the negotiation of the leasing of the subject office space". The contract for the report was entered into on March 2, 1992; it had a stipulated completion date of March 31, 1992.

On March 18, 1992, another LRPC meeting was held. The minutes of that meeting indicate what Mr. McMurray was expected to advise Mr. Séguin during the following week what rental rate Mr. McMurray would expect to receive on a lease renewal. The minutes indicate that after this information was received, a decision could be made to negotiate a renewal of the lease or go to tender.[3] In fact, no initiative had been taken by Mr. Séguin to contact Mr. McMurray. Mr. McMurray did not know that the LRPC expected he would be presenting a proposed rental rate within a week.

On April 8, 1992, the LRPC met again. The minutes of that meeting and Mr. Séguin's personal notes state that Mr. Séguin had met with the lessor and was expecting a proposal from Mr. McMurray within two weeks. In fact there had been no such meeting and Mr. McMurray had not been contacted.

Mr. McMurray, having had no response to his May 1991 letter and not having been contacted by Mr. Séguin in the early part of 1992, as promised in December 1991, again took the initiative to seek a meeting. A meeting was arranged for April 15, 1992. Quite different recollections of what occurred at that meeting were given. Messrs. Séguin and Mahar, the defendant's officials, state that Messrs. McMurray and Browning were told that a decision had been made to tender the space requirement but if they made an extremely beneficial offer to the Crown, the decision to tender could be reversed. Messrs. McMurray and Browning state that this is not what they were told. They state that, although aware that tendering was always a possibility, they understood from what was said at the meeting that the defendant was entering negotiations with them for the purpose of reaching a lease agreement without tender.

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3. "Lessor to advise C. Séguin next week as to proposed renewal rental rate. Once this is known future planning can be firmed up (reneg./tender)."

I accept the latter as the more accurate description of what occurred. It is consistent with contemporaneous documents and conduct. For example, Mr. Mahar's notes of the meeting do not contain any statements reflecting the advice Messrs. Séguin and Mahar now say they gave about a decision having been made to go to tender. Indeed, no such firm decision had been made. Mr. Mahar's notes of the meeting do record however, "Contact Sid [Mr. McMurray] by 8 May *to continue negotiations* or advise him we will be tendering" (emphasis added). The McMurray-Browning recollection of the meeting also accords with the prior conduct of Mr. Séguin in seeking a rent appraisal for the property, with the content of the discussions on April 15 and with the subsequent conduct of Messrs. Séguin and Mahar.

With respect to the discussion at the April 15 meeting, Mr. Séguin discussed with Messrs. McMurray and Browning a new escalation clause that Public Works was using in leases based on the consumer price index (CPI) as well as the possibility of additional space being required for the AECB. Messrs. McMurray and Browning made two proposals for a rental rate. One was a rental rate of $\$319.00/m^2$ with six months free rent, a ten year term and a 1992 base year. The other was a rate of $\$278.00/m^2$ with six months free rent, a ten year term and a 1983 base year. These both equated to a net effective rate of $\$295.37/m^2$. Messrs. McMurray and Browning viewed these as their opening offers. While there appears to be some conflict between what Mr. McMurray said on discovery and what he said at trial about whether he expected either of those offers to be accepted, I accept his explanation at trial. Mr. Séguin told Messrs. McMurray and Browning about the appraisal that had been commissioned and said that he would get back to them when it was completed.

On April 28, Mr. McMurray wrote to Mr. Séguin with respect to the April 15 meeting:

> You indicated that you would consider our proposal for the new or extended lease, and would be prepared to discuss it further within the next few weeks.

Messrs. Séguin and Mahar now say that this letter does not accurately reflect what was said at the meeting. As noted, I prefer the evidence of Messrs. McMurray and Browning. The May 8 date referred to in Mr. Mahar's notes of the April 15 meeting was not met.

In an internal memorandum that Mr. Mahar prepared for Mr. Séguin on May 5, Mr. Mahar wrote that they were still awaiting the private appraisal and that when that information became available, it together with information from the Public Works' appraisal section would put Messrs. Séguin and Mahar in a position to *continue negotiations*.[4] Mr. Mahar's May 5 memorandum also indicated that "successful negotiations with the existing Lessor would have to be completed by June 30, 1992".

When the procedure for acquiring rental space is to be by tender, Public Works requires a long lead time. The tender documents must be prepared, the bids evaluated, the fit-up design completed, the construction of the fit-up undertaken and the tenants moved into the new space by the time the lease of the premises where they are presently located expires. Approvals are necessary at several stages and different levels during this process. Thus, Mr. Mahar's conclusion that a decision whether or not to go to tender had to be made by June 30 was based on an informed assessment of the amount of time Public Works needed to properly deal with the lease project. The date June 30, 1992, was referred to as "the drop dead date".

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4. "With this info, combined with our own Market Analysis, Leasing will be better equipped *to continue negotiations* with the Lessor to see if a mutually agreeable, yet supportable rate can be achieved" (emphasis added).

In contemplation of a LPRC meeting of May 13, 1992, Mr. Mahar again prepared notes for Mr. Séguin. Mr. Mahar reiterated that the drop dead date was June 30, 1992 and that, while the appraisal report they had been waiting for had arrived, neither of them had seen it. Notes taken respecting the May 13 LPRC meeting indicate that the AECB had expressed a desire to remain in the Martel building and that Mr. Séguin was instructed, yet again, to send a status report to Accommodation(IM) concerning the lease. Notes read:

> Claude Séguin reported that the preliminary offer received from the owner is not favourable; however, the evaluation report is forthcoming after which negotiations will start. The drop dead date is 30 June 1992. Leasing are to provide full details of preliminary offer to H. Ratcliffe so that the tenant can be made aware that a move may be unavoidable and seek their support if this becomes necessary.

