

Court File No. SC-09-000872782-0000

**SUPERIOR COURT OF JUSTICE  
SMALL CLAIMS COURT**

B E T W E E N:

**OTAVNIK, JOSEPH**

Plaintiff

v.

**SINCLAIR, RITCHIE and  
KINSMAN ROBINSON GALLERIES**

Defendants

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**P R O C E E D I N G S**

BEFORE THE HONOURABLE JUSTICE D. GODFREY  
on January 11, 2011, at TORONTO, Ontario

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APPEARANCES:

J. Otavnik

On His Own Behalf

R. Sinclair

On Behalf of the Defendants

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SUPERIOR COURT OF JUSTICE  
SMALL CLAIMS COURT

T A B L E O F C O N T E N T S

<u>WITNESSES:</u>	<u>Exam. in-Ch.</u>	<u>Cr- Exam.</u>	<u>Re- Exam.</u>
Kim, S.N.	3	16	17
White, J.H.	18	37	-
Otavnik, J.	49	52	-

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Reasons for Judgment	142
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E X H I B I T S

<u>EXHIBIT NUMBER</u>	<u>ENTERED ON PAGE</u>
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January 11, 2011

**REPORTER'S NOTE:** Due to technical difficulties, tape 10/11 is defective.

MR. SINCLAIR: No, I have some issues that would need to be brought up. There's a lot happened since we were last here on November 16<sup>th</sup>, Your Honour.

My witnesses on November 16<sup>th</sup> that were here were particularly Mr. Don Robinson and Mr. Garth Cole (ph). Mr. Cole did testify; Mr. Robinson didn't have an opportunity before you ended the day. This morning I planned to bring three witnesses in my, to help me with my prosecution of my case. Mr. Robinson first, Mr. Muskovich (ph), my lawyer, and Mr. Richard Baker.

As you know, Mr. Robinson and Mr. Baker both testified on March 18<sup>th</sup>. Mr. Robinson and Mr. Baker were both even, were both subpoenaed on March 18<sup>th</sup> by Mr. Otavnik, even though....

MR. OTAVNIK: That's not in evidence, I....

THE COURT: All right, wait a second. Let him finish with his statement.

MR. OTAVNIK: Go ahead then.

MR. SINCLAIR: So what I'd like to suggest is the witnesses that I wanted to bring in here this morning didn't come in because of the, first off, they've been harassed unduly by Mr. Otavnik.

THE COURT: All right, well they can tell me that if that's the case.

MR. SINCLAIR: They could tell you that, sir, but I, I requested...

MR. OTAVNIK: ...Your Honour.

THE COURT: No, no.

MR. SINCLAIR: ...the suite of documents and emails that was sent to my witnesses by Mr. Otavnik yesterday. This is one amongst many, there's several emails here. There's documents, there's....

THE COURT: Well, again, this evidence is going to have to be - just one moment.

Why can't we deal with the witnesses that are here? The witnesses that aren't here, we can talk about what you want to do about the fact that they're not here without referencing why they're not here, first of all.

MR. OTAVNIK: Your Honour, we have two witnesses here....

THE COURT: No, no. Mr. Otavnik..

MR. OTAVNIK: I'm sorry, Your Honour.

THE COURT: ...I haven't asked to hear from you.

MR. SINCLAIR: Well, okay. Well, why they're not here, I've just, I've explained.

THE COURT: No, no. Let's deal with that part later. Let's get the witnesses that are here that are going to give evidence give their evidence so they can be done with and we'll deal with parties that aren't here and the significance of that.

MR. SINCLAIR: I understand, sir.

MR. OTAVNIK: Thank you, Your Honour.

MR. SINCLAIR: Okay, then in the meantime, I don't think we should have any witnesses leave that are here, that would be Mr. White, Mr. Kim. These people, Mr. and Mrs. Goldie (ph) here, I don't know what's going on with....

THE COURT: Well, for now witnesses, they can be in the courtroom.

MR. OTAVNIK: No, they can be here.

MR. SINCLAIR: Well, okay, so we have two witnesses, from what I can tell that are here that would....

MR. OTAVNIK: Well....

MR. SINCLAIR: ...and maybe Mr. White, if you could leave the room for a few minutes while Mr. Kim....

THE COURT: Mr. Kim, do you want to come into the witness box.

MR. OTAVNIK: You have to leave, Jim. Mr. Kim, he wants you to testify.

**SUN NAN KIM - AFFIRMED**

THE COURT: All right, go ahead, Mr. Sinclair.

**EXAMINATION IN-CHIEF BY MR. SINCLAIR:**

Q. Thank you for coming today, Mr. Kim, I appreciate it.

You're the owner of the Art Cube Gallery;

correct?

A. Yes.

Q. How do you know Mr. Otavnik?

5 A. I met him about three years ago at the  
auction house.

Q. Three years ago?

A. Yeah.

Q. At, at an auction house?

A. About three, yes, three years ago, yeah.

10 Q. The Randy Potter Auction House?

A. Yeah, in - yeah, at the Port Hope.

Q. Would it be fair to say that you and he are  
in the same business?

A. No.

15 Q. Could you tell me what your business is,  
sir?

A. My business?

Q. Yes.

20 A. My business was I am selling on the  
consignment for arts and antiques.

Q. For arts and antiques?

A. Yes.

25 Q. So you met Mister - do you do business with  
Mr. Otavnik?

A. No.

Q. How do you know Mr. Otavnik?

MR. OTAVNIK: He's answered it, asked and  
answered.

30 THE COURT: Let's not object or we'll never get  
through today.

A. I, I went with Mr. Jim White, Jim White

introduced Mr. Otavnik.

MR. SINCLAIR: Q. Okay. And is Mr. Jim White in the same business as yourself?

5 A. Not the same business - fine art and Jim White, I think he is some - and print and some kind, you know, the Canadian art and artist, the paintings, he's selling to close (ph) Canada, the limits I know.

10 Q. And you both, you both deal with purported Morrisseau artwork?

MR. OTAVNIK: Objection, Your Honour. This is not part of Mr. Sinclair's counterclaim. Mr. Sinclair's counterclaim is my alleged defamation of character....

15 THE COURT: Okay, I agree. Just one moment. Mr. Sinclair, you should be introducing evidence now that deals solely with your...

MR. SINCLAIR: I understand...

THE COURT: ...defendant's claim...

20 MR. SINCLAIR: ...sir.

THE COURT: ...not...

MR. SINCLAIR: I understand...

THE COURT: ...getting back to...

MR. SINCLAIR: ...sir.

25 THE COURT: ...bringing in evidence to counter Mr. Otavnik's claim.

MR. SINCLAIR: Right.

THE COURT: So just....

30 MR. SINCLAIR: But the fact that they are in the - they are in the same or similar business...

A. Yeah, similar business.

MR. SINCLAIR: ...speaks to...

A. Yes, similar but not the same.

MR. SINCLAIR: ...the matters....

MR. SINCLAIR: Q. Right, okay. You sued me on November 21<sup>st</sup>, 2008; is that correct, sir?

A. Two thousand?

Q. Two thousand and eight, November 21<sup>st</sup>, you sued me, along with Mr. White and some..

A. Yes, yes...

Q. ...Mr. McLeod?

A. ...I did, yeah.

Q. What happened there?

MR. OTAVNIK: Relevance, Your Honour?

THE COURT: All right. You know, I'm just going to let it - if I have problems with the relevance I'll interject, just leave it for now.

MR. OTAVNIK: Okay.

A. I remember in at that time I seen your website...

MR. SINCLAIR: Q. Yes?

A. ...and also Mr. Joe Otavnik called probably Jim White, Mr. Jim White, you know, explained to me you had just opened your website. The website was some kind of my face there, my name there.

Q. I'm sorry?

A. ...website on the picture, the pictures of my, you know, my face there.

Q. Yes.

A. And also, you know, what I trying to sell into - painting to, you know, close Canada and some painting was some, you say to me, you know, are counterfeit and that

5 those kind of things, they'll be, I also a little upset.  
You should have call us, because we are buying and selling  
and I'm a specialist, but usually when the, you know, my  
kind of blinging (ph), you know, we try to ask the owners  
to, to, to make certificate by the, you know, his family,  
specially of Elderson, David Morris, and the David Morris  
always say to - inspection for the painting, he say that  
it's a genuine painting, what it a fair painting and the....

10 COURT REPORTER: Court's indulgence for a  
minute. I have a little bit of difficulty....

THE COURT: Yes, I'm having difficulty, you're  
going to have to speak slowly, sir.

A. No, I, I'm sorry.

15 MR. SINCLAIR: Q. Yes. Thank you, Mr. Kim.

That's very good though.

So it was Mr. Jim White that informed you first  
or Mr. Otavnik?

A. Yes.

20 Q. Mr. White?

A. Yeah, Mr. White.

Q. Okay. Did you attend a meeting called by  
Mr. Jim White on or around September 3<sup>rd</sup>, the first week of  
September of 2008; do you recall that?

25 A. I can't remember....

Q. Okay. Have you ever attended a meeting  
called by Mr. White?

A. No.

30 Q. Have you ever attended a meeting called by  
Mr. Otavnik?

A. No.

Q. When I delivered the subpoena to you...

A. M'hm.

Q. ...which was very nice, you were very....

THE COURT: Okay, just ask the question.

5 MR. SINCLAIR: Q. Yeah. You advised me that you, that you felt that I was actually right in most of my or many of my opinions...

A. Yeah.

Q. ...with regard to the paintings.

10 A. I think you know though some, some time that you have some kind of specialty for Norval Morris painting, yeah, I told you.

Q. Thank you, Mr. Kim.

A. Yeah.

15 Q. So....

THE COURT: Keep the hand signals down, Mr. Otavnik, the evidence....

MR. SINCLAIR: Q. What's the current status....

20 THE COURT: I don't want to see your reactions to any of the evidence at this point.

MR. OTAVNIK: I fail to see the relevance to the questions.

25 THE COURT: No, I told you that I'm going to give him..

MR. OTAVNIK: Yes, Your Honour.

THE COURT: ...some leeway, so just....

MR. OTAVNIK: Thank you, Your Honour. Thank you, Your Honour.

30 MR. SINCLAIR: Q. With regard to that lawsuit from 2008...

A. M'hm.

Q. ...what is the status of that lawsuit and what is your position in that lawsuit right now?

A. I think, I, I don't know you object to me, you know, what's going on. But....

Q. I'm sorry, sir?

A. I'm not sure, you know, what's going on.

Q. Okay.

A. Okay. And one time, the lawyer, they send it to some kind of legal fee.

Q. Some kind of what?

A. Some, you know, money, for the fee.

Q. Yes.

A. So is not easy to pay for the legal fee, you know, at the, at the time, so rather than go ahead, I just stop. That's why I stop.

Q. You just stopped paying the lawyer..

A. Yeah.

Q. ...fee?

A. Yeah.

Q. I see. And so that, so you don't know what happened to that..

A. No, I don't.

Q. ...lawsuit at all? I see. Okay.

A. Just to....

THE COURT: Okay, just wait for the next question, sir.

MR. SINCLAIR: Q. Excuse me just for a moment.

THE COURT: What are you showing him....

MR. SINCLAIR: I, I'm showing Volume II, tab eight of the additional documents of the defendant, the three volumes that I often use.

5 THE COURT: One second. We made this an exhibit, so what Exhibit Number are we talking about? I'll just get those. What volume did you say?

MR. SINCLAIR: Volume II.

THE COURT: Okay, so it's Exhibit Four. Tab eight?

MR. SINCLAIR: Yup, tab eight.

10 Q. This is an affidavit.

A. M'hm.

Q. Do you mind if I bring it up....

THE COURT: All right, go ahead.

MR. SINCLAIR: Q. This is an affidavit from  
15 this court case...

A. Okay, yeah.

Q. ...that you signed?

A. Yes.

Q. You wrote; do you recognize that affidavit?

A. Yeah, I, yeah.

20 Q. Okay. There's your signature, right?

A. Yeah.

Q. Okay.

THE COURT: Mr. Sinclair....

MR. SINCLAIR: Q. Now in this affidavit....

THE COURT: Just one moment.

MR. SINCLAIR: Yes, tab, tab eight, Your Honour, Volume II.

THE COURT: I'm seeing an affidavit...

MR. SINCLAIR: And unfortunately....

THE COURT: ...of Mr. McLeod....

30 MR. SINCLAIR: It's the last, yes, there's five

affidavits in there. The last affidavit, the last six pages are Mr. Kim's affidavit.

THE COURT: All right. So what do you want to ask him, sir?

5 MR. SINCLAIR: Q. In this affidavit you say that Mr. Otavnik was the one who first informed you in early....

THE COURT: Read him the....

10 MR. SINCLAIR: Q. Yes. I'm going to read you the, the paragraph six:

"In early October 2008, James White and Joe Otavnik were both art collectors in the Canadian art community, each contacted me to tell me that Sinclair had created the website."

15 Is that correct?

A. Yes.

Q. Who contacted you first; Mr. White?

A. Jim White, yes.

20 Q. Jim White, okay. And did Jim White ask you to join him in a lawsuit against me?

A. Yeah, he - to me and the decide on my decision, I did, yes, yes.

25 Q. Okay. And then subsequent to that, Mr. Otavnik called you and he also suggested that you sue me?

A. I don't think so.

Q. Okay. Okay. He says he first contacted you about me in October, but you met him three years prior to that?

30 A. Yeah, about three years, yes.

Q. Right? Did you know that there was a controversial issue before you ever looked at, before Mr.

White ever showed you Morrissimeau.com and the pictures on it...

A. M'hm.

Q. ...did you know that there was an ongoing controversy about Morrissimeau artworks?

A. No.

Q. You didn't? And you...

A. No, I....

Q. ...never heard of a controversy?

A. No.

Q. You never saw any...

A. No.

Q. ...newspaper articles?

A. No.

Q. You never saw any television programs?

A. No.

Q. No?

A. One day I heard from the, you know, somebody, about the - the things, but I, I didn't know anything about that.

Q. Oh, but you did hear from somebody?

A. Yeah, well....

Q. From people?

A. Yeah, someones, yes.

Q. I see.

A. Yes.

Q. Did you get a sworn affidavit from Norval Morrissimeau?

A. I seen it, but I don't believe.

Q. You, you saw it, but you didn't believe it?

MR. OTAVNIK: Your Honour, I object.

MR. SINCLAIR: Q. Okay.

MR. OTAVNIK: We're dealing with my alleged...

THE COURT: All right.

MR. OTAVNIK: ...defamation of....

MR. SINCLAIR: I, I....

MR. OTAVNIK: ...I'm....

THE COURT: Mr. Otavnik. Mr. Otavnik! Sit down.

MR. OTAVNIK: ...on topic.

THE COURT: Mr. Otavnik....

MR. OTAVNIK: It's not on topic, sir.

THE COURT: Mr. Otavnik...

MR. OTAVNIK: Thank you.

THE COURT: ...I know what you're arguing. Mr. Sinclair, get to the point what you're trying to ask in relation to the allegations...

MR. SINCLAIR: Yeah.

THE COURT: ...against Mr. Otavnik.

MR. SINCLAIR: Okay.

THE COURT: I've given you a little bit of leeway...

MR. SINCLAIR: Yeah.

THE COURT: ...but it's going on, get to the point of what you want to ask that's relevant.

MR. SINCLAIR: Q. Were you aware of Mr.

Otavnik launched two websites in August,  
NorvalMorrisseauLawsuit.com?

A. Sorry....

Q. Mr. Otavnik?

A. No.

Q. Were you - did you...

A. No.

Q. ...see those websites?

A. No, I don't know. What kind of website?

THE COURT: Okay. No, no, you're not to ask him questions.

A. Oh, I see, I'm sorry.

MR. SINCLAIR: Q. Okay. Now, you filed a second lawsuit recently, in November 2010?

MR. OTAVNIK: Your Honour, that's not part of...

A. Yes, I did.

MR. OTAVNIK: ...the records.

THE COURT: Okay.

MR. OTAVNIK: That's not part of the record, Your Honour.

THE COURT: Well, it doesn't have to be part of the record.

MR. SINCLAIR: Q. This, this lawsuit. Have you seen this lawsuit before?

A. Oh yeah, to you.

Q. Yes.

A. Oh yeah, I did, yeah.

Q. What's your address on Yonge Street?

A. Six-oh-three-five (6035) Yonge Street.

Q. So who put the address in here?

A. What address?

Q. The address says 5322 Yonge Street.

A. Oh, that old one.

Q. That's the old one. How old? When did you move from there?

A. About three and a half years ago.

Q. Three and a half years ago?

A. Yeah.

Q. So who put the address on here?

A. Okay. One time, I don't know how to....

THE COURT: All right, just one moment.

A. Okay.

THE COURT: Mr. Sinclair, I'm trying to figure out the relevance of this new lawsuit that was issued. In relation to what you're pleadings are, I don't know what the relevance is.

MR. SINCLAIR: Well, I, I, I - Q. Did you make this lawsuit? Okay, Mr. Kim....

THE COURT: Okay, no, I'm not sure - that suit's going to be dealt with separately and you can....

MR. SINCLAIR: The, the actual existence of this lawsuit is about Mr. Otavnik's harassment of me, Your Honour.

THE COURT: Well, you know what? You can deal with that in the next lawsuit if you want to add Mr. Otavnik.

MR. OTAVNIK: Thank you, Your Honour.

THE COURT: It's not part of the pleadings in this lawsuit.

MR. OTAVNIK: Thank you, sir.

MR. SINCLAIR: Well....

THE COURT: No, no, I know what you're going to say.

MR. SINCLAIR: You know what I'm going to say?

THE COURT: Well....

MR. SINCLAIR: I did bring this into evidence on November 16<sup>th</sup>.

THE COURT: You know what? I'm going into the

questions of the facts that were pleaded in  
this lawsuit; that's not part of this lawsuit.

MR. SINCLAIR: Well, Your Honour, I've pleaded..

THE COURT: No, no, no.

MR. SINCLAIR: ...this as a fact in this lawsuit  
of harassment.

THE COURT: It may have come out in the last  
day, but I'm not dealing with it for the  
purpose of determining any claim of harassment,  
et cetera, that you have against....

MR. SINCLAIR: Right, I just want to determine  
who made this..

THE COURT: No, no.

MR. SINCLAIR: ...thing, not what's in it.

THE COURT: No, no. Let's move on.

MR. OTAVNIK: Thank you, sir.

THE COURT: Mr. Otavnik, I don't need your  
comments on my Rulings.

MR. SINCLAIR: Can I talk about this lawsuit?

THE COURT: No.

MR. SINCLAIR: It's a duplicate of....

THE COURT: If it's a duplicate then bring a  
motion to strike it as being a duplication;  
it's not a matter I'm dealing with.

MR. SINCLAIR: Okay. Mr. Kim, thank you for  
appearing here today.

A. Thank you.

MR. SINCLAIR: I appreciate it.

THE COURT: Any questions?

MR. OTAVNIK: Yes, sir.

**CROSS-EXAMINATION BY MR. OTAVNIK:**

5 Q. Mr. Kim, was I part of your lawsuit against Mr. Sinclair back in 2008?

A. Yes.

Q. No, I was not part of your lawsuit.

A. No, at the time, no.

10 Q. Who was part of that lawsuit, you, Jim, Joe McLeod, Jackie Bugera....

A. Yeah, I think four or five person.

Q. Right. Five people; but not me?

A. Not you.

Q. And I didn't give any money?

A. No.

15 Q. And I didn't give any testimony?

A. No.

Q. And I didn't give any evidence?

A. No.

20 MR. OTAVNIK: Thank you, sir. No more further questions.

THE COURT: You can step down, Mr. Kim, unless you want to clarify something out of that...

MR. SINCLAIR: I do, yeah.

25 THE COURT: ...line of questions.

**RE-EXAMINATION BY MR. SINCLAIR:**

30 Q. Did, do you, are you aware of Mr. Otavnik assisting in this lawsuit with Mr. McLeod and Mr. White and...

A. No.

Q. ...the others? Are you aware of - assisting

in it?

A. No.

Q. Are you aware of him assisting financially..

A. No.

Q. ...in it? Okay. Thank you.

THE COURT: You can step down.

MR. SINCLAIR: Thank you, Mr. Kim.

THE COURT: Are you calling Mr. White next, Mr. Sinclair?

MR. SINCLAIR: Yes, Mr. White.

THE COURT: Do you want to call him in then?

Mr. White, do you want to come in the witness box.

