

SUPERIOR COURT OF JUSTICE
SMALL CLAIMS COURT

B E T W E E N:

OTAVNIK, JOSEPH

Plaintiff

v.

SINCLAIR, RITCHIE

Defendant

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE D. GODFREY
On March 18, 2010, at TORONTO, Ontario

APPEARANCES:

J. Otavnik
R. Sinclair

On His Own Behalf
On His Own Behalf

(i)

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March 18, 2010

MR. OTAVNIK: I am the plaintiff. I am ready to proceed, Your Honour.

THE COURT: How many witnesses for you today, sir?

MR. OTAVNIK: Um....

THE COURT: Other than yourself.

MR. OTAVNIK: Uh, two.

THE COURT: Two in addition to yourself?

MR. OTAVNIK: Yes. Yes, sir.

THE COURT: All right. Mr. Sinclair?

MR. SINCLAIR: Your Honour.

THE COURT: Are you also representing Kinsman Robinson Galleries?

MR. SINCLAIR: Uh, no. Kinsman Robinson Galleries settled with the plaintiff.

THE COURT: Oh, is that correct? They are out of the action?

MR. OTAVNIK: Kinsman Robinson, well, they're testifying on behalf of Mr. Sinclair.

THE COURT: Okay, but they are not parties to the action any more?

MR. OTAVNIK: No. No, not any, no sir.

THE COURT: Were they formally removed?

MR. OTAVNIK: Yes, sir, they were. It's a rather complicated situation, sir.

THE COURT: And how many witnesses for you, sir?

MR. SINCLAIR: I'd like to tender my expert witness, Mr. Robinson, and beyond that,

there are other people that potentially might have to be witnesses, depending on, who the plaintiff brings forward, Your Honour. Sorry.

MR. OTAVNIK: I'm ready to call my first witness.

THE COURT: Any need to exclude any of the witnesses? Are you concerned about any of the other witnesses hearing the evidence of, of yourself or....

MR. OTAVNIK: No, sir.

MR. SINCLAIR: No, sir.

THE COURT: All right.

MR. OTAVNIK: Just a moment.

THE COURT: Who is going to give evidence first, Mr. Otavnik?

MR. OTAVNIK: Donna Shea, please.

THE COURT: All right, ma'am, do you want to come forward?

DONNA SHEA - SWORN

EXAMINATION IN-CHIEF BY MR. OTAVNIK:

CLERK OF THE COURT: Please keep your voice up for the microphone. It doesn't amplify your voice.

A. Okay.

THE COURT: Go ahead, sir.

MR. OTAVNIK: Q. Um, what is your current occupation?

A. I am a registered nurse.

Q. And what was your title and position at Kahn Auctions, later to be known as Randy Potter Auctions?

A. I was vice president.

Q. And how did you help before the auction started?

A. I would help register people, I would speak to the customers, I would, if there was an item that somebody wanted to see, I would take them to see an item, um, answer questions. Sometimes, prior to, we had pre-lotting and cataloguing, so I would catalogue the items prior to the auction.

Q. And during the auction?

A. I would look for bids, I would, if there was any disputes or questions, I would answer those questions and make sure the auction moved along...

Q. And, and after...

A. ...quickly.

Q. ...the auction?

A. I would, um, help with the cashing out. During the time there was a number of people that would want items to come up, particularly with the Morrisseaus, so I would ask if they wanted to be called if we got more...

Q. The, the point...

A. ...in.

Q. ...is, you were actively involved in the business, you knew who the clients and customers were?

A. Yes, I did.

Q. Okay. I am now going to ask you to look at exhibit ten....

THE COURT: To what?

MR. OTAVNIK: To the Plaintiff's Claim.

THE COURT: Is it marked? Oh, they are marked. Okay.

MR. OTAVNIK: Q. Yes, sir. Are those

receipts from your auction house?

A. Yes, they are.

Q. Are you familiar with the purchaser, Don Robinson?

A. Yes. I met him at the, uh, several of our auctions.

Q. Did he and Dave and buy the 28 paintings that the receipts show, and as you go, sequentially by pages, for example, the first page you see how many purchases?

A. Five.

Q. And the second page, how many purchases?

A. Six.

Q. And if you go forward, but the point is, these are the, these are the receipts from your auction house?

A. Yes, they are.

Q. And these are the purchaser, Don Robinson?

A. Yes.

Q. And do you see Don Robinson in the Court today?

A. Yes, I do.

Q. Thank you. Now, so did he, now, those are the purchase, that, ones that he bought, did he ever bid on any, any more of them?

A. Numerous others.

Q. So....

A. Probably about, at least 25 to 50 more.

Q. Okay. Now, did he ever return any of them to you for any reason?

A. The Morrisseaus? No.

Q. Okay. Now, did Don Robinson ever make any public statements in any newspaper with respect to Kahn Auctions?

A. Yes. Um, in the National Post he, he did do an article with regards to the paintings being false. And he, in this article, he did state that there was an RC, he had, RCMP investigations into the Morrisseaus up in Thunder Bay.

