Federal Court of Appeal | Cour d'appel fédérale

Date: 20110530

Docket: A-290-10

Citation: 2011 FCA 183

CORAM: **LÉTOURNEAU J.A.**
TRUDEL J.A.
MAINVILLE J.A.

BETWEEN:

REMSTAR CORPORATION

Applicant

and

SYNDICAT DES EMPLOYÉ-ES DE TQS INC. (FNC-CSN);
SYNDICAT DES EMPLOYÉ-E-S DE L'INGÉNIERIE DE TQS INC (FNC-CSN);
SYNDICAT DES EMPLOYÉ(E)S DE BUREAU DE TQS INC. (FNC-CSN);
SYNDICAT DES REALISATRICES ET RÉALISATEURS EN AUTO-PUBLICITÉ DE TQS (FNC-CSN);
SYNDICAT DES EMPLOYÉ-ES DE TSQ-ESTRIE (FNC-CSN);
SYNDICAT DES RÉALISATEURS DE TQS MAURICIE (FNC-CSN);
SYNDICAT DE TQS MAURICIE (FNC-CSN);
SYNDICAT DES EMPLOYÉ(E)S DE COGÉCO TÉLÉVISION JONQUIÈRE CKTV-TQS (FNC-CSN);
SYNDICAT DES EMPLOYÉ(E)S DE CFAP-TV (TQS-QUEBEC), LOCAL 3946 OF THE CANADIAN UNION OF PUBLIC EMPLOYEES

Respondents

and

V-INTERACTIONS INC. (formerly TQS INC.)
and
THE ATTORNEY GENERAL OF CANADA

Interested Parties

Heard at Montréal, Quebec, on May 24, 2011.

Judgement delivered at Ottawa, Ontario, on May 30, 2011.

REASONS FOR JUDGMENT BY: LÉTOURNEAU J.A.

CONCURRED IN BY: TRUDEL J.A.
MAINVILLE J.A.

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REASONS FOR JUDGMENT

LÉTOURNEAU J.A.

Issues

[1] The applicant, Remstar Corporation, is challenging through judicial review a decision by the Canada Industrial Relations Board (Board), rendered on July 9, 2010 (File 27758-C). This decision was pursuant to an application for reconsideration of the decision rendered on September 14, 2009, by the original panel of the Board (File 26864-C).

[2] To avoid potential confusion, I will refer to the decision of September 14, 2009, as the initial decision. I will refer to that of July 9, 2010, as the reconsideration decision.

[3] I note from the outset that the initial decision was not challenged before this Court. It therefore has the authority of *res judicata*. It is settled law that the initial decision is not to be reviewed by this Court, which will instead limit itself to determining whether the reconsideration decision was reasonable: *Guan v. Purolator Courier Ltd.*, 2010 FCA 103; *Lamoureux v. Canadian Air Line Pilots Assn.*, [1993] F.C.J. No. 1128; *Halifax Employers Association Inc. v. The Council of ILA Locals for the Port of Halifax*, 2006 FCA 82; *Williams v. Teamsters Local Union 938*, 2005 FCA 302. It is common ground that the standard of review applicable to the Board's reconsideration decision is the standard of reasonableness.

[4] Although it is in fact the initial decision that the applicant attacks on the merits in its Memorandum of Fact and Law, during the hearing, counsel for the applicant recognized the case law of this Court. In defining the issues before us, he accepted the Board's statement of the issues before it on reconsideration. This statement can be found at paragraph 80 of the reconsideration decision. I will reproduce it below and adopt its content:

> [80] In essence, what the Board must decide is whether it departed from the above-mentioned principles in finding that a "sale of business" had taken place between TQS and Remstar; whether it set a precedent in this case with respect to the application of the CCAA; and whether it erred in law in making the decision.

[5] We must therefore determine whether the conclusion reached by the reconsideration panel was reasonable in the circumstances.

A brief review of the facts

[6] TQS operated a television network and owned several stations in Quebec. Its shares belonged to a numbered company, whose shares were partly held by Cogeco Radio-Télévision and partly by CTV Television Inc.

[7] TQS's business was having financial difficulties. On December 17, 2007, it applied to the Superior Court of Québec for protection under the *Companies' Creditors Arrangement Act*, R.S.C. (1985), c. C-36 (CCAA). The order was granted. An RSM Richter Inc. monitor was appointed to supervise Groupe TQS's business and financial affairs, as an officer of the court.

