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SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-17-112996-205

DATE: December 10, 2025

BY THE HONOURABLE KAREN M. ROGERS, J.S.C.

QUAD/GRAPHICS, INC.
Plaintiff

v.

YELLOW PAGES DIGITAL & MEDIA SOLUTIONS LIMITED
Defendant

JUDGMENT

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FOR THESE REASONS, THE COURT:34

[1] The Court must determine what damages, if any, Yellow Pages Digital & Media Solutions Limited (**YPG**) must pay Quad/Graphics, Inc. (**Quad**) as a result of its unilateral resiliation of a Canadian-wide printing agreement¹ originally entered into with Quebecor World inc. (**Quebecor**), which was subsequently acquired by Quad in the context of its acquisition of Quebecor.²

[2] The printing agreement, as amended throughout the years, has been in effect since October 6th, 2006 (the **Agreement**).³ It granted Quebecor, later renamed World Colour Inc., (collectively “**Quebecor**”) the exclusive rights to print, bind and deliver all YPG’s Canadian telephone directories for local businesses, national brands and consumers to predetermined locations across Canada. The Agreement was amended four times.

[3] The Agreement is governed by the laws of the Province of Quebec.⁴

[4] It is undisputed that the conditions allowing YPG to unilaterally resiliate the Agreement pursuant to article 2125 of the *Civil Code of Quebec (C.C.Q.)* were satisfied, and that neither party waived its right to do so.⁵ The parties agree that the precedent condition to a resiliation under article 2125 C.C.Q. has been met, notably the Agreement qualifies as “a contract of enterprise or services”, and thus falls within the scope of Chapter VIII, Title Two, Book Five of the C.C.Q., which includes articles 2125 and 2129 C.C.Q.

1 Exhibit P-10.
2 Exhibit P-1.
3 Exhibit P-1, The Amended and Restated Directory Printing Agreement.
4 Exhibit P-1, clause 37.7.
5 Exhibit P-1, clause 33.2.

[5] Thus, YPG was within its right to unilaterally resiliate the Agreement before term pursuant to article 2125 C.C.Q.

[6] The crux of the case hinges on the interpretation of the types of damages that Quad may claim from YPG under article 2129 (3) C.C.Q. as a result of YPG terminating the Agreement before its term.

[7] Quad is a global marketing solutions company based in the United States and listed on the New York Stock Exchange. It is among the largest commercial printers in North America, with a market capitalization of approximately \$2.5 billion.⁶

[8] In 2015, YPG became the successor of Yellow Pages Group Co., the original signatory to the Agreement. Both entities are wholly owned subsidiaries of Yellow Pages Limited, a company listed on the Toronto Stock Exchange.⁷

[9] The parties have submitted by mutual consent a list of common admissions and a list of the exhibits. A sworn declaration from Ms. Gwenda Neuroth, Senior Account biller at Quad, was filed in support of the legitimacy and accuracy of the list of unpaid invoices filed by Quad as Exhibit P-14.

1. QUAD'S CLAIM AGAINST YPG

[10] Up to the final amendment to the Originating Application, accepted and filed on the last day of trial, it remained unclear whether Quad was contesting YPG's right to unilaterally resiliate the Agreement under article 2125 C.C.Q. and following. Ultimately, during its oral pleadings and in its written argument, Quad acknowledged that YPG had lawfully unilaterally resiliated the Agreement under article 2125 C.C.Q.

[11] Quad is claiming damages in the amount of \$42,536,515 from YPG due to the latter's unilateral resiliation of the Agreement. During the trial, Quad confirmed that it was abandoning its claim for surplus materials and repurposed equipment.

[12] Quad confirms, as does his expert in his report, that the damages claimed do not represent the loss of profit resulting from the early termination but rather the injury it alleges to have suffered as a consequence of it.⁸

[13] In essence, Quad seeks to be made whole for the financial impact of the concessions it granted to YPG in 2012, when it agreed to the Fourth Amendment to the Agreement. That amendment extended the fixed term of the Agreement from December 31, 2020 to December 31, 2024 (**Extension of the Term**). Quad argues that the Extension of the Term was an essential component of the bargain, enabling YPG to derive substantial benefits from the arrangement.

⁶ List of Common Admissions and the examination in chief of Kelly Vanderboom.

⁷ List of Common Admissions.

⁸ Exhibit P-24, PricewaterhouseCoopers Forensic Accounting Expert Report dated March 21, 2022, p. 14.

[14] Quad's claim of \$42,536,515 represents its calculation of the net value of the concessions it granted to YPG in connection with the Fourth Amendment to the Agreement, capitalized as of September 12, 2019, the date on which Quad issued formal notice to YPG to pay damages.⁹ These concessions included:

- The price discounts granted to YPG (**Discounted Prices**);
- Retroactive rebates on directories issued prior to the execution of the Fourth Amendment, specifically from January to June 2012 (**Retro-Rebates**);
- The foregone penalties it waived in relation to the annual guaranteed minimum volume for the number of printed pages (**Foregone Volume Guarantee Penalties**);

(collectively, the "**Overall Concessions**").

[15] To quantify the amount of its claim, Quad relied on the independent forensic accounting expert report (**PwC Report**) prepared by Jonathan Allard and Michel Hébert from PricewaterhouseCoopers (**PwC**).¹⁰ Michel Hébert testified at trial.

[16] The PwC report quantifies the value of the Overall Concessions as a result of the early termination of the Agreement by YPG.

[17] As a first step, PwC quantified the "capitalized value" of the Overall Concessions agree to as of the signature of the Fourth Amendment up to Quad's formal notice of its claim for damages against YPG¹¹ (**Capitalized Value of Overall Concessions**).

[18] The Capitalized Value of Overall Concessions came to \$65,574,515.

[19] It then proceeded to deduct the capitalized value¹² of the upfront payment of \$10,000,000 paid by YPG upon signature of the Fourth Amendment, which capitalized value amounted to \$23,038,000 (**Capitalized Value of the Upfront Payment**) from the Capitalized Value of Overall Concessions.

[20] By deducting the Capitalized Value of the Upfront Payment from the Capitalized Value of Overall Concessions, PwC arrives at the Net capitalized value of \$42,536,515. This amount represents Quad's claim in damages. (**Quad's Damage Claim**).

⁹ Exhibit P-17.

¹⁰ Exhibit P-24.

¹¹ PwC used the capitalisation rate of 12.29%, which corresponds to the costs of Quad's equity. The date of September 12, 2019 is that of Quad's formal notice to YPG to pay the damages. Exhibit P-17.

¹² PwC used the same capitalisation rate of 12.29%.

[21] Quad contends that it agreed to grant YPG the Overall Concessions in order to secure the Extension of the Term.¹³

[22] Given YPG's early termination of the Agreement, prior to the commencement of the period covered by the Extension of the Term, Quad alleges that YPG not only acted in bad faith but also benefitted from the Overall Concessions from July 2012 until February 2019 (date of the resiliation notice), while depriving Quad of the benefits of an essential component of the bargain, the Extension of the Term, confirmed by the Fourth Amendment.

[23] Quad states in its Plan of argument:

[9] YPG now seeks to opportunistically appropriate itself and retain the significant benefits it obtained from Quad when it entered into its long-term contractual commitment and leave Quad without compensation. That position cannot stand. It is both legally and factually untenable.

[24] Given the context surrounding Quad's granting of the Overall Concessions, Quad argues that Quad's Damage Claim qualifies as "other injury" suffered as a result of YPG's unilateral resiliation of the Agreement. Quad submits that Quad's Damage Claim is recoverable from YPG under article 2129 (3) C.C.Q.

[25] On March 14, 2019, Quad wrote to YPG to dispute the termination, citing YPG's alleged bad faith, and stating its intention to hold YPG accountable for all damages unless it rescinded the termination letter.¹⁴ On March 26, 2019, YPG disputed Quad's claim and asserted that Quad was acting in bad faith by refusing to complete directories scheduled for pickup on March 19, 2019.¹⁵

[26] On September 12, 2019, Quad issued its demand letter claiming payment of Quad's Damage Claim and a little more from YPG, failing which it stated it would initiate arbitration proceedings.¹⁶

[27] YPG disputed Quad's right to arbitration. Quad instituted the Quad's Damages Claim before the Superior Court in July 2020.

[28] Quad is also claiming payment of unpaid services rendered in the amount of \$346,900.03, with interest and the additional indemnity, calculated as of September 12, 2019.

¹³ Exhibit P-01.5.

¹⁴ Exhibit P-11.

¹⁵ Exhibit P-12.

¹⁶ Exhibit P-17.

