

ONTARIO  
Small Claims Court

B E T W E E N:

MARGARET HATFIELD

Plaintiff

-and-

DONNA CHILD and ARTWORLD OF SHERWAY

Defendants

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**CLOSING SUBMISSIONS ON BEHALF OF THE DEFENDANTS**

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**Part I - Overview**

1. In this action, the plaintiff seeks recovery of damages on the basis that the defendant Artworld of Sherway ("Artworld") sold to her a painting entitled "Wheel of Life" purported to be the work of Norval Morrisseau when it is in fact a fake painting or that there is uncertainty as to the authenticity of the painting such that it has no value.
2. Artworld defends this action on the singular basis that the painting is in fact a genuine work of Norval Morrisseau and that the plaintiff's expert witness, Donald Robinson has worked with Mr. Morrisseau's former manager to destabilize the secondary Morrisseau art market by calling hundreds of purported Morrisseau paintings fake.

3. It is common ground between the parties that Wheel of Life was purchased for the sum of \$10,350.00 inclusive of taxes. Artworld has agreed to purchase Wheel of Life back from the plaintiff for the price she paid plus applicable interest if her claim is dismissed.

4. The plaintiff's allegations are very serious. She alleges that Ms. Child, the operator of Artworld, fraudulently or deceitfully sold Wheel of Life to her when she knew it to be a fake. Alternatively, the plaintiff claims that the defendants either made a negligent or innocent misrepresentation as to the authenticity of Wheel of Life or breached a warranty as to the authenticity of the painting pursuant to section 15(1) of the *Sales of Goods Act*. The plaintiff seeks damages against Ms. Child in her personal capacity.

5. The evidence was heard over a five-day period commencing in September 2011 and concluding on June 4, 2012. The plaintiff called two witnesses in addition to herself. The defendants do not contest the factual evidence provided by the plaintiff in her evidence except where she falsely accuses the defendants and Joseph McLeod of wrongdoing. She could not offer any evidence as to the authenticity of Wheel of Life.

6. The plaintiff's first witness was Donald Robinson who was qualified as an expert in the field of art evaluation. He testified that Mr. Morrisseau did not paint Wheel of Life. It became clear by the end of Mr. Robinson's testimony that he has a direct interest in the litigation and does not possess the necessary independence to provide opinion evidence.<sup>1</sup> Moreover, his credibility is seriously undermined by the fact that he bought paintings from Potter auctions by Mr. Morrisseau that in his expert opinion were authentic and, years later, decided that they too were fakes. The paintings came from the very same auction and grouping of art as Wheel of

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<sup>1</sup> As the Small Claims Court Rules are silent on the issue of expert evidence, the Rules of Civil Procedure apply. Rule 53.03(1)(2.1)(7) requires an expert to sign an acknowledgement of expert's duty that states, *inter alia*, that he acknowledge that it is his "duty ... to provide opinion evidence that is fair, objective and non-partisan."

Life. Mr. Robinson demonstrated by his own evidence that he really cannot tell what is an authentic Morrisseau painting and what is not. Further, he purported to give opinion evidence as to the handwriting on the painting without any qualifications to do so. His evidence should be rejected outright as unreliable.

7. The plaintiff's final witness was Ritchie Sinclair. It appears that the purpose of Mr. Sinclair's evidence was to establish that the defendants, with others, are involved in litigation with Mr. Sinclair and that the purpose of the defence of this proceeding is to somehow gain an advantage in the litigation with Mr. Sinclair. Mr. Sinclair's evidence was, to say the least, bizarre. He has actually labelled over 1,000 paintings purported to be the works of Mr. Morrisseau as fakes. He did so based on his review of tiny photos on the Internet. This evidence became even more incredible when Mr. Sinclair was forced to admit that he represented a work of art to be an authentic Morrisseau to Mr. Cott only to later call it a fake after Mr. Cott had purchased it based on Mr. Sinclair's "expert opinion." Mr. Sinclair lied to this court by stating under oath that he apologized to Mr. Cott for his mistake when he had not done so. To accept Mr. Sinclair's evidence would be dangerous in the extreme as (i) he proved himself an unreliable witness and (ii) his testimony was calculated, illogical and unsupported by any other evidence.

8. Further, Mr. Sinclair, when recalled in reply, explained that there was some sort of conspiracy among five or six people to paint upwards of 1,200 paintings, sign them on the back in black acrylic paint and put them up for sale at Potter auctions. The evidence is so preposterous that Ritchie Sinclair has absolutely no credibility and all of his testimony should be rejected.

9. The defendants called Donna Child, Wolf Morrisseau, Marlowe Goring, Joseph McLeod, Dr. Singla, Kevin Cott and James White as witnesses.<sup>2</sup>

10. The evidence is overwhelming that the painting is an authentic painting by Norval Morrisseau. It is common ground that the painting is signed on the back in black acrylic acrylic paint along with the name of the painting and the year it was painted. Mr. Robinson was emphatic in his report and his evidence that Norval Morrisseau never signed his paintings on the back in dry brush acrylic paint. Two witnesses personally saw Norval Morrisseau sign the backs of various paintings in dry brush black acrylic painting. Wolf Morrisseau, the artist's brother, not only witnessed his brother signing the back of his paintings in this manner, but he testified that he in fact recommended to his brother to do it so that his works could be identified around the world. Mr. Goring testified that he knew Norval Morrisseau personally and that Mr. Morrisseau had come into his gallery and signed the paintings in black acrylic dry brush on the back in front of him.

11. The plaintiff was unable to undermine this testimony. Rather, she sought to undermine the credibility of both witnesses by pointing to failings in their lives wholly unrelated to the case. No evidence was adduced at trial that either of these witnesses ever provided false testimony in a court of law. The attempt to undermine Wolf Morrisseau in particular was astonishing and a pathetic attempt to embarrass and humiliate a man who had nothing at all to gain from his testimony.<sup>3</sup> And the plaintiff did not stop there. Her counsel was instructed to accuse Wolf Morrisseau of painting Wheel of Life! There was no evidence at all that he had done so and the suggestion that he did so was preposterous. Moreover, the plaintiff offered absolutely no

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<sup>2</sup> The defendants did not call Paul Bremner as a witness as the parties agreed that it was not necessary to hear from both Bremner and McLeod. The parties also agreed that no adverse inference should be drawn by the failure of Bremner to testify.

<sup>3</sup> Wolf Morrisseau testified that he does not own any Norval Morrisseau paintings and has no interest in the Morrisseau family foundation.

evidence that Wolf Morrisseau painted Wheel of Life. Wolf Morrisseau maintained his dignity throughout his testimony and responded to the ridiculous accusation by stating that he was not talented enough to paint Wheel of Life.

12. In addition to Wolf Morrisseau, Dr. Singla had absolutely nothing to gain by his testimony. He testified as an independent expert<sup>4</sup> on handwriting analysis. His credentials are impeccable. He testified that it is highly probable that the signature on the back of Wheel of Life is the genuine signature of Norval Morrisseau.

13. The defendants ask that this Honourable Court declare Wheel of Life to be a genuine work of art of Norval Morrisseau. By doing so, Mr. Morrisseau's legacy can be restored and Ms. Hatfield will have a work of art worth more than double what she paid for it.<sup>5</sup> There is more than enough evidence to support the relief requested.

## **Part II – The Evidence at Trial**

### **(A) The plaintiff's evidence**

14. The plaintiff called three witnesses at trial. The first witness was the plaintiff, Ms. Hatfield. She then called Don Robinson who was qualified as an expert on art evaluation. Finally, she called Ritchie Sinclair to testify on a variety of topics ranging from his allegation that he is a protégé of Norval Morrisseau to his alleged ability to tell the difference between a fake and genuine Morrisseau painting, and his theory that many people have taken part in a massive art forging conspiracy covering upwards of a thousand paintings purported to be the works of Norval Morrisseau that he calls fakes or imitations.

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<sup>4</sup> The plaintiff conceded that Dr. Singla was qualified to give expert opinion evidence on handwriting analysis.

<sup>5</sup> It seems clear that if the painting is genuine, it is worth somewhere between \$20,000 and \$25,000. Ms. Hatfield will have the choice of keeping the painting and having an asset that has greatly appreciated, or getting her money back.

(i) *Margaret Hatfield*

15. Ms. Hatfield was a good witness and a truthful witness. She testified that she is a retired schoolteacher. Her youngest son, Christopher is an Ojibway Indian and she looked to Native art as a way for him to experience his culture. On February 24, 2005, the CBC aired a television show on Norval Morrisseau and his art and there was an advertisement for Artworld during a break in the broadcast. Ms. Hatfield then went on the web site for Artworld and saw more than 50 canvasses by Mr. Morrisseau displayed. Ms. Hatfield knew that Mr. Morrisseau was ill with Parkinson's disease, was aware that he had stopped painting and had a strong desire to own a piece of his art.

16. Ms. Hatfield testified that she looked at the section of the Artworld web site that dealt with art as an investment. She explained that if she was going to purchase a Morrisseau painting, she would only do so if the purchase was an investment as the cost of a Morrisseau painting was high and "I was keen to make a choice in favour of purchasing a Morrisseau but I knew that it meant I would have to forgo a lot of other expenditures for a while that were self indulgent".

17. Ms. Hatfield was confident that whatever Morrisseau she purchased would accrue in value over time.

18. Ms. Hatfield called Artworld the next day to learn that the piece of art she was interested in purchasing, had already been sold. She then looked over the web site again, selected Wheel of Life, called back the next day, and purchased the painting using a credit card. Ms. Hatfield paid for the painting with her credit card and received an invoice from Artworld (Exhibit 4) and two appraisals for the painting from Bremner Fine Art and Maslak-McLeod Gallery (Exhibits 3a and 3b). The plaintiff received the painting and she placed it on her mantle. It is important to note that Ms. Hatfield testified that she was aware of the names of the appraisers of the painting

before she purchased it but she chose not to call them despite her questions about the provenance of the painting.

19. It is common ground that Norval Morrisseau passed away on December 4, 2007.

20. On April 6, 2009 the plaintiff was reading a Toronto Newspaper online and saw an advertisement for "www.morrisseaubuyersbeware.com". From there she found herself on a web site that had an interview with Dr. Jonathan Brown and the problems he encountered with allegedly fake Morrisseau paintings. She then discovered a statutory declaration purportedly by Norval Morrisseau dated September 22, 2004 that stated certain paintings at Artworld were fakes or imitations (Exhibit 5). One of the paintings listed was Wheel of Life. The plaintiff wrongly assumed that Artworld was aware of the declaration at the time it sold the painting to her given that the date of the signature on the statutory declaration was five months before she purchased the painting.

21. The plaintiff was reminded of a hymn from Isaiah:

And does a mother forget her baby or a woman the child within her womb?  
Yes, even if these forget I will not forget. I have carved you in the palm of  
my hand."

22. From this, the plaintiff question how it could be that an artist would deny what he had produced. She felt the artist process was the equivalent of giving birth.