[8] After the Superior Court approved a formal process to allow offers to purchase Groupe TQS, the applicant presented an offer on March 3, 2008, to acquire the shares of Groupe TQS. This was accepted by TQS's shareholders and Board of Directors on March 5, 2008, and on March 10, 2008, the Superior Court approved the applicant's accepted offer.

[9] On March 14, 2008, the applicant entered into a management contract with Groupe TQS, including the numbered company, which gave the applicant extensive powers. It thereby acquired the power [TRANSLATION] "to manage both the business and internal affairs of the members of Groupe TQS". To this end, it was vested indefeasibly with [TRANSLATION] "full authority over each and every director and other employee of each member of Groupe TQS, including the authority to dismiss, lay off and hire": see the management contract, Applicant's Record, Vol. 1, Tab 6, clause 6.3(*a*) at page 110.

[10] Also, [TRANSLATION] "no instrument, by-law, resolution or decision of the Board of Directors or shareholders of a member of Groupe TQS will be binding, enforceable or given effect unless implementation of any such instrument, by-law, resolution or decision is approved or assented to in advance, in writing" by the applicant: *ibidem*, clause 6.11, at page 111.

[11] Finally, each of the persons designated by the applicant was vested with the authority to act alone in representing Groupe TQS. Each of the members of Groupe TQS, as well as its managers, directors and staff, was justified in following the directives and instructions of any such representatives of the applicant: *ibidem*, clause 6.12, at page 111.

[12] It should come as no surprise that this management contract was at the heart of the dispute that led to the Board's initial decision and reconsideration decision.

[13] The management contract entered into with the applicant was temporary in nature. The applicant's temporary management delegation had to be approved by the Canadian Radio-television and Telecommunications Commission (CRTC). The approval was granted on March 20, 2008. It is worth reproducing the terms of the CRTC's approval:

> [TRANSLATION]
> The Commission approves the above application and authorizes Remstar Corporation to continue to operate the undertaking for a period of six months following the date of this decision, that is, until September 20, 2008, under the same terms and conditions as applicable to the existing broadcasting licences.
>
> During this period, Remstar Corporation will have exclusive responsibility for the operation of the undertaking. Should it be necessary to renew this authorization, the licensee will have to submit a request to that effect at least one month prior to the expiry date indicated.
>
> [Emphasis added, except for the words "at least one month prior", which are emphasized in the original.]

[14] On June 26, 2008, the CRTC approved the change in control of TQS. In accordance with clause 3(*d*) of the management contract, this arrangement came to an end on August 29, 2008, by way of a transfer of shares from the numbered company to the applicant.

The Board's initial decision

[15] The respondents asked the Board under section 44 of the *Canada Labour Code*, R.S.C. 1985, c. L-2 (Code) to find that there was a sale, transfer or other disposition of TQS's business

to the applicant. Section 44 must be read together with section 46, which authorizes the Board to determine any question that arises under section 44.

[16] Both sections are reproduced below:

44. (1) In this section and sections 45 to 47.1,	**44.** (1) Les définitions qui suivent s'appliquent au présent article et aux articles 45 à 47.1.
"business"	« entreprise »
« entreprise »	"business"
"business" means any federal work, undertaking or business and any part thereof;	« entreprise » Entreprise fédérale, y compris toute partie de celle-ci.
"provincial business"	« entreprise provinciale »
« entreprise provinciale »	"provincial business"
"provincial business" means a work, undertaking or business, or any part of a work, undertaking or business, the labour relations of which are subject to the laws of a province;	« entreprise provinciale » Installations, ouvrages, entreprises — ou parties d'installations, d'ouvrages ou d'entreprises — dont les relations de travail sont régies par les lois d'une province.
"sell"	« vente »
« vente »	"sell"
"sell", <u>in relation to a business, includes the transfer or other disposition of the business</u> and, for the purposes of this definition, leasing a business is deemed to be selling it.	« vente » <u>S'entend notamment, relativement à une entreprise, du transfert et de toute autre forme de disposition de celle-ci</u>, la location étant, pour l'application de la présente définition, assimilée à une vente.
Sale of business	Vente de l'entreprise
(2) Where an employer sells a business,	(2) Les dispositions suivantes s'appliquent dans les cas où

(*a*) a trade union that is the bargaining agent for the employees employed in the business continues to be their bargaining agent;