[29] For both claims, Quad seeks payment of the amounts, with interest and the additional indemnity, as of its formal summons to YPG.¹⁷

[30] On March 27, 2025, counsel for YPG notified Quad that their client intended to pay certain invoices for services rendered,¹⁸ representing a total amount of \$346,900.03, with interest at the legal rate, from September 12, 2019 to March 28, 2025, for a total of \$442,986.58. Counsel confirmed that this amount had been deposited in trust and requested Quad's counsel to provide trust account details for payment.¹⁹

2. ISSUES IN DISPUTE

[31] The issues the Court must decide are as follows:

- (1) Did YPG act in bad faith when it decided to resiliate the Agreement or when it initiated a confidential by-invitation only Request for Proposal (**RFP**)?
- (2) Is Quad's Damage Claim recoverable under article 2129 (3) C.C.Q.?
- (3) Is Quad entitled to a claim of \$346,900.03 with legal interest and additional indemnity running from September 12, 2019?

[32] Even if grounding its claim under article 2129 C.C.Q., Quad maintains that YPG's bad faith remains relevant to any discretion the Court may need to exercise in determining components of the damages claimed and setting the quantum to be awarded.²⁰

3. CONTEXT

3.1 General timeline leading up to the Fourth Amendment

[33] YPG does not itself manufacture its telephone directories. Instead, it outsources this work to third-party contractors.

[34] In 2006, YPG decided to consolidate the production of its Canadien directories under a single agreement with a single contractor. As a result, effective as of October 2006, its multiple agreements with multiple contractors were replaced by a single agreement with Quebecor.²¹

[35] In 2006, the print directory industry was doing well, and the parties expected this trend to continue.²²

¹⁷ Exhibit P-17.

¹⁸ Those listed in Exhibit P-14 and collated in exhibit P-24 which the exception of invoices 50194702, 50194703, 50194704, 50194860, 50194861 and 50194862.

¹⁹ Exhibit D-34.

²⁰ Quad's plan of argument, para 22.

²¹ Exhibit P-1, Amended and Restated Directory Printing Agreement.

²² Examination of Lorne Richmond.

[36] The Agreement, originally signed in 2006, provided, among other elements, the following:

- Quebecor was the exclusive printer of YPG's telephone directories in Canada;
- The Agreement had a fixed term expiring on December 31, 2020, and included schedules setting out the prices to be paid per work, which included all costs and charges incurred by Quebecor except for the cost of freighting the finished directories to YPG, which costs were borne by YPG²³;
- Manufacturing Price Adjustments: Effective January 1, 2010, manufacturing price adjustments were to be implemented as annual increases to the manufacturing prices listed in the relevant price schedules. These adjustments were to be calculated using a specific formula based on the Canadian Consumer Price Index;²⁴
- Foregone Volume Guarantee Penalties: The parties acknowledged and agreed that the Prices granted by Quebecor to YPG were based on the annual total volume of printed pages contemplated in the Agreement. Accordingly, beginning in 2013, if the volume of printed pages fell below 24 billion in any given year, YPG undertook to pay a Foregone Volume Guarantee Penalty. This penalty was calculated using a specific formula based on Price lists attached to the Agreement;²⁵
- Quebecor supplied the paper required for the work, which YPG would eventually pay but Quebecor would support the debt until payment;²⁶
- Quebecor undertook to "use reasonable commercial efforts" to produce the directories at its "Closest Canadian Facilities" and undertook to bear any additional costs resulting from its use of facilities other than its "Closest Canadian Facilities"²⁷;

[37] In 2007 to 2009, the global financial crisis, coupled with the rise of digital alternatives to print, triggered a significant downturn in the printing industry. The demand for printed materials declined sharply, resulting in a substantial decrease in the volume of printed pages.

[38] In 2008, Quebecor obtained creditor protection under the *Companies Creditor Arrangement Act (CCAA)* but emerged from the CCAA proceedings and continued its

²³ Exhibit P-1, Clause 8.3.

²⁴ Exhibit P-1, Clause 9.2.

²⁵ Exhibit P-1, Clause 8.2.

²⁶ Exhibit P-1, Clause 11.4.

²⁷ Exhibit P-1, Clause 8.4.

commercial relationship with YPG as its exclusive printer.²⁸

[39] On February 23, 2010, YPG and Quebecor executed a first amendment to the Agreement (**First Amendment**), the particulars of which are not relevant for the purposes of the issues to be decided.²⁹

[40] Effective June 27, 2011, the Agreement was formally assigned to Quad/Graphics inc. as part of its acquisition of Quebecor, pursuant to the terms of the Second Amendment signed on March 16, 2010. The acquisition by Quad of Quebecor was completed on July 2, 2010 (**Second Amendment**).³⁰

[41] As will be discussed later, the Second Amendment allowed, for the first time, the production of certain directories to be carried out in the U.S.³¹ Up until June 27, 2011, YPG's Canadian directories were printed in Canada.

[42] The Second Amendment, effective as of June 27, 2011, included the following relevant amendments:³²

- YPG's Eastern Canada directories were to be produced at Quad's U.S. facility located in Hazelton, Pennsylvania (**U.S. Hazelton Facility**);
- Directories for geographic areas west of Ontario-Manitoba border continued to be produced at Quad's Edmonton, Alberta facility;
- YPG agreed to the use of the lower-quality cold-set printing method for the directories produced at the U.S. Hazelton Facilities;
- Quebecor/Quad agreed to bear the additional freight costs resulting from transferring production of the Eastern Canada directories to the U.S. Hazelton Facility; and
- The price schedule was replaced by new price schedules.

[43] Importantly, the Second Amendment was made as part of Quad's acquisition of Quebecor and its ensuing acquisition of the Agreement. On June 27, 2011, the date on which the Second Amendment became effective, the Agreement was formally assigned to Quad as part of its acquisition of Quebecor.³³

²⁸ List of Common Admissions.

²⁹ Exhibit P-01.2.

³⁰ List of Common Admissions.

³¹ Exhibit P-01.3.

³² Exhibit P-01.3 and List of Common Admissions.

³³ List of Common Admissions.

[44] Following the market reset in 2008-2009 and in the context of the decline in demand for printing, YPG's revenues began to decrease.

[45] On July 13, 2011, Quad announced it would sell all its Canadian printing facilities to Transcontinental Printing (**Transaction**), which it did, as such Quad only had printing facilities in the United States.³⁴

[46] In or around the end of 2011 and the beginning of 2012, YPG was facing difficulties servicing its debt.

[47] On February 28, 2012, Quad and YPG signed the Third Amendment³⁵ (**Third Amendment**) which consolidated Quad's printing operations in the United States, and included the following changes:

- a. Changes in facilities used to produce the directories, namely that:
 - i. Directories for Eastern geographic areas were to be produced at Quad's Hazelton, Pennsylvania and Waukee, Iowa facilities; and
 - ii. Directories for Western geographic areas were to be produced at Quad's Loveland, Colorado and Waukee, Iowa facilities;
- b. Provisions on freight and transportation costs, namely, that:
 - iii. With respect to the directories for the Eastern geographic areas, YPG was to pay freight and transportation costs equivalent to the freight and transportation costs it would have paid had these directories been shipped to their final destination from Richmond Hill, Ontario; and
 - iv. With respect to the directories for the Western geographic areas, YPG was to pay freight and transportation costs equivalent to the freight and transportation costs it would have paid had these directories been shipped to their final destination from Edmonton, Alberta; and
- c. Waiver by Quad of certain price adjustments intended to reflect the expected consequences of inflation on production costs for 2012.³⁶

3.2 The Fourth Amendment (July 6, 2012)

[48] As of 2007, the telephone directory industry experienced a steady decline due to the onset of the Internet and the digital substitution which created an important down

³⁴ Exhibit D-1, Exhibit D-26; List of Common Admissions; testimonies of Lorne Richmond and Kelly Vanderboom.

³⁵ Exhibit P-01.4.

³⁶ List of Common Admissions.

swing in the printing industry and YPG's financial situation.³⁷

[49] As a result of the declining industry, the annual volume of pages YPG required Quad to print dropped significantly over the years as did the market prices for printing.³⁸

[50] YPG's revenues began declining and towards the end of 2011 and the beginning of 2012, YPG was attempting to restructure its debt as it faced liquidity issues and the real possibility of having to file for insolvency protection.³⁹

[51] At the time, YPG owed Quad CAN\$10,071,419.47 in outstanding invoices (**Outstanding Invoices**).⁴⁰ The parties acknowledged that the price for Quad's printing services under the Agreement was significantly higher than the 2011 market rates. They further recognized that, due to the industry conditions, YPG would be unable to meet the guaranteed minimum volume as of 2013.⁴¹

[52] At this point, YPG credit risk had increased from Quad's perspective.⁴²

[53] In this context, the parties entered into negotiations to find a solution to avoid YPG having to file for insolvency protection, allow Quad to be paid the outstanding invoices and allow the parties to continue to do business together under different terms.

[54] On July 6, 2012, Quad and YPG signed the Fourth Amendment, which provided for the following relevant amendments:⁴³

- "Upon execution of this Amendment and in consideration of a Ten Million Canadian Dollars (\$10,000,000.00) payment to be made by YPG to (Quad)" (the **Upfront Payment**), Quad agreed to eliminate the guaranteed minimum volume and the associated Foregone Volume Guarantee Penalties and to modify the Prices YPG had to pay under the Agreement, which represented an overall average discount of 45.25%;⁴⁴
- Quad agreed to the Retro-Rebates;
- YPG agreed to immediately settle the Outstanding Invoices⁴⁵, and to pay all future invoices in advance. In support of this last commitment, YPG made an advance payment of \$2,562,629.16 to Quad at the time of signing the Fourth

³⁷ Testimonies of Lorne Richmond and Kelly Vanderboom.

