

Superior Court of Justice
Cour supérieure de justice



Plaintiff's Claim
Demande du demandeur

Form / Formule 7A Ont. Reg. No. / Régl. de l'Ont. : 258/98

TORONTO SMALL CLAIMS COURT
COUR DES PETITES CREANCES TORONTO
477 SHERBROOK AVENUE EAST 3RD FLOOR
477 AVENUE SHEPPARD EST 3^È ETAGE
TORONTO, ONTARIO M2N 5N1
PHONE: 416-326-3554
www.attorneygeneral.jus.gov.on.ca
Phone number / Numéro de téléphone

SE 09 92 503-00
Claim No. / N° de la demande

PLAINTIFF'S CLAIM / DEMANDE DU DEMANDEUR

Plaintiff No. 1 / Demandeur n° 1

- Under 18 years of age.
Moins de 18 ans.
- Additional plaintiff(s) listed on attached Form 1A.
Le ou les demandeurs additionnels sont mentionnés sur la formule 1A ci-jointe.

OTAVNIK

Last name of individual or name of company, etc. / Nom de famille du particulier ou nom de la compagnie, etc.

JOSEPH

First given name / Premier prénom: 299 DOVER CRT, OSHAWA, ONTARIO
Second given name / Deuxième prénom: OSHAWA, ONTARIO
Also known as / Également connu(e) sous le nom de:

Address for service (street & number, unit, municipality, province) / Adresse aux fins de signification (numéro et rue, unité, municipalité, province):
116 G 67 (905) 720 2133

Postal code / Code postal: L1B 6G7
Phone no. / N° de téléphone: (905) 720 2133
Fax no. / N° de télécopieur:

Representative / Représentant(e):
LSUC # (if applicable) / N° du BHC (le cas échéant):

Address for service (street & number, unit, municipality, province) / Adresse aux fins de signification (numéro et rue, unité, municipalité, province):

Postal code / Code postal: Phone no. / N° de téléphone: Fax no. / N° de télécopieur:

Defendant No. 1 / Défendeur n° 1

- Under 18 years of age.
Moins de 18 ans.
- Additional defendant(s) listed on attached Form 1A.
Le ou les défendeurs additionnels sont mentionnés sur la formule 1A ci-jointe.

KINSMAN ROBINSON GALLERIES

Last name of individual or name of company, etc. / Nom de famille du particulier ou nom de la compagnie, etc.

First given name / Premier prénom: 108 CUMBERLAND STREET, TORONTO, ONTARIO
Second given name / Deuxième prénom: TORONTO, ONTARIO
Also known as / Également connu(e) sous le nom de:

Address for service (street & number, unit, municipality, province) / Adresse aux fins de signification (numéro et rue, unité, municipalité, province):
MSR 1A6 (416) 964-2374 (416) 964-9042

Postal code / Code postal: M5R 1A6
Phone no. / N° de téléphone: (416) 964-2374
Fax no. / N° de télécopieur: (416) 964-9042

Representative / Représentant(e):
LSUC # (if applicable) / N° du BHC (le cas échéant):

Address for service (street & number, unit, municipality, province) / Adresse aux fins de signification (numéro et rue, unité, municipalité, province):

Postal code / Code postal: Phone no. / N° de téléphone: Fax no. / N° de télécopieur:

Within seven (7) calendar days of changing your address for service, notify the court and all other parties in writing.
Dans les sept (7) jours civils qui suivent tout changement de votre adresse aux fins de signification, veuillez en aviser par écrit le tribunal et les autres parties.

CAUTION TO DEFENDANT(S):	If you do not FILE A DEFENCE (FORM 9A) with the court WITHIN TWENTY (20) CALENDAR DAYS after you have been served with this Plaintiff's Claim, JUDGMENT MAY BE OBTAINED WITHOUT NOTICE AND ENFORCED AGAINST YOU.
AVERTISSEMENT AUX DÉFENDEUR(S):	Si vous ne DÉPOSEZ PAS DE DÉFENSE (FORMULE 9A) auprès du tribunal AU PLUS TARD VINGT (20) JOURS CIVILS après avoir reçu signification de la présente demande du demandeur, UN JUGEMENT PEUT ÊTRE OBTENU SANS PRÉAVIS ET ÊTRE EXÉCUTÉ CONTRE VOUS.

The plaintiff(s) claim(s) from you \$ 10,000, court costs, interest in accordance with
Le ou les demandeurs vous demandent paiement de (Principal amount / *Montant en principal*) \$, *ainsi que des dépens et des intérêts conformément*

the Courts of Justice Act or payable by agreement at a rate of 5% % per year, being
à la Loi sur les tribunaux judiciaires ou exigibles par accord au taux de *pour cent par an,*

pre-judgment interest of \$ _____ to the date this claim was prepared, and post-judgment
soit des intérêts antérieurs au jugement de *\$ jusqu'à la date de préparation de la présente demande*

interest.
et des intérêts postérieurs au jugement.

To obtain forms and self-help materials to assist you in filing a Defence (Form 9A), attend the nearest Small Claims Court or access the following website: www.ontariocourtforms.on.ca.
Vous pouvez obtenir les formules et la documentation à l'usage du client qui pourront vous aider à déposer une défense (formule 9A) auprès de la Cour des petites créances de votre localité ou en consultant le site Web suivant : www.ontariocourtforms.on.ca.

TYPE OF CLAIM / NATURE DE LA DEMANDE

(Check as many as apply / Cochez le ou les cases qui s'appliquent)

- | | | |
|--|---|--|
| <input type="checkbox"/> Construction/Renovation
<i>Construction/rénovation</i> | <input type="checkbox"/> Motor Vehicle Accident
<i>Accident de véhicule automobile</i> | <input type="checkbox"/> Real Estate
<i>Bien immeuble</i> |
| <input checked="" type="checkbox"/> Contract
<i>Contrat</i> | <input checked="" type="checkbox"/> Negligence
<i>Négligence</i> | <input checked="" type="checkbox"/> Sale of Goods
<i>Vente d'objets</i> |
| <input type="checkbox"/> Damage to Property
<i>Dommages causés à des biens</i> | <input type="checkbox"/> N.S.F. Cheque
<i>Chèque sans provision</i> | <input type="checkbox"/> Services Rendered
<i>Services rendus</i> |
| <input type="checkbox"/> Estates/Wills
<i>Successions/testaments</i> | <input type="checkbox"/> Professional Malpractice
<i>Négligence professionnelle</i> | <input type="checkbox"/> Unpaid Account/Invoice
<i>Compte/facture impayé(e)</i> |
| <input type="checkbox"/> Landlord/Tenant
<i>Locateur/locataire</i> | <input type="checkbox"/> Promissory Note
<i>Billet</i> | <input type="checkbox"/> Wrongful Dismissal
<i>Congédiement injustifié</i> |
| <input type="checkbox"/> Other:
<i>Autre :</i> _____ | | |

PLAINTIFF'S CLAIM / DEMANDE DU DEMANDEUR

REASONS FOR CLAIM AND DETAILS / MOTIFS DE LA DEMANDE ET PRÉCISIONS

In separately numbered paragraphs, give a full explanation of what happened, including the dates and places involved. Calculate and explain the amount of money which you are claiming.

Indiquez en détail sous forme de paragraphes numérotés ce qui est arrivé, y compris la ou les dates et le ou les lieux en cause. Calculez et précisez la somme d'argent que vous demandez, en l'expliquant.

If you are relying on any documents or other material, you MUST attach copies to the claim. If evidence is lost or unavailable, you MUST explain why it is not attached.

Si vous vous appuyez sur des documents ou d'autres pièces, vous DEVEZ en annexer des copies à la demande. Si une preuve est perdue ou n'est pas disponible, vous DEVEZ expliquer pourquoi elle n'est pas annexée.