On May 14, Mr. Séguin wrote a memorandum asking Mr. Ratcliffe if Accommodation(IM) wanted him to pursue negotiations with Mr. McMurray until the drop dead date. The response was affirmative.

On June 2, 1992, having heard nothing from Messrs. Séguin and Mahar, Mr. McMurray telephoned Mr. Mahar. He was informed that the appraisal Messrs. Mahar and Séguin had been awaiting had arrived and that it indicated that the market rate would be \$195.00 - \$220.00/m^2 for a ten year term. A meeting was arranged for June 11. Mr. McMurray was sent a copy of the CPI clause that he had requested in mid-April. Mr. McMurray and Ms. MacKillop met with Mr. Mahar on June 11 and made an offer. Mr. McMurray thought this offer was at the \$220.00/m^2 net effective rate. At the same time, he expressed the view that the appraisal report was too low and that it must be flawed. He was of the view that the comparables that had been used could not be true comparables and that his proposed retrofit had not been taken into account (It had not). He asked for a copy of the report. This request was refused. Discussion ensued about Mr. McMurray's present value calculation of the offer and it was subsequently ascertained that the

method of calculation he had used differed from that used by the defendant. The net effective rate of the June 11 offer was $285.00/m^2. Mr. Mahar's notes of this meeting indicate that he had met with Mr. McMurray and Ms. MacKillop "to continue negotiations".

Mr. McMurray considered that after a retrofit the Martel building would be a Class A building. What is and what is not a Class A building is very subjective; there are no firm criteria. Messrs. Séguin and Mahar considered the Martel building to be a Class B building. They considered a Class A building to be a new building. Mr. McMurray clearly did not. He considered that a renovated older building that met current standards also fell within that category. Mr. McMurray informed Mr. Mahar that he was commissioning his own appraisal report.

On July 6, Mr. Séguin wrote to Mr. Ratcliffe that negotiations for renewal of the Martel building lease had not proven successful. The lowest effective rental rate then offered, had been $272.64/m^2, while market rate had been identified as between $195.00 - $205.00/m^2. The memorandum noted that the lessor was having his own market analysis prepared but that Mr. Séguin did not "anticipate a sufficient reduction in his rate to justify by-passing the tender process". A revised schedule for a decision to tender was set out. A "Fast Track Schedule" was chosen with the requirement that a mandate to tender be obtained by August 28, 1992.

On July 9, Mr. McMurray was advised by the appraisal firm he had hired that there was currently insufficient leasing activity in the Ottawa core area, for space of a comparable size to that leased by the defendant in the Martel building, to enable the drawing of any firm conclusions with respect to the market rent. This was followed by a meeting of Messrs. Mahar and McMurray on July 29. Mr. McMurray offered a net effective rate of

$252.00/m^2$. He still took the position that the appraisal report that had been prepared for Mr. Séguin was flawed, that the comparables used therein were not true comparables, and that his proposed retrofit had not been considered.

In the first half of August 1992, Mr. McMurray tried to contact Mr. Mahar with respect to the lease renegotiation but without success. This led him to fax a letter to Mr. Séguin, on August 14, stating that he had left telephone messages because he required "some information to complete our proposal for a lease renewal". He asked that someone please call him. Mr. Séguin apparently attempted to do so late in the afternoon on August 14 but was not able to reach Mr. McMurray. On August 19, Mr. McMurray wrote expressing a desire to reach agreement on a rental rate and again expressing the view that the appraisal that had been commissioned by Public Works was flawed. He sought a response from Mr. Mahar at his earliest convenience but noted that he knew Mr. Mahar was on vacation. Mr. Mahar contacted Mr. McMurray by telephone on August 25. A meeting was arranged for September 2. At that meeting Mr. McMurray put forward two proposals. He was asked to put them in writing, which he did on September 4. One offer was based on a five year term and was calculated to be $249.42/m^2$ or $233.99/m^2$, net effective rate, depending upon whether a 1982 or 1992 base year was used. The other was for a ten year term and was calculated to be $253.42/m^2$ or $254.78/m^2$, net effective rate, depending upon whether a 1982 or 1992 base year was used. Nothing further was heard from Messrs. Mahar or Séguin until Mr. McMurray telephoned Mr. Séguin on October 14 because he had heard rumours that the AECB space was to be tendered.

I turn, then, to describe the internal procedures of Public Works for dealing with lease space acquisition. Two different types of approvals are required: preliminary project approval (PPA) and effective project approval (EPA). Preliminary project approval must be obtained before a tender

process is commenced. Effective project approval applies at a later stage, after the tender bids have been evaluated. The authority to grant either PPA or EPA rests at different levels within the Department, and sometimes with Treasury Board, depending upon the amount of money involved. The level at which authority exists is established by Treasury Board, set out in Treasury Board Guidelines. The amount of space needed to house the AECB required preliminary project approval by the Assistant Deputy Minister - Accommodation ("ADM"). Effective project approval had to be obtained from Treasury Board.