Q. M'hm.

A. Um, we investigated that. We did call the RCMP up in Thunder Bay...

Q. M'hm.

A. ...to find out if there were any investigations, and they claimed that they heard nothing about it and they knew nothing about it, and there were no investigations at the time. Um, and basically....

Q. So, so he bought 28 Morrisseaus, paid approximately \$53,000.00, went to the newspaper, called them fake, but never asked for his money back?

A. No.

Q. Now, he did return one painting to Kahn Auctions, correct?

A. Yes.

Q. And that was for, for a, for the amount of approximately how much?

A. Uh, around \$200.00, I believe.

Q. Okay. Now, how many paintings by Norval Morrisseau did Kahn Auction, approximately, sell?

A. Uh, over 1,000.

Q. Okay. Okay. And, but the painting which was the subject of, uh - how many different clients did you have?

A. For the Morrisseaus we had approximately 200.

Q. And, so these are many clients, many diverse clients from all, from all backgrounds, right?

A. That they were.

Q. I mean, some were museums, some were private collectors?

A. Yes.

Q. So it wasn't concentrated in a few people, they were quite diverse...

A. They...

Q. Okay.

A. ...were.

Q. Okay. I want you to go to exhibit nine. That is a copy of the receipt for this painting, correct?

A. That is.

Q. And....

THE COURT: For what painting?

MR. OTAVNIK: The painting that's subject of the suit, Your Honour. That one there, Your Honour.

THE COURT: The one on the following page?

MR. OTAVNIK: Yes, Your Honour. I have it here, too, if you want to see it. The point is, I purchased the painting....

THE COURT: All right. No, no, do not give me a statement, you can ask questions. I just was not sure..

MR. OTAVNIK: I understand.

THE COURT: ...you said, "for this painting," and I do not see a painting on the page.

MR. OTAVNIK: Q. Sorry about that, Your

Honour. Now, uh, so if this painting was bought at Potter Auctions, is this the painting, is this painting any different than any, uh, any other paintings that you sold at Kahn Auctions?

A. No.

Q. Now, in your opinion, since you sold over 1,200, is it consistent with the other ones that you, have been sold through there?

A. Yes, it is.

Q. Now, has anybody ever sued Kahn Auctions for selling a fake Morrisseau?

A. No.

Q. Okay. Now, can you turn to exhibit eleven please? How did you become, how did you come to know Mr. Sinclair?

A. We had an auction...

Q. M'hm.

A. ...and, um, Mr. Sinclair's works were going to be sold at the auction. We received a letter and it was, um, about property that we were selling and that we were to see....

Q. It was by his lawyer?

A. Yes, it was.

Q. His lawyer, his lawyer sent you a demand letter ceasing to desist the fact that your auction was selling some....

THE COURT: All right, well...

MR. OTAVNIK: All right, sorry.

THE COURT: ...let her give the evidence.

MR. OTAVNIK: Sorry. Go ahead, sorry.

THE COURT: All right...

MR. OTAVNIK: Sorry sir.

THE COURT: ...instead of you telling her what the evidence is.

MR. OTAVNIK: I understand sir.

5 A. Okay. And we received the letter to not sell, um, his paintings because they were not to be sold, and....

THE COURT: When you say, "he," whose paintings are not to be sold?

10 A. Mr. Sinclair. Mr. Sinclair. We had paintings from Mr. Sinclair, um, to be sold at our auction.

THE COURT: And his solicitor wrote saying they were not to be sold?

A. That is correct.

MR. OTAVNIK: Right.

15 A. But we did not get those paintings from Mr. Sinclair. So what we did was, is we, the, um, consigner who gave them to us, the auctioneer called him to bring in the appropriate information in the forms of how he obtained those paintings. They were obtained at public
20 auction through, um, selling of containers, of storage lockers. So he brought in the information that he bought the storage lockers legitimately, and brought them to us to sell. Then my, my husband, sorry....

25 MR. OTAVNIK: Your Honour, I'm just trying to, trying to find the fact, is, she came into contact by Mr. Sinclair, but the fact is....

THE COURT: All right...

MR. OTAVNIK: Okay.

30 THE COURT: ...well, at the end you can summarize what your position is...

MR. OTAVNIK: Thank you, sir.

THE COURT: ...but you, all you can do is ask her questions right now, sir.

MR. OTAVNIK: Okay. I know...

A. And....

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

A. Then my husband, who is the auctioneer, called the lawyer to make sure that it was legal and proper to be able to sell these items.

MR. OTAVNIK: Q. But the point is that the letter dated February 9th, and you went ahead selling Mr. Sinclair's contents on the 14th, correct?

A. That is correct.

Q. And is that where you met Mr. Sinclair?

A. Yes, that is.

Q. Did you talk to Mr. Sinclair?

A. Yes, I did.

Q. What did he, did he comment on the Morrisseau paintings for sale that night?

A. Yes, he did. After the auction he was standing staring at the, the wall which had, which had several Morrisseaus up, and I asked him what he thought, and he was saying they were beautiful, um, that he had no money to buy a Morrisseau, he would love to have a Morrisseau, and that this was the type of painting that he would love to have.