Large empty rectangular box with horizontal lines for writing the reasons for the claim.

(If more space is required, attach and number separate sheets. / Si vous avez besoin de plus d'espace, annexe et numérotez une ou des feuilles supplémentaires.)

Prepared on: Nov 23rd, 20 09
Fait le :

Joe D'Amico
(Signature of plaintiff or representative / Signature du demandeur/le la demanderesse ou du/le la représentant(e))

Issued on: Nov 23 2009, 20
Délivré le :

(Signature of clerk / Signature du greffier)

CLAIM

1. The Plaintiff claims:

(a) Recession of the contract between the Plaintiff and the Defendant dated February 1st, 2003 in respect of the paintings Honouring Peace and Fish, Fowl Transformation of Life

(b) In the alternative, damages in the amount of \$6,750.01 plus GST and PST for negligent misrepresentation, breach of contract and/or breach of warranty as per the Sale of Goods Act, R.S.O. 1990, c. S.1

(c) Pre-judgement interest as per section 128 of the Courts of Justice Act, R.S.O. 1990 c. C.43 as amended;

(d) Post-Judgement interest in accordance with section 129 of the Courts of Justice Act, R.S.O. 1990c.C 43 as amended

2. The Plaintiff, Joe Otavnik is an individual living in the City of Oshawa.

3. The Defendant, Kinsman Robinson Gallery (KRG) a division of Tele-Connect Publication L td is a gallery carrying on business in the City of Toronto

4. The plaintiff introduces as per Exhibit # 1 through Exhibit # 49 a summary of the misrepresentations made by KRG with respect to the works of Norval Morrisseau.

Misrepresentations By Kinsman Robinson

It is my belief that this submission will affirm the fact of the ongoing nature and context of the misrepresentations being made and resulting damage done to the competitive process and to the marketplace. The marketplace for the artwork of Mr. Morrisseau is now wrought with confusion, rumour and innuendo. It is our submission that it was Mr. Robinson et al who started these rumors and have disseminated them in a carefully orchestrated manner through the various media outlets since May 18th, 2001 to present. These parties have done so in a deliberate, calculated manner in order to gain control of the market and gain a monopoly on how a authentic Norval Morrisseau is to be defined and what is and what is not, in fact, an authentic work of art by Norval Morrisseau. Mr. Robinson et al have even enlisted some of Canada's most respected National galleries/public institutions and an art industry association in his scheme by using their good name(s) to achieve his goal.

Norval Morriseau and his importance to Canadian Art

Norval Morriseau burst into the art scene on September 12th, 1962 at the Pollock Gallery in Toronto where his first show sold out in less than 24 hours. Mr. Morriseau was an internationally known artist since then and has had many shows and exhibitions that were done around the world. Among his many accomplishments and highlights of his career include his sixteen (16) foot mural for the *Indians of Canada Pavilion* at Expo 67; his receiving the Order of Canada on December 18th, 1978 and his inclusion in 1989 *Magicians of the Earth* on the occasion of the Bicentennial of French Revolution at the Pompidou Centre in Paris. Mr. Morriseau has the singular distinction of being the only artist from Canada to be invited to this prestigious event. He has graced the cover of *Time* and *Maclean's* magazine etc. In 2005, a documentary film about his life was shown on CBC's called *A Separate Reality-The Life & Times of Norval Morriseau*. Before this, the last Canadian painter so honored was Tom Thomson of the Group of Seven. In 2006 Mr. Morriseau became the first First nations Artist to have a solo exhibition in the 136 year old history of the National gallery of Canada. In 2007 he became the first Canadian First Nation artist to have a show at the Smithsonian National Museum of the American Indian at the George Gustav Centre in New York, City, NY. Please refer to Exhibit # 1 which is a *Curriculum Vitae* of Norval Morriseau.

During the above time timeframe (1962-2001) there was never any suggestion in any article, art review magazine etc ever the ideal that there were "fake" Norval Morriseau paintings' in the marketplace. It was almost four decades after his initial show that the notion of Norval Morriseau "fakes" ever came up in any newspaper, art magazine etc in any way, shape, matter or form until it was done by Mr. Don Robinson in the National Post article dated May 18th, 2001.

I now refer to Exhibit # 2 which is the National Post Article of May 18th, 2001 called "Morriseau fakes alleged". In the second paragraph of the article Mr. Robinson states that he was suspicious of the authenticity of 23 paintings brought to him by another collector (Mr. James White) who purchased them at Kahn Auctions.

" Donald Robinson, Mr. Morriseau's gallery representative in Toronto, was approached last month by a collector who bought several paintings attributed to Mr. Morriseau at Kahn's County Auctions in Pickering Ontario. The collector wanted the works appraised, but Mr. Robinson was suspicious of their authenticity"

I enclose Exhibit # 3 which is a statement from that collector. In that statement it is clear that Mr. Robinson told that individual that he had bought wisely and to insure the paintings because they were valuable. Mr. Robinson in the same National Post article only suggests that he bought "some" paintings. He is deliberately vague on this issue and does not even mention Mr. Morriseau's name or disclose what he actually bought at Kahn Auctions. In fact, later on in his

Blog from the Kinsman Robinson gallery he denies this suggestion that he bought "some" but I will deal with that in this submission..

" I had long thought there was something wrong with these paintings" said Mr. Robinson who bought some himself."

The fact is that over the period between late 1999 and early 2000 Mr. Robinson not only purchased 28 paintings from the auction house for a total of \$ 54,000. (Exhibit # 4), he openly encouraged other people to buy them and he also unsuccessfully bid on another 40 to 60 paintings from the same auction house (Kahn Auctions). Enclosed please find a copy of the actual receipts and statements from the owner of Kahn Auctions Mr. Randy Potter. Please also refer to Exhibit # 5 which is a statement from Donna Shea Vice President of Kahn Auctions. In that statement Mr. Robinson was not worried about the authenticity of the paintings at Kahn Auctions but rather the fact that he (Mr. Robinson) couldn't sell them as fast as they were coming into Kahn Auctions. Mr. Robinson even tried to get the individual (Mr. David Voss) who supplied Kahn Auctions to sell to him directly in an attempt to bypass Kahn Auctions. I enclosed a statement as per Mr. David Voss (as per Exhibit # 6). In it Mr. Voss states

"The collector friendships are more important to me than selling art so I send Randy Potter painting paintings by mostly Morriseau to sell at auction. It was shortly after this that I had my first contact with Robinson. He told me to leave the auction house and to do only business with him and he could make me more money. Normally I would have taken this offer but it was the way he said it, more like a threat than an offer"

The rest of Mr. Voss statement which is also part of Exhibit # 6 echoes the same. Mr. Robinson wanted to buy directly from Mr. Voss. Why would Mr. Robinson do so if he thought the paintings supplied by Mr. Voss to Kahn Auctions were "fakes". The fact is and it will be shown that Mr. Robinson only called the paintings from Kahn Auction "fakes" after Mr. Voss thwarted his attempt to sell to him (Don Robinson) only.

Mr. Robinson also points out in the National Post article of May 18th, 2001 that the alleged "fakes" came through his attention via the RCMP in Thunder Bay. Moreover, Mr. Robinson also states in the article that Mr. Morriseau told him that Mr. Morriseau even knew who were paintings these alleged "fakes".

" Allegations of forgeries of Mr. Morrisseau's work are nothing new. "He's being telling us for years about the fakes and even the people who were painting them" Mr. Robinson said" and

" The allegations of fakes first came through Mr. Robinson's attention through the Thunder bat RCMP, which had received a tip through Crime-stoppers."

