

COUR SUPÉRIEURE

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N0 : 500-05-069317-012
(chambre civile)

DATE : LE 26 AVRIL 2002

SOUS LA PRÉSIDENTE DE : L'HONORABLE PIERRE VIAU J.C.S.

JIA QIANG ZHANG, XIAO YAN SUN, HUI YANG ET AL.
Requérants

c.

CRESCENT CHAU
-et-
LA PRESSE CHINOISE EASTERN INC.
-et-
BING HE
Intimés

J U G E M E N T
SUR UNE REQUÊTE INTITULÉE
«MOTION FOR CONTEMPT OF COURT AND SPECIAL RULE»

[1] Le Tribunal, saisi de la requête précitée doit, avant de l'examiner, la situer dans son contexte : celui d'un recours de plus de 12,000,000,00 \$ en dommages-intérêts.

I – État du litige

A) Requête en dommages-intérêts et ordonnances

[2] En décembre 2001, Jia Qiang Zhang et cent vingt-six (126) autres personnes font signifier aux intimés précités une requête intitulée : «Motion for damages, safeguard orders and injunctive relief in relation to damage to reputation and integrity».

[3] Ils disent appartenir à Falun Gong qui n'est pas partie au litige et qui, semble-t-il, n'a pas d'existence légale, mais qui serait «*a spiritual way of living*».

[4] Selon eux, les intimés auraient commis à leur égard les actes répréhensibles suivants :

«THE OFFENDING MATERIAL

13. *In the November 3, 2001 edition of LA PRESSE, there appeared an article of almost one (1) page in length, stated to be advertising made by a Falun Gong practitioner, authored by the Respondent, BIN HE.*

14. *This «advertising» was a lengthy diatribe against the teachings/practice of Falun Gong, as well as Falun Gong's founder, his family, the Falun Gong organizations and its practitioners.*

15. *The November 3, 2001 material is herein produced as Petitioner's Exhibit P-1(a) and P-1(b), the former being the original version of LA PRESSE in which the material appears and the latter being an official English language translation of the original Chinese text.*

16. *Notwithstanding the sending of a mise-en-demeure by the Petitioners' lawyers, as alleged below, the same type of material, although more vitriolic, appeared in the November 10, 2001 as well as the November 24, 2001 editions of LA PRESSE.*

17. *The November 10, 2001 material is herein produced as Petitioners' Exhibits P-2(a) and P-2(b). The November 24, 2001 material is herein produced as Petitioners' Exhibit P-3(a) and P-3(b), the former being the original version of LA PRESSE in which the material appears and the latter being an official English language translation of the original Chinese text.*

18. While the text of Exhibits P-1(a), P-1(b), P-2(a), P-2(b), P-3(a) and P-3(b) speak for themselves, some of the salient features of these texts can be demonstrated by the following quotations :

a) From Exhibits P-1(a) and P-1(b) :

«Falungong practitioners, just putting the Falungong overcoats and opposing the interests of the Chinese government and the Chinese people, being them money-washers in the underworld or wanted murderers, the more the better, all become his backbones and vanguards.»

«He is to intentionally conspire the bloody suicide and self-immolation to oppose China, oppose the Chinese government and its people.»

«Everyone who has practiced Falungong would treat his/her spouse like an enemy, his family would be torn apart and family members would die or leave him, and he would have nothing left. Still he would be desperate to promote Li Hongzhi and Falungong while having completely disregard for his own family members.»

«At present, all those who have practice Falungong for over 5 or 6 years are controlled by Li Hongzhi. Li Hongzhi performs sexual intercourse between human and animal, which is a totally fascist atrocity and is devoid of the least bit of humanity.»

b) From Exhibits P-2(a) and P-2(b) :

«PN-A does not allow «PR-F» practitioners to take medicine or go to hospitals but he himself not only consulted doctors, he also took medicines.»

«Su Yanling, a farmer of Fangouqiao in the suburb of Bengbu, Anhui Province, deeply believed that Falun Gong could treat illness. In April 1999 Sun began spitting blood, but she didn't go to the hospital once. She missed the chance to be treated in a hospital and eventually died.»

«In the afternoon of April 9, 2002, Jia XX, from Hubei working at Guang Dong Hui Zhou Shi De Clothing Factory, believing that she had reached the highest level of PR-A, used a knife to open her lower abdomen to «retrieve the Law Wheel from the lower abdomen». Luckily, a co-worker discovered her and called police to send her to the hospital. She was saved in the hospital.»

«Li Chang said in the court that «PR-F» has all of the basic characteristics of evil cults. PN-A uses the banner of «Truthfulness», «Compassion», and «Forbearance» to arouse some people's interest and the participation of kind people.»

c) *From Exhibits P-3(a) and P-3(b) :*

«In M's Haikou General Assistance Centre responsible person Jian Xiaojun's two letters, M cruelly killing lives, hoarding large amounts of money, hurting women and children, acts which are devoid of humanity in harming people, are obvious. The demonic paws of M which abuse women and hoard large amounts of money have reached to the overseas and have been persecuting cruelly and violently.»