³⁸ Testimony of Kelly Vanderboom and of David Pelletier and Accuracy's response report to PwC's report.

³⁹ List of Common Admissions.

⁴⁰ List of Common Admissions.

⁴¹ Testimony of Kelly Vanderboom; Exhibit P-1 and the Re-Modified Originating Application and Exhibit D-4.

⁴² Exhibit P-5.

⁴³ Exhibit P-01.5.

⁴⁴ Clause 2.8 of the Fourth Amendment.

⁴⁵ Schedule K to the Fourth Amendment.

Amendment, in order to prepay the printing services of the next 22 directories;

- YPG further agreed to assume responsibility for all freight, transportation and brokerage costs associated with the delivery of the finished directories from Quad's facilities in the United States of America to Canada;
- YPG agreed to supply directory text paper to Quad;
- The original term of the Agreement was set to expire on December 31, 2020 but was extended to December 31, 2024.

[55] On December 20, 2012, YPG announced the completion of its debt restructuring.⁴⁶

3.3 The events leading to the termination

[56] In late August 2015, Quad informed YPG of its decision to close its U.S. Loveland Facilities and move production of the Western Canada Directories to its U.S. Waukee and Hazelton facilities.⁴⁷

[57] In June 2018, Quad advised YPG of its decision to close its U.S. Hazelton, Pennsylvania Facility.⁴⁸

[58] As of then, all YPG's Canadian directories were produced at one facility going forward, the Waukee, Iowa facility.⁴⁹

[59] At that time, YPG was assuming all freight costs. Additionally, the Waukee Facilities, located in the heart of the United States, was simultaneously far from the destination of both the Eastern and Western Canada directories drop off, and distant from the main freight routes. This increased freight costs, notably because it was challenging to arrange a backhaul for the return leg of the delivery of the directories given the location of the Waukee facilities. These changes also added a level of complexity to the delivery of the directories.⁵⁰

[60] In addition, freight logistics became significantly more complex, necessitating ongoing negotiations and close monitoring of freight forwarders. As a result, YPG expanded the responsibilities of Ms. Suzette Smith, who had previously been assigned exclusively to managing last-mile distribution of directories, to include the role of dedicated logistics manager.

⁴⁶ Exhibit D-3.

⁴⁷ List of Common Admissions.

⁴⁸ List of Common Admissions

⁴⁹ List of Common Admissions.

⁵⁰ Examinations in chief of Lorne Richmond and Shawn Woodford.

[61] In January 2018, the U.S. Department of Commerce determined, on a preliminary basis, that it was allowed to impose trade tariffs on imports of groundwood paper from Canada of up to 10%.⁵¹

[62] This would apply to the paper YPG was supplying to Quad under the Fourth Amendment.

[63] In March 2018, the U.S. Department of Commerce increased its trade tariffs on imports of groundwood paper from Canada to the United States of America by an additional 22%.⁵²

[64] Given the significant amount of paper supplied by YPG from Canada to Quad's U.S. Waukee Facilities, the imposition of tariffs increased YPG's costs, which YPG was alone to assume. Quad never agreed to participate in these additional costs.⁵³

[65] Although, in August 2018, the U.S. International Trade Commission reversed the decision to impose tariffs on groundwood paper, YPG remained concerned of future trade tariffs impacting YPG's costs given the political context in the United States.⁵⁴

[66] In 2018, in an effort to reduce its costs and eliminate the complex task of distributing its Canadian directories which YPG had assumed until then, YPG decided to shift distribution of all Canadian directories to Canada Post.

[67] Canada Post offered several advantages to YPG, including extensive distribution experience, a flat distribution fee per directory across Canada, and the use of a centralized sorting facility. This arrangement allowed for a single drop-off point for all directories delivered from Quad's Waukee facilities to Canada Post for national distribution.

[68] To perform this work, Canada Post required the directories be packaged or "mail prepped", in accordance with certain standards.⁵⁵

[69] YPG approached Quad to provide the required mail preparation services, but Quad was unable to provide them at a reasonable price. The price Quad quoted for these services was high and offset most of the savings achieved by switching to Canada Post.⁵⁶

[70] The challenge Quad had was that, in Canada, the equipment necessary for mail preparation services for Canada Post was provided free of charge. This was not the case for American companies, such as Quad.

⁵¹ List of Common Admissions.

⁵² List of Common Admissions.

⁵³ Exhibit D-12 and Examination in chief of Shawn Woodford.

⁵⁴ List of Common Admissions, Exhibits D-12 and D-13, and Examination of Shawn Woodford.

⁵⁵ Examination of Shawn Woodford.

⁵⁶ Carrey Hanson and Shawn Woodford's examinations; Exhibit D-9.

[71] Thus, YPG explored if outsourcing this task to another supplier was viable, adding further complexity to the distribution of the directories.⁵⁷

[72] YPG decided to assess the cost of mail preparation services provided by Quad in comparison to its competitors. However, as mail preparation is typically not quoted independently, YPG opted to solicit market quotes for both printing and mail preparation services combined.⁵⁸

[73] In October 2018, YPG initiated a confidential by-invitation only Request For Proposal (**RFP**) for printing and mail preparation services in the context of which it invited two Quad competitors to tender proposals. The proposals it received were cheaper than Quad's prices.⁵⁹

[74] In early January 2019, TC Transcontinental (**TC**) was informed that it had been selected to enter into negotiations with YPG.

[75] On February 25, 2019, Quad and TC executed a contract for the printing of YPG's Canadian directories and the mail preparation for Canada post.

3.4 The termination

[76] On February 27, 2019, YPG sent a notice informing Quad of its decision to resiliate the Agreement (**Termination Notice**). The Termination Notice⁶⁰ specified that:

- YPG was exercising its right to unilaterally resiliate the Agreement under article 2125 C.C.Q.;
- YPG explained its decision by pointing to “the increased risk of unfavourable tariffs being levied by the US government on paper imported from Canada into the US, the recent increases in freight charges associated with the delivery of paper from Canada to the US and the finished directories produced by Quad being delivered to Canada, and the shift to Canada Post delivery of directories and the increased associated costs in Quad's preparing and delivering the product to Canada Post's standards”; and
- YPG offered Quad the opportunity to continue production of the directories listed in a schedule to the Termination Notice to ensure “a smooth transition” and “to assist Quad in mitigating the volume reduction”.

[77] On March 14, 2019, Quad responded to YPG's letter. Quad denied the Agreement was purely a service agreement and accused YPG of trying to resiliate the Agreement in

⁵⁷ Exhibit D-9, Examination of Shawn Woodford.

⁵⁸ Examination of Shawn Woodford.

⁵⁹ Exhibits D-15 A, D-21, D-22 and examination of Shawn Woodworth.

⁶⁰ Exhibit P-10 and List of Common Admissions.

bad faith. As such, according to Quad, the option to resiliate under 2125 CCQ was not available to YPG. However, even if the Agreement qualified as a “service agreement”, Quad’s position was that YPG’s termination did not account for YPG’s liability following the termination, including, without limitation, the \$1.8 million left to be amortized from the price concession made by Quad in the Fourth Agreement.⁶¹

[78] As such, Quad informed YPG of its decision to “immediately stop all activity under the Agreement” unless YPG rescinded the Termination Notice.

[79] YPG did not rescind the Termination Notice and Quad ceased production of the Directories and refused to hand over those it had already produced. In reaction, YPG refused to pay for the directories printed and delivered by Quad, the surplus materials and equipment repurposing.

[80] YPG immediately turned to its new contractor and asked it to assume the transitional work it had offered Quad, and although challenging, it did.

[81] On September 12, 2019, Quad sent a formal notice to YPG in which it required that YPG pay it the sum of CAN\$43,349,074 within ten business days of the receipt of the notice.⁶² Attached was a draft Arbitration Notice for the purpose of initiating arbitration proceedings if YPG did not comply.

[82] YPG contested an Arbitrator’s jurisdiction and Quad initiated these proceedings.

4. DID YPG ACT IN BAD FAITH WHEN IT DECIDED TO RESILIATE THE AGREEMENT OR WHEN IT INITIATED THE RFP?

4.1 Conclusion

[83] Quad relies heavily on the long-term nature of the parties’ contractual relationship and its actions, which it claims were consistent with their historical collaboration.

[84] The Court finds that Quad cannot rely on the long-term contractual relationship between Quad and YPG, as that relationship, contrary to what one might expect from such an arrangement, lacked predictability and stability from the moment Quad took over from Quebecor.

[85] YPG did not chose to do business with Quad, the latter simply acquired Quebecor’s rights under the Agreement.

[86] When Quad assumed Quebecor’s obligations under the Agreement in June 2011, it included a best-effort clause requiring the Supplier, Quad, to produce the directories at its closest Canadian facilities.⁶³ One month later, Quad announced that it was selling all

⁶¹ Exhibit P-11 and List of Common Admissions.