Q. Could you please go to exhibit twelve? That's also a receipt from the auction hall for that night, correct?

A. Yes, it is.

Q. And I was also there that night, correct?

A. Yes, you were.

Q. Because this was not an absentee bid...

A. No.

Q. ...I was there in person.

A. You were there in person.

5 Q. And I purchased three Morrisseaus that same night?

A. Yes, you did.

10 Q. Thank you. Now, since, how did the, uh, contents and existence of Mr. Sinclair's website effect the volume and prices realized for Norval's paintings at your auction hall after it came out?

15 A. They dropped dramatically. Um, it was very interesting how everybody who saw the blogs and everything else, um, he actually had pictures of my husband selling Morrisseaus and was claiming that they were not real, and actually put down, "fake, fake, fake, fake," as he took paintings off of our website that was for advertising.

20 Q. Now, can you explain the effects, um, on the demand for Norval's paintings as a result?

A. They have dropped dramatically. At the last auction it was very difficult to sell...

Q. Do you even....

A. ...any of the Morrisseaus.

25 Q. Do you even actively even try to sell Morrisseaus now?

A. No, we do not.

Q. Okay. Is anybody asking for his work?

A. No, they are not.

30 Q. How, how would you characterize the overall, uh, marketplace since the inception of Mr. Sinclair's website?

5 A. The marketplace is no longer there. Everything is suspect. Um, everybody is claiming they are not sure, they don't know what - excuse me - they don't know if they are real, if they are, are not real, whether there any reals out there or whatever.

Q. All, all because of this website?

A. All because of the website.

10 MR. OTAVNIK: Yeah, okay. Thank you. I have no further questions.

THE COURT: Any questions of this witness, sir?

15 MR. SINCLAIR: Uh, yes, Your Honour. But would it be possible to reserve my questions for, uh...

THE COURT: No, no.

MR. SINCLAIR: ...Ms. Shea?

20 THE COURT: You have got to deal with them now, sir.

CROSS-EXAMINATION BY MR. SINCLAIR:

MR. SINCLAIR: Q. Did you receive letters from Norval Morrisseau?

25 A. We did receive a letter from, well, from, uh, Norval Morrisseau. Yes, we did.

Q. And from other people with regard to the issue of fake Morrisseau paintings?

A. As far as I know, Norval Morrisseau, or through Gabe Vadas was the only letter that we received.

30 Q. What did that letter say?

A. It just said that, uh, we were, we should not be selling these Morrisseaus because they were

not real.

Q. And did you respond to Mr. Morrisseau?

A. No, we did not.

Q. Did you understand that Mr. Morrisseau
5 was the artist who painted those pictures?

A. Yes, I did.

Q. So, uh, why did you choose not to
respond to Mr. Morrisseau?

A. Because there had been, um, different
10 controversies and we did not receive a letter from Mr.
Morrisseau until after all of the, um, controversies came
out in the paper with Mr. Robinson. We did not receive it
before that.

Q. And what was the date when this, uh,
15 when this Mr. Robinson controversy, purported controversy?

A. Uh, whatever date that the article came
out in the paper....

Q. So we're talking 2001?

A. Uh, probably somewhere around there.
20 I'm not exactly sure of the date because this paper does
not have the date on the bottom.

Q. How many letters did you receive from
Norval Morrisseau?

A. Just the one.

Q. Just the one?

A. Yes.

Q. Uh, did, when you, when you chose not to
respond, you, or your husband...

A. Yes.

Q. ...your husband is Randy Potter, correct?

A. He is.

Q. Yeah. And you are now out of business,

correct?

5 A. We are not out of business, we are just not, we, our last auction that we did, we're doing on-site auctions, um, more so because of the, the way that the recession has gone and everything has started to go downhill as far as the auction business and the monetary value.

10 Q. I see. Uh, is that, am I correct that I read on, on the Randy Potter website...

A. M'hm.

Q. ...that he was retiring?

A. Well, he quite frequently writes that he retires.

15 Q. I see. Does, uh....

A. We did an auction in October, an on-site auction.

Q. I see.

A. We were retiring out of our building.

20 Q. Were Norval Morrisseau paintings in that auction?

A. No, it was a private auction for a country estate.

25 Q. I see. There was a statement written by your husband saying that he sold over 2,000 pictures by Norval Morrisseau.

A. There could very well have been a stat statement. Quite frequently - we didn't, uh, sit down and count over the number of years, exactly how many paintings that we have sold.

30 Q. Who was in charge of your, of your books, with regard to the number of paintings?

A. Um, I am in charge, but we do not, as I

said, we do not, I, over the last few years I have not sat down and counted.

Q. That's a large disparity, though, between 1,000 that you mentioned to the plaintiff and 2,000 that your husband suggests.

MR. OTAVNIK: Your Honour, 2,000 is not part of, any part of the record.

THE COURT: All right, well....

MR. OTAVNIK: I'd like to see it.

MR. SINCLAIR: It, it is....

THE COURT: Just one moment, it is not part of the what?