«Please stay far away from the terrorist underground organization F organization, which great Buddha is the Canadian F legally registered person ! Which good person dares to call himself Buddha ? All of these are ghosts and evil stuff that use devils to perform magic, pretending to be gods or ghosts. Someone was even able to tell who is or is not a genuine practitioner like a Buddha ! Is also capable to send out news to prove retributions to the evil !»

19. *Furthermore, the photographs that accompany the text of the material are all either distortions taken out of context or doctored or falsified.*

20. *The statements about Falun Gong and its practice found in Exhibits P-1(a), P-1(b), P-2(a), P-2(b), P-3(a) and P-3(b) are all false or grossly inaccurate distortions made for the purpose of inciting hatred against the practitioners of Falun Gong, causing derision from the Chinese community against Falun Gong in Canada and justifying the persecution of Falun Gong practitioners in the PRC.»*

[5] Ces actes leur auraient causé des dommages :

«THE INJURIES

23. *The offending material constitutes hate literature.*

24. *The offending material is susceptible to comply with the definition of hate crimes as defined in The Criminal Code of Canada.*

25. *The allegations in the offending material violate the Petitioners' civil liberties and human rights under the Quebec Charter of Human Rights and The Civil Code of Quebec.*
26. *The offending material violates the norms and standards and code of ethics for advertising and for journalism and media conduct.*
27. *The offending material is injurious to and damages the reputation and integrity of the Petitioners, as practitioners of Falun Gong, as they are, amongst other things, labelled as promoters and practitioners of a devious, perverted, delinquent and subversive practice according to the offending material.*
28. *As a result of the publication of the offending materials, the Petitioners are being held up to ridicule, prejudice and denigration in their communities.»*

[6] Partant de ces faits, les requérants réclament des dommages-intérêts :

«**DAMAGES**

29. *Each of the Petitioners claims damages to his or her reputation and integrity, damages for mental anguish and suffering and punitive and exemplary damages in the amount for each Petitioner individually of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).»*

[7] Ils réclament aussi une intervention immédiate du Tribunal :

«**ADDITIONAL RELIEF**

30. *On November 12, 2001 and again on November 29, 2001, mise-en-demeures were sent by fax and served by bailiff on the Respondents, LA PRESSE and CHAU. Copies of the said mise-en-demeures are produced herewith as Petitioners' Exhibits P-3 and P-4 respectively.*
31. *The Respondents have made no response whatsoever to the said mise-en-demeures.*

32. *The Respondents continue to publish like and offending material.*
33. *Should the same or similar material continue to be published, the injury to the Petitioners' reputation and integrity will increase, will be reinforced and the effects of continuing publication will reach a wider and broader audience.*
34. *The Petitioners are entitled to the appropriate safeguard orders and order of injunction to prevent the ongoing injury and damages and to the dissemination of hate literature which violates their civil rights and liberties.*
35. *The injuries suffered by the Petitioners cannot be remedied by money alone.*
36. *The Petitioners will suffer serious and irreparable damage if the same or similar offending material continues to be published by the Respondents.*
37. *The balance of inconvenience favours the Petitioners.*
38. *The Respondents will suffer no adverse prejudice should they be required to cease publishing the offending material.»*

[8] Voici enfin le libellé même des conclusions de cette première requête (requête en dommages-intérêts).

«WHEREFORE the Petitioners prays this Honourable Court:

RECEIVE the present motion;

CONDEMN the Respondents jointly and severally to pay to each of the Petitioners the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00), together with interest and interest indemnity in accordance with Article 1619 of the Civil Code of Quebec;

ISSUE the appropriate safeguard orders in favour of the Petitioners;

ORDER the Respondents to cease and desist from publishing, distributing and circulating the offending material or like material, the whole subject to the sanctions provided by law, including Contempt of Court;

ORDER the Respondents to cease and desist from publishing, distributing and circulating the offending material or like material, the whole subject to the sanctions provided by law, including Contempt of Court;

ORDER the Respondents to publish the appropriate retraction and apology in the next edition of the newspaper

DISPENSE the Petitioners from giving any security;

DECLARE that any judgment to intervene in respect of the orders of the Court be served by bailiff on the Respondents at the addresses that appear in the heading of this proceeding, such orders to take effect immediately;

REDUCE the delays for the presentation of this Motion in respect of any safeguard orders or order of injunction;

DECLARE judgment to intervene executory notwithstanding appeal and without security;

THE WHOLE WITH COSTS.»

[9] La requête en dommages-intérêts, signifiée le jeudi 6 décembre, 2001 à 17h45 à Mme Bing He et, à 16h50 à M. Chau et à La Presse chinoise Eastern Inc., est présentable devant la cour supérieure de Montréal, le lundi 10 décembre 2001. Crescent Chau est alors en voyage à Hong Kong, et son épouse parvient à confier un mandat à Me Oulousian qui reçoit les documents le lundi matin.