⁶² Exhibit P-17.

⁶³ Exhibit P-1, Clause 5.

its Printing facilities in Canada. Consequently, all YPG's directories would soon be produced in the United States.

[87] Up to the signing of the Fourth Amendment, the factories where the directories would be printed, and the applicable freight charges were subject of changes. This continued after the Fourth Amendment was signed. Quad relocated printing operations in 2015 and in 2018 and YPG at one point assumed all freight charges.

[88] The parties tried to work it out, but the contractual relationship with Quad was marked by instability and recurring difficulties.

[89] For the reasons set forth below, the Court finds that Quad failed to prove that YPG acted in bad faith at any time during its contractual relationship with Quad or upon the termination of same.

4.2 Legal principles

[90] The relevant provisions of the C.C.Q. are the following:

➤ **Good faith requirements**

6. Every person is bound to exercise his civil rights in accordance with the requirements of good faith.

7. No right may be exercised with the intent of injuring another or in an excessive and unreasonable manner, and therefore contrary to the requirements of good faith.

1375. The parties shall conduct themselves in good faith both at the time the obligation arises and at the time it is performed or extinguished.

2805. Good faith is always presumed, unless the law expressly requires that it be proved.

➤ **Right to unilaterally resiliate a contract of service or of enterprise**

2125. The client may unilaterally resiliate the contract even though the work or provision of service is already in progress.

2129. Upon resiliation of the contract, the client is bound to pay to the contractor or the provider of services, in proportion to the agreed price, the actual costs and expenses, the value of the work performed before the end of the contract or before the notice of resiliation and, as the case may be, the value of the property supplied, where it can be put into his hands and used by him.

For his part, the contractor or the provider of services is bound to repay any advances he has received in excess of what he has earned.

In either case, each party is liable for any other injury that the other party may have suffered.

4.3 Discussion

[91] Quad acknowledges that it is not required to prove bad faith to assert Quad's Damage Claim. However, it argues that the presence of bad faith remains relevant to the Court's discretion in determining the components and the quantum of damages. Quad submits that a finding in bad faith on the part of YPG would justify awarding a more comprehensive compensation for the prejudice suffered, pursuant to article 2129 C.C.Q.

[92] During argumentation, Quad points notably to the following conduct, which it submits amounts to bad faith on the part of YPG:

- Under the Agreement, Quad or its successor had secured exclusivity from YPG in consideration of which benefits were given to YPG, who acted throughout the negotiations of the Fourth Amendment as if it had no unilateral termination right.
- It was abusive and unfair for YPG to negotiate an Extension of the Term and then resiliate the Agreement before the beginning of the extension period.
- YPG resiliated the Agreement without informing Quad in advance of the possibility that it would do so.
- YPG's issuance of an RFP and its conclusion of a printing agreement with Transcontinental — without first advising Quad and giving it an opportunity to match the competitor's conditions — constitutes bad faith.
- YPG's refusal to pay for work done before the resiliation of the Agreement.

[93] When exercising its right to resiliate a contract under article 2125 C.C.Q., the client must act in good faith, which it is presumed to have done unless proven otherwise.⁶⁴

[94] The right to resiliate a contract under 2125 C.C.Q. is a discretionary right exercised by the client. The client need not justify its decision or right to resiliate the contract.⁶⁵

⁶⁴ 2805 C.C.Q. *Construction Blenda inc. c. Office municipal d'habitation de Rosemère*, 2020 QCCA 149, para 45-50.

⁶⁵ *Gestion environnementale Nord-Sud inc. c. Ste-Marthe-sur-le lac (Ville de)*, 2011 QCCS 1935, para 110-113; appeal dismissed 2011 QCCA 1332; *Gestion David Couture inc. c. Sucrierie la Coulée d'or inc.*, 2023 QCCS 2254, para 84; *Veilleux c. ICAR inc.*, 2022 QCCS 4962, para 67, confirmed by Court of Appeal 2024 QCCA 1057.

[95] As such, the resiliation of the contract itself cannot be equated to an abusive termination otherwise the objective of providing such a right would be negated.⁶⁶

[96] Given the discretionary nature of the right, Quad must establish that YPG resiliated the Agreement either with the intention of harming Quad, or that, in exercising its right to resiliate, YPG committed a gross fault which, although not intentional, nevertheless caused harm that goes beyond what normally results from the termination itself.⁶⁷

[97] The Quebec Court of Appeal confirmed this principle in its recent decision *Construction Blenda Inc. vs Office municipal d'habitation de Rosemère*,⁶⁸ where it stated:

[50] Bien qu'une telle résiliation soit intrinsèquement préjudiciable à l'autre partie, un abus de droit ne peut résulter du seul exercice par le client de la prérogative que lui octroie l'article 2125 C.c.Q. Pour invoquer un abus de droit découlant d'une telle résiliation, l'entrepreneur ou le prestataire de services doit démontrer que le client a agi dans le but de lui nuire, et ce, contrairement aux obligations de bonne foi énoncées aux articles 6, 7 et 1375 C.c.Q., ou a commis une faute distincte qui engendre un préjudice au-delà de ce qui découle de la résiliation. Autrement, l'entrepreneur ou le prestataire de services ne peut obtenir que le paiement des montants énoncés à l'article 2129 C.c.Q.

[98] When analyzing the proof required to establish bad faith in the context of the exercise of an analogous right, the authors Audet and Bonhomme⁶⁹ write:

[22] Bref, il résulte de la jurisprudence que si l'exercice de la faculté unilatérale de résiliation consacrée par l'article 2091 C.c.Q. n'échappe pas aux articles 6 et 7 C.c.Q., l'application de ces dispositions, vu le caractère discrétionnaire et intrinsèquement préjudiciable du droit en cause, commande un test plus exigeant que celui qu'énonce la Cour suprême dans l'arrêt Houle. Commet ainsi un abus de droit l'employeur qui exerce la faculté de résiliation « en vue de nuire à autrui », pour reprendre l'expression de l'article 7 C.c.Q., c'est-à-dire, pour user d'autres termes, avec malice ou mauvaise foi. Commet aussi un abus de droit l'employeur qui, dans l'exercice de cette faculté, commet une faute caractérisée qui, sans être intentionnelle, engendre cependant un préjudice allant au-delà de celui qui découle normalement de la résiliation : c'est en cela seulement que l'employeur peut agir de manière « excessive et déraisonnable » au sens de l'article 7 C.c.Q. Inutile de préciser que le fait qu'aucun motif sérieux, au sens de l'article 2094 C.c.Q., ne justifie l'exercice de la faculté de résiliation n'est pas constitutif d'un

⁶⁶ *Construction Blenda inc. c. Office municipal d'habitation de Rosemère*, 2020 QCCA 149, para 45-50; *Gestion environnementale Nord-Sud inc. c. Ste-Marthe-sur-le lac (Ville de)*, 2011 QCCS 1935, para 94-98, 104-114, 120-124 and 128, appeal dismissed 2011 QCCA 1332.

⁶⁷ *Gestion environnementale Nord-Sud inc. c. Ste-Marthe-sur-le lac (Ville de)*, 2011 QCCS 1935, para 110-113; appeal dismissed 2011 QCCA 1332.

⁶⁸ 2020 QCCA 149.

⁶⁹ Georges AUDET et Robert BONHOMME et al., *Le congédiement en droit québécois en matière de contrat individuel de travail*, 3^e éd., vol. 1, Cowansville, Yvon Blais, 1991, à jour mai 2010, feuilles mobiles, n° 2.1.17, p. 2-10 et n° 2.1.54, p. 2-34.5-2-34.7.

abus de droit : prétendre le contraire enlèverait tout sens à l'article 2091 C.c.Q.

[Our underlines, references omitted]

[99] Although not required to do so, YPG provided some of the factors that led to its decision to resiliate. In its termination letter, it referred to “the increased risk of unfavourable tariffs being levied by the US government on paper imported from Canada into the US, the recent increases in freight charges associated with the delivery of paper from Canada to the US and the finished directories produced by Quad being delivered to Canada, and the shift to Canada Post delivery of directories and the increased associated costs in Quad’s preparing and delivering the product to Canada Post’s standards.”

[100] The facts enumerated have been established on the evidence.

[101] It is now well set in case law that any renunciation by a party to its rights under 2125 C.C.Q. must be clear, unequivocal with full knowledge of its consequences and apparent effects.⁷⁰

[102] The mere fact that exclusivity was granted to a party, or that a party interprets the other party’s silence or actions during a negotiation to imply that it did not seem to think it had a unilateral right to resiliate the agreement does not consist in a clear and unequivocal renunciation by that party to its right to resiliate.⁷¹

[103] The fact that the Agreement contains a termination clause is not a clear and unequivocal waiver of article 2125 C.C.Q.⁷² In this particular case, this is even more evident as the termination clause begins with the phrase “In addition to any other rights and remedies available to it, either Party...”⁷³

[104] Furthermore, it is well established that the mere existence of a term in a contract does not amount to a renunciation of a party’s rights under article 2125 C.C.Q.⁷⁴

[105] The Court will address in the next section whether the Extension of the Term by the parties during the Fourth Amendment constitutes a basis for Quad to claim damages against YPG under article 2129 (3) C.C.Q.