**JAMES HOWARD WHITE - AFFIRMED**

**EXAMINATION IN-CHIEF BY MR. SINCLAIR:**

Q. Thank you for appearing here today, Mr. White.

A. My pleasure.

Q. You're the owner of White Distribution Incorporated?

A. Correct, yes it is.

Q. What is your business?

A. Art business, buying and selling of original art.

Q. What's your - original art by who?

A. Norval Morrisseau, Armand Tortosian (ph), Norman Brown.

Q. And how long has this business been focussed on Norval Morrisseau?

A. Three years.

Q. Three years?

A. Yes, a little over three and a half years.

Q. How do you know Mr. Otavnik?

A. I met Mr. Otavnik at a Potter auction.

Q. Randy Potter Auctions?

A. M'hm.

Q. And when would that be, sir?

A. It's got to be about four years ago, I  
guess.

Q. About four years ago.

A. M'hm.

Q. Would it be fair to say you and he are in  
the same business?

A. I don't know what business Mr. Otavnik is  
in as regards to the art business, but the job he works at,  
I believe, has nothing to do with art.

Q. You don't know what job Mister - oh, with  
regard to - I'm sorry, sir. Could you repeat that? I think  
I was....

A. I, I don't know that Mr. Otavnik is in any  
art business. I know he purchased art at Potter Auctions.  
I do not know him to own any company or be actively engaged  
in the art business, other than as I say, I know him to have  
purchased art.

Q. But you don't know him to have ever sold  
art?

A. Not, I do..

Q. Morrisseau art?

A. ...not have direct knowledge of that, no.

Q. No. How about indirect knowledge of that?

A. No.

Q. You sued me on November 21<sup>st</sup>, 2008?

A. Yes, was that, you're referring to the suit in which there were five of us who were plaintiffs?

Q. Yes, I am.

A. Yes, that's correct.

Q. And you sought an injunction at that time; correct?

A. Correct, yes indeed.

Q. What happened to that action?

A. That action, as we speak, either your lawyer, Mr. Muskovich is going to file a defence in which case that action will carry on as such. Or, my lawyer, Brian Shiller of Ruby & Shiller will file that you are in default and will ask that it be set down for trial.

Q. Now, this lawsuit was laid down November 21<sup>st</sup>, 2008, we're now at 2010.

A. Correct.

Q. Right?

A. Absolutely correct.

Q. And there's not even a defence been filed?

A. By yourself, that is correct.

Q. Right. But there, yeah, is an intent to defend that's been filed, right?

A. Sorry, I'm not a lawyer.

Q. Okay. Let's turn to Volume II, tab eight again, Your Honour. I'm just looking for an affidavit that you filed in support of your motion to injunct (ph) Morrissette.com and myself.

A. Sure, m'hm, yeah.

Q. It says in paragraph one that you started

this business of buying and selling the artwork of Norval  
Morrissette in the year 2000?

5 A. White Distribution, which you asked me  
about, was not incorporated or start to do business until  
much later than that. It was an unincorporated business  
prior to that.

Q. So, I....

10 MR. OTAVNIK: Your Honour, again I fail to see  
the relevance....

MR. SINCLAIR: Q. So for three-point-five  
years...

THE COURT: I'm giving him some....

15 MR. SINCLAIR: Q. ...you've been selling  
purported Morrissettes...

A. I'm sorry, I....

Q. ...according to your testimony; is that  
correct?

20 A. That is absolutely not correct. I've been  
selling legitimate, not purported, Morrissettes.

Q. Purported is....

A. Is what?

25 Q. Doesn't mean it's illegitimate; it just  
means, let's say, that they're reported to be Morrissettes.  
The point is....

A. What I believe to be legitimate, yes.

30 Q. Right, right. Okay. But it says here in  
paragraph one that you started this business, White  
Distribution, paragraph one, in the year 2000; so we're  
talking...

A. That's absolutely....

Q. ...seven years' difference...

A. Yeah....

Q. ...between....

A. ...the business was never incorporated. You asked me about White Distribution Incorporated.

Q. Oh no.

A. Yes, you did.

THE COURT: Wait a minute. Okay. He's...

MR. SINCLAIR: Q. In any case....

THE COURT: ...given the distinction, Mr. Sinclair.

MR. SINCLAIR: I see.

THE COURT: Let's move on.

MR. SINCLAIR: Q. Okay. On page two, the first two people on the list, number, Roman numeral one and two, were your fellow plaintiffs in the claim, in the \$17 million lawsuit against me; is that correct?

A. I'm sorry, I....

Q. Maslak McLeod Gallery and Artworld of Sherway?

A. They are.

Q. You do business with them, right?

A. They are also plaintiffs, that's correct.

Q. Right. So you're in the same business?

A. No, I am not.

THE COURT: Again, Mr. Sinclair, get to the point that relates to...

MR. SINCLAIR: To Mr. McLeod.

THE COURT: ...Mr. Otavnik.

MR. SINCLAIR: Otavnik. Q. On page three...

A. M'hm.

Q. ...paragraph five, you state in your

affidavit that you were first informed about Morrissette.com from Mr. Otavnik on October 11<sup>th</sup>, 2008?

A. It sounds about right.

5 Q. Could you tell me how that happened? The details of the....

A. At one of the auctions he said "You should look at this site. It's claiming that there are a lot of fake Morrissettes" and those are the details.

10 Q. So you were at Randy Potter Auctions?

A. Yes.

Q. And Mr. Otavnik told you what?

A. That I should look this website.

15 Q. Had, Mr. Otavnik, since he discovered the website, he discovered the issue on the website on September 16<sup>th</sup>, 2008, but he didn't inform you for almost a month; is that, for something that...

A. I would have...

Q. ...he was so upset about...

A. ...no idea....

20 Q. ...that you would sue for \$17 million and some - how's it possible that he wouldn't have spoken to you about this issue for a month?

A. I think you'd have to ask him, because....

25 Q. Yeah, I will ask him. With regard to the first week in September of 2008, did you attend a meeting with Mr. Otavnik, Donna Child (ph) and perhaps other people?

A. That's a long time ago. I attended one meeting with Mr. Otavnik, as I recall, at the offices of Falconer Charney.

30 Q. In September 2008?

A. I have no idea.

Q. So law offices?

A. M'hm.

MR. OTAVNIK: I fail to see the relevance....

THE COURT: Okay, now Mr. Otavnik, I told you, I'll interrupt when I think it's...

MR. OTAVNIK: Sorry, Your Honour.

THE COURT: ...getting beyond the point.

MR. SINCLAIR: Q. Volume III, tab six, page one.

THE COURT: It's Exhibit Five.

MR. SINCLAIR: Tab six. Do you mind if I show it to the witness?

THE COURT: Go ahead.

MR. SINCLAIR: Q. Do you recognize this letter, Mr. White?

THE COURT: I'm not sure I'm looking at the same thing. Tab? Volume III.

MR. SINCLAIR: Volume III, page one of tab six.

THE COURT: Oh, page one of tab six. All right.

A. Something, okay, that I sent to all of the people.

MR. SINCLAIR: Q. M'hm.

A. M'hm.

Q. Will you tell the court that you, that you recognize this letter?

A. Yes, I believe I sent that email, m'hm.

Q. So this letter, in this letter you state that Mr. Otavnik and we're looking at the second last paragraph with, you know, these....

THE COURT: You had better read it to him so he

knows...

MR. SINCLAIR: ...paragraphs.

THE COURT: ...what you're....

MR. SINCLAIR: Q. Wait, I'll read it to you.

A. Sure.

Q. You send a letter to all these people saying, including many of the plaintiffs in this major lawsuit:

"I've just seen the work undertaken by Joe Otavnik and it is nearing completion. It contains much of the documentation we need in this case and while Joe is not on the roster of plaintiffs for this case, this time his time and effort and financial costs will probably exceed each of our shares."

How much was your share by December 11<sup>th</sup>?

A. Oh geez, I would have to look at invoices. This is - when was the case started, if you would again?

THE COURT: Okay, it doesn't matter the exact figure. What question, what...

MR. SINCLAIR: Q. Yeah, in general.

THE COURT: ...show as a result of the statement?

MR. SINCLAIR: Q. Well, that was my first question. So would you agree with that statement that you wrote?

A. I....

Q. That Mr. Otavnik's share...

A. If I wrote it....

Q. ...did exceed any of your shares....

A. If I wrote it then at the time I wrote it I believed it.

Q. Right. And by that time you'd already

5 filed two telephone books worth of materials for an interlocutory injunction; correct?

A. I filed nothing, of course.

Q. Your lawyers?

A. I assume...

Q. Yeah.

A. ...they filed whatever they filed, of course.

10 Q. And your lawyers' representing, you appeared for two full days in court.

THE COURT: All right, well....

A. Okay.

THE COURT: What is the question you want to get to, having said....

15 MR. SINCLAIR: I want, I want some recognition of, of what his share is, how much Mister....

THE COURT: I'm not concerned. What do you want to ask in relation to how that reflects on Mr. Otavnik in your case against him? Ask him...

20 MR. SINCLAIR: I think it....

THE COURT: ...a question that relates to that.

25 MR. SINCLAIR: Q. So Mr. Otavnik supplied much of the documentation you needed for this \$17 million case, you, you...

A. Not that I'm aware of.

Q. ...attest to? Well you say it here:

"...Joe's not on the roster of plaintiffs for this case, his time...." Oh, I'm sorry, the line before.

30 "I've just seen the work undertaken by Joe Otavnik and it is nearing completion. It contains much of the documentation we need for this case and while Joe's not on the roster of plaintiffs...." blah, blah, blah.

5  
A. I don't think anything there indicates that he actually provided anything.

THE COURT: Well, I guess the question he's asking, sir, what does it mean, well, you've seen the work and "it contains much of the documentation we need...." What documentation are you referring to? That's the question he's asking. What documentation did he provide?

10  
A. This was his case in which I, I believe he had cases against yourself, which was why we're here, he had a case against Gabe Vadas and he was putting together evidence for that.

MR. SINCLAIR: Well, actually he didn't have....

15  
THE COURT: Okay, no, no. Let's not, I don't want your comments.

MR. SINCLAIR: Okay.

THE COURT: That just leads to the next question.

20  
MR. SINCLAIR: Q. So, you believe that Mr. Otavnik had sued me by December 11<sup>th</sup>, 2008, there was a case active from Mr. Otavnik against me?

A. I wouldn't have a clue.

25  
Q. But you just said....

A. I wouldn't have a clue.

Q. But you just said that he had me in a lawsuit at that time.

30  
A. Was preparing documents. I, the dates, I really have no idea when these things were started or not.

Q. Well, okay. Now, in the last paragraph of this letter, which you sent, I'd like to read the names off

5 of who this letter was sent to. This letter was sent to Joe Otavnik; it was sent to Donna Chow (ph) of Artwork of Sherway; Jackie Bugera of Bear Claw Gallery; Joe McLeod of the Maslak McLeod Gallery; Marlo Goering of Qualican (ph) Frameworks; Sunny Kim of Art Cube; Christian Morrissette, the youngest son of Norval Morrissette, and; Wolf Morrissette, estranged brother of Norval Morrissette, and; Randy Potter of Randy Potter Auctions.

10 Now, in this letter in the last paragraph you say you will outline, "I will outline the type of truthful statement I believe they can provide" speaking in particular of Christian and Wolf Morrissette. "I have included Christian and Wolf Morrissette as I know they have information of value. I will outline the type of truthful statement I believe they can provide". What kind of outline did you provide?

15 THE COURT: All right. Well, again, let's talk about in relation to Mr. Otavnik only.

20 MR. SINCLAIR: These statements are....

THE COURT: No, no, no. The questions that you're going to ask him have to relate to Mr. Otavnik, not in relation..

MR. SINCLAIR: Right.

25 THE COURT: ...you're not cross-examining him on the outstanding lawsuit that's...

MR. SINCLAIR: Okay.

THE COURT: ...against you. It's not the purpose of...

30 MR. SINCLAIR: Right.

THE COURT: ...the cross-examination.

MR. SINCLAIR: I understand, Your Honour, thank

you.

5 Q. Okay. You asked Mr. Otavnik, I'm going to roll back in this letter a bit here. If we have the truth ourselves documented, you say, if we know of others that know the truth, pressure them until the document it. Well, I've been under pressure....

THE COURT: No, no. Ask him a....

10 MR. SINCLAIR: Q. Were you asking Mr. Otavnik to, to pressure me?

A. To pressure you?

Q. Did you ask him to - yes.

A. No. I....

15 Q. To pressure other people to provide documentation?

A. As to the truth of what was going on in this case.

20 Q. Right. And your last line is, "I will outline the type of truthful statement I believe they can provide which will be of benefit in this case and possibly to the family's case as well as other family members who may wish to provide evidence to refute Ritchie's claims". Right? So...

A. Absolutely right.

25 Q. ...what you were doing was you, you were asking these nine people to pressure other people....

THE COURT: All right, well I don't care.

Let's talk about in relation to Mr. Otavnik only, please.

30 MR. SINCLAIR: Okay.

Q. Mr. Otavnik sent multiple letters to the media and to various members of the Norval Morrisseau

Heritage Society on August 28<sup>th</sup>, 2008. Are you aware of those letters?

A. Not specifically at this time.

5 Q. Exhibit A to my defendant's claim is a letter, correspondence between yourself and Mr. Otavnik.

A. M'hm.

Q. On August 27<sup>th</sup>, the day before.

THE COURT: Is this one of the exhibits?

10 MR. SINCLAIR: It's exhibit A to the defendant's claim, Your Honour. I don't believe it's in the, in these three volumes. It's attached here, if I could, I do believe I brought an extra copy.

15 THE COURT: Well, have you seen this, Mr. Otavnik? You had better show it to Mr. Otavnik.

MR. SINCLAIR: It's exhibit A, it's been filed for, for, since the beginning, since I filed this defendant's claim.

20 MR. OTAVNIK: Yes, I'll, I'll allow it.

THE COURT: All right. Let him take a look at it.

25 MR. SINCLAIR: Q. Do you recognize this correspondence between yourself and....

A. It sounds familiar.

Q. Thank you. So as of August 27<sup>th</sup>, 2008, you had no issue with me personally; did you?

A. I don't believe so.

30 Q. No. Do you remember the first time you and I actually had contact with one another?

A. Oh, I certainly do.

Q. Do you?

A. Oh, yes.

Q. Two thousand and seven?

A. The Liss Gallery.

Q. Pardon me?

A. The Liss Gallery?

Q. No, it was before that.

A. I do not recall that.

Q. Our first contact was correspondence. I wrote you a letter in December 2007 to your EBay account....

THE COURT: Okay, again, again....

A. May I respond?

THE COURT: Just one moment, no, no, no.

A. Certainly.

THE COURT: Again, it better relate to something in relation to Mr. Otavnik.

MR. SINCLAIR: Thank you, sir.

Q. Okay. In this letter sent August 27<sup>th</sup>, the morning of, the letter says, "Hi Joe, Should we get together to plan? You should attend the current show at Artview", which Sunny Kim's gallery. Jim, what were you going to plan? You and Joe, what were you going to plan on August 27<sup>th</sup>?

A. We were going to plan how to basically tell the world what a liar you are.

Q. We're talking August 27<sup>th</sup>, 2008.

A. Okay.

Q. Well, what were you going to tell them I was lying about on August 27<sup>th</sup>, 2008?

A. Specifically I don't know, but the claims on your website in general.

Q. The website, I didn't begin posting....

THE COURT: Okay, no, don't give an explanation.

MR. SINCLAIR: Right.

THE COURT: Phrase a question....

MR. SINCLAIR: Okay. Q. So you were aware of that, of images on my website in August 27<sup>th</sup>...

A. That's right, all of these...

Q. ...2008?

A. ...dates that you're throwing at me, I have absolutely no idea, they're kind of interspersed and....

Q. Okay, so then I'll ask...

A. I have no idea.

Q. ...once again. You say that you're getting together to plan to tell the world that I was a liar?

A. I said that.

Q. And this is on August 27<sup>th</sup>, 2008? That's what the plan was.

A. If, okay, as I say, these dates...

Q. Okay.

A. ...they intermingle, I don't know. I'm only concerned with, as I say, telling the world what a liar you are.

Q. Now, Mister, the owner of Art World of Sherway, Mr. Brian Chow, has advised that a meeting did take place a week later.

A. Okay.

Q. Between yourself....

THE COURT: What is the question?

MR. SINCLAIR: Q. Do you recall that meeting now?

A. I remember meeting with Mr. Chow, yes, on several occasions actually.

Q. Right. This first week in September?

A. The date is meaningless as far as any meeting with him, but yes, there were meetings.

Q. Okay. And his response to you, Mr. Otavnik says, "Hi Jim, I hope and trust everything is well. Yes, we should get together. I launched my website, Norval Morrisseau Lawsuit.com last week and will launch Norval Morrisseau Legal Defence Fund.com today or tomorrow."

Were you aware of those websites in August; do you, do you recall? Did you go and look at them when he sent you this letter?

A. No.

MR. OTAVNIK: Again, Your Honour....

THE COURT: No, no....

MR. OTAVNIK: I must say the - remember, this case is about Mr. Sinclair's counterclaim of me defaming him on the internet. I fail to see any question bringing in....

THE COURT: Have a seat, Mr. Otavnik.

MR. OTAVNIK: I apologize. I just....

MR. SINCLAIR: Q. Mr. Otavnik writes back to you, "I'm now going to focus my attacks on the individual members of the NMHS and the organizations they work for. It's going to get ugly, but that's okay. In fact, I'm going to start at the bottom of the barrel because it's going to get there eventually, so why not start there? I think me," meaning Mr. Otavnik, "you," meaning yourself, Mr. White..

A. M'hm.

Q. ..."Donna," who would Donna be?

A. Donna Child, I believe....

Q. ...who is Sun....

A. Mr. Kim.

5 Rog? Q. And who would Michael Rog (ph) be? Michael

A. Michael Rogozinsky I assume.

Q. And he's?

A. The owner of Empire Auctions.

10 Q. That's right. Now, do you recall that? Did these people appear at this meeting?

A. No, no such meeting took place with particularly Michael Rogozinsky, no.

15 Q. And the final line is, "I have a plan I think will work." Right? So I'm going to ask you, was this plan that you and, and, and Joe Otavnik had, was this plan to attack people?

A. Plan to, to reveal the truth about people. If that qualifies as an attack, so be it.

20 Q. So this is - now, you're saying I was on the radar as of August 2008 or you're saying you're mixed up about dates?

A. I'm saying I may be mixed, was that before or after we met at Liss Gallery?

25 Q. Oh, this was after. But, you know, I'm the one asking the questions.

THE COURT: All right, so I'm not sure why you answered it then. Anything else of this witness?

30 MR. SINCLAIR: Yes, there is, Your Honour.

Q. Okay, so you started up the \$17 million lawsuit again and as of November 2010 you filed a lawsuit in

this court against me....

THE COURT: Again....

MR. SINCLAIR: There're certain issues with this particular one, Your Honour, that I need to bring to the court's attention.

THE COURT: Well, you're not bringing it to my attention. I ruled I wasn't going to hear it when Mr. Kim was in the box; I'm not going to hear it when Mr. White's in the box.

MR. SINCLAIR: This one's different.

THE COURT: I don't care if it's different. It can be dealt with at that time.

MR. SINCLAIR: Would it, would it be considered if Mr. Otavnik made these lawsuits, talked to....

THE COURT: You deal with them....

MR. SINCLAIR: ...if Mr. Otavnik....

THE COURT: No, no, that's not..

MR. OTAVNIK: Your Honour....

THE COURT: ...the issue before me.

MR. OTAVNIK: Thank you.

THE COURT: The only issue before me....

MR. SINCLAIR: It's certainly before me.

THE COURT: No, no. No, it isn't.

MR. OTAVNIK: Next question.

THE COURT: Mr. Otavnik, I don't need..

MR. OTAVNIK: Sorry.

THE COURT: ...your sarcasm or assistance.

MR. OTAVNIK: I apologize to the court.

MR. SINCLAIR: Just give me a moment, Your Honour. Okay, I'll talk to Otavnik.

Q. Did you know that Mr. Kim also filed a lawsuit at the same time?

THE COURT: No, not relevant.

MR. SINCLAIR: Can I ask that, Your Honour?

THE COURT: No. I said it wasn't relevant.

MR. SINCLAIR: Okay.

Q. I'd like to ask, I believe it is relevant to harassment, why you've filed these lawsuits and why you started up this Superior Court lawsuit....

