

SC-09-87264

**Ontario Superior Court of Justice
Toronto Small Claims Court**

BETWEEN:**MARGARET HATFIELD**

Plaintiff

-and-

**DONNA CHILD and ARTWORLD INC.
doing business as ARTWORLD OF SHERWAY**

Defendants

J.J. Sommer, counsel for the Plaintiff

R. Dowham & B. Shiller counsel for the Defendants

Judgment**INTRODUCTION**

The Plaintiff purchased a painting called the "Wheel of Life" also referred to as the "Circle of Life" from the defendant art gallery. The painting is said to be an original by Norval Morrisseau, the founder of the Woodland School of Art. She believes that her painting is a worthless forgery.

Morrisseau was a prolific artist having painted in excess of 10,000 paintings in his lifetime. It is common knowledge that he had various health issues, had a stroke, suffered from alcoholism and substance abuse, and in his later years had Alzheimer's disease. He was incarcerated for a period of time during which he continued to paint from his cell. He lived across Ontario, in Western Canada and British Columbia.

REMEDY

The Plaintiff seeks as a remedy the rescission of the contract due to misrepresentation and breach of contract and reimbursement of all costs. In the alternative, she seeks damages for deceit including the refund of the purchase price plus loss of investment opportunity punitive damages and costs. The costs sought by the Plaintiff exceed \$40,000.00 dollars. The Defendant seeks costs of \$1,500.00 dollars.

Issue

1. Is the painting "Wheel of Life" a forgery or is it an authentic painting by Norval Morriseau?
2. If a forgery, did the Defendants misrepresent the painting?

PLAINTIFF'S EVIDENCE**MARGARET HATFIELD**

The Plaintiff purchased the painting February 26, 2005 paying \$10,350.00 dollars.-see exhibit 4. She was told that Ms. Child, the gallery director had obtained it from a gentleman collector. Two certificates of appraisal were provided-see Exhibit 3a and Exhibit 3b as proof of authenticity.

On April 6, 2009 she learned of the forgery of the painting by viewing a website called www.morrisseaubuyersbeware.com and from an Ottawa newspaper article by Dr. Jonathan Brown's attempts to get refunds based upon a statutory declaration by Norval Morriseau-see Exhibit 5. She saw her painting "Wheel of Life" on the website and spoke with Mr. Ritchie Sinclair who has a website focused on Morriseau.

She was advised by Ms. Child that Morriseau's declaration was

of no value since he was not competent at the time and the matter with Mr. Sinclair was in litigation. The Defendant Ms. Child sent the Plaintiff Ms. Hatfield a registered letter dated June 16, 2009 indicating that the matter could be resolved amicably-see Exhibit 6.

The Plaintiff spoke with Mr. Samuel Stevens, the lawyer who swore the affidavit and learned that Morrisseau appeared to be aware at the time, and in a letter from Stevens dated June 18, 2010 he stated that Morrisseau appeared to be of sound mind and understood what he was saying.-See Exhibit 7.

She also obtained a letter from Mr. and Mrs. Dave and Michelle Vadas, the executors of the estate of Norval Morrisseau from Dr. G. Sheppard dated October 6, 2004 which says that Morrisseau was in possession of his faculties.-See Exhibit 8.

On cross-examination, Ms. Hatfield agreed that she did not investigate further and speak to either of the appraisers either at the time or years later. Essentially she relied on Mr. Don Robinson and Mr. Ritchie Sinclair.

DONALD ROBINSON

QUALIFICATION AS AN EXPERT

Mr. Robinson was qualified as an expert witness on the valuation and authentication of the paintings by Norval Morrisseau. He was not qualified as an expert witness regarding handwriting.

Robinson is the founder of the Kinsman Robinson gallery which opened in 1980 and represented Norval Morrisseau for 19 years. He examined the artist's syllabic and English signatures.

He appeared as an expert witness in the Tax Court of Canada in regards to the appraisal of two hundred, (200) Norval Morrisseau

paintings and as an expert witness in two other proceedings. He stated that he had personally appraised one thousand, (1,000) Norval Morrisseau paintings for institutions and private collections. Due to the controversy over fake Morrisseau paintings he is no longer a member of the Art Dealers Association of Canada.

On cross-examination he agreed that Mr. Michel Vardas developed a marketing plan to gradually increase prices. Mr. Robinson himself testified that he wanted a small gradual increase of perhaps 5-10 percent per year since at the time prices in Vancouver B.C. were much lower than in Ontario. In addition Robinson sold Norval Morrisseau paintings to private collectors. He owns one (1) such painting himself.

Although he testified as to valuation of Morrisseau art in the Tax court case of Whent v. Canada, the basis for his evidence was not favourably received by the trial judge. Defendant Counsel read paragraph 67 of the decision of Justice Morgan:

"Mr. Robinson's use of his 1990 price list as his basic tool for appraising fair market value is based on the assumption that there was at least one owner of a retail art gallery who, in 1984, 1985 and 1986 would have taken the risks, incurred the costs and put forth the effort which Mr. Robinson did in 1990 in order to sell new Morrisseau works. There is no evidence on which I can find that any such owner of a retail art gallery existed in those years. In fact, the evidence runs in the opposite direction and I'm left to conclude that there was no such owner. In other words, the assumption underlying Mr. Robinson's use of the 1990 price list has not been proven. Therefore, the cornerstone of his appraisal is seriously damaged."

Page 10 Transcript dated May 31, 2011

Defence counsel also raised the Court's concern of a conflict of interest at para 62:

"Mr. Robinson's close association with Morrisseau is both an asset and a liability. It is an asset in

the sense that he has extensive knowledge of Morriseau, his paintings and the current market for Morriseau's work. It is a liability in the sense that he has a hopeless conflict of interest in trying to be objective about the quality or value of Morriseau's work when he is currently the exclusive distributor for Morriseau's new works in Ontario."

Page 11 Transcript dated May 31, 2011

Mr. Robinson's report dated July 7, 2010 was marked for identification as Exhibit 16 and was provided to show his background and extensive dealings with the art of Norval Morriseau. Mr. Robinson testified that although he was not compensated for this testimony he continues to sell Morriseau paintings. Despite this important and significant conflict of interest, he testified that he would be objective in his testimony.

On redirect, Mr. Robinson testified that (there were perhaps thirty (30) paintings sold by his gallery) and that Morriseau painted ten thousand (10,000) paintings. It was his opinion that Randy Potter sold some two thousand, (2,000) fake paintings. He testified that at least forty-five (45) galleries sell Norval Morriseau paintings across Canada. The Court finds it obvious that Potter would be seen as a significant competitor.

Robinson candidly admitted that he bought fake Morriseau paintings in 1990 at a Kahn country auction and believed that they were genuine based on the word of another art dealer named Joseph McLeod, the author of the appraisal- of the "Wheel of Life"--see appraisal Exhibit 3B. Mr. Robinson testified that he bought some twenty-eight (28) fakes at two or three auctions.