These are I believe deliberately false statements with the intent of placing the artwork of Mr. Morrisseau in the secondary market into question. If Mr. Robinson says Norval told him he knew who these people were why hasn't he found and identified these people. Mr. Robinson talks about an RCMP investigation. I believe that no complaint was ever filed and no investigation was ever undertaken. The reference to Crime-stoppers is ridiculous and the RCMP does not even have jurisdiction in any such matter. Mr. Robinson's assertion that "Allegations of forgeries of Mr. Morrisseau's work are nothing new " is false. It was Mr. Robinson who was the first person to every bring up this subject and I will go into that issue in detail later on in this submission.

Please now refer to Exhibit # 7 which is a letter from Don Robinson to his clients dated May 19th, 2001 the day after the National Post article. Please pay special attention to the first sentence. " Some extraordinary information has come to our attention that may be of interest to you". This is clearly misleading and is clearly misrepresentation. Mr. Robinson was the sole source behind the allegation of Norval Morrisseau fakes for the National Post article called "Morrisseau fakes Alleged". In this letter to his clients he makes it sounds as if he just stumbled upon the information. Mr. Robinson fails to mention the name of the auction hall (Kahn Auction) and fails to mention the fact to his own clients that he bought over 28 painting from the source (Kahn Auction) which he calls "fakes" in his letter to them. Moreover, Mr. Robinson in the same letter admits to communicating these statements to an even larger audience Live on National TV.

In the same letter to his clients he mentions a painting by Robert Davidson the he said he bought from Kahn Auctions which he called a "fake" also. The artist (Mr. Davidson) never in fact called the painting in question a "fake" and never communicated anything to Mr. Potter. The mentioning of this "fake" by Mr. Robinson is to purposely reinforce this notion of "fakes" in the marketplace being associated with an unscrupulous seller-Kahn Auctions-which again I point out to the reader Mr. Robinson did not name in the National Post article nor in his letter to his

clients. Mr. Robinson is simply trying to discredit Kahn Auctions which was and is the single largest seller of Mr. Morrisseau's artwork. Mr. Randy Potter of Kahn Auctions denied that the Robert Davidson painting bought by Don Robinson was a "fake" but he nevertheless refunded Mr. Robinson his money (\$250) for the painting as per Exhibit # 4. It is also fact that Mr. Robinson never, never asked for a refund on the 28 paintings of Norval Morrisseau he personally bought at Kahn Auctions.

Mr. Robinson never publicly explained the whereabouts or status of these twenty-eight (28) paintings. Even when on June 10th, 2005 a longtime collector of Norval Morrisseau works informed the Norval Morrisseau Heritage Society that he personally saw Mr. Robinson purchase works of art by Norval Morrisseau from Kahn Auctions as per Exhibit # 8 Mr. Robinson was silent and made no public statement. Mr. Robinson's lawyer R. Brendan Bissell responded to Mr. Humphries as per Exhibit # 9. Please note point # 5 where Mr. Robinson's lawyer states that Mr. Robinson was "taken" in and these works were removed from the market. It is our belief that Mr. Robinson sold these paintings to his clients in the normal course of business. Please refer back to Exhibit # 5, the statement from Donna Shea the Vice President of Kahn Auctions. Please note in item 4. That Mr. Robinson never complained about the authenticity of the paintings but "was worried that he could not sell the Morrisseau paintings that he bought fast enough as they were coming into Kahn Auctions". He now wants you to believe that in fact he never sold these paintings. He wants you to believe that he bought the paintings found out they were "fakes" never asked for his money back and kept them for future reference and even available as evidence in the continuing investigations in the future.

It is interesting to note that Mr. Robinson was silent on the issue of these 28 Norval Morrisseau painting he bought between September 1999 and March 2008, which he says were "fakes" but still in his possession. It was only after the existence of these twenty eight (28) painting were made known in a web site to the members of the Norval Morrisseau Heritage Committee (NMHS), (as per Exhibit # 10) on Friday August 29th, 2008 did Mr. Robinson ever publicly acknowledge them.

On the Kinsman Robinson blog on Saturday August 30th, 2008 Mr. Robinson has the title of an Entry called Fighting Smears: Auction canvases which should be labelled Exhibit # 11. This entry on the blog was posted on the blog on Saturday but the date on top of the article is Thursday August 28th, 2008 one day before Mr. Otavnik actually emailed the truth about these 28 painting to the individual member(s) of the NMHS. Interesting again that Mr. Robinson was silent on this issue, Mr. Otavnik sent an email and then his respond is backdated to the day before Mr. Otavnik sent it.

On the Kinsman Robinson blog on August 30th, 2008 Mr. Robinson as per Exhibit # 12, called "Our favourite top 10 lies" page 2, item 4 Mr. Robinson contends that the 28 paintings were delivered to the office of a board member of the Norval Morrisseau Heritage Committee. I believe that these paintings have been sold and are not being held by anyone. I have communicated such as per Exhibit # 10 to the various members of the Norval Morrisseau Heritage Society. To date I have received no acknowledge or reply. I will revisit this issue later on in this submission as I will point out the contradictions in Mr. Robinson explanation of the above on this blog and then another explanation in his Expert Report in SC 09-82782.

Appraisals done by Kinsman Robinson for painting(s) purchased from Kahn Auctions

Kinsman Robinson claims to be experts with respect to the authenticity of Norval Morrisseau paintings. I have an appraisal done by Kinsman Robinson from a client who clearly states that the painting was purchased at Kahn Auctions. The appraisal is dated August 18th 1999 which is before the time that Mr. Robinson started buying Norval Morrisseau paintings from the same auction house (Kahn Auctions). Mr. Robinson started buying his paintings from Kahn Auction shortly after this appraisal starting in September 29th, 1999 as per Exhibit # 4. The other appraisal is dated October 30th, 2001 which is after the date of the National Post article. It was also purchased at Kahn Auctions. Kinsman Robinson has appraised two (2) paintings from the source he claims sold "fakes" as per Exhibit # 13. In both cases Kinsman Robinson accepted the authenticity and provenance of the paintings, placed a value on them and issued the appraisals. It is our position that Mr. Robinson knew of the source of the paintings, he appraised them, started buying from Kahn Auctions and only questioned their authenticity after he realized he couldn't control the market for them.

Robinson's Questioning of the Morrisseau Secondary Market

The various misrepresentation of Don Robinson have to be put in content of his overall scheme to control the market for Norval Morrisseau works' of art. The previous mentioned article in the National Post is designed to question the secondary market for the works' of Norval Morrisseau. The next public statements of Mr. Robinson in the Toronto Star article of June 5th, 2004 named "Say it isn't so, Morrisseau" (as per Exhibit # 14) the article states

"It's the secondary market" says Robinson, that's the problem."

Mr. Robinson further states in the same article

"As part of this secondary market, the Maslak McLeod Gallery at 118 Scollard Street has received a warning from Gade Vadas and Kinsman Robinson that it is advertising for sale a number of "fake" Morrisseaus".

The problem with this statement is that Mr. Morrisseau was a well known and internationally famous artist for over twenty five (25) years before Mr. Robinson says Morrisseau choose him to be his agent. The secondary market is now defined as the period of Mr. Morrisseau career that wasn't with the Kinsman Robinson Gallery according to Mr. Robinson. This is incorrect. At any time including his time with his former agent Jack Pollock any works' done by Mr. Morrisseau would constitute the primary market at that time. By definition any sales transaction done after the initial sale would constitute a secondary market. Mr. Robinson is making the impression that works' in the secondary market are questionable and should not be as trusted as primary (or First sales and he just happens to be Mr. Morrisseau primary (or original) dealer now. There is an implication that primary pieces should be viewed as being more authentic than previously sold pieces which would constitute the secondary market.