MR. OTAVNIK: The record. I mean, this, Mr. Potter never stated that.

THE COURT: Well, he is...

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

THE COURT: ...he is asking the question, so she does not know the answer, or she says that she is, he never said that, then she can indicate that that is the case.

MR. OTAVNIK: Thank you, Your Honour.

A. The amount of numbers could have gone from 800 to 1,000 to 1,200 to 2,000. People make comments on a regular basis. As I said, if you wanted me to go back and count exactly how many Morrissey we have sold, I could get all of my records and count them.

MR. SINCLAIR: Q. How many different sources did you acquire your paintings from?

A. Uh, one.

Q. All 2,000 paintings came from one source?

A. Yes, they did.

Q. Is this, uh, person in the courtroom?

A. No, he is not.

Q. Have you ever met this person?

A. Yes, I have.

Q. Given that he, that you claim he is the source of these 2,000 paintings that are purported to be by Norval Morrisseau, how is it possible that he is not here to verify the source of those paintings?

A. Nobody asked him.

Q. Nobody asked him?

A. Nobody asked him.

Q. Okay. Uh, so 200 people have purchased these paintings?

A. I would say so.

Q. Um, are there some people that have purchased more than others?

A. Yes.

Q. Are there some people that have purchased more than 50?

A. I'm not sure.

Q. Have people, um, bought these paintings, as far as you know, directly from your source, and could you please give the name of your source.

A. The source is David Voss and I have not spoken to Mr. Voss to find out if anybody has bought them directly from him. All I can go by is what people have said and, uh, nobody knows for sure but Mr. Voss.

CLERK OF THE COURT: Could you spell the name Voss?

A. V, as in Victor, O-S-S, first name, David.

MR. SINCLAIR: Q. And when, when is the

most recent time you spoke to Mr. Voss?

A. Um, I believe my husband spoke to him about, uh, maybe six months ago.

Q. And yourself?

A. I did not speak to him other than the fact that I answer the phone quite frequently when he calls.

Q. Oh, you've never had a conversation with him yourself?

A. I have. When he first brought the Morrisseaus in, I was there.

Q. I see.

A. And I have had conversations on the telephone, "hi, how are you?" things along these lines. I have been in the room when my husband's been speaking with him.

Q. I see. So Norval Morrisseau sent you, uh, a sworn declaration...

A. Uh....

Q. ...or a legal letter....

A. Um, right off the top of my head, I really don't know whether it was a legal letter. It was, do you have that letter, Joe?

MR. OTAVNIK: I think it was an email, wasn't it?

A. No, we did get a letter from him.

MR. OTAVNIK: Oh, it was a letter signed by Gabe Vadas I believe.

THE COURT: All right, sir, well let's not give evidence. She's asking you, "do you have anything?" Say "yes" or "no" to that answer, or question.

MR. SINCLAIR: Q. So are you saying you never received a sworn declaration, uh, from Norval Morrisseau signed by, notarized by a lawyer?

5 A. Um, I am sorry, I don't have it sitting in front of me. It was a good number of years ago and I can't remember what it said. All I remember is what, in general, the letter stated.

10 Q. I see. Were there pictures of your paintings, of some of the paintings that you were selling in this letter, or can you...

A. No.

Q. ...not remember this either?

A. No, there...

15 Q. There were no pictures?

A. ...was no pictures. It was just a, uh, on a piece of paper, and I'm sorry I cannot remember all of the details. I have seen it, and we put it away; it was put to rest.

20 Q. And you don't remember whether it was notarized by a lawyer or not?

A. I really don't remember at this point in time.

25 Q. And you chose not to contact Mr. Morrisseau or his, uh...

A. Representatives?

30 Q. ...representatives, his legal representative, his, uh...

A. We did...

Q. ...business manager?

A. ...we did not get the paintings directly from Mr. Morrisseau. If we had have gotten the paintings directly from Mr. Morrisseau, we probably would have

responded much, in a timely fashion, but we did not get the paintings from Mr. Morrisseau.

Q. Uh, well did you, did you check into the fact that there's a possibility that they've, given the fact that this person has, uh, given you one to 2,000 paintings that you don't have conversations with, did you check into him as a viable source?

A. What we did, um, Mr. Sinclair, was when we got those paintings, we knew nothing about Morrisseau paintings. So my husband, the auctioneer, got on the telephone and called the galleries in Toronto that dealt with all of the native art. There was numerous ones. He called them and said...

Q. Could he....

A. ..."we have these paintings, the Morrisseau paintings, they are going up for sale on a certain night, if you would like to come down and see them, you are more than welcome to check them out." We had numerous galleries that came down, and they were sold. The gallery people bought them, and these are the people that were to know, and supposed to know, what a Norval Morrisseau looked like.

Q. I see. Um, how much were these paintings selling for on average?

A. Uh, they would go from \$800.00 to, I think one of the highest amounts was, gee, I don't remember. There was \$5,200.00, there was, uh, \$4,000.00, there was numerous different amounts, depending upon the size and content of the paintings.