After reviewing the authorities provided by counsel and considering their submissions, Mr. Robinson was qualified as an

expert witness on the valuation and authentication of Norval Morrisseau, the artist. He was not qualified as a handwriting expert.

DONALD ROBINSON EXPERT TESTIMONY

AUTHENTICITY

Morellian Analysis

In determining the authenticity of a painting Robinson examines the history of the painting, he considers Morellian stylistic analysis based upon the nineteenth century art critic Giovanni Morelli, later adopted by the American scholar Bernard Berenson who died in 1957. The Morellian method consists in looking at paintings to tell the difference between fake and real paintings. Mr. Robinson would examine a tiny part of the painting and by examining the tiny details proof of the forgery would be revealed. In his opinion the painting entitled "Wheel of Life" was nowhere an exact copy and nowhere a good fake due to inconsistencies in the style.

Syllabic signature

Robinson looked at the documentation, and the syllabic signature. He examined the provenance (origin) to see if there was a link back to the artist and determined that there was no credible provenance. He testified that he would expect to see bills of sale, gallery receipts and owner's notes. The only evidence that was provided was that the painting was purchased from the collection of Jim White who was known to have purchased paintings from Kahn Auctions. He learned that they purchased the painting from a private collector in Thunder Bay which Mr. Robinson testified turned out not to be true.

It was his opinion that the signatures varied tremendously.

He agreed that some paintings in the 90's had syllabic signatures similar to the subject painting stating that Morrisseau was not totally consistent in those days.

Signature on the back

He testified that there was never large black dry brush paint on authentic Norval Morrisseau paintings. Whenever Norval Morrisseau signed he used a regular brush. The dry brush technique is to dip a brush in a jar of paint, wipe most of the paint off and use it to produce a signature. He testified that the back of the "Wheel of Life" painting has a dry brush signature so that it looks old and faded which is typical of 1970's fakes.

Handwriting

He then examined the handwriting and looked at the title and the signature and he noted a significant difference in the signature compared to examples from undisputed sources.

Title

He stated that Morrisseau never painted using all capital letters in his titles. He would use upper and lower case letters.

Style

Robinson testified that the style of the paintings is not typical of Morrisseau. That he would expect painting in 1979 to be brighter since Norval Morrisseau used paints directly from the tube and so colours are less muted and less earth colour. These were not the colours used in 1979. And yet he agreed that he had dealt with a sample of paintings that was considerably smaller than the prolific production of this artist.

Valuation

Mr. Robinson testified that if the "Wheel of Life" was authentic that it would sell for between twelve thousand to fifteen thousand dollars in February 2005. Whereas, if fake worth nothing but if framed two hundred dollars. If authentic today the market value would be between twenty to twenty-five thousand dollars. He would sell the painting at his gallery for between twenty to twenty-three to twenty-five thousand dollars. The value as a fake at trial is zero.

An order was issued excluding Mr. Ritchie Sinclair from the courtroom pending his testimony.

DONALD ROBINSON

Re sworn

Mr. Robinson commented on the Statement of Jim White in a statutory declaration dated December 6, 2009 set out in Exhibit 9. Defendant counsel objected to Mr. Robinson testifying and the Court ruled in considering the jurisprudence that an expert witness can testify in regards to his area of expertise as well as matters that are within his personal knowledge. An expert witness has the obligation to be truthful and objective in all of his testimony.

The Court ruled that it would permit Mr. Robinson to testify as to his personal knowledge and give it the weight that it found appropriate.

The Court also ruled that it would permit Mr. Ritchie Sinclair to testify although present on the first day of the trial during the testimony of other witnesses and apply the same rules and

orders to all witnesses. The Court will assess the credibility of all witnesses in the normal course.

Robinson testified that during the time that he represented Morrisseau exclusively which was for 19 years that not one painting had writing on the back in paint and brush.

Mr. Robinson testified that he assumed that the paintings attributed to Morrisseau were signed by the family. He had received a large number of paintings from the Morrisseau family in Thunder Bay. On February 22, 2002 Christian Morrisseau sent him paintings which Robinson said were all fakes. He took photographs of them and returned the paintings to them. He later noted that the Morrisseau family were selling the same paintings as well as others on the internet. They made paintings and tried to sell and distribute them and issued certificates of authenticity of fake paintings.

On cross-examination, Mr. Robinson agreed that:

Morrisseau made his living selling paintings.

Morrisseau painted over 10,000 paintings in his life and that he was most prolific in his later years.

Morrisseau moved throughout Ontario and B.C from 1960-1980.

Morrisseau was sometimes in Northern Ontario from 1962-1981 and sometimes making paintings and selling them through the Pollock Gallery.

A significant number of paintings would be from Northern Ontario where Norval resided.

It was his opinion that paintings from the 1970's were rare.

Morrisseau suffered from drug addiction, had alcohol problems, was incarcerated and lived on the streets of Vancouver.

In 1996 Morrisseau suffered from Parkinson's disease and for a number of years after took concern for his health and no longer

took drugs, did not smoke and was not intoxicated. That in the early 1980's Morrisseau had an alcohol problem and smoked marijuana and suffered a stroke in 1994 and Mr. Robinson took him to hospital.

Exhibit 16- Report of Donald Robinson dated July 7, 2000

Mr. Robinson agrees that his process was to review seven considerations in determining the authenticity of painting. The provenance of the "Circle of Life" was from James White via Randy Potter-Khan Country Auctions from David Voss. That Randy Potter told him that he purchased paintings directly from Morrisseau.

Mr. Robinson based his opinion of forgery since a large number of the paintings came from Khan Country Auctions. He observed Mr. White at Khan Country Auctions buy a large number of paintings. That he agrees that all the paintings from this auction are forgeries. "They certainly are!" he said.

In particular he referred to a statement from Mr. Voss in which he claims five hundred paintings. Although Mr. Robinson agrees that paintings were available from Northern Ontario at the time he testified that he could not agree:

"Q. But he says he got 500, Mr. Robinson; you see that?"

A. Yes, but we've already had a statement by Randy Potter that - which is in my appendix - that he first of all sold over 1,000, or 1,200 I think it was, and then secondly he sold over 2,000 and, during the early times when these paintings were first appearing on the, at the auction market, I began - I followed the first 800 and then I gave up following because I realized 800 was just too many paintings to be suddenly available from one little part of Canada from the '70's."

Page 19 Transcript dated September 1, 2011

"A. ...there's a massive scale of - it was a massive scale of acquisitions and it's incredible. For

example my gallery currently specializes in just these types of paintings, older historical, older paintings with a good provenance, and we - routinely when we get paintings consigned to us from private people, a lot of them from Thunder Bay area and from northern Ontario - it's routine that we would receive a letter with it, a gallery invoice, other documentation, that if it didn't come from Norval it came from someone else, but some sort of trail and record and provenance is so important. None of these paintings have any provenance whatsoever."