23. The plaintiff contacted Dr. Brown. He did not testify at trial. However, Dr. Brown sent the plaintiff to Ritchie Sinclair. Ms. Hatfield explained that Mr. Sinclair is an artist in Toronto who was a protégé of Norval Morrisseau. She explained that Mr. Sinclair had told her that he had painted with Norval Morrisseau and that he "started trying to weed out all the fakes that had come to his attention" by maintaining his own web site where he posted pictures of the canvasses that he considered to be fakes. This evidence is very important, as we will see when we come to

Mr. Sinclair's evidence that he is nothing but a charlatan who has preyed on Ms. Hatfield and sold her a story that is preposterous. Ms. Hatfield is a victim of Ritchie Sinclair and not either of the defendants.

24. On June 6, 2009, the plaintiff went to Artworld and spoke with its proprietor, Donna Child. Ms. Child told her that Mr. Morrisseau was not in his right mind when he signed the declaration and that she was involved in litigation related to these false claims of forgeries. Ms. Child indicated that she would discuss the matter with her lawyer and get back to Ms. Hatfield.

25. True to her word, Ms. Child got back to Ms. Hatfield and told her by letter dated June 16, 2009 (Exhibit 6) that Artworld could not provide a refund as to do so would amount to an admission that the painting is a fake and the painting is not a fake. Ms. Child also told Ms. Hatfield that she would refund her money regardless of whether the court ruled the painting to be authentic.

26. The plaintiff then contacted Samuel Stevens, the lawyer who witnessed Mr. Morrisseau's statutory declaration, and confirmed that he witnessed the signature. Mr. Stevens also provided her with a letter indicating that while he was not a doctor, it was his view that Mr. Morrisseau was of sound mind when he swore the statutory declaration.

27. The plaintiff also produced a letter from a Dr. Sheppard purporting to provide the status of Mr. Morrisseau's health at the time he swore the statutory declaration. The defendants refused to concede the authenticity of the document (it was marked as Exhibit 8) and indeed the plaintiff did not rely on the letter from Dr. Sheppard in her closing submissions.

28. The plaintiff testified in cross-examination that she did not contact either of Paul Bremner or Joseph Macleod after she learned of the statutory declaration by Mr. Morrisseau as she was mistakenly of the view that their appraisals only provide a value on the assumption that



the painting is authentic. She must not have realized that, particularly in the case of Joe Macleod, they are experts on the works of Norval Morrisseau and Mr. McLeod knew the artist personally. She also refused to contact Mr. McLeod because Mr. Sinclair had told her that he “was involved in the forgery as well and in their distribution.” She had no doubt that both Mr. Bremner and Mr. McLeod would have told her that the painting was authentic but that there assertions were false. She had absolutely no basis to say this other than the theories of Ritchie Sinclair.

29. From Ms. Hatfield’s evidence, it is crystal clear that once she spoke to Mr. Sinclair, she chose to believe him and determined that the painting was a fake. As a result, Ms. Hatfield commenced litigation and was put in touch with Donald Robinson through Ritchie Sinclair.

**(ii) Donald Robinson**

30. Mr. Robinson testified at length in the trial. What follows is a recitation of the salient evidence from his testimony. He was qualified as an expert on valuation and authentication of paintings. He provided an expert report dated July 7, 2010 (Exhibit 16). Crucially, Mr. Robinson was not qualified as a handwriting expert.

31. It is noteworthy that Mr. Robinson is not a typical expert witness. For one thing, he did not charge the plaintiff a fee to prepare his report. Rather, he states that he provided his evidence out of “a moral obligation to help protect the legacy” of Norval Morrisseau and his artistic legacy. He purports to “speak neither for my ‘side’ nor for that of the defendant, but as a professional art dealer on behalf of my profession, in the interest of truth and justice.” Yet, his report and evidence were entirely one-sided.

32. There are numerous area of evidence given by Mr. Robinson that he was simply not qualified to give. His report is replete with "evidence" related to handwriting analysis, for example.

33. Mr. Robinson's evidence can be distilled down to the following:

- (a) There was no provenance relating back to the artist for the painting;
- (b) The syllabic signature on the front of the painting is completely inconsistent with authentic documented syllabic signatures from the same time period;
- (c) The signature on the back of the painting is not that of Norval Morrisseau;
- (d) The handwritten title on the back of the painting was not written by Norval Morrisseau;
- (e) A Morellian stylistic analysis of the painting shows that there are significant pictorial design elements that are inconsistent with those used by Morrisseau;
- (f) The painting lacks any of secondary supporting documentation one would expect to find on paintings from the secondary market;
- (g) Morrisseau never signed paintings on the back in heavy black dry-brush paint; and
- (h) The painting is worth \$200.00.

34. Mr. Robinson testified that he purchased 28 paintings from the same source as Wheel of Life: Khan Country Auctions. Despite having had 19 years experience running a fine art gallery, having been the exclusive representative of Norval Morrisseau in Canada for a decade, having been qualified as an expert in Morrisseau art four years earlier, and having written a book on Mr. Morrisseau's art, in 1999 Mr. Robinson purchased 28 of the Khan auction paintings over a six month period, while telling other patrons that the paintings were genuine. The evidence

shows that a substantial number of those paintings were signed on the back in black acrylic paint. Mr. Robinson testified that Morrisseau did not sign any paintings on the back in black acrylic paint. Why did Mr. Robinson fail to immediately condemn the Potter auction paintings as fake. Instead, he bought many.

35. At the time his suspicions were not aroused. Indeed, despite his reputation as an expert in Morrisseau art, Mr. Robinson sold no less than 12 of these supposed fake paintings as actual paintings by the man he exclusively represented to unsuspecting buyers. One would have thought that a simple Morrelian analysis of the paintings, or any of them, undertaken in the manner he so diligently undertook with Wheel of Life, would have uncovered that the 28 paintings he purchased over a six month period were fakes. Was it not part of his duties as an art dealer to do just that? He must have provided appraisals for those paintings he sold that he now says are fakes? Did he not do an actual appraisal of them or did he simply sell them with no appraisal? Did he provide a refund to the people to whom he sold those 12 paintings?

36. Once his suspicions were aroused, did Mr. Robinson courier any of the 28 paintings he purchased to Mr. Morrisseau for his authentication? Oddly, he did not. Instead, the trigger point for his analysis of the Potter paintings came five years later when Jim White brought him 23 "Potter-sourced" paintings to appraise. He took colour photographs of the paintings and sent them to Mr. Morrisseau with two options: Tick the box that indicated all 23 paintings were fakes or tick the box that all 23 paintings were genuine. Mr. Morrisseau purportedly ticked the box indicating that all 23 paintings were fakes. There is no affidavit or witness to the document. He then told Mr. White that the paintings were fakes and that he would not provide certificates of appraisal for them. At the same time, Mr. Robinson told the world that Mr. White's paintings

were fakes and even had the audacity to take pictures of Mr. White's paintings, without permission and provide them to the National Post.

37. It is most telling that the one painting that the National Post chose to include with their article concerning alleged Morrisseau fakes was a painting owned by Mr. White that Mr. Morrisseau refused to include in the listing of paintings he called fake from Mr. McLeod's catalogue (Exhibit 30). Mr. Robinson had no explanation for this in his evidence and utterly failed to disclose this fact in his expert report.<sup>6</sup>

38. When Mr. Robinson conceded in his cross-examination that he was found to be an expert witness in relation to Morrisseau's art prior to his purchase of the 28 paintings, the issue arose as to how it could possibly be that an expert on Morrisseau's art, qualified to give opinion evidence on the topic, was so easily fooled by 28 paintings for five years. Mr. Robinson was asked during his cross-examination to explain the difference in his expertise from 1995 to 2012, he explained that he was only ten percent of the Morrisseau expert in 1995 that he is now. This evidence is incredible and defies logic. Mr. Robinson specializes in Morrisseaus art. He had written a book on his art in 1997. It is simply not possible that he could be fooled into buying 28 Potter-sourced paintings that were, as he and Ritchie Sinclair assert, manufactured, mass-produced fake paintings.<sup>7</sup>

39. Further, Mr. Robinson was asked to compare the claims of Mr. Morrisseau from the three statutory declarations placed in evidence and had to concede that there were many

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<sup>6</sup> The painting is entitled "Ancestral Spirit with Evil Serpent" and is found at page 32 of Exhibit 30. In Mr. Morrisseau's statutory declaration concerning fakes in the catalogue (Exhibit 30), he does not list this painting. His statutory declaration is found at Exhibit 31.

<sup>7</sup> A review of Mr. Robinson's Curriculum Vitae (Tab 1, Exhibit 16) demonstrates that he authored an article on Norval Morrisseau in 1991, a major catalogue of Norval Morrisseau's work on a date apparently between 1991 and 1997, authored a "sold-out" hardcover book on Morrisseau in 1997, commissioned a report on 211 Norval Morrisseau paintings in 1995 and was qualified as an expert witness in relation Morrisseau's paintings in 1995. Perhaps that is why the judge in that case (*Whent*) found Mr. Robinson's testimony to be self serving and of little value.

inconsistencies in the claims of Mr. Morrisseau. That is, in one statutory declaration he would claim a painting was a fake, and in another statutory declaration he would fail to call the very same painting a fake despite indicating that he had reviewed it. There were more numerous examples of this put into evidence.

40. Mr. Robinson was unequivocal in his report and testimony that there was no provenance back to the artist for Wheel of Life. The painting supposedly came to Potter Auctions through a gentleman named David Voss. Mr. Robinson states that he has "never met nor communicated in any way with David Voss and I am not aware of anyone else who has been able to do so." He then says that along with other he tried to contact Voss and was unable to do so. He then refers to a statement purportedly from David Voss where a detailed explanation is provided as to where Voss obtained Morrisseau's art.

41. Mr. Robinson concludes that because no "payment receipts, bills of sale, letters, notes or correspondence from earlier previous owners" are evident, there is no provenance for the painting. This evidence is in stark contrast to that of Mr. White who testified that he has met and had many discussions with Mr. Voss. Mr. White testified that his previous lawyer was provided documentation from Mr. Voss to Mr. White stating that he consigned Wheel of Life to Potter auctions. Mr. White testified that previous counsel did not submit the documentation to the court. The documents are therefore not in evidence but the oral evidence supporting those documents is in evidence.

42. Mr. Robinson's evidence amounts to feigned ignorance on provenance related to Morrisseau's art. The evidence is crystal clear that Norval Morrisseau handed out paintings all over Ontario over a long period of time. His paintings went everywhere. People acquired them

for as a little as a case of beer or a pack of cigarettes. To require the defendants to demonstrate provenance more than they have is completely unreasonable.

43. Given the evidence put forward by the defendants as detailed below, it is respectfully submitted that the provenance for Wheel of Life is reasonable in all of the circumstances. Provenance is not a science and what will constitute good provenance in relation to one work of art may well be very different in relation to another work of art – even by the same artist. For example, Mr. Robinson had a direct relationship with Morrisseau and obtained paintings directly from him. Provenance for paintings that come directly from the artist is ideal. Is it not convenient that Mr. Robinson possesses art directly from Mr. Morrisseau and he seeks to discount the authenticity of works that do not have the same level of provenance? It is respectfully submitted that because Mr. Robinson only represented Mr. Morrisseau from 1990 until his death but the vast majority of his painting took place before he met Robinson, Mr. Robinson is seeking to discredit the vast majority of Mr. Morrisseau's art legacy in favour of his paintings that have this direct provenance. This court's decision could affect the authenticity of works of art by Morrisseau held by thousands of people around the world.