An internal advisory structure existed to vet proposals before they were presented to the ADM for decision. The first step was the preparation by Accommodation(IM) of an Investment Analysis Report ("IAR"). The purpose of the report was to analyze the various options and recommend how the space should be acquired: by tender, by lease renegotiation, or from lease inventory. When prepared, the IAR was sent to the Regional Investment Management Board ("RIMB"), a committee chaired by the Regional Director, Accommodation ("Regional Director"). The committee made a recommendation to the Regional Director. When it was not within her authority to make the final decision, as it was not in this case, she put her decision in the form of a recommendation to yet another committee, the Investment Management Board ("IMB"). That committee then considered the matter and made a recommendation to the ADM for decision. (One understands why a great deal of lead time was required for decisions to be made.)

In any event, as of August 11, an IAR had not been prepared with respect to the AECB space. A memorandum of that date, addressed to Mr. Séguin, indicated that information was needed on, among other matters, the possible costs of fit-up if the space requirements should go to tender, the

realistic cost of fit-up should the AECB be moved to a Nicholas Street location (a lease inventory option), market data on downtown space available in the size AECB required, any new information Mr. Séguin had concerning Mr. McMurray's current position and how far over market he was. The memorandum was also addressed to a number of other people. It was not Mr. Séguin's responsibility to provide the fit-up information.

On September 11, Mr. Mahar informed Accommodation(IM) that Leasing was of the view that the privately commissioned appraisal report could be as much as $\$10.00/m^2$ too low. He set out Mr. McMurray's offer of September 4. He stated that Leasing was not prepared to recommend a rate higher than $\$215.00/m^2$ in light of recent major renewals. He forwarded Mr. McMurray's planned retrofit documents. He also indicated that a letter would be sent to Mr. McMurray informing him that Public Works would be pursuing alternatives other than lease renewal. No such letter was sent.

A new "drop dead date" by which a decision to tender would have to be made was established as October 2, 1992. At this point it was thought that, if a move to a different building were contemplated, there would be a need to overhold in the Martel building for a couple of months to allow time for fit-up design and fit-up construction in the new building.

An IAR dated September 24, 1992, was considered by RIMB at a meeting of the same date. The IAR recommended renegotiation of the Martel lease as being the most cost effective option. The report noted the proposed $1.6 million retrofit that was contemplated, the $1.4 million fit-up expenditures that had recently been incurred for the AECB in the Martel building, and the fit-up, design and moving costs that would be incurred should the occupants be moved to another building. The report stated that the rental rate being suggested was within market range for the class of

building in question. The report also noted that there were only two other office buildings in the downtown core that could offer the amount of space required and that the effective rate that was being proposed for the Martel building was competitive with the rates that had been tendered recently for space in those buildings. It was recommended that direct negotiations with the owner be undertaken "to attempt to reduce the gross rental rate further".

The IAR had been presented to RIMB as a last minute addition to the agenda. Questions were raised and a decision was deferred. The IAR was redrafted and resubmitted to RIMB on October 9. The redrafted IAR showed an even greater cost savings for the defendant should the renegotiation of the lease be the option chosen. RIMB rejected the IAR recommendation and instead recommended that "a competitive tender call for each tenant in the Martel Bldg. be undertaken". The minutes of the meeting indicate that this decision was taken because the Realty Services Branch had advised the committee that market rental rates were considerably lower than the landlord's offer.

By memorandum of October 9, Mr. Vollrath, the person in Accommodation(IM) in charge of the space acquisition project and who had prepared the IARs, instructed Mr. Mahar to proceed immediately with the preparation and issuance of an expression of interest advertisement, the first step in a tender process. There had been no contact with Mr. McMurray; no letter had been sent to him informing him that negotiations were ended. Mr. McMurray was still awaiting a response to his September offers.

While the preparation of an expression of interest advertisement was part of Mr. Mahar's job, he had not prepared more than one or two before. He had a precedent from which he worked. The precedent called for tenders on contiguous space. Indeed, if one were seeking *new* space for the

AECB, it would only make sense to require that the space be contiguous. The AECB did not enjoy contiguous space in the Martel building. Other government tenants were on some intervening floors. The AECB occupied part of the ground floor, all of floors 2 - 8, part of floor 10, and the penthouse (the thirteenth floor).

There was no consideration by IMB of the tender proposal and it is not entirely clear when the ADM's approval was given. Mr. Séguin's evidence was that it was given orally sometime within the required time frame but he did not know when. One departmental document indicates it was given on October 30, 1992, another that it was given on November 30, 1992. Mr. McMurray telephoned Messrs. Séguin and Mahar on October 14 and October 15 respectively. Mr. McMurray wrote a letter on October 15, inquiring about the status of his September 4 proposal. In the letter he states that Mr. Mahar had informed him that Messrs. Mahar and Séguin had not yet received an analysis of the September 4 proposal, that Mr. Mahar thought the plaintiff's offer was a bit high, that Messrs. Mahar and Séguin would be in contact with Mr. McMurray as soon as possible because he was anxious to negotiate a final agreement. Mr. McMurray also asserted that a commitment had been made that no final decision would be taken by Public Works before final negotiations were completed with him.

Messrs. Séguin and Mahar responded to this letter quickly, and in very definite terms. They stated that since April 15 they had been telling Mr. McMurray that the Crown's decision was to proceed to a tender unless an offer was received that was extremely beneficial to the Crown. They stated that on June 11th, Mr. McMurray had been advised that the effective rate, which the Department would consider acceptable, was \$195.00 - \$200.00/m^2 for a five year term, and \$205.00 - \$220.00/m^2 for a ten year term. This letter was written when it was known that RIMB had advised tendering, when Mr.