Pages 20-21 Transcript dated September 1, 2011

In answer to the question: did Norval sign his signature in English with brush and paint? He testified:

"... almost never did it. Not to my knowledge have I ever seen it."

Pages 21-22 Transcript dated September 11, 2011

Mr. Robinson's evidence of Morellian analysis of the round versus elongated eyes in Morrisseau's painting was confusing. His commentary on colour was also inconsistent.

Exhibit 29- Colour reproduction of painting "Sunset Ceremony"

In reference to the painting "Sunset Ceremony" 1974 p 105, it was said to appear as a faded yellow orange colour. When Defence counsel put to him the statement that the colour palette in "Sunset" is muted as in the painting "Wheel of Life", Robinson had no answer. Mr. Robinson said that the subject painting has a muddied look. In other words dull. Mr. Robinson testified that Morrisseau increased the brightness of paintings by the 1980's. Then when Robinson was asked to comment on Exhibit 17- a colour reproduction of painting of the "Migration" 1973 at page 95, Mr. Robinson agreed that this painting has the same earth tones but a different colour palette than the subject painting.

Mr. Robinson agreed that he probably offered for sale Morrisseau paintings that turned out to be fakes. He also agreed that even

he himself had difficulty assessing the authenticity of Morrisseau paintings around 1999-2000.

Mr. Robinson testified that his testimony as an expert witness in the Whent tax case was on the narrow issue of the appraisal of Morrisseau paintings and not on authenticity since he relied on the appraisals of more experienced appraisers from the Art Gallery Association of Canada.

He testified that he observed Norval Morrisseau himself having difficulty telling whether or not his own painting was a fake.

"A. Well then, I have evidence. I watched him; I've been aware of his looking at paintings in the past, not this particular one, and I've been aware that Norval sometimes had difficulty just to tell you whether a fake painting was really his, because it might be quite close in style, or if it's a fake. So this is, this almost certainly would be one of the ones that Norval looked at and said, "I'm not sure about this" and very likely then he was advised not to submit a statement saying he, he was sure.

Q. You're just speculating; you don't know?

A. I, I've seen evidence of him doing that in the past; sometimes not being able to, not being sure whether a painting is, was really his or whether it was by somebody else. It's pretty obvious; at least it is to me; that if he wasn't sure he wouldn't say he was."

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The Court concludes that authentication by the artist himself was at times incorrect.

Although Morrisseau told Mr. Robinson the names of the persons involved in the forgeries, Mr. Robinson did not write them down since he had no evidence to back up his claims.

"A. Well, I didn't write them down and I had no evidence whatsoever to back up his claims. He did mention people, apprentices. So I didn't do anything with them because I had no, no evidence and no reason to believe - I had nothing to back him up."

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Mr. Robinson also agreed that Morrisseau could have had memory problems during the years 2003, 2004, 2005, 2006 and certainly in 2007.

"Q. So he was starting to have memory problems, wasn't he?

A. He may have.

Q. He could have had memory problems in '03, '04, '05, '06, certainly in '07?

A. He could have.

Q. You saw him...

A. It could be.

Q. ...in those years?

A. The, there's two possible explanations; he had a memory failure or he wasn't sure of the style.

Q. Well, but what I'm confused about is he was so sure it was a fake when he, in May of 2001, told you it was fake.

A. Well, you know, Norval was getting sick somewhere around this time and...

Q. ... So you'll agree with me that he started to fade in his ability to talk as he moved towards 2006; correct?

A. Yes."

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Mr. Robinson also agreed that Morrisseau could have been inconsistent in his identification of fakes. For example Norval Morrisseau signed a statutory declaration dated April 24, 2003- (See Exhibit 31) listing thirty seven works as fakes and imitations with photocopy of painting.

"Q. So it's clear, you'll agree, he's very inconsistent in what he says is real and what he says is fake?

A. Well...

Q. Isn't that true?

A. ...somewhat inconsistent. I mean, it was a large volume of paintings here, which, in my eyes, there's a large number here that are in fact very consistent, but there are some that aren't.

Q. Well, we don't have the evidence relating to all the paintings and where they are, right, to be able to - there aren't other catalogues with them in them where he's made commentary, right? All we have is what we have?

A. Yes.

Q. But you're seeing that he couldn't get it right a number of times; isn't that correct?

A. Well, you know, again, I have to repeat what I said before; I, it isn't necessarily so that he didn't get it right. What I'm saying

is he may, he may well, for example, have when unsure whether it was his or, or it was similar to something and he just wasn't sure, I do know from talking to Michele Vadas and Gabe Vadas in the past that there were instances where, they told me that Norval had looked at some paintings and he wasn't sure so they omitted it. They did, they did tell me that.

A. ...but he's able to, I believe he was fully able to identify a painting when he was shown a real painting in front of him. He knew right away whether he painted or not.

Q. Okay. Was he shown Wheel of Life, to the best of your knowledge?

A. Not to my knowledge."

Pages 74-75 Transcript dated February 23, 2012

The Court finds it highly irregular that Morrisseau the artist himself was unable to identify his own art. Mr. Robinson testified that he would not be surprised that Morrisseau would sign a certificate of authenticity to make someone happy as stated by Christian Morrisseau in a blog. This raises even more doubt in the view of the Court as to the reliability of Morrisseau.

Mr. Robinson further testified that he agreed that Morrisseau was unpredictable in general.

R. SINCLAIR-EXAMINATION IN-CHIEF

Mr. Ritchie Sinclair's testified that he commenced his employment with Norval Morrisseau late in 1979, three quarters (3/4) of the way through the year. He painted periodically with Morrisseau. The "Wheel of Life" was dated February 1979, and so there was ample opportunity for Morrisseau to paint "Wheel of Life" prior to Sinclair coming on the scene in August 1979.

In fact it appears that their dealings were more independent:

"A. No, we weren't tied at the hip or anything; it was, it was a fluid lifestyle; we had multiple places at the same time....

Q. Together?

A. Not together; more like comrades on the path; artists doing their thing, you know, so I mean, I could, I could down in Toronto working in the studio for a few days and then meet up. I mean, basically that's,

that's what it, we crossed like this for 20 years. The last time he painted with me we stayed in his, my place in 1999."

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The Court finds that Mr. Ritchie Sinclair was not impartial or objective for the reason that there is a civil action against him by Donna Child who is the defendant in this action as well as by Joseph McLeod, and several other people, including James White, White Distribution Limited. And Sinclair had been refused gallery time by Child and had been charged with assault by McLeod.

His methodology in identifying forgeries is clearly inadequate and suspect since he testified that he does not even view the original paintings before condemning them as fakes:

"Q. And your whole 1,000 or so of paintings that you put up there they come from cutting and pasting from other places on the Internet; correct?"

A. Oh yeah, pretty well...."

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Moreover his accuracy in identifying paintings by Morrisseau is suspect due to his admission that he himself made mistakes in identifying the paintings of Morrisseau. Indeed Sinclair admitted that Morrisseau had painted "maybe 2,000 paintings" prior to his meeting him so he was unable to account for all of the paintings and did not have as an extensive knowledge of the artist as reported by him.