The fact that the sale of any product after the initial sale is in the secondary market. If you buy a share of BCE today for example, that's the secondary market because you are buying the stock and somebody else is selling it. By referring it as the "secondary market" Mr. Robinson is implying that works' of Norval Morrisseau that are being resold are different and/or not as good as the "primary market" which to his suggestions imply a direct sale from him to you the purchaser. This implied difference in potential quality or authenticity to differentiate between the two markets is a deliberate attempt to mislead and confuse buyers in the marketplace. Given that Mr. Morrisseau painted a majority of his work before Mr. Robinson claims to have exclusive representation of Mr. Morrisseau is an attempt to discredit the quality or authenticity of everything Norval painted before Mr. Robinson says he represented him. I will get to this actual or implied exclusivity of the artist later on in this submission.

Robinson's attempt to Control the Market

I have already established as per Exhibit # 6 and the several statements given by Mr. David Voss that Don Robinson did indeed try to get Mr. Voss to stop supplying Kahn Auctions and sell to him directly. This in conjunction with his attempts through the media, his public advertisements which indicate that he is the sole authorized agent for Norval Morrisseau and his public statements which bring into question the secondary market is a clear attempt to control the market. It is my position that Mr. Robinson has made two separate sets of representations that are part of an overall campaign to adversely effect competition and distribution channels for the artwork of Norval Morrisseau.

- 1) It is he (Don Robinson) who is the only part capable of authenticating the artwork of Norval Morrisseau ?
- 2) Don Robinson representations of the actual relationship between Norval Morrisseau and Robinson-namely that Robinson is the exclusive or official representative of Norval Morrisseau.

Don Robinson is the only party capable of determining authentic Morrisseaus.

1. In the May 19th, 2001 letter to his clients, the day after the article on Norval Morrisseau "fakes" Mr. Robinson alleges that certain Morrisseau paintings that are in the marketplace are not authentic. Even though he was the source of this information he makes it clear to his clients that they should go to him to get their Norval Morrisseau paintings appraised by him because only he and his firm (Kinsman Robinson) were "the official representatives of Norval Morrisseau" as per Exhibit # 7.
2. In the National Post article of May 18th, 2001 it is only Mr. Robinson who is casting doubts and giving an opinion on so called Norval Morrisseau "fakes" in the marketplace. If he is such an expert then how did he get as a lawyer says as per Exhibit # 9 "taken in". Thus Mr. Robinson in effect holds no special ability to discern between real and allegedly fake Morrisseau. Indeed, Mr. Robinson by his own actions and admissions was "taken in" twenty-eight (28) times. After the collector (Mr. James White) asked Mr. Robinson why all of a sudden he considered the artwork that he was to appraise a fake Mr. Robinson contends that it was Norval Morrisseau who called them fakes. The question is If Mr. Robinson was such an expert then why would he need Norval's input in assessing the authenticity of his works? Mr. Robinson further contends that one of the main reasons he was suspicious of the artwork of Norval Morrisseau from Kahn Auctions is that the work was "shoddy". It is a well known fact that Mr. Morrisseau was a transient, had a history of substance abuse and frequently painted in exchange for food and shelter and was not always sober when he painted. Indeed, in the CBC documentary in the series "Life and Times" it was well established that in the 1970's Mr. Morrisseau accepted cocaine in lieu of money for his work. Moreover, he was put up in a hotel in Toronto by a well-known mobster who supplied him with booze and drugs in lieu of money. It is also a well known fact that when Norval was homeless and destitute in Vancouver he openly painted on the streets of Vancouver for bottles of wine. Indeed, it was on the streets of Vancouver where he met his so called manager Mr. Gade Vadas. They were both homeless. The fact that some of his work was "shoddy" given Mr. Morrisseau's circumstances throughout his life is irrelevant. The artwork can be "shoddy" and still be an original.
3. Mr. Robinson has also tried to extend his knowledge of Norval's art to that of an expert by claiming certain features of Norval's art that are shared by

nobody else. In his web site blog as per Exhibit # 11. In it he states that "After investigation, we found that none of these paintings had heavy black, faded writing on the back. Even today. I have never seen a Morrisseau painting, with a provenance traceable back to the artist, with this kind of writing on the back". I present the reader now as per Exhibit #15 a painting sold at Levi's auction with a provenance traceable back to Kinsman Robinson Galleries which directly contradicts their assertions. I will deal with the issue of provenance latter on in this submission but I ask the reader to keep this in mind. This ideal that Norval rarely if ever signed the back of his painting is clearly intended to cause confusion in the marketplace. This contention with respect to the work of Norval Morrisseau is completely false, misleading and clearly wrong. Mr. Morrisseau at times only signed the front of his painting, sometimes only the back with his Cree syllabics on the front, sometimes only his Cree syllabics on the front etc. There was no set manner in which Norval signed his work throughout his career.

4. Please refer to Exhibit # 16, which is a submission by Irene Seetner to the Thunder Bay Art Gallery. All three (3) works of art by Norval Morrisseau were signed in black acrylic on the back. This submission was approved by the Register Gail Fikis. The paintings were then declared authentic by the curator Mr. Glenn Allison of the Thunder Bay Art Gallery and then by the Board of the Thunder Bay Art Gallery. It was then further vetted and approved by the Cultural Property Review Board (CPRB) in Ottawa and approved. Moreover, in the Toronto star article dated June 5th, 2004 (Exhibit # 14) "Say it ain't so Morrisseau" Mr. Robinson states that " I've seen him paint and sign his work". I have also submitted a statement as per Exhibit # 17 in which Mr. Marlowe Goring states that he personally saw Mr. Morrisseau sign the backs of his painting.
5. In *Moniz Vs CTV Globemedia Publishing and Val Ross (CV-07-1776-SR)* the authenticity of several paintings for sale on Ebay was put into question by an article written in *The Globe & Mail* by the reporter Val Ross. Enclosed please find as per Exhibit # 18 a detailed forensic handwriting analysis report from DEC Inc. That report concludes that the signatures on the backs of the paintings put in question in the *Globe & Mail* article were in fact signed in black, in acrylic by Norval Morrisseau. The conclusion of the forensic report is definitive and contradicts and refutes the public assertions made by Mr. Robinson et al in the marketplace-namely that Mr. Morrisseau " rarely if ever signed the back of his paintings". The *Globe & Mail* and Val Ross, Patrica Fehelley, Mr. Vadas, Mr. Milrad and Robinson have never produced any evidence to the contrary. Please now refer to Exhibit # 6 and a statement as of November 10th, 2008 by Mr. David Voss. In it Mr. Voss points out the fact that he and other art dealers sold their paintings through Don Robinson and he (David Voss) knew for a fact that all of these paintings were signed and dated on the back by the artist-Norval Morrisseau. As per Mr. Voss's statement

“ It was the mid 90’s that I met several business men who showed an interest in Norval’s work. We bought and traded art from a large array of outlets. Some of the individuals, who I traded with, asked not to be named.