Mahar had drafted or was in the final stages of drafting an expression of interest advertisement to commence the tender process and when Messrs. Mahar and Séguin had not yet responded to Mr. McMurray's September 4 proposals.

In my view, both Mr. McMurray's letter of October 15, 1992, and the reply of Mr. Mahar overstate what had really been said. With respect to the former it seems unlikely Mr. Mahar would have said they were still awaiting an analysis of the September 4 proposals, or that Messrs. Mahar and Séguin would contact Mr. McMurray after that analysis arrived. It also seems unlikely that Mr. Mahar would have said that no final decision would be taken before final negotiations were completed with Mr. McMurray. He may however have indicated that there was still time for further negotiations.

With respect to Mr. Mahar's letter, the first two main paragraphs interpret past events in a way that contemporaneous documents do not support. I cannot conclude that it was ever made clear to Mr. McMurray that the defendant's $220.00/m^2$ figure was a non-negotiable bottom line. Mr. McMurray believed he was negotiating and that, just as his $319.00/m^2$ face rate ($295.37/m^2$ effective rate) was an opening proposal, so the defendant's $195.00 - $220.00/m^2$ rate was an opening rate from which he could expect upward movement. Mr. Séguin himself had expressed the view, within the department, that he thought the $220.00/m^2$ appraisal was too low. Secondly, I cannot find that the time limits within which an agreement had to be reached were made clear to Mr. McMurray or that Messrs. Mahar and Séguin did not have authority to commit the Department. Mr. Mahar, in his letter of October 15, represents that he is writing on behalf of the *Department*. He stated orally at trial that this was the terminology used when dealing with private sector landlords because Leasing was their window into the Department. Landlords were not allowed to communicate directly with

Accommodation(IM). This is consistent with Mr. McMurray's understanding that Messrs. Mahar and Séguin were representing the Department.

As noted, Mr. Mahar's October 15 letter stated that Mr. McMurray had been told that unless the rental rate fell between $205.00 to $220.00/m^2 for a ten year term the Department would not make a recommendation to renew the lease. The letter ends with the following:

> The Department has assessed your proposal and has decided to now proceed with the tender process. Rest assured that your building will be given consideration in that process. However, if you are anxious to negotiate a final agreement acceptable to the Crown, as indicated in your letter, we would be prepared to meet with you at your earliest convenience. Please bear in mind, however, that the Department cannot entertain negotiations beyond 22 October 1992.
>
> (underlining added)

Mr. McMurray subsequently asked for an extension beyond the October 22 date because illness in his family required him to travel outside the country. An extension was agreed upon and a meeting was scheduled for October 27. An expression of interest advertisement for tender of the AECB space appeared in the Ottawa Citizen on October 27. Mr. McMurray and Ms. MacKillop became aware of the advertisement before they met with Messrs. Séguin and Mahar on that date.

There is considerable conflict in the evidence as to what occurred on October 27. My conclusions are: Mr. McMurray and Ms. MacKillop expressed consternation at the issuance of the expression of interest advertisement; they were advised that it was in no way binding and could be disregarded; Mr. McMurray stated that it was impossible for him to reach the $220.00/m^2 rate but that he could come within 5% of that amount; he indicated that if this was not acceptable, then, he would have to take his chances on a tender; Mr. Séguin told him that given the downward trend that existed in the Ottawa office rental market, some landlords had successfully

renegotiated their mortgage terms with their mortgagees in order to meet the lower rates. There was also discussion of what was involved in a tender process.

Mr. McMurray states that he told Mr. Séguin, at the October 27 meeting, that he was going to speak to his lender, London Life, to see if the mortgage on the Martel building could be renegotiated to allow him to meet the $220.00/m^2 rate. He states that Mr. Séguin indicated that if he could meet that rate they would have a "done deal". I am not sure that Mr. McMurray told Mr. Séguin on October 27 that he was going to approach his lender but he certainly had done so by telephone the following day. I cannot conclude that Mr. Séguin indicated to Mr. McMurray that if he met the $220.00/m^2 rate that they had a "done deal". I do conclude, however, that Mr. McMurray did understand, and it was a reasonable understanding on the basis of the communications that had been received from Messrs. Séguin and Mahar, that if he met the $220.00/m^2 rate the *Department* would recommend renewal of the lease on that basis to Treasury Board and that, barring some unforseen circumstances, the lease would likely be renewed.

In any event, Mr. McMurray left the October 27 meeting and went to discuss the matter with his lender in London, Ontario. He telephoned Mr. Séguin on October 29 to say that he had been successful. This information was communicated to Mr. Mahar and, then, by him to Accommodation(IM) on that same date. This was followed by written confirmation of the offer from Mr. McMurray on October 30. Messrs. Séguin and Mahar advised Accommodation(IM) that they were now prepared to recommend the renegotiation of the lease. This information was communicated to RIMB.

A response came back from RIMB through Accommodation(IM) that, while the rental rate now appeared to be acceptable, the rest of the terms on which a renegotiated lease might be agreed upon were not known. One such outstanding item was the details of the proposed retrofit. Mr. Séguin's evidence was that it is usual to reach agreement first on the rental rate and then to negotiate other details with a landlord. The tone of the intra-departmental communications at this point show a considerable degree of irritation.

The memoranda of October 30 that Mr. Séguin received from Accommodation(IM) reads:

> I am writing further to my E-mail on the aforementioned project. Please be advised that I must have the Owner's new proposal (all the details) not just the bottom line base rent by 3:00 PM THIS AFTERNOON in order that I can evaluate same and determine our acceptance or rejection of same, and possibly cancel the show of Interest ad. Should the full details of the 'new' offer be received passed [sic] that deadline the project will proceed as planned, that is to say, we will go to Invited tenders for the AECB requirement. Your immediate attention to this matter is expected.