[106] Even if the parties originally set a term to 2020 and extended the term to 2024, this does not consist in a waiver by YPG of its right to unilaterally resiliate the Agreement under article 2125 C.C.Q. nor does it prove that YPG was acting in bad faith when the

⁷⁰ *Godbout c. Pagé*, 2013, QCCS 4866, para 45.

⁷¹ *Steve Brown Machineries Solutions (SBMS) Inc. c. Groupe Sutton*, 2021 QCCA 302, para 101-106.

⁷² *Steve Brown Machineries Solutions (SBMS) Inc. c. Groupe Sutton*, 2021 QCCA 302, para 87 and 88.

⁷³ Exhibit P-1, Clause 33.2.

⁷⁴ *Steve Brown Machineries Solutions (SBMS) Inc. c. Groupe Sutton*, 2021 QCCA 302, para 97-106; *Centre régional de récupération C.S. inc. c. Service d’enlèvement de rebuts Laidlaw (Canada) Ltée*, EYB 1996-29236 (CA), para 28.

extension was granted or the Agreement resiliated.

[107] YPG could have resiliated the Agreement prior to the Fourth Agreement but chose to continue the business relationship with Quad further to the negotiations of the Fourth Amendment.

[108] It is obvious that Quad was taken aback by the letter of termination, and disappointed, however, article 2125 C.C.Q. permits a client to unilaterally resiliate a contract without cause or prior notice⁷⁵. This provision represents a significant derogation from principles of the binding force of contracts. By its nature, such terminations are always inherently prejudicial to the other party but legal.

[109] The Court finds that YPG did not renounce to its right to unilaterally resiliate the Agreement under article 2125 C.C.Q. and did not act in bad faith.

[110] Furthermore, the fact that YPG initiated an RFP and signed a printing agreement with Transcontinental a few days before terminating the Agreement, without first advising Quad and giving it an opportunity to match the competitor's conditions, does not demonstrate bad faith on the part of YPG.

[111] The evidence shows that when YPG launched its RFP, it was interested in costing out the mail preparation services according to Canada Post's requirements but went to market for printing services as well because it felt it would be difficult to get a quote on mail preparation only.

[112] YPG was interested in companies that had facilities in Canada. Two companies that met that condition were invited to bid on the services sought.

[113] When YPG received the proposals, it noticed a favorable difference in the printing costs. The difference in the costs of mail preparation was also significant and Transcontinental had the capabilities to assume mail preparation services for Canada Post, which was important to YPG.

[114] Before initiating the RFP, YPG attempted to work with Quad to lower costs of the mail preparation.

[115] One of YPG's principal challenges was the high costs stemming from Quad's US location and its plant in Waukee. This situation exposed YPG to potential tariffs on the paper supplies, elevated freight costs and Quad's inability to meet Canada Posts prepackaging requirements at a reasonable cost.⁷⁶

[116] YPG acted to protect its own interest but had no intention of harming or prejudicing Quad beyond the consequences inherent in the termination itself.

⁷⁵ Unless a prior notice is contractually required.

⁷⁶ Exhibit D-9.

[117] Ultimately, YPG selected a Canadian printing company, Transcontinental, and decided not to retain LSC, even if it had printing facilities in Canada, due to the uncertainties associated with dealing with an American company, which LSC was.⁷⁷

[118] Even if Quad had prior knowledge, the additional costs associated with using an American printer for Canadian end users exposed YPG to significant financial vulnerability. These circumstances arose from changes beyond Quad's control.

[119] In any event, there was nothing Quad could do even if it had been forewarned.

[120] As for the damages resulting from the nonpayment of the value of the work performed, these consist of interest at the agreed rate or, in the absence of such agreement, at the legal rate, together with the additional indemnity provided for in article 1619 C.C.Q.⁷⁸

[121] In its letter of termination⁷⁹, YPG proposes, to ensure a smooth transition, that Quad continue the printing services for certain directories scheduled for April, May or June. Quad refused and immediately ceased all work unless YPG rescinded its letter of termination, which it did not.⁸⁰

[122] This placed YPG in a difficult situation.

[123] It is as a result of Quad's reaction that YPG did not immediately pay but not with an intent to harm Quad.

[124] On March 27, 2025, YPG offered Quad the amount owed together with interest. What remains to be determined is whether the additional indemnity is also payable.⁸¹

[125] The Court finds that Quad failed to establish that YPG acted in bad faith during the negotiations of the Fourth Amendment, in deciding to resiliate the Agreement pursuant to article 2125 C.C.Q. or at any other time.

[126] It is not abusive or in bad faith for a company to look out for its best interest and go to the market to assess the situation. YPG no longer believed that it was in its best interest to remain with Quad given the distance, the border that separated them and all the complications that it implicated.

5. IS QUAD'S DAMAGE CLAIM RECOVERABLE UNDER ARTICLE 2129 (3)

⁷⁷ Testimony of Shawn Woodford.

⁷⁸ Art. 1617 C.C.Q.

⁷⁹ Exhibit P-10.

⁸⁰ Exhibit P-11.

⁸¹ Art. 1619 C.C.Q.

C.C.Q.?**5.1 Conclusion**

[127] The evidence does not support Quad's argument that the Overall Concessions were made to secure the Extension of the Term.

[128] Quad's Damage Claim does not constitute claimable injuries under 2129 (3) C.C.Q. The alleged damages do not result from the early termination of the Agreement. Rather, they stem from Quad's assertion that it would never have made the Overall Concession during the negotiation of the Fourth Amendment had YPG not agreed to the Extension of the Term.

[129] In essence, while acknowledging that YPG lawfully resiliated the Agreement under article 2125 C.C.Q, Quad is asking the Court to treat the Fourth Amendment as resolved due to YPG's early termination, and to retroactively cancel the Overall Concessions it made when agreeing to the Fourth Amendment, while adjusting for certain concessions made by YPG, in order to restore Quad to the position it would have been in had it never agreed to the Fourth Amendment.

[130] Given YPG's financial situation in 2012, it is likely that, absent the Fourth Amendment, the Agreement would have been resiliated either under 2125 C.C.Q or pursuant to insolvency legislation.

[131] Moreover, the right to seek the resolution of a contract is a remedy available to a creditor "(w)here the debtor fails to perform his obligations without justification on his part and he is in default."⁸² The cancellation of a contract is only available if a contract "does not meet the necessary conditions of its formation".⁸³

[132] Quad does not allege that the Agreement was resiliated as a consequence of YPG's default nor that it does not meet the conditions of its formation.

[133] In fact, Quad acknowledges that the resiliation of the Agreement resulted from YPG's lawful exercise of its rights under articles 2125 and following of the C.C.Q.

[134] By acknowledging the above, Quad admits that it cannot claim lost profits. No evidence was presented regarding the amount of such lost profits.⁸⁴

[135] Quad can only claim past damages resulting from the early termination of the Agreement. The Overall Concessions are not damages which result from the early termination of the Agreement.

⁸² Art. 1590 C.C.Q.

⁸³ Art. 1416 C.C.Q.

⁸⁴ The Court cannot determine whether they would exceed the value of Quad's Damage Claim.

[136] For the reasons set forth below, the Court finds that Quad's Damage Claim is not an injury claimable under article 2129 (3) C.C.Q.

5.2 Discussion

5.2.1 The agreement qualifies as a contract of enterprise or of service

[137] To be legally entitled to unilaterally resiliate a contract under article 2125 C.C.Q., the contract must qualify as a contract of enterprise or for service.⁸⁵

[138] The parties agree that the Agreement qualifies as such a contract.⁸⁶

[139] The Court also agrees.

[140] The essence of Quad's obligations under the Agreement is to print, bind and deliver Canadian directories to YPG at a price that YPG has undertaken to pay. Quad is free to choose the means of performing the Agreement and there is no relationship of subordination between the parties.

5.2.2 Can YPG be obliged to pay Quad's Damage Claim resulting from the resiliation of the Fourth Amendment?

[141] YPG agrees and has offered to pay for the value of the work, plus interest owing pursuant to article 2129 (1) C.C.Q., as it is bound to do when a contract is resiliated under article 2125 C.C.Q.

[142] The only issue which remains unresolved between the parties under section 2129 (1) C.C.Q., is whether Quad is entitled to the payment of the additional indemnity on the costs of the value of the work performed before the end of the work. This question will be dealt with in a next section.

5.2.2.1 General interpretation of "any other injury"

[143] The central issue in dispute is whether Quad's Damage Claim falls within the scope of "any other injury" as contemplated by paragraph 3 of article 2129 C.C.Q.

[144] It is useful to recall the legal framework applicable to damages under 2129 (3) C.C.Q.

