

ARBITRATION TRIBUNAL

CANADA
PROVINCE OF QUEBEC

Date: October 3, 2003

BEFORE THE ARBITRATOR: Jean-Pierre Lussier

THE MONTREAL GAZETTE GROUP INC.,

hereinafter referred to as the "Employer"

and

THE MONTREAL NEWSPAPER GUILD,

hereinafter referred to as the "Union"

Grievance: "BYLINES"

ARBITRATION DECISION

[1] On December 6 and 7, 2001, many journalists demanded that their stories be unsigned. When the Employer notified the Union on December 7 that it considered this demand to be contrary to the collective agreement, a grievance was filed. This grievance is the subject of this decision.

1. THE EVIDENCE

[2] The first witness, **Jan Ravensbergen**, stated that he has worked at The Gazette since 1978. Except for a four-year period when he was a copy editor, he has always worked as a reporter. He has also performed union duties since 1983. He explained that the grievance concerns the “Editorial” bargaining unit, a unit that covers approximately 180 members.

[3] Of this number, some 75 are reporters and 40 – 45 are copy editors while 5 are part of the editorial board. The editorial board includes three other persons who are members of management: the publisher, the editor-in-chief, and the editorial page editor.

[4] On 7 December 2001 at about 4:30 p.m., Mr. Ravensbergen was summoned to a meeting with the Editor-in-Chief, Peter Stockland, and the Vice-President of Human Resources, Jean-Pierre Tremblay. John Belcarz, President of the Union, although physically absent, participated in this meeting by telephone. The management representatives stated that the journalists’ demand that their name not appear as the author of their stories contravened the collective agreement and that if they maintained this position, they would expose themselves to disciplinary measures. The employer demanded that the journalists’ position be changed by the next day’s edition.

[5] The Union officers immediately stated that they disagreed with this position of management and that they were filing a grievance. Furthermore, to prevent the union members from being penalized, Mr. Ravensbergen sent them the following e-mail at the end of the meeting:

“To all Guild members in Editorial:

Minutes ago, the Montreal Newspaper Guild was informed by Peter Stockland, Editor-in-Chief, and Jean-Pierre Tremblay, vice-president (Human Resources), that Mr. Stockland will shortly issue an order that reporter bylines must be restored for the Saturday edition of The Gazette and thereafter.

Mr. Tremblay informed the Guild that the company disagrees strongly with the Guild’s interpretation of Art. 19 (a) of the Editorial Collective Agreement, which states, in full, that “An employee’s byline or credit line shall not be used over his/her protest.” Many reporters have recently withheld their bylines.

The Guild filed a first-stage grievance immediately. Mr. Tremblay has agreed that the matter may be submitted to accelerated arbitration.

In the interim, however, the Employer has made it clear that Guild members who withhold their bylines may be subject to disciplinary action.

The Guild, as a matter of policy, always advises members to try to avoid being subject to disciplinary action. That advice stands in this instance as well.

We will keep you apprised of developments.”

[6] This e-mail was followed 10 minutes later by another from the management, reading as follows:

“To all editorial staff:

Article 19(a) of the Collective Agreement does not permit reporters, columnists or other writers to withhold bylines arbitrarily as has been done for the past two editions of The Gazette. Please submit all copy with proper bylines for Saturday’s Gazette and all subsequent editions. Thank you for your cooperation.”

[7] Mr. Ravensbergen then set out the reasons why a great many reporters had demanded that their bylines be withheld from stories appearing on December 6–7, 2001. He stated that the Guild had been advised at about 4:00 p.m. on December 5 that at a meeting of the editorial board that day, it had been announced that there would henceforth be a national editorial written in Winnipeg at the corporate headquarters of the newspaper chain’s parent company. At that point in time, a frequency of one national editorial per week was at issue, but the frequency was to increase to three per week.

[8] Several journalists then met informally in the presence of the Editor-in-Chief, Mr. Stockland. Informed by the Guild of their right to withhold their byline, a number of them decided to exercise this right in protest of the decision to publish a national editorial.

[9] Mr. Ravensbergen mentioned that the standard procedure for withholding one’s byline is to indicate this choice to the copy editor when sending the article by writing “No byline please.” In some cases the copy editor would ask the reason for this request; in others the reporter would anticipate this question by explaining the reason when making the request.

[10] The national editorial was to be written by Murdoch Davis, Editor-in-Chief of Southam News in Winnipeg. This editorial would appear in the newspapers published by the company in Canada's larger cities. This would be the first time in the history of The Gazette that such a national editorial was at issue. Previously, editorials had been the exclusive business of the local editorial board which met, debated, and determined the subject and author of the next day's editorials.