THE COURT: No, no, not relevant...

MR. SINCLAIR: Q. ...after leaving it...

THE COURT: ...it's not relevant.

MR. SINCLAIR: Q. ...now?

THE COURT: He doesn't have to answer that.

MR. SINCLAIR: Okay.

A. May I?

THE COURT: No.

MR. SINCLAIR: Q. Are you in business with Mr. McLeod?

A. No.

Q. Are you in business with Donna Child?

A. I provide artwork to the gallery on consignment. If they sell it they sell it, if they don't it's returned; if that constitutes business, perhaps so.

Q. Yeah, I mean, in your....

THE COURT: Okay, that's the answer. Next question.

MR. SINCLAIR: Q. I'll ask it again. Are you in business with Mr. McLeod?

THE COURT: No, he's answered the question.

A. At this time I have not supplied art to Joe

McLeod.

MR. SINCLAIR: Thank you, Your Honour.

THE COURT: Any questions?

MR. OTAVNIK: Yes.

**CROSS-EXAMINATION BY MR. OTAVNIK:**

Q. Mr. White....

THE COURT: Stand up, please.

MR. OTAVNIK: Pardon?

THE COURT: Stand up, please.

MR. OTAVNIK: Thank you, Your Honour.

Q. Mr. White, do you own the website in which  
Mr. Sinclair claims I defamed him?

A. Is that, that Google Matavlik (ph) website?

Q. Yes.

A. No, I have no interest in that.

Q. Do you control what gets posted on that  
website?

A. No, not at all.

Q. Do you have any idea who posted anything on  
that website?

A. No, I do not.

Q. And Mr. White, can you give the court a  
brief background on how you got involved in buying the  
artwork of Norval Morrisseau?

THE COURT: All right...

MR. OTAVNIK: Q. Briefly.

THE COURT: ...again, I don't have to hear that.

MR. OTAVNIK: Q. How did Mr. Website's (sic),  
Mr. Sinclair's website affect your business and the

galleries you have distribution deals with?

THE COURT: Okay, no....

MR. OTAVNIK: Your Honour, I...

THE COURT: No, no.

MR. OTAVNIK: ...give me wide latitude, give me two....

THE COURT: He's not a litigant.

MR. OTAVNIK: I understand..

THE COURT: I don't have to hear.

MR. OTAVNIK: ...I understand. I understand. I understand. Okay.

Q. Now with respect to your suit in District Court in 2008 against Mr. Sinclair with the five other named plaintiffs, what was my extent of the involvement in that case?

A. Nothing whatsoever. I mean..

Q. Did I....

A. ...you never met with the lawyers or with us as a group or did you provide any money.

Q. Nor any evidence?

A. No, none.

Q. Thank you. Now, Mr. Robinson referred to you in his expert report on page nine. I'd like to show it to you - well, actually I'll just read it: "However in 2001 Jim White bought (sic) 23 Pottersore's (ph) paintings to KRG for individual appraisals." Is that, I sent 23 large colour photos of them to Norval; is that you, Mr. White, that he's talking about?

A. It is.

Q. Can you give the court a little bit of a background on that whole situation?

THE COURT: No, that doesn't assist me.

MR. OTAVNIK: Okay, one second, Your Honour.  
Just give me one moment.

5 Q. Can you explain how you met Mr. Sinclair at  
the Liss Gallery; what happened there?

10 A. I was asked to bring paintings by Norval  
Morrisseau to the Liss Gallery by Mr. Tambori (ph), who said  
he was bringing customers there who may wish to purchase. I  
did so, and indeed gentlemen appeared as potential  
15 purchasers and they brought with him Mr. Sinclair. Lengthy  
discussions ensued, Mr. Sinclair made his recommendations to  
the purchasers and I believe at that time two paintings were  
purchased, the total amount well in excess of \$20,000.  
Subsequently those paintings have appeared on Mr. Sinclair's  
website as fakes.

20 Q. Thank you, thank you, Mr. White. Now,  
let's go to the trial manuscripts on page 158. I'm going to  
show them to - I'm going to read them to you or show them to  
you.

A. As you wish.

THE COURT: One-fifty-eight of what?

MR. OTAVNIK: Of the - manuscripts.

THE COURT: Of what? I can't see....

25 MR. OTAVNIK: Of the trial, the actual trial  
transcripts.

THE COURT: Of what trial?

MR. OTAVNIK: Of this trial, March 18<sup>th</sup>, 2010.

THE COURT: I don't have the transcripts.

30 MR. OTAVNIK: Your Honour, I have the copies.

THE COURT: One-fifty-eight?

MR. OTAVNIK: One-fifty-eight, line 20. I'm

going to start reading from there.

COURT CLERK: Okay, sir, you have to be close to a microphone when reading.

MR. OTAVNIK: I apologize, madam.

THE COURT: Go ahead, read....

MR. OTAVNIK: Oh, okay, sorry.

Q. This is Mr. Sinclair's in-chief testimony:

"The Court: What would you like to tell me?

A. I am a graduate of the commercial art at George Brown College, 1979. I met, I, Norval Morrisseau put in advertisement in a newspaper seeking his protégé in 1979, the summer up. I responded to that advertisement. I was the 20<sup>th</sup> person interviewed personally by Norval Morrisseau and he took me as apprentice at that time. I painted with him from 1979 until he was no longer capable of painting."

Now, Mr. White..

A. M'hm.

Q. ...you know the Morrisseau family quite well?

A. I am the only person that has a contract with the Morrisseau family for the reproduction of Norval Morrisseau's artwork.

Q. And what has Mr. Wolf Morrisseau told you about....

THE COURT: No, hearsay evidence. I'm not accepting it.

MR. OTAVNIK: Q. Has the Morrisseau family ever said that they knew of Ritchie Sinclair?

THE COURT: It's hearsay.

MR. OTAVNIK: Okay, okay. Okay, that's fine.

Q. Mr. White, just bear with me for one second, Your Honour. Mr. White, are you aware or ever heard of anyone proving a Norval Morrissimeau was fake at all....

THE COURT: Not relevant.

MR. OTAVNIK: I didn't think so, Your Honour.

Q. Mr. White, is there anything else you'd like to think the court would be aware of (sic)?

THE COURT: Okay, let's not - if you have something specific to ask..

MR. OTAVNIK: Okay.

THE COURT: ...him, fine.

MR. OTAVNIK: Okay, sure.

Q. Bottom line, to rephrase. Mr. White, I have not been, I was never involved in that 2000....

THE COURT: All right, we've already gone through that.

MR. OTAVNIK: Okay, thank you, Your Honour.

Mr. White, you're excused.

THE COURT: Okay. Anything else based on what the cross-examination produced?

MR. SINCLAIR: No. The Liss Gallery - is irrelevant. I could ask questions, but I won't.

THE COURT: All right, I'm not asking for your opinion; do you want to ask him any questions based on what Mr. Otavnik leads?

MR. SINCLAIR: No. Thank you, Mr. White....

THE COURT: Okay, you can step down. Do you have another witness here?

MR. SINCLAIR: I don't.

THE COURT: So the questions becomes what at

this point?

MR. SINCLAIR: Well, I guess the question is with regard to witnesses?

THE COURT: Yes.

MR. SINCLAIR: Mr. Robinson will not be appearing today unless he's on call, because he would, he would appear if, if absolutely necessary. I'd like....

THE COURT: Well, what other witnesses are you seeking to call?

MR. SINCLAIR: Well, I'm, I, I will not be calling any of my friends and associates because of...

THE COURT: Well, that's fine. I don't need...

MR. SINCLAIR: ...harassment.

THE COURT: ...explanation. I'm asking you....

MR. SINCLAIR: I will not be calling any more witnesses except Mr. Otavnik.

THE COURT: Mr. Otavnik, presumably, will give evidence in response to the defence.

MR. OTAVNIK: Yes, Your Honour.

THE COURT: All right, so Mr. Otavnik, do you want to come in the witness box then?

MR. OTAVNIK: Yes, sir. One moment, sir.

MR. SINCLAIR: Your Honour, with regards to the witnesses that didn't appear that were subpoenaed?

THE COURT: Yes?

MR. SINCLAIR: Mr. McLeod.

THE COURT: Yes.

MR. SINCLAIR: He was subpoenaed on, to appear

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10  
15  
on May 11<sup>th</sup>, didn't appear. He was subpoenaed to appear on September 7<sup>th</sup>, he didn't appear. And he was subpoenaed and refused the subpoena to appear here today. This is Mr. Otavnik's key witness, because Mr. McLeod appeared before Mr. Otavnik, I didn't have an opportunity to cross-examine him about certain issues, in particular the damages in, in that lawsuit. Beyond that Mr. McLeod was the first person that was informed with regard to what we were speaking about with both these witnesses today. He has a very close association with Mr. Otavnik. I submit that he committed perjury multiple times...

THE COURT: Okay, well....

MR. SINCLAIR: ...in March and has not appeared in court since because of that.

MR. OTAVNIK: They....

20  
THE COURT: No, no, no. Wait a second. I don't....

MR. OTAVNIK: Sorry.

THE COURT: So I'm not sure what - your position is what then?

25  
MR. SINCLAIR: My position is is that I went to great lengths to have Mr. McLeod here as a witness. I followed the rules of the court to the, to the letter. I followed your direction, I, I....

30  
THE COURT: All right. So in your summons here to Mr. McLeod it looks like - why do you want him here? What's the purpose of his

attendance; with respect to your claim against Mr. Otavnik would be what?

5 MR. SINCLAIR: In part, it's similar to the questions that I asked Mr. Kim and Mr. White with regard to their actions, with regard to these letters, with regard to this lawsuit that I claim was initiated by Mr. Otavnik. And with regard to....

10 THE COURT: Well, you say here you want him to bring documents providing you purchased art directly from Morrisseau...

MR. SINCLAIR: Right....

15 THE COURT: ...and it proves that - "previous lawyer offered to allow you to sell discredited art"....

MR. SINCLAIR: Right. I considered those amongst nine other statements by Mr. McLeod to have been false.

20 THE COURT: Well, just....

MR. SINCLAIR: Or, or misleading. And....

THE COURT: So if he was called and you were able to establish that some of those statements made previously were misleading?

25 MR. SINCLAIR: Very much so.

THE COURT: But how about in regard to the claim against Mr. Otavnik, which is what we're hearing now?

30 MR. SINCLAIR: Exactly. So there's certainly plenty of reason to have Mr. McLeod here to, to, as a witness with regard to, for example, nine days before any of the other plaintiffs,

5  
10  
according to these five affidavits that I  
filed, nine days before Mr. McLeod was  
contacted by Mr. Otavnik. So I'm suggesting  
that the organization for the actions that were  
brought against me in November 8<sup>th</sup>, including  
Mr. Otavnik's lawsuit that's here today, were  
done in partnership, in concert with Mr.  
McLeod. I suggest that there is evidence that,  
clear evidence, documented evidence that he  
came in here on March 18<sup>th</sup>, that he did perjure  
himself and he refused to reappear in court  
because of that.

THE COURT: Well....

MR. SINCLAIR: And....

15  
THE COURT: No, no....

MR. SINCLAIR: I paid a hefty price for  
following the rules of the court and delivering  
this subpoena to him in, in, in person.

20  
THE COURT: But it sounds like the evidence  
you're trying to, for the most part, get from  
him is evidence that somehow, I guess the  
evidence he gave the last time was in relation  
to the authenticity of, was his opinion  
evidence, wasn't it? That Mr. Otavnik's  
painting was not a forgery?

25  
MR. SINCLAIR: That was some of the evidence he  
gave.

THE COURT: Okay.

30  
MR. SINCLAIR: Yup.

THE COURT: And the other part of the evidence?

MR. SINCLAIR: That he gave?

THE COURT: Yes.

MR. SINCLAIR: Well, I mean, I can show you.  
If you want to go through them..

THE COURT: No, no, no....

MR. SINCLAIR: ...I'd be glad to.

THE COURT: You're missing what I'm trying to  
tell you, Mr. Sinclair. My big concern is that  
this matter has been going on for a long period  
of time and for me to adjourn another day to  
somehow enforce that Mr. McLeod is going to  
attend and the only way I can do that is issue  
a warrant for his arrest to bring him here, and  
unfortunately I don't want that warrant of  
arrest to go out on the basis of, you know, in  
theory the police picking him up two weeks in  
advance of any trial date. So normally those  
warrants go out indicate that the police are to  
use their discretion, which means they'll try  
to bring him in on the day of the trial. Now,  
if for some reason if they go and he's not  
where they think he is then we're back in to  
the same position of adjourning it again. So I  
have to be satisfied that his evidence is going  
to be material to the outcome of this case. I  
don't think his evidence is going to be  
material at this point in relation to the  
authenticity of the painting. Okay?

So the only other question I have is what other  
material reason would I want him before me?

MR. SINCLAIR: Okay. Well, that's, I, I  
appreciate you saying that, because....

THE COURT: Okay, no. Having said that, I've asked you a question: How else is his evidence going to be material?

5 MR. SINCLAIR: Outside of the fact of confirming that what has, more or less been confirmed by Mr. Kim and Mr. White, we can get away without...

THE COURT: All right.

10 MR. SINCLAIR: ...chasing him around town.

THE COURT: All right. So then how about Ms. Child?

MR. SINCLAIR: Okay, Ms. Child...

THE COURT: Do I indicate that she's....

15 MR. SINCLAIR: ...is the same story. Three times in a row, three excuses...

THE COURT: Okay, well....

MR. SINCLAIR: ...this time she's out of the country.

20 THE COURT: Well, I don't....

MR. SINCLAIR: They don't want to appear, Your Honour.

25 THE COURT: All right, look. I don't know if she's out of the country or not, she said, I saw some reference of a letter saying that she was out of the country...

MR. SINCLAIR: Right.

30 THE COURT: ...okay. Whether it's accurate or not, I have no idea. The question becomes, why is she a material witness?

MR. SINCLAIR: Well, once more, the similar issues, similar, there are similar things,

there are differences.

THE COURT: What else is she going to testify, other than....

MR. SINCLAIR: Well, she was part, she partook in this meeting. I mean, this, this meeting..

THE COURT: Well, I've heard....

MR. SINCLAIR: ...to decide....

THE COURT: Just one moment. I've heard from several people at that meeting as to what went on. Why should I think that her evidence is going to be any different?

MR. SINCLAIR: I would....

THE COURT: Keeping in mind the fact of the problem of getting her here, issuing the warrant for her arrest and whether they get her or don't get her and if adjourned for three..

MR. SINCLAIR: You're absolutely....

THE COURT: ...months and then another three months..

MR. SINCLAIR: No, I've had enough.

THE COURT: ...I can only, I can only remember the facts of this for so long after. You know, it's very difficult to keep dragging this out over and over and over again.

MR. SINCLAIR: Yeah, yeah. I agree.

THE COURT: All right. So let's....

MR. SINCLAIR: Okay. But at least we brought them to your attention.

THE COURT: Okay, that's fine. Just one moment. Is there anybody else then?

MR. SINCLAIR: No, that's it.

THE COURT: Okay, so Mister....

MR. OTAVNIK: Well, there's another issue with respect to Mr. McLeod.

THE COURT: No, no, we don't have to hear any other....

MR. OTAVNIK: Well, I'll do it in my evidence. Thank you.

THE COURT: Do you want to come in the witness box?

MR. OTAVNIK: Yes, sir. Thank you.

THE COURT: Okay, come into the witness box.

**JOSEPH OTAVNIK - AFFIRMED**

THE COURT: Again, Mr. Otavnik, please limit your evidence in regard to the claim made by Mr. Sinclair.

A. Your Honour, I'm going to do as best I can. I am not going to ramble on like four hours.

THE COURT: All right, well....

A. No, I'm just saying I want you, you to grant me a little bit of latitude. I don't expect that much latitude. I should be done in approximately 15 minutes.

THE COURT: All right, let's go.

A. Okay. You know, Mr. Sinclair has filed a lot of documentation in this court.

THE COURT: No. Give me the evidence, don't give me argument.

A. Okay.

THE COURT: Give me the evidence that you want to rely on.

A. Well, Your Honour, I mean, here again,  
you're cutting me off..

THE COURT: I'm not cutting you off..

A. ...cutting off....

THE COURT: ...I'm saying don't give me a summary  
of your position. If you want to comment on  
specific documentation comment, but don't start  
giving me a rambling story, "Well, you know,  
he's issued a lot of documentation", tell me  
the evidence. You're in the witness box.

A. Okay. With respect to....

COURT CLERK: Sir, I need you to face the  
microphone, please.

THE COURT: You don't have to play with it,  
sir..

COURT CLERK: No, no....

THE COURT: ...leave it. No, leave it.

COURT CLERK: No, you can't....

A. I understand.

COURT CLERK: Unfortunately I can't hear you  
unless you're facing the microphone.

A. My point is with Mr. Sinclair's counter -  
can you hear me now, ma'am?

THE COURT: She'll mention it if she can't.

You don't have to play with the microphone.

A. Sure, sure, sure, sure, sure. With respect  
to Mr. Sinclair's counterclaim of defamation Mr. Sinclair  
was supposed to get records from AOL, Blogger.com....

THE COURT: Don't give me....

A. My point is he has not provided any  
evidence of any....

5 THE COURT: Sir, that's argument. You know what? The evidence is in on that point. All you're doing is giving me summation of why you think his evidence is lacking. I want to hear what evidence you can provide me with respect that would assist me in determining...

A. Sure.

10 THE COURT: ...whether there's any merit to his claim.

A. Perfect. I never posted anything about Mr. Sinclair anywhere and he has, and that's just the way it is. I, I cannot prove a negative. I never posted anything about him anywhere and he hasn't brought any records to prove that.

15 And as far as Mr. Sinclair's damages, he has no damages. In his own self-admitted evidence, he had three shows in 10 years and provided no sales receipts. The only sales receipts we have of Mister - well, I'm talking....

20 THE COURT: No, no, no. You're giving me evidence.

A. Oh.

THE COURT: I mean, you're giving me final argument.

25 A. Okay, thank you, Your Honour, okay.

THE COURT: I don't want you to repeat his evidence in saying, "Well, that's"....

30 A. I'll make it short and sweet. I have never posted anything about Mr. Sinclair on the internet and I never caused him any damages. That's it.

THE COURT: Okay. Mr. Sinclair, any examination?

5 MR. SINCLAIR: M'hm. Your Honour, this is going to be a little process, not too long, but I would like to have a 15-minute recess, if you, if you'd be kind enough to.

THE COURT: Okay, we'll take a short recess..

MR. SINCLAIR: Before we do this.

THE COURT: ...before we start.

10 **R E C E S S**

**UPON RESUMING:**

15 THE COURT: Mr. Otavnik, do you want to come back in the witness box, please?

MR. OTAVNIK: Yes, sir.

**CROSS-EXAMINATION BY MR. SINCLAIR:**

20 A. Go ahead.

MR. SINCLAIR: Q. Mr. Otavnik, did you send letters to my witnesses yesterday, Mr. Don Robinson, Mr. Richard Baker, Mr. Wang from....

25 A. Yes, I invited them down to hear your testimony and they wanted to get to the bottom of the truth so I said now would be a good day to come down, because I assumed Don Robinson would be here.

Q. And did you send him documents and a list of questions that you could ask him today?

30 A. Well, what I did was I also invited some reporters like Mr. James Adams back there, down there and I did list some questions that they might want to ask Mr.

5 Robinson which I would have also asked Mr. Robinson on any cross-examination. They were, they were questions that would contradict his own in-chief testimony. I was just going to point that out in any attempt, any, any chance I had to cross-examine him today.

10 Q. Now, you had the same option as me to send a subpoena and, and file documents properly and, and noted, and give them due notice and proper notice instead of the day before court sending a massive amount of documentation and did you honestly expect - well, did you expect Dr. Wang to fly from Pennsylvania University to be here today?

15 A. Well, Dr. Wang told me to, to contact him if there's updates and as far as Mr. Robinson, I tried to serve Mr. Robinson and he avoided service. I hired process servers, which if you want to see, will, will tell you they went to Mr. Robinson's....

Q. When was this?

A. That was back in March.

20 Q. Back in March?

A. For your - he was your, he was your witness. I assumed he'd be here. He avoided my service.

Q. If he was my witness, my expert witness for March 18<sup>th</sup>...

25 A. M'hm.

Q. ...and, and an expert report had been filed by Mr. Robinson...

A. M'hm.

30 Q. ...then why would you feel that you had to hire a process server and chase him around?

Q. Because if I, if I issued a summons to witness, in that summons could be specific documents which I

5 wanted, which would repute his expert testimony. So had Mr. Robinson been served that summons, he would have had to comply. If he didn't comply with the summons, he could show up and present what he wanted.