5.2.2.1.1 The Legal Principles

[145] Under the general regime of contracts, when a debtor fails to perform an obligation without justification, the creditor may generally compel specific performance.⁸⁷ If the

⁸⁵ Art. 2098 and following C.C.Q.

⁸⁶ Art. 2098-2100 C.C.Q.

⁸⁷ Art. 1590 C.C.Q.

creditor does not exercise that right, he is entitled to the resolution or resiliation of the contract and damages.⁸⁸

[146] With respect to damages that can be claimed in contractual matters, the relevant provisions are as follows:

1606. A contract which is resolved is deemed never to have existed; each party is, in such a case, bound to restore to the other the prestations he has already received.

A contract which is resiliated ceases to exist, but only for the future.

1607. The creditor is entitled to damages for bodily, moral or material injury which is an immediate and direct consequence of the debtor's default.

1611. The damages due to the creditor compensate for the amount of the loss he has sustained and the profit of which he has been deprived.

Future injury which is certain and assessable is taken into account in awarding damages.

1613. In contractual matters, the debtor is liable only for damages that were foreseen or foreseeable at the time the obligation was contracted, where the failure to perform the obligation does not proceed from intentional or gross fault on his part; even then, the damages include only what is an immediate and direct consequence of the nonperformance.

[147] At stake in this case, is the unilateral and lawful right to prematurely resiliate a contract pursuant to article 2125 C.C.Q., without cause or prior notice, which is an exception to the principle that contracts are binding.⁸⁹ When a client resiliates a contract under this exceptional regime, he is liable only for those damages provided under article 2129 C.C.Q.

[148] The client's right to resiliate the contract is discretionary, meaning the client is never required to justify or explain its decision to the contractor.⁹⁰ Moreover, the client's right of resiliation is not subject to any prior notice requirement, nor is the client obliged to give to the contractor an opportunity to remedy the situation that led to the termination.⁹¹

[149] In *Construction Blenda inc. c. Office municipal d'habitation de Rosemère*⁹², the Court of Appeal explains the rationale for this exceptional regime as follows:

⁸⁸ Art. 1604 C.C.Q.

⁸⁹ Art. 1439 C.C.Q.

⁹⁰ *Gestion David Couture inc. c. Sucrierie la Coulée d'or inc.*, 2023 QCCS 2254, para 85; *Communications Stress inc. c. Montréal Auto-prix inc.*, 2015 QCCS 2834, para 33.

⁹¹ *Veilleux c. ICAR inc.*, 2022 QCCS 4962, para 67, conf. by *Veilleux c. ICAR inc.*, 2024 QCCA 1057; *Communications Stress inc. c. Montréal Auto-prix inc.*, 2015 QCCS 2834, para 33.

⁹² 2020 QCCA 149, para 44.

[44] Ce droit se justifie, notamment, par la nature du contrat d'entreprise ou de service, qui implique généralement un certain rapport de confiance entre les parties. Ainsi, lorsque, comme ici, cette confiance est perdue, le client peut résilier unilatéralement le contrat sans fournir de motif. Il n'est alors tenu de payer que les montants énumérés à l'article 2129 C.c.Q.

[150] Although article 2129 C.C.Q. does not provide an exhaustive list of damages that the contractor or service provider is entitled to, it is now well established that the expression "any other injury" must be interpreted restrictively.⁹³ Once again, in *Construction Blenda inc.*, the Court of Appeal states⁹⁴:

[88] En effet, l'expression « autre préjudice » doit être interprétée restrictivement pour ne pas dénaturer le droit du client de résilier unilatéralement le contrat prévu par l'article 2125 C.c.Q., ce qui exclut la perte de profits futurs sur le contrat. Le juge Chamberland s'exprime de façon claire à ce sujet dans *Conseillers en informatique d'affaires CIA inc. c. 4108647 Canada inc.*⁹⁵ :

[40] Dans la mesure où le contrat en est un de service, le prestataire de services – ici 4108647 – n'a pas, en principe et en l'absence de stipulation contractuelle particulière, droit à un préavis de résiliation, le client – ici CIA – ayant le pouvoir de résilier unilatéralement le contrat en tout temps, même lorsque la prestation du service a déjà été entreprise (art. 2125 C.c.Q.).

[41] Le client est alors cependant tenu de payer au prestataire de services la valeur des travaux exécutés avant la fin du contrat, ce qui a été fait ici. Il est également tenu de tout autre préjudice que le prestataire de services a pu subir en raison de la résiliation du contrat (art. 2129 C.c.Q.).

[42] Les termes « autre préjudice » doivent être interprétés restrictivement de crainte de faire perdre tout son sens à la règle énoncée à l'article 2125 C.c.Q.

[43] La perte des revenus que le contrat aurait générés s'il avait été mené à terme n'en fait pas partie [...].

[151] By exercising the lawful right conferred upon it under article 2125 C.C.Q., the client cannot be placed in the same position as a party who commits a contractual fault without justification.⁹⁶ Otherwise, the right to resiliate under article 2125 C.C.Q. would be rendered moot or illusory.

⁹³ Vincent KARIM, *Contrats d'entreprises (ouvrage mobiliers et immobiliers : construction de rénovation), contrat de prestation de services (obligations et responsabilité des professionnels) et l'hypothèque légale*, 4^e éd, Wilson & Lafleur, 2020, Montréal, no 2261.

⁹⁴ *Construction Blenda inc. c. Office municipal d'habitation de Rosemère*, 2020 QCCA 149, para 88; *Bruneau Électrique inc. c. Groupe Roger Faguy*, 2019 QCCA 1670, para 18 and 19.

⁹⁵ *Conseillers en informatique d'affaires CIA inc. c. 4108647 Canada inc.*, 2012 QCCA 535, para 40-43.

⁹⁶ *Pelouse Agrostis Turf inc. c. Club de Golf Balmoral*, [2003] R.J.Q. 3043 (C.A.) para 36 and 37.

[152] The Court of Appeal, in *Pelouse*⁹⁷, sets out a framework that may serve as a guide for analyzing the damages that can be claimed under article 2129 C.C.Q.

[29] Le premier paragraphe de l'article 2129 C.c.Q. limite la réclamation à la période écoulée avant la fin du contrat ou avant la notification de la résiliation. Au troisième paragraphe, il semble que le législateur a voulu préciser qu'en sus de la valeur des services déjà rendus ou des travaux déjà exécutés l'entrepreneur ou le prestataire de services pourront réclamer pour le préjudice déjà subi. On doit d'ailleurs noter qu'on emploie ici le verbe au temps passé.

[30] Quant au préjudice déjà subi, on peut penser aux débours encourus pour les fins de ce contrat, tels l'achat ou la location d'équipement particulier, l'engagement de personnel spécialisé qui ne peut être mis à pied sans préavis, etc.

[153] Accordingly, the injury cannot be equivalent to the loss of profit or gains that the contractor might have earned had the contract not been lawfully resiliated under article 2125 C.C.Q.⁹⁸ Expenses incurred as a result of the termination of the contract⁹⁹ or for work that continues after termination because the contractor cannot cease performance without notice are covered under article 2129 (3) C.C.Q.

[154] In *Bruneau Électrique Inc.*, the Court of Appeal confirms that a contractor may claim the loss of anticipated profit on the work completed prior to the termination of the contract, but not future anticipated profit or the loss of a business opportunity.¹⁰⁰

5.2.2.2 The relevance of a fixed-term contract

[155] As a general rule, it is settled law that the existence of a fixed-term contract does not constitute a clear and unequivocal waiver by the client of the right to resiliate under article 2125 C.C.Q.¹⁰¹

[156] Quad relies on the following three decisions of the Court of Appeal collectively referred to as the “the Trilogy” to justify the Quad Damage Claim:

- a) *Gagnon c Bell Mobilité inc*¹⁰² (**Bell**) and *Rogers Communications s.e.n.c. c Brière*¹⁰³ (**Rogers**), both 2016 judgments in separate class action lawsuits which were heard in a joint hearing by the Court of Appeal;

⁹⁷ *Pelouse Agrostis Turf inc. c. Club de Golf Balmoral*, [2003] R.J.Q. 3043 (C.A.) para 29 and 30.

⁹⁸ *Pelouse Agrostis Turf inc. c. Club de Golf Balmoral*, [2003] R.J.Q. 3043 (C.A.) para 29-38.

⁹⁹ *Groupe Roger Faguy inc. c. Bruneau Électrique inc.*, 2018 QCCS 812, para 134; confirmed in appeal 2019 QCCA 1670.

¹⁰⁰ *Bruneau Électrique inc. c. Groupe Rogers Faguy*, 2019 QCCA 1670, para 18 and 19.

¹⁰¹ *Veilleux c. ICAR inc.*, 2022 QCCS 4962; confirmed by *Veilleux c. ICAR* QCCA, 1057; *Steve Brown Machineries Solutions (SBMS) inc. c. Groupe Sutton Excellence inc.*, 2021 QCCA 302, para 97-106.

¹⁰² 2016 QCCA 1496.

¹⁰³ 2016 QCCA 1497.