They sold their paintings through Donald Robinson and I know for a fact were all signed and dated on the back. Something that seems to be in varying degree of question today”

- 6. In Otavnik (Plaintiff) Vs Vadas (Defendant) as per Exhibit # 19, where Mr. Otavnik sued Mr. Gabe Vadas (who claimed to be Norval’s manager) Mr. Robinson refused to give an opinion on Norval Morrisseau painting Mr. Vadas called a fake. Mr. Robinson claims to have special knowledge, he claims to be an expert and yet when Mr. Otavnik sued Mr. Vadas and Mr. Robinson dealt with Mr. Vadas in that Mr. Vadas supplied Mr. Robinson with current works of Norval- he was silent. Please take note of the date of the lawsuit April 16th, 2007 and the date that that Norval Morrisseau died December 4th, 2007. Please now further refer to Exhibit # 20 which is the 1st pre trial endorsement of June 26th, 2007 as per page 1. It clearly states in point 4 that the plaintiff (Otavnik) was to provide a copy of the painting to the defence in order for the defence to inspect the painting and have their experts examine it for a period not to exceed two (2) weeks. The fact is that defence failed to have their experts inspect it before Mr. Morrisseau died despite repeated attempts from the plaintiff to deliver the painting to the defence. In the second pre-trial endorsement of March 28th, 2008 (as per Exhibit # 21) the order of June 26th, 2007 was extended to a period of four (4) weeks. Mr. Vadas and Mr. Robinson have had a close relationship since the late 1980’s. In pre-trial Mr. Otavnik asked Mr. Vadas why he just didn’t take the painting to Don Robinson since he (Gabe Vadas) was Norval’s so called manager and Mr. Robinson claimed to be an expert and the “official agent of Norval Morrisseau”. Mr. Vadas declined to comment. The point is that the source of the painting that Mr. Vadas called a fake in the Heffel on-line auction was from Kahn (now Randy Potter Auctions) which was the same source that Mr. Robinson previously brought from which he knew that I knew.**
- 7. In Otavnik Vs. Richie Sinclair (SC 09 82782) as per Exhibit # 22 please find a statement from Kathleen McMullan Debassige. In it she highlighted the provenance of the painting (Rolf Schneider), the size, dated and title of the paintings which were at the Nimkee Gallery of which she was a co-owner. The statement also shows the front and back of the paintings in the Gallery which clearly show the signature of Norval Morrisseau and date and title of the paintings and pictures of Mr. Gabe Vadas and Norval Morrisseau at the gallery with the paintings. Despite this Mr. Vadas and Mr, Robinson et al keep spreading the ridiculous notion that Norval did not sign the back of his paintings. This is a deliberate attempt to confuse confusion in the market which I will go into much further detail in the second part of this submission. I leave you now and refer to**

Exhibit # 14 page 2 in the last sentence of the first (1) paragraph which is from the blog of the Kinsman Robinson Gallery where Kinsman Robinson Galleries infer that Norval didn't title his paintings on the front-rarely on the back side either.

8. Mr. Robinson claims to be an expert yet he had to rely on Mr. Morrisseau to determine that the paintings that he was to authenticate for Mr. James White were in fact as Mr. Robinson said Norval told him were fake. If he was a expert he could declare them fake but did not because then he could be sued and chose to hid behind the artist.
9. We have a forensic report dated January 24th by DEC which indicates that some of the paintings that Mr. Robinson contended in the National Post Article were in DEC's expert opinion to be consistent with the signatures of known Norval Morrisseau examples. Please see Exhibit # 23.
10. Given the fact that Mr. Morrisseau had a minor stroke in 1994 and the public knowledge that he suffers from Parkinson's disease and his advanced age there is a question as to at what point could he identify his own art. Given his known and admitted substance abuse and the fact that he may even have Korsakoff's syndrome it is doubtful that even Mr. Morrisseau could have identified his own work while he was in the later stages of his life. We even have a statement as per Exhibit # 24 where Mr. Morrisseau contended that a certain painting at a Robinson exhibition was fake, but quickly altered his position after being encouraged by Mr. Robinson to do so. I would also like to point out that the writer (Mr. Karl Comete) even disclosed that he bought a painting from Mr. Robinson in 1993 where the title on the back was signed, faded and virtually unreadable. This directly contradicts Mr. Robinson's public statements. It is consistent with the fact that Mr. Robinson bought from Kahn Auctions which sold paintings from the 1970's which due to aging was signed in black acrylic and faded. Mr. Comete then explains a brief but concise history of the differing types or ways Mr. Morrisseau signed the various pieces of artwork that he did.
11. Enclosed also please find as per Exhibit # 25 an affidavit from Norval with respect to certain paintings by him. In the affidavit dated April 24th, 2003 certain paintings in the Maslak Mcleod catalogue fake and other paintings in the same catalogue are implied to be authentic. The paintings not identified as fake were previously declared so by Robinson and Norval in the Toronto Star article of June 5th, 2004 article. Mr. Morrisseau even claimed that the painting called "Spiritual Battle for Life" but was featured in the Globe and Mail as per Exhibit # 26. This is in contrast with Norval's affidavit as per Exhibit # 27 dated March 14th, 2003 he identifies are fake are not identified as such in the affidavit of April 24th, 2003. It can't be both and it is our position that Mr. Robinson knew this.

1. Is Don Robinson the official agent for Norval Morrisseau ?

1. Mr. Robinson has implied that his special relationship with Mr. Morrisseau conveys with that a standing above other galleries with respect to the implied authenticity of Norval's work in the secondary market. I believe I have covered that issue in the sense even if he was Norval's official representative that fact would not have a bearing on whether a painting Mr. Morrisseau painted forty (40) or so years ago was authentic or not. I believe that in fact that Mr. Robinson is not Mr. Morrisseau official agent nor does he have any contract with Norval. Thus, he stated he was Norval's official representative when in fact he was not. Enclosed please find Exhibit # 28 which is the defence to the plaintiff claim in Otavnik (Plaintiff) Vs Vadas (Defendant) in SC-07-51428. Mr. Vadas has claimed to be Norval's manager since they met on the streets of Vancouver when they were both homeless. In Schedule "A" point 2) & 3) Mr. Vadas points to a Power of Attorney as giving him the authority to act on Norval's behalf. Before, the case was settled out of court in favour of the plaintiff it was revealed in pre-trial that Mr. Vadas had no power of attorney and certainly no contract between himself and Mr. Morrisseau. Thus, it was Gabe Vadas who dealt with Don Robinson (of Kinsman Robinson) and he had no authority to deal on behalf of Norval Morrisseau.

It is my contention and belief that Mr. Robinson knew this and chose to deceive the public and the marketplace by stating that he was the "official agent of Norval Morrisseau" knowing that he wasn't. Moreover, Mr. Robinson advertised in the Globe & Mail as being the sole authorized representative of Norval Morrisseau. In doing so Mr. Robinson is trying to cast doubt on all dealers not affiliated with the exclusive or official representative of Norval Morrisseau-himself.

The Role of Provenance in the Industry, It's Misrepresentation by Kinsman Robinson and the Sale of Goods Act

The role of provenance is an industry specific factor which Mr. Robinson et al have used to try and undermine and distort the market of paintings of Norval Morrisseau. The traditional and industry accepted notion of "provenance" is the ideal that the artist paints the painting he gives/sells it to the gallery and the gallery sells it directly to their client. There is no middleman. It is like selling an old collectible car from the original owner who has the original bill of sale. Placing an economic or dollar figure on the value of provenance is a subjective undertaking. It does however exist and it may even be the final factor in the determination of a sale. Take the example of a painting for sale with no provenance as such but a picture of the painting with the artist in the picture with the painting. This is not "provenance" in the traditional sense in how it is defined/used in the industry, but such a picture probably adds a certain comfort level to any prospective buyer. It could even be the final consideration in whether the purchasers' mind.

In any market context any painting with a solid provenance will sell for more than a similar piece with no provenance. Mr. Robinson has made a concerted effort to try and question the provenance of any painting that was ever done by Mr. Morrisseau that was done before Mr. Robinson represented him. I doing so he has restricted the number of paintings available for sale and reduced the number of prospective buyers. It is well know and widely accepted that the vast majority of Mr. Morrisseaus' total output has no provenance in the traditional sense. Indeed, Mr. Morrisseau was at several times in his career incarnated for public drunkenness etc. The authorities even called on Mr. Morrisseau agent Mr. Jack Pollock for advice on how to deal with Mr. Morrisseau who suggested Norval be put in jail in order to sober him up (1) as per Exhibit # 29. Mr. Morrisseau in the early to mid 1970's was promptly locked up on many occasions with the longest being six (6) months. The authorities even provided Norval with an empty cell to paint in while he was in jail. It is many of these paintings and timeframe that Mr. Robinson et al are attacking the provenance of. It's quite simple. If you put out the word that only paintings with a solid traditional provenance can be considered authentic then you substantially reduce the number you can attribute to the artist. As you reduce the number you obviously increase the price. This is why Mr. Robinson et al want to attack the provenance of a painting and not on it's actual form or content. As told by Susan Ross in from the book "The Art of Norval Morrisseau" by Lister Sinclair and Jack Pollock from page 30 recalls as per Exhibit #30

"Often she was visited by a drunken Morrisseau carrying paintings under him arm, and asking for money. She would tell me how he was trading pictures for booze, and how at times, there was no exchange. He would be found drunk and unconscious, his pictures stolen." 2

This was Norval Morrisseau and a tale that was unfortunately told over and over.