[11] The first national editorial appeared on December 6, 2001. It concerned the tax regime for charitable foundations. The witness had understood that even if the local editorial board disagreed with the content of this national editorial, it was not allowed to express its disagreement. A columnist was allowed to do so, but his or her column had to be published on a different page of the newspaper, including the page opposite to the editorial page.

[12] This occasion, in December 2001, was not the first time that journalists had asked to withhold their bylines. This had happened from time to time for various reasons. The witness gave the example of journalists who exercised this right in protest at having being assigned to cover a given event. He mentioned the case of a journalist (Eric Siblin) who exercised this right quite often without the Employer ever having reacted against this practice. He gave examples concerning other journalists (Debbie Parkes, etc.) who had asked that their names be withheld without incurring any consequences.

[13] In the summer of 1984, when the journalists were involved in a conciliation process at the Ministère du Travail, they had all decided to exercise the provision authorizing them to withhold their byline. The employer did not react on that occasion.

[14] In February 2000, the witness himself requested that his articles on the Southam News wire service be published without his byline if they were also to appear in the Calgary Herald, then on strike. Other journalists did the same. The Guild, at that time, notified its members that they were entitled to withhold their byline in protest and suggested the appropriate phrasing to use at the beginning of their article if they wished to exercise this right.

[15] In December 2001, many journalists wished to protest by using what they considered to be their right to withhold their byline. The reasons for this position were stated at that time on a website created by many of them. The reasons were as follows:

“GAZETTE NEWSROOM

Welcome to a site put together by some Montreal Gazette reporters and editors on their own time. It is part of a protest against the decision by Southam News to force 12 of its major metropolitan newspapers to run "national editorials" written at the corporate headquarters of parent company CanWest Global Communications Corp.

DECEMBER 10, 2001 -- Media Giant Silences Local Voices: Canadian Journalism Under Attack

Le journalisme canadien attaqué

An open letter by journalists at The Gazette

For two days last week, many reporters at The Gazette in Montreal removed their names from the articles they wrote. It was a protest against the decision by Southam News to force all of its 12** major metropolitan newspapers to run "national editorials" written at the Winnipeg corporate headquarters of parent company CanWest Global Communications Corp. The first was published last week. Another is to run Thursday (Dec. 13).

We believe this is an attempt to centralize opinion to serve the corporate interests of CanWest. Far from offering additional content to Canadians, this will practically vacate the power of the editorial boards of Southam newspapers and thereby reduce the diversity of opinions and the breadth of debate that to date has been offered readers across Canada.

CanWest's intention is initially to publish one national editorial a week in all major Southam newspapers. This will eventually become three a week.

More important, each editorial will set the policy for that topic in such a way as to constrain the editorial boards of each newspaper to follow this policy. Essentially, CanWest will be imposing editorial policy on its papers on all issues of national significance. Without question, this decision will undermine the independence and diversity of each newspaper's editorial board and thereby give Canadians a greatly reduced variety of opinion, debate and editorial discussion.

Editorial boards at each newspaper exist to debate public policy issues, reach a consensus and then present the reasoning to the public. They are designed to be largely free of corporate interests. This crucial process of journalistic debate is undermined by editorials dictated by corporate headquarters.

We believe this centralizing process will weaken the credibility of every Southam paper. Last week's first editorial, for example, calls on the federal government to reduce and eventually to abolish capital-gains taxes for private foundations. Who would blame a reader for thinking the editorial simply serves the interests of the foundation run by the Asper family, owners of CanWest and Southam? Credibility is the most precious asset a newspaper possesses. When the power of the press is abused, that credibility dies.

Journalists have a duty to be faithful to the interests of their readers. Our responsibility is to seek the truth and encourage freewheeling debate on a full range of issues and present stories and ideas in as dynamic a way as possible. Blatant pressures applied to editors by CanWest have damaged this process at major newspapers across Canada. The company is narrowing debate and corrupting both news coverage and commentary to suit corporate interests.

A free press is no longer free when competing voices disappear, yet the federal government has recently permitted two large corporations, CanWest and BCE Inc., to secure a stranglehold on Canada's major privately operated television and newspaper outlets. It is time for a thorough inquiry into this dangerous situation.

** Halifax Daily News, St. John's Telegram, Montreal Gazette, Ottawa Citizen, Windsor Star, St. Catharines Standard, Regina Leader Post, Saskatoon Star Phoenix, Calgary Herald, Edmonton Journal, Vancouver Sun, Victoria Times-Colonist.”