44. Mr. Robinson testified that the syllabic signature on the front of the painting and the English signature on the back were not those of Mr. Morrisseau. It is entirely unsafe for this Honourable Court to accept the evidence of Mr. Robinson concerning his alleged expertise in handwriting analysis. Handwriting analysis, as we learned from Dr. Singla, requires extensive study and expertise. Mr. Robinson has no training at all. His evidence is anecdotal. Coupled with his lack of objectivity and his conflict of interest (as found by this court during the voir dire) Mr. Robinson's handwriting analysis evidence should be rejected.

45. Mr. Robinson is of the view that all Morrisseau paintings that were sold at Khan Country Auctions and Randy Potter Auctions are fakes. When one slows down to consider his evidence, which dovetails very nicely into the evidence of Mr. Sinclair, this means that there is some organized ring of forgers who have gone around and painted over 1,000 paintings, dated them back to the 1970's and 1980's, forged Mr. Morrisseau's signature over one thousand times and passed them off as works of art by Norval Morrisseau. Their work is so good that they fooled Mr. Robinson himself, Joseph McLeod and Paul Bremner along with countless other gallery owners across Canada, including Ms. Child, who have sold these paintings. Further, they managed to fool a handwriting expert with experience testifying in over 500 cases.<sup>8</sup>

### **(iii) Ritchie Sinclair**

46. Some reference has been made to Mr. Sinclair's lack of credibility earlier in these submissions. It is true that the defendants, along with Joseph McLeod, James White and his gallery, have sued Mr. Sinclair for his allegedly false allegations related to 1,000 Morrisseau paintings on his web site. Pause for a moment to consider the position of these gallery owners and art dealers: Mr. Sinclair holds himself out as a protégé of Norval Morrisseau, a claim that is hotly disputed by the defendants and unsupported in any writings of and concerning Mr. Morrisseau other than those of Ritchie Sinclair, and he tells the entire world that these hard working people are selling fakes when he has zero evidence to support it. He unilaterally turned the entire Morrisseau legacy into turmoil. There is only one consistent story line that comes from Mr. Sinclair's evidence: He is a failed artist who was refused showings in galleries by the defendants and other gallery owners who sold Morrisseau art. In retaliation, he successfully

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<sup>8</sup> Further, Mr. McLeod testified that he hired a handwriting expert during the time when he was determining the authenticity of the Potter Auction paintings who concluded that the signature on the paintings he analyzed were authentic.

ruined their ability to sell Morrisseau art. It was Mr. McLeod's evidence that Mr. Sinclair told him he would ruin the Morrisseau market and he has done just that.

47. In the submissions filed by the plaintiff, the only evidence of Ritchie Sinclair that is relied upon is as follows (see page 8 of the plaintiff's submissions under the heading "Contextual Evidence"). Mr. Sinclair testified that he worked with Norval Morrisseau and that his work included obtaining and mixing paints. He therefore was able to say that certain of the paint used by Mr. Morrisseau in the time period in question, which was apparently contemporaneous with the time *Wheel of Life* was painted, involved colours Morrisseau did not use. He also described the painting as a very bad fake; a mass-produced, manufactured painting. He further explained that the size of the painting was inconsistent with the type of canvass sizes that Morrisseau used during the relevant time period.

48. If it is assumed for a moment that Mr. Sinclair is a reliable witness, and he is not, given that the record is crystal clear that Mr. Morrisseau painted somewhere between 10,000 and 15,000 paintings in his life time, in a variety of places, using a variety of mediums and under many different circumstances, there is nothing at all conclusive that can be derived from Mr. Sinclair's testimony.

49. Most troubling is that much of Mr. Sinclair's evidence descended into madness. He describes himself as a protégé but he is the only one who would describe him that way, he claims that approximately 1,200 paintings were painted by some seemingly well organized forgery ring, he told the court that there were paintings purportedly by Morrisseau that were fakes in many museums, including the Smithsonian<sup>9</sup>, and that this forgery ring was run by Norval Morrisseau's family members.

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<sup>9</sup> When this suggestion was put to Mr. Robinson, he clearly was not prepared to agree with Mr. Sinclair and did not adopt this point of view.



50. Finally, and most important, is the fact that Ritchie Sinclair lied under oath. Please see the section on the evidence of Mr. Cott for full details of the evidence regarding this submission.

51. In his reply evidence, Mr. Sinclair stated hat Wolf painted "Season of Rut for Moose". He also testified that Wolf could not resist painting a wolf with a beard in the painting. This is also a lie. The smaller figure in the painting located in the upper left is in fact a moose with a wattle (a hair-like growth typical of a moose). The smaller figure is identical to the main figure of the painting that is, of course, a moose.

52. In Dr. Singla's report of August 24, 2010 is a painting titled "Great Moose". It is one of the eleven paintings Dr. Singla deemed highly probable ot bear Morrisseau's signature on the back. This painting of a moose is identical to the main figure in Season of Rut for Moose, as well as the smaller figure that Mr. Sinclair called a wolf with a beard. Mr. Sinclair also testified that Mr. Morrisseau never painted bubbles. This is false. In the book "The art of Norval Morrisseau by Lister Sinclair at page 143, there is a painting "Door to Astral Heaven". Bubbles are clearly evident.

53. Mr. Sinclair was a terrible witness who has no credibility. All of his evidence should be rejected where it is not corroborated by another, reliable witness.

## **(B) The Defendants' Evidence**

### **(i) Donna Child**

54. Ms. Child has worked at Artworld of Sherway for 16 years and is the Gallery Director. In her role, she acquires paintings, does the marketing and bookkeeping. She testified that Artworld Inc. employs her and that the gallery has approximately 1,500 paintings. From those paintings, approximately 25 are by Norval Morrisseau. She testified that Artworld sells

Morrisseau paintings because he was an extremely important Canadian artist who was the founder of the Woodland school. He was in fact the first Native artist whose art was in the National Gallery.<sup>10</sup>

55. Ms. Child explained that most of the Morrisseau art at Artworld comes from James White and came to the gallery on consignment. Ms. Child confirmed that Wheel of Life came to her on consignment from Mr. White.

56. Ms. Child testified that on February 24, 2005 a television show aired on the CBC of and concerning Norval Morrisseau. Artworld was selling Morrisseau's works at that time and decided to advertise during the documentary. The advertisement showed works of Morrisseau that could be purchased at Artworld with a drum beat in the background.

57. It was around that time that Ms. Child started to hear about the controversy surrounding alleged fake paintings by Norval Morrisseau. Crucially, at the time of the CBC documentary, Ms. Child had no information that Mr. Morrisseau was taking the position that Artworld was selling allegedly fake Morrisseau paintings.

58. As a result of the advertisement on CBC, Artworld sold somewhere between 20 and 25 paintings. The plaintiff was one of the customers. She purchased Wheel of Life for \$10,350 inclusive of taxes. Ms. Child explained that the painting came with two appraisals – one from Joseph McLeod and one from Paul Bremner.

59. Ms. Child regards Mr. McLeod as the leading authority in Canada on the artwork of Norval Morrisseau. Ms. Child is unable to authenticate a painting herself and she relied on the appraisals provided to her by the experts. She had absolutely no reason to doubt their appraisals when the painting was purchased and no reason to doubt them now.

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<sup>10</sup> The National Gallery is considered to be one of Canada's most important museums.

60. Prior to selling the painting to Ms. Hatfield, no one had told Ms. Child that Wheel of Life was a fake and she had no reason to doubt its authenticity. Further, the Norval Morrisseau paintings in her gallery were seen by Norval's son Christian Morrisseau who is an artist. He saw paintings signed in black acrylic paint on the back in the Artworld gallery. Christian advised Ms. Child that the paintings by Norval Morrisseau that were in her gallery were authentic paintings by his father.<sup>11</sup> Christian's statement that the paintings were authentic works of art was important to Ms. Child as it was her view that Christian was not only an artist himself but is someone with intimate knowledge of his father's art. Ms. Child testified that the fact that Christian Morrisseau believed the paintings to be authentic was significant to her.

61. The day after the CBC show aired, Ms. Child received a call from a woman who called herself Michelle Vadas. She advised that she was the wife of Gabe Vadas and that she had watched the CBC television show with Mr. Morrisseau and that they had subsequently went on Artworld's web site to look at the paintings. Ms. Vadas told Ms. Child that Mr. Morrisseau had indicated that all of the paintings were fakes. Ms. Vadas did not specify any paintings in particular and Mr. Morrisseau did not take part in the conversation.

62. It is important to note that Ms. Vadas explained that Artworld had to stop selling the paintings and that Ms. Vadas was prepared to help out Artworld in obtaining genuine Morrisseau paintings for sale by Artworld.<sup>12</sup>

63. Ms. Child was very surprised that Ms. Vadas was saying all of the art of Morrisseau at Artworld was fake. Ms. Child had an honest belief that the art she was selling was genuine. No one had ever accused her of selling fakes or forgeries before and she was very sceptical of the

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<sup>11</sup> Note that this evidence is not offered for the truth of its contents, i.e., that Christian Morrisseau's evidence is that Norval Morrisseau painted Wheel of Life; it is offered to demonstrate that Ms. Child held an honest belief in the authenticity of Wheel of Life. This is important evidence in terms of the allegations of fraudulent misrepresentation.

<sup>12</sup> Note that this is precisely what Mr. Goring was told when Gabe Vadas confronted him at his Gallery in 1996 (this is reviewed below).

information provided to her by Ms. Vadas. She did not believe it was a legitimate call and she testified that in the days following the airing of the CBC broadcast, there were many calls concerning Mr. Morrisseau's art and she felt that what Ms. Vadas was saying to her made no sense.

64. At tab 7 of Mr. Robinson's report (Exhibit 16), is a letter dated September 17, 2004 from Clark R. Purves to Artworld of Sherway. It attaches a purported Statutory Declaration by Norval Morrisseau dated September 22, 2004. This statutory declaration predates the CBC broadcast by almost five months. Ms. Child was asked in her testimony when it was that she became aware of the letter from Clark Purves and she indicated that the first time she saw the letter was when Mr. Robinson's report was delivered. There was no evidence offered in the trial to contradict this testimony.

65. Ms. Vadas did not appear as a witness at the trial. Given her crucial involvement in the facts surrounding the plaintiff's assertion that Wheel of Life is a fake, it is unfortunate that the plaintiff simply relied upon an affidavit from her. While her affidavit is certainly admissible, Ms. Child's evidence was viva voce and she was available for cross-examination and the court was able to observe her demeanour during her testimony. Where her evidence contradicts that of Ms. Vadas, Ms. Child's evidence should be preferred. In particular, Ms. Vadas swears under oath (paragraph 10, Exhibit 32) that Mr. Morrisseau "also offered to advise them in person which paintings were 'fake'. To my knowledge, they did not take him up on the offer." Ms. Child testified that she was willing to have Mr. Morrisseau look at the paintings but that the discussions with Gabe Vadas's lawyer ended when there was no further response from them on the issue. Regardless, Ms. Child testified that Mr. Robinson and Mr. Vadas controlled Norval Morrisseau and there was no confidence that the artist would state his own work was genuine.

66. It is respectfully submitted that the court can infer from this evidence that Mr. Vadas was all about threatening to do certain things but that when push came to shove, he was not willing to have a real evaluation of the actual art undertaken. This is because he knew that the art would be authentic. It was far better for Mr. Vadas to leave the market in a state of instability as it permitted him and Mr. Robinson to continue to control the Morrisseau art market.