Another memorandum of the same date from Accommodation(IM) was sent to Mr. Mahar. It sought information respecting the building condition, apparent defects in the maintenance, and building code violations. It asked how the owner was addressing these deficiencies. It noted that the offer used a 1992 instead of a 1993/94 base year and again noted that there were no details respecting the outstanding base building items. Accordingly, Mr. Mahar was instructed to proceed with the preparation of tender documents and to have them available by November 20, 1992.

There were in fact no building code violations. While there had been some complaints during the term of the lease about inadequate cleaning and the need for renewal of certain areas (e.g., sinks in the washrooms) these had been attended to. There were no outstanding deficiencies. The 1992

base year had been used because Mr. McMurray had been asked to put his offer forward on that basis.

The response Mr. Mahar sent on the same day to the memoranda he received reads, in part:

> In our protracted negotiations with Mr. McMurray, the main stumbling block has always been his rental rate. The offer received from him today was the first one presented to us in which we felt the rate was reasonable enough to be considered further. This is not a final offer. Negotiations have not been completed. Normally our next step would be to meet again with Mr. McMurray to tie up the loose ends. The owner has indicated that he will proceed with the $1.6M building retrofit, an outline of which was provided to you on 11 September. The Property Manager's report (which includes a report from our Technical Services Section on the mechanical, electrical, and elevator systems, and a report from Labour Canada on fire and safety aspects) a copy of which was provided to you on 15 October, does not identify any major problems with the building or its systems. It is possible these type of items can be discussed with Mr. McMurray and a firm offer put together concurrently with the preparation of tender documents. However, if you feel strongly that you cannot consider Mr. McMurray's proposal any longer, then we will not waste our time, or Mr. McMurray's, any further. Please advise.
>
> (underlining added)

No minutes were kept of the emergency RIMB meeting that was held on October 30 to consider the October 29 - 30 offer. The subsequent explanation of the Regional Director as to what had happened at RIMB is as follows:

> ... We rejected the offer because it was only marginally at market ($229, I think), because the needs of a minor tenant have changed (500m2 is no longer required in the building), because of deficiencies in the offer (primarily, it did not contain info on the building upgrade (either costs or details) that would be a requirement for our tenants, and for other reasons related to the strategies for dealing with other concurrent NCR lease expiries.
>
> . . . .
>
> However, to be as flexible as possible, we advised Volker that if by Oct 30th at 3.30, he had received details of the upgrade that satisfied him, we would again be prepared to reconsider. These details were never received and have not been received to this date. Confirming these details would no doubt involve further protracted negotiations with this landlord which we are unwilling to entertain since all our flexibility for implementing a cost-effective relocation are now gone unless we proceed on tender track. ...

The offer was not $229.00; it was $219.00. Exactly how the needs of a tenant other than the AECB could affect the offer is not clear – the expression of interest advertisement was for the AECB space only. The strategies for dealing with other expiring leases and how they would relate to the Martel building lease have never been made known. From Mr. McMurray's perspective the sudden request for retrofit details was unreasonable. He had provided preliminary plans and reports to Public Works in March 1991. At no time since that date had he ever been asked to provide any more detailed information. He was now, however, being asked to provide it within an afternoon – three hours. The inability to do so in counsel's words became the "deal breaker".

Mr. Séguin pushed for a reconsideration of Mr. McMurray's offer. He was concerned that since the only other buildings that had adequate space to accommodate the AECB were Class A buildings, this would allow a higher bid for the Martel building space than he thought appropriate, and that bid would be the winning bid. On November 18, Mr. Mahar advised Mr. McMurray that "the tender process was continuing, but we are making a last ditch effort to have ... [your] offer re-considered". On November 26, a letter was sent to the plaintiff rejecting the October 29 - 30 offer. On the same day tender documents were issued. Bids in response were required to be filed by December 3, 1992.

When the tender bids were opened on December 3, the plaintiff appeared to have won the tender. Present value calculations of the net effective rates of the various bids showed the plaintiff's bid to be the lowest. Standard Life was the next lowest bidder. Standard Life was a Class A building. The market was dropping and Class A buildings were being tendered at Class B rates.

After bids are opened and the information contained therein disclosed to the public, Public Works does a financial analysis of the bids. This involves evaluating each by adding thereto fit-up and other costs that the defendant would incur as a result of accepting the respective bids. On December 4, Mr. McMurray received a letter from Mr. Séguin stating that Public Works was evaluating the tenders. It asked Mr. McMurray to provide, by December 9, further details of his planned retrofit. The tender specifications had not made any reference to a retrofit or to a particular class of building being required. On December 9, Mr. McMurray wrote to Mr. Séguin giving details of the planned retrofit; additional details were given on December 11. The AECB became aware of the contiguous space requirement in the tender and complained to Mr. McMurray that he was making them move from the floors they already occupied onto other floors. Mr. McMurray indicated that as far as he was concerned they could stay where they were. Ms. MacKillop wrote to the AECB to that effect and Mr. McMurray wrote to Mr. Séguin.

On January 15, 1993, the plaintiff was advised that it would not be awarded the lease contract. On March 31, 1993, Treasury Board approved the offer that had been received from Standard Life. Design fit-up work in anticipation of that approval was commenced by Public Works on January 18, 1993, prior to Treasury Board approval being given. Two contractors for fit-up instead of one were hired and the AECB moved into the Standard Life building by September 1, 1993.