Q. Did you ask him to bring documents today to court...

A. No.

Q. ...in your letter yesterday?

A. No. I invited him there on....

Q. Did you ask him to bring a book?

A. Well, yes, his book.

Q. So you did ask him to bring materials?

A. The same book that was where you called his own paintings fake and his publication, yes, I asked him to bring a copy of that book down, yes.

Q. So then given that, given that you subpoenaed him in March because you wanted him to bring certain documents that you wanted to be examined..

A. Right.

Q. ...and given that you wanted him to bring certain documents that you wanted to cross-examine him on, why didn't you send him a subpoena including the documents that you wanted him to bring, instead of calling my witness the day before?

A. I invited them all down. I invited members of the press down. I simply told Mr. Robinson to bring the book down because it would be easier for logistical problems.

Q. And what about the other documents that you sent in your letter to him? Do I have to find them?

A. Sure.

Q. What about the other documents that you sent...

A. What....

5 Q. ...Mr. Robinson? You sent at least 10 documents, at least 10.

A. They were sent in a general email to members of the press, too.

10 Q. Yes.

A. They were....

10 Q. Members of the press, too. Why were, why were questions that you wanted to ask Mr. Robinson about art...

A. Mr. Robinson....

15 Q. ...in an email that you also forwarded to the newspapers?

A. Mr. Robinson has always said he wanted to get down to the bottom of the story and I said I agreed.

20 Q. What story?

20 A. Well, he says there's fakes out there, so I says, "Okay, Mr. Robinson, come down, tell your story and have, let's have the media there, let's have the newspapers here and let's hear your story".

25 Q. Well, wouldn't that have been March being a better time for that instead of a harassment trial?

A. He avoided service. I'm not harassing him. I....

30 Q. This is a harassment trial today. This is not a trial about....

THE COURT: Okay, what is the question?

A. What's the question? I invited Don Robinson down here, along with, along with Mr. Adams. I

invited people from The Toronto Star down. I'm simply saying if the trial's on, let's get to the bottom of it, you're all invited down.

5 THE COURT: All right, let's move on.

MR. SINCLAIR: Q. Is it possible...

THE COURT: Let's move....

MR. SINCLAIR: Q. ...it might have intimidated my witnesses to have a list...

10 THE COURT: Okay.

MR. SINCLAIR: Q. ...of questions....

THE COURT: Okay, let's move on, Mr. Sinclair.

A. Mr. Robinson....

THE COURT: No, no.

A. Sure, go ahead.

15 THE COURT: Let's move.

A. Sure, go ahead, go ahead.

MR. SINCLAIR: Q. Did you hear Mr. White's testimony?

A. I was here, yes.

20 Q. Mr. White testified that you and he had a plan to tell the world that I was a liar.

A. No.

Q. That's what he testified to.

25 A. No. He testified to that and that refers to the Norval Morrisseau Heritage Society, which we, which were, which we are doing nothing about.

Q. Okay. Let's talk about that.

A. Sure.

30 Q. Exhibit A to the defendant's claim, right? There's correspondence between you and Mr. White.

A. True.

Q. Now, Mr. White testified that this was about telling the world that I was a liar, that's a quote. Now, you, you deny that, right? This..

A. I deny what?

Q. ...is about telling the world about - what is this about? Tell me what this plan is about.

A. What plan?

Q. This August 27<sup>th</sup> - okay, I'll read it again. "Yes, we should get together. I launched my website, my website's Norval Morrisseau Lawsuit.com".

A. M'hm.

Q. Why is that called "Norval Morrisseau Lawsuit"?

A. Because it was a lawsuit involving Norval Morrisseau.

Q. Who did you sue?

A. I sued Gabe Vadas.

Q. And what else was on this lawsuit? Like, on, on this website?

A. Nothing. Nothing.

Q. Nothing but this case?

A. Nothing but this, that case.

Q. And the case was against who?

A. Gabe Vadas.

Q. So why doesn't it say "Gabe Vadas Lawsuit.com"?

A. Because I thought that would be a better for the law, for, for the website. It simply had the filings of myself, the filings of Mr. Vadas, the court decision and there was actually no place for comments, which I specifically pointed out. And you weren't even on that

website. There's no mention of you on there?

Q. Why wasn't I on that website?

A. Because it was, because you weren't involved in that case.

Q. And then you carry on in this letter, "And will launch today or tomorrow", so that would be the 28<sup>th</sup> of August...

A. Yes.

Q. ...or the 29<sup>th</sup> of August...

A. Yes.

Q. ...Norval Morrisseau Legal Defence Fund.com"?

A. Correct. Which again had no reference to you.

Q. So you were collecting funds?

A. No.

Q. What did it say on your website?

A. It said I, it, it said I had, it had a, it had a copy of Mr. Robinson's lawyer's statements, a copy of the Vadas case and basically telling people that Norval Morrisseau and the Morrisseau family disagreed with Don Robinson. It had nothing to do with you. There's no mention of, of you on there.

Q. How about raising funds? Is there mention of raising funds?

A. No.

Q. Well, I have the, I have here, it's actually filed but it's very hard to read so I made another copy, but let's have a look at it. It's Volume I, section eight.

THE COURT: All right, Madame Clerk....

A. Well, it....

THE COURT: Just give me a second. I'll be back....

All right, were you saying Volume I?

MR. SINCLAIR: Yeah, Volume I, tab eight.

THE COURT: Okay, that's Exhibit Three we're referring to.

MR. SINCLAIR: Is yours readable, Your Honour?

THE COURT: It is.

MR. SINCLAIR: Mine isn't.

Q. Mr. Otavnik?

A. Exhibit One, tab eight? I'll get mine, is it okay, Your Honour?

THE COURT: Go ahead.

A. Volume I, right?

MR. SINCLAIR: Q. Yeah, tab eight, the last few pages of the book.

A. Yes, go ahead.

Q. Well, maybe you'll do me a favour, because I can't read it.

THE COURT: Where are you....

MR. SINCLAIR: The second last paragraph.

THE COURT: Of what page?

MR. SINCLAIR: Of page two, the second last page in the entire book.

THE COURT: It starts off, "With respect to...?"

MR. SINCLAIR: Yes, that's it.

THE COURT: It says, "With respect to Mr. Morrisseau's estate, Norval's family was left with nothing. One of the purposes of the Norval Morrisseau Legal Defence Fund is to raise funds in order to help Norval's children

at least benefit from any future dispositions of his work including all intellectual rights".

MR. SINCLAIR: Q. So there.

THE COURT: So what's the question?

MR. SINCLAIR: Q. Are you raising, you were raising money for a defence fund, right?

A. No. We, we thought about that, but we didn't do it.

Q. Who is we?

A. Me.

Q. You said "we"?

A. Well, I said we, well, I said me.

Q. No, you said we.

THE COURT: Okay.

A. Well, if I said me, we, I said, I meant me.

Q. So you've decided and you put it up on the internet that you were collecting funds but you decided against that?

A. Correct. And if you would notice this whole thing, there's not your name in here at all.

Q. Well, that's true, isn't it?

A. It is true.

Q. Okay. Back to the letter.

A. Sure.

Q. Exhibit A of the defendant's claim.

A. Sure.

Q. So you're saying you're now going to focus your attacks...

A. Yeah.

Q. ...on the individual members of the NMHS?

A. The Norval Morrisseau Heritage Society,

correct.

Q. So how....

A. Not you.

Q. What did you do in, in attacking the NMHS?

A. I sued Mr. Baker.

Q. Well, what did you do the next day?

A. I....

Q. What did you do on August 28<sup>th</sup>, 2008?

A. I sent them out all, I sent them all an email basically telling them that Don Robinson was a liar and I provided them proof.

Q. Right.

A. Again, not you.

Q. Right. But Don Robinson.

A. That's right.

Q. That's the man you sent all those list of questions to that I suggest to you intimidated?

THE COURT: Let's not make statements.

MR. SINCLAIR: Q. Okay. So and not only the NMHS members, so who are these people? Baker....

A. Who are the people?

Q. Richard Baker....

A. I only sued Mr. Baker.

Q. And the organizations they work for. So did you attack the organizations they worked for and who..

THE COURT: All right, again..

MR. SINCLAIR: Q. ...would those organizations be?

THE COURT: ...again. Mr. Sinclair, let's limit this against - you've made claims against yourself..

A. Exactly.

THE COURT: ...not against these other people.  
So let's....

A. Thank you.

MR. SINCLAIR: Well....

THE COURT: Keep the questioning as it pertains  
to you.

MR. SINCLAIR: Right, well - Q. But you -  
okay. You said "it's going to get ugly, but that's okay".

A. Yeah.

Q. What do you mean by that? What's ugly in  
your, in your line of work?

A. I will litigate however, however long and  
how much money it takes.

Q. And?

A. That's it.

Q. That's the extent of ugly?

A. Absolutely.

Q. How about letters?

A. Never to you.

Q. How about emails and letters..

A. To who?

Q. ...do you consider that part of your ugly  
attack?

A. I, I simply provided the truth in all those  
emails. People actually thanked me for, for sending them  
the truth, they said they never knew about that. In fact,  
one of the members of Norval Morrisseau Heritage Society  
said that Don Robinson never told them about the 20  
paintings he bought at Potter Auctions and they thanked me  
for pointing that out.

Q. Yeah, I....

THE COURT: Okay, next question.

MR. SINCLAIR: Q. So, you say, "In fact I'm going to start at the bottom of the barrel"; right?

A. M'hm.

Q. Now, these organizations...

A. M'hm.

Q. ...that you contacted..

A. M'hm.

Q. ...who are they? Give me a few of them.

A. Well, I simply told Carleton that if Dr. Ruth Phillips is going to be....

Q. No, I just asked you for the names of the organizations.

A. Are....

Q. That you contacted.

A. Carleton, it's all I contacted was Carleton. Carleton and I think Penn State.

Q. Did you contact the National Gallery?

A. Oh yeah.

Q. Did you contact the Museum of Civilization?

A. The members that I, I contacted the members of the Norval Morrisseau Heritage Society and that's where they worked.

Q. And?

A. And....

Q. The organizations they worked for. Okay.

A. Does that deal with you?

Q. So -no.

THE COURT: Okay, let's not....

MR. SINCLAIR: Q. I'm wondering who's the

bottom of the barrel.

THE COURT: Just one moment.

A. Sure, go ahead.

THE COURT: Again, Mr. Sinclair, let's try to relate questions that relates to you.

MR. SINCLAIR: Q. I'm wondering if I'm the bottom of the barrel?

A. No, no, no.

Q. So "In fact I'm going to start my attacks at the bottom of the barrel".

A. Which means....

Q. So who is the bottom of the barrel?

A. No, what that means is....

Q. 'Cause I got attacked.

THE COURT: Okay. Let him answer the....

A. ...answer the question. When I mean, mean the bottom of the barrel it means I don't pussyfoot into litigation; I file first and then ask questions. I don't try to negotiate first, you know, I try to give people a way out, they don't. I litigate, I litigate hard, that's all.

MR. SINCLAIR: Q. So you suggested to Mr. White that, that you do get together and you meet; correct?

A. I, we meet now and then, yes.

Q. No, in this letter you suggested that, you agreed with him, "Yes, let's get together and meet"....

A. I believe we did meet at some point in time after that, I don't know when or, or where or....

Q. Well, in this letter you say, you think yourself, Mr. White, Ms. Child, Sunny Kim and Michael Rogozinsky should meet in the middle of next week.

A. Well, whatever it was....

THE COURT: Just a moment. Let him phrase the question.

A. Sure.

THE COURT: So what is the question?

MR. SINCLAIR: Q. So....

A. What is your question?

Q. So did you end up, do you recall meeting with these people or some of these people on or about September 3<sup>rd</sup>?

A. I don't remember.

Q. Wednesday, September 3<sup>rd</sup>...

A. I don't remember.

Q. ...2009?

A. I don't remember.

Q. You don't remember. Well, you said you have a plan that you think will work. Can you tell the court about this plan that you thought would work?

A. The plan for?

Q. "I have a plan I think will work", last line.

A. Well, the plan, if, if, if there was any plan was basically to, to inform the public of what was going on and inform these organizations like I did through email, that Don Robinson was a liar and the Norval Morrisseau Heritage Society was just a big sham. It didn't involve you.

Q. What about what you just spoke about, litigating?

A. I said when I litigate I litigate tough, I litigate hard and I litigate without hesitation. If there's anybody out there who calls one of my Norval Morrisseau

paintings fake, I will litigate at the drop of a hat.

Q. Okay. So the people that sued me on November 21<sup>st</sup>, they all say that....

A. November?

Q. November 21<sup>st</sup>, 2008.

A. Right.

Q. These five people representing nine plaintiffs all say that you, you contacted them.

A. Yeah, I told them about the existence of your website.

Q. Apparently you discovered the existence of my website on September 16<sup>th</sup>.

A. I don't...

Q. Do you have any evidence of, of my doing something untoward in your estimation?

A. Untoward what?

Q. Something that you would want to litigate about...

A. You....

Q. ...on September 16th? According to these five affidavits on September 16<sup>th</sup> you were roaming around my website and, and you've claimed that at that point you discovered that I had images that I had stated in my opinion were fake.

A. Mr. Sinclair, I informed the people of the existence of your website whenever I saw it. Whatever, whenever it was up, that's when I would have contacted them. I contacted anybody who I knew in the business and "Hey look, here's a website calling all these paintings Norval Morrisseau fake. Hey, you better see if yours are up there, too".

Q. So you contacted anyone you knew in the business?

A. Yeah.

Q. Does this include people that don't sell purported Morrisseaus?

A. What do you mean?

Q. Well, in what business? Any one you know...

A. ...I informed those....

COURT CLERK: Court's indulgence....

THE COURT: You're going to have to let him finish the question before you...

A. Sure.

THE COURT: ...start answering.

A. Sure, sure. Go ahead.

MR. SINCLAIR: Q. What's the business? You contacted anyone you knew in the business.

A. In the art business.

Q. What art business?

A. Their art business. I'm not in the business. I knew....

Q. So did you contact the National Gallery?

A. Not at that time, no.

Q. Not about me?

A. Not at that time, no.

Q. Well, once again, so in general, the art business or the business of selling of purported Norval Morrisseau paintings?

A. Your website claimed 1,000 Norval Morrisseau paintings fake. I knew people in the business so I called them up and said, "Hey, you better take a look at

5 this website, it's calling some of, some of my paintings up there are fake and I'm sure some of yours are. You might want to take a look at it and take action against this person because a person calling 1,000 Norval Morrisseau openly fake on his website can't be good for your business or for what you own".

Q. And what action did you suggest they take?

A. Well, I just said, "Look at it".

10 Q. You said you suggested they take action.

A. Well, I said this is obviously something that's, you can litigate. Someone cannot just openly call paintings that you own fake, identify your gallery as a fake, that is against the law. You can, there are civil remedies. You may want to look into that.

15 Q. So did you suggest to Mr. McLeod that he could litigate?

A. Of course, 'cause he has, he has an action.

20 Q. Did you suggest to Donna Child that she could litigate?

A. I suggested to all of them that there were civil remedies for what you had done and they came to their own conclusion, hired their own lawyer and did their own action. I did a separate action. I was not part of their action.

25 Q. Well, would you say that you assisted them in getting rolling?

A. No. They hired their own lawyer...

Q. Yeah, they did.

30 A. ...they paid their own lawyer.

Q. Yeah, yup.

A. I mean, they, they didn't need any

assistance to get rolling. They're in the business, your identification of them personally selling fakes was the motivation they needed.

5 Q. You contacted, according to these affidavits, you're welcome to look at them, they're filed. You contacted Mr. McLeod nine days before anyone else, but more than two weeks after discovering this. Now, when you, the impression I get from you is you discovered this, these  
10 images on this website and you were really upset about it, so you called anyone you knew in the business about it. But from September 16<sup>th</sup> until October 2<sup>nd</sup>, apparently nobody was informed, according to these affidavits.

15 A. I don't know what you're talking about. I mean, I....

Q. Then let's get the....

THE COURT: Okay, okay. Well....

A. What's the....

THE COURT: No, no....

20 A. ...relevance?

THE COURT: Wait a second. Mr. Sinclair - his question to you is if in fact as he's suggesting, the affidavits suggest, what, a two-week period?

25 MR. SINCLAIR: A two-week period before contacting Mr. McLeod..

THE COURT: Okay, okay.

MR. SINCLAIR: ...and then nine more days before contacting anybody else.

30 THE COURT: All right. Do you have any reason to - his question is....

A. No....

THE COURT: Sir...

A. Sure, yes.

THE COURT: ...would you let me finish?

A. Yes, yes.

THE COURT: His question is to the effect of do you have any reason or do you know why you may have waited a period of time before advising people?

A. I don't think I waited. I just think their recollection to their lawyer and their affidavit has the, has the dates as they recall. I don't know, I know I cannot tell you exactly when I saw Mr. Sinclair's website. I can tell you when I saw one of my paintings up on there, but we all knew as we came from the same source, Randy Potter Auctions. So I'm simply informing people who I know in the business of the existence of his website. That's all I did. I took, they took their own legal action, I took separate legal action.

THE COURT: All right, all right. Next question.

MR. SINCLAIR: Q. Okay, so you contacted Mr. McLeod nine days before you contacted anybody else, according to these affidavits.

THE COURT: Okay, what's the question?

MR. SINCLAIR: Q. On around October 2<sup>nd</sup>, you contacted Mr. McLeod.

THE COURT: What's the question?

MR. SINCLAIR: Q. Do you have a special relationship with Mr. McLeod? Why did you contact him first?

A. Joe's a friend.

Q. Joe's a friend?

A. I, I, I'm, I, Joe's a friend.

Q. How long have you known...

A. ...respect....

Q. ...Joe?

A. I've probably known Joe for, oh, 20 years.

Q. Twenty years.

A. And before I knew Joe and before I had any money, Joe took the time to explain to me the art market and Norval Morrisseau and all that kind of stuff. I didn't have a dime to my name and he took the time to go - with me, all this kind of stuff. So I respected Joe. He's a friend, he's a, he's a very nice man.

Q. Are you in the same business?

A. I'm not in the art business. I do risk management.

Q. You're not in the art business?

A. I'm not in the art business. I collect art. I appreciate art. I am...

Q. So....

A. ...not carrying on....

Q. How do you pay your rent, Mr. Otavnik?

THE COURT: All right, not relevant.

MR. SINCLAIR: Well, he's not in the art business, so...

THE COURT: No, no, no.

MR. SINCLAIR: ...I think....

THE COURT: No, no, no. Not relevant. No, no, it's not relevant.

A. Risk management.

THE COURT: Okay, look, if I say "not relevant"

it means you don't have to answer.

A. I apologize.

THE COURT: All right, next question.

5 MR. SINCLAIR: Q. So Mr. McLeod calls you a  
fellow art collector?

A. Yes.

Q. Would you say Mr. McLeod is an art  
collector?

10 A. Well, he's an art collector and he also  
sells art. I'm sure Joe has his own little private  
collection that's for his own enjoyment and he's a retired  
school teacher and, you know, he sells art through a full-  
time business now.

15 Q. You testified you never sold a painting  
before, you just collect them; is that correct?

A. I never sold a painting?

Q. Yeah.

A. I tried to sell one at Heffel, correct.

20 Q. So I'd like to know why it took you nine  
days after informing Mr. McLeod about this until the other  
four plaintiffs were incited by you or suggested by you that  
they should take action against me?

25 A. I told them all at approximately the same  
time. What their recollections of the time tiers go, I  
don't know. They could have been out. They may, I may have  
left a voicemail, they may have got back to me, I don't  
know. As soon as I knew about the website, saw what was,  
saw what was on the website, saw the identification of these  
30 paintings as fake, I informed people in the business.

Q. Okay.

A. Like, I don't do business with Mr. White,

I'm a friend of Mr. White's.

Q. And in, okay. Is Mr. White in, in the same business as you?

5 A. I, Mr. White works at a different company. I work in risk management, Mr. White apparently is a chartered accountant for an....

10 Q. Your Honour, can I ask the question about what this risk management thing is? I mean, it means nothing. It's just, it's like....