[10] Me Oulousian comparaît donc pour Crescent Chau et La Presse chinoise Eastern Inc. Bing He n'est pas présente devant le Tribunal ni au moment où Me Bergman, l'avocat des requérants, et Me Oulousian discutent de la cause. Car il y a en effet discussion et signature par les avocats du document manuscrit suivant :

(document aux pages suivantes)

«CONSENT TO SAFEGUARD ORDER»

CANADA SUPERIOR COURT
PROVINCE OF QUEBEC (ADMINISTRATIVE
DISTRICT OF MONTREAL DIVISION)

No. 500-05-069317-012 JIA QING ZHANG
ET ALS

PETITIONERS

CRESCENT CHAU,
LA PRESSE CHINOISE
EASTERN INC
BING HE

RESPONDENTS

CONSENT TO SAFEGUARD ORDER

① THE ~~ABOVE~~ PETITIONERS AND THE
RESPONDENTS CRESCENT CHAU AND LA
PRESSE CHINOISE EASTERN INC AGREE
TO THE FOLLOWING SAFEGUARD ORDER
WITHOUT PREJUDICE TO THEIR RESPECTIVE
RIGHTS AND UNDER RESERVE OF THEIR
RECOURSES AND WITHOUT ADMISSION BY EITHER
PARTY OF THE FACTS ALLEGED IN THE MOTION.

② THE AFORESAID RESPONDENTS
UNDERTAKE NOT TO ACCEPT FOR
PUBLICATION AND NOT TO PUBLISH
ARTICLES OR ADVERTISEMENTS
EMANATING FROM THE CR. RESPONDENT
BING HE WITH RESPECT TO FALUN GONG
IN Q TO

AS ALLEGED IN THE PETITIONERS' MOTION FOR ARTICLES OR ADVERTISEMENTS (AND EXHIBITS) OF A SIMILAR NATURE FROM ANY OTHER PERSON, IT BEING UNDERSTOOD THAT THE ABOVE RESTRICTION DOES NOT LIMIT THE RESPONDENTS AFORESAID FROM ACCEPTING FOR PUBLICATION OR PUBLISHING ARTICLES OR ADVERTISEMENTS OF THE FAUX GOING THAT CONSTITUTE LEGITIMATE AND LAWFUL COMMENT AS IS PERMITTED UNDER CANADIAN LAW AND QUEBEC LAW.

(3) THE PETITIONERS' MOTION SHALL BE POSTPONED TO JANUARY 7, 2002 AT 9:00 A.M. IN ROOM NO 516 FOR THE PURPOSES OF ESTABLISHING AN ECHEANCIER; ~~IT~~ SHOULD COUNSEL FOR THE PARTIES HAVE BEEN UNABLE TO AGREE TO AN ECHEANCIER PRIOR TO THAT DATE.

(4) THE SAFEGUARD ORDERS RENDERED IN THIS CONSENT SHALL BE SERVED BY BAILIFF OF THE RESPONDENTS, IN RESPECT OF THE RESPONDENT CHAN AND LA PRESSE CHINOISE, AT THE ADDRESS OF LA PRESSE CHINOISE. IN THE CASE OF SERVICE OF THE ORDER ON THE RESPONDENT CHAN, VALID SERVICE MAY BE MADE AND TO

ON A REASONABLE PERSON AT THE OFFICES OF LA PRESSE CHINOISE

(5) THE SAFEGUARD ORDERS HEREIN CONSENTED TO SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL 5:00 P.M. JAN. 7, 2002, SUBJECT HOWEVER TO ANY RENEWAL THEREOF EITHER BY CONSENT OR BY ORDER OF THE COURT

(6) COSTS TO FOLLOW SUIT.

MONTREAL, DEC. 10, 2001.

[Signature]
ATTORNEYS FOR PETITIONERS

[Signature]
ATTORNEY FOR RESPONDENTS
CRESCENT CHAN AND
LA PRESSE CHINOISE
EASTERN INC

[11] Les deux avocats se présentent ensuite devant le Tribunal à 12h32 et déposent ce consentement. La juge qui préside la séance du Tribunal déclare alors «qu'elle va ordonner aux parties qui ont signé l'entente de s'y conformer de même qu'à Mme Bing He». Comme on peut le constater au procès-verbal de la séance, Bing He «n'est pas représentée par avocat.» La séance prend fin à 12h42. Et elle reprend à 14h30 alors que Me Bergman dépose un projet de jugement qu'il a préparé. Me Oulousian n'est pas présent à cette seconde séance. La juge signe le jugement dont voici la teneur :

J U D G M E N T

«December 10, 2001

PRESENT: DANIELLE GRENIER

- 1) *The Court having taken cognizance of the Petitioners' Motion, Affidavits and Exhibits and having heard the representations of counsel for Petitioners and counsel for Respondents Crescent Chau and La Presse Chinoise Eastern Inc.;*
- 2) *SEEING the Consent for Safeguard Orders signed by counsel for the Petitioners and counsel for the Respondents Crescent Chau and La Presse Chinoise Eastern Inc. dated December 10, 2001;*
- 3) **THE COURT DOES ORDER AS FOLLOWS:**
- 4) *GIVES ACTE to and ratifies the Consent dated December 10, 2001 filed in the Court Record;*
- 5) *ORDERS the Respondent Bing He not to cause to be published or circulated the material or similar material as alleged in Petitioners' Motion and Exhibits;*
- 6) *ORDERS the service of this judgment in accordance with the said Consent dated December 10, 2001 in respect of the Respondents Crescent Chau and La Presse Chinoise Eastern Inc.;*
- 7) *ORDERS the service of this judgment on the Respondent Bing He at her address in the heading of the Petitioners' Motion;*

- 8) *ORDERS the Respondents to conform and comply with this judgment under the penalties and sanctions provided by law, including contempt of court;*
- 9) *DISPENSES the Petitioners from the giving of security.*
- 10) *COSTS TO FOLLOW SUIT.*

(S) DANIELLE GRENIER J.S.C.»