When the details of the bid analysis became available to the plaintiff, it found that its bid had been calculated as more costly than the Standard Life bid because approximately one million dollars had been attributed to fit-up and other costs the AECB would need to incur should it stay in the Martel building. Some of these costs were attributable to the

tender's contiguous space requirements, which required the AECB to move from some floors in the Martel building to others. However, it was fit-up costs over and above these that made the plaintiff's bid the second lowest rather than the lowest bid.

This was the first time there had been any mention of fit-up costs being required if the AECB stayed in the Martel building. Mr. McMurray knew that $1.4 million had been spent on fit-up for the AECB in 1990. As landlord, he knew that if a present requirement for additional fit-up existed, he would have known of it. None of the internal documents calculating the costs of the various options, for example the IARs of September and October 1992, had mentioned fit-up being required if the AECB stayed in the Martel building. Neither Mr. Mahar nor Mr. Séguin knew of any such fit-up being required before mid-December, 1992.

Mr. Séguin stated that he had explained to Mr. McMurray during the course of their discussions that existing fit-up might not necessarily have any residual value. Even if such an explanation had been given, it was nothing more than a general comment and certainly could not be taken as indicating that fit-up undertaken as recently as 1990 was not relevant. In addition, Mr. Mahar's evidence was that the fit-up costs included in the financial analysis of a bid are not subjected to a present value calculation because they are costs that occur at the commencement of the lease. This does not accord with Mr. Séguin's position that the fit-up costs included were estimated costs for the ten year term of the lease. No details of the fit-up requirements have ever been provided although the method of calculation was explained.

One cost, added to the plaintiff's bid about which details are known, albeit not a fit-up cost, is that respecting a secured card access system

for the elevators. This did not exist in the Martel building. $60,000.00 was added to the plaintiff's bid as costs the defendant would have to incur to provide for such a system should it stay in the Martel building. No amount for this purpose was added to the Standard Life bid. It was assumed that a card access system existed in the Standard Life building. This was not entirely true. The defendant subsequently had to install systems in two of the Standard Life building elevators. The installation cost for the two elevators was $15,000.00. In the financial analysis, $60,000.00 had been added to the Martel building bid for its four elevators despite the inclusion of a secured card access system as an option in Mr. McMurray's retrofit plans at a cost to him, he estimated of $30,000.00. One can understand Mr. McMurray's suspicion that undisclosed preferences played a role in the addition of the hitherto unmentioned fit-up costs to the financial analysis of his bid. The tender invitation, of course, carried the standard clause stating that the defendant was not required to accept the lowest or any bid.

Prior to September 15, 1992, the acquisition of rental space was governed by the *Government Contract Regulations*, SOR/87 - 402, enacted pursuant to the *Financial Administration Act*, R.S.C. 1985, c. F-11. Section 5 of the *Regulations* required that bids be solicited before a lease was entered into. Section 6 provided that despite this general requirement the solicitation of bids was not necessary when it would not be in the public interest. In fact, sole source negotiations for leases were conducted, as is clear from the evidence. Indeed, during the summer of 1992 in conjunction with the renegotiation of a lease for the Journal Towers north and south, which lease expired on August 13, 1992, principles relating to sole source lease negotiations were developed[5] by Public Works.

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5. 1. There must be a demonstrable financial advantage to the Crown over all possible alternatives as determined by PWGSC.

   2. This financial advantage must be supported by market analysis.

cont'd ...

On September 15, 1992, the *Government Contract Regulations* were amended to remove the requirement that leases, in general, be tendered.[6] At the same time the *Federal Real Property Act*, S.C. 1991, c. 50 was proclaimed in force.[7] Under paragraph 16(2)(b) of that *Act* the Governor in Council was given authority to make regulations respecting the acquisition of leased property. Under subsection 16(4), the Treasury Board was given authority, generally or with respect to any Minister, to establish financial or other limits, restrictions or requirements respecting any transaction or class of transactions authorized under regulations made pursuant to subsection 16(2). Relevant portions of the Treasury Board Manual, dated September 15, 1992, provide:

> **3.1** **A department shall:**
>
> - **when acquiring real property, accept the lowest offer or, in circumstances that in the opinion of the minister warrant, accept the offer representing the best value, or**
>
> . . . .
>
> **The criteria for determining best value must be identified before entering into the acquisition or disposition. These criteria may be based on the best balance of benefits to a department's programs.**

A best value analysis of the plaintiff's bid was not carried out. Mr. Séguin's evidence was that this was not required because the financial analysis showed that the plaintiff's bid was not the most financially beneficial to the Crown.

... cont'd

3. **The space meets or will meet by a specified date, at no extra cost to the Crown, all the required accommodation standards and tenant requirements.**

4. **There is a continuing program need for the amount of space under question.**

5. **The landlord has met all obligations under the existing lease.**

6. **Any negotiations which might take place must be within the context of an agreed-to schedule which allows for PWGSC to implement alternatives such as relocation with minimum or, preferably, no overhold implications if a deal is not reached.**

6. SOR/92 - 503.

7. SI/92 - 151.

It is clear that something went terribly wrong for the plaintiff in its dealings with Public Works. The difficulty, however, is framing what occurred as a legal cause of action.