Q. Okay, let's talk about the \$800.00 painting.

A. M'hm.

Q. Um, what would you estimate, given that you sold so many paintings and have come into contact with so many galleries that sell Norval Morrisseau paintings, what would you assume the market value was, is of that...

A. They....

Q. ...ballpark.

A. Ballpark? A small....

Q. Eight-hundred?

A. Pardon?

Q. Eight-hundred?

A. No, in, very rarely do you ever get top price because, at an auction, because people come to auctions to get a deal.

Q. M'hm.

A. Because if a gallery came and paid the top price for, um, a Morrisseau, how could they sell it and make a profit?

Q. Nevertheless, let's...

A. Um....

Q. ...let's give me a ballpark.

A. I really don't know. I don't frequent galleries. I do not see what they would go for, but maybe one of the \$800.00 could have gone for \$4,000.00.

Q. I see. So in the 2,000 pictures that you sold, did you ever sell one at market value?

A. I don't know what market value would be, sir.

Q. Well it says....

A. I am not, I do not own a gallery...

Q. You....

A. ...I do not understand what, um, denotes a painting being \$800.00, \$8,000.00, or \$8,000,000.00.

Q. Okay, but, uh, you said an \$800.00 painting you'd estimate...

A. Could be.

Q. ...ballpark \$4,000.00, so...

A. Could be so.

Q. ...so we're talking less than 25 per cent, right?

A. I would well imagine.

Q. And would that go, would that be general for all of these paintings that went through Randy Potter auctions?

A. I really don't know, sir.

Q. Okay.

A. You would have to talk to the gallery owners...

Q. Okay.

A. ...who sell them at market price.

Q. Okay. Thank you. Um, you mentioned that I was at Randy Potter auctions in 2004, I believe...

A. M'hm.

Q. ...and that some of my paintings were being auctioned...

A. Yes.

Q. ...that I claimed were stolen?

A. Yes.

Q. Um, you said, you just testified that when you did receive a legal letter...

A. Yes?

Q. ...you did the appropriate thing and...

A. M'hm.

Q. ...you checked into the source?

A. Yes.

Q. Right? And you got...

A. Yes.

Q. ...some documentation, as far as you were concerned, that showed you that this had, as far as you were concerned, was okay.

A. Yes.

Q. Right?

A. M'hm.

Q. But when Canada's most famous artist...

A. M'hm.

Q. ...um, contacts you with sworn legal declarations...

A. M'hm.

Q. ...and points out that you are selling multiple fakes and...

A. M'hm.

Q. ...demands that you stop...

A. M'hm.

Q. ...in that case, you don't check back into the source, you just depend on the galleries here in Toronto?

A. We depended upon for your paintings, the consigner, who had the appropriate paperwork, because you say that they were stolen.

Q. Oh, excuse me. Okay.

A. We did not want to sell something illegally. So we didn't. What we have to do is we have to rely upon the information that is provided. So we did not want to think that we were selling stolen goods. Mr. Morrisseau never stated that those paintings were stolen.

Q. He, he stated that they were fraud, fraudulent.

A. He....

Q. He denied...

A. He may have....

Q. ...paternity...

A. He....

Q. ...to them.

A. Yes.

Q. He demanded that you stop selling them.

A. And apparently...

Q. And it was legal....

A. ...he has done that numerous times.

THE COURT: Let her, let her answer, sir.

A. He has done that numerous times in other instances with paintings from galleries.

MR. SINCLAIR: Q. Such as?

A. So we have heard. Well, it would only be hearsay, wouldn't it, sir?

Q. Where, well, I mean, you obviously heard it said, so who, who told you that he, he or she, or a gallery had received similar sworn declarations, uh, that....

A. Apparently at one time, and this is only rumour, okay, was that a showing at Kinsman Robinson Gallery, um, Mr. Morrisseau was there, and he stated to a customer that came out of the gallery that the painting was, he never painted that painting, and....

Q. Excuse me, can I interrupt?

A. This is just the....

Q. I am asking you about the...

A. Okay.

Q. ...letter, the sworn declarations.

A. You just asked me...

Q. You said there were other letters....

A. ...what other things have - no, I did not say other letters.

THE COURT: All right, just one moment. I am not sure where we are going with this line of questions. I thought this case was based on a defamation...

MR. OTAVNIK: Thank you.

THE COURT: ...action by the plaintiff, so I have...

MR. SINCLAIR: Yes, Your Honour.

THE COURT: ...let it go on for a bit, but I am not sure...

MR. SINCLAIR: Where it's going?

THE COURT: ...what relevance it has in relation to this gentleman's claim of defamation.

MR. OTAVNIK: Thank you.

MR. SINCLAIR: Well, first of all, this claim of defamation itself it's a, a slander of title or injurious falsehood claim, and, uh, because of that we're talking about paintings and not about words said against....

THE COURT: Well, that may be the case, but what she did with respect to the letter, I don't know how it helps me decide the whole issue of what the plaintiff's claim is about.

MR. SINCLAIR: Um, my suggestion is the plaintiff would have never had the opportunity to buy this painting, which is

one amongst 2,000 pictures that were sold through this auction house, um, if these people had responded to the, the....