- b) *Masson c Telus Mobilité*¹⁰⁴ (**Telus**) a judgment rendered by the Court of Appeal in 2019 in a class action lawsuit.

[157] Based on these decisions, Quad argues that YPG should be ordered to fully reimburse it the amount of the Quad's Damage Claim. According to Quad, the Trilogy establishes that a provider of service is entitled to compensation for costs such as rebates, credits, and other financial commitments made to secure the client's long-term agreement.

[158] Quad submits that, in negotiating the Fourth Amendment, it granted Overall Concessions to secure a four-year Extension of the Term. It therefore claims that Quad's Damage Claim, representing the net value of the capitalized Overall Concessions, should be recoverable from YPG.

5.2.3 The Trilogy

[159] The judgments rendered in the Trilogy arose in the context of class actions against telecommunications providers concerning early termination fees for consumers who ended their fixed-term wireless service contracts before the agreed term. These consumers had entered a fixed-term contract that allowed them to benefit from a discount on the purchase of a mobile phone.

[160] The consumers resiliated their fixed-term service contract pursuant to article 2125 C.C.Q. The relevant service contracts contained a clause by which the parties agreed in advance to the value of the injuries the service provider would suffer if the fixed-term agreement were resiliated prematurely.

[161] In *Bell and Rogers*, the Court found that the class members had not renounced to the application of article 2125 C.C.Q. and that the Early Termination Clause was simply an implementation of article 2129 (3) C.C.Q. in that the parties assessed in advance the injury the service provider would suffer as a result of early termination.

[162] Although the Court of Appeal confirmed the validity of a consensual clause predetermining the supplier's "any other injury" suffered as a result of an early resiliation pursuant to article 2125 C.C.Q. (**Early Termination Clause**), these contracts were contracts of adhesion. Thus, article 1437 C.C.Q. applied, and the Court was required to ensure that the Early Termination Clause was not abusive in nature, and, if it was, the Court could declare it null or reduce the obligations arising from it.

[163] During its analysis, the Court characterized the indemnity payable by the client exercising its rights under 2125 C.C.Q. as a "break-up indemnity" rather than a "compensation indemnity".¹⁰⁵

¹⁰⁴ 2019 QCCA 1106.

¹⁰⁵ *Gagnon c. Bell Mobilité inc.* 2016 QCCA 1496, para 161.

[164] In *Bell and Rogers*, the class members shared the following characteristics:

- Each entered into a fixed-term wireless service contract with the provider;
- Each benefitted from a discount on the purchase of a mobile phone;
- Each resiliated the service contract before the agreed term;
- Each paid the fees stipulated in the Early Termination Clause.

[165] A client could conclude a service contract without a fixed term, but the client would not qualify for the discount on the mobile phone. Moreover, in the case of fixed-term contracts, the discount varied according to the term of the service contract chosen by the client, 12, 24 or 36 months.

[166] In determining whether a clause was abusive, the Court compared the claimable injury under the Early Termination Clause to the injury claimable under article 2129 (3) C.C.Q.

[167] For this purpose, the Court reiterated the restrictive interpretation to be given to “any other injury” under article 2129 C.C.Q., so as to avoid placing the client exercising its rights under article 2125 C.C.Q. in the same position as a client who committed a contractual fault.

[168] In both cases, the Court upheld the Superior Court’s finding in that only the amounts incurred to ensure the client remained subscribed to the service during a certain period of time constituted the injury in this case.

[169] Given the evidence that the discount was specifically granted to secure a fixed-term and given the restrictive interpretation to be given to “any other injury”, the Court found that only the discount granted to secure the fixed-term of the contract and the related expenses qualified as “an injury” under 2129 (3) C.C.Q.

[170] In this regard, the Court in *Rogers* emphasized that the injury suffered by the provider does not include all expenses incurred to “acquire” a client. For example, advertising costs, rent, or other general operating expenses cannot be claimed. The actual injury must be tied to expenses incurred to ensure that the client remained subscribed for a certain period. Discounts granted to secure the fixed term, as well as expenses directly related to those discounts, clearly constitute such an injury.¹⁰⁶

[171] Against this legal backdrop, the Court will now examine whether Quad’s Damage Claim falls within the scope of article 2129 (3) C.C.Q. and whether Quad is entitled to any damages beyond the value of the work performed.

¹⁰⁶ 2016 QCCA 1497, para 79.

5.2.3.1 Was the extension of the term an essential component of the bargain for Quad?

[172] The Fourth Amendment was a heavily negotiated contract between two sophisticated parties at a time when market conditions and YPG's financial situation were in decline.

[173] Quad was aware of YPG's deteriorating financial position and that it was seriously considering initiating CCAA proceedings. YPG's credit rating had been downgraded by the rating agencies, and it was evident that, without an amendment to the Agreement, YPG would not be able to meet its obligations under the Agreement, including the volume guarantees effective as of 2013, which would trigger the Foregone Volume Guarantee Penalties.¹⁰⁷

[174] Quad recognized that the printing industry had changed, paper was less in demand in the new digital world, and as a result, the volumes of printed paper required had significantly decreased. Furthermore, the prices agreed upon at the outset of the Agreement were no longer relevant under the prevailing market conditions.

[175] Concerned with securing the reimbursement of its receivable in excess of CAN\$10,000,000, retaining a client it considered to have a sustainable business, and obtaining an upfront payment referred to by the parties as a "termination fee"¹⁰⁸, Quad entered into the negotiations for the Fourth Amendment with the intent of reaching a deal.¹⁰⁹

[176] The negotiations spanned over several months, with each party represented by a team versed in commercial negotiations and in modeling the financial impact of each concession and benefit. Both sides regularly conducted sophisticated internal financial analysis to evaluate offers and concessions and detailed Power Point presentations were prepared.

[177] Mr. Vanderboom, a senior Quad officer involved in the negotiating the Fourth Amendment, testified at trial and summarized the negotiations as follows:

- Quad wanted YPG to assume all freight costs, while Quad would grant a price reduction.
- On April 20, 2012, Quad reduced the required upfront payment to \$18,000,000 and requested that YPG pay for and supply the paper used to print the directories as well as shorten the payment timeline for the manufacturing.¹¹⁰ In return, Quad was prepared to provide a price reduction

¹⁰⁷ Kelly Vanderboom's examination in chief.

¹⁰⁸ Exhibit P-6 and Exhibit P-9.

¹⁰⁹ Exhibit P-6, Kelly Vanderboom examination in chief.

¹¹⁰ Exhibit P-5.

on services under the Agreement and waive the volume guarantee.

- In May 2012, YPG countered with an upfront payment of \$5,000,000 and agreed to assume the freight costs. YPG also suggested a 4-year term extension. Quad accepted the waiver of the volume guarantee and the price reduction.¹¹¹
- On June 4, 2012, Quad countered again. The only unresolved issue was the upfront payment. Quad wanted \$15,000,000. The “(d)eal was reached by shifting two elements”: Quad agreed to apply the pricing discount retroactively for the period of January to June 2012¹¹² and YPG agreed to increase its upfront payment from \$5,000,000 to \$10,000,000.

[178] The recurring themes during the negotiations from at least December 2011 to July 2012 were:

- Upfront payment from YPG, with the parties going back and forth on the amount;¹¹³
- Price Discounts;
- Waiver of Volume guarantees and the Foregone Volume Guarantee Penalties;
- Payment of all outstanding invoices by YPG;
- Advance payment for printing all future directories;
- YPG supplying future text paper;
- YPG assuming freight costs.

[179] As negotiating progressed, concessions and agreements were made on certain points.

[180] The issue of the Extension of the Term was raised by YPG and appears to have been accepted by Quad without negotiations:

- On May 22, 2012, YPG referred for the first time to the Extension of the Term as one of its three proposals presented to Quad in a Power Point

¹¹¹ Exhibit P-6.

¹¹² Roughly representing a value of \$3,000,000.

¹¹³ Exhibits P-2 (December 2011), P-3 (9 March 2012), D-4 (April 16, 2012), P-4 (April 20, 2012), D-5 (April 26, 2012), D-6 (May 30, 2012), P-7 (June 4, 2012), P-9 (June 26, 2012); Kelly Vanderboom's and Shawn Woodford's testimonies.

presentation.¹¹⁴

- On June 4, 2012, Quad's presentation confirmed that the parties agree to extend the term to December 31, 2024.¹¹⁵
- On June 26, 2012, in an e-mail to its internal counsel, Quad's regional Vice president wrote "Our revised deal is essentially lower prices and a contract extension to 2024 in return for payment of all outstanding accounts receivable (roughly US\$10 million) plus a NET cash payment of CAN\$12 million (net because we gross up the cash payment with a rebate of a 45.25% discount on invoices to 1-1-2012 less related freight)."¹¹⁶

[181] There is no contemporaneous evidence that Quad attached any importance to the Extension of the Term. In fact, it appears to have been an afterthought concession sought by YPG and accepted by Quad without a negotiation. It was simply accepted.