- 1 The Art of Norval Morrisseau by Lester Sinclair and Jack Pollock, Methuen Publications, ISBN 0-458-93820-3, page 33
2. Sinclair and Pollock at 30.

The total of the number total pieces produced by Mr. Morrisseau is simply not known. It has been estimated from the NMHS and the art establishment which suggest approx. 10, 000 pieces to his family who insist the number is at least 15,000 and probably closer to 20,000. They come to this figure by watching their father paint, knowing how much he could paint when sober, how often he painted, when he rested and the characteristics and mannerisms of his artistic process and in discussions with their father etc. In any case Mr. Morrisseau was a very prolific artist. We know that Mr. Morrisseau only had only eight or nine shows of his work with his original manager Mr. Jack Pollock between the years 1962 to 1981. Please refer to Exhibit # 31 from the MasLak McLeod Gallery called Norval Morrisseau "The Development of the Woodland School of Art" and catalogue from Kinsman Robinson dated May 7th-31, 1994 titled Norval Morrisseau "Honouring First Nations" as per Exhibit 32. We also know that Norval first show in 1962 sold out in twenty four (24) hours and he sold 42 paintings as per Exhibit # 33. 3. In his October 1963 showing Mr. Morrisseau had 23 paintings offered for sale as per Exhibit # 34. 4.

- 3.Sinclair and Pollock at 21
- 4.Sinclair and Pollock at 27

From this point on there is no mention from Mr. Pollock on how many more paintings were offered up for sale by Mr. Morrisseau through his gallery past that time. There is also no mention of Mr. Pollock onto how much Mr. Pollock sold in his entire time being Mr. Morrisseau's manager. If we take the figure of 50 paintings per show from the Pollock Gallery one gets approx. 450 total pieces sold by Mr. Pollock. If we take the figure of 10,000 pieces from the Norval Morrisseau Heritage Society at 10,000 (which is conservative) we still have a gap of approx. 9,500 painting(s). We know that Norval had no other official agents which owned economically viable business and provided for proper provenance in the traditional industry sense and use of the term as known in the normal course of business in that industry.

Thus, within this context if you keep spreading the myth of "fakes" in the marketplace then being able to provide a provenance is even more important. Again, this will reduce the number of authentic paintings of the artist in the public's eye when the truth is the painter painted alot and many of the pieces because of Mr. Morrisseaus' substance abuse problems which are/were well known and documented.

Norval Morrisseau never cared about the santicaty of the concept of provenance. He painted and sold artwork where he wanted and when he wanted. He even undercut his own agent Mr. Jack Pollock as per Exhibit # 30. It is well known and documented that Mr. Morrisseeau painted for people in lieu of money for his rent, food , alcohol and drugs. The notion of provenance is not something Mr. Morrisseau ever cared about . It has effected the value of his work but is not a basis in determining whether any individual piece is authentic or not.

In his January 26th, 2004 article in Maclean's Magazine "The Ecstasy of Norval Morrisseau" the writer recalls his first meeting with Norval Morrisseau as per Exhibit # 35. Mr. Geddes as per page 39 recalls how Mr. Morrisseau went door to door selling his paintings circa 1970's and how his father bought two and how many other people in the Red Lake District also did so. Mr. Geddes states "Yet owning a pieces wasn't unusual. Up there in the Red Lake District, where he first painted and peddled his work, his bold acrylics were quite common in ordinary homes". It is clear that Mr. Morrisseau sold many pieces of his artwork not through galleries and thus a provenance in the traditional sense but, nevertheless are still original piece(s) of artwork from the artist.

In his book " The Spirit of Ahnishabee Art" 5 by James R. Steven's, Mr. Roy Thomas, in his own right a famous artist, friend and drinking companion of Norval recalls several tales of Norval's excess and debauchery. Mr. Thomas on page 48 describes how he met Norval in jail in Geraldton on how they upon their release Norval gathered up some paint and produced a few pieces of artwork that he sold to a Librarian for a case of wine and cigarettes as per Exhibit #36.

5. The Spirit of Annishabee Art by James R. Steven's ISBN 0-9688345-0-7

On page 55 and 56 (further as per Exhibit # 36) Mr. Thomas recalls on how Norval commented to a waiter at a gallery opening to stop running around and coming back and forth to serve them drinks but instead just to leave the whole tray in front of him (ie Norval Morrisseau). The waiter then said to Norval, " You mean you are going to drink all that?" to which Norval responded " My ideal of a sociable drink is a forty-pounder of Rye". Indeed, and going back to Mr. Geddes on page 41 of the above aforementioned article in Maclean's when asked about his struggles with alcohol Mr. Morrisseau told the reporter "I'd do it all over again. I'd have a better approach. I'd really get drunk". Finally on page 80 Mr. Thomas explains how he and Norval would paint anything and in rapid succession in order to provide paintings in what Mr. Thomas referred to as "Holiday Inn Paintings". Mr. Thomas further points out on the same page his consternation of being at his exhibits and having people come up to him and brag on how they bought a painting off Norval for \$20 or bottle of whisky or wine. The point is that everybody in the artworld knew of Norval and the situations that he put himself in and under the condition and circumstances in which he sold his artwork again as further per Exhibit # 36.

Mr. Robinson keeps stressing the need for having a proper provenance knowingly full well the artist's history and anybody's inability to provide for such. Mr. Milrad (of FMC) readily admits that one could have in the 1980's picked up a piece of art from Norval for as little as \$10 (ten dollars). Mr. Milrad calls these pieces " inferior". He may be right. They may be "inferior" and they may have no provenance in the traditional sense but they are still genuine authentic artwork done by the artist himself. Again, the fact that there is no provenance will effect the market value but not the authenticity.

Now, as per Exhibit #37 which is a statement from Tammy and John MacDougall. In this statement it is clear that Mr. Robinson brings up the issue of having a strict provenance traceable back to the artist as a central feature of his argument. Without this as per Mr. Robinson's words ' the piece had virtually no value". Mr. Robinson even stated that there were many pieces from the 1970's were "fakes". Mr. Robinson further supports this ideal by mentioning the fact that Mr. Morrisseau has provided several signed affidavits' to this effect. Mr. Robinson has questioned the authenticity for mainly the period of the 1970's and has directed his attack mainly on the sales from one particular auction house-That of Kahn Auction-now Potter Auction. Mr. Robinson et al have concentrated their efforts on Mr. Potter because he has been the largest single seller of Norval's paintings in the marketplace.

Public statements made by Robinson et al to Distort the Marketplace

Please now refer to Exhibit # 38 which is a article from the CBC web site as of March 24th, 2005 named " Group to authenticate Morrisseau artwork". It starts out

"A group of experts is being assembled in Toronto to help stem the proliferation of fake Norval Morrisseau paintings". The article then states that

"Aaron Milrad, Morrisseau's lawyer, says a committee of five Morrisseau experts will be in place by the end of April to authenticate Morrisseau Artwork. Anyone owning a piece will be urged to contact the Committee."

Then the same theme of “fakes “ in the marketplace is repeated later in the same article
“ Forgeries are so abundant that Morrisseau recently put an ad in the Globe & Mail newspaper saying: “for the record, I would like to state that Kinsman Robinson Galleries are my sole authorized representatives in Canada”.