THE COURT: No, that is not relevant. He did buy it, so it is not a, they are not parties to the action that, that they did something wrong, so..

MR. SINCLAIR: Right.

THE COURT: ...we are not, I am not here to judge the witness's right or obligation to sell them. The question is, apparently there were paintings sold, the question becomes whether you, somehow, you know, defamed the plaintiff as a result of statements made by you in regard to the paintings. That really becomes the question.

MR. SINCLAIR: Q. Yes, sir. Okay, with regard to the painting, uh, itself then, uh, do you, you remember, as you mentioned, that, the night that he bought this painting, or do you? Do you remember the night the, uh, the plaintiff bought the painting that's the subject painting of this, uh, hearing?

A. Um, Mr. Otavnik had bought several paintings through us, and, um....

MR. OTAVNIK: I believe I showed the receipt.

A. Yeah, the, the receipt has been....

MR. SINCLAIR: Do you, uh, recall, the receipt has no, it's exhibit....

THE COURT: What exhibit?

MR. SINCLAIR: Exhibit nine.

A. Exhibit nine.

MR. SINCLAIR: Yes. Now we mentioned, uh, or Your Honour mentioned that there was no picture of his painting on this receipt.

THE COURT: No, no, I said...

MR. SINCLAIR: Correct?

THE COURT: ...oh, you are right. There was....

MR. SINCLAIR: Q. Correct? Um, and the title of this painting, or at least it's under the description category, would you read that?

A. "Norval Morrisseau, Jesuit."

Q. Have you sold other Norval, uh, purported Norval Morrisseau paintings that are called, "Norval Morrisseau, Jesuit," or something like this?

A. Um, likely.

Q. Uh....

A. How do we know which paintings they are?

Q. This is a, a question I have, because the title that is written on the back of the subject painting...

A. Yes.

Q. ...is entirely different than this title.

A. Of course. Um, you only have so many characters on the computer, and the reason that he would put one or two lines of the description so that when the, um, people would be going to look at them to get, when they were numbered, he would, they would know which one to point to.

Q. M'hm. Okay. So it appears to me that in this exhibit there is no price. How much do you believe, this painting was sold for, \$800.00?

A. Off the top of my head I would not know because that was, I....

Q. You didn't bring that information with you?

MR. OTAVNIK: No, uh, as part of....

THE COURT: Sir....

A. I was here to state that these were ours, what happened with you, the conversations that we had with you, that I had with you. I was not prepared to come with numerous amounts of information, um, because a lot of the things that we are talking about is conversations, particularly the one that you and I had.

MR. SINCLAIR: Well, right now we're talking about this piece of paper. And, and it appears to me that I don't see a picture of the subject painting, I don't see the title of the subject painting, I see no price for the subject painting, I see no signature...

THE COURT: What is the question?

MR. SINCLAIR: ...on it.

THE COURT: So what is the question? You've made that statement what is...

MR. SINCLAIR: Right.

THE COURT: ...the question to go with it?

MR. SINCLAIR: Q. How do we know that this isn't just a receipt that, that, uh, was made up on the spur of the moment?

A. I guess you don't. You'll just have to take our word for it.

MR. SINCLAIR: Right. Okay. That's all the questions I have for now, Your Honour.

THE COURT: All right, any redirect?

RE-EXAMINATION BY MR. OTAVNIK:

MR. OTAVNIK: Q. I just want to redirect,
yes. Bottom line is, Norval Morrisseau's business manager
sent you a letter said, "you're selling fakes," correct?

A. Correct.

Q. And you didn't respond, right?

A. That is correct.

Q. So Mr. Morrisseau's legal team,
representatives, could have sued you and said, "please
stop" and they never did?

A. No, that was the only letter...

Q. So after...

A. ...we received.

Q. ...after this letter, Morrisseau's legal
team did nothing to prevent you from selling Morrisseaus?

A. No, they did not.

Q. They never sued you or nothing?

A. No, they did not.

MR. OTAVNIK: Thank you.

THE COURT: All right, you can step down.

Next witness, sir?

MR. OTAVNIK: Mr. Joe McLeod.

JOSEPH MCLEOD - SWORN**EXAMINATION IN-CHIEF BY MR. OTAVNIK:**

MR. OTAVNIK: Q. Mr. McLeod, what was your
profession before you became an art dealer?

A. I was the Dean of English at Seneca
College and, uh, their artistic director for the Minkler
Auditorium and for their galleries.

Q. And how long have you operated Maslak

McLeod?

A. Uh, after retiring, approximately, my, myself, my daughter, and my son, fifteen years.

Q. And when did you first meet Norval Morrisseau?

A. Uh, some time around 1960.

Q. Now, did Mr. Morrisseau write letters to you and you ex-wife which are now being used by handwriting experts to verify Norval's signature.

A. Frequently.

Q. Yes. And, uh, are they in, are they, in effect, sort of being used as benchmarks by various forensic experts for comparison purposes with other paintings?

A. I think so.

Q. Okay. Now, therefore, Mr. McLeod, I mean, your long association with Mr. Morrisseau, are you familiar with his signature?