[182] The parties carried out numerous analyses of the financial implications of their respective concessions leading to the Fourth Amendment, yet none of these consider the financial implications for either party of the Extension of the Term. Neither party appears to have modeled any financial impact of the Extension of the Term, even after it seems to have been agreed to.¹¹⁷

[183] The Court does not retain Kelly Vanderboom's testimony on that issue, which it considers unreliable on that point.

[184] Clause 2.8 of the Fourth Amendment, which confirms the Overall Concession signed by the parties states:

2.8 Upon execution of this Amendment and in consideration of a Ten Million Canadian Dollars (\$10,000,000.00) payment to be made by YPG to Supplier, Section 8 of the Agreement (Prices) is amended as follows:

- (i) by deleting Subsections 8.1 (i), 8.1 (ii), 8.2 [which provides for the Volume Guarantee and the Foregone Volume Guarantee Penalties] and 8.4;
- (ii) by replacing Schedules B1, B2, B3 and B4 [which were the then existing price lists] with the revised Schedule B3.1 found hereto in Schedule J;
- (iii) by replacing Subsection 8.1 (iii) [which required YPG to pay the then current prices] with the following:

¹¹⁴ Exhibit P-6 under Volume Commitment.

¹¹⁵ Exhibit P-7, Revised QG, Proposal 3.

¹¹⁶ Exhibit P-9, June 26, 2012.

¹¹⁷ Exhibits P-6, P-7, P-8 and P-9.

YPG shall pay to the Supplier the Prices set forth in Schedule B3.1 - Prices [the new price schedules] in accordance with the pricing application instructions set forth in Schedule C - Application of Rates. Unless otherwise provided herein, each such Price Schedule shall enter into force and effect as of the date set forth herein and shall replace the Price Schedule in force as of the date immediately preceding such entering into force. To reflect the application of the revised Price Schedule to directory issues with a publication month of January to June 2012 and includes the Lower Mainland Vancouver Directory, Supplier shall rebate to YPG the amount calculated on the attached Schedule L - Rebate Calculation.

- (iv) by deleting "(subject to Section 5.5)" in Subsection 8.3;
- (v) by deleting reference to Section 8.2 in Subsection 8.6; and
- (vi) by replacing reference to "Customer-directed Paper" to "Customer-supplied Paper" in Subsection 8.9.

[185] YPG also paid the arrears owing to Quad and an advance on the future directories Quad was going to print.

[186] In the Fourth Amendment, the Extension of the Term is a stand-alone clause.¹¹⁸

[187] The evidence shows that the Extension of the Term was incidental at best to Quad. It was definitely not a make-or-break condition, and Quad made no particular concession as a result of the Extension of the Term.

[188] The biggest concessions in favour of Quad were the upfront payment of CAN\$10,000,000, the payment of Quad's receivables, assumption of freight costs and paper.

[189] The proof does not support Quad's argument that the term was an important consideration for them.

[190] The Court concludes that Overall Concessions were not given by Quad as a result of the Extension of the Term and are not injuries related to the premature termination on the Agreement but damages that a party could claim if termination occurred without valid cause.

5.2.3.2 In the absence of the extension of the term being a consideration, is Quad's Damage Claim valid?

[191] Only injury caused by the premature termination of the Agreement can be claimed by Quad under article 2129 C.C.Q.

¹¹⁸ Clause 2.4 of the Fourth Amendment.

[192] Quad seeks full compensation for the net value of the Overall Concessions it granted to YPG under the Fourth Amendment, and if granted, it would place the parties in the same situation as if the Fourth Amendment had never been agreed to and implemented.

[193] In fact, without expressly stating it, Quad is seeking the resolution of the Fourth Amendment as if YPG had defaulted under the Agreement, whereas YPG was merely exercising its strict right to prematurely resiliate the Agreement.

[194] Quad's Damage Claim does not concern injuries caused by the premature resiliation of the Agreement. Rather, Quad seeks full compensation of the net Overall Concessions it made when it negotiated the Fourth Amendment, which damages the Court could potentially consider in a different context, outside the scope of article 2125 and following of the C.C.Q.

[195] Accordingly, Quad's Damage Claim cannot be upheld.

6. **SHOULD THE AMOUNT OWING BY YPG FOR THE VALUE OF THE WORK PERFORMED BEFORE THE RESILIATION INCLUDE THE ADDITIONAL INDEMNITY?**

[196] On March 27, 2025, YPG's attorneys sent a letter with prejudice to Quad's attorneys¹¹⁹ stating that YPG intended to pay the invoices listed in Exhibit P-14¹²⁰ to the Modified Originating Application, except for certain invoices, which were contested.¹²¹

[197] The contested invoices relate to directories that Quad had printed but did not permit YPG to take delivery of in a timely fashion.

[198] YPG deposited into the trust account of their attorneys the amount representing the uncontested portion of Quad's unpaid invoices (\$346,900.03) and accrued interest at the legal rate until March 28, 2025, for a total of \$442,986.58 (the **Trust Amount**).¹²²

[199] Although YPG did offer to pay the invoices in 2019, that offer was conditional upon the signature of a mutual full and final release by the parties in favour of each other.¹²³

[200] No condition was attached to the March 2025 offer to transfer the Trust Amount to Quad.

[201] The Trust Amount does not include the additional indemnity provided for under article 1619 C.C.Q., which would represent \$46,146.14 (**Indemnity Amount**).

¹¹⁹ Exhibit D-34.

¹²⁰ Also see invoices collated in Exhibit P-24.

¹²¹ List of Common Admissions.

¹²² List of Common Admissions.

¹²³ Exhibits P-11, P-12 and P-13.

[202] YPG asks the Court to exercise its discretionary power under article 1619 C.C.Q. to deny adding the Indemnity Amount to the Trust Amount, given that Quad's Damage Claim was grossly exaggerated, and the Trust Amount represents only a small fraction of the claim.¹²⁴

[203] Although the Trust Amount is only a small fraction of Quad's Damage Claim, there is no dispute that the Trust Amount was owed as of the moment YPG resiliated the Agreement.

[204] Contrary to the greater portion of Quad's Damage Claim, which is claimed as "any other injury" under article 2129 (3) C.C.Q., the Trust Amount is owed under article 2129 (1) C.C.Q. which specifies that the client is bound to pay for "the value of work performed before the end of the contract or before the notice of resiliation".

[205] The Trust Amount is isolated from the rest of the claim and clearly owed.

[206] By choosing to withhold payment of the value of the directories printed by Quad and delivered in a timely manner, YPG was clearly in breach of article 2129 (1) C.C.Q. and should pay to Quad the Trust Amount plus the additional indemnity.

7. PWC'S EXPERT REPORT

[207] Even if the Court's reasons support the dismissal of the portion of Quad's Damage Claim which was anchored on article 2129 (3) C.C.Q., the Court will briefly comment on PwC's mandate.

[208] There is no expert report in the record that confirms an independent expert's opinion on the damages suffered by Quad as a result of the early termination of the Agreement.

[209] PwC does not opine on the damages suffered by Quad as a result of YPG's early termination of the Agreement.

[210] In fact, PwC clearly states in its PwC Report, that its calculation and analysis were based on instructions from Quad's attorneys to assume that the damages claimed by Quad correspond to the difference between the conditions in the Fourth Amendment and those in the previous amendment.¹²⁵

[211] As a counter expertise, YPG filed a Limited Critique Report prepared by Accuracy, which reviewed and commented on the damage quantification methodology adopted by PwC.

¹²⁴ *Canadian Newspaper Co. Ltd c. Snyder*, 1995 CanLII 11027(QC CA), para 10 and 14-17.

¹²⁵ Exhibit P-24, p. 15.

[212] It appears that PwC lacked independence, as it followed Quad's instructions closely. PwC applied a high percentage to calculate the capitalized value of amounts, omitted to consider certain concessions made by YPG under the Fourth Amendment, and did not provide an opinion on the actual damages PwC believed Quad suffered due to early termination.

[213] As such, the reliability and usefulness of PwC's report are significantly mitigated, given that the report was prepared under Quad's direction, with PwC having limited latitude.

8. **OBJECTIONS**

[214] Neither party argued any of the objections taken under reserve. As such, all objections taken under reserve will be dismissed.

9. **CONCLUSIONS**

FOR THESE REASONS, THE COURT:

[215] **DISMISSES** in part Plaintiff's Re-Modified Originating Application;

[216] **CONDEMNNS** the Defendant, YELLOW PAGES DIGITAL & MEDIA SOLUTIONS LIMITED, to pay to Plaintiff, QUAD/GRAPHICS, INC., damages in the amount of \$346,900.03 with interest at the legal rate and the additional indemnity under Article 1619 of the *Civil Code of Quebec* calculated as of September 12, 2019, up to March 28, 2025;

[217] **DISMISSES** the remainder of Plaintiff's Re-Modified Originating Application;

[218] **DISMISSES** all and any objections taken under reserve during the hearing which were not argued during oral arguments;

[219] **THE WHOLE**, with legal costs, including expert costs, against Quad/Graphics, Inc.

KAREN M. ROGERS, J.S.C.

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Hearing dates: March 31, April 1 to 4; April 7 and 8, 2025