67. Further, Ms. Vadas swears in her affidavit "the art they [Artworld] was selling that was attributed to Norval Morrisseau was fake". This is simply not true on Mr. Morrisseau's own sworn evidence. Mr. Morrisseau swore under oath that out of 63 paintings listed in the Artworld catalogue, 38 of them were fakes leaving the inescapable conclusion that 25 of the paintings were genuine in his view. This evidence devastates the reliability of Ms. Vadas's evidence.

68. Ms. Child testified that she did not read the letter purportedly from Norval Morrisseau's lawyer until after the sale of Wheel of Life to the plaintiff. Regardless, Ms. Child testified that the allegations of fake Morrisseau's were nothing new and she had two appraisals from reputable dealers telling her that Wheel of Life was an authentic painting. Further, there was no statement by Morrisseau himself indicating his view that Wheel of Life was a fake. That assertion was only made in the statutory declaration that Ms. Child did not see until much later.

69. Once Ms. Child was aware of the allegation that she was selling fake Morrisseau paintings, she sought to determine the provenance of the Potter auction paintings. She testified that she learned through discussions with many people, including Joseph McLeod, Christian Morrisseau and Paul Bremner that there was a struggle to control Mr. Morrisseau's art. She learned that the Morrisseau family was on one side of the struggle and Gabe Vadas and Donald Robinson were on the other. To the best of her knowledge, the only people asserting that the

Potter auction paintings were forgeries were Don Robinson and Gabe Vadas. Mr. Vadas did not testify at the trial despite that he appears to be at the centre of the position taken by the plaintiff.

70. Ms. Child concluded that the Potter auction paintings posed a real problem for Mr. Vadas and Mr. Robinson because there were at least 1,000 paintings in the market place that found their origin at the Potter auctions. Because of the sheer volume of paintings, supply exceeded demand. This meant that the paintings controlled by Mr. Vadas and Mr. Robinson were logically worth less. It was therefore in their interest to declare the Potter auction paintings fakes.

71. It is respectfully submitted that both Mr. Vadas and Mr. Robinson were in the perfect position to discredit these paintings because (i) they controlled the artist by keeping him in a nursing home and denying access to him by anyone (including his own family) and (ii) they had painting with pure provenance. If they discredit all other paintings in the market place, purchasers have only one place left to go.

72. When one takes into consideration the evidence of Marlowe Goring concerning Gabe Vadas's attempt to have him purchase Morrisseau paintings from him (see below), and his wife's attempt to have Artworld purchase Morrisseau paintings through her, the intentions of Mr. Vadas and Mr. Robinson become more obvious.

73. Ms. Child heard many stories of Mr. Robinson and Mr. Vadas literally wheeling Mr. Morrisseau around in a wheel chair and that Mr. Morrisseau was completely incapacitated. She learned that they sought to completely exclude his family from his life and even went so far as to attempt to control his funeral when he died. To Ms. Child's knowledge, Mr. Morrisseau had stopped painting in 1998. He could hardly read or write and she did not believe that he was in any condition to assess the authenticity of his paintings. Further, given that he had painted more than 10,000 paintings in a career spanning some forty years, fraught with alcoholism and drug-

abuse, it was not surprising to Ms. Child that Mr. Morrisseau would be unable to recall all of his works of art, particularly by looking at pictures of them on the Internet. It is respectfully submitted that there is ample evidence to support her conclusion.<sup>13</sup>

74. Ms. Child is of the view that Mr. McLeod's professional opinion was very persuasive because he has absolutely no interest in the controversy. When Mr. Robinson and Mr. Vadas attacked him, Mr. McLeod simply stopped selling the Potter auction paintings despite his view that the paintings were genuine. He did however continue to sell Morrisseau's signed on the back signed in black acrylic paint in the 1970's and 1980's styles. Based on Ms. Child's detailed knowledge of the life and times of Mr. Morrisseau, it was her view that Mr. McLeod is the authority on Morrisseau's art and that she placed her entire trust in his professional assessment of Wheel of Life.

75. Ms. Child also testified about the deceit of Mr. Robinson. He showed up at Artworld one day around the time that the CBC documentary aired and she recognized him from a time when she was at his gallery. He asked her if they sold any paintings by Norval Morrisseau. She showed him the paintings and they had a brief conversation. Mr. Robinson lied to her and told her his name was "Mr. Smith".

76. When asked if her opinion concerning the authenticity of Wheel of Life had changed, Ms. Child responded that it had not. She explained that the painting sold to the plaintiff:

- a. Was provided with two appraisals from reputable experts with knowledge of the works of Norval Morrisseau;

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<sup>13</sup> Not that both Mr. Robinson and Mr. White testified that in 2001 Mr. Morrisseau signed two certificates of authenticity for paintings in exchange for money and then immediately told his son Christian that he did not recall paintings in questions but that the person making the request for the certificates of authenticity was a nice guy so he signed anyway.

- b. The statutory declarations sworn by Mr. Morrisseau are so inconsistent with each other that they have no credibility or reliability. She notes that while Morrisseau swears in his September 22, 2004 affidavit (Exhibit 16, Tab 7) that many painting that were Potter sourced paintings were fakes, he fails to include numerous other paintings that were Potter sourced paintings as fakes. They too are signed on the back in black acrylic paint;
- c. Artworld hired an expert on handwriting analysis who has provided a detailed report attesting to the authenticity of Mr. Morrisseau's signature on the back of the painting;
- d. She determined that the provenance, while not perfect, establishes that Wheel of Life was painted approximately 25 years ago that went from Norval Morrisseau to the family of David Voss who then auctioned the painting, along with many other from the same source, through Potter auctions. The painting was then purchased by James White who consigned it to Artworld;
- e. In the art world, it is common for there to be controversy as to whether a painting is authentic. There are always challenges with secondary market works of art. Such problems exist with Group of Seven Art, Picasso and Dali, to name a few;
- f. All an art gallery can do is ensure that there are appraisals from experts who the work of the artist. Artworld did that. There is never an absolute certainty that a work of art is genuine. Artworld provides an express warranty or they will not sell the painting; and



- g. With Wheel of Life, Artworld has established the provenance of the painting in detail, an expert opinion on the signature and the word of two experts who dealt with Morrisseau's art during the relevant period when Wheel of Life was painted.

77. Ms. Child testified that if the plaintiff wants a refund if the court finds in favour of the defendants, she would agree to the refund because she feels that Ms. Hatfield is the victim of unscrupulous people who are using her to manipulate the market in Morrisseau's art.

78. When asked why she did not simply provide a refund to the plaintiff prior to the commencement of litigation, Ms. Child explained that she told Ms. Hatfield that it is an issue of Artworld's reputation. Artworld does not sell forgeries. To take a painting back in the face of allegations of forgery would tell the world that Artworld sells forgeries and that is simply not the case.

79. Finally, Ms. Child testified that prior to the issues arising involving the plaintiff, Ritchie Sinclair approached her and asked that Artworld show his art in their gallery. Ms. Child told him that she was not interested. It is respectfully submitted that this gave motive to Mr. Sinclair to attack Artworld.

#### **(ii) Wolf Morrisseau**

80. The defendants submit that Wolf Morrisseau was the most important fact witness who gave evidence in this trial. This is so for two reasons. First, he had absolutely nothing to gain by providing evidence that supported the position of the defendants. Second, it was most telling that the plaintiff's only real cross-examination of Wolf Morrisseau accused him of being a thief and of committing forgery. To add insult to injury, the plaintiff then drudged out Wolf

Morrisseau's domestic situation and tried to convince the court that because of his involvement with the law related to a domestic issue, he was somehow an unsavoury witness.

81. It is respectfully submitted that the reason the plaintiff stooped to such a low level is that Wolf Morrisseau's evidence was devastating to their theory that Wheel of Life is a forgery.

82. Wolf Morrisseau is the brother of Norval Morrisseau. When Wolf was a young man, he lived off and on with his brother for a period of ten years. He testified that when he was living with his brother in the 1970's, he came home one day to find "a bunch of Indians", including his brother, drunk and damaging their home. He called the police. His brother was arrested and ended up spending six months in custody in the Kenora jail. Wolf explained that when his brother was drunk, he was an extremely difficult person to deal with. He also explained that when his brother was sober, he was very creative and much easier to deal with.

83. Wolf testified that he would go to school during the day and visit his brother in jail frequently. Wolf explained to this Honourable Court that Norval had two cells: One cell was to live in and the other to paint. He explained that the jailers brought paint and canvasses to Norval and that he was a prolific painter during his time in the Kenora jail.

84. Importantly, Wolf testified that on one visit to his brother in jail, they had a discussion concerning the fact that Norval only signed his name in Cree syllabics on the front of his paintings. It was Wolf's view that Norval should sign his name in English on the back of the paintings. Norval agreed and started signing some of his paintings on the back in English.

85. Wolf also explained that during his lifetime, he had witnessed his brother paint hundreds of paintings. He explained that he also witnessed Norval sign the backs of paintings on many occasions.

86. Wolf was shown the painting Wheel of Life. He advised the court that he had no doubt that his brother painted the painting and he also testified that the handwriting on the back of the painting was that of Norval Morrisseau. This was not opinion evidence. This was first hand evidence of a fact witness who established on a balance of probabilities that he was in a position to know whether his brother was the artist who painted Wheel of Life. His evidence was unchallenged on this point. Instead, the plaintiff suggested to Wolf that he in fact painted Wheel of Life. This was a preposterous suggestion as there was no evidence to suggest that Wolf had painted Wheel of Life and the plaintiff was merely grasping at straws by putting that question to him. Wolf immediately responded to this suggestion by stating that he was not talented enough to paint Wheel of Life.

87. One can only assume that the plaintiff was relying on information provided to her by Ritchie Sinclair who believes that there exists a forgery ring responsible for the entire Morrisseau secondary market.

88. Towards the end of his testimony in chief, Wolf Morrisseau discussed his last meeting with his brother. Wolf explained to the court that his brother only had moments of lucidity. Wolf asked his brother what he thought of the controversy concerning alleged fake paintings by him. His response was words to the effect that it is the white man's problem. Indeed it is.

**(iii) Kevin Cott**

89. Mr. Cott was called in reply to the evidence of Ritchie Sinclair. Mr. Sinclair testified in cross-examination that he provided an opinion to someone that a painting they were planning to purchase from Mr. White was an authentic work of art by Morrisseau. The evidence of Mr.

White (set out below) established that the painting was purchased from Potter Auctions and that Mr. Morrisseau signed it in black acrylic paint on the back.

90. Mr. Sinclair testified that it was true that he told this individual that the painting was authentic but he went on to testify, under oath, that he subsequently determined the painting was fake (although it was entirely unclear from his evidence how it was that he determine the painting was fake) and that he placed a photograph of the painting on his web site declaring it to be a fake. When he was asked if he contacted the purchaser to advise him that, despite his determination that the painting was genuine which caused the purchaser to buy the painting from Mr. White, he had subsequently determined it to be a fake painting, Mr. Sinclair testified that he contacted the purchaser and apologized to him for telling him it was authentic when it was not.

91. It turns out that the purchaser was Mr. Kevin Cott. Mr. Cott came to trial and testified on behalf of the defendants.