(*b*) a trade union that made application for certification in respect of any employees employed in the business before the date on which the business is sold may, subject to this Part, be certified by the Board as their bargaining agent;

(*c*) the person to whom the business is sold is bound by any collective agreement that is, on the date on which the business is sold, applicable to the employees employed in the business; and

(*d*) the person to whom the business is sold becomes a party to any proceeding taken under this Part that is pending on the date on which the business was sold and that affects the employees employed in the business or their bargaining agent.

l'employeur vend son entreprise :

a) l'agent négociateur des employés travaillant dans l'entreprise reste le même;

b) le syndicat qui, avant la date de la vente, avait présenté une demande d'accréditation pour des employés travaillant dans l'entreprise peut, sous réserve des autres dispositions de la présente partie, être accrédité par le Conseil à titre d'agent négociateur de ceux-ci;

c) toute convention collective applicable, à la date de la vente, aux employés travaillant dans l'entreprise lie l'acquéreur;

d) l'acquéreur devient partie à toute procédure engagée dans le cadre de la présente partie et en cours à la date de la vente, et touchant les employés travaillant dans l'entreprise ou leur agent négociateur.

Change of activity or sale of a provincial business

(3) Where, as a result of a change of activity, a provincial business becomes subject to this Part, or such a business is sold to an employer who is subject to this Part,

(*a*) the trade union that, pursuant to the laws of the province, is the bargaining agent for the employees employed in the provincial business continues to be their bargaining agent for the purposes of this Part;

(*b*) a collective agreement that applied

Changements opérationnels ou vente d'une entreprise provinciale

(3) Si, en raison de changements opérationnels, une entreprise provinciale devient régie par la présente partie ou si elle est vendue à un employeur qui est régi par la présente partie :

a) le syndicat qui, en vertu des lois de la province, est l'agent négociateur des employés de l'entreprise provinciale en cause demeure l'agent négociateur pour l'application de la présente partie;

to employees employed in the provincial business at the time of the change or sale continues to apply to them and is binding on the employer or on the person to whom the business is sold;

(*c*) any proceeding that at the time of the change or sale was before the labour relations board or other person or authority that, under the laws of the province, is competent to decide the matter, continues as a proceeding under this Part, with such modifications as the circumstances require and, where applicable, with the person to whom the provincial business is sold as a party; and

(*d*) any grievance that at the time of the change or sale was before an arbitrator or arbitration board continues to be processed under this Part, with such modifications as the circumstances require and, where applicable, with the person to whom the provincial business is sold as a party.

…

46. The Board shall determine any question that arises under section 44, including a question as to whether or not a business has been sold or there has been a change of activity of a business, or as to the identity of the purchaser of a business.

b) une convention collective applicable à des employés de l'entreprise provinciale à la date des changements opérationnels ou de la vente continue d'avoir effet ou lie l'acquéreur;

c) les procédures engagées dans le cadre des lois de la province en cause et qui, à la date des changements opérationnels ou de la vente, étaient en instance devant une commission provinciale des relations de travail ou tout autre organisme ou personne compétents deviennent des procédures engagées sous le régime de la présente partie, avec les adaptations nécessaires, l'acquéreur devenant partie aux procédures s'il y a lieu;

d) les griefs qui étaient en instance devant un arbitre ou un conseil d'arbitrage à la date des changements opérationnels ou de la vente sont tranchés sous le régime de la présente partie, avec les adaptations nécessaires, l'acquéreur devenant partie aux procédures s'il y a lieu.

[…]

46. Il appartient au Conseil de trancher, pour l'application de l'article 44, toute question qui se pose, notamment quant à la survenance d'une vente d'entreprise, à l'existence des changements opérationnels et à l'identité de l'acquéreur.

[Emphasis added.]

[17] The Board recognized that “the circumstances in this case are unusual, if not exceptional”: see paragraph 137 of the initial decision, as well as paragraph 134, in which the situation is described as unique.

[18] After reviewing the evidence and the parties’ submissions, the Board found that there had been a temporary transfer, and therefore a sale of the business within the meaning of section 44 of the Code. This transfer was made to the applicant for the term of the management contract, from March 21, 2008, to August 29, 2008: see paragraph 188 of the initial decision.