[16] Under counter-examination, the witness stated that he had never been a member of the editorial board; and, as to the meeting of 7 December 2001, he acknowledged that he had gone to the Mr. Tremblay's office accompanied by Mr. Stockland; he did not remember their conversation en route. On the subject addressed during the meeting, the atmosphere was tense. The witness recalls mentioning that someone should be allowed to write a story on what was happening in the newsroom and on the journalists' position on the issue of national editorials.

[17] Mr. Ravensbergen denied that disciplinary measures were ever at issue in relation to any expression of frustration or betrayal on the part of the journalists. He maintained that the threat of disciplinary measures related solely to the absence of bylines.

[18] Finally, the witness was questioned on certain editorial policies he had attributed to Southam in the 1990s as well as on his own opinions as to the copy editor's role when asking a journalist why the latter wishes to withhold a byline.

[19] **Eric L. Siblin** is a journalist. He was employed by The Gazette from 1996 to February 2002 after working for other press corporations, such as Canadian Press, for seven years.

[20] He was on a sabbatical year from November 2000 to November 2001, but did not resume working until February 2002. He resigned on February 26 of the same year.

[21] The witness recounted that he had quite often requested that his name not appear as the author of an article he had written. He estimated that, excluding the sabbatical year, during his last 12–18 months of employment at The Gazette he had asked the copy editor to withhold his byline about every other article. The copy editor had asked the reason for the request only four or five times. He had responded, for example, that the story was banal and not worth publishing. In other cases he had responded that the article should have been assigned to a junior journalist. He had never responded that it was because the content of his article had been changed. It was almost always for reasons of professional pride.

[22] At no time had he been reprimanded or warned with respect to his requests to withhold his byline.

[23] **Neil Laverdiere** is a copy editor. His work consists in receiving articles, reading them and editing them as necessary. The changes involved may be minor, affecting form only, in which case it is unnecessary to discuss them with the reporter. Where changes to the content are necessary, he discusses them with the reporter. Where the latter disagrees, he or she may refer to the supervisor, etc., and if he or she continues to refuse the change, he or she may request that the byline be withheld.

[24] Mr. Laverdiere has been working as a copy editor for 20 years, and with The Gazette since 1988. He stated that apart from substantial changes to an article, there are other cases in which journalists request that their byline be withheld. This is done by means of a note at the start of the article, or in some cases verbally. When such a request is made, Mr. Laverdiere always inquires as to the reason for it, but he always respects the journalist's wishes.

[25] During the period relevant to the grievance, no one asked him to withhold a byline. Prior to that, when such a request was made, he had never heard that a reporter could be disciplined for this reason. He himself had never received any instructions to the effect that the reporter's decision should be ignored. However, he believed that he has the authority to include the reporter's name despite the latter's opposition. Questioned as to the source of this opinion, he answered that he has always believed that he holds this power.

[26] **Michelle Lalonde** has been a journalist at The Gazette since 1991. Prior to that she worked part-time at the Globe and Mail in Toronto. In December 2001, when the national editorial policy was at issue, a frequency of three editorials per week in all of the chain's newspapers was being discussed.

[27] Concerned, the journalists met informally. They feared that this situation would affect their publication's independence, and particularly that of their editorial team, and that it would consequently harm the newspaper's credibility. It was in protest of these eventualities that she and several other reporters decided to withhold their byline from several stories. She was not questioned then by the copy editor nor by any other representative of the Employer as to the reasons for her request.

[28] Prior to that, she had made a similar request about ten times. The reason had been that either the article was very short, she disagreed with changes made by the copy editor, or the article did not deal with a subject related to her usual beat. In several cases the copy editor had asked her why she wanted to withhold her byline, but she always believed that her byline belonged to her and that she was entitled to request that it not appear, whatever her reasons. She did not recall any situation in which a copy editor had reversed a journalist's decision to withhold a byline.

[29] Two days after the bylines were withheld, Ms. Lalonde discontinued this practice because she saw a notice from the Guild to the effect that there would be sanctions if journalists persisted in doing so. The content of the notice posted by the Union was not contradicted by any notice from the Employer to the effect that there was no threat of disciplinary measures.

[30] The parties agreed that if the other journalists involved in the events of 5–6 December 2001 were to testify, they would agree with Ms. Lalonde's version of the events.

[31] **Enza Micheletti**, at the time in question, had been a copy editor at The Gazette since 1998. Her immediate supervisor was Jack Romanelli, himself an assistant to Ray Brossard.

[32] She recalled that on 5–6 December 2001, several reporters asked her to withhold their bylines. When she noticed that the number of requests was abnormally high, she asked other copy editors what she should do. She spoke to Mr. Romanelli about the requests, who responded: “If people are asking, you have to take it out.”

