

Brampton Small Claims Court

Small Claims Court
7755 Hurontario Street
Brampton, Ontario
L6W 4T1

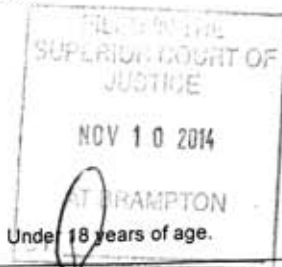
Address

905-456-4700

Phone number

SC-14-003873-00

Claim No.



Plaintiff No. 1

Additional plaintiff(s) listed on attached Form 1A.

Under 18 years of age.

Last name, or name of company Goldi Productions Ltd.		
First name	Second name	Also known as
Address (street number, apt., unit) 1409 Malibou Terrace		
City/Town Mississauga	Province Ontario	Phone no.
Postal code L5J 4B9		Fax no.
Representative Joan Goldi		LSUC #
Address (street number, apt., unit) 1409 Malibou Terrace		
City/Town Mississauga	Province Ontario	Phone no.
Postal code L5J 4B9		Fax no.

Defendant No. 1

Additional defendant(s) listed on attached Form 1A.

Under 18 years of age.

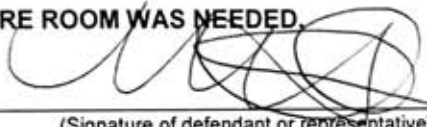
Last name, or name of company Postmedia Network Inc., incorrectly described as Postmedia Network		
First name	Second name	Also known as
Address (street number, apt., unit) 365 Bloor Street East		
City/Town Toronto	Province Ontario	Phone no.
Postal code M4W 3L4		Fax no.
Representative Douglas C. Richardson		LSUC # 37983R
Address (street number, apt., unit) 20 Richmond Street East, Suite 600		
City/Town Toronto	Province Ontario	Phone no. 416-216-0256
Postal code M5C 2R9		Fax no. 416-214-0606

Les formulaires des tribunaux sont affichées en anglais et en français sur le site www.ontariocourtforms.on.ca. Visitez ce site pour des renseignements sur des formats accessibles.

Why I/we disagree
with all or part of
the claim:

ADDITIONAL PAGES ARE ATTACHED BECAUSE MORE ROOM WAS NEEDED.

Prepared on: November 5, 20 14


(Signature of defendant or representative)

NOTE:

Within seven (7) calendar days of changing your address for service, notify the court and all other parties in writing.

**CAUTION TO
PLAINTIFF(S):**

If this Defence contains a proposal of terms of payment, you are deemed to have accepted the terms **unless** you file with the clerk and serve on the defendant(s) a Request to Clerk (Form 9B) for a terms of payment hearing **WITHIN TWENTY (20) CALENDAR DAYS** of service of this Defence [R. 9.03(3)].

Schedule "A"

DEFENCE OF THE DEFENDANT POSTMEDIA NETWORK

Except as otherwise provided in this Defence, Postmedia Network Inc. (*herein* "Postmedia" or the "Defendant") admits the following allegations contained in certain paragraphs of the Plaintiff's Claim:

- (a) regarding paragraph 10, Postmedia admits that it received a "Cease and Desist and Intent to Sue" letter from the Plaintiffs. Postmedia pleads that it carefully reviewed this letter and determined not to respond on the basis that the Plaintiffs' claim was entirely without merit.
- (b) regarding paragraphs 46 and 73, Postmedia admits that certain extracts of the article written by journalist, Tristin Hopper, (*herein* "Hopper") are properly cited, but plead that the entire article must be referred to for full meaning and effect.
- (c) regarding paragraphs 52 and 69, Postmedia admits that certain extracts of the decision rendered on December 17, 2013 by the Ontario Divisional Court are properly cited, but plead that the entire decision by the Ontario Division Court must be referred to for full meaning and effect.

2. Except as otherwise provided in this Defence, Postmedia denies the allegations contained in paragraphs 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 14, 16, 17, 18, 20, 21, 22, 31, 33, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53, 54, 55, 56, 57, 58, 59, 61, 62, 63, 64, 65, 66, 68, 70, 71, 72, 74, 75, 76, 88, 89, 90, 91, 92, 95, 97 and 98 of the Plaintiff's Claim.