As noted, counsel for the plaintiff framed their argument in three ways. First, there was a breach of an implied term of an existing lease between the parties and of an agreement between the parties for the renewal of that lease, reached on or about October 30, 1992. With respect to the breach of an implied term of the existing lease, while that lease contemplated the possibility of renewal, there was no obligation therein to renegotiate. I do not think one can apply decisions such as those found in *Gibson* v. *Parkes District Hospital* (1991), 26 N.S.W.L.R. 9, *Houle* v. *Canadian National Bank*, [1990] 3 S.C.R. 122, *Gateway Realty Ltd.* v. *Arton Holdings Ltd. (No. 3)*, (1991), 106 N.S.R. (2d) 180 (N.S.S.C.) and *Empress Towers Ltd.* v. *Bank of Nova Scotia* (1990), 73 D.L.R. (4th) 400 (B.C.C.A.). The first three deal with the requirement to act in good faith when performing duties owed under a contract. The fourth involves that obligation but with respect to a specific contractual term that required the parties to renew at market value as mutually agreed.

With respect to the argument that there was a breach of an agreement for the renewal of the lease, which agreement was reached on October 29 - 30, 1992. I accept that Mr. Séguin was an employee of the defendant, with ostensible authority to negotiate, and that the defendant is vicariously liable for the acts of its employees or agents; see *J.E. Verrault & Fils Ltée* v. *Québec (A.G.)*, [1977] 1 S.C.R. 41 and Hogg, P.W., *Liability of the Crown*, (2d, 1989) at 168. However, Mr. Séguin's authority was not to *conclude* a contract with the plaintiff. Messrs. McMurray and Browning knew that any concluded negotiations would only result in a recommendation for ultimate approval by Treasury Board. I accept that had the recommendation

been made it is exceedingly likely that it would have been accepted. I note for example that Public Works entered into fit-up design work, thereby incurring costs before Treasury Board approval of the Standard Life contract was obtained. This indicates the degree of confidence that existed that, when a recommendation of this type was made, it would be accepted. At the same time, I do not think that the causal linkage to the claimed damage, loss of a ten year rental contract, is sufficiently certain to allow me to conclude that the plaintiff has met the burden of proof in this regard (see *infra*, page 32). Decisions such as *Hoffman* v. *Red Owl Stores, Inc.* (1965), 133 N.W. (2d) 267 (Wisc. S.C.) and *Brewer* v. *Chrysler Canada Ltd.*, [1979] 3 W.W.R. 69 (Alta. S.C.) were ones under which not only was reliance placed on an agreement to recommend the concluding of a contractual arrangement but the plaintiffs also expended funds or changed their positions in reliance thereon. For example, inventory was purchased or property sold as a result of the reliance and the damage award related to those expenditures not, for example, to the expected profits over the life of the dealership or franchise had the dealership or franchise agreement been actually signed.

The second argument made by counsel for the plaintiff is that there was a breach of a duty to negotiate in good faith. This is a sub-category of the third argument that a breach of a duty of care is owed to the plaintiff. With respect to the breach of an obligation to negotiate in good faith, counsel made a very attractive analysis based primarily on the decisions in *Canada Steamship Lines* v. *Canadian Pacific Ltd.* (1979), 7 B.L.R. 1 (Ont. S.C.) and *Lac Minerals Ltd.* v. *International Corona Resources Ltd.*, [1989] 2 S.C.R. 574. Counsel referred to the article by Hawkings, R.E., *LAC and the Emerging Obligation to Bargain in Good Faith* (1990), 15 Queen's L.J 65 and to the cases referred to therein. The thesis of that article is that there is a duty to negotiate in good faith, breach of which is an actionable tort. The content of the duty is said to be governed by the reasonable expectations arising from

the particular negotiating context. The content of the duty varies with the circumstances, one such circumstance being the degree of dependence that exists between the parties. The content of the duty might include, for example, the requirements that: negotiators not hold themselves out as having authority when they have none; a party not make demands in excess of those made initially (e.g., upping the ante or 'trumping' the initial bid); a party not withdraw concessions once made (negotiating norms do not countenance attempts to have last-minute riders tacked onto a virtually concluded agreement).

While counsel for the plaintiff argues that I should characterize the facts in this case by reference to the emerging tort of a failure to negotiate in good faith, counsel for the defendant cites *Courtney Ltd.* v. *Tolaini Bros. Ltd.*, [1975] 1 W.L.R. 297 (C.A.), *Walford* v. *Miles*, [1992] 2 A.C. 128 (H.L.), *MacDougall* v. *St. Peters Bay (Community)* (1992), 100 Nfld. & P.E.I.R. 45 (P.E.I. S.C.) as well as *Cedar Group Inc.* v. *Stelco Inc.* (November 13, 1996), Ontario Court File No. C23664 (Ont. C.A.) affirming *Cedar Group* v. *Stelco Inc.* (December 21, 1995), Ontario Court File No. 94-CQ-59170CM (O.C.G.D.). The headnote of the *Walford* decision reads:

> ... the agreement of 17 March contained no term as to the duration of the obligation to negotiate and made no provision for the defendant to determine the negotiations: ... a duty to negotiate in good faith was unworkable in practice and inherently inconsistent with the position of a negotiating party, since while the parties were in negotiation either of them was entitled to break off the negotiations at any time and for any reason ...

I do not think I can conclude that a tort of failure to negotiate in good faith has yet emerged.

I turn then to an analysis on the basis of general negligence principles. I encouraged counsel for the plaintiff to expand the plaintiff's

claim into this broader category hoping that an analysis on that basis might lead to a remedy for the plaintiff.