92. Mr. Cott confirmed that Mr. Sinclair attended with him and that he asked Mr. Sinclair to advise him as to the value of the painting. The painting is called "Season of Rut for Moose" (Exhibit 34). He testified that Mr. Sinclair told him it was a "great Morrisseau" and based on Mr. Sinclair's advice, he purchased the painting. Mr. Sinclair does not dispute this evidence. Mr. Cott testified that he only learned about Mr. Sinclair's recanting of his authentication of Season of Rut for Moose from counsel to the defendants in this proceeding and only saw Mr. Sinclair's denunciation of the painting on his web site when he was directed to it just prior to his testimony.

93. Mr. Cott was asked whether Mr. Sinclair ever called him to apologize as he stated he did under oath. Mr. Cott was unequivocal in his evidence. He stated that Mr. Sinclair never called him to apologize.

94. Mr. Sinclair took the stand to reply to Mr. Cott's evidence. He testified that Mr. Cott was mistaken and that he simply did not recall their conversation. This evidence is pure nonsense and demonstrates the lengths to which Mr. Sinclair will go to discredit the defendants. Why would Mr. Cott fail to remember Mr. Sinclair calling him to tell him the painting he spent a significant amount of money purchasing was worthless? He would not. No one would forget such a call. It is also noted that Mr. Sinclair had determined that not only had he apologized to Mr. Cott for getting him to buy a fake painting, but he now knew who had painted Season of Rut for Moose and it was none other than Wolf Morrisseau. He never explained how this was the case and from the first day of his evidence to his last moments on the stand, it is respectfully submitted that Mr. Sinclair went further down the rabbit hole.

95. Mr. Sinclair was caught in a lie under oath. There is no other reasonable conclusion to be taken from Mr. Cott's evidence. All of Ritchie Sinclair's evidence should be rejected as unreliable and he should be regarded as an unsavoury witness.

96. It is crucial to note, that despite the unsavoury testimony of Mr. Sinclair, the general public who may be interested in purchasing a Morrisseau painting, can easily find his web site and his false assertions concerning approximately 1,000 Morrisseaus. What is of great concern is that Mr. Sinclair holds himself out as a protégé of Morrisseau on his web site. When denouncing "Season of Rut for Moose", Mr. Sinclair said on his web site "In the opinion of Norval Morrisseau protégé, Ritchie "Stardreamer" Sinclair this is an image of an INFERIOR, COUNTERFEIT NORVAL MORRISSEAU painting." (see Exhibit 34)<sup>14</sup>

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<sup>14</sup> Oddly, Mr. Sinclair goes on to describe Season of Rut for Moose as "counterfeit, fake, false, falsified, unauthorized, ungenuine [sic], unreal, forged, forgery, descending into the inferior regions of the earth, poor in quality, substandard, less important, valuable, or worthy, bottom-rung, less, lesser, lower, nether, peon, subordinate, under, underneath, bent, bogus, copied, crock, deceptive, delusive, delusory, faked, fishy, fraudulent, imitation, misleading, mock, pseudo, sham." What makes this description even more troubling is that he fails to tell the reader that at one time he believed it to be a genuine painting and that he recommended to Mr. Cott that he purchase the painting as a genuine Morrisseau painting. It is respectfully submitted that these are the ramblings of an ill person.

**(iv) Joseph McLeod**

97. Mr. McLeod took the stand to defend his appraisal, which was entered as Exhibit 3b. His catalogue of Morrisseau's art that was predominantly purchased from Potter auctions by James White is Exhibit 30. At page 56 of the catalogue Mr. McLeod details his extensive experience. Starting on page 6 of the catalogue, Mr. McLeod explains the life and times of Norval Morrisseau. It is worthwhile to read pages 6-9 to gain a concise history of the life of the artist. In a review of pages 54 and 55 of the catalogue, it is noted that Mr. McLeod's gallery, Maslak McLeod, has held seven exhibitions of Mr. Morrisseau's art.

98. Mr. McLeod has had extensive experience dealing with Morrisseau's art over the past 50 years. Not only is he the curator of his gallery but he has also curated for a Canadian Art Exhibition in Brazil on behalf of the Canadian Government, a Canadian Art Exhibit in Boiano, Italy, at the Gallery of Geronimo in Munich, Germany, he was retained to provide a curatorial examination of early Morrisseau art for the Heritage Foundation, he has curated for the ROM, has represented Sotheby's, has curated for the Governor General of Canada and has more than 30 publications.

99. It is Mr. McLeod's unequivocal and unshaken testimony that Wheel of Life is an authentic painting. In his testimony, he was able to describe the story in the painting from his extensive experience. Contrary to Mr. Robinson, Mr. McLeod testified that the pictorial design and elements are entirely consistent with those used by Norval Morrisseau. Mr. McLeod was speaking with fifty years of experience studying Morrisseau's art.

100. Mr. McLeod has been the subject of attack from Mr. Vadas, Mr. Robinson and Mr. Sinclair much in the same manner as Mr. White and the defendants in this proceeding. He has

been accused of selling forgeries of Morrisseau's art and, despite the baseless accusations, has maintained his integrity throughout.

101. Despite this, and despite that he is an elderly gentleman, Mr. Sinclair stalked him and criminally harassed him. It got to the point where Mr. Sinclair was banging on the window of his home in the middle of the night and accosting him on the street when he was walking with his daughter. Mr. McLeod contacted the police and Mr. Sinclair was charged criminally.

102. It is Mr. McLeod's view that Mr. Robinson and Mr. Vadas are trying to discredit the Potter sourced paintings for their own gain. Despite this, when Mr. Vadas started having lawyers attack him for selling allegedly fake Morrisseaus, despite that he knew them to be genuine, he simply stopped selling the Potter sourced paintings.

103. Mr. McLeod detailed his interactions with Mr. Morrisseau and explained that he was a difficult artist to deal with. He bought several paintings directly from Morrisseau but lost touch with him over the years and it culminated in Donald Robinson and Gabe Vadas taking control of both Morrisseau and his art.

104. He purchased several paintings from the Potter auctions. He had no doubt about their authenticity. Despite this, when he was asked to appraise some of the paintings, including Wheel of Life, he did not simply sign his name to the appraisal. He conducted his own independent review of the paintings. He had the signature on the back of some of the paintings analyzed by a handwriting expert, he investigated the provenance of the paintings and he spoke with members of the Morrisseau family. Mr. McLeod was satisfied, in his expert opinion, that the potter sourced paintings were genuine works of art by Norval Morrisseau.

105. He also investigated the provenance of the Potter sourced paintings and satisfied himself that the paintings came from the Voss family who collected them in the Kenora area.

106. Mr. McLeod stated that he has extensive experience cataloguing the history of the life and times of Norval Morrisseau. He testified that despite Ritchie Sinclair's assertions to the contrary, he was not aware of any publications that indicated Mr. Sinclair to be a protégé of Norval Morrisseau.

107. Mr. McLeod was aware that Mr. Sinclair had a showing of his own art in a gallery in his Yorkville neighbourhood. He testified that the exhibition only lasted a few days and was taken down. He did not know why it was taken down. However, Mr. Sinclair showed up unannounced at his gallery, was extremely aggressive and accused Mr. McLeod of having a hand in ruining his exhibition. Mr. McLeod testified that he had no hand in it at all. Despite this, the campaign of harassment referenced above began. Mr. Sinclair told Mr. McLeod that he would ruin the Morrisseau market. It was after that encounter that Mr. McLeod learned of Mr. Sinclair's web site that called approximately 1,000 paintings of Mr. Morrisseau's fake.

108. Mr. McLeod testified that in his experience it would have made no sense for someone (or a group of people as Mr. Sinclair posits) to create fake Morrisseau's in such large quantities and then eventually flood the market with them. He explained that in the late seventies, Mr. Morrisseau's art was not selling particularly well and it would have been far more logical to create fake paintings of many other artists before Norval Morrisseau.

109. There is absolutely no basis on the evidentiary record before this Honourable Court to reach a conclusion that Mr. McLeod is either an unreliable witness or that his appraisal of Wheel of Life was anything but accurate.

**(v) Marlowe Goring**

110. Mr. Goring's testimony centred on his encounter with Norval Morrisseau in or around 1982 when he personally witnessed the artist sign the back of his works of art in black acrylic



paint. In 1982, Norval came into the store and needed framing for approximately 12 – 15 pieces of his work, for a show to be held at Robertson's Art Gallery. He provided the pieces to Mr. Goring rolled up, so the store was also required to stretch them. The day before Morrisseau was to pick them up Mr. Goring was closing the store at 6 p.m. Mr. Goring testified that Morrisseau came in with a Chase & Sanborne coffee tin and a brush. Mr. Goring explained that he had a vivid memory of the incident because his parents bought Chase & Sanborne coffee and he was very familiar with the design and colours on the can.

111. Mr. Goring told the court that there was black acrylic paint in the can and Morrisseau told him that he had to sign and title the backs of the canvases before they were wrapped up to be transported to the gallery. Mr. Goring testified that he took the canvases and leaned them against the wall and Morrisseau followed behind him and signed, titled and dated each piece. Mr. Goring was shown Wheel of Life during his testimony and he confirmed that his description of the signature and other writings on the backs of the paintings that Morrisseau signed in his presence were strikingly similar to what is seen on the back of Wheel of Life.

112. The best that the plaintiff could do in cross-examination was point out that Mr. Goring had tax issues with the Canadian Revenue Agency and he was found guilty of failing to file proper income tax returns. There was no evidence that Mr. Goring had given false testimony on previous occasions nor was there any indication in any evidence put forward by the plaintiff that Mr. Goring was an unsavoury witness whose evidence had to be corroborated. Rather, the plaintiff's point was that if the plaintiff was dishonest with CRA, his evidence should not be trusted (although the plaintiff made no mention of his evidence at all in her closing submissions).

113. Mr. Goring also testified that he last saw Norval Morrisseau in 2006 when he was about to open a showing of Morrisseau's work at his gallery. He testified that Gabe Vadas came into

the gallery and looked around. He then told Mr. Goring that all of the paintings were fakes. He further explained that he could assist Mr. Goring in obtaining genuine works of Norval Morriseau.

114. Mr. Goring played dumb. He was aware of Mr. Vadas and his reputation within the Morriseau art community of gallery owners and that he was calling everyone's Morriseaus fakes. He did not believe Mr. Vadas.

115. The next day, Vadas showed up and asked Mr. Goring to come out to his van. Mr. Goring assumed that he was going to be shown some Morriseau paintings. Instead, the van door was opened and Norval Morriseau was sitting in the van in a wheel chair and was non-communicative. Despite the fact that Mr. Goring had spent a great deal of time with Mr. Morriseau, Mr. Goring testified that Mr. Morriseau did not recognize him at all. Mr. Goring offered to have Mr. Morriseau examine the paintings and identify fakes. Mr. Vadas never responded.

116. It is respectfully submitted that Mr. Goring was a truthful and straight forward witness who gave compelling evidence that is consistent with the evidence of Dr. Singla and Wolf Morriseau concerning the handwriting on the back of the painting Wheel of Life.