[33] It was not until the second day that she received an explanation why several reporters had made this request.

[34] Prior to these events, she had occasionally had to withhold bylines. This had happened perhaps one time out of 20 or 25. When it did occur, she asked the reporter the reason. But even if she disagreed with the reasons given, she did not believe that she had the authority to ignore the request.

[35] Under counter-examination, Ms. Micheletti responded that when she talked to Mr. Romanelli and asked him what she should do in the face of numerous requests to withhold bylines, the latter’s response was unambiguous, and he had in fact discussed the appropriate course of action with Mr. Brossard.

[36] **Alexander Senyk** has been working at The Gazette for 20 years. He worked for five years as a reporter, and then as a copy editor. He was not working on December 5–6, 2001, but he did work on December 7. Upon arriving at work, he saw a memo signed by Mr. Stockland to the effect that there could be consequences if bylines continued to be withheld. There was no request to withhold a byline that day.

[37] In the past, continued Mr. Senyk, he had occasionally received a request to withhold a byline, perhaps six times a year. In general, this happened when the reporter disagreed with the copy editor on changes to the article or the importance of the article, etc. He remembered one journalist, Debbie Parkes, who typically requested that her name not appear on any article concerning events on the South Shore of Montreal. Mr. Senyk added that he had never been asked by a manager to include or withhold a reporter’s byline against the latter’s will.

[38] The parties agreed that if the other copy editors were to testify, they would agree with Ms. Micheletti’s and Mr. Senyk’s versions of the events.

[39] **Minko Michael Sotiron** teaches journalism, and particularly the history of journalism, at John Abbott College and Concordia University. He was declared an expert witness. He testified as to the origin of the concept of “byline” in North American English-language journalism. Although he testified orally, he essentially reiterated the contents of a document prepared by himself to the attention of the counsel to the Union. This document was produced as Exhibit S-27 and reads as follows:

“Dear Mr. Sciortino:

After some hours both on the internet and especially in the journalism section of Concordia University’s library, I can give you a brief sketch of the development of the byline in the North American context.

The byline began temporarily as Union generals Sherman and Hooker sought to identify and control reporters’ accounts of their armies’ movements during the American Civil War (1861-65). They forced accreditation and accountability upon the reporters by insisting that they attach their initials to their stories. One source noted that “correspondents’ bylines became common during the Civil War, in part because editors wanted any criticism deflected to the writers instead of newspapers.” [Implication that content responsibility is the reporter’s and is thus associated with the name.]

After the war, news story anonymity quickly resumed because most editors and owners subscribed to the view, as commented by a New York *Tribune* editor who stated that using a correspondent’s signature “inevitably detracts from the powerful impersonality of a journal.”

After a hiatus, bylines began to appear once again in the 1880s. One of the first recorded bylines for the Associated Press was in 1885 by Charles S. Diehl who managed to get a rare and unusual interview with Jay Gould, head of the largest US railway, at the beginning of a potentially ruinous railway strike. The “association carried his name at the end to indicate that it was an exclusive dispatch [and] was ... a great departure from tradition.” [The byline came about then as a recognition of special effort from a reporter whose achievement went beyond the normal pursuit of his craft.]

At the end of the 19th century, bylines began to reflect the increased status and higher salaries of certain star correspondents, who, through extraordinary personal efforts, had distinguished themselves from the rank-and-file reporters. For example, because of her sensational stunts (such as beating Jules Verne's fictional trip around the world in 80 days and spectacular exposes), Nellie Bly's byline made her a household name in the USA. Other star reporters such as Henry Livingstone (his discovery of Dr. Livingstone in Africa), Richard Harding Davis and others (through their dispatches from Cuba during the Spanish-American War) also became quite well-known. Again, bylines went to extraordinary journalistic personalities for sensational and spectacular journalistic performances.

But there was still resistance to the use of the byline. For example, Adolph Ochs, the proprietor who made the New York *Times* the greatest American journalistic institution, shunned the byline as long as possible. He wanted the *Times* to be as much and as impersonal an American national institution as the London *Times* was in Britain.

After World War I, however, the byline finally came into its own. Its rise is linked to the increasing desirability and insistence on objectivity in journalism in the early 20th century, according to Michael Schudson (author of *Discovering the News*). It also was reflected by the rising popularity of star reporters especially the political columnists and journalists who specialized in certain types of stories. Sports, humor, business, and other specialists received their bylines. Their signed articles reflected the increasingly popularity of "individual" journalism. This journalism connotated an emphasis on literary style (almost authorship) and the personal opinion of the writer as opposed to the "objectivity" of the news columns. Interestingly, the hard news front page of the New York *Times* was the last section of the paper to get bylines. Though the *Times* began to grant bylines on its front page to foreign correspondents, especially *those whose copy was dominated by the first person singular*. This was borne out by another study of US newspapers from 1920 to 1940, which also noted the rise of bylines in distinction to the need for the objectivity of the newspaper as a whole.