[12] Comme nous pouvons le constater à l'examen de la requête pour outrage au Tribunal, les ordonnances précitées seront renouvelées.

B) Requête pour outrage au Tribunal

[13] Lisons maintenant cette requête datée du 22 février 2002 :

**«MOTION FOR CONTEMPT OF COURT
AND SPECIAL RULE**

(Articles 49 & following C.P.C.)

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT SITTING IN CHAMBERS IN AND FOR THE DISTRICT OF MONTREAL IN RESPECT OF THE ISSUANCE OF A SPECIAL RULE AND TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT SITTING PRACTICE DIVISION IN AND FOR THE DISTRICT OF MONTREAL IN RESPECT OF A HEARING ON THE CHARGE OF CONTEMPT OF COURT, THE PETITIONERS STATE:

1. *They have commenced proceedings for an injunction to prohibit the Respondents from publishing, distributing and circulating defamatory material concerning the practice and practitioners of Falun Gong, also referred to as Falun Dafa (hereinafter referred to as «FALUN»).*
2. *By way of the same proceeding, the Petitioners seek damages of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) per Petitioner in respect of the defamation.*
3. *On December 10, 2001, the Honourable Madame Justice Danielle Grenier issued a Safeguard Order in favour of the Petitioners, the text of which reads as follows:*

- «1) *The Court having taken cognizance of the Petitioners' Motion, Affidavits and Exhibits and having heard the representations of counsel for Petitioners and counsel for Respondents Crescent Chau and La Presse Chinoise Eastern Inc.;*
- 2) *SEEING the Consent for Safeguard Orders signed by counsel for the Petitioners and counsel for the Respondents Crescent Chau and La Presse Chinoise Eastern Inc. dated December 10, 2001;*
- 3) *THE COURT DOES ORDER AS FOLLOWS:*
- 4) *GIVES ACTE to and ratifies the Consent dated December 10, 2001 filed in the Court Record;*
- 5) *ORDERS the Respondent Bing He not to cause to be published or circulated the material or similar material as alleged in Petitioners' Motion and Exhibits;*
- 6) *ORDERS the service of this judgment in accordance with the said Consent dated December 10, 2001 in respect of the Respondents Crescent Chau and La Presse Chinoise Eastern Inc.;*
- 7) *ORDERS the service of this judgment on the Respondent Bing He at her address in the heading of the Petitioners' Motion;*
- 8) *ORDERS the Respondents to conform and comply with this judgment under the penalties and sanctions provided by law, including contempt of court;*
- 9) *DISPENSES the Petitioners from the giving of security.*
- 10) *COSTS TO FOLLOW SUIT.*
(sgd) DANIELLE GRENIER
J.S.C.»

4. *The Safeguard Order rendered by the Honourable Madame Justice Danielle Grenier refers to and ratifies a Consent signed between counsel for the Petitioners and the Respondents, La Presse Chinoise Eastern Inc. (hereinafter referred to as «LA PRESSE») and Crescent Chau (hereinafter referred to as «CHAU»). The pertinent portions of the Consent in respect of the present contempt proceedings read as follows:*
 - «2) *The aforesaid Respondents undertake not to accept for publication and not to publish articles or advertisements emanating from the Co-Respondent Bing He with respect to Falun Gong as alleged in the Petitioners' Motion and Exhibits or articles or advertisements of a similar nature from any other person, it being understood that the above restriction does not limit the Respondents aforementioned from accepting for publication or publishing articles or advertisements on the Falun Gong that constitute legitimate and lawful comment as is permitted under Canadian Law and Quebec Law.»*
5. *The said Safeguard Order of Justice Grenier was duly served by bailiff in accordance with the requirements stipulated for service as found in the Order upon the Respondents, the whole as can be seen from the process-verbale of the serving bailiff herein produced as Exhibit C-1 (the «C» referring to «contempt»).*
6. *In accordance with the Safeguard Order of Justice Grenier, a further hearing was held on January 7, 2002 in respect of the renewal of the Safeguard Order and any related measures. This hearing was conducted before the Honourable Mr. Justice Reynald Frechette.*
7. *At the January 7, 2002 hearing, all of the Respondents contested the renewal of the Safeguard Order. The Respondent Bing He (hereinafter referred to as «BING») was present personally and represented herself. The Respondents LA PRESSE and CHAU were represented by their legal counsel, Me Aram Oulousian and CHAU was present personally both for himself and on behalf of LA PRESSE.*
8. *Justice Frechette ordered that the Safeguard Order be renewed in favour of the Petitioners.*

9. *The pertinent sections of Justice Frechette's Order read in part as follows:*

«Jugement

Pour les motifs énoncés verbalement et enregistrés par mécanographie, le Tribunal:

Renouvelle l'ordonnance de sauvegarde aux mêmes conditions et conclusions que celle rendue le 10 décembre 2001 par la Juge Danielle Grenier, j.c.s.»