**(vi) Dr. Singla**

117. Dr. Singla provided a report dated August 24, 2010 (Exhibit 42). His Curriculum Vitae was put into evidence as Exhibit 41. Worldwide Forensic Services Inc. employs Dr. Singla and he has a Ph.D. in Forensic Science, a diploma in document examination and is a certified fraud examiner. Relevant to the issues in this case, Dr. Singla has extensive experience analyzing

handwriting, signatures, initials and hand printing. He has been conducting handwriting analysis for almost 30 years. The plaintiff conceded that he was qualified to give opinion evidence.

118. Dr. Singla had the opportunity to inspect the handwriting on Wheel of Life. He also looked at 10 other paintings by Norval Morrisseau that had signatures on the back in dry brush acrylic paint. In analyzing the signatures, Dr. Singla compared them to nine known signatures of Norval Morrisseau that were provided to him by Joseph McLeod on March 30, 2010.<sup>15</sup>

119. Dr. Singla uses an opinion scale that ranges from being unable to determine whether the signature is authentic to conclusive evidence that the signature is authentic. Just below “conclusive evidence” is the “highly probable” threshold. Dr. Singla states in his report that it is highly probable that Norval Morrisseau painted the signature on the back of Wheel of Life (and the 10 other paintings).

120. At page 7 of her submissions, the plaintiff characterizes Dr. Singla’s opinion as “deeply flawed”. This assertion is completely inaccurate. The plaintiff provides seven reasons why Dr. Singla’s opinion is deeply flawed. What follows is the allegation by the plaintiff and the response by the defendants to each of those assertions:

- (a) The plaintiff asserts that Dr. Singla did not conduct independent research beyond looking at a “tiny number (9) of handwriting samples” from Joseph McLeod who supposedly did not remember meeting him.” The problem with this criticism is that the plaintiff never challenged the authenticity of the known signatures in any substantive way and provided no expert evidence to draw the conclusion that nine signatures was an inappropriate number of samples.

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<sup>15</sup> In her submissions, the plaintiff appears to seek to cast doubt on the authenticity of the known signatures based on Mr. McLeod’s evidence that he was not involved in this case until recently. However, given the passage of more than two years from the date that Dr. Singla visited him to the time he testified at trial, and given that Dr. Singla was looking at paintings other than Wheel of Life in his analysis, there is nothing at all persuasive in the apparent argument of the plaintiff that the known signatures are not authentic.

- (b) The plaintiff submits that Dr. Singla was comparing “apples to oranges” because none of the comparison signatures used paint as the medium. This is not a factual argument. It is an argument that would require expert evidence. The only expert evidence was that of Dr. Singla. He testified that the handwriting samples he was provided enabled him to determine, in his expert opinion, that it was highly probable that Morrisseau signed the back of Wheel of Life. He then stated that if he had an actual black acrylic paint comparison signature, he would have been able to provide a definitive answer to the question. What this evidence shows is that Dr. Singla was thoughtful on the issue and that he was not going to rush to a conclusive decision despite that, as will be seen below, he was of the view that there is no doubt that the signature on Wheel of Life is that of Norval Morrisseau.
- (c) The plaintiff asserts that Dr. Singla failed to note obvious differences in the handwriting of Mr. Morrisseau in the known signatures versus the signature on Wheel of Life. Again, the plaintiff’s assertion that these are “obvious” differences asserts as a fact that which is the subject of an expert assessment. It is respectfully submitted that it is entirely unsafe for the this Honourable Court to accept a submission from the plaintiff based on her counsel’s assertion that expert evidence is improper. The plaintiff was at liberty to have her own handwriting expert review the signature of Norval Morrisseau and she chose not to do so.
- (d) The plaintiff asserts that Dr. Singla’s testimony - that it is very difficult to forge a signature using paint since it would result in an identifiable interruption in the flow - is “clearly illogical”. It is not clear why the plaintiff would say that this is clearly illogical. Dr. Singla has thirty years of experience assessing handwriting

samples and analyzing apparent forgeries. His opinion is based on his wealth of knowledge in determining the character traits of a forger and what an expert will look for when determining if a signature is a forgery. Dr. Singla testified that he had previous experience analyzing a painted signature. He also has extensive experience noting how a forger will forge a signature. The plaintiff and her counsel have no experience at all in conducting such an assessment and yet they ask this Honourable Court to reject the testimony of an expert witness based on their own conjecture.

- (e) The plaintiff questions the reliability of the evidence of Dr. Singla based on his conclusion in cross-examination that there was no possibility that the painting was a forgery despite that his report was more guarded. It is true that Dr. Singla concluded in his report that it was "highly probable" that the signature on Wheel of Life was that of Norval Morrisseau and that he was more unequivocal in his testimony on cross. Dr. Singla was being pressed in cross-examination and his answer was referring to a report that he completed which referenced signatures in black paint by Morrisseau that had been witnessed, allowing Dr. Singla to be conclusive. The subsequent report had not been served on the defendants when the trial had started. The defendants are not asking this court to make a finding based on a report that was not placed into evidence and are content that the opinion of Dr. Singla is confined to the first report and his conclusion that it was "highly probable" that Norval Morrisseau signed the back of Wheel of Life. However, the defendants raise this point to explain the minor inconsistency in the evidence of Dr. Singla and why he was so unequivocal when attacked in cross-

examination, but more importantly, to protect Dr. Singla's reputation as an expert witness given that the report did was not in evidence through no fault on his part.

- (f) The plaintiff asserts that Dr. Singla suffers from "confirmation bias" – that he does not leave room for the possibility that the psychology of a forger is anything other than what Dr. Singla believes to be the case. This is an overstatement of the evidence of Dr. Singla. But more important is the fact that Dr. Singla does leave room in his report for the possibility that the signature is not that of Mr. Morrisseau. If he suffered from "confirmation bias" – whatever that may be, why would he not assert that the signature on the back of Wheel of Life is without any doubt that of Norval Morrisseau? It is an oversimplification of Dr. Singla's thoughtful evidence and an insult to Dr. Singla's sworn acknowledgment of his obligations to this Honourable Court.
- (g) The plaintiff attacks the credibility of Dr. Singla, suggesting that he has lied under oath – and thus committed the criminal offence of perjury – on the basis of two court decisions that are entirely unclear. To reach such a conclusion based on nothing more than decisions of courts that are not evidence is very dangerous. There is no other expert opinion to which one can compare Dr. Singla's evidence. Because of this, the plaintiff is left with nothing more than an attack on Dr. Singla's credibility. But she has done so without any evidence to support her attack. It is respectfully submitted that this Honourable Court should be loathed to reject this thoughtful report and careful examination of Mr. Morrisseau's signatures based on conjecture and inconclusive dicta in court decisions.

121. It is respectfully submitted that Dr. Singla's evidence is unbiased and based on an expert assessment of known signatures of Norval Morrisseau that were compared in a balanced way by an experts whose credentials were not questioned by the plaintiff at all.

122. Most important is the fact that the plaintiff owns a painting by Morrisseau that, in addition to two appraisals, comes with an expert opinion by a certified fraud examiner that the signature on the back of the painting is that of the artist. The plaintiff will also be provided with a more definitive report that moves the assessment from "highly probable" to "conclusive".

**(vii) James White**

123. Mr. White was the final witness to testify at the trial on behalf of the plaintiff. It is respectfully submitted that he was a straightforward and honest witness who expressed his genuine feelings about the manner in which he has been treated by Donald Robinson and Ritchie Sinclair.

124. Mr. White purchased Wheel of Life from Potter auctions. He does not profess to be an expert in the authentication of art, let alone a painting by Norval Morrisseau. He accordingly sought to obtain appraisals, as is customary, on the works of art he purchased at Potter auctions. For Wheel of Life, he testified that he had Paul Bremner and Joseph McLeod provide their expert appraisals and that those appraisals were done for the benefit of a prospective purchaser. Through his research, he knew that Joseph McLeod and Paul Bremner were very knowledgeable on the subject of authentication of works of art by Norval Morrisseau.

125. He also testified that he purchased as many as 90 Morrisseau paintings through Potter auctions. It is important to note that when Mr. White was purchasing Morrisseaus from Potter auctions, other bidders were telling him that Don Robinson was purchasing paintings as well and

that he had told them that they were authentic paintings. With this knowledge at hand, and once he had purchased a number of Morrisseaus, Mr. White brought 23 of them to Donald Robinson and asked him to provide appraisals sometime in 2001. Mr. Robinson told Mr. White that they were great Morrisseaus and that he hoped that Mr. White had adequate insurance. Mr. Robinson informed him that it would take about one week for the appraisals to be completed. Mr. White called Mr. Robinson a week later and he was told it would take another week. Unbeknownst to Mr. White, Mr. Robinson was off on a frolic of his own and, without any permission from Mr. White, allegedly sent photographs of the paintings to Norval Morrisseau for his review. After a second week had passed, Mr. Robinson called Mr. White and told him that all 23 paintings were fakes and that he would not be offering an appraisal on them and that Mr. White could "read all about it" in the National Post the next day.

126. True to his word, Mr. Robinson gave an exclusive interview to the National Post that appeared in the National Post the next day. Morrisseau is not quoted in the article. Only Mr. Robinson is quoted. Mr. Robinson provided at least one photograph of Mr. White's paintings, again, without any permission to do so, and started the ball rolling to destroy the market for Morrisseau paintings that did not come from either himself or Gabe Vadas. As stated earlier, the painting that appeared in the National Post, that came from Mr. White and was identified as a fake in the newspaper, was a painting that Mr. Morrisseau did not describe as a fake in his statutory declaration related to the McLeod catalogue (Exhibit 30, page 32).

127. Mr. White was obviously upset (imagine relying on a renowned expert on Morrisseau's art when you buy a painting<sup>16</sup>, only to have that same expert label your paintings as fakes) and demanded that Mr. Robinson provide to him the proof from Morrisseau himself. To that end,

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<sup>16</sup> i.e., Mr. Robinson was purchasing Morrisseau's from Potter auctions as well.



Mr. White hired a lawyer to make the demand. Mr. Robinson refused to provide the evidence and he personally never stated that the 23 paintings were fake. In fact, Mr. Robinson never went on the record regarding any alleged fake paintings until after Mr. Morrisseau had past away. This left Mr. White in an impossible position. He has now spent the last 11 years defending his paintings against an onslaught by this small group of people (Mr. Robinson, Mr. Vadas and Mr. Sinclair). Mr. White testified that he took numerous steps to talk to people who had direct knowledge of Morrisseau and his painting.

128. He talked with Norval's son, Christian Morrisseau and Wolf Morrisseau. He learned from their first hand accounts how Norval painted, how much he painted and the history of how he signed the backs of his paintings. He spoke to Dieter and David Voss who had direct knowledge of where the paintings sold at the Potter auctions had come from. He, together with Joseph McLeod, hired a handwriting expert named Brian Lindblom who analyzed the signatures and determined their authenticity. He spoke at length with Joe McLeod who was a wealth of information on Norval Morrisseau and his art.

129. Mr. White was of the view that as far as provenance goes, the Potter auction paintings had provenance that was just a step below receiving the painting directly from the artist.

130. Mr. White testified that at no time did Norval Morrisseau ever ask to see any of the paintings. It was his view that Gabe Vadas and Donald Robinson simply told him what paintings were fakes and he signed where he was told to sign. It is respectfully submitted that while the lawyer who took his oath and the doctor who said Norval Morrisseau was of sound mind, may have believed that he was capable of swearing an oath, they could not possible know what forms of manipulation were taking place in the background to have him state under oath that 80 paintings were fakes having not seen the actual paintings when he swore to their lack of

authenticity.<sup>17</sup> Nor could they know whether Mr. Morrisseau had the ability to remember over \$10,000 paintings.