[19] Consequently, the Board found that the applicant became bound by all the applicable bargaining certificates and collective agreements, in accordance with section 44 of the Code: *ibidem*, at paragraph 189. In short, during that period, it was the true employer of TQS’s employees, since it was not a mere mandatary of the company, it exercised authority over it and had effective control of the operation of TQS as a going concern: *ibidem*, at paragraphs 136, 154, 155 and 174.

The Board’s reconsideration decision

[20] The Board’s power to reconsider its decisions is conferred by section 18 of the Code:

18. The Board may review, rescind, amend, alter or vary any order or decision made by it, and may rehear any application before making an order in respect of the application.	**18.** Le Conseil peut réexaminer, annuler ou modifier ses décisions ou ordonnances et réinstruire une demande avant de rendre une ordonnance à son sujet.

[21] Section 44 of the *Canada Industrial Relations Board Regulations*, SOR/2001-520, does not constrain the Board's reconsideration powers: see *ADM Agri-Industries Ltée v. Syndicat National des Employés de Les Moulins Maple Leaf (de l'Est)*, 2004 FCA 69; *Société des Arrimeurs de Québec v. Canadian Union of Public Employees, Local 3810*, 2008 FCA 237. The powers are expressed as follows:

> **44.** The circumstances under which an application shall be made to the Board exercising its power of reconsideration under section 18 of the Code include the following:
>
> (*a*) the existence of facts that were not brought to the attention of the Board, that, had they been known before the Board rendered the decision or order under reconsideration, would likely have caused the Board to arrive at a different conclusion;
>
> (*b*) any error of law or policy that casts serious doubt on the interpretation of the Code by the Board;
>
> (*c*) a failure of the Board to respect a principle of natural justice; and
>
> (*d*) a decision made by a Registrar under section 3.

[22] Maintaining its prior interpretation of this section, the Board noted in its reconsideration decision that its "power of reconsideration is not intended to be an appeal process in respect of a panel's decision": see paragraph 74 of the decision.

[23] In the same paragraph, it added the following:

> The reconsideration panel's role is not to reexamine evidence already presented to the Board with a view to substituting its own judgment. Reconsideration is not meant to enable the parties to obtain a new hearing.

[24] After reconsidering the decision, the Board found that, in the circumstances, the panel that rendered the initial decision had been justified in finding that there was a sale of TQS's business to the applicant for a set period of time and while TQS was under the protection of the CCAA: see paragraph 83 of the reconsideration decision.

[25] It rejected the applicant's argument that the initial decision set an important precedent with respect to the application of the CCAA. Instead, it saw an application of the reasoning from similar proceedings involving a sale that had also taken place during the operation of the CCAA: *ibidem*, at paragraph 85. It was referring to its decision in *International Association of Machinists and Aerospace Workers (IAM) v. Intair Inc., Les lignes aériennes Inter-Québec Inc., 2847-8451 Québec Inc. and Teamsters, Local 1999*, Files 530-1955, 560-259 and 585-425, Decision No. 1042 of December 13, 1993, affirmed by this Court, *Inter-Canadien 1991 Inc. v. Canada (Labour Relations Board) (F.C.A.)*, [1994] F.C.J. No. 1575.

[26] Finally, relying on our decision in *Grimard v. Canada*, 2009 FCA 47, it adopted the original panel's approach, looking beyond the parties' intentions and claims to examine the factual reality resulting from the application of the management contract: *ibidem*, at paragraph 91.

[27] Like the original panel, it saw clear evidence of effective control by the applicant: *ibidem*, at paragraph 192. With one member dissenting, the majority dismissed the application for reconsideration on the basis that it was not convinced that there was any reason to allow it.

[28] The dissenting member, on the other hand, would have allowed the application. In his view, there was no reason to conclude that there had been a sale, since the management contract did not give rise to any mischief that needed to be suppressed: *ibidem*, at paragraph 110. In the absence of mischief, there was no reason to embark on a broad and liberal construction of section 44 of the Code: *ibidem*, at paragraph 136.

Analysis of the reconsideration decision and the parties' claims

[29] At the outset of the hearing, counsel for the applicant departed somewhat from the Memorandum of Fact and Law filed in the record and made the following admissions.

[30] The Board's factual findings are no longer at issue. The applicant is not challenging the need for a broad and liberal interpretation of the concept of sale under section 44 of the Code. This section is a public order provision, the application of which does not depend on a decision of the Board and is effective as of the date of the sale or transfer.