10. *As all of the Respondents were present sat the rendering of Justice Frechette's Order, Justice Frechette dispensed the Petitioners from the necessity of serving the renewal of the Safeguard Order on the Respondents.*
11. *The Safeguard Order of Justice Frechette required a further hearing on February 7, 2002 in respect of the further renewal of the Safeguard Order and any related measures.*
12. *Accordingly, a further hearing was so held on February 7, 2002 before the Honourable Madame Justice Sylvianne Borenstein. Again the Respondents contested the renewal of the Safeguard Order.*
13. *Justice Borenstein ordered that the Safeguard Order be renewed and imposed further restrictions on the Respondents' ability to publish, distribute and circulate material concerning the practice and practitioners of FALUN, the whole as can be seen from the Court Record.*
14. *Justice Borenstein's Order was served on the Respondents, the whole as can be seen from the process-verbale of the serving bailiff herein produced as Exhibit C-2.*
15. *On February 2, 2002, the Respondent LA PRESSE published, distributed and circulated a special twelve page insert in its newspaper concerning the practice and practitioners of FALUN. This twelve page insert is herein produced as Exhibit C-3(a) in respect of the Chinese language original and Exhibit C-3(b) in respect of the official English translation. (This exhibits has also been produced as Exhibit P-6(a) and P-6(b). Exhibits C-3(a) and C-3(b) have already been served by bailiff on the Respondents LA PRESSE and CHAU's legal counsel and on BING personally as part of a compilation of exhibits containing the Chinese language originals and official English translations of a series of articles appearing in LA*

PRESSE on different dates which are defamatory of the practice and practitioners of FALUN.

16. *The said twelve page February 2, 2002 insert manifestly and flagrantly violates the Safeguard Order of Justice Grenier as renewed by Justice Frechette in that it contains in its text unreasonable, false and misleading statements about the practice and practitioners of FALUN, which said statements do not constitute and are not legitimate and lawful comment as is permitted under Canadian and Quebec Law. In fact, the said statements constitute illegitimate and unlawful comment and are not permitted under Canadian and Quebec Law.*
17. *The following is a non-exhaustive list of details and examples of the text of the February 2, 2002 twelve (12) page insert which violates the Orders of the Court. (The following lists by page one (1) through twelve (12) of the said twelve (12) page insert referring to the sentences or paragraphs on each page of the insert as is found in the Official English translation, Exhibit C-3(b):*

In respect of the violations of the Court Order committed by LA PRESSE and CHAU:

PAGE 1:

- (a.) *The paragraphs under the heading «Do Not Ignore the Next Generation» refer to the lies of FALUN;*
- (b.) *The paragraphs under the heading «Announces» refer to «... Falun Gong's financial power is mysterious» and «... To go against Falun Gong...»;*
- (c.) *The second paragraph under the heading «Do Not Ignore the Next Generation» refers to the founder's «theory of self-claimed consummation is damaging the normal life of human beings.»;*
- (d.) *In the same paragraph reference is made to the founder's theory as «... sullenly twisting the ethical concept, cutting off family relations and damaging family structure.»;*
- (e.) *In the same paragraph reference is made to the founder's theory as constituting superstition and as requiring that practitioners refrain from the use of doctors or medicine causing damage to people's lives;*

- (f.) The third paragraph refers to FALUN attending university campuses in Canada as horrible;*
- (g.) The fourth paragraph refers to FALUN as damaging to family structure;*
- (h.) The fifth paragraph refers to the founder's theories as being evil and causing damage to the Chinese Community. The paragraph also incites the Chinese Community to denounce FALUN;*
- (i.) The sixth paragraph refers to FALUN as damaging the Chinese Community;*
- (j.) The seventh paragraph refers to FALUN as damaging the Chinese Community and attempts to rally the Chinese Community against FALUN;*
- (k.) The end of the first page calls on people to sign a petition to denounce FALUN.*

PAGE 2:

- (a.) The entire page consists of an interview with the Respondent BING under the heading «I Have Enough Evidence». All of the responses of the Respondent BIND to the reporter's questions (the article is a question and answer statement) is false;*
- (b.) The article under the heading «My Saddest Misfortune», unsigned and without the name of the author is false;*
- (c.) The article under the heading «A Happy Family Facing Apart», unsigned and without the name of the author is false.*

PAGE 3:

- (a.) The entire article under the heading «Our Words», unsigned and without the name of the author is false;*
- (b.) Commencing with the second paragraph thereof, it is false or distorted or misleading or incomplete to the point of giving the reader a false and grossly inaccurate version of events.*

PAGE 4:

- (a.) *The article under the heading «True Theory», unsigned and without the name of the author is entirely false and also repeats a false description of the events which took place on December 28, 2001 inside The People's Republic of China's embassy in Ottawa;*
- (b.) *The article under the heading «My Re-Thought» is a grossly inaccurate, distorted and incomplete description of FALUN, Chinese culture and religious practices who purpose is to denigrate and cause derision against the practice and practitioners of FALUN;*
- (c.) *The article under the heading «Being Purchased Yet Still Being Sued» labels FALUN as «... an evil cult ...», (the last paragraph of the article under the said heading) and attempts to cause derision against the Petitioners' lawsuit;*
- (d.) *The article under the heading «Strange News to Share» appears to make FALUN practitioners as villains and the Respondents as victims and compares FALUN practitioners to «terrorists» (the last paragraph of the article) and attempts to bring the practitioners of FALUN into disrepute and derision through innuendo and false statements.*