DEFENCE EVIDENCE**MS. DONNA CHILD****EXAMINATION IN-CHIEF**

Ms. Donna Child testified that she worked as an employee for 16 years and as the gallery director for Artworld of Sherway. She confirmed that the correct legal name of the company is Artworld Inc. doing business as Artworld of Sherway. The Defendant's name was amended to reflect the correct name. The Court finds that there was no basis for a claim against Ms. Donna Child personally since she worked as an employee and accordingly the Plaintiff's claim against her is dismissed.

The Defendant, Artworld Inc. has an important interest in promoting and maintaining the authenticity of the paintings that it sells since it is in the business of selling art. To fail to do so would be fatal to its business reputation.

Although Ms. Child testified that Artworld has 800-900 paintings in its collection, only 25 to 30 paintings are by Norval Morrisseau, less than five percent of its total collection. She testified that her gallery sold between 100 to 110 Morrisseau paintings over a period of approximately 16 years.

Mr. Donald Robinson testified that the market value of the "Wheel of Life" was between \$20,000 to \$25,000.00 dollars. By extrapolation using one-quarter of this value say \$5,000 multiplied by the number of paintings produced by Morrisseau say 10,000 it becomes very clear that the value of art produced by Morrisseau could easily attain \$50,000,000.00 dollars. Given the considerable amount at issue it is of no surprise to this Court that art dealers such as Robinson and Artworld seek to present

themselves as reputable art dealers.

"A. It's my belief that there was an attempt to manipulate and control the art market for Norval Morriseau's paintings, and they did that by putting a seed of doubt in collectors' minds that paintings that were being sold through certain galleries were not authentic. And they did that in order to get a strangle-hold on the market for themselves.

Q. What's happened to the secondary market of Morriseau paintings?

A. It's virtually flat right now. Very few sales.

Q. And, in your opinion as a gallery owner, is it the result of the accusations related to these paintings?

A. It absolutely is."

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It is her view that there was a struggle to control the art market between the Norval Morriseau family and approximately 40 galleries across the country and Gabe Vadas and Don Robinson. That more than 1,000 paintings were coming on the market through the Potter auctions and flooding the market at prices that were considerably less than Robinson's gallery.

It is her belief that Morriseau was ill at the time of the affidavit and was controlled by Gabe Vadas and Don Robinson. It was her evidence that it was very common knowledge that Morriseau lived on the streets; that he gave his paintings away for alcohol, for drugs, for accommodations, for anything so that receipt books would not have been provided to confirm the provenance of his work.

Ms. Child testified that she relied on the appraisal of Joe McLeod to authenticate "Wheel of Life" because of his long association with the artist and his knowledge of his work. That at the relevant time of the appraisal he was a certified appraiser but that he left when he was told to no longer do appraisals and was no longer a member of the Art Dealers Association of Canada. Counsel also agreed that Joe Bremner also provided an appraisal.

Ms. Child testified that the day following the CBC documentary, Michele Vadas contacted her and told her that the paintings that were offered for sale were fake. Child then contacted Jim White and learned that the painting had come from the collection of Dieter Voss, an employee of the jail in Kenora where Morrisseau was in jail. She stated that Morrisseau's incarceration while painting in jail was common knowledge and mentioned in Jack Pollock's book.

Child testified that it was her understanding that Randy Potter had advised that the paintings had come from David Voss, the son of Dieter Voss. White spoke with David Voss and confirmed that the paintings that he had consigned to Potter Auctions were from his father's collection and he was now selling some of the collection.

She stated that Dieter Voss could not remember exactly how he acquired the painting in terms of whether he acquired it from another gallery or he acquired it directly from Norval Morrisseau since it was a long time ago.

Ms. Child's opinion of the authenticity was further supported by the report of the forensic examination by Dr. Singla.

MR. WILFRED DAVID CHARLES MORRISSEAU

EXAMINATION IN-CHIEF

Mr. Wilfred (Wolf) David Charles Morrisseau testified in a clear and convincing, straightforward and unassuming manner about his brother. He did not embellish or exaggerate and the Court finds him to be an entirely credible witness, notwithstanding his

criminal record which is rather dated and for which he received probation.

In testifying he has the opportunity to relate his personal dealings with his brother and to be completely impartial and unbiased since he had no financial interest in the result.

"Q. Do you yourself today own any Morrisseau paintings?

A. No I do not.

Q. Do you yourself today have any interest in the Morrisseau foundations? Does any money come to you as a result of the sale of any of your brother's paintings?

A. No, nothing comes to me."

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The Court finds that this witness has direct personal knowledge of his brother's painting and explains his lifestyle and the method of production of paintings.

"Q. And can you tell us where Norval was living in the '70s?

A. My brother lived in a lot of different places. The most he usually would stay is about six months at one particular place.

Q. In the '70s how much time did you spend living with him?

A. I would often, I would have to say maybe three to four years.

Q. Can you tell us in those three or four years what sort of places you were living?

A. Well, I guess the, the best place that he had was this, close to Markham, he had a 40-room Spanish villa, and I know because I washed every one of the floors in that room (sic).

We, he lived in Toronto here also; he had an apartment. I didn't live with him here but I, I stayed at the other place. He lived in Winnipeg, Thunder Bay.

Q. But did you live with him in these places?

A. Yes, I lived with him in Winnipeg; a place called Royal Dragoon; plus when we were on the streets we stayed in an abandoned house, and he stayed in another abandoned house down the street from where I would stay.

Q. Can you say how much time he spent on the streets when you were with him?

A. I would have to say at least maybe 30 percent because he always had a place to go; he knew so many people and he was never short of really finding a place.

Q. And, in this time that you're discussing, was Norval painting?

A. Yes he was.

Q. So how often did he paint?

- A. He was driven to paint. He had to paint constantly and he painted on anything that he could apply paint to.
- Q. Can you give us examples of what things you saw that he painted on?
- A. Cardboard, turtle shells, glass, rocks but canvas was his, his favourite medium.
- Q. And are you able to say that, in this timeframe of the '70s, are you able to tell us in your approximation, and I realize it can only be an approximation, how many paintings he would have painted?
- A. In the time that I was with him I would have to say at least 3,000. That would be at least; it's probably more than that.
- Q. Are you able to say how many paintings you personally witnessed him paint?
- A. There was so many; I could not honestly say exactly how many.
- Q. Okay, but in just giving the Court a general idea would it be hundreds?
- A. I would say, yeah, close to the thousands because you have to understand the way he painted; he didn't sit down and just do one painting and then go on from there. He did 40, 50, 60 paintings at a time; he would line them all up and sometimes, if he had a really, really good idea, he'd wake up and he would take a, a canvas and black paint and do the outline first, and then he would fill in the colours.
- But if he was doing a painting that didn't move him so much he would draw, draw it out first, then put in all the colours and then do with the black outline, and then this is why when you flip the paint over the last brush that he used was usually the black outline, and this is why he signed his name in English on the back of his paintings."