A. I do derivative risk management. I handle companies' foreign exchange cash flows.

Q. So you work for a company?

15 A. I work for my own company, I am self-employed. I do derivative risk management, which, right now is handling cash flows in different currencies. That is risk management. I am not in the art business. I do not have a business licence to sell art, to buy art. I do not have a tax number for that business. I do not, I am not....

20 THE COURT: All right, you've made your point. Let's move on.

25 MR. SINCLAIR: Q. Okay. What I'd like to do is, there are many, many documents that have been filed by you, Mr. Otavnik, and what I'd like to do is just go through a couple of them that are indicative of the rest and ask some questions from that; if that's all right?

The first document I'd like to, sort of, go through with you is your December 17<sup>th</sup>, 2009 motion affidavit.

30 A. Sure.

Q. According to the affidavit you made, you phoned the Nova Scotia Art Gallery about me; is that

correct?

A. Yes.

Q. You called the Thunder Bay Art Gallery about me; is that correct?

A. Nope.

Q. Did you contact Sharon Godwin of the Thunder Bay Art Gallery about me?

A. Nope.

Q. You also contacted one of my expert defence witnesses, Mr. Wang?

A. I never spoke to him.

Q. Of Penn State University?

A. I never spoke to him.

Q. Contacted.

A. Yeah, yeah....

Q. Let's get this....

A. No, I....

Q. Let's go back a step here.

A. Sure, go ahead.

Q. Did you contact the Thunder Bay Art Gallery and Sharon Godwin about me?

A. No, no phone, no email.

Q. Okay. You contacted my expert defence witness, Dr. Wang of Penn State University about me?

A. Not about you. I contacted him about Don Robinson and the, and, and the Canadian Conservation Institute; not about you. I told him that Don Robinson, I, I, I told him that Don Robinson bought 28 paintings in this place he called fake and that you better check on your source.

Q. Soon after Judge Skolnik had me disclose my

expert witnesses, did you contact Dr. Wang and tell him that he was on my witness list?

A. Did I contact Dr. Wang....

Q. Dr. Wang....

A. I knew Dr. Wang's...

Q. Okay....

A. ...email from his own publications and I told him, yes, I made him aware that you were on his witness list and he said "What? Why, why would I want to do that?"

Q. Is that what he said? 'Cause we have your, the emails here filed.

A. Well, there's a few emails that aren't, going - let me see it. I knew about the existence of Dr. Wang and his report.

Q. Volume II, Volume I, section four, this is that top one for you, Your Honour.

THE COURT: Volume what? You said II and I?

MR. SINCLAIR: Volume I, section four, page 17.

Q. Okay. I'm just going to read off a couple of sections of the letters you wrote to him.

A. Sure.

Q. Dr. Wang from Joe Otavnik, this is sent somewhere around August the 26<sup>th</sup>, 2009, actually page 22. The subject is Ritchie Sinclair. This actually comes subsequent to a letter that you sent, one of many but, that you sent on the 20<sup>th</sup>.

A. M'hm.

Q. You say, "Norval Morrisseau did not sign the affidavits in question".

A. Well, what, what page on we are now?

Q. Oh, Mr. Wang, page 20 in there.

A. Page 20? Okay, I thought you said 22?

Q. Yeah, 22 we'll get back to. I'm sorry.

A. Hang on. Okay, go ahead, yes.

5 Q. So, you tell Dr. Wang that Norval  
Morrissette did not sign the affidavits in question.

A. M'hm.

Q. Do you believe that?

A. I do.

10 Q. Do have any proof of that? Did you contact  
the lawyers?

THE COURT: Okay, okay.

A. No, but....

15 THE COURT: Just one moment. Mr. Sinclair,  
we're talking about...

A. Your Honour....

THE COURT: ...a defendant's claim..

A. Thank you.

MR. SINCLAIR: Right.

20 THE COURT: ...either defaming you or harassing  
you, et cetera.

MR. SINCLAIR: Right.

THE COURT: This doesn't deal with that issue.

MR. SINCLAIR: In particular.

25 THE COURT: So let's...

MR. SINCLAIR: Okay.

THE COURT: ...deal with evidence that relates  
specifically to the defendant's claim.

30 MR. SINCLAIR: Right. Q. So specifically I  
disclosed Dr. Wang and Don Robinson in this first paragraph,  
this letter, you say, "As a scientist, I urge you not to be  
used by these people..."

A. M'hm.

5 Q. ..."these people have been propagating the myth of fake Norval Morrisseau paintings in the marketplace."

A. M'hm.

Q. Right?

A. M'hm.

10 Q. So I would be one of those people, right, that you wrote to my witness?

A. No.

Q. I'm not one of these people that, not to be used by these people?

15 A. No, because I only, 'cause if you remove the, I'm only referring to Don Robinson because Don Robinson supplied him with the information he was going to use for the baseline of his study. I'm saying, "Hey, wait a second. Don Robinson supplied you with these so-called fakes, you better watch him. Did you know that Don Robinson called, provided you with those fakes, yet he bought 28 paintings  
20 from the same place he called fake; so hey, you had better watch it".

Q. Well, on page 19...

A. Sure.

25 Q. ...you have another letter to Dr. Wang.

A. Yup.

Q. And here you talk about me.

A. Well, that's him. That's his - page what?

30 Q. Now, dear sirs, sincerely Joe Otavnik, the page before, 19.

A. I, I haven't got a page 19. I have a page 18 and a page 20.

Q. Oh, okay. Well, I'll read it.

A. Sure.

Q. You wrote it. It's just the usual stuff  
5 you say, anyhow.

A. Your Honour....

Q. "Ritchie Stardreamer Sinclair, Kinsman  
Robinson omitted all references from Ritchie Stardreamer  
Sinclair from their blog which is now not operating.  
10 Kinsman Robinson was promoting Mr. Sinclair's website when  
Mr. Sinclair identified 1,000 images once promoted by RR  
(ph) in March 2009 but no longer - or but not soon after".

So that's me, just before...

A. Yeah, we....

Q. ...so I'm going to ask you again on page 20...

15 A. Yes?

Q. ...was I one of those people?

A. No, this, when it says here what I'm saying  
is the truth here. You were removed, all the references  
20 from you were removed from Kinsman

Robinson's website. They stopped promoting  
you and what I'm stating is a fact. I'm basically telling  
them, yeah, Ritchie called even Mr., Mr. Robinson's stuff  
25 fake.

Q. You know, another thing on page 20 that I'd  
just like to ask...

A. Sure.

Q. ...it may not be exactly on, but you tell,  
30 you tell my witness that you only have seven years of  
university; is that true?

A. Pardon?

Q. On the third, on the second last sentence....

A. Yeah, I only have seven years of university and I am no Ph.D., but I know this, yeah.

Q. What university did you go to?

A. University of Toronto.

Q. Really?

A. Really. I'm just trying to tell him that yes, 'cause I know to do a Ph.D. it takes longer than that. I'm saying, "Yeah, I'm no Ph.D., but I know what the baseline, I knew, I know, I know how you discover, you work from a baseline and network from there." I mean, if what, if someone's giving you paintings that aren't what they say they are then anything flowing from that cannot be true. I'm just saying, "Hey, wait a second. The people who you gave them to, they aren't the most honest people in the world. Don't believe me? Check it out".

Q. Now, are you aware that my witness, Dr. Wang, had already provided, produced for the public, for the world in general, two studies of Norval Morrisseau paintings and that Morrisseau identified his fakes compared with ones that were well-known to be authentic; were you aware that he'd done two studies of this already?

A. I, yes, of course I was aware.

Q. Okay.

A. But I'm, I told you that what you use as a baseline of your study may have not have been correct.

Q. Right.

A. And then he turned around and said, "Yeah, but they're not to be used in court anyways, 'cause the computer couldn't tell".

Q. Right. Now, on page 22, we're back there, now here's, you know, you said you didn't, but here's where, where you....

A. Sure.

Q. It's a letter with regard to me; right?

A. Right.

Q. And you say in this letter you've been named as a witness in the above-noted court case by Mr. Ritchie Sinclair who is receiving assistance by Mr. Don Robinson of Kinsman Robinson Galleries".

A. Right.

Q. Right? Is, and Don Robinson's one of those people; right, from the page before that you say isn't me?

A. What's your point? I told him, I said....

THE COURT: Okay. I'm not sure, what is the question that you're trying to ask?

A. I....

MR. SINCLAIR: Q. Keeping....

THE COURT: Just a moment.

MR. SINCLAIR: Q. Okay then, let's go to page

23.

A. Sure.

Q. Now, you wanted a response to this letter.

A. M'hm.

Q. With regard to me from him and maybe previous letters. On November 17<sup>th</sup>, 2009...

A. M'hm.

Q. ...you write in the second one here: "I've still not received any response to this email. If you do not respond I will contact the legal department and board of ethics for your university. It is simple. Your research is

being used to discredit current authentic works of art held by private collections, galleries and universities. You've been informed of such and have done nothing".

5 So do you think Mr. Wang might have been intimidated by this letter you sent to him?

10 A. Well, I hope he was concerned because what I'm saying to you is "Hey, Mr. Wang, I've tried to cooperate with you. You've asked for evidence, I've told you that the people who supplied you with these paintings, these so-called fakes of paintings have also called paintings in the Smithsonian fake." They've also done this and that. I'm saying, "Hey, watch out and you have a responsibility, Mr. Wang, to, to do your research and if you have any information that comes up post-research that would affect your research, you have an ethical responsibility to disclose that".

15 Q. But, Mr. Otavnik, the letter that you're asking him, you wanted to receive a response to the previous letter, right, to this email?

20 A. M'hm.

Q. And, and it's a, it's a letter about me and about him being noted as a witness in this case and now you're threatening Pennsylvania University with legal action.

25 A. I'm....

THE COURT: Just one moment. I don't see a question; you're making a statement.

A. Thank you.

30 MR. SINCLAIR: Q. Okay. Mr. Otavnik...

A. M'hm.

Q. ...in the, in the letter that, this, you ask

for a, Dr. Wang to respond to the previous letter; am I correct?

A. Well, I, I can't follow the dates here....

5 Q. Well, it's on the same page. Twenty-three has the previous letter then the one that came after it, then the one that came after that, right, all on page 23.

A. Sure, okay, go ahead. What's your question?

10 Q. So you send a letter entitled "Ritchie Sinclair" saying that I've been named as a witness.

A. Yeah.

Q. Right? Then you send another letter on November 17<sup>th</sup>, saying you've still not received any response...

A. Yeah.

15 Q. ...to this letter.

A. Yeah.

Q. Right? So, are you threatening to sue Dr. Wang?

A. I'm telling you....

20 Q. Are you threatening legal action against these people because they were going to be my witness?

A. Absolutely not. I'm telling Mr. Wang, if you want to show up, please show up but have your facts, because I'll have mine and you are responsible for adjusting anything that you said in the past in the light of new information. I'm putting him on note, that's all.

25 Q. On notice.

30 A. Yeah, I'm just saying, "Mr. Wang, I'm trying to inform you of the truth. You can ask me anything you want, I will provide you that information, but if you don't want that information, that's your choice. But if you

5 do, if you ignore it and you come to court, I will be  
prepared. I will tell you, Mr. Wang, did you know Don  
Robinson bought 28 paintings from a place he later called  
fake? Were those used as your study, Mr. Wang? Where'd he  
get those paintings, Mr. Wang? Mr. Wang, how do you know  
they are real in the first place? Mr. Wang, aren't you  
using a lot of assumptions by people just giving you  
something, telling you what it is? If you don't know if  
10 they're real or fake to start off with, how can that be any  
basis for your study going forward? If the base of your  
study is incorrect, the conclusions are all incorrect. Do  
you know all these facts about these people, Mr. Wang?"

15 Q. Well, do you think you would have had a  
chance to ask those questions if he had been able to be my  
witness?

A. Oh, absolutely, on cross-examination.

Q. Once more back to the letter of yesterday.

A. Of what, sir?

20 Q. You invited Dr. Wang to fly here from Penn  
U for this morning?

25 A. He's a free man. I, I want to make him  
aware of it, that way he could update himself with other  
people, he can contact other people that, who were named  
there. Mr. Robinson's always been about openness,  
transparency, let's get to the truth. So I said, "Hey, I'm  
invited the media down", I said, "Yeah, let's get the truth,  
come on, Don, explain that".

30 Q. Okay. Good enough. Did you contact  
Morrisseau principal dealer, Bryant Ross of the Coghlan Art  
Gallery about me? Did you write him a letter about me?

A. I think I emailed him.

it.

Q. Let's turn a few pages and have a look at

A. I would have told him the same thing.

THE COURT: Wait for the question.

A. Can I get some water?

MR. SINCLAIR: Q. Page 13.

THE COURT: Yes, go ahead.

A. What volume?

MR. SINCLAIR: Q. I'm sorry.

THE COURT: The same volume.

MR. SINCLAIR: Q. Volume I.

THE COURT: Volume I.

MR. SINCLAIR: Q. Same section, page 13.

right?

A. Okay, same section, page 13. Section five,

THE COURT: Yes.

and...

MR. SINCLAIR: Q. Prior to that, Your Honour,

A. Is it 13?

Q. ...Mr. Otavnik...

A. Yeah, go ahead.

Q. ...I would like to, I would like to have a  
look at Volume III, section one.

A. Oh, I'll have to get my volume.

Q. My apologies. Page five. It's a letter  
from Bryant Ross of Coghlan Art.

A. A letter, to you?

Q. Yes.

A. Okay.

Q. A letter, yeah. For the court, a  
statement, let's call it. Now, in this letter, halfway

down, can you see that, do you see that Mr. Ross confirms that I was an apprentice to Norval Morrisseau?

A. In his opinion, yes.

5 Q. Yes. And he says that he's been involved for 25 years, has a close personal relationship of more than 20 years with Norval Morrisseau; do you agree with that?

A. He claims that, yes.

10 Q. He claims that, yeah. Mr. Ross also claims to confirm that I painted with Norval and he actually has paintings of mine. Just to introduce who Mr. Ross is to the court.

Now, we'll turn to letter you wrote to Mr. Ross with regard to me.

A. Sure.

15 Q. You wrote it on January 6<sup>th</sup>, 2010.

A. Yup, yes.

20 Q. And the subject, not so different from Mr. Wang is legal notice; right? You, your subject you wrote was "Legal Notice"?

A. Yeah, yes.

Q. So this is a legal notice sent to Mr. Ross.

A. I'm making him aware of the situation.

25 Q. You're giving him notification like you gave Dr. Wang, right?

30 A. I'm telling him that if you have a, you have a website and you have a hyperlink to a defamatory site, then you are liable for that link and if you, especially if you highlight that link on that website, you direct people from your website to another website which is known to carry defamatory stuff, you're in trouble.

Q. Right. And so you actually....

A. It's an old case.

Q. What do you say to Mr. Ross? Who is going to proceed with legal action against him?

A. Me.

Q. You're going to?

A. Yeah.

Q. Did you?

A. No, but it's, not but I still may.

Q. You still what?

A. I still may.

Q. You still may?

A. M'hm.

Q. I see. Did he remove the hyperlink? This is a year ago.

A. No, he hasn't. I have other things on my plate. I, as long as, as long as the link is still up, that's fine. He, he has to, you know, if he removes the link then I'll be okay. As long as the link up, as long as the link is up he is liable and if I choose to take further action I, I may, I may or may not very soon.

Q. So you say in this letter that you sued KRG because they promoted me on their website?

A. Well, I did. It was part of the original filing of this case.

Q. That's why you sued them?

A. Pardon?

Q. That's why you sued them?

A. I sued them because they were promoting you and they, and they knew that the stuff on their site, that was a defamatory website, that's why they settled out. Well, in fact, Mr. Sinclair, if you remember, they settled

5 out after they found out that you actually in that same website called some of their own paintings fake, some which hang in the Smithsonian and other famous galleries. So I guess they weren't too happy with having Norval's protégé who was calling their own work fake.

Q. Well, as you said after, not, not because of, Mr. Otavnik, we both know.

A. All right.

10 Q. You said after. They took the information...

THE COURT: All right, let's....

MR. SINCLAIR: Q. ...about me....

THE COURT: No, no....

A. Well, I don't understand....

15 THE COURT: Just a moment. Whoa, whoa, both of you. It's not a question again; it's a comment on his evidence. So phrase a question he can respond to.

MR. SINCLAIR: I'm sorry. Yeah, that's an issue of....

20 THE COURT: No, no, don't. I don't want to hear your comments, Mr. Sinclair. You can ask another question, whether you like the answer or don't like the answer.

25 MR. SINCLAIR: Okay. Q. So you say, "That's why KRG settled the case out of court with me. That's why you don't see KRG's blog. And you see that KRG removed all references to Ritchie from anything on their website".

A. That was their choice.

30 Q. So, you say to Bryant Ross, "Why don't you ask Ritchie for a copy of that agreement, he has it"; right?

A. Yeah.

Q. Now, you've testified to what happened there in the transcripts.

A. What happened where?

5 Q. What happened with regard to this settlement that I'm not allowed to talk about, but you did talk about it, right?

A. I don't know what you're talking about, Mr. Sinclair.

10 Q. Well, I'm going to ask you...

A. Sure.

Q. ...what, what the, what the settlement agreement was between you and KRG.

A. Well, you, you....

15 Q. It's disclosed. You've, you made it as public as you want, so...

A. No, no, you....

Q. ...so disclose that.

A. No, well, let's get the facts straight.

20 One, I had a disclosure agreement with Kinsman Robinson and you asked Kinsman Robinson for a copy of that, which they gave you. I never broke, I had a confidentiality agreement between myself and KRG, which you asked me to break and I said no and then KRG disclosed that to you. So I, I was quite content with having the confidentiality agreement remain confidentiality, confidential. You took the action of asking for it.

25 Q. Did you appear at a motion with, that I, that I held with, regarding to getting disclosure of that...

30 A. When?

Q. ...document?

A. When? I, I, Mr. Sinclair....

Q. June....

A. ...with you. I went, well over four or five motions with you. I don't know exactly...

Q. At least.

A. ...what date.

Q. At least. Nevertheless, I suggest that - I shouldn't be suggesting.

Now, all you wanted, according to this letter from KRG was for them to take down any information they had about me off their website; is that correct?

A. Absolutely not. What I told KRG was as long as you take off the link to, as long as you stop talking about fakes and Ritchie Sinclair and have a link on, on Ritchie Sinclair's, on your website to Mr. Sinclair's website, that's no go. I said if you want to promote Mr. Sinclair, fine. If you want to have a show of Mr. Sinclair, fine. None of my business. None of my business. But you can't have a link on your website and frame it around fake Norval Morrisseau paintings and then direct the reader to the link, to that link, that's it. As far as KRG, Mr. Sinclair, you can have a show tomorrow with them, none of my business. They're free to, they're there for me, they're free to sell your art. You're free to show there, I have nothing to say at that, care less. They decided to take you off. I never asked to take you off all references. They did that. I just said take off the link, don't talk about fakes. You want to promote Ritchie separately, perfect, no problem, sell his artwork there, none of my business. You just can't use that, mister, you can't have a link, I'm now repeating myself, on there. But as far as whatever, whatever business relationship you want with Mr. Sinclair,

5 you're free to do what you want, none of my business. I'm concerned about my Norval Morrisseau artwork. You're helping Mr. Sinclair call it fake by directing people to his website, that's not on. Anything else you do with Mr. Sinclair, go ahead, none of my business.

Q. Okay. So then essentially what you did, was you got KRG to make me disappear...

A. No.

Q. ...on the internet.

A. No.

Q. You got him, because they spoke about fakes on their website...

A. No.

Q. ...and had a link to my website, that's what you just testified to.

A. That's right.

Q. Right?

A. You spoke about fakes on, on their website and link to your website.

Q. Right.

A. For example, they had a picture of you having dinner with Norval Morrisseau they took off, none of my business. If you want to have a picture of Ritchie, you, you having dinner with Norval in your home, perfect. Not, not for me to say.

Q. And what did you give them in return for making me disappear?

A. What did we - I didn't make you disappear. They chose to take you, I told them the agreement was....

Q. I have your settlement agreement here.

A. Then, then why asking me, you see it?

Q. I'm asking you because you're on the witness stand.

A. They....

THE COURT: All right. Again....

A. They....

THE COURT: Just one moment. Mr. Sinclair, I don't know how long exactly you've had Mr. Otavnik in the box, but the line of questioning hasn't helped me. As a matter of fact, I'm sitting here, I haven't made one note based on any questions you've asked. And normally I'm making notes on things that I think are important that I'm going to have to remember for the purpose of my decision.