PAGE 5:

- (a.) *The article under the heading «Falun Gong Uses Rare Tricks to Influence the Operations of Our Newspaper, Readers Unhappy», unsigned, contains false, grossly distorted and misleading statements about the events which occurred prior to the commencement of the legal proceedings by the Petitioners, designed to cause derision against the practice of FALUN, the Petitioners' proceedings and to incite the Chinese Canadian Community against the Petitioners.*

PAGE 6:

- (a.) *The article under the heading «Statement 1», unsigned, falsely accuses Yumin Yang, one of the Petitioners, as being a liar;*

- (b.) *The article under the heading «Statement 2» falsely describes the alleged photo-taking of the Respondent BING and characterizes the FALUN photographer as committing «white terror», an incendiary statement;*
- (c.) *The articles falsely accuse persons of picketing the LA PRESSE;*
- (d.) *The articles falsely accuse a person of hitting the Respondent BING with a camera;*
- (e.) *The articles falsely accuse persons of preventing others from attending a meeting at LA PRESSE.*

PAGE 7:

- (a.) *The article under the heading «Is Buying Up to Protect the Speech Freedom? – Some Thoughts After Reading the Article 'Also Talking About the Event of Buying Up HQSB,» contains false statements about the nature and practice of FALUN;*
- (b.) *In Paragraph 5 of the article, the remaining text gives distorted information in order to cause derision against the practitioners of FALUN;*
- (c.) *The article under the heading «Boundless Beneficence» gives a distorted version of events to cause derision against the practitioners of FALUN;*
- (d.) *The article under the heading «Positioning Oneself and Trust» gives a distorted version of events to cause derision against the practitioners of FALUN;*
- (e.) *The article under the heading «The Action Taken by Falun Gong Followers is Wrong» gives a distorted version of events to cause derision against the practitioners of FALUN;*
- (f.) *The article under the heading «Hateful, Unexpectedly Hateful» gives a distorted version of events to cause derision against the practitioners of FALUN.*

PAGE 8:

- (a.) *The article under the heading «Statement on Deeply Exposing and Criticizing PR-F» gives a distorted version of events to cause derision against the practitioners of FALUN;*
- (b.) *The article under the heading «Dual Standard? Worshipping Westerns and Bullying Chinese?» contains provocative statements, designed to cause derision against the practice and practitioners of FALUN;*
- (c.) *The article under the heading «Watch Out» gives a distorted version of events to cause derision against the practitioners of FALUN.*

PAGES 9, 10 AND 11:

- (a.) *Pages 9, 10 and 11 of the twelve (12) page insert consist of a series of articles which give a grossly distorted comparison of traditional oriental beliefs with the practice of FALUN, contains false statements about the practice of FALUN and denigrates the practice of FALUN.*

PAGE 12:

- (a.) *Page 12 of the twelve (12) page insert consists of an article which gives a grossly distorted comparison of traditional oriental beliefs with the practice of FALUN, contains false statements about the practice of FALUN and denigrates the practice of FALUN.*

In respect of the violations to the Court Order committed by BING:

PAGE 2:

- (a.) *The interview given by the Respondent BING under the heading «I have Enough Evidence» constitutes entirely false information.*
18. *On Page 6 of the January 5, 2002 issue of LA PRESSE, there is an article entitled «Spokesperson from Chinese Embassy in Canada Delivers Speech on the Event of the Break-In to the Embassy» in which it copied the defamation release from the Chinese embassy which is a distorted report of the beating of a student in the Embassy.*

19. *On page 4 of the February 9, 2002 issue of LA PRESSE, the Respondents regard the Court Order of February 7, 2002 as «Free Speech is Again Defeated and Our Newspaper is Deeply Disappointed!». The article claims that the principle of LA PRESSE is to maintain «freedom of expression», but in fact LA PRESSE has been equating «freedom of expression» to «freedom of defamation».*
20. *Apart from any analysis of the February 2, 2002 twelve (12) page insert on a question-by-question or paragraph-by-paragraph or article-by-article basis, a plain reading of the entire twelve (12) page insert as a whole demonstrates that the Respondents have violated the Court Order.*
21. *The February 2, 2002 twelve (12) page insert constitutes defamation against the practice of FALUN, including the Petitioners.*
22. *The February 2, 2002 twelve (12) page insert violates the integrity of the practice and practitioners of FALUN, including the Petitioners.*
23. *The February 2, 2002 twelve (12) page insert contains statements and, as read as a whole, violates the rights and freedoms of the practitioners of FALUN, including the Petitioners, as is provided in the Quebec Charter of Human Rights and Freedoms.*
24. *The February 2, 2002 twelve (12) page insert both in its parts and as a whole constitutes hate literature in conformity with the definition of hate crimes found in the Criminal Code of Canada.*
25. *The February 2, 2002 twelve (12) page insert violates the norms and ethical standards of journalism.*
26. *The material found in the February 2, 2002 twelve (12) page insert was designed to provoke hatred, derision and the persecution of the practitioners of FALUN, including the Petitioners.*
27. *The Respondents have violated the Court Order knowingly and with mens rea.*