Counsel for the defendant argues that all this case involves is hard bargaining by the defendant's officials, in a very volatile and downward moving market, for the best price in the interests of the taxpayers as a whole. That is not an objective with which anyone would quarrel. However, it is not how I would characterize the facts.

Messrs. Séguin and Mahar and Mr. Bray before him, as Mr. Mahar said, were a lessor's "window" into the Department. The lessor had no right to communicate directly with Accommodation(IM), the departmental unit in charge of making the first level recommendation as to whether to renegotiate or tender. As the communication link, Mr. Séguin and his colleagues surely had a responsibility to be an effective window, a transparent window. They had a responsibility to communicate effectively with Mr. McMurray. For more than a year, Mr. McMurray attempted to engage in serious negotiations and they did nothing. At the same time, Accommodation(IM) was attempting to get Mr. Séguin to obtain from Mr. McMurray his proposals with respect to a rental rate. Not only did Mr. Séguin do nothing but Mr. Séguin left the impression with the LPRC that he had taken initiatives in this regard when he had not. What ultimately overtook Mr. McMurray was lack of time within which to provide Public Works with sufficient details of his retrofit plans to conclude an agreement. Yet he had provided preliminary documents in March of 1991 and had never once since that time been asked for further details. The six principles developed during renegotiation of the Journal Towers lease include the requirement that:

> any negotiations which might take place must be within the context of an agreed - to schedule which allows for PWGSC [Public Works and Government Services Canada, the successor to Public Works] to implement alternatives such as

> **relocation with minimum or, preferably no overhold implications if a deal is not reached.**

The end result of the failure to communicate effectively and at a sufficiently early stage with Mr. McMurray resulted not only in Mr. McMurray being unable to provide the retrofit details but also in decisions being made by RIMB hastily and on the basis of incorrect information. Moreover, there was no time to proceed with the usual internal process of having the proposal go to IMB. Mr. McMurray lost the opportunity to negotiate the lease renewal. Mr. McMurray was also misled, perhaps inadvertently, into thinking that Mr. Séguin had authority to commit the Department.

In a negligence claim, the first step is to determine whether there was a duty of care owed by the defendant to the plaintiff. This was dealt with by Mr. Justice Iacobucci in *London Drugs Limited* v. *Kuehne & Nagel International*, [1992] 3 S.C.R. 299 at 408, as follows:

> **... It is now well established that the question of whether a duty of care arises will depend on the circumstances of each particular case, not on pre-determined categories and blanket rules as to who is, and who is not under a duty to exercise reasonable care.**

The question to be asked when deciding whether a duty of care existed has been said to be, with some qualification, whether there was a sufficiently close relationship between the parties ... so that, in the reasonable contemplation of the defendant, carelessness on its part might cause damage to the plaintiff.[8] The relationship between the parties in this case supports a conclusion that the requisite duty of care existed. The parties had a subsisting long standing lessor/lessee relationship. The lease contemplated a possibility of renewal although there was no obligation to renegotiate. The defendant was essentially the only tenant in the building and had been so since the

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8. *Hall* v. *Hebert*, [1993] 2 S.C.R. 159; *Kamloops (City of)* v. *Nielsen*, [1984] 2 S.C.R. 2.

building was first constructed. The defendant was the dominant player in the leasing of rental space in the area in which the defendant's building was located. The relationship between the parties was such that one could reasonably contemplate that carelessness on the part of the defendant (through her officials) might cause damage to the plaintiff.

The second requirement to be met, to succeed in a negligence claim, is whether there was a breach of the duty of care. The content of a duty of care is determined by considering what is reasonable in the circumstances. That is, did the defendant, as represented by the various officers of Public Works, act reasonably in the light of all the circumstances. I cannot conclude that they did. First, a great deal of delay ensued in entering into negotiations when the defendant's employees knew of the time constraints under which they worked and the plaintiff did not. Then, there was carelessness in failing to make Mr. McMurray aware of who had authority to commit the Department and who did not. There was a failure to make the defendant's negotiating position clear to him. There was a failure to make clear to him, at an early enough time to give him a realistic opportunity to comply, that retrofit details were required before the Department would recommend lease renewal. There was a failure to set a realistic schedule and make Mr. McMurray aware of it so that he knew the deadlines. There was a failure to ensure that timely and pertinent information was supplied to avoid creating such time constraints for the internal departmental decision-making process that decisions were made to Mr. McMurray's detriment, on the basis of incomplete and inaccurate information. I have no doubt that the standard of care was breached. In addition, a somewhat arbitrary assessment of fit-up costs appears to have been added to the financial analysis of the plaintiff's bid. I am aware that the terms of the tender invitation expressly state that there is no requirement to choose the lowest or any bid.

Unfortunately, the difficulty the plaintiff faces, regardless of how the facts are characterized, is that of proving causation. He claims damages on the basis of the loss of a ten year rental contract. As a result of the defendant's employees actions he lost the opportunity to complete negotiations of the lease renewal. The market was in a downward spiral. This also contributed to the loss of his lease opportunity. In *Stewart* v. *Pettie*, [1995] 1 S.C.R. 131, at 153, it was stated that one must prove, on the balance of probabilities, that the breach of the duty of care actually caused the loss complained of. See also *Farrell* v. *Snell*, [1990] 2 S.C.R. 311 at 319 - 320, 328. I am not able to conclude that the plaintiff has proven the causal linkage to support the damages claimed.

With great regret, I dismiss the plaintiff's claim.

OTTAWA, Ontario.
April 22, 1997.

B. Reed

Judge