MR. SINCLAIR: Right.

THE COURT: So, I mean, I don't know what else to tell you other than you haven't asked anything that's really caught my interest in any way. So if you're just going to continue like this, I can't see me having any notes to look at in other words.

MR. SINCLAIR: Well....

THE COURT: Again, you don't seem to be directing your questions specifically enough that address the interests of your defendant's claim and you're talking about things with KRG, you're talking all this, but I haven't heard anything that would....

MR. SINCLAIR: Your Honour, I understand, I know, I, I, at the risk of boring you with all this stuff again, this is a legal notice to, to

an art dealer of mine that..

THE COURT: All right. I know what you....

MR. SINCLAIR: ...that this man has sent saying, you know, I consider that harassment.

THE COURT: All right.

MR. SINCLAIR: Right.

THE COURT: Okay. And you know what? I haven't made a note, I guess the question is a) is it harassment? And secondly, what are all the legal things you have to prove to create a claim of harassment. And I think that's what your biggest problem at this point is. I'm not sure you know what your legal obligations are and you're....

MR. SINCLAIR: Well, you, you're right, sir. This game is beyond me. All, what I'd like to....

THE COURT: Okay, well, all I'm telling you is that the questions you're asking now aren't really helpful.

MR. SINCLAIR: Okay. Q. You plan to have the Smithsonian Museum witness appear for you in the Cole, in the Otavnik v. Cole case?

A. M'hm.

Q. You plan to have a Smithsonian Museum witness appear....

THE COURT: All right. I don't care what other case there is; it's not relevant to this case.

MR. SINCLAIR: Q. You spoke slanderously to the Ottawa Citizen, did you about me?

A. No, not at all.

Q. You didn't speak about me to the Ottawa Citizen?

A. No.

5 Q. Did you speak to the Ottawa Citizen with regard to an article that came out about me and about a painting that you owned that had been, that the Bear Claw Gallery had been sued over being fake?

10 A. They called me with respect to that painting and I said to them all I know is that other people were suing you in court. It had nothing to do with that. I never had any comments about you at all to them.

Q. You didn't?

A. No.

15 Q. When the Ottawa Citizen writes "Mr. Otavnik is certainly no fan of Mr. Sinclair"?

A. Well, they would be right.

Q. So how do they arrive at that?

20 A. Well, the fact that five people were suing you in District Court calling Norval Morrissette paintings fake and since I own some artist's work, I guess they put two and two together.

25 Q. Did you talk to the Ottawa Citizen about this article more than once? Did you phone them several times?

30 A. They, they phoned me, it was about a 45-minute interview and if you want to hear it, I guess you can ask them for the, for the tape. It was, it was recorded, they told me it was recorded in advance, I said, yeah, sure, go ahead. Paul Giselle was the, or Gazelle (ph) was the person who called and interviewed me.

Q. But you're telling the court that you

5 didn't slander me to the Ottawa Citizen?

A. Absolutely not.

Q. Okay. Did you know that your bizarre allegations to the Ottawa Citizen, which I was told about, held up the story for weeks?

A. Bizarre allegation of what?

Q. About me.

10 A. Absolutely not. Maybe you should get a copy of that tape and hear what was said.

Q. Okay. You state in this December 17<sup>th</sup> motion affidavit...

A. M'hm.

15 Q. ...that you confirmed the alleged evidence was collected on Norval Morrisseau blog spot.com with third parties.

A. Pardon?

20 Q. You state that you, that this, first of all, you, you say that you collected evidence from Hugo Matulak's (ph) Norval Morrisseau blog spot.com website; is that correct?

25 A. Absolutely, it's a good source. Hugo actually does a lot of research and I, I looked at it, verified it with other parties, like, for example, Art Gallery of Nova Scotia. You put a painting up there calling it fake and I called the gallery and says "Is this actually in your permanent collection?" They said, "Oh, yes, it is". I said, "Oh, by the way, it's being called a fake on this website". So I basically said you can confirm that you own the painting, yes.

30 Q. Did you contact Mr. Matulak personally about the documents that he was publishing?

A. No. I verified....

Q. How about your documents that were published through him?

A. I never gave him any documents.

Q. Have you been at, were you there to his website yesterday?

A. I don't know. I think I may have. I may have, I may have, I may have viewed what people, what he, what he posts. He's a very good actual source of information.

Q. Well, he is, isn't he?

A. Well, he is, I mean.

Q. You know, as of yesterday, are you aware what's posted up there, right now?

A. Well, I understand....

THE COURT: Okay, just one moment.

A. I don't....

THE COURT: No, we're dealing with the allegations in the claim, not things that are on a website today. So let's not get into that area.

MR. SINCLAIR: Q. So you say that you've never provided any information or published any comments on the blog; right?

A. Correct.

Q. And you never provided any information to Mr. Matulak?

A. Nope.

Q. Or Mr. Moneez (ph)?

A. No.

Q. Or the Norval Morrisseau.blog spot.com

website?

A. Nope.

Q. You never provided the transcripts of this court for exposure on the internet yesterday?

A. I believe Mr. Matulak ordered a copy from the court services like anybody else is available..../

Q. Mr. Matulak ordered a copy?

A. I, I don't know. How would I know?

Q. I don't know. I think, I don't know. How would you know?

A. Well, if it's published on....

Q. So you never gave...

A. ...I have a....

Q. ...Mr. Matulak a copy?

A. I have a copy of myself, Mr. Sinclair. You have a copy, where'd you get your copy?

THE COURT: Okay....

A. See my point.

THE COURT: Well, no.

MR. SINCLAIR: Q. So you're testifying you never gave Mr. Matulak a copy of this?

A. No. Yes, I didn't, I never, I never gave him a copy.

Q. Okay.

A. A copy of a public document, so I mean, yeah, okay.

Q. What about the image of the subject painting; did you give Mr. Matulak the image of the subject painting..

A. That's not...

Q. ...to publish?

5 A. ...part of this, Your Honour. It's not part of this.

Q. Yes, it is. Did you give Mr. Matulak....

THE COURT: Okay, well....

MR. SINCLAIR: Q. It's not about the painting, it's about did you give Mr. Matulak...

A. No. No, I believe....

Q. ...documentation and this image?

10 A. I believe, no, he took it off Mr. Potter's website. He called me up and said, "I have a picture of it, it's a beautiful painting. I'm going to put it on my website".

Q. Well, in your, in your claim against me, which is right here, you say you gave it.

15 A. Gave.

Q. You gave it to Mr. Matulak and he put it up. That's your claim.

A. Well....

20 Q. In your claim that's what you say. "I gave it to Mr. Matulak".

A. Well, Mr. Sinclair, in your claim you also stated that you didn't even know I owned the painting when you called it fake. I mean, I don't understand his question.

25 Q. My question is, did you give Mr. Otavnik (sic) the painting?

A. Did I give?

30 Q. The image of the painting. There it is. Did you give Mr. Otavnik (sic) the image of the painting?

A. I'm Mr. Otavnik.

Q. Oh. Did you give Mr. Matulak, my

apologies.

5 A. He took it off Randy Potter's website. He then said, "That's a great painting" and I think he might have said "Can you send me a better image of it?" And I think I might have, but he took the image from Randy Potter's website.

Q. Perhaps you could read that?

10 A. Sure, sure. "Mr. Sinclair called it a fake without even knowing who owned the painting. I gave the image of this painting to Mr. Matulak who posted it on his blog". Yeah, so? He had the, he had the painting already. He had a, he took it off Potter's website and I gave him another one.

15 But what's the...

THE COURT: All right...

A. ...what's the point?

THE COURT: ...okay.

MR. SINCLAIR: Q. Okay.

20 A. You didn't even know who owned it. You called the painting fake in your....

Q. Did you tell Mr. Matulak the title of the painting?

A. No, I gave him front and back.

25 Q. You gave him the picture of the front and the back of the painting?

A. Of course, which I have right here.

Q. And did you tell, did you tell Mr. Matulak the title of the painting?

30 A. No, it's on the, it's on the painting.

Q. Did you tell Mr. Matulak the owner or runner, operator, spokesperson of your website?

A. What website?

Q. Norval Morrisseau.blog spot.com. Did you tell Mr. Matulak the title of the painting? That's just a yes or no.

A. Did I tell the title of the painting? I don't remember.

Q. Okay.

A. It's on the back. I, I sent him a front, copy of the front and the back.

Q. Did you tell Mr. Matulak to keep you anonymous instead of identifying you as the owner of the painting?

A. No.

Q. Were you anonymous, though?

A. What do you, what, what do you mean am I anonymous?

Q. Okay. One thing you say in your claim is that "Mr. Sinclair did this without even knowing it was my painting"...

A. Well, that's true.

Q. ...you didn't say....

A. You're, you're, there's 1,000 paintings on your website, you don't even know who owns this, you're calling them fake. I was pointing out the fact that....

Q. But you also didn't - my question is, did you identify that you owned this painting?

A. On where?

Q. The image of the picture that you gave to Mr. Matulak?

A. No. He just, he just said "It's a great painting. I want, I want to put it up." He said, "I

already got the...", he already had the copy from Randy Potter Auctions.

Q. When did you put it up?

A. I didn't put it up.

Q. When did you give it to Mr. Matulak...

A. I have no idea.

Q. ...for him to publish?

A. I have no idea. He already had it. He just wanted....

Q. ...would have been on or about October 16<sup>th</sup>, 2008?

A. I have no idea. You took these various....

THE COURT: Okay, let him ask the next question, sir.

MR. SINCLAIR: Q. Now, you really loved this painting, right?

A. It's a great painting.

Q. Why wouldn't you want the public to know that it was your painting when you, when you have this....

THE COURT: Okay, not relevant.

MR. SINCLAIR: Q. ...had it published?

THE COURT: Not relevant.

MR. SINCLAIR: Q. Okay, so you, two months' prior, actually a month, no two months' prior....

A. To what?

Q. Approximately, you launched a website, which we talked about...

A. Prior, prior to what?

Q. ...right? Norval Morrisseau Lawsuit website; right?

A. What, what?

Q. Two months, in August.

THE COURT: Is the date important?

MR. SINCLAIR: Not really.

THE COURT: Okay, so then why are we arguing over the date? Let's just get to the question in regard to the site.

A. The websites that I put up....

THE COURT: No, no, no, sir. He hasn't..

A. Sorry.

THE COURT: ...asked you a question.

A. Sorry, sorry. Sorry, Your Honour.

MR. SINCLAIR: Q. When did you first launch this website, Norval..

A. Launch what?

Q. ...Morrisseau Lawsuit.com?

A. I believe it was after Gabe settled out with me. Yes, it had to be that because I put up a copy of the case only on the website, which a case which did not involve you. Your name is not mentioned on the case. It simply showed the world my filing, Mr. Vadas' response and the final payout from Mr. Vadas to me. It had a place for no comments on purpose. I had a little thing up there saying....

THE COURT: All right. You know what? I..

A. Yeah, I, I....

THE COURT: ...don't want you to get into the whole....

A. I understand, I'm sorry.

THE COURT: I don't know why we're dragging out information. I mean, I know people want to get certain things off their chest, but for me to

listen to hours of details that aren't assisting me in any way, yes, you're right, it's painful.

5 So again, I still haven't made a note, Mr. Sinclair. Just to let you know that I didn't see any improvement in the line of questioning in particular.

10 MR. SINCLAIR: Q. Okay, Mr. Otavnik you, you did contact these people. I have evidence that....

A. Which people?

Q. You did contact the people that sued me....

15 THE COURT: No, you phrase questions to him, sir. I don't want to hear any evidence from you, you're not in the witness box.

MR. SINCLAIR: No.

THE COURT: If you want to ask him...

MR. SINCLAIR: I know, we....

20 THE COURT: ...a question, you ask him a question.

MR. SINCLAIR: Q. Mr. Otavnik, you were well aware that there was, because you were informing the people who eventually became plaintiffs...

A. M'hm.

25 Q. ...between October 2<sup>nd</sup> and October 11<sup>th</sup>...

A. M'hm.

Q. ...right? So you were telling anyone and everyone...

THE COURT: What is the question?

30 MR. SINCLAIR: Q. ...who would listen. The question is: Given the fact that you know that I was posting pictures...

A. M'hm.

Q. ...of paintings that I considered were illegitimate Morrisseaus...

A. M'hm, m'hm.

Q. ...and given the fact that you contacted all these people...

A. M'hm.

Q. ...and were really upset about it...

A. M'hm.

Q. ...and, and you knew I was taking these images from various websites; correct?

A. Right.

Q. And you knew that I was taking images from Mr. Matulak's website; correct?

A. Yeah, and....

Q. And yet this painting that you claimed on March 18<sup>th</sup> to love so much that you didn't even want to bring it to court, you put it up on his website; correct?

A. No, he, as I've explained....

THE COURT: All right, I'm not sure what the question is.

MR. SINCLAIR: Q. I'm saying....

THE COURT: No, no, don't go through a whole story. What is the question? I have no idea what you're trying....

MR. SINCLAIR: I can give you the answer.

THE COURT: Well, I don't want, you know what? I'm sure the witness can give me the answer.

MR. SINCLAIR: Q. The question is: Did you put that image of, did you give that image to Mr. Matulak in order for him to place it on his website knowing that I was

going to pick it off his website and put it on mine because you knew I was doing this every day and in particular this website was a....

A. Well, well, well, no.

Q. Did you know beforehand? Did you say, "I'm going to put this up anonymously"?

A. Of course not.

Q. So why did you put, why did you give it to Mr. Matulak?

A. As I explained....

THE COURT: All right, no, no. I don't want to hear it again.

MR. SINCLAIR: Okay. Q. Well....

A. And Mr. Sinclair....

THE COURT: No, no, no, I don't want to hear it, please.

A. Sorry.

MR. SINCLAIR: Q. On the same day, October 16<sup>th</sup>, there was another website that put up information about me being Norval Morrisseau's apprentice, his name is Jonathan Manovich (ph). Now, in the court materials which I've entered..

A. M'hm.

Q. ...in evidence...

A. M'hm.

Q. ...did you threaten him with this, in a similar threat that you did to Dr. Wang and to Bryant Ross with regard to his website and statements about me?

A. I don't know. Can you show me them?

Q. Yeah.

A. Because if anything I would have told him

the same thing. "You're calling paintings fake that you don't even know", you know. "You know, you can't call"....

THE COURT: All right. You know what? It's not....

MR. SINCLAIR: It's not necessary to go into that?

A. No.

THE COURT: No.

MR. SINCLAIR: You understand, okay.

Q. And what happened to Mr. Zamanovich's website on October 16<sup>th</sup>?

A. I have no idea. Whatever he did to his website, I, I have no idea.

Q. It's in your statement of claim on page two...

A. What's my statement....

Q. ...paragraph three.

A. What's it say?

Q. "Please refer now to exhibit 14, which is from a now defunct blog named 'Honouring Norval Morrisseau blog spot.com'".

A. M'hm.

Q. "The same interview from Mr. Sinclair"; right? In your letter to Bryant Ross, you ask him, what do you think happened to Johnson Zamanovich's website? Do you take credit for pulling his website down?

A. No, he should take credit for it for realizing what the truth was and realizing, "Hey, you know what? I'm not getting involved in this, I'm taking this stuff down".

Q. And did you do that? Did you contact him

the very next day after he put up information about me being Norval Morrissette's apprentice?

5 A. I contacted him, I think, and said, "You know, John, it's a good thing you took it down, because you know, he doesn't know what he's talking about".

Q. Okay.

A. May I have some more water, sir?

THE COURT: Go ahead.

10 A. Thank you, Your Honour.

MR. SINCLAIR: Q. In January 2009, you contacted this same gentleman that had pulled his website down, after he'd appeared in an affidavit, in one of my affidavits, and threatened him once again and asked him to contact me; is that correct?

15 A. I, you know, you have to show me that, I don't know. I mean, an affidavit that I sent?

Q. No, I, I wrote the affidavit. You were upset that Mr. Zamanovich's name appeared in an affidavit I filed in Superior Court..

20 A. Why would I....

Q. ...and contacted him again.

A. I...

Q. Okay.

25 A. ...I don't want....

Q. I don't want to take the judge through this.

THE COURT: All right.

A. I....

30 THE COURT: Just one moment.

MR. SINCLAIR: Your Honour, I'm trying to show that this man is....

THE COURT: No, I don't want to hear, in final argument you can tell me what you were trying to show there.

5 MR. SINCLAIR: Q. Okay. Section four, Volume I, page three.

A. Section four?

Q. Yeah, third page.

A. M'hm.

10 Q. Okay. Now at the time you didn't know that it's addressed to Mr. Seabrook, but really it was sent to Mr. Zamanovich; you just didn't know his name at the time. Right?

A. I don't know, whatever.

15 Q. Can you read that letter, page three?

A. Sure.

Q. From you.

20 A. Your little friend's, Ritchie - "Your little friend's website, Ritchie Sinclair, has been shut down. If you do not remove all references to my case, Otavnik versus Vadas and all the negative comments made about me, I will sue you for libel, slander and defamation of character. Do you want to carry Mr. Vadas' water, you better be able to handle the weight."

25 Q. Now, this is the same materials you're telling that you've already had published on the internet on Norval Morrisseau Lawsuit.com?

A. I don't know what you're talking....

Q. Otavnik v. Vadas..

30 A. Well, he....

Q. ...is that the case you mentioned that you have publicly, that you had publicly available?

A. Well, he put, I believe this person put it, put it on their website, which is public, I mean...

Q. Yeah.

5 A. ...I says, well, I'm saying the negative comments made about me. I don't care about the actual filings of the case. What would I care? I already had a website up doing that. If someone else wants to take it off and publish it, good for them.

10 Q. Well, Mr. Zamanovich in two pages over, he says that he didn't, or the page before, page two.

A. M'hm.

THE COURT: What's the question?

A. Which?

15 MR. SINCLAIR: Q. Well, it's his response.

THE COURT: Sir, I'm not....

A. ...response....

MR. SINCLAIR: Q. ...Ritchie Sinclair, he doesn't even know me.

20 THE COURT: Mr. Sinclair, I'm....

MR. SINCLAIR: Q. So the next page, Your Honour, is the one we were just discussing really. Here we are, January 10<sup>th</sup>, 2009. Right? Can you read that?

25 A. Sure, sure. "I thought we had a gentleman's agreement, you took down Norval Morrisseau - Norval Morrisseau, I told you I would leave you alone, not tell anybody anything. When I sued Mr. Sinclair and Kinsman Robinson I mentioned a blog by - and didn't reference your name in my case. As you know via Ritchie's website, there's  
30 a reference to a lawsuit where Ritchie uses your name to make defamatory and false claims about me." What's your point?

Q. Well my, my point is do you think you intimidated Mr. Zamanovich, who is assisting me?

5 A. Well, if a person wants to put defamatory, have defamatory comments about a person on their blog, they should realize that people are going to take action. Now, he could have kept them up and I would have sued him.

Q. What defamatory comments are you talking about?

10 A. Well, I don't know. I mean, obviously had to be some comments about me. I didn't....

Q. Neither did Mr. Zamanovich, all he did - anyhow.

A. Well, then you bring him up.

Q. Okay.

15 A. You could have called him as a witness.

Q. To speed this up, I'm just going to go through...

A. All the filing?

Q. ...these things. Let's turn to page five.

20 A. Sure.

Q. Okay. My lawyer representing me in higher court is Zack Muskovich.

A. M'hm.

25 Q. He received this letter from you; correct?

A. Yeah, it would appear so. I, I, I do recall it.

Q. And the subject is "Summons to witness for your wife"; correct?

30 A. Yes, correct.

Q. And it was sent the 22<sup>nd</sup> of January 2009.

A. Correct.

Q. Right? So you had just sued me in this court.

A. Correct.

Q. Now....

A. Well, actually not exactly correct. I served him on the 23<sup>rd</sup> of December. He wrote me a letter back saying he was not the lawyer of record for you for me. So then I reserved you on the 8<sup>th</sup> after he said he was no longer the, he said he was not the lawyer of record in December.

Q. So the next section of it...

A. M'hm.

Q. ...you tell my lawyer that you're going to take him if he dares to represent me...

A. No.

Q. ..."if by some miracle you become Ritchie's lawyer, prior to that you will be in violation of several sections of the Law Society's rules of professional conduct".