[31] Finally, counsel for the applicant correctly acknowledged that mischief was not necessary for the application of section 44. I would add the following. The legal characterization of a transaction under section 44 does not depend on the existence of mischief. While the provision may play a remedial role, its basic purpose is preventative. In *Lester (W.W.) (1978) Ltd. v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 740*, [1990] 3 S.C.R. 644, at page 671, the Supreme Court wrote the following regarding provincial labour provisions analogous to section 44 of the Code:

> The basic aim of such provisions is to prevent employees from losing union protection when a business is sold or transferred or when changes are made to the corporate structure of a business. . . .

[32] In that case the Board was dealing with a litany of allegations of acts prejudicial to the respondents: the refusal to honour an agreement on pay equity reached a few months before the applicant's arrival, lay offs contrary to the collective agreement, abusive dismissals, the failure to respect the recall rights of regular employees, the failure to respect the rules of seniority applicable to supernumeraries and assignments contrary to the collective agreement, illegal subcontracting, direct negotiation with employees, non-payment and illegal withholding of union dues deducted at the source, etc. On the one hand, the applicant refused to follow up on the respondents' grievances, alleging, as is clear from the letter from its counsel to the Syndicat des employés de TQS-Québec on May 27, 2008, that it was not the employer and that there was no factual or legal relationship between them: see the Respondent's Record, Vol. II, at page 252. Furthermore, at the expiry of the management contract, none of the stakeholders at TQS was authorized to enter into talks with union representatives. Therefore, TQS never dealt with the grievances that were submitted to it: *ibidem*, at page 156, paragraphs 87 to 89, and Vol. III, at pages 537 to 555. It was therefore impossible for the union to exercise the rights of its members under the collective agreement.

Allegation that, in its initial decision, the Board departed from the principles applicable to section 44 of the Code in finding that there had been a sale of the business to the applicant

[33] The applicant claims that the management contract could not support a finding that there had been a sale of TQS's business to it. It adds that the interpretation given to section 44 of the Code goes beyond the legislative intent, which it says is to protect union certification and the rights arising therefrom.

[34] It is common ground that the term "sale" in section 44 is neither restrictive nor exhaustive. It includes a lease, transfer or "other disposition".

[35] In *Lester*, cited above, the Supreme Court of Canada was called upon to interpret section 89 of the Newfoundland legislation (*The Labour Relations Act*, 1977, S.N. 1977, c. 64), which refers to operations such as sale, lease, transfer and disposition. At page 674, the majority writes the following:

> Although the terms "sale" and "lease" may have restricted meanings, the words "transfer" and "other disposition" have been broadly interpreted to include several types of transactions, including exchange, gift, trust, take overs, mergers, and amalgamation.
>
> [Emphasis added.]

[36] In the following paragraph, it endorses the position taken by the Ontario Board in *United Steelworkers of America v. Thorco Manufacturing Ltd.* (1965), 65 CLLC (PP) 16,052, namely, that "an expansive definition accords with the purpose of the section—to preserve bargaining rights regardless of the legal form of the transaction which puts bargaining rights in jeopardy".

[37] Counsel for the applicant emphasized an excerpt from the decision in which the majority states that “something must be relinquished by the predecessor business on the one hand and obtained by the successor on the other to bring a case within the section”. I believe it goes without saying that such a relinquishment may be temporary rather than final. Otherwise, the lease and the takeover could not be included in this category of operations and constitute a transfer.

[38] The takeover is a type of operation that may involve a relinquishment on one hand and an acquisition on the other. In this case, the applicant’s acquisition of effective control of TQS as a going concern, as found by the Board in its initial decision, resulted in a relinquishment, forced in this case, by Groupe TQS.

[39] As the Supreme Court of Canada puts it in *U.E.S., Local 298 v. Bibeault*, [1988] 2 S.C.R. 1048, at paragraph 157, a “collective agreement is negotiated with a single employer and is concluded in order to bind that employer”. To identify that employer, it adds that the “only employer who has the power to adapt working conditions to the requirements of the collective agreement in the undertaking is the one who controls that undertaking”: *ibidem* [emphasis added].

[40] In light of the evidence and the powers attributed to the applicant under the management contract, the Board, both initially and upon reconsideration, stated that it was satisfied that there had been, on these facts, a takeover of the operation of TQS’s business by the applicant. I cannot

consider this finding of fact to be unreasonable, especially in light of the CRTC's approval on March 20, 2008, mentioned above. Recall that the CRTC authorized the applicant [TRANSLATION] "to continue to operate the undertaking for a period of six months following the date of this decision" and held that "[d]uring this period, [the applicant] Remstar Corporation will have exclusive responsibility for the operation of the undertaking" [emphasis added].