The Associated Press, which had long resisted using the byline (with the rare exception) began to use it more and more. This followed an emotional and highly popular series on the well-publicized burial of the Unknown Soldier in 1921. Readers were so moved by the touching prose of its reporter that they demanded to know his name. Increasingly, personal journalism was becoming in vogue.

There then is a great deal of evidence to suggest that the byline came about as a recognition of the reporter as an individual author, signifying that his byline was a kind of signature attesting to abilities innate in his personality and character. The newspaper owners long resisted this change because the unsigned news story reflected the authority and objectivity of the newspaper as a whole. Thus, the byline is a reflection of the reporter' personality and belongs to him as surely as the color of his eyes and other personal features. It follows that what he does with his name is his business.

Byline withdrawal as a means of airing grievances and protest has become increasingly common throughout North America. For example, reporters at a number of newspapers including the *Washington Post*, the Associated Press in San Francisco, the *Providence Journal* and others in Saskatoon and Vancouver. Last week, the *Globe and Mail* reported that Toronto *Star* reporters withheld their bylines in support of grieving reporters at another Ontario newspaper.

Sincerely,

Minko Sotiron, PhD"

[40] **Larry McInnis** has been retired since 1998. In the 20 years prior to his retirement, he worked at The Gazette as a copy editor. He was also president of the Union from 1982 on, after sitting on its executive committee.

[41] Questioned as to the change in the language of Articles 19(a) and (b) between the collective agreements of 1979–81 and 1981–84, he explained that the text had been split into two parts to signify that the withholding of a byline is a journalist's prerogative, regardless of whether changes have been made to the body of the article. The text was also changed to add the phrase "credit line" to indicate that photographers enjoy the same right. In sum, the intent was to clarify that journalists are entitled to withhold their bylines even when no changes have been made to a text.

[42] However, Mr. McInnis continued, Article 19(b) mentioned the parties' agreement that an opinion piece written by a columnist must bear the latter's name. This was the reason for the language "In the case of analysis, columns... which must include the byline..."

[43] **Jean-Pierre Tremblay** is Vice-President, Human Resources at The Gazette. He has been working there since April 1984 and, as part of his responsibilities, he handles bargaining and the application of collective agreements. He stated that in 1984 he had just joined the staff. He participated in the bargaining committee but was not the management spokesperson, though he did assume that responsibility as of the 1986 bargaining sessions.

[44] Mr. Tremblay has no memory of discussions concerning the application of Article 19, and this grievance, in his opinion, is the first to deal with this matter. Although his memory is hazy, he stated that it is possible that in 1984, the employees requested that their bylines be withheld from their articles as a spur to the negotiations. The Employer did not react, since the negotiations were difficult and it wanted to keep the situation calm.

[45] On 6 September 2001, the witness received a telephone call from Mr. Stockland informing him that several journalists had requested that their bylines be withheld to protest the existence of national editorials. He immediately told Mr. Stockland that this practice was not authorized by this provision, whose purpose was quite different. For Mr. Tremblay, there are three permissible reasons for withholding a byline: a substantial change has been made to an article; the journalist merely rewrote a press release or only composed several lines of an unimportant news item; or for reasons of security where, for example, the journalist wanted to protect his or her identity against possible wrongdoers. He continued that the purpose of this clause as negotiated was not to allow journalists to protest against the views of the company owner. It was for these reasons that he told Mr. Stockland not to accept the withholding of the bylines.

[46] On Friday, December 7, many bylines were nevertheless withheld from the newspaper, but management did not want the situation to continue in the Saturday edition. Mr. Tremblay and Mr. Stockland wanted to notify the employees of this and decided to involve the Guild. They asked Mr. Ravensbergen to attend a meeting. After giving the latter their interpretation of the scope of Article 19, Mr. Ravensbergen asked that the President of the Guild, John Belcarz, participate in the meeting, which he did via conference call. The Union representatives stated their disagreement with this interpretation of Article 19 and requested that this meeting be considered the first stage in a grievance proceeding.

[47] Mr. Tremblay added that discipline was not at issue for the management representatives, since in this matter, management merely had to deny the request to withhold the bylines. During the discussion, it was nevertheless stated that management wanted to avoid an escalation and that, if anything else happened, it could give rise to disciplinary measures.