Pages 99-100 Transcript dated February 24, 2012

He testified that he told his brother to sign the paintings on the back in English so that his art would be recognized outside of Canada. This testimony of signing in English on the back was good common sense advice which has the ring of truth since the syllabic script on the front of his paintings of Indian name Ozaawaabikobinesi, meaning Copper Thunderbird, was unknown to the general public. This would increase the recognition of his brother's work on the international scene.

"Q. Okay, and did you see him sign paintings?

A. Yes, I saw him sign paintings. In fact I was the one who helped him to sign his English name on the back of his artwork, and my reasoning behind that was the fact that, I told him, I said, "If you sell your paintings in Canada and you have the, the syllabics on there, people that are familiar in Canada with your work will automatically recognize that signature, but if that painting goes overseas, to Japan, to, to any other country, they're not going to have a clue what that is. But if you sign your English name on the back you can go out to Timbuktu and you'll find someone who speaks English." And I said, "Therefore you will be given - you'll be known more."

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Nor does he limit the type of materials used to sign, which would be expected if he were trying to exaggerate his testimony to bolster his reliability.

“Q. Okay. Now, when you said you saw your brother sign the back of the paintings can you tell me the mediums he used to sign on the back?

A. He used whatever was at hand because he ran out of paint and he'd grab a pencil or he'd grab a crayon or, you know, he'd a piece of soot; I saw him do it with a, with a charcoal one day.”

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Moreover he confirms that he himself was present during the painting of at least one thousand paintings and that they were signed on the back in black paint.

His testimony of his personal observation of the colours used and the manner of signature by his brother was entirely believable.

“Q. Then when you look at the front of the painting does it strike you, from your experience of seeing, I guess, close to 1,000 of paintings by your brother, to be a painting that was painted by your brother?

A. Yes, I would.

Q. I look at the various colours on here and I want to know, are any of the colours on this painting something that you would consider unusual colours for your brother to use?

A. No I would not because he used whatever was at hand and, sometimes, if the colour didn't match he would use another colour. It didn't matter as long as the painting itself got out.

Q. But when he signed his name on the back of the paintings what specific name would he use; how would he sign?

A. He would sign, “Norval Morriseau”.

Q. Would he ever, at least the ones you witnessed, just put his initial and ‘Morriseau’?

A. The only ones that he did that were his very, very first paintings and if you would look at, there's a large book, it's white, and if you look at his first original works his works are not signed ‘Copper Thunderbird’ or in syllabics; it's just ‘N-M’.

Q. Did he have a preferred colour for his paintings?

A. No, he loved all the colours.

Q. I've noticed on the paintings that I've seen in the books they all have this black outlines; do all of them have the black outline?

A. Yes; that gives it the Woodland Style. That's why they called that, the style, the Woodland Style..."

Pages 106-107 Transcript dated February 23, 2012

Of critical relevance to the issue of provenance is Wilfred Morriveau's direct evidence of relationship with his brother Norval and the criminal justice system. The special accommodation provided to Norval Morriveau to paint while serving his sentence.

"A. Well, he was quite decadent; he enjoyed the luxuries of life. He didn't really care about what anybody said or did; he just did what he thought was right. His alcoholism was quite detrimental to him and his health.

Page 107 Transcript dated February 23, 2012

A. Well, yes; I do have one experience where I had to actually have him incarcerated by the local constabulary in...

Q. Where was that?

A. Kenora, Ontario.

Q. Do you know roughly when that was?

A. Seventy - late '70s, I'd have to say; maybe be seventy - early '76 if that was the date. I'd have to get the records from, from the police in, in Kenora.

Q. Okay, and they would....

A. They would have a record of it.

Q. Can you tell us what happened?

A. We were both living across the lake from the actual jail, and he had a house that he was renting and we were staying there, and I was keeping it clean and doing what I was supposed to do, and then I had to go, I was in school at Beaver Brae High School in Kenora.

And then I came home one day and he had gone downtown; he had made a huge sale of artwork and he dragged probably every Aboriginal person that drank from downtown and he had a party. And I came home; I was quite upset and I told him in no uncertain terms that these people that he was partying with did not really care for him, and they're making a mess and they're being disrespectful.

So I tried my best to show them the door. Well, they all got very upset with me so I called the, the local police force and they charged him with mischief and....

Q. Charged who with mischief?

A. My oldest brother...

Q. M'hmm.

A. ...for going out and getting people drunk for no reason, I guess; I mean, a reason, you need a reason to party.

Q. And what did they do with him?

A. They put him in jail. He was, he was such a likeable fellow that they would not lock his cell. He slept in one cell and they, they, they brought him, the Police Association bought him a bunch of canvas and they put it all in a cell beside him, and he was able to walk around and paint. For about four months he was in there.

Q. And how do you know that; where you there?

A. Yes, I was there.

Q. Did you visit him in jail?

A. Yes I did and he thanked me after. He says, "Thank you, my brother, for putting me in, in here because if you had not maybe I would have burned the house down or somebody could have got hurt in a bad way.

Q. What did he do with the paintings that he made in the jail?

A. Well, that, that is a mystery 'cause I went back to the jail and I, and I tried to do some homework to find out what the nice police officers did with his works and, apparently, they absconded with them.

If that's not the case then maybe something else happened because they had no record of where those paintings went."

Pages 109-110 Transcript dated February 23, 2012

On cross-examination, Mr. Wilfred Morrisseau testified that some eighty percent (80%) of the paintings were signed on the back with black paint. More importantly that he saw his brother sign with his own eyes.

MR. KEVIN COTT

EXAMINATION IN-CHIEF

Kevin Scott testified that he purchased a Norval Morrisseau painting after being assured by Ritchie Sinclair that it was 100%

authentic. That he paid about \$27,000 dollars. That the back of the painting is signed in black dry brush paint. And that he was surprised to learn that Sinclair now considered it to be a fake.

MR. JOSEPH McLEOD:

EXAMINATION IN-CHIEF

Joseph McLeod testified that he dealt with Morrisseau on a business basis over an extensive period purchasing about fifty paintings and eventually as artist in residence at Seneca College while he McLeod was artistic director of their galleries and theatre. He testified as an expert on behalf of the government of Canada and was retained by various museums to prepare appraisals. He appeared to be especially knowledgeable about Morrisseau.

It is common ground that he provided one of the appraisals of "Wheel of Life" which he initially appraised as an authentic Morrisseau at \$9,000.00 dollars and testified in court that its current value was \$25,000.00 dollars. In his view the signature on the back in black dry brush was not unusual at that time.