Did the Board set a precedent with respect to the application of the CCAA?

[41] I agree with the reconsideration panel's conclusion that the initial decision did not create a precedent with respect to the application of the CCAA. The issue of the relationship between section 44 of the Code and the CCAA was first raised in the *Intair Inc. v. Inter-Canadien 1991 Inc.* cases, cited above.

[42] It is worth reviewing the parallels between those two cases and the one before us. Like Groupe TQS, Intair Group was experiencing difficulties with its operations and intended to cease a certain number of them. As with TQS, an offer to purchase assets and/or shares of Intair Group was made, and the latter accepted it.

[43] Like in this case, the offer accepted by Intair Group included a management contract, which stated that the acquirer would be responsible for managing the day-to-day activities of Inter-Québec (a member of Intair Group) and included an immunity clause protecting the acquirer against claims arising from its management. The daily management of operations was taken over quickly, one week after the offer was accepted.

[44] That management contract was considerably less draconian and one-sided than that to which Groupe TQS was forced to consent. In fact, by comparison with Intair Group, Groupe TQS was under full trusteeship and could not, factually or legally, perform any act or make any decision on its own.

[45] However, in *Intair Inc.*, cited above, the Board held that there had been a sale within the meaning of section 44. As in this case, it looked at the substance rather than the form of the transaction: see *Inter Inc.*, Respondent's Book of Authorities, Tab 7, at page 91. "The question to be asked", it wrote, "is whether the already existing business or of a part thereof continues on": *ibidem*. Is this not what happened with the business of Groupe TQS?

[46] The Board took into account that Inter-Canadien (which became a new regional carrier and the successor of a part of Intair) had "a decisive role in policy, labour relations decisions, service closings and the ultimate fate of the components of Lignes Aériennes Intair". Was this not also the case both in the applicant's management contract and in its effective control of TQS's business?

[47] The Board's decision in *Intair Inc.* was brought for judicial review before this Court, which recognized that the Board had properly considered the substance rather than the form of the transaction: see *Inter-Canadien 1991 Inc.*, cited above, at paragraph 4.

[48] Having been asked to decide whether the Board's decision was reasonable, our Court wrote the following at paragraph 5:

> There was evidence in the record which clearly allowed the Board to select the date of March 4, 1991. In particular, that was the date on which the master agreement was accepted, on which the seller began handing over to the buyer the largest part of its business (operation of the "scheduled" routes) and on which the applicant began exercising a kind of supervision over the latter's management.
>
> [Emphasis added.]

In this case, as mentioned above, the takeover and trusteeship were complete, following a forced, total relinquishment of TQS's business.

[49] I will conclude on this point by stating that both this case and *Intair Inc.* support the proposition that the CCAA and section 44 of the Code have different objectives, which, as they are not incompatible, allow room for the harmonious interpretation and application of the legislative provisions at issue.

Conclusion

[50] The reconsideration decision, in the circumstances of this case, is not unreasonable. As the Board pointed out at paragraph 98 of its reconsideration decision, the choice of the means for completing the transaction was the applicant's. It could have arranged things otherwise and avoided the resulting upheaval.

[51] For these reasons, I would dismiss the application for judicial review with costs in favour of the Syndicat des employé(e)s de CFAP-TV (TQS-Québec), Local 3946 of the Canadian Union of Public Employees.

"Gilles Létourneau"
J.A.

"I agree
Johanne Trudel J.A."

"I agree
Robert M. Mainville J.A."

Certified true translation
Francie Gow, BCL, LLB

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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APPEARANCES:

Philippe Frère Catherine Maheu	FOR THE APPLICANT
Isabelle Lacas	FOR THE RESPONDENTS (CSN)
Pierre Grenier Annick Desjardins	FOR THE RESPONDENTS (CUPE)

SOLICITORS OF RECORD:

Lavery, De Billy, L.L.P. Montréal, Quebec	FOR THE APPLICANT
Pepin and Roy, Lawyers Montréal, Quebec	FOR THE RESPONDENTS (CSN)
Melançon Marceau Grenier Sciortino Montréal, Quebec	FOR THE RESPONDENTS (CUPE)