131. Mr. White recounted that he went with his wife and Christian Morrisseau to visit Norval Morrisseau in a residence for the elderly in British Columbia in 2006. When they arrived, Gabe Vadas had left instructions that no one was to visit Mr. Morrisseau. It was simply incredible to Mr. White that Morrisseau's own son could be kept away from his father. Eventually, Mr. Morrisseau's caretakers permitted Christian Morrisseau to visit his father. Mrs. White took a picture of Norval with his son that shows Mr. Morrisseau in a serious state of decline. This evidence paints a very strong picture of the lengths to which Gabe Vadas would go to control Morrisseau. He isolated him from his own family and indeed everyone else who was seeking the truth.

132. This assertion is further supported by Mr. White's testimony concerning what happened when Morrisseau passed away in 2007. It was Mr. White who informed the Morrisseau children and his siblings that he had died. Gabe Vadas and Donald Robinson obviously saw no reason to do so. Mr. White and others paid for the family to come in to attend the funeral. Mr. White arrived at the funeral home with the family where they learned that Mr. Vadas and Mr. Robinson intended to cremate Mr. Morrisseau. This was against Mr. Morrisseau's traditions and customs. The family intervened and took Mr. Morrisseau to be buried properly.

133. Mr. White researched the three statutory declarations and came to the conclusion that they were totally unreliable. He pointed to the following significant inconsistencies:

- (a) In the March 14, 2003 affidavit, Morrisseau states that the painting "Interdependents" is a fake that was not produced by him. However, it is the

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<sup>17</sup> This number is derived at by adding up the paintings listed in the three statutory declarations in evidence that are dated March 14, 2003, April 24, 2003 and September 22, 2004.

exact same painting that is located at page 43 of the McLeod catalogue. In Morrisseau's April 24, 2003 affidavit (a mere six weeks later) he fails to call that painting a fake.

- (b) As stated earlier in these submissions, the painting that was printed in the National Post article is presumably called a fake by Morrisseau when he deals directly with Morrisseau to have him review photographs of the 23 paintings that Mr. White brought to Mr. Robinson to have appraised, and that painting is not listed as a fake in the April 24, 2003 affidavit that Morrisseau swore presumably after he carefully went through the McLeod catalogue.
- (c) 34 of the paintings that were located in the McLeod Catalogue came from Mr. White and were all signed in black acrylic paint on the back. Morrisseau only indicates that 24 of them are fakes. The other ten all came from Potter auctions.
- (d) Morrisseau swore in his April 24, 2003 affidavit that "Spiritual Battle for Life" is a fake painting. That painting was featured on the mass head of the Globe and Mail years earlier as part of an interview with Mr. Morrisseau. The plaintiff produced no evidence that Mr. Morrisseau ever indicated that painting to be fake when it appeared in the Globe and Mail.
- (e) In Morrisseau's September 22, 2003 affidavit, he states that "Spirit Beings" is a fake painting. That painting was also located at page 16 in the McLeod catalogue. In Mr. Morrisseau's April 24, 2003 affidavit, he does not listed "Spirit Beings" as a fake painting. That painting is signed in black acrylic painted on the back.
- (f) At page 33 of the McLeod catalogue, there is a painting entitled "Warrior Thunderbird". Mr. White purchased it from Potter auctions and it is signed on the

back in black acrylic paint. Mr. Morrisseau does not identify that painting as a fake in any of his affidavits.

(g) The painting "Heavenly Twins" was brought to Mr. Robinson by Mr. White to have appraised as one of the 23 paintings. Morrisseau calls it a fake in his September 22, 2004 affidavit when reviewing the paintings located at Artworld. It is also listed in the McLeod catalogue at page 42. In Mr. Morrisseau's affidavit dated April 24, 2003 he does not list "Heavenly Twins" as a fake painting. That painting came from Potter Auctions and is signed in black acrylic paint on the back.

134. Mr. White had Dr. Singla look at 25-30 paintings that were all sourced from Potter auctions and all had Morrisseau's signature on the back in black acrylic paint. Dr. Singla advised him that it was "highly probable" that all of the signatures were authentic signatures of Norval Morrisseau.

135. Mr. White then gave his first hand account of an incident where Ritchie Sinclair assisted Kevin Cott in purchasing Season of Rut for Moose. His evidence was entirely consistent with that of Mr. Cott and, quite frankly, Mr. Sinclair did not disagree with the evidence.

136. Mr. White also testified that Mr. Sinclair posted on his web site a purported fake painting of a Morrisseau work of art and called a fake or imitation sold by James White. Mr. White testified that the painting was one he had never seen before and that he certainly had never possessed or sold to anyone. And yet, Mr. Sinclair had no difficulty calling Mr. White a criminal without any evidence to support it. Mr. White testified that it is his view that Mr. Sinclair has done more than anyone to ruin the Morrisseau market in secondary sourced paintings. He is of the view that Mr. Sinclair has victimized him, Donna Child, Artworld and Ms. Hatfield by

making false assertions that he is a protégé of Norval Morrisseau and false claims that genuine Morrisseau paintings are fake. It is respectfully submitted that it is no wonder so many people took legal action against Mr. Sinclair.

#### **Part IV - Law**

137. At page 17 of the plaintiff's submissions, she lists 9 legal issues for the court to consider when determining whether she should prevail in this lawsuit. First, the plaintiff states that the court must determine whether the defendants made one or more fraudulent misrepresentations to her regarding the authenticity of Wheel of Life.

138. The defendants submit that there is not a scintilla of evidence before the court that establishes fraud on their part. Ms. Child was crystal clear in her evidence that she did not see the September 22, 2004 affidavit of Norval Morrisseau prior to selling Wheel of Life to the plaintiff and only saw that affidavit much later. The fact that Ms. Vadas called her to say that Norval Morrisseau was saying paintings in Artworld were not by his hand is highly speculative and inclusive evidence. How come Mr. Morrisseau did not get on the phone with her? If he could tell Ms. Vadas that the paintings were fakes, why is it that he could not tell Ms. Child? The story makes no sense. Further, why is it that the affidavit was sworn on September 22, 2004 but Ms. Vadas did not mention it in her phone call? Why was it not provided to Artworld when it was sworn? Where is the evidence that Artworld received that affidavit before Wheel of Life was sold to the plaintiff? Why is it that Donald Robinson had legal letters addressed to Artworld before Artworld did? It seems abundantly clear that Mr. Robinson and Mr. Vadas waited in the weeds and sprung this supposed affidavit by the man they controlled after the painting was purchased. It seems equally clear that Ms. Hatfield's real claim is against Donald Robinson and

Gabe Vadas and not Artworld and Ms. Child who sold the painting to Ms. Hatfield with two appraisals by renowned experts on Morrisseau's art.

139. Fraud is simply defined as intentional deception made for personal gain. We need not look beyond that definition. Where is the intention to defraud in the face of two appraisals? Even if the plaintiff is correct, and she is not, that Wheel of Life is a fake, there is no evidence of an intention to deceive the plaintiff and that aspect of the plaintiff's claim should be dismissed.

140. The plaintiff then states that the defendants violated Section 15 of the *Sale of Goods Act*, R.S.O. 1990, c. S.1. That provision reads as follows:

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 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 will be 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 particular purpose.
2. Where goods are bought by description from a seller who deals in goods of that description (whether the seller is the manufacturer or not), there is an implied condition that the goods will be of merchantable quality, but if the buyer has examined the goods, there is no implied condition as regards defects that such examination ought to have revealed.
3. An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.
4. An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith. R.S.O. 1990, c. S.1, s. 15.

141. Realistically, the issue surrounding the plaintiff's claim under the *Sale of Goods Act* boils down to whether the plaintiff received a genuine work of art by Norval Morrisseau. If this Honourable Court rules that Norval Morrisseau did not paint *Wheel of Life* or that it cannot be stated on a balance of probabilities that he painted *Wheel of Life*, then the plaintiff should prevail.

142. It is respectfully submitted that in the face of the evidence of Dr. Singla that it is highly probable the signature on the back of the painting is that of Norval Morrisseau, the evidence of Wolf Morrisseau that his brother did sign the backs of paintings in the same manner as *Wheel of Life* is signed, the evidence of Wolf Morrisseau and Marlowe Goring that they witnessed Norval Morrisseau sign his name on the backs of paintings in the same manner as *Wheel of Life* and the blanket assertion by Donald Robinson that Norval Morrisseau never signed the backs of his paintings in this manner, the evidence is nothing short of overwhelming that *Wheel of Life* was painted by Norval Morrisseau. If Mr. Robinson was really of the opinion that Mr. Morrisseau never signed the back of his paintings in black acrylic paint, it is a mystery why (i) he would purchase paintings with those signatures (ii) only come to the conclusion that they were fakes years later and (iii) despite having the opportunity, never have Mr. Morrisseau look at those paintings to address their authenticity.

143. The plaintiff wished to purchase a painting of Norval Morrisseau. She had every right to assume that the defendants were selling her a genuine painting. If they did not, she is entitled to damages. She was understandably upset and had every right to question the authenticity of the painting when she saw the September 22, 2004 statutory declaration by Mr. Morrisseau that indicated *Wheel of Life* was not painted by him.

144. Ms. Hatfield sat in court for every minute of the trial. By the end of the trial, she should not have any doubt that the hand of Norval Morrisseau created the painting Wheel of Life. There was a plethora of evidence to support that assertion.

145. It is sad that Ritchie Sinclair manipulated the plaintiff. He deceived her, he lied to her and he did so for his personal motives and agenda. But this is not the fault of the defendants. Why would the plaintiff assume that an independent forensic examiner would provide a false report as to the authenticity of the painting? If the defendants were in the business of defrauding people and selling fake paintings, why would they spend far more than the cost of the painting to prove the plaintiff wrong? They run a business. It would not make economical sense for them to do so.

146. The claim related to the tort of deceit is untenable. The defendants do not take issue with the case law referred to by the plaintiff. First, the defendants made no false statement to the plaintiff. They provided her a painting with two appraisals. If the plaintiff is correct that Wheel of Life is a forgery, there is no evidence that the defendants knew this to be the case. They made no statement that could be construed as false. Taken at its highest, the plaintiff's case is that in the face of Ms. Vadas's statement that Artworld was selling fakes (and Ms. Vadas did not say Wheel of life in particular was fake), Artworld should have told Ms. Hatfield this fact. The problem is that this would mean that any gallery owner who receives second hand information from a third party questioning the authenticity of the art they are selling, in a telephone call no less, has an obligation to inform purchasers that there is a question as to the authenticity of the art. It is respectfully submitted that this is an overwhelming obligation to place on a gallery.

147. Where is the evidence from Mr. Robinson that he went back and told everyone to whom he sold the Potter sourced paintings that they were fakes and they should come in and get their



money back? He makes no mention of this in his report. The inference is there that he kept their money. And yet these defendants are suppose to tell their clients about unsubstantiated allegations that come second hand from third parties. The plaintiff's theory is unsustainable.

148. For the same reasons, the defendants submit that the plaintiff's claim for negligent misrepresentation must fail as the first criteria; identical to the criteria related to the tort of deceit, are wholly absent. There is no proof of a false statement.