A. No. What I was trying to say to Mr. Muskovich is Mr. Muskovich, on December 23<sup>rd</sup> you said you weren't Ritchie's lawyer of record. I accepted that and served Mr. Sinclair. If you all of a sudden become Mr. Sinclair's lawyer of record now, after telling me you were not, given what, given that he just filed, he just filed an affidavit in your support on, I believe, January the 5<sup>th</sup>, which he defamed me in that filing, obviously there may be some problems, Mr. Muskovich. That's all I'm trying to point to him.

Q. Do you think that might have intimidated my lawyer?

5 A. Your lawyer's a lawyer. If he doesn't understand how legal stuff works - probably doesn't, but that's how it works. If he doesn't know, if he doesn't understand how legal stuff works, well God bless him.

Q. Now, the subject title, summons to witness for my lawyer's wife...

A. Correct.

Q. ...did you summon her as a witness?

10 A. I was going to until we came up to an out of court agreement.

Q. Well, no, no, no. This is....

A. Yeah, yeah, yeah.

15 Q. This is January 22<sup>nd</sup>, 2009. Had you sued my lawyer and my lawyer's wife....

A. Not at that time.

Q. Okay. So, let's go back to this again.

A. Sure.

Q. Summons to witness for your wife, right?

20 A. Correct.

Q. You were going to summon her as a witness in this case.

A. No. Separate case.

25 Q. In your claim against me, you were going to summon her as a witness.

A. No.

Q. Correct?

A. No.

30 Q. So then what were you summoning her as a witness for?

A. A separate case against him.

Q. Against who?

A. Mister - Ms. Cathy and Zack Muskovich.

Q. And when did you sue Cathy and Zack Muskovich?

A. I didn't because we came to an agreement.

Q. Did you sue them or not?

A. I sue them, I sued them with in part with Mr. Cole, which is not part of this action.

Q. So you did sue them?

A. Eventually yes.

Q. And when did you sue him?

A. I, I don't know.

THE COURT: I mean, the date's not important.

A. I, I don't know. I forget.

MR. SINCLAIR: Q. Well, several months later, right?

THE COURT: All right. Again, the date's...

A. I....

THE COURT: ...not important.

A. If we're, if we're getting to something relevant, let's get to it.

MR. SINCLAIR: Well only because he's saying he's acting like there's a case before.

THE COURT: Again, I'm not sure why we're even going on.

MR. SINCLAIR: Why we're talking about this?

THE COURT: Yes.

MR. SINCLAIR: Look, Your Honour, the reason you're dealing with me five days into this trial is because I don't have a lawyer. You know. The reason I don't have witnesses today, extra witnesses, the ones I planned to have.

THE COURT: Okay, sir.

A. Because of me, Your Honour, of course.

THE COURT: Anything else, Mr. Sinclair?

MR. SINCLAIR: Lots more, Your Honour, but I guess I, I'm having a hard time giving you what you want.

THE COURT: All right. You can step down then.

MR. SINCLAIR: I'm not saying he can step down.

THE COURT: Oh, okay. What are you saying?

MR. SINCLAIR: I'm saying I have a lot, a lot more.

THE COURT: Well, how much is a lot more?

MR. SINCLAIR: Could you provide me with, not advice, but some direction...

THE COURT: I can't give you advice.

MR. SINCLAIR: ...of what you're looking for?

THE COURT: All I can - I'm not your lawyer. I'm here to decide the case; I can't be advocate for either side.

MR. SINCLAIR: I understand.

THE COURT: All I can tell you is I'm not hearing any particular questioning that's going to assist me in deciding, or I haven't heard anything in the cross-examination of Mr. Otavnik to date that assists me in any way in coming to a decision on this case.

MR. SINCLAIR: Yeah.

THE COURT: I can't tell you what to ask him.

MR. SINCLAIR: No.

THE COURT: But we're going to have to take a lunch break shortly, I know that. And I'd like

to sort of know, in the ballpark, how much time you think you're going to be with him.

MR. SINCLAIR: An hour.

THE COURT: Well, let's take a short lunch now, come back about 20 after 1:00, let's say, just take a half-hour and..

A. Sure.

THE COURT: ..you can get some of your thoughts together, perhaps. Again, you know the basis of your claim, it's defamation and harassment and, I can't remember.

A. Vexatious litigation, vexatious litigation, I believe.

THE COURT: You're going to have to ask - harassment, defamation. You'll have to ask questions that assist you in convincing me that those claims are supportable. I mean, that's all I can tell you. I can't tell you exactly - I'm not here to phrase the questions for you. But, get into areas of him, letters to all these other witnesses haven't assisted me. So I think we're talking about more things about you specifically than as opposed to him dealing with other people.

MR. SINCLAIR: I see, okay.

THE COURT: All right.

MR. SINCLAIR: Thank you.

**R E C E S S**

**UPON RESUMING:**

THE COURT: Do you want to come back into the witness box?

MR. OTAVNIK: Sure, before that, just with, with box.

THE COURT: With what?

MR. OTAVNIK: I'm going - I'm going to bring over, I have nothing over there, so.

THE COURT: Well, why don't you take Volumes I, II and III seem to be the popular ones.

MR. OTAVNIK: I'll grab my pen, too.

THE COURT: All right, Mr. Sinclair.

MR. SINCLAIR: Thank you, Your Honour.

Q. Return to Volume I, section three, page one.

A. Sorry. Yes, go ahead.

Q. This is a correspondence between you, Mr. Otavnik, and myself on....

THE COURT: Can you just give me a second, please?

MR. SINCLAIR: Yeah.

COURT CLERK: Off the record.

**--- OFF THE RECORD**

THE COURT: All right, go ahead.

MR. SINCLAIR: Thank you.

Q. We were at Volume I.

A. M'hm.

Q. Tab three, page one.

A. M'hm.

Q. This is correspondence between you and me in the third week of October 2008.

A. M'hm.

Q. Would you read the first paragraph? It's a letter from yourself to me.

5 A. It's already in the record, Your Honour, Mr. Sinclair's testimony.

THE COURT: What? It starts off, "If you do not respond..." is that what you're referring to?

MR. SINCLAIR: Yes, sir.

10 THE COURT: Well, okay, he doesn't have to read it out loud. Have you read it?

A. I've read it.

THE COURT: Okay. So what's the question?

15 MR. SINCLAIR: Q. Okay. You say that you, you'll be forced to post my address, phone number in the public record and offer a reward for anybody who can find me; is that correct?

A. Yeah, it's done in jest, but yes, that's what the words say.

20 Q. In jest?

A. M'hm.

Q. You called some of my Norval Morrisseau paintings which are in my house fakes and you won't stand for it.

25 A. Correct.

Q. That doesn't sound like a joke.

A. Well, no, I, and I sued you.

Q. Right, okay. Now, in my defendant's claim and paragraph 19...

30 A. M'hm.

Q. ...I, I speak about some alleged defamatory comments.

A. M'hm.

5 Q. And under, halfway down it says, "And under the signature the Habs One (ph), Mr. Otavnik published the defendant's telephone number and home address after the following statement".

A. I'm not the Habs One. I don't know who the Habs One is.

10 THE COURT: Okay, wait for the question.

What's the...

A. Sure, sure.

THE COURT: ...question?

A. Go ahead.

15 MR. SINCLAIR: Q. It says, the actual comment says, "I shut down www.HonouringNorvalMorriseaublogspot.com (sic)". Now that's, whose website is that?

A. I have no idea who posted that.

20 Q. Whose website is Honouring Norval Morrissette.blogspot.com?

A. I don't know off the top of my head. I don't know.

Q. It's, it's, do you, do you remember John Zamanovich being mentioned...

A. Well, I, I...

25 Q. ...about an hour ago?

A. ...do, but - I, I, I do, but I don't know who posted that.

Q. Do you remember the letters....

30 THE COURT: It's not the question he asked you, sir. The question...

A. Okay, go ahead.

THE COURT: ...originally was: Who owned that

particular site?

A. Well, I believe, just Mr. Zamanovich did.

THE COURT: Okay, so you said you..

MR. SINCLAIR: Q. Mr. Zamanovich.

THE COURT: ...didn't know, now you're....

5 A. Okay, well, I mean, I mean, there's so many....

10 MR. SINCLAIR: Q. Now we have these letters here...

A. M'hm.

Q. ...that, that I show that you were the individual who shut down...

A. And someone else.

Q. ...is that correct?

15 A. And someone else took credit for it.

Q. And someone else took credit for it; is that what you're saying?

20 A. On the - I don't know who "123 Habs" (ph) is....

Q. Now it says, the next line says...

A. M'hm.

25 Q. ..."I'm now offering a reward for the whereabouts of Ritchie Sinclair". Now, this letter, this is, this is written the same day or the day after this, which has been in filed in evidence....

THE COURT: What is the question?

A. What's the, what's the question?

30 MR. SINCLAIR: Q. The question is here you, in here you say that you're offering a reward to anyone that can find me; correct?

A. In this email, personal email to you...

Q. Right.

A. ...that's what it says, yes.

Q. Right.

A. Right.

Q. And, and you say that you're also going to post my address; correct? And my phone number, correct?

THE COURT: He's already....

A. No, I will....

MR. SINCLAIR: He's already agreed to that, I'm just....

THE COURT: All right. The thing speaks for itself. The question, you know, you just keep reiterating..

MR. SINCLAIR: So....

THE COURT: ...things that have already been established..

MR. SINCLAIR: No.

THE COURT: ...I don't know that particularly helps.

MR. SINCLAIR: Q. What I'm trying to establish here is that you were the individual whose offering a reward, so on here when it says, "I am offering a reward for the whereabouts of Ritchie Sinclair", did you offer a reward?

A. No. I didn't post nothing about you anywhere.

Q. You didn't?

A. That's right.

Q. So, this letter where you say you offered, you were going to offer a reward to anyone who could find me...

A. What's that?

Q. ...that, that was never, you were never serious about that, offering a reward?

A. I emailed you this on this page....

THE COURT: Just one moment. Just one moment.

Mr. Sinclair, I think if anything in final argument, it's up to you to say, make whatever submissions you want about the wording of this letter to you, being page one and how, if you feel it's similar to what that..

MR. SINCLAIR: Letter is.

THE COURT: ...posting is, then ask me to draw a certain inference from that.

MR. SINCLAIR: I see.

THE COURT: Okay. And then it's up to me to decide whether I'm prepared to say yes it is or it isn't, notwithstanding perhaps..

MR. SINCLAIR: Right.

THE COURT: ...Mr. Otavnik saying he didn't post it.

MR. SINCLAIR: He didn't write this, right. Q. Whoever wrote this says, "I already have his last known address" and then posted my address; correct?

A. Who? What? Where?

Q. Whoever wrote this post, which I, I assume you've read this, 'cause this is..

A. Well, I....

Q. ...famous?

A. Well, I don't know who wrote what. As I said....

Q. No, I'm not asking you....

A. Okay, then what are you, what, what's the question?

5 Q. I, I'm asking if, if you remember that my address was posted along with this and, any my, my address, phone number....

A. I got your address from the other....

THE COURT: No, no, listen to the...

A. No, I don't know...

10 THE COURT: ...asking.

A. I didn't....

THE COURT: Mr. Otavnik....

A. Go, ask the question again, please.

15 THE COURT: He said were you aware of that posting? That was the question.

A. No.

MR. SINCLAIR: Q. Okay. My, my roommate, Mr. Cole...

A. M'hm.

20 Q. ...testified on November 16<sup>th</sup>...

A. M'hm.

Q. ...right?

A. M'hm.

Q. That on or about the same day, October...

25 A. M'hm.

Q. ...the 18<sup>th</sup>...

A. M'hm.

Q. ...you called him; is that correct?

A. I don't remember.

30 Q. You telephoned him.

A. I don't remember.

Q. You don't remember calling Mr. Cole?

A. No, I, I don't.

Q. You don't remember calling him? You don't remember looking for me, looking for my address?

A. No, I, I don't.

Q. Okay. Just staying in the same section there, move to page five and discuss this, the issue of, of purported death threat, what you claimed I made. It's....

A. Sure.

Q. Do you see it?

A. Page five, yes, go ahead.

Q. Okay. This is a letter to me from you; right? "Hello Ritchie"....

A. A letter from me, from me to you.

Q. Yes, yes, okay, sorry.

A. Yes, yes.

Q. From you to me, yeah.

A. Yes, that's why you threatened to put....

THE COURT: Okay, wait a second..

A. Go ahead.

THE COURT: ...what's the question?

MR. SINCLAIR: Q. Yeah, you, my question is: What evidence do you have, it says it's an anonymous email that was sent to Mr. Matulak's blog; correct? It says here, "I received a copy of your anonymous email which was sent to Hugo's blog", right?

A. M'hm.

Q. Who sent you that copy?

A. Well, I, I guess, I guess Hugo did, I don't know.

Q. And it's anonymous.

A. I...

Q. You say you....

A. Who's anonymous?

Q. Yeah, but you say in that email I defamed you. How did I defame you in that email or how have you alleged that I defamed you?

THE COURT: Okay, wait a second. Wait a second. I don't think we have to worry about it, he's not - the issue of what I'm hearing today is your claim, not his claim for defamation or anything; it's your claim.

MR. SINCLAIR: Right.

THE COURT: So I don't have to....

MR. SINCLAIR: I see, yes, Your Honour.

THE COURT: I don't have to hear this.

MR. SINCLAIR: Yeah, yeah.

THE COURT: It's not relevant. That's what I'm saying, Mr. Sinclair, you've got to....

MR. SINCLAIR: Q. Now....

THE COURT: Just one moment, Mr. Sinclair. You've got to ask yourself the question, "What am I trying to prove?" You're not trying to prove or somehow dispute that you may have defamed him; that's not what I'm deciding today.

MR. SINCLAIR: No.

THE COURT: I'm deciding your claim. So what do you have to establish factually to assist me in determining what you're alleging? Not what he's alleging. So....

MR. SINCLAIR: Q. So, Mr. Otavnik, you allege I wrote, I wrote this purported letter that was

published?

A. Yes, but that's not part....

THE COURT: Okay, so what does that....

A. ...and....

THE COURT: Just one moment. So where does that get me if you did or you didn't? The question is....

MR. SINCLAIR: It is, um, Your Honour, if, if you had nothing to do with something and someone put up something on the worldwide web saying that you had made a death threat against Mr. Otavnik and against Mr. McLeod, that I would consider that to be harassment, intimidation, you know. It's just, it's outlandish, you know.

THE COURT: Well, again....

MR. SINCLAIR: Without....

THE COURT: Just one moment, sir. You have to understand all the concepts behind the law of veracity, et cetera. So, unfortunately there are a number of factors you've got to get over. You haven't addressed a great number of them and that's my concern. You're sort of either going over examples of what you perceive to be harassment, but then there's a number of additional things you have to prove beyond that and I'm not hearing anything in regard to those other issues.

MR. SINCLAIR: I see.

THE COURT: And I'm not going to sit here and tell you what they are because..

MR. SINCLAIR: Yeah.

5 THE COURT: ...I'm not your lawyer. If you had a lawyer, your lawyer would say, "Mr. Sinclair, we have to prove items one, two, three and four; not just item one. You got to get two, three and four". And that's what's making this somewhat....

10 MR. SINCLAIR: You understand, sir, that I didn't bring a lawsuit to this court.

THE COURT: Well, I appreciate that.

MR. SINCLAIR: I'm just trying to stop the lawsuits in this court.

15 THE COURT: Well, but you - sir, you filed a defendant's claim.

MR. SINCLAIR: I did.

20 THE COURT: So it's not just a matter of defending yourself, you put up a shield, but you also brought out a sword in the sense of a claim.

MR. SINCLAIR: Yeah.

THE COURT: That's, obviously, a figure of speech.

MR. SINCLAIR: Yes.

25 THE COURT: I don't mean it in the....

MR. SINCLAIR: I do understand.

30 THE COURT: You know what I'm saying. So, it's not just defending, you've taken an active approach to say "You've done something wrong", well, you have to prove what he's done wrong.

MR. SINCLAIR: Right, right.

THE COURT: Just like he has to prove..

MR. SINCLAIR: Right.

THE COURT: ...that you did something wrong.

MR. SINCLAIR: Right. Well, okay. Q.

5 Nevertheless, okay, what, well, what have, what have you  
done to harass me?

A. Nothing.

Q. Nothing? Did you sue my lawyer?

THE COURT: It's not harassing you. Well....

10 MR. SINCLAIR: Q. Did you sue my lawyer to  
harass me?

A. Nope.

Q. Did you sue my roommate?

A. Yes.

15 Q. Why did you sue my roommate?

A. Because I had standing against him.

Q. Carry on. That doesn't mean anything to  
me.

A. Well, the judge understands that.

20 Q. Why did you sue my roommate? Would you  
have sued my roommate if he wasn't associated with me?

25 A. Yes, if he had that, that same, if he was,  
he was your partner in that website and 1,000 fake  
Morriseaus, yes. Anybody who owned or was a partnership  
with that business which was, which was, had a website which  
controlled that website, yes, anybody.

Q. And is that why you sued him?

A. Yes.

30 Q. So if that's, if that's the truth, then why  
didn't you sue him on, in December in the same lawsuit as  
me, why did you sue him in April and with a....

A. Because I only found out about his

5 connection to Friendship Enterprises through your lawyer,  
Mr. Muskovich, and you had, you had that business,  
Friendship Enterprises. There's no, nothing that says I  
have to sue both parties at one time.

Q. Okay.

A. It was, I had standing so I sued.

Q. Why did you sue my lawyer's wife?

A. I believe that's in the documents why.

10 THE COURT: All right....

A. I mean I think....

THE COURT: Just one moment. No, no. I don't  
need you trying to argue with me, Mr. Otavnik.

A. I'm trying to.

15 THE COURT: And Mr. Sinclair, again, it's not  
helping me, okay, going over this particular  
evidence. It's not helping me to support your  
position. I mean, I could let you go on for  
another 20 minutes talking about this, but..

20 MR. SINCLAIR: Yeah.

THE COURT: ...what's the point? I've been  
telling you what I'm listening to is just not  
registering with me in a significant way.

25 MR. SINCLAIR: Q. What happened with the  
lawsuits? With the lawsuit against my roommate, first off?

THE COURT: All right, again, the evidence is  
on the record as to what happened.

MR. SINCLAIR: Okay, you know, in other words?

30 THE COURT: Yes. You don't have to go over  
that.

MR. SINCLAIR: Okay.

A. Actually, it's....

THE COURT: No, no, no. I don't want any further comment on that, Mr. Otavnik.

MR. SINCLAIR: Q. So you're an internet service provider? Can you...

A. Pardon?

Q. ...tell me the name of your internet service provider, please?

A. I believe it's AOL.

Q. AOL?

A. Yes, sir.

Q. And how many years have you been with AOL?

A. Ten, 10, I don't know, 10 years. I have no, no, I, I don't know. I mean, four years, I guess. I mean, I don't know. I switched..

Q. Okay, four years.

A. ...to get a better deal, to move around, I mean, I don't know.

Q. You visited Morrissimeau.com before, the website?

A. Of course.

Q. On a daily basis?

A. No, not on a daily basis, no.

Q. If I told you that I have near to 6,000 page views on Morrissimeau.com from you....

THE COURT: I think we went over this.

A. I think we went over that, Mr. Sinclair.

THE COURT: We've gone over that evidence with this witness....

MR. SINCLAIR: That's true. That's true, that's true.

A. I don't believe you....

THE COURT: Okay, no, no. You don't have to say anything more.

MR. SINCLAIR: That's true. Q. Okay. Mr. Baker's role in my case, can I speak about that? Mr. Baker, Mr. Richard Baker....

THE COURT: I don't know. I thought....

MR. SINCLAIR: He had a small role and, and has paid a price for his small role..

THE COURT: No....

MR. SINCLAIR: ...in assisting me.

THE COURT: That's a matter that is still yet to be heard.

A. Correct, sir.

MR. SINCLAIR: Q. Okay. An expert report was to be provided and was provided by Don Robinson, correct?

A. He's no expert.

THE COURT: Okay, well, that's the question he..

A. Sure..

THE COURT: ...asked you.

A. ...yeah, he, he did. He provided a report.

MR. SINCLAIR: Q. Right. And, and in the process of that, of providing that report..

A. M'hm.

Q. ...he received communication as well, Greg Hofstein (ph), his lawyer, received communication from you with regard to this expert report?

A. I don't - what, what do you mean? I don't understand what you're talking about. He produced a report, he filed with the court....