It was his evidence that he received the painting "Wheel of Life" from Jim White and McLeod's testimony provides further confirmation of the care taken to establish the provenance of the "Wheel of Life":

"A. Well, I, I get a lot of things. Number one, we had a forensic expert check the signature on the back. Number two, I tracked Morrisseau, to find out where he was at that particular time. If you look at these paintings it came through the auction house, you'll find that they're directly after Norval left his family in '75. There are a few before that but he was gone out of Red Lake. His family stayed on McKenzie Island, and he moved off to, both, Kenora and he was frequently, at that time, in jail. And the person who brought the paintings to Potter Auction was a man whose father was a jail - he, he took care of the jail. And, in fact, it was known that they had two cells.

One for Norval to paint and one for Norval to live. And he was also given day passes. And so he was painting then while incarcerated in Kenora, and they insisted too, that he sign the back as well as the front. The front is Cree syllabics, and it reads, Copper Thunderbird. The back is his signature in English. And so I traced where he was at that time. What he was likely doing and then I had a forensic expert look at the back, and then I came back to those things that I talked to you about. Why Norval Morrisseau did what. And one of them, certainly, was Potan Nanakonagos telling the boy the stories of his mythology.”

Q. Okay, so let's slow up for a second. When assessing the authenticity of the painting, one of the things you said is you had signature checks. Can you explain that?

A. I hired a forensic expert who took signatures by Norval Morrisseau on prints, on other paintings, on letters that he wrote to my wife. On all sorts of sources, and he investigated the signature and also the grammatic [*sic*] errors in the titles, and also the spelling errors. And almost everything that's written on the back of the painting. And the forensic expert came back and said, what he said. And I said, can't you be more clear. And he said, the only way I could be clearer is if I was standing next to Norval while he signed the painting. And so I wasn't there, but if I was called to court, his opinion was that was the signature of Norval Morrisseau on the back. The Cree syllabics on the front he didn't have much to say about it”

Pages 22-23 Transcript dated June 4, 2012

“Q. Okay, and the Cree Syllabics on the front, to your knowledge, are those on every Morrisseau painting?

A. I can't say that, but that was his routine. His routine was, Norval did not speak Cree. Harriet, his wife and her family had knowledge of Cree, and so it was Harriet who told him how to sign the paper. The name, Copper Thunderbird, comes from the fact that where they live there were all these high wire things and they used to see the wind going through. And so they decided, and, or a Shaman told them that he should use the word copper thunderbird. And those, I'm told, are the Cree syllabics of his name.”

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He demonstrates a superior depth of knowledge of Morrisseau and provides his personal interpretation of the meaning of the painting “Wheel of Life”. In his opinion the brown colour palette employed in “Wheel of Life” was representative of

Morrisseau's choice of paint at that time based upon the artist's use of brown craft paper.

“Q. So why don't you explain to the court, from your understanding, what the story is in this painting?”

A. It's an older man, maybe Potan, a Shaman. Maybe Norval, teaching a child, perhaps Christian, or perhaps Norval himself. And so it's an older man who's wise, intelligent, and the thunderbird comes right through the middle of the painting over the child's head, in circles that he splits. He's dealing with the animism of the idea of yin and yang; male and female; negative, positive. And so it's a perfect sort of symbol of basic lesson being taught by Norval. Also, because of the flatness of his, and the lack of, you know, perspective. He cuts the canvas in a number of ways that are, may be jarring but at the same time they complex the painting so that you've got that brownish colour there. The green colour in the bottom and then the brown colour at the top. And he's enriching the painting by taking that attitude. And that's one of the things that I mentioned before about Norval showing us a different way of looking, which made him important.

Q. And the use of, for example, I guess it's a kind of a beige-ishy [*sic*] tone in the centre of the canvas. Was that unusual? Was that an unusual colour?

A. He spent half of his original time painting on parchment. We used to bring him paper, craft paper from the paper mill, which was great big thick brown paper, and he would take it and a lot of his really highly prized paintings, the ones that are the most expensive; the most authentic; the most early, are on brown craft paper. That's it.

Q. When you say, that's it, what - you're referring to the colour?

A. Yeah, he's referring - he's painting back too, he's remembering. Certainly later, Morrisseau's work became brighter and brighter and brighter. Sometimes instigated by the gallery. In the beginning, when he travelled with Selwyn Dewdney, and travelled through Lac Seul, and on Nipigon, and they were looking for the pictographs. They were looking at paintings that they found painted on stone and the pigment was mud and bear fat. And so, in the beginning, the paintings were brown, brown, brown, brown, brown and black. And that was the only colour. And so Selwyn also told him, don't put bikes in there. No aero planes. Stick to the content of. Make sure you know what you're doing. And so, all of that was part of his preparation to become a painter. And so, the colour combinations that you see in the painting are highly different than the paintings he was doing later and, or before. And to complain about how he painted is like complaining about, you know, Picasso had a blue period, and then he had a period where he fractured everything. And then he had a period - so as painters develop they change their style.”

It was moreover his opinion that forging Morrisseau paintings in the 1970's didn't make sense since the paintings were not selling:

"Q. And when you say he wasn't selling, in what period are you talking about?

A. The 1970's. I mean, I'm - when I say he wasn't selling. He was selling a painting and he was struggling. Financially, he was broke. His family was living on flour. He didn't have any money. He had to move from place to place because he'd run out of customers who would buy. And so Norval was a vagabond with a bunch of hangers on. And he was having a very difficult time living. And so for someone to choose him to forge, it's just economically unsound."

Page 34 Transcript dated June 4, 2012

Regarding the affidavit referenced as Exhibit 16 at tab 7, his testimony clarifies the confusion regarding the various affidavits purportedly signed by Morrisseau.

"A. I replied to them, and I pointed out that a good portion of them could not be factual and were not in my gallery. I also reported to them that they - lists were garbled and they changed them. And they contracted them, and then they made another one. And so, there were numerous contractions and changes and improvements and that kind of thing. And so, yes it happened, and there was considerable confusion between what you're now implying and what actually happened. It was a mess."

Page 54 Transcript dated June 4, 2012

He takes issue with the validity of the signatures and states categorically that the printed signature on one of the affidavits is not Morrisseau's signature leading to his conclusion that this signature was forged.

"Q. I'd like you to look at page three of this statutory declaration.

A. Yes.

Q. And you see where it says the fourth painting listed here is Wheel of Life?

A. Yes.

Q. And you see down below there's a signature, Norval Morrisseau....

A. It is not his signature.

Q. That's not his signature?

A. No.

Q. So somebody forged that?

A. You look at it and look at the other signature. This is not Norval Morrisseau's signature. It's a printed, Norval, he never signed his name like that."

Page 57 Transcript dated June 4, 2012

His dealings with Ritchie Sinclair were extremely unpleasant and resulted in the laying of criminal charges against Mr. Sinclair for harassment.

MR. MARLOW GORING

EXAMINATION IN-CHIEF

Marlow Goring testified that he has owned a gallery for fourteen years in BC and first met Norval Morrisseau in 1979 when he attended at his U-Frame it store in Vancouver to have some paintings framed. After framing the paintings Norval Morrisseau returned to sign the paintings on the back in black dry brush paint:

"A. He was having them framed - he was having a show at Marion Scott Art Gallery.