This combined with Mr. Robinson’s notice to his clients as being the “official representatives” and his campaign to question the authenticity works cast doubts on any other art dealer or anybody in the marketplace. This clearly reduces competition.

According to Mr. Robinson generally and Mr. Milrad in this article, these so called forgeries are so abundant and yet then as now they cannot point to a single case. Not only have they not proven one “fake”, they have even never sought any type of injunctive relief in any way on the galleries they suggest were selling “fakes”. They are conveying to the public the idea that here is a problem with respect to “fakes” and the purpose of the Committee is to authentic Mr. Morrisseau’s artwork and solve this problem. It stated that forgeries are abundant and that the Morrisseau family has hired a private investigator to track down the source. This is misleading and knowingly false on several fronts.

1. They (Mr. Robinson and Milrad) talk about a proliferation of “fakes” yet they have never proven one. It appears that everybody in the art market was fooled for the previous 39 years except for Mr. Robinson and that was only after his attempt to buy directly of Mr. Randy Potter consignors Mr. David Voss was thwarted by Mr. Voss.
2. Moreover, in the original National Post Article of May 18th, 2001 Mr. Robinson stated that Norval even told him who were painting the fakes yet now they are hiring an investigator. If Mr. Morrisseau told Mr. Robinson who were paintings these “fakes” then why hire an investigator? Just go after these people and prosecute them? Surely, by 2005 (or even now) Mr. Robinson et al should be able to report on something one would think.
3. What about the RCMP investigation you claim was initiated. What happened to it?
4. The Morrisseau family has never had any dealings with Mr. Milrad and to suggest otherwise is false, misleading and a deliberate attempt to mislead the public. Mr. Milrad knew that since the date of the article (May 18th, 2001) that Mr. Robinson had not found one fake Morrisseau painting and to suggest otherwise was misleading. He knows or ought to know that what he is saying via his public statements are simply not true and not supported by any facts. The suggestion that the Morrisseau family agrees with Mr. Milrad et al position is merely another attempt to reinforce the false perception of “fakes” in the marketplace. Mr. Milrad does not speak for the family. He knows that and he is being deliberately deceptive.

Thus, Mr. Robinson has set up the basic construct as such. His public statements are that there are many “fakes” in the marketplace and that he is trying to safeguard the buying public through

the NMHS. The problem is that he is the source of the story with respect to so called fakes and he has set up this committee to shield him and Mr. Milrad from liability. Let's take a closer look at the article and the framework and structure of the NMHS.

Please now refer to Exhibit # 39 from The Globe and Mail dated March 23rd, 2005 called "Morrisseau moves to authenticate art". In it the same statements and themes in the CBC article are repeated. The dissemination of the fact that there are "fake" Norval Morrisseau paintings in the marketplace and the need for the establishment of a Board to authentic Norval's work. From the second paragraph of the article

Aaron Milrad, Toronto-based counsel for Morrisseau, Canada's most famous and influential first nations artist, said this week that the committee, composed of five Morrisseau experts, should be in place no later than the end of April. The experts will function much like the famous four-member Andy Warhol Authentication Board, which has been the sole arbiter of genuine Warhols since the pop-master's death in 1988: If you think you have a real Morrisseau but want to know for sure, you'll have to submit it to the committee for determination. And once you do, you'll have to sign a contract by which you absolve Morrisseau, his family and Milrad of "any liability if the committee comes back and says, "It's not a Morrisseau".

If Mr. Robinson is the expert surely he can do the appraisal or authentication. In fact, Mr. Robinson always deflects the notion of "fakes" to Norval. He did this in the first National Post article "Norval told us... , or Norval has signed several affidavits etc, or the NMHS was set up at the request of the artist etc. He does not want to do so because if he did

- 1) he could be potentially sued if he were and more importantly
- 2) If it became public knowledge that Mr. Robinson had already bought "28 fakes" himself he would have no credibility in the marketplace.

Moreover, as Mr. Milrad states in the same article

" If you think you... Morrisseau'. Mr. Robinson has poisoned the marketplace by suggesting fakes and is now with Mr. Milrad setting up a legal device to shield them. The ideal that you must sign a contract to absolve them of any liability is ridiculous. Indeed, they ask for blanket immunity. Again, the reference to Mr. Morrisseau's family is false and leaves the reader with impression that the family approves and has knowledge of such actions taken by Mr. Robinson and Milrad. The fact is that there was never in Norval's career any suggestions of fakes until the National Post article. The entire notion of fakes was concocted, introduced and further perpetuated by Mr. Robinson and Milrad.

We now fast forward to February 9th, 2007 as per The Globe and Mail article "Old art scam surfaces on-line" as per Exhibit # 40. Please note that the article was written by Val Ross (now deceased). It just happens to be that the late Val Ross was married to Bryant Ross of Coughlan Art who had a business relationship with Mr. Vadas and has helped propagate the falsehoods of "Fake" Norval Morrisseau paintings in the marketplace.

(I will point out to the reviewer that the late Val Ross never disclosed the fact that she was married to a person which is calling Norval Morrisseau paintings fake and she was getting her information through her ex -husband Mr. Bryant Ross).

In the Globe & Mail article Mr. Milrad claims It is a new wrinkle on a old scam” in the second paragraph. Please note that at this point the article points out that Mr. Milrad is now both representing the artist and the Norval Morrisseau Heritage Society . Further on he states on page two of the Exhibit

“Two years ago, the Norval Morrisseau Heritage Society formed a six- person committee of museum and government experts to compile a list of all authentic Morrisseaus. To date, the committee has identified about 1,200 pieces-those with proper provenance thanks to gallery exhibitions or conscientious owners.”

The article further states that

“ The only way any vendor can claim it is genuine is if the committee authenticates it.”

This statement is intended to deceive the public and it false. It is unclear as to who this statement is attributable to and I will discuss it in detail later on in this submission.

Again, the same claims of so called fakes are made by Mr. Milrad. The same claims made by Mr. Robinson in National Post article of May 18th, 2001 and the articles by Mr. Milrad in March 2005. Mr. Robinson and Mr. Milrad are knowingly spreading falsehoods in the marketplace in an organized scheme to disseminate lies and to deceive the buying public at large.

Kinsman Robinson Exhibition of Nov 9th to 29th, 2008

The Kinsman Robinson show as per Exhibit # 41 only shows artwork that was all apparently acquired directly through the artist as per the List of Works in the Exhibition Index. This constant claim is and has always be highlighted, promoted and marketed as such to imply an inherent superiority in the Morrisseau painting(s) being offered up for sale by KRG. That along with being "the official representatives of Norval Morrisseau" implies a higher fitness of sale/expertise that the public should rely on due to Kinsman Robinson relationship and knowledge of both Norval Morrisseau and his art. This is even reflected in further as per Exhibit #41 a copy of an entry from Twitter by KRG as of September 30th, 2009. I will summarize all these market claims vis a via all media sources in another submission/claim. They do this to maintain the concept of having a provenance which is the basis of their claims to the public. It's the provenance etc. Again, the industry accepted notion of the provenance is the artwork from the artist to the gallery to the buyer. That's it. The question is how is this possible for this show. As previously stated Mr. Morrisseau meet Mr. Vadas while there were both homeless on the streets of Vancouver. Mr. Milrad admitted that during that time period you could buy a Morrisseau for \$10 or a cheap bottle of liquor. If so and these painting were acquired directly from the artist where were they when Mr. Morrisseau was living on the streets of Vancouver?