28. *The Respondents are guilty of Contempt of Court.*
29. *Given the nature of the contempt, the impact of the February 2, 2002 twelve (12) page insert, the harm it is causing to the Chinese Community in Canada, the materials' circulation abroad, particularly in The Peoples Republic of China where it is being used to, in part, justify the ruthless suppression of FALUN practitioners, an exemplary sentence for Contempt of Court should be imposed on the Respondents.*
30. *Given the flagrant violation of the Court Orders by the Respondents and the vexatious and abusive nature of the materials published, the Petitioners are justified in seeking an order that the Respondents jointly and severally pay both court costs and the extra-judicial fees of the Petitioners' legal counsel in respect of the contempt proceedings.*

WHEREFORE Petitioners pray this Honourable Court:

RECEIVE the present Motion;

ISSUE a Special Rule citing the Respondents for Contempt of Court and ordering them to appear to answer the charges found in this Motion for Contempt of Court on such date and time as this Honourable Court may fix;

AUTHORIZE the service of the Special Rule on the Respondent Bing He wherever she may be found, upon the Respondent La Presse Chinoise Eastern Inc. at the address of its offices at 1123 Clark Street, 2nd Floor, Montreal, Quebec, by leaving a true copy of the Special Rule with a person in charge of the said offices and upon Crescent Chau either personally wherever he may be found or by leaving a true copy of the Special Rule at the aforementioned offices of La Presse Chinoise Eastern Inc. giving same to a person in charge thereof;

DECLARE and FIND the Respondents guilty of Contempt of Court for violating the Safeguard Orders ordered by the Honourable Madame Justice Grenier on December 10, 2001 and renewed by the Honourable Mr. Justice Frechette on January 7, 2002;

IMPOSE the appropriate and exemplary sentence;

CONDEMN the Respondents jointly and severally to pay all costs, court costs and the extra-judicial fees of the Petitioners' legal counsel in respect of the Contempt proceedings;

THE WHOLE WITH COSTS.

MONTREAL, February 22, 2002

*(S) BERGMAN & ASSOCIÉS
Attorneys for Petitioners»*

[14] Selon les requérants, les intimés, en particulier le 2 février 2002, auraient contrevenu aux ordonnances du 10 décembre 2001, renouvelées par la suite.

[15] Ces ordonnances sont-elles claires, précises et exécutoires ? Peuvent-elles constituer «l'acte d'accusation» en vertu duquel une personne peut être reconnue coupable d'outrage au Tribunal et être passible d'une amende n'excédant pas 5 000,00 \$ ou d'un emprisonnement pour une période d'au plus un an ?

[16] Voilà l'essence de la discussion qui va suivre.

II – Discussion

[17] L'accusation d'outrage au Tribunal en est une de droit strict, et l'ordonnance que l'on prétend avoir été violée doit être claire, précise et surtout susceptible d'être exécutée par la personne à laquelle elle s'adresse.

[18] En l'espèce, les requérants soutiennent que les ordonnances du 10 décembre 2001, en particulier celle apparaissant au paragraphe 2 du «Consent to Safeguard Order» rencontrent ces exigences.

[19] Ce texte est rédigé de bien curieuse façon. Il débute par une interdiction totale de publier, voire d'accepter même des textes pour publication. Quelle sorte de textes ? Des «articles or advertisements». De qui ? De Bing He. Et traitant de quel sujet ? «With respect to Falun Gong». On ne saurait museler de façon plus complète la liberté d'expression d'un individu et la liberté de presse. Ne rien dire, ne rien publier concernant un mouvement qui agit publiquement et dont on ne connaît pas l'existence légale.

[20] Et quant aux «articles or advertisements» ... with respect to Falun Gong, de quoi s'agit-il au juste ? De ce qui concerne Falun Gong «as alleged in the Petitioner's Motion and Exhibits». Il s'agit ici non pas de la requête pour outrage au Tribunal mais de la requête en dommages-intérêts signifiée le 6 décembre 2001. Comme on a pu le constater à la lecture de cette requête, celle-ci réfère à plusieurs documents qu'il faut évidemment examiner attentivement pour comprendre la portée exacte de cette partie du paragraphe 2 qui est loin d'être clair et précis, du moins quant à son objet exact.

[21] Mais il y a davantage car la même phrase se poursuit en visant toute personne autre que Bing He qui pourrait désirer publier ou publier des «articles or advertisements of a similar nature». Qu'est-ce que cela signifie ? Impossible de le savoir exactement, la similarité étant une notion qui, dans son sens usuel, indique un rapport général (ici dans la nature des «articles or advertisements» de la personne encore inconnue) avec ceux déjà publiés et qui sont mentionnés dans la requête en dommages-intérêts. La similarité permet en fait de rapprocher des choses sur des points essentiels et de les considérer comme deux réalisations concrètes d'un même type.

[22] En l'espèce et avec respect pour l'opinion contraire, le Tribunal ne peut voir comment on pourrait considérer une telle obligation comme un énoncé clair, précis et susceptible de constituer le fondement d'une accusation quasi-pénale comme celle d'outrage au Tribunal. Le Tribunal ne voit pas comment on peut bâillonner ainsi un éditeur en le forçant à scruter des documents et à en faire une analyse sémantique poussée pour voir s'ils se retrouvent dans la catégorie nébuleuse de la similarité.