A. Yes.

Q. And are you familiar with the artist and his style of work throughout his entire career?

A. I think so.

Q. Okay. And can you give the Court a brief summary of all the museums throughout the world which have come to your advice asking for your advice on First Nations art, and in particular, uh, the art of Norval Morrisseau?

A. Well, most museums in Canada, and certainly Germany, the United States, we operated a gallery out of Santa Fe...

Q. M'hm.

A. ...and, uh, as well as the government of

Canada, the government of Ontario, the system of deciding whether or not our art that was donated to various...

Q. M'hm.

A. ...uh, museums could be accepted for tax relief. So, all of these people have made use of my service.

Q. Now, you have seen the painting which is the subject of this suit, and in your opinion, is it an authentic Norval Morrisseau?

A. Yes.

Q. Thank you. Um, can you, you've assisted many people at museums in the process required under the Canada Property Review Board, correct?

A. Yes.

Q. Now, how rigorous of a process is that?

A. It's very rigorous. Um, in fact, it's, it's almost impossible now. Frankly, they don't have a great deal of money, and they don't get a lot of money to purchase art, and so they've relied, for a long time on gifts from, um, collectors and....

Q. No, no, I'm sorry...

A. Yeah.

Q. ...that's not what I mean, Mr. McLeod. I mean in order to....

A. How rigorous is it?

Q. How rigorous is the, does the board take, the Cultural Property Review Board, take applications for donations of works of art...

A. Very rigorous...

Q. ...including Norval's?

A. ...because they normally I accept, I think, more than one, they probably have two or three, and

they expect the, uh, three different galleries or people not to collude and they expect them to come up with relatively even money...

Q. Yeah.

A. ...uh, decisions, and also decisions with regards to the authenticity of the piece...

Q. Yes.

A. ...of art, so....

Q. My point is, it's first approved by, um, it's verified by dealers, then it goes to the museum, the museum okays it, the museum then sends it to their board, they okay it, then the museum then applies to revenue, to, uh, the Cultural Property Review Board, it is reviewed by the Cultural Property Review Board, and then okayed?

A. I think so, yes.

Q. Thank you. Now, Mr. McLeod, have you assisted my sister in such an application?

A. Yes.

Q. Now, but you've never done it for me, correct?

A. Uh, I have not.

Q. No. Do you have a business relationship with me?

A. No.

Q. Have you ever done an appraisal for me?

A. No.

Q. Have I ever bought a painting from you?

A. No.

Q. Now, did you ever meet Mr. Sinclair before he set up his website?

A. Yes.

Q. And did he, didn't he express

frustration over the fact that he wasn't on the Norval
Morrissette Heritage Society?

A. Yes.

Q. What did he mention to you?

5 A. He came into my gallery and, uh, I did
not know him. I think I might have seen him two or three
times. And, uh, he was irate because he had not been asked
by Kinsman Robinson to be part of the Norval Morrissette
Heritage, uh, Society. And I was shocked. I had no idea
10 that he had any interest in this kind of thing, I didn't
know what his background was, and I didn't know who he was.
And I explained to him that it was not, I don't think, the
choice of Kinsman Robinson to decide...

Q. Okay.

15 A. ...who was going to be on the, uh, board,
and that I guess, to summarize, he was out of his realm.
They were asking for, um, the, the daughter of Marshall
McLuhan, who had written two or three books on the subject
matter, classic, early books. They were asking, uh, the
20 curator of the National Gallery, they were asking academics
from Carleton University...

Q. Yeah....

25 A. ...so my suggestion was, I didn't have the
slightest idea where he placed himself to think that they
would ask him to be on, uh, the Heritage Society.

Q. Now, there was, um, in late September,
early October, 2008, Mr. Sinclair had a showing at a
gallery nearby, correct?

A. Yes.

30 Q. And for some reason the show ended
early...

A. Yes.

Q. ...and Mr. Sinclair came into your establishment. What did he communicate to you then?

A. He, um, he was angry and he said something to the effect, "oh, man, do you want to talk? Do you want to talk? Oh, man, do you want to talk?" And I said, "no." And, uh, my son was there, and he stood up, and he was extremely belligerent, and he said, "you're going to talk or you're not going to talk. You're going to talk or you're not going to talk. Hey, man, fat cats." And I said, "hold it. You know, what are you talking about?" And, uh, he said, "I am going to take down the whole Morrisseau market. I am going to," and he ranted on and on. And finally I said, listen, you know, get out.

Q. And the website went up about a week later, right?

A. I think it was up.

Q. Yeah. Now, now, I want to talk about the effects of Mr. Sinclair's website. Um, your clients come in two basic business segments, your museums and the general public, right? Now, what effects have Mr. Sinclair's website had on your institutional clients?

A. Well, running a gallery is like running a cloud; when you think you've got a hold of it it's going off in another direction. And so, in actual fact, it appears to be split. Uh, for whatever reason, small pieces, pieces that don't have a great deal of provenance or real, uh, clout - Norval was a genius, and he was also an extremely uneven painter. Norval painted absolute knockouts - one of them is Rideau Hall, uh, some of them are in the National Gallery - and he actually is known to have done knock-offs and given them away...