Q. You wrote several letters to the lawyer for Kinsman Robinson Gallery.

A. About what?

Q. With regard to the expert report.

A. No.

THE COURT: So, I'm not sure....

5  
MR. SINCLAIR: Q. Oh, he's asking me - okay, did you ask Greg Hofstein to, a, a lawyer for Kinsman Robinson in a letter to join forces with you to bring down my website?

10  
A. I told Mr. Hofstein that since the website also identified paintings from KRG as fake, that yes, it may be advisable because since my painting was called fake on the website and since some of his own paintings were called fake on the website, I couldn't understand why K - Robinson Galleries was promoting you while you were calling stuff on their own website fake. So I said, "Mr. Hofstein, we may have similar interests. Your, your client's being defamed by Mister - you, your client's paintings are - have their title slandered like mine are and it would be in your interests to take down his website, too. Why would your client want to have a website up there showing his artwork as being fake?"

15  
Q. And how did Mr. Hofstein respond to you?

20  
A. Mr. Hofstein didn't respond, which I couldn't understand. I mean, you thought KRG would want to, well, I'm, what can I say?

25  
Q. So you sued KRG, once again, in the middle of this, right, in November?

A. No. November of what?

30  
Q. Did you sue Kinsman Robinson Gallery yet again?

A. I, I have no suit with them outstanding.

Q. No, I know that. Did you sue the Kinsman Robinson Gallery in November?

A. I don't remember. I don't....

Q. Two thousand....

A. I, I don't know. It had nothing to do with this case....

Q. You don't know if you sued them or not?

A. I don't remember. I sued them once, they were a co-defendant here and then I don't know, Gabe, I don't know. I don't remember suing them again, no, I don't remember. Well, it didn't, certainly didn't involve you.

Q. So you did sue them?

A. I don't remember. I'm saying but it didn't involve you is all I know.

Q. Well "it"....

A. If it was...

Q. What's it?

A. ...it didn't involve you.

Q. So what did you sue them for then?

A. I don't remember. I just keep trying to tell you.

Q. Did you settle it?

A. I don't remember.

Q. It's only a year ago.

A. I don't remember and it's not relevant to this case, is it, that didn't, it, what can I say? It's not, I don't.

Q. Well, I've been advised....

THE COURT: Okay, no...

MR. SINCLAIR: No.

THE COURT: ...it's not - you can ask him a

question.

MR. SINCLAIR: Right. Q. Did you meet out in the hallway out here with Paul Robinson and Greg Hofstein and discuss this recent lawsuit against Kinsman Robinson?

A. I don't - no, I don't think so. I haven't seen him, I can't tell you how long.

Q. Did you discuss that, that the second lawsuit was frivolous and that you would settle if they retracted the report?

A. No.

Q. And did Mister - did you ask them to have Mr. Robinson not show up for court?

A. No. Mr. Robinson showed up when he wants. I have no control over what he does.

Q. Did you settle that case then? You said you had no active case, did you settle that case?

A. I, I will repeat for the umpteenth, I don't remember suing them. I don't remember.

Q. Well, I'll find those documents.

THE COURT: All right.

A. Well, find them, what do I, I....

THE COURT: You know what? It's not assisting me particularly, again, Mr. Sinclair.

MR. SINCLAIR: It's in this court anyhow. Q. Okay, I, I believe that - now, I, did I have to do a motion in court in order to examine the subject painting?

THE COURT: Okay. I'm not sure of the relevance of the question.

MR. SINCLAIR: It might not be one of those things I've missed on harassment, but. You know, I guess that's....

THE COURT: I can't see the relevance of the question.

A. I can answer it.

THE COURT: No, no.

A. Okay. I said....

THE COURT: No, I don't want you to answer...

A. I hear you.

THE COURT: ...it's taking time up that's unnecessary.

A. I, well, I'm not taking the time.

THE COURT: You are taking the time when I'm telling you...

A. I'm sorry.

THE COURT: ...I don't need to hear the answer.

A. Again, I apologize. Go ahead.

MR. SINCLAIR: Q. Who was Mr. Cole's agent?

Who acted for Mr. Cole in the lawsuit when you sold my -  
sued my roommate?

A. Who was the agent?

THE COURT: Again, not relevant. Not relevant.

A. I don't....

THE COURT: No. I'm going to cut these very short because there's no necessity to provide me with information that doesn't assist me in a determination. So you know what? Whether Mr. Otavnik may prefer to sit here all day and answer questions, but I'm not prepared to sit here all day listening to questions that I don't think have any relevance.

MR. SINCLAIR: Yes, Your Honour.

A. Do you have a question?

THE COURT: Okay, just relax. If he's taking too long, I'll ask him, Mr. Otavnik. You just stand there and wait for the question.

A. Thank you, Your Honour.

MR. SINCLAIR: Q. Was Richard Baker sued for providing a venue to examine the subject painting?

THE COURT: No, not relevant.

MR. SINCLAIR: Q. When - did you ask Richard Baker...

THE COURT: Not relevant.

MR. SINCLAIR: Q. ...to....

THE COURT: The whole thing with Mr. Baker is going to be heard Thursday....

A. No, it's been adjourned, on consent, of course.

THE COURT: Figures, okay.

MR. SINCLAIR: Q. Okay. The, volume III, section six, page one is a letter that Mr. White confirmed.

A. Correct, yes.

Q. In this letter...

A. M'hm.

Q. ...it said that you were providing much of the documentation for the case?

A. No, it doesn't say that.

Q. For the higher court case.

A. No, it doesn't say that.

THE COURT: All right, sir. It says, "It contains much of the documentation we need for this case". In the....

A. "...contains much of the documentation we need for this case". Okay, so what's your question?

MR. SINCLAIR: Q. Yeah. So when your work was completed..

A. M'hm.

Q. ...did you pass it over to them..

A. No.

Q. ...for assistance? What did you do with that work that you'd done?

A. That is for a different action at a, at the, at the Competition Bureau, which may, may or may not go forward.

Q. And when did you sue me in this lawsuit?

A. I don't....

Q. It was only days after this, right?

A. No, I, I, I served you in December. I believe they sued you in, in October and I sued you in December and then re, re-filed, re, we had to reserve you in January on a different, on a different issue.

Q. Right.

A. They sued you for intentional interference of economic relations, et cetera, et cetera, et cetera, slander of title. I sued for slander of title on one painting. They, as a business, joined together and had the same, you know, same cause of action.

Q. Well, what I read here is Mr. White giving you accolades for all your effort on their behalf and I'd like to know if....

THE COURT: Okay. What do you want to know?

MR. SINCLAIR: Q. Yeah. I'd like to know if even though you weren't on the roster of plaintiffs how much cost, how much did you financially contribute to that?

A. I didn't. What he's saying is the amount

of work I did exceeds our shares in the sense that I was working on another case, a Competition Bureau case, which had to do with similar stuff, but not the similar facts. That paintings that they sued for were their paintings, they could not be part of my action 'cause I could only sue for my action and their lawyer took a different twist on it. That's why they sued and I sued separately.

Q. Okay. But this letter is about this case; am I correct?

A. I, I don't know what it's about.

Q. It's about me, right? It's about....

A. Well....

Q. It's about the lost three days prior, isn't it?

A. About what? About?

Q. In Superior Court, you know, the unfavourable decision in the injunction motion on December 8th?

A. Well, I wasn't a, I wasn't a party, I wouldn't know.

Q. Well, I see that, you're not on the roster of plaintiffs.

A. No, I wasn't....

THE COURT: All right. Well, let's not argue back and forth there. Again, Mr. Sinclair..

MR. SINCLAIR: Okay.

THE COURT: ...you can make whatever submissions as to how I should interpret that, okay?

MR. SINCLAIR: Yes, I have, Your Honour.

Q. So, Mr. McLeod and you are business partners?

5 A. No, we're not business partners. Joe is a friend of mine.

Q. Has he done authentications for you?

A. Nope.

Q. What about the Vadas case; did he authenticate?

A. Nope.

Q. If I show you the document?

10 THE COURT: All right, again...

A. Sure.

THE COURT: ...again...

A. Sure, go ahead....

15 THE COURT: ...wait a second. Again, getting off, I mean, I know you've got a whole history between the two of you of disagreements over a number of things, but I have a narrow question to decide in this case, is there evidence to support defamation? Is there evidence to support harassment? That's all I want to hear. I don't want to hear about whether Mr. McLeod authenticated, didn't, whether he authenticated properly, it doesn't matter. I'm not dealing with Mr. McLeod. I'm dealing with your  
20 allegations of harassment and defamation. So we get side-tracked on all these other issues that you may feel are part of your life, but they aren't issues of concern to me. I'm focussed in on a narrow area, I don't have to  
25 hear about all this other information that's gone on between the two of you over the years. That's where you seem to getting off the track.

MR. SINCLAIR: Okay. Well, I tell you, Your Honour....

THE COURT: I recognize it's frustrating for you, Mr. Sinclair....

MR. SINCLAIR: These are all forms of harassment.

THE COURT: Well, Mr. Sinclair, I don't want to hear your submissions. I'm saying..

MR. SINCLAIR: Yeah.

THE COURT: ...I recognize the frustration of handling your own case when there are technicalities from both sides of what the law is and how I should interpret, not how I interpret the evidence, but how I apply the law to the facts. And if you don't know, I mean, the facts to the law, if you don't know all the legal issues that you have to address, then yes, there's going to be gaps perhaps in your ability to present your case. But again, I'm sitting here as an objective third party listening to this. I'm not here to tell you, "Gee, go into this area. Make sure you cover this off", you know. That's what lawyers are for. And if you don't want to then, I mean, this is a very complicated case legally. So that's all I can tell you.

MR. SINCLAIR: It is very complicated.

THE COURT: Any other questions?

MR. SINCLAIR: It's hard.

THE COURT: I recognize it is.

MR. SINCLAIR: It's hard to get a lawyer, Your

Honour. Two lawyers...

THE COURT: Sir...

MR. SINCLAIR: ...I've been....

5 THE COURT: ...whether it is difficult or not, I recognize that people don't want to necessarily pay the money for a lawyer for the amount of time involved in this, a lawyer's going to be represented is going to far outweigh the recovery. Three days in court, five days in court or whatever it is.

10 MR. SINCLAIR: You're right.

THE COURT: Okay, so....

MR. SINCLAIR: But that's not the reason that they are not appearing.

15 THE COURT: Well, I don't really...

MR. SINCLAIR: You know.

THE COURT: ...care the reason. I'm just saying there are a lot of reasons why people don't show up with lawyers in this court. Okay.

20 MR. SINCLAIR: Right.

THE COURT: That doesn't mean that the court somehow bends the rules as to the principles it considers in making a decision. That's all I can tell you. I still have to make a decision based on the evidence. If the evidence is there, fine; if the evidence isn't there, well, I can't make it up. And I can't tell you what evidence I should be listening to and what I shouldn't be listening to. I'm just sitting here trying to listen and try to keep you in a narrow range that I think covers things that I

25

30

should be concerned about and prevent you from going off there where I don't think it helps me.

MR. SINCLAIR: Well, unfortunately I'm getting is that I haven't got my message across to you.

THE COURT: I haven't said you haven't got your message across, I'm saying you haven't necessarily pursued areas that may be the most beneficial to you.

MR. SINCLAIR: Yeah, okay. Well, you're right. I can go on for a long time here, but if I can't speak about the people that have been harassed in order that they would harass me to his benefit....

THE COURT: Well then I'd have to hear from those other people as to what their harassment was.

MR. SINCLAIR: Yeah. And they're not here.

THE COURT: There are other issues involved.

MR. SINCLAIR: Yeah. I'll let it go.

THE COURT: Okay.

MR. SINCLAIR: We'll take it from here.

THE COURT: All right, Mr. Otavnik, you can step down. Why don't we take a 10-minute recess and we'll hear final argument and I'm going to limit probably both of you to about 20 minutes of final argument, because again, I'd like to resolve this matter today and give you a decision today. So let's say we're back at 25 after and we'll give about 20 minutes a person.

**R E C E S S****UPON RESUMING:**

5 THE COURT: Okay. Mr. Sinclair, we'll go with  
you first. The final argument essentially is  
an opportunity to summarize why I should hold  
in your favour on your claim and on your  
10 position on the defendant's claim. I don't  
want you to start telling me new information  
that hasn't been brought out in the witness  
box.

MR. SINCLAIR: Okay.

15 THE COURT: Don't start saying, "Oh, by the  
way, there's...". The evidence is in. I'm only  
going to decide based on what I've heard in the  
witness box. So your comments should be "This  
is why you should hold in my favour in my  
20 claim. This is why you should dismiss the  
defendant's". If you want to take that  
opportunity, you can. You don't have to, it's  
not a mandatory thing, it's just an opportunity  
if you wanted to.

25 MR. SINCLAIR: Thank you, sir.

--- SUBMISSIONS BY MR. SINCLAIR AND MR. OTAVNIK

**R E A S O N S F O R J U D G M E N T**

30 **D. GODFREY J. (Orally):**

THE COURT: All right, be seated.

5 The plaintiff in the main action, Mr. Otavnik, sues the defendant in the main action, Mr. Sinclair, under the tort of injurious falsehood, also known as trade libel or slander of title.

10 The plaintiff is the owner of a painting entitled "Jesuit Priest Bringing Word". Mr. Otavnik, the plaintiff, claims the painting to be painted by Norval Morrisseau, the said Morrisseau being a renowned Canadian native painter.

15 Mr. Sinclair, on his website alleges the aforesaid painting is a fake. As a result of the defendant's allegation, Mr. Otavnik claims the painting is worthless.

20 I find that the plaintiff's claim must fail for a number of reasons.

25 The tort of injurious falsehood requires that the plaintiff must prove a) that the defendant published words in disparagement of the plaintiff's property; b) that the words were false; c) that they were actuated by malice, and; d) that the plaintiff suffered special damages.

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The plaintiff has failed to satisfy me on items b), c) and d). Firstly, the plaintiff has failed to satisfy me on a balance of probabilities that the statements of Mr. Sinclair are false. I am not prepared to accept the evidence of Mr. McLeod for the plaintiff over that of Mr. Robinson for the defendant as to the authenticity of the painting. Both witnesses are reputed art dealers who gave their respective opinions, but the plaintiff's evidence did not sufficiently tip the scales in the plaintiff's favour.

Secondly, I am not satisfied that the defendant acted with malice. The defendant appears to have worked with Norval Morrisseau for many years. His statements regarding the plaintiff's painting, in my opinion, have been made without malice and for the purpose of reiterating previously made statements in newspaper articles and through statements made by or attributed to Morrisseau, himself.

Finally, the plaintiff has failed to prove he suffered special damages. I do not accept the plaintiff's position that his painting is worthless, even accepting that it is an original Morrisseau. Although common sense alone suggests that an article claiming a painting to be a fake may lessen the number of

people interested in the painting, I cannot accept the plaintiff's position that he could not even give the painting away as being credible.

As acknowledged by Mr. McLeod, the plaintiff's own witness and expert, the defendant's website would not affect an institutional or sophisticated buyer. Mr. Otavnik's apparent worst-case scenario is that he would be put to a greater degree of authenticity or authenticating the painting due to the negative publicity.

He seeks, however, not the potential increased cost of authenticating, but the market value of the painting which he sets at \$10,000.

It is further not clear to me to what extent the defendant's comments might have affected the price in light of the fact that the issue of fake Morrisseau art existed before the defendant's website. I am not persuaded by the plaintiff's evidence that the defendant's blog put the final nail in the market value of the painting.

Lastly, the plaintiff clearly indicated he is not in the market to sell his painting. As such, I find that his claim is premature since he has not established an actual loss. The

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plaintiff candidly testified that the painting could be worth money in the future if the market turns around. That being the case, it seems to me that the plaintiff will be potentially unjustly enriched today if damages were granted prior to any actual loss.

Despite claiming slander of title throughout, Mr. Otavnik, in final written submissions argued the *Libel and Slander Act*. I am not prepared to accept submissions in this regard as damages to Mr. Otavnik's reputation were not claimed. Even if I were prepared to accept his submissions, the evidence discloses no damage to Mr. Otavnik's reputation since he was not identified as the owner of the painting in issue.

Based on the foregoing, the plaintiff's claim is dismissed.

Turning to Mr. Sinclair's defendant's claim, Mr. Sinclair in his defendant's claim claims harassment and defamation by Mr. Otavnik.

The harassment claim relates to a history of litigation involving Mr. Sinclair and others as defendants. Mr. Otavnik is a party plaintiff to some but not all of these actions. All these actions relate to one fundamental common issue, being the allegations of fake Morrisseau

paintings.

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Mr. Sinclair also alleged that Mr. Otavnik has deleted many references on the Wikipedia website relating to Norval Morrisseau and defamed Mr. Sinclair under the screen names of "123 The Habs" and "123 Maddie", M-A-D-D-I-E. Mr. Otavnik denies using these screen names, although Mr. Sinclair established by Exhibit 10 Eight that Mr. Otavnik has used the screen name "Maddie 123CA".

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It is interesting to note that in Exhibit Three, tab three, page one, that Mr. Otavnik, in an email indicates that he will be forced to post Mr. Sinclair's last address and phone number in the public record and offer a reward to anyone that can find Mr. Sinclair.

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Exhibit Nine is an extensive "Norval Morrisseau blog". At page nine a person using the screen name "The Habs One" states in part, "I am now offering a reward for the whereabouts of Ritchie Sinclair. I already have his last 25 known address at" and then dot, dot, dot, it goes on to the end of the quote. The wording in this blog is almost identical to the email of Mr. Otavnik.

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As such, I am satisfied on a balance of probabilities that Mr. Otavnik is one and the

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same as "The Habs One". I also find it is more than a coincidence that Mr. Otavnik also has the screen name of "Maddie 123CA" with AOL and that the screen names used on the Wikipedia alterations and comments are "123 Maddie" and "123 Habs". I find that all those screen names are probably Mr. Otavnik.

Turning to the issue of harassment, it appears to me that the law is unclear in Canada whether harassment can be an independent tort or whether such behaviour is considered under the tort of intentional infliction of mental suffering. In this regard I would ask the parties to reference the case of Lynch v. Westario Power Inc., the citation being 2009, CarswellOnt 4057.

In either case, Mr. Sinclair is required to show 1) outrageous conduct, 2) intent, 3) proximate causation, and as a minimum 4) severe or extreme emotional distress and possibly a visible and provable illness.

To be short and to the point, even if the facts satisfy 1), 2) and 3) aforesaid, the evidence falls well short of number 4), being the obligation of Mr. Sinclair to establish severe or extreme emotional distress and possibly a visible and provable illness. There was no medical evidence presented by Mr. Sinclair to

support his position in this regard.

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As to the issue of defamation, I cannot conclude on the evidence that Mr. Sinclair has been defamed. Some comments made by Mr. Otavnik are clearly insensitive and in bad taste, but have been directed solely to Mr. Sinclair and therefore do not satisfy the publication requirement of the tort of defamation.

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Those comments that can be attributed to Mr. Otavnik that have been published as described in the evidence do not specifically discredit Mr. Sinclair. In any event, it is my opinion that such comments are protected under the defence of qualified privilege in the tort of defamation. As such, I can make no finding of defamation in regard to the allegation set out in the defendant's claim.

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Accordingly, the defendant's claim will also be dismissed.

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Since both sides were unsuccessful in the main action and the defendant's action, each side will bear its own costs.

Thank you.

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**CERTIFICATE OF TRANSCRIPT**  
**Evidence Act, Subsection 5(2)**

5 I, Laurel M. Campbell, certify that this document is a  
true and accurate transcript of the recording of Otavnik  
v. Sinclair et al in Toronto Small Claims Court, held at  
47 Sheppard Avenue East, taken from Recording Nos. 11, 12  
& 13/11, on January 11, 2011, which has been certified in  
10 Form 1.

MARCH 22 2011  
Date

  
\_\_\_\_\_  
Laurel M. Campbell,  
Court Reporter

20 COPIES OF THIS TRANSCRIPT ARE NOT CERTIFIED AND HAVE NOT  
BEEN PAID FOR UNLESS THEY BEAR THE ORIGINAL SIGNATURE OF  
LAUREL M. CAMPBELL, AND ACCORDINGLY ARE IN DIRECT VIOLATION  
OF ONTARIO REGULATION 587/91, ADMINISTRATION OF JUSTICE ACT,  
25 JANUARY 1, 1990.