149. Did the defendants make an innocent misrepresentation to the plaintiff? According to the court in *Kingu v. Walmar Venutres Ltd.* (see plaintiff's authorities) and in the submissions of the plaintiff at page 26 of her submissions, in the absence of a positive misrepresentation, the plaintiff must be a fiduciary to avail herself of the remedies available to her under this cause of action. The plaintiff states in her submissions that the defendants created a fiduciary duty by reason of the representations on their web site that one can perform due diligence by dealing with Artworld. She goes on to say that these "representations create a strong, even fiduciary, duty of care in relation to the plaintiff."

150. With the greatest of respect to the plaintiff, while there is no doubt that the defendants owed to her a duty of care, and they discharged that duty, there was no fiduciary relationship.

According to the court in *Fedirchuk v. Levitz*, [1998] O.J. No. 831 (Ont Court Gen Div.):

A fiduciary relationship exists where one party agrees to act on behalf of, or in the best interest of another person and, as such, is in a position to affect the interests of that other person in a legal or practical sense. As such, fiduciary relationships are marked by vulnerability in that the fiduciary can abuse the power or discretion given him or her to the detriment of the beneficiary.

151. The defendants were not in a fiduciary relationship with the plaintiff because they were relying on others to provide to them appraisals as to the authenticity of the painting and the plaintiff knew this to be the case when she purchased *Wheel of Life*. The painting came to

Artworld with appraisals from renowned experts. The defendants were in no better of a position to assess the authenticity of the plaintiff than the plaintiff. The plaintiff could have talked to Paul Bremner and Joseph McLeod and chose not to so. Imposing a fiduciary duty is very different than imposing a duty of care. It is conceded that there was a duty of care owed to the plaintiff. To impose a fiduciary duty on a gallery is unrealistic. Such an imposition creates obligations on the gallery that are simply inequitable. It is respectfully submitted that the court should not lose sight of the fact that Artworld, and Ms. Child for that matter were as vulnerable to the appraisals as the plaintiff. It was entirely reasonable for the defendants to rely on the appraisals; art dealers do it every day. Absent the notoriety of a work of art, like the Mona Lisa, how is it that an art gallery can attest to the authenticity of the painting if they are not permitted to rely on the expert opinion provided to them in an appraisal, let alone two appraisals?

152. With respect to the plaintiff's submission in the alternative, that there is a mistake in the understanding of the parties (a far cry from alleging fraud), the plaintiff maintains that both she and the defendants were mistaken as to the authenticity of the painting. There is no common mistake. At this stage, the plaintiff should be satisfied that the painting is a genuine work of art by the artist.

153. It would appear that the most logical argument that the plaintiff could make is that there is a cloud on title because of the fact that the artist has said that he did not paint the painting and the artist has died so that he cannot retract that statement. It is for that very reason that the defendants have gone to the lengths they have, at considerable expense, to ensure that the plaintiff has overwhelming evidence at her disposal to ensure that she can, if desired, sell the painting as an authentic work of art of the artist. If this Honourable Court rules that the evidence is overwhelming that Wheel of life was painted by Norval Morrisseau and that it is highly

probable that the signature on the back of the painting is that of Norval Morrisseau, the plaintiff will have completely solid documentation that Wheel of Life is authentic. If she is not satisfied with that level of proof, Artworld will refund her money with interest.

154. Finally, the allegation that Donna Child is personally liable to the plaintiff is patently unreasonable and unsupported at law. Donna Child's evidence is that every representation she made was on behalf of Artworld. The plaintiff testified at trial that she understood that she was dealing with Artworld and not Donna Child. There is no evidence to support the very serious allegations of fraud and deceit levelled at Ms. Child. How could the court possibly find personal liability in the face of the conduct of the defendants in going to significant expense to prove the painting owned by the plaintiff is authentic?

#### **Part V - Damages**

155. Whether the plaintiff wins or loses, she is in a unique position where she can keep the painting or get her money back. The only appropriate remedy if the plaintiff is successful, is to refund her what she paid for the painting along with interest from the date of the claim forward.

156. Given that the defendants hold an honest belief that the painting is authentic, were in possession of two appraisals that the painting was authentic at the time they sold the painting to the plaintiff and retained an independent forensic examiner who told them that the painting was authentic (regardless of whether the court concludes that to be the case) and that they researched the provenance of the painting to assure themselves that the painting is authentic, it is respectfully submitted that the only remedy available to the plaintiff is rescission of the contract.

157. Any claim for loss of investment (particularly where there was no evidence of this adduced at trial) does not correlate to the harm done to the plaintiff by an innocent party. The

defendants did not knowingly sell a fake painting to the plaintiff and it is absurd for the plaintiff to allege that they did.

158. For the same reasons, the plaintiff's claim to punitive damages should be dismissed. Punitive damages are designed to punish conduct. The defendants were very clear that they could not simply provide the plaintiff her money back in the face of allegations of fraud and forgery. The reputation of the gallery is at stake. This has been an extremely unfortunate situation for all of the parties. The defendants take no pleasure in having to defend this action but they were left with no choice.

159. The plaintiff takes the position that the purpose of this lawsuit was to indirectly attack Ritchie Sinclair instead of pursuing the litigation against him. That allegation is completely false. The plaintiff called Ritchie Sinclair as a witness in this action, not the defendants. The plaintiff held Ritchie Sinclair out as a protégé of Norval Morrisseau and he is not. He testified as to the alleged forgery ring and the defendants had a right and obligation to attack his assertions. It is respectfully submitted that his testimony was completely discredited. And it is true that the defendants want Ritchie Sinclair discredited. He should be discredited. What he has done to the plaintiff and the defendants and the legacy of Norval Morrisseau, for that matter, is despicable. If any one person involved in this litigation should be censured, it is Ritchie Sinclair. He is a proven liar under oath. He is untrustworthy and he did a great deal to put the plaintiff in the position she is in today.

160. It is respectfully submitted that Donald Robinson was exposed as having his own agenda and that he was not an independent expert at all. Should this court rule that Wheel of Life is a forgery, rest assured that Mr. Robinson will use that ruling to sell his paintings at a higher value. He has everything to gain by a positive ruling for the plaintiff.

161. The only reason the painting Wheel of Life is being subjected to such scrutiny rests at the feet of Donald Robinson, Gabe Vadas and Ritchie Sinclair. The plaintiff did not mention, nor did she produce one other witness, either directly or indirectly, who challenges the authenticity of Wheel of Life or any of the Potter sourced paintings. It is just the three of them. And they have led the plaintiff down the garden path. Gabe Vadas did not even appear to give testimony, either viva voce or by affidavit. Where are the independent experts who say that the Potter sourced paintings are forgeries? There was not even a hint that they exist in the evidence of the plaintiff. That is because they do not exist. The story that the Potter sourced paintings are forgeries is the invention of this small group of men who have done so for selfish reasons.

162. The plaintiff also states that the conduct of the defendants, including their previous counsel, in the defence of this action reached a level of antagonism and obstruction to warrant a punitive damage award. Present counsel for the defendants is at a loss to understand that submission. If the court felt that any conduct at any particular time in the proceedings warranted sanctions, those sanctions would have been imposed. How that conduct could amount to an independent actionable wrong that would entitled the plaintiff to a punitive damage award is a mystery. One would assume that conduct so egregious would have been elucidated in the plaintiff's submissions but no particulars are given at all. There is no merit at all to the allegation and it is scandalous.

#### **Part VI - Costs**

163. The defendant's first submission is that given the allegations of the plaintiff in her submissions, the more appropriate way to deal with costs is through specific written submissions that follow the findings of the court. It is respectfully submitted that this would be the most

expedient way to properly address the issue, as there are so many possible outcomes that depend on the court's ruling on the evidence.

164. Alternatively, the defendants are at a loss to understand why it is that their conduct is considered so egregious by plaintiff's counsel. It bears repeating that the defendant's did not create this situation. The Potter sourced paintings were legitimate works of art by Norval Morrisseau until Donald Robinson had a revelation years after he bought them himself and decided that they were all fakes and Ritchie Sinclair decided to let the world know that as Norval Morrisseau's protégé, he knew better than renowned experts and there were in fact Morrisseau fakes at every turn – in virtually every gallery in Canada, in countless museums and the Smithsonian. Then the plaintiff shows up at the door of Artworld and, using the ammunition of Ritchie Sinclair and Donald Robinsons musings, demands her money back for a painting the defendants knew was authentic. The game had to stop somewhere. Mr. White had already been subjected to Donald Robinson's accusations and media interviews, Ritchie Sinclair had already published his ridiculous and unsubstantiated accusations on his web site and Gabe Vadas was throwing around affidavits by a gravely ill artist who he was shielding from the world.

165. Artworld is simply trying to run a business. The plaintiff aligned herself with these people. If this honourable court determines that the plaintiff should prevail in this lawsuit, she is entitled to some measure of costs, but certainly not the amounts her counsel has put forth. Those amounts are outrageous and, despite the uniqueness of this case, it is still a small claims court case.

166. Section 29 of the *Courts of Justice Act* reads as follows:

29. An award of costs in the Small Claims Court, other than disbursements, shall not exceed 15 per cent of the amount claimed or the value of the property sought to be recovered unless the court considers it necessary in the interests of justice to penalize a party or a

party's representative for unreasonable behaviour in the proceeding.  
R.S.O. 1990, c. C.43, s. 29; 2006, c. 21, Sched. C, s. 105 (2)

167. First, there is no question that the winning party should receive their costs of this action. Given that neither the plaintiff nor defendants caused this situation, the costs should not exceed 15 percent of the amount claimed or the value of the property.

168. The defendants called seven witnesses in this case. They put forward their evidence in a straightforward manner. The cross-examinations by plaintiff's counsel were frequently longer than the evidence in chief. No party unnecessarily protracted the litigation though. The defendants put forward cogent clear testimony by necessary witnesses – win or lose. While the plaintiff called witnesses who, it is respectfully submitted, caused the problem in the first place, for the purposes of costs, the defendants are not taking the position that the plaintiff unduly lengthened the trial proceedings.

169. Therefore, if the plaintiff is victorious, the value of her claim is \$10,350. She should therefore be entitled to approximately \$1,500 in costs.

170. If the defendants prevail, it is arguable that they should be entitled to an assessment of their costs based on a value of the painting at \$20,000 to \$25,000 as that is the value given to the painting by Don Robinson and Joe McLeod on the assumption it is authentic. However, the defendants only seek their costs based on the purchase price of the painting. The defendants would therefore seek costs in the sum of \$1,500.

171. In other words, regardless who prevails, the cost amount should be \$1,500.

## **Part VII – Orders Sought and Conclusion**


172. Regardless of the outcome of this unfortunate trial, neither party will come out a winner. It is respectfully submitted that the plaintiff's action should be dismissed and the defendants

respectfully ask this court to find that the painting Wheel of Life is authentic work of art by Norval Morrisseau and that it is highly probable that the signature on the back of Wheel of Life is that of Norval Morrisseau.

173. The defendant and their counsel would also like to take this opportunity to thank this Honourable Court for its patience and commitment to a very difficult case where a lot is at stake for both parties and to commend plaintiff's counsel for his professionalism throughout.

All of Which is Respectfully Submitted,

Date: July 30, 2012



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