Q. And did you personally see those paintings?

A. Yes I did.

Q. And were they signed on the back?

A. Yes they were.

Q. In what way were they signed on the back?

A. In black. In brush.

Q. And do you know what kind of paint it was?

A. No. It was a black paint brushed on with a, his signature and the date, as I recall."

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Goring vividly remembered the artist signing in black due to the

blue coffee container in which the artist carried the paint:

"A. Yeah, after we had stretched them and framed them, he was to pick them up on a Saturday. He came in, as I recall, late on Friday as we were closing the store, and he was carrying a Chase and Sandborn Coffee container.

Q. What's Chase and Sandborn?

A. It's a, it's a coffee with a - it's a blue - I remember it because it was a good coffee back in the day, and it was - he was standing outside the store with a brush and the paint - and the coffee tin with paint in it. And so we let him in and he said, I have to sign the back of the pieces for the show tomorrow, so I need time for it to dry.

Q. All right, and did he, in fact, sign the paintings?

A. Yes he did. He came in. We took the pieces and leaned them up against the wall with the pieces to the wall, and took the paint and signed and dated each of them."

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He testified that in 2006 Gabe Vadas told him that all of his 35 paintings by Morrisseau were fakes but offered to supply him with new paintings,

"A. By all means. We were having a show of Norval Morrisseau's work. I think we had about 35 pieces and Gabe Vadas came into the gallery and told me that all the pieces that I had on the wall were fake."

Pages 82-83 Transcript dated June 4, 2012

"And he said, well he could look after me with some new pieces. And I was like, oh, okay. Well, and I'm still playing along with this. So, he drove up two days later in his van and he said he had something to show me. And it was an Indian summer, it was a hot, hot day.

Q. Can you describe what you saw?

A. Yeah, I'll never forget it. He was strapped into a wheelchair in the back of a cargo van. His head was slumped over like this.

Q. When you say 'like this', you have to indicated for the record...

A. Oh...

Q. ...what you mean.

A. ...his - it looked like he had no muscle control in his neck and he was slumped in his chair, head off to the right side, and he had crumbs all over his sweater that he was wearing and he was drooling.

Q. Okay, and did you say anything to him?

A. I was shocked. I said, oh my God, I think, was the first thing I said, and I said, hi Norval, how are you. I mean - and there was no recognition whatsoever. And he would have recognized had he been of, you know, clear mind, I think."

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He offered to show the paintings to Gabe Vadas to determine if they were forgeries in the presence of the RCMP and wrote him a letter to that effect but he never responded.

"And we wrote Gabe Vadas a letter stating that if he came to gallery after hours and could prove to us that any piece was fake that we would give it to him. ."

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DR. A. KUMAR SINGLA
EXAMINATION IN-CHIEF

Dr Singla was qualified as an expert witness based upon his education and experience in the field of forensic science and signature analysis. The Court noted that he testified in excess of five hundred cases and that three of the cases involved signatures in paint. He holds a Master's degree and a PHD in forensic science. He is as well a member of the Canadian Society of Forensic Sciences, document section. His CV is entered as Exhibit 41.

He examined the signatures on eleven paintings of which one was "Wheel of Life" and compared them to nine known signatures of Norval Morrisseau referenced at pages one to three of his report dated August 24, 2010 which was filed as Exhibit 42.

The front and back of the painting "Wheel of Life" with the distinctive brush black signature of Norval Morrisseau on the back with a magnified photograph of the signature of Norval Morrisseau

and the year 1979 referenced as Signature Q11 are set out on Illustrative Chart #31a. On the following page appears the magnified signature of Norval Morrisseau with fourteen comments. After a detailed technical analysis of the signature on the back of each of the paintings he concludes in his report that:

"1.It is highly probable that the writer of the known signatures K1 to K9 did write the questioned signatures Q1 to Q11."

Page 5, Expert Report of Dr. Cingla dated August 24, 2010 Exhibit 42

He testified that:

"A. In my opinion it is highly probable that the writer of known signatures [Norval Morrisseau] signed the signature in question on the back of painting."

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In testimony he added that the possibility that an alternative hypothesis is true is considered to be very unlikely.

Based upon his testimony and his detailed forensic report referenced at exhibit 42, the Court finds as a fact that the painted black dry brush signature on the back of the painting Wheel of Life is that of Wilfred Morrisseau.

MR. JAMES WHITE

EXAMINATION IN-CHIEF

James White is the owner of White Distribution Inc., a company engaged in the buying and selling of art. He testified that over the years he had purchased about one hundred and eighty paintings selling about eighty to hold one hundred. And that everyone of the paintings sold had the dry black brush signature on the back. That he consigned paintings and reproductions to Artworld of Sherway including The Wheel of Life, which he purchased at Potter Auctions in 2004. That over the years he had many paintings authenticated

by Joe McLeod, Paul Bremner and Marlow Goring. He purchased 23 paintings at the auction and was told by Don Robinson to keep them very well insured. Later after sending them to Robinson he was told that they were fakes based upon Robinson's assertion that he had sent photographs of the paintings to Morrisseau.

Due to the controversy he took further steps to determine if the paintings were authentic and obtained appraisals from McLeod and Bremner and had a forensic analysis by Brian Lindblom of Ottawa. White concluded that they were authentic Morrisseaus. He also made further enquiries:

"Q. All right, and have you ever talked with, either of, Dieter Voss or David Voss?

A. Yes, I discovered from Randy Potter where the paintings came from. From Thunder Bay, from a gentleman by the name of David Voss. I contacted David Voss to ensure myself, firstly, that Randy was, just, telling me the truth, which he was. I talked maybe six, seven times with David Voss as to who he was, where he was. He explained to me that Norval Morrisseau had often stayed with the family. Lived in their garage and that his father knew him very, very well over the years. I, in fact, acquired from his father, Dieter Voss, two paintings, which were accompanied by a sworn affidavit from Mr. Voss, indicating that he had watched Norval sign these paintings and that he had watched Norval paint these paintings. "

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White places little reliance on the affidavit evidence of Morrisseau due to a number of factors, Morrisseau's propensity to lie about the authorship of his paintings, the conflicting affidavit evidence of Morrisseau about paintings being forgeries, and his Parkinson's disease which profoundly affected his ability to communicate:

"A. I'm telling you that Norval Morrisseau, in February of 2005, was in a wheelchair with his tongue hanging out. Could not speak, much less hire a lawyer, much less direct a lawyer to do anything.

Q. So you knew all of that for a fact?

A. Yes I did.

Q. And you're a doctor sir?

A. No I'm not. I'm the man who took Norval's son to see him and who was refused admittance because Gabe Vadas said, no one gets to see him. Not the family, not anyone. He did get to see him. Pictures were taken. Norval is sitting in the wheelchair with his tongue hanging out. He's sitting with his son. His son is holding his hand and crying because his father cannot even recognize him. That's why."