3. Except as otherwise provided in this Defence, Postmedia has no knowledge in respect of the allegations contained in paragraphs 3, 12, 13, 15, 19, 23, 24, 25, 26, 27, 28, 29, 30, 32, 34, 35, 36, 37, 38, 60, 67, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 93, 94, and 96 of the Plaintiff's Claim.

ne Article Complained Of

4. The Defendant admits that on or about February 3, 2014, Postmedia published an article written by Hopper, entitled “Barenaked Ladies’ keyboardist suing in what may be the biggest art forgery case in Canadian history” (*herein* the “**Article Complained Of**”) which appeared in the print and online editions of the *National Post* newspaper.

5. The Defendant further admits that the Article Complained Of included but was not limited to the words as set out at paragraph 46 and 73 of the Plaintiff’s Claim. In this regard, Postmedia pleads that the entire Article Complained Of must be referred to for full meaning and effect.

6. The Defendant denies the allegations contained in the Plaintiffs’ Claim as to the meaning of the Article Complained Of. Instead, Postmedia states that the words contained in the Article Complained Of when taken in their full context were understood to mean that a dispute existed concerning the alleged circulation of fake Norval Morrisseau paintings.

Background

7. The *National Post* newspaper is a daily newspaper distributed throughout Canada and published by Postmedia.

8. Hopper was, at all material times a journalist for the *National Post* newspaper and the author of the Article Complained Of.

9. Postmedia pleads that it has no relationship with the Plaintiffs, Goldi Productions Ltd., Joan Goldi, and John Goldi (*herein* collectively referred to as the “**Goldis**” or the “**Plaintiffs**”) whatsoever, and in particular, prior to the writing of the Article Complained Of by Hopper and published by Postmedia.

10. Postmedia pleads that, prior to writing the Article Complained Of, Hopper completed a thorough investigation of the story to be published, obtained statements from both sides to the issue in dispute, and took the appropriate steps to ensure the accuracy of those statements, including the following:

- (a) Hopper contacted and interviewed Jonathan Sommer (*herein* “**Sommer**”), the lawyer acting for the Plaintiff, Kevin Hearn in the Ontario Superior Court of Justice in Toronto as Court File No. CV-12-455650 (*herein* “**Hearn Action**”); and the Plaintiff, John McDermott in the Ontario Superior Court of Justice in Toronto as Court File No. CV-13-490894 (*herein* “**McDermott Action**”), two separate actions for damages against Joseph Bertram McLeod and Maslak-McLeod Gallery Inc. (*herein* collectively the “**McLeod Defendants**”);
- (b) Hopper contacted and interviewed Brian Shiller (*herein* “**Shiller**”), the lawyer defending the McLeod Defendants in the Hearn Action and McDermott Action;
- (c) Hopper obtained and reviewed court documents in the Hearn Action and McDermott Action and other documents upon which the article was based;
- (d) Hopper researched Ritchie Sinclair, and considered his blog containing relevant information to the issues in dispute; and
- (e) Hopper also had access to reports from other Postmedia journalists, specifically of Jacquie Miller and Paul Gessell in which to verify the accuracy of the statements as reported in the Article Complained Of.

11. Postmedia pleads that no cause of action lies with the Plaintiffs so as to permit them to claim against Postmedia for the writing or publication of the Article Complained Of.

Negligence Defences

12. Postmedia denies that it owed any duty of care to the Plaintiffs, of any nature whatsoever. Postmedia denies, further, that it acted in any manner that would cause it to owe any duty to the Plaintiffs, whether in fact or at law.

13. Postmedia denies that it was in any proximity of relationship with the Plaintiffs that could give rise to a duty at law.

14. In the alternative, if it is found that Postmedia owed any duty to the Plaintiffs, which is denied, Postmedia specifically denies that it has breached any duty owed to the Plaintiffs, of any nature whatsoever, and puts the Plaintiffs to the strict proof thereof.