[48] When Mr. Tremblay read the e-mail from Mr. Ravensbergen to the editorial employees stating that the Employer had discussed disciplinary measures, he did not see fit to react. It was not his responsibility to correct the Guild's communications and, moreover, management was seeking the Guild's cooperation. He therefore felt that it was not the right moment to tell the Guild that it was incorrect.

[49] Finally, Mr. Tremblay stated that the appearance of bylines over stories lends credibility to the newspaper. It is a practice that readers see as important.

[50] **Peter Stockland** has been Editor-in-Chief of The Gazette since September 2000. A journalist for 25 years, he worked for several publications, including the Calgary Herald as editorialist, before joining The Gazette.

[51] He stated that several months prior to December 2001, the issue of national editorials had been raised. The owner, CanWest, believed in its own political and social role and wanted to express its views once a week, on Thursdays.

[52] The preliminary discussions had revolved around local editorial policies and the implications of a national editorial. Could and should regional points of view be reflected, or could a so-called national point of view be given regional nuances? These issues had not been totally resolved when the first national editorial appeared. But the regional newspapers were nevertheless encouraged to publish comments criticizing a national editorial if, from a local point of view, the editorial did not reflect realities on the ground. In such a case, the critiques or comments were allowed to be printed on the page opposite to the editorial page.

[53] The existence of national editorials more or less ceased in June or July 2002.

[54] In early December 2001, there was a movement of protest in the newsroom against the decision to publish a national editorial. On December 5, several journalists met with Mr. Stockland and asked him to explain where matters stood. Subsequently, several of them asked to withhold their bylines. At that time, the stated intention was to publish three national editorials per week.

[55] Since Mr. Tremblay was absent, Mr. Stockland consulted Mr. Romanelli on the scope of Article 19. Since this was unclear, the management agreed to withhold the bylines for the December 6 edition. After speaking with Mr. Tremblay, Mr. Stockland nevertheless decided to agree to withhold the bylines for the December 7 edition so as to allow the wind of protest to die down and tempers to cool. But a meeting with the Union representatives took place at the end of the afternoon on December 7. As to the content of the meeting, Mr. Stockland repeated Mr. Tremblay's comments. He, too, stated that it was never expressly stated at that time that disciplinary measures would be taken if the requests to withhold the bylines continued.

[56] According to the witness, it is the reverse problem that usually occurs with bylines; that is, journalists complain that their name did not appear even though they wanted it to. He pointed out that bylines have two purposes; on the one hand, they emphasize the journalist's contribution, and, on the other, they serve as a link between the newspaper and its readers, who like to know who wrote which article.

[57] As to the existence of unsigned editorials, this corresponds to standard practice in the North American English-language press.

[58] Questioned as to the withholding of bylines in the Calgary Herald by journalists of The Gazette, Mr. Stockland stated that the management of the Herald did not feel bound by the journalists' requests. It nevertheless opted to put up no opposition so as not to create problems for the newspapers that had been giving the Herald a helping hand during the strike.

[59] **John Belcarz**, President of the Montreal Newspaper Guild, gave evidence in rebuttal. Present by telephone at the 7 December 2001 meeting, he stated that disciplinary measures had indeed been at issue. Mr. Tremblay allegedly stated that if the requests to withhold bylines did not cease, he would have to react ("If not, we have to take whatever action to restore it"). Thus it was clear to the Union representatives that management intended to react through disciplinary channels.

2. ARGUMENTS

[60] The **Union** argues that Article 19(a) has always been given the interpretation claimed by the grievance. Copy editors have always been convinced that it is the journalist's prerogative to withhold a byline, and it was only in December 2001, when Mr. Tremblay claimed that the Employer has a legitimate interest in this matter, that the problem arose.

[61] In actual fact, there were threats of disciplinary measures, and the filing of a grievance was appropriate, since the clause is clear and must be enforced. If there is a restriction on withholding a byline, it would be to exercise the right for a frivolous reason, which was far from the case here. After all, the reason for withholding the bylines was the threat to the autonomy of the newspaper and its journalists posed by the appearance of a national editorial three times a week.

[62] The **Employer** for its part, denies that disciplinary measures were ever threatened. It adds that it is entirely legitimate for the owner of several newspapers to want to convey its political and social point of view. One may agree or disagree on this point, but it is normal for the company owner to want to express its opinion.

[63] According to the evidence, the withholding of bylines was only one aspect of the reaction to this management decision. In reality, the withholding of the bylines was a concerted action to change a legitimate decision by the Employer. Article 19(a) was never negotiated for such purpose. The title of Article 19 is significant. The clauses it contains exist for the purpose of protecting the journalist's professional integrity. In order to withhold a byline, journalists must show that their integrity is threatened; for example, that the product to be published is no longer theirs due to the corrections, etc. The arbitrator should not forget that one of the conditions of employment is to grant the Employer the right to use a journalist's name, and Article 19(a), which constitutes a limitation of this right, must be interpreted in favour of the Employer.