[23] C'est vague, imprécis et impossible à exécuter en pratique.

[24] Une fois le bâillon bien en place, on semble ensuite vouloir en soulager les intimés en le soulevant légèrement de la façon suivante : *«it being understood that the above restriction does not limit the Respondents aforementioned»* :

«(2) *The aforesaid Respondents undertake not to accept for publication and not to publish articles or advertisements emanating from the Co-Respondent Bing He with respect to Falun Gong as alleged in the Petitioners' Motion and Exhibits or articles or advertisements of a similar nature from any other person, it being understood that the above restriction does not limit the Respondents aforementioned from accepting for publication or publishing articles or advertisements on the Falun Gong that constitute legitimate and lawful comment as is permitted under Canadian Law and Quebec Law.»*

[25] Passons sur l'euphémisme «restriction» qui réfère en fait à une interdiction et relisons l'ensemble du paragraphe 2. On constate alors aisément que les intimés peuvent publier des «articles or advertisements on Falun Gong». Ils ne le pouvaient pas cinq lignes plus haut, ils le peuvent maintenant. Mais, attention ! En autant qu'il s'agit d'un *«legitimate and lawful comment as is permitted under Canadian Law and Quebec Law»*.

[26] On ne saurait être plus vague, plus imprécis. Les intimés sont à toutes fins utiles forcés, s'ils veulent s'exprimer sur Falun Gong d'avoir un œil sur leurs propos et un autre sur la législation et la réglementation en vigueur au Canada et au Québec. En somme ils ne peuvent exercer leurs libertés fondamentales qu'avec leurs codes et leurs avocats à leurs côtés.

[27] Impossible d'exécuter une telle ordonnance, c'est l'évidence même. On s'en rend compte facilement en examinant les allégations apparaissant aux paragraphes 15 et suivants de la requête pour outrage au Tribunal. Et encore ne s'agit-il là, selon les requérants, que «*a non-exhaustive list of details and examples of the text of the February 2, 2002 twelve (12) pages insert which violates the Orders of the Court*». Même ceux qui ont exigé de si importantes entraves aux droits et libertés d'autrui ne sont pas en mesure d'énumérer clairement quelles infractions ont commises les intimés.

[28] Ils prétendent que tout cela est suffisamment clair et précis et qu'ils convaincront le Tribunal du bien-fondé de leurs accusations une fois la preuve terminée.

[29] Or, les requérants mêmes prévoient devoir faire entendre quinze (15) témoins ordinaires et un expert pour établir le bien-fondé de leurs accusations. Crescent Chau et La Presse chinoise Eastern Inc. en convoqueraient onze (11) ordinaires et un (1) expert. Quant à Bing He elle ferait entendre cinq (5) témoins.

[30] Voilà un «procès dans le procès» qui s'annonce long et coûteux avant que les parties ne décident de procéder au fond sur leur requête en dommages-intérêts et qu'un Tribunal puisse enfin se prononcer sur le bien-fondé des prétentions des parties. Pourtant, la requête pour dommages-intérêts est une procédure simple, efficace et qui peut et doit être entendue rapidement. Il n'en tient qu'aux parties de faire les efforts nécessaires pour atteindre cet objectif.

[31] Cela dit, le Tribunal se voit obligé de constater que la requête pour outrage au Tribunal se fonde sur un consentement qui n'est ni clair, ni précis et que les ordonnances qui l'ont suivi ne sont pas exécutoires. Elles constituent des actes incitatifs plutôt que des énoncés performatifs et donnent des indications de la voie générale à suivre d'ici l'examen au fond du véritable litige qui divise les parties. Elles ne sauraient donc constituer le fondement d'accusations graves pouvant entraîner des condamnations à l'amende ou à une sentence d'emprisonnement.

[32] Bref, le «Consent», devenu ordonnance, est à ce point vague et imprécis qu'il exige à tout le moins une interprétation difficile tant pour son objet que pour son application. Et il serait injuste que cette interprétation se fasse au moment du recours en outrage au Tribunal. L'ordre donné doit être clair et précis et toute ambiguïté y relative doit être dissipée au moment de la demande d'ordonnance, non ultérieurement lors de la présentation d'une requête pour outrage.¹ Les avocats des parties auraient pu régler ce problème lorsqu'ils ont rédigé le «Consent», mais ils ne l'ont pas fait.

¹ *Sporting Club et autres c. 2320-4365 Québec Inc.* (1989), 35 Q.A.C. 7; 16.

[33] Il ne sera pas nécessaire de commenter ici les autorités citées par les avocats et examinées, avec intérêt, par le Tribunal.

[34] **POUR CES MOTIFS, LE TRIBUNAL :**

[35] **REJETTE** avec dépens la requête intitulée «Motion for contempt of Court and special rule».

PIERRE VIAU J.C.S.

Me Michael N. Bergman
Bergman & Associés
Avocats des requérants

Me Aram Oulousian
Orenstein & Associés
Avocats des intimés Crescent Chau, et
La Presse Chinoise Eastern Inc.

Mme Bing He
Personnellement

Dates d'audience : Les 15 et 17 avril 2002