15. Postmedia denies that there was any reliance by the Plaintiffs on Postmedia, at all.

16. Alternatively, if the Plaintiffs relied upon Postmedia in any manner, which is not admitted but rather denied, Postmedia pleads that any such reliance was unreasonable and unforeseeable by Postmedia.

Injurious Falsehood Defences

17. Alternatively, if the Article Complained Of is an injurious falsehood, which is not admitted but expressly denied, Postmedia pleads that the Article Complained Of contained statements relating to the quality of paintings by Norval Morrisseau, which are true.

18. Further and in the alternative, if the Article Complained Of is an injurious falsehood, which is not admitted but expressly denied, Postmedia pleads that the Article Complained Of was not in any way a disparagement of the quality of paintings by Norval Morrisseau.

19. Further and in the alternative, if the Article Complained Of is an injurious falsehood, which is not admitted but expressly denied, Postmedia pleads that the Article Complained Of did not in any way reflect adversely on the Plaintiffs' business or property, or title to property so as to induce any person not to deal with the Plaintiffs in relation to paintings by Norval Morrisseau.

20. Further and in the alternative, if the Article Complained Of is an injurious falsehood, which is not admitted but expressly denied, Postmedia pleads the Article Complained Of was published without malice and with just cause or excuse.

21. Further and in the alternative, if the Article Complained Of is an injurious falsehood, which is not admitted but expressly denied, Postmedia pleads that the Article Complained Of was published without malice on an occasion of privilege in that:

R.S.O., 1990, c.L-12, and plead that the Plaintiffs are therefore barred from commencing or proceeding with the within action or any action in relation to the publication of the Article Complained Of.

27. Further, Postmedia pleads that the Plaintiffs are barred from proceeding with the within action as it was commenced after the expiry of the limitation period stipulated in s. 6 of the *Libel and Slander Act, Supra*.

28. Postmedia pleads that the Article Complained Of did not identify or otherwise refer to the Plaintiffs, Goldi Productions Ltd., Joan Goldi, or John Goldi.

29. Postmedia denies that the Article Complained Of when take in its full context and in its plain and ordinary meaning or by implication was understood to have the meanings alleged by the Goldis in the Plaintiff's Claim or any defamatory meaning of the paintings by Norval Morrisseau.

30. In the alternative, if the Article Complained Of is defamatory, which is not admitted but expressly denied, Postmedia pleads that the Article Complained Of was a fair and accurate report of two court proceedings and was published on an occasion of privilege pursuant to s.4 of the *Libel and Slander Act, Supra* or at common law.

31. Further and in the alternative, if the Article Complained Of is defamatory, which is not admitted but expressly denied, Postmedia pleads that the Article Complained Of was published without malice on an occasion of privilege in that:

- (a) the *National Post* is an important source of information to its readers;
- (b) the alleged circulation of fake paintings by Norval Morrisseau, one of Canada's most prominent Aboriginal artists is an issue of significant public interest to readers of the *National Post* published by Postmedia;
- (c) Postmedia had a social and moral duty to publish the information contained in the Article Complained Of so Canadians would be better informed about the issues set out in subparagraph (b) above and those receiving the information contained in

the article had a corresponding interest in receiving the information so they would be better informed of such matters.

32. Further and in the alternative, if the Article Complained Of is defamatory, which is not admitted but expressly denied, Postmedia plead and rely on the defence of responsible communication on matters of public interest. Without limiting the foregoing, Postmedia relies on the facts set out in this Defence including the following facts in support of the defence of responsible communication:

- (a) The Article Complained Of concerned matters of public interest. In particular, the article concerned the alleged circulation of fake Norval Morrisseau paintings, one of Canada's most prominent Aboriginal artists, an issue currently before the Court in the Hearn Action and McDermott Action;
- (b) Hopper, the author of the Article Complained Of, obtained and reviewed court documents in the Hearn Action and McDermott Action and other documents upon which the article was based;
- (c) Hopper, the author of the Article Complained Of, contacted the lawyers on both sides to verify the issues in dispute in the Hearn Action and McDermott Action and included the position of the opposing parties in the Article Complained Of;
- (d) The inclusion of the words complained of by the Plaintiffs in the Article Complained Of, were an essential element of the Article Complained Of in that such information was necessary to convey the substance of the dispute concerning the alleged circulation of fake Norval Morrisseau paintings;
- (e) The Article Complained Of was published contemporaneously with an on-going legal process; and
- (f) The Article Complained Of reported on the substance of the court proceedings and other allegations in a neutral manner and did not present the allegations contained therein as a statement of true fact.