3. DECISION AND REASONING

[64] The grievance submitted to me essentially calls for a declaratory decision. The Union is asking me to conclude that the journalists have the right to withhold their byline, to declare that the Employer does not have the right to force journalists to refrain from exercising this right, and that the Employer violated the collective agreement by threatening to resort to disciplinary measures to prevent the exercise of this right. As to the last part, the Union is requesting an injunction against preventing the journalists from exercising their right to withhold their byline.

[65] I must stress at the outset that the evidence is not clear as to the threats to resort to disciplinary measures. The evidence only convinced me that the Union representatives inferred from the comments of the management representatives that the latter would resort to disciplinary measures. But Mr. Belcarz, for example, acknowledged that the phrasing used by Mr. Tremblay and Mr. Stockland was perhaps as follows: "We will take whatever steps are necessary to restore the bylines."

[66] According to the management representatives, their intention was purely and simply to ignore the requests to withhold the bylines. According to the Union representatives, it had to be inferred from this that the maintenance of the requests could lead to sanctions.

[67] Whatever be the case, the essence of the debate does not really revolve around this issue. Whether or not there were threats of disciplinary measures does not change the declaratory nature of the grievance; since, in fact, no disciplinary action was ever taken, and if the Union is correct, a decision declaring that the right to withhold a byline is the journalist's prerogative and that the Employer has an obligation to respect it would suffice to decide this dispute.

[68] Before examining the collective agreement, a brief summary of the facts is in order. In early December 2001, the journalists learned that CanWest had decided to publish three weekly "national" editorials in all its newspapers. In fact, a "national" editorial written by the Editor-in-Chief of Southam News in Winnipeg, Murdoch Davis, was published about December 6 and subsequently, at a frequency of once a week for several months.

[69] This decision of the Employer caused a stir in the newsroom. Several journalists got together and asked the Editor-in-Chief, Mr. Stockland, for clarification. In protest, several of them decided to request that their bylines be withheld. They did this for the December 6 and December 7 editions without their requests being denied. At the end of the day on December 7, they were notified that they would not be allowed to withhold their bylines for the following day's edition.

[70] These facts being set forth, let us now examine the collective agreement. I shall begin with a memorandum of understanding explaining why I shall subsequently see fit to reproduce the language of the contract in both its English and French versions. It reads as follows:

"LETTER OF UNDERSTANDING LANGUAGE OF NEGOTIATIONS

The parties recognize that this Collective Agreement was negotiated and concluded in English. As a result, it is their wish that, in case of conflict between the English text and the French text, the English text should prevail to the extent where the context allows it. In case of arbitration, if there is a discrepancy between the French and English texts, the parties would appreciate it if the Arbitrator could keep in mind that this Collective Agreement was negotiated in English."

[71] The clause most relevant to the dispute is 19(a). I also reproduce clause 19(b), which, in my opinion, adds some clarity to the debate. I also reproduce the title of Article 19, since the Employer invoked it in support of its claims. They are as follows:

“EMPLOYEE INTEGRITY

Article 19 (a) An employee's byline or credit line shall not be used over his/her protest.

Article 19 (b) The Employer shall make no changes and/or cuts in articles or photographs submitted that would change the meaning of the material without prior consultation with the employee. If the Employer determines that changes or cuts must be made and if the author or photographer disagrees or is not available for consultation after all reasonable efforts have been made to contact him/her, the byline or credit line must be removed before publication of the material.

In the case of analysis, columns or opinions which must include the byline, no changes and/or cuts that would alter the meaning of the material shall be made without prior consultation with and the consent of the employee.

Upon request, any substantive changes in material shall be explained to the employee.”

INTEGRITE DU (DE LA) SALARIE(E)

Article 19(a) Le nom d'un(e) salarié(e) comme auteur(e) ou source ne sera pas utilisé contre son gré.

Article 19(b) L'Employeur ne fera aucun changement et/ou coupure dans les Articles ou photographies soumis, qui pourraient changer le sens dudit matériel, sans auparavant consulter le (la) salarié(e). Si l'Employeur détermine que des changements ou des coupures doivent être faits et que l'auteur ou le photographe n'est pas d'accord ou n'est pas disponible pour consultation après que tous les efforts raisonnables ont été faits pour le (la) rejoindre, le nom du (de la) salarié(e) comme auteur(e) ou source devra être enlevée avant la publication du matériel.