The Exhibition called Norval Morrisseau "A Retrospective" lists nineteen (19) of the thirty four (34) paintings as being done prior to the period before Mr. Robinson says he signed a contract with Norval on March 6th, 1990. The notion that in this Exhibition that all pieces from the 1960's up until when Mr. Robinson represented Mr. Morrisseau is false were directly from the artist is ridiculous. The current seller of the paintings may indeed have bought it directly from Mr. Morrisseau and it could indeed be an original, but Mr. Robinson denies this same treatment to anybody else and only casts dispersion on the same facts to anybody else. The fact is that only "his" clients can claim such provenance in the same set of circumstances. The fact is that these are pieces that have been consigned to Mr. Robinson by the seller. There is nothing wrong or illegal with that. The only problem for Mr. Robinson is that he would have to admit that these are real Morrisseaus' that don't have the traditional provenance . This is in direct contradiction to his mantra of provenance, provenance, provenance, which he uses to disqualify and cast suspicion anyone else from selling/consigning a Morrisseau because the piece cannot be attributed directly through the artist or primary dealer-which he claims to be.

Mr. Robinson's contention that all artwork was acquired directly through the artist is misleading. Mr. Robinson bought several pieces of artwork by Norval at Joyner-Waddington's but labels these as being "acquired directly through the artist. Going back to Exhibit #41 and now Exhibit # 42 (from the Kinsman Robinson blog) with respect to the painting untitled (Thunderbird), 1966. This painting was in fact bought at the monthly sale at Joyner Waddington's. I further enclose Exhibit # 43 which is a picture from Waddington's wall clearly showing the painting along with several others that were in that weekly sale. Due to privacy issues Joyner Waddington cannot confirm this to us but I have confirmed that this is the painting in question. Mr Robinson et al tries to thwart and refute anybody else's attempt to claim such in the marketplace by insisting on a "rock solid" provenance. One that even he cannot give. I will further tie this type of misrepresentation into the Sale of Goods Act.

Past Misrepresentations and Current Statements and the Sale Of Goods Act

On the Kinsman Robinson blog dated August, 28 (which was actually posted on August 30th, 2008) as per Exhibit # 11. Mr. Robinson has a simple explanation. He contends that the 28 painting(s) he bought at Kahn Auction were declared as "fakes" by the artist and all given to the Normal Heritage Society. This corresponds to Exhibit # 9 which is a letter from Mr. Robinson's lawyer (Mr. Bisell) to Mr. Martin Humphries with respect to this issue. However, this is in direct contradiction to his (Mr. Robinson's) so called Expert Report as per Exhibit # 44 of September 2009 in 58871 (now SC 09 82782. As per page 8 & 9 of that report Mr. Robinson now admits on the top of page 9 "It had not even occurred to me to send them to Norval for confirmation" and that only 16 were donated to the Norval Morrisseau Heritage Society (NMHS) in the third paragraph of the same page.

Moreover, at the point of purchase and time of sale which occurred on or about February 1st, 2003 as per Exhibit # 45 there were/was several omissions in disclosure

1) KRG held themselves out as experts on the works' of Norval Morrisseau but did not disclose the fact that they had bought 28 paintings from Kahn Auctions which they claimed in the May 19th, 2001 article in 2001.

2) This omission is obviously the omission of a material fact. If had had been "fooled" into buying 28 painting from an artist whom in their words were "the official representatives Of Norval Morrisseau" and so called experts on his works then exactly what were/are their qualifications to claim such expertise. It is my submission that had they disclosed this to their customers at the point of sale or somewhere also the process they credibility would have been put in doubt in the eyes of the purchase. Purchaser are relying upon the knowledge and integrity of the seller (KRG) in this example and have an expectation of the truth. I now turn to Section 15 of the Sale of Goods Act and the entire Act as per Exhibit # 46.

Implied conditions as to quality or fitness

15. Subject to this Act and any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any other particular purpose of goods supplied under a contract of sale except as follows:

1. Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description that it is in the course of the seller's business to supply (whether the seller is the manufacturer or not), there is an implied condition that the goods are reasonably fit for such purpose, but in the case of a contract for the sale of a specified article under its patent or other trade name there is no implied condition as to its fitness for any other purpose

3. People including myself relied upon the integrity of the seller which would have come into question if full disclosure of the painting and disposition of the 28 painting from Kahn Auction would have been know. Not only KRG not disclose this they communicated the exact opposite in the National Post article of May 19th, 2001 (Exhibit # 2) and in a letter to their clients as per Exhibit # 7). The information contained in that letter is an out and out misrepresentation of the facts. These misrepresentations if know by the public would have seriously put in question KRG's truthfulness and is completely lacking in disclosure. All actual and potential purchasers would have questioned the honesty and integrity of the seller and certainly by extension the authenticity of the art being offered for sale by KRG. Nowhere in the article does it KRG mention the name of the gallery where they state sold paintings they were fake nor the fact that they bought from this gallery. I will expand on this in later additional submissions.

4. One of the main points of KRG's sale process is their so called special knowledge of Norval and the implication of their superior status as sellers that differentiate them from just anybody and the reason you should buy from them. One of these features is their so called specialized knowledge and expertise which they imply any buyer should and can rely on is in signature.

That is that Norval rarely if ever and if he did only pencil signed the back of a painting (ie canvas). I have already pointed out this inconsistency as per Exhibit # 15 but bring more to the readers' attention as per Exhibit # 47. I present lot 68 (Journey on a Dream) which is a painting which has a provenance traceable back to KRG which clearly states it was signed by the artist. Lot 132 (Sea Otter Salmon) also has a provenance traceable back to KRG and the listing clearly indicated the the painting is signed in syllabics, titled and signed and dated "1990" on the canvas on the reverse, acrylic on canvas. I have also included auction results from other galleries which show the same characteristics.

Additional Information to question KRG's implied market fitness over other sellers as to there implied fitness as a superior seller of Norval's works of art

KRG as per Exhibit # 44 which their report requested by Mr. Sinclair is nothing short of bizarre. I now enclose Exhibit # 48. This Exhibit represents an additional filing in SC 09 82782. In that submission it was shown that Mr. Sinclair who created a web site that called over 1,000 painting from Norval Morrisseau "fake" included on his web site several paintings in a publication published by KRG "fake" and KRG did nothing. Indeed, it was Mr. Otavnik who forced this issue. Even after Mr. Sinclair in Exhibit "Q" admits that he called the painting from KRG's publications as fakes.

"Shouldn't the fact that in my opinion these paintings are fakes and yet I've taken them out of KRG's book tell you something Ugo?"

So here we have the bizarre situation the KRG promoted a person that defamed over 1,000 painting by Norval Morrisseau. They were forced to remove Mr. Sinclair from there then blog, they do not promote Mr. Sinclair on their twitter account but offer an 'Export Report' on his behalf. I will greatly expand on that in any additional filing with respect to this action.

5. Given the past misrepresentations and new current information as per Exhibit # 49 which is a few email from Carlos Burrows (one of Mr. Morrisseau's students) the authenticity of the painting subject to this suit are in doubt. The past misrepresentation(s) and new information constitute a latent defect in the painting especially in this industry when provenance, trust and integrity are cornerstone(s) of the business. Moreover, I believe the emails to be self explanatory and I will expand greatly on the issues raised in these email in a later filing.

6.As a result the plaintiff is entitled to the rescission of the contract for the sale of the painting as per Exhibit # 45.

7. The Plaintiff further and in the alternative claims damages against the defendant's for breach of contract and breach of warranty. The paintings are not fit for the purposes for which it was sold and it's value is zero given the past and current representations of the defendant. Moreover, the paintings are defective and not of merchantable quality and such defects were

not capable of being ascertained by the plaintiff at the point and time of sale. Thus, the paintings did not correspond with the warranties and representations made by the defendant.

8. The plaintiff contends that under the Sale of Goods Act R.S.O. 1990, Chapter S.1 and Section 15 of the said Act. The authenticity of the paintings sold are highly questionable given the representations and actions of the defendant.

To conclude, I thus ask for \$10, 000 plus costs.