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He further testified that Jack Pollock, Morrisseau's first representative in his book "Letters to M" told Morrisseau to sign in black acrylics to identify his paintings.

Moreover, White believes that Sinclair has destroyed the market for Morrisseau paintings by publishing approximately 1000 images of Morrisseau paintings on his website, which he says are fake.

White provided documentation supporting the purchase of the "Wheel of Life" to his attorney:

"I have certainly provided documentation that I purchased the painting from Potter Auctions. I provided a letter from Randy Potter, who agreed that it came from his auction. I provided a letter from David Voss, who said yes, I believe that I supplied that painting to Randy Potter, yes."

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He categorically and strongly denied a conspiracy to sell fakes.

"Q. I put it to you also that the paintings that you are selling through them are paintings you know are fakes, and that you have an arrangement with these persons in order to create certificates of authenticity so you can sell the fakes?

A. Might I gather myself for a moment. That the brashness of that comment leaves me speechless. If you're looking for a direct answer, I know of no fakes that I have ever purchased or tried to sell. I just find it amazing that you would say such a thing?

Q. So the answer's no?

A. If that answer means no, I do not sell fake Morrisseau's, the answer is no."

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Mr. White testified that he provided documentation in support of the provenance consisting of a letter from Randy Potter who he stated agreed that the painting came from his auction and from David Voss who confirmed that he believed that he supplied the painting to the auction. He agreed it obvious that a favourable decision would increase his revenues.

MR. RITCHIE SINCLAIR

EXAMINATION IN-CHIEF

Mr. Ritchie Sinclair testified in reply that it was his opinion that Wolfe Morrisseau, Christian Morrisseau, Eugene Morrisseau, Benji Morrisseau and Gary Lamonte were all involved in producing fake paintings.

"Q. Now, it's just so un-credible I had to ask it again. So, the six artists, they painted all these paintings that are Potter Auction, with the black brush strokes on the back, that's your story, right?

A. There are others too. Most of them were paid with drugs, but there are...

Q. With drugs?

A. ...others too.

Q. They were paid with drugs?

A. Paid with drugs"

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ANALYSIS

The Court has considered in excess of some 750 pages of testimony over five days of hearing and reviewed the exhibits and considered the detailed written submissions of counsel.

The Court finds that there is overwhelming evidence that Norval Morrisseau signed paintings in black brush paint. The eye witness testimony of his brother Wilfred Morrisseau who lived with him for substantial periods of time in the North and elsewhere and who saw

him sign in black brush paint is convincing and credible.

The testimony of Marlow Goring supports his testimony in regards to the practise of the artist signing paintings in black brush. Wilfred Morrisseau's testimony that his brother painted while in jail and his explanation of his brother's decadent lifestyle and his carefree attitude to life provides a cogent explanation for the lack of receipts to document the provenance. The Court adopts Wilfred Morrisseau's testimony that his brother painted a significant number of paintings en masse and it is therefore reasonable to conclude that his production was in the thousands.

The testimony of Mr. Joseph McLeod is indicative of his care and the detailed efforts to confirm provenance, including the hiring of a forensic expert to examine the signature on the back of the painting indicate that he took his role to provide appraisals seriously. His testimony of the origin of the Cree syllabic signature, the name Copper Thunderbird and his interpretation of the painting "Wheel of Life" demonstrates his depth of knowledge of the painter due to his lengthy association with the artist. His explanation of the brown more muted colour of the painting compared to the brighter later paintings is credible when considered in the context of pictographs near Lac Seul and in Nipigon where Morrisseau lived and likely the inspiration of the earlier paintings. Such pictographs were also known to exist in the Petroglyphs near Peterborough where Morrisseau formerly resided.

The Defendants acted reasonably in obtaining one of two appraisals from Mr. Joseph McLeod to authenticate the painting due to his knowledge of and prior dealings with the artist due to the controversy about provenance.

The Court received the statutory declarations of Norval Morrisseau and letters filed by the Plaintiff in support of the allegation of forgery. This evidence was relevant and although hearsay was admitted since it was relevant to the central issue-Was the painting a forgery? In assessing the reliability of that evidence however, the Court notes that since this evidence was not subject to cross-examination it had to be carefully weighed in light of the testimony of all of the witnesses.

The Plaintiff's own witness Donald Robinson provided viva voce testimony of Norval Morrisseau's inconsistency and difficulty in identifying his own work, and of his unpredictability. He agreed that Morrisseau could have memory problems from 2003 to 2006, and of his decline in health due to his illness. Robinson's admission that he was not surprised that Morrisseau would sign a certificate of authenticity to please also cast doubt on the reliability of the statutory declarations signed by Morrisseau.

His testimony coupled with the testimony of other witnesses of Morrisseau's Parkinson's disease raises a significant doubt of the reliability of the statutory declarations.

Although a letter from a lawyer who was present at the signing of the statutory declaration and a doctor's letter were filed at trial, no expert testimony of capacity was proffered by the Plaintiff on such a key issue.

Mr. Robinson was qualified as an expert in the area of valuation and appraisal. His testimony however overlapped into the area of handwriting and included an analysis of syllabic and English handwriting, areas for which he was not qualified. He has no formal training as an expert witness in handwriting analysis and his evidence is rejected. Dr. Singla's forensic evidence is preferred in

this regard and his finding that it is highly probable that the painting "Wheel of Life" was painted by Norval Morrisseau was supported by his detailed technical analysis of known signatures of Norval Morrisseau.

Mr. Robinson also testified as to his personal dealings with Morrisseau paintings. It was his view that there were a large number of forgeries. It was also clear that his personal views and business interests conflicted with his professional opinion since it was in his interest along with Mr. Vadas to maintain the price of Morrisseau paintings which would not otherwise be the case if the market was flooded with paintings sourced from Potter auctions. The Court rejects his expert report and his conclusion that the Morellian analysis, style, colour, and provenance all pointed to forgery.

Mr. Joseph McLeod's testimony is preferred to that of Mr. Ritchie Sinclair. Mr. Sinclair's testimony of numerous forgers paid for with drugs although dramatic was not supported by the evidence.

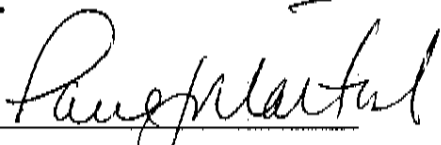
DECISION

After a careful consideration of all of the evidence, the Court finds that on the balance of probabilities that the painting "Wheel of Life" dated February 1979 is an original Norval Morrisseau and undoubtedly one of his most notorious paintings.

The painting "Wheel of Life" is not a forgery. The Defendants did not misrepresent the authenticity of the painting.

The Plaintiff's claim is dismissed with costs fixed at \$1,500.00 dollars pursuant to the written submissions of counsel.

Dated at Toronto this 25 day of March 2013.


Paul J. Martial