Dans les cas d'analyses de chroniques ou d'opinions qui doivent contenir la signature de l'auteur(e), aucun changement et/ou coupure pouvant dénaturer le sens du matériel, ne sera effectué sans consultation préalable et assentiment du (de la) salarié(e).

Sur demande, tout changement substantiel au matériel sera expliqué au (à la) salarié(e).”

[72] My first remark concerns the clarity of the text of 19(a). It grants the employee the right to demand that his or her name not be used. As phrased, this provision grants the employee an absolute right.

[73] At best, for the Employer, this provision grants it a right consisting of two components, one of which is relative. On the one hand, the Employer can choose to refrain from publishing the author’s name; on the other, if it chooses to publish it, it may not do so unless the journalist consents.

[74] This interpretation flows from the unambiguous wording of 19(a). And it is just as certain that the second paragraph of the following clause evokes the cases of analyses, columns, and opinions, which MUST contain the author’s byline. This paragraph is thus a limitation on the rights of both the employee and the Employer. It signifies that the Employer may not exercise its right to refrain from publishing the author’s byline and signifies as well that the author of an analysis, column, or opinion may not withhold his or her byline except where the text has been altered.

[75] But this paragraph, interpreted *a contrario*, also tells us that if analyses, opinions, and columns require a byline, this is not the case for other texts published in the newspaper. And if there is no mandatory byline for these other texts, neither is there any restriction on journalists’ withholding their byline.

[76] It was claimed that the journalists’ request denatured the purpose of 19(a), and the title of Article 19 was invoked in support of that claim. Let us begin with the title.

[77] It is clear that a title may serve to interpret a law or a chapter of a law but, as Professor Coté states, with case law in support of his position, the title may only be taken into consideration to the extent that the provision is ambiguous.¹ The title may not be invoked to restrict the scope of a well-defined provision.

[78] Counsel for management argued that if the text did not contain a patent ambiguity, it did contain a latent ambiguity in the sense that its application is ambiguous. I cannot agree. I see no ambiguity in the application of 19(a). If an employee requests that a byline be withheld, it is withheld. That’s all there is to it. There is nothing in the fact that several employees make the same request at the same time that makes the clause ambiguous.

¹ P.A. Coté, *Interpretation des lois*, 3rd edition. Montreal: Les Éditions Thémis, 1999, pp. 70–1.

[79] As Dr. Sotiron wrote: “Thus, the byline is a reflection of the reporter’s personality and belongs to him as surely as the color of his eyes and other personal features. It follows that what he does with his name is his business.”

[80] And Dr. Sotiron concluded by citing cases in which the withholding of bylines was used as a means of protest in North America. Concerning The Gazette itself, bylines have been withheld in the past on at least two occasions for other than personal reasons. This was done to express discontent (in 1984 to protest the torpor of the negotiations) or as a method of support for other journalists on strike (in 1998, if the articles were to be published in the Calgary Herald).

[81] On these two occasions, a number of employees opted to use their prerogative, that is, the right granted to them by 19(a) over the use of their name. Therefore, it is inaccurate to claim that past practice shows that the byline withholding prerogative has only been used when the journalist believed that his or her professional reputation might be affected (for example due to an assignment of little importance in the eyes of the journalist) or where the article itself had undergone significant alterations by the copy editor.

[82] On the contrary, past practice illustrates that 19(a) has been invoked for many other reasons.

[83] In short, the wording of 19(a) is very clear. There is no need to invoke the title of Article 19, nor even the intent of the negotiating parties, given a text that admits of so little ambiguity.

[84] I need not discuss here the legitimacy of CanWest’s decision to publish national editorials in newspapers it owns. Perhaps it was merely a matter of the free exercise of its right to express itself. But the withholding of bylines by many journalists of The Gazette was perhaps an equally legitimate right. This right was granted to them by the collective agreement and the Employer could not prevent them from exercising it without violating its contractual undertakings.

FOR THESE REASONS, THE ARBITRATOR HEREBY:

[85] ***FINDS IN FAVOUR*** of the grievance;

[86] ***DECLARES*** that the journalists have the right to withhold their byline as they see fit;

[87] **DECLARES** that the Employer, in a case other than an analysis, column, or opinion (as provided in clause 19(b)), has the obligation to respect the journalists' choice where they request to withhold their byline.

[signature]
Jean-Pierre Lussier, Arbitrator

For the Union: Me Giuseppe Sciortino

For the Employer: Me Richard E. Beaulieu

Hearing dates: March 13, 2003; April 28, 2003; April 30, 2003; May 26, 2003, September 2, 2003; September 5, 2003.