In the alternative, if the Article Complained Of is defamatory of the Plaintiffs, which is not admitted but is expressly denied, Postmedia pleads that the words contained in the Article Complained Of when taken in their full context were understood to mean that a dispute existed concerning the alleged circulation of fake Norval Morrisseau paintings.

34. Further and in the alternative, if the Article Complained Of is defamatory of the Plaintiffs, which is not admitted but is expressly denied, Postmedia pleads that the Article Complained Of was true or substantially true.

35. Further and in the alternative, if the Article Complained Of is defamatory of the Plaintiffs, which is not admitted but is expressly denied, Postmedia pleads that to the extent that the words contained in the Article Complained Of are statements of fact they are true and to the extent that they consist of expressions of opinion they are fair comment made in good faith and without malice on matters of public interest.

Liability Defences

36. Postmedia denies that it is, in any way, liable to the Plaintiffs, at all, and puts them to the strict proof thereof.

37. Alternatively, Postmedia denies any liability to the Plaintiffs in the manner alleged in the Plaintiff's Claim, and puts them to the strict proof thereof.

Causation Defences

38. Postmedia denies that it was in any way causative of the damages alleged to be sustained by the Plaintiffs and puts them to the strict proof thereof.

39. Postmedia pleads that if the Plaintiffs has sustained any damages or losses, which is not admitted, but rather specifically denied, then any such damages or losses were not caused by Postmedia, but rather by the Plaintiffs' own act, omission, fault or neglect, which include but are not limited to the following:

- (a) the conduct and statements of the Plaintiffs in relation to the quality of paintings by Norval Morrisseau; and

- (b) by inappropriately commencing multiple court actions against various parties which are in fact duplicate claims, constituting a multiplicity of proceedings, which is an abuse of the court's process.

40. In the further alternative, if the Plaintiffs have sustained damages or losses, which is not admitted but rather specifically denied, Postmedia pleads that such damage was not a result of the conduct of Hopper or Postmedia but rather the result of:

- (a) the various acts and statements of others including but not limited to Hearn, McDermott, Sommer, the McLeod Defendants, Shiller and Ritchie Sinclair in relation to the quality of paintings by Norval Morrisseau;
- (b) publications in other media concerning the quality of paintings by Norval Morrisseau but not by Postmedia; and
- (c) such other factors not known to Postmedia at this time, but particulars of which will be provided prior to trial.

Damages Defences

41. Postmedia denies that the Plaintiffs have sustained any damages, whatsoever, and puts them to the strict proof thereof.

42. Alternatively, Postmedia denies that the Plaintiffs have sustained damages alleged in the Plaintiff's Claim and puts them to the strict proof thereof.

43. In the further alternative, if the Plaintiffs have sustained damages, which is not admitted but rather specifically denied, Postmedia pleads that the damages alleged are excessive, exaggerated, remote, unmitigated, unrecognized at law and unconnected to any act or omission on the part of Postmedia. Postmedia puts the Plaintiffs to the strict proof of their damages and losses, including proof of efforts of reasonable mitigation.

44. In the further alternative, if the Plaintiffs have sustained damages, which is not admitted but rather specifically denied, Postmedia pleads that such damages or losses have been mitigated

by the Plaintiffs through statements made to the media, in court proceedings, and other similar statements made to their community.

Statutory Defences

45. Postmedia pleads and relies upon the *Negligence Act*, R.S.O. 1990, c. N.1., as amended and the *Libel and Slander Act*, R.S.O., 1990, c.L-12.

46. Postmedia pleads that the Plaintiff's Claim ought to be dismissed against it and with costs including goods and services tax thereon on accordance with the *Excise Tax Act*, R.S.C. 1985, c.E-15 as amended.

November 5, 2014

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