Q. Yeah, no...

A. ...for 50 bucks.

Q. ...no, what I meant was, for your clients, you have two sets of distinct clients....

A. It doesn't effect the institutional buyers...

Q. That's what I meant.

A. ...we're doing a show for McMaster University...

Q. Exactly.

A. ...we're doing another one for the Thomson family...

Q. But....

A. ...and so these things are not effected.

Q. Right. But the effects of the Mr. Sinclair's website on your retail clients, how would you explain those?

A. Bad. Drastically bad.

Q. Okay. And the general public?

A. Again, they want provenance. They want to know where the paintings came from. They want to be able to trace the painting back to Norval Morrisseau as closely as possible. In the past that wasn't a question. Now it is.

Q. Yeah, but the....

A. And so you better have a good provenance, and it has affected the market, and the market is now pretty much flat.

Q. So, but my, my point is, it is much harder today to sell a Morrisseau than it was before Mr. Sinclair's website came out?

A. Yes. And it's not only Mr. Sinclair, it's the...

Q. Yeah, it's....

A. ...dollar, it's the...

Q. Yes.

A. ...lack of American tourists, it's...

Q. Sure.

A. ...uh, it's everything.

Q. But the point is it's, the market has been negatively affected...

A. Absolutely.

Q. ...by this website?

A. Yeah.

Q. And people have called you up and say, "hey, what's going on here? This guy's got a, calling 1,000 Norval Morrisseaus fake, what's going on? What do you know?"

A. I don't get a lot of phone calls like that, no.

Q. Okay. But the point is, though, there has been some though, eh?

A. Uh, have people questioned me about the, about the, his actions? Yes.

Q. Yeah, okay. Okay. Now, okay, Mr. McLeod, I think I have - anything else you want to add Mr. McLeod? Anything you want to say about....

A. Well, I'd like to point out that, aside from the market, he's done great harm to the family of Norval Morrisseau. He has done great harm.

THE COURT: All right, well the family, the family is not...

MR. OTAVNIK: That's just....

A. Okay.

THE COURT: ...a party in this action.

A. You asked me if I had anything else to say.

MR. OTAVNIK: No, no, no, I just....

THE COURT: Okay.

MR. OTAVNIK: I just, in terms of the effect - I'm, I'm done.

THE COURT: All right. Any questions of this witness?

CROSS-EXAMINATION BY MR. SINCLAIR:

MR. SINCLAIR: Q. Yes, Your Honour. Mr. McLeod, have you ever, uh, sold a painting for Norval Morrisseau directly?

A. Uh, yes.

Q. Yes? When, when did you sell a painting for him directly?

A. Norval Morrisseau came to my home in Marathon Ontario for approximately three years. After that, Norval Morrisseau contacted me on a regular basis, and sold me paintings, and I purchased them from Norval Morrisseau, and I sold them for Norval Morrisseau. And we not only supplied him with money, we supplied him with, uh, materials with which to paint, we supplied his family with clothing over a very long period of time. And I know them intimately, and I knew Norval Morrisseau.

Q. What period of time are we talking about that you bought these paintings and, and, uh, facilitated Norval....

A. 1960 up to 1985.

Q. 1960 to 1985. Now I have a, a sworn affidavit by you that says that you never bought a painting from Norval Morrisseau.

A. I'd like to see it.

THE COURT: Is it in your defence material?

MR. OTAVNIK: It's not filed in this case.

MR. SINCLAIR: It's, it's in another lawsuit, Your Honour. Um, could I produce this, I'll produce this....

THE COURT: When?

MR. SINCLAIR: Later today..

MR. OTAVNIK: No.

MR. SINCLAIR: ...if that's possible.

THE COURT: Well, this witness....

MR. SINCLAIR: Or, could I take a recess and, and, uh, and get my materials ready for Mr. McLeod, because I was, was not....

THE COURT: Well, how much time do you need to get your....

MR. SINCLAIR: Fifteen minutes.

THE COURT: All right, let's take a fifteen minute recess.

MR. SINCLAIR: Thank you.

R E C E S S

U P O N R E S U M I N G :

THE COURT: All right, the parties on the trial come forward. Just before we continue with the evidence, I need a little clarification from, from the plaintiff..

MR. OTAVNIK: Yes, sir.

THE COURT: ...as to what your cause of action is. When I quickly read through the pleadings, and, and....

MR. OTAVNIK: Slander of title.

THE COURT: Okay, just let me finish, sir.

MR. OTAVNIK: Yes, sir.

THE COURT: And, more important, perhaps, I relied on the settlement conference report, which indicated that the issue was, well that the claim is slander with respect to the sale....

MR. OTAVNIK: The - yes.

THE COURT: So I, okay, slander of what?

MR. OTAVNIK: Of title of the painting.

THE COURT: Not slander of....

MR. OTAVNIK: No, me, no, no.

THE COURT: You personally....

MR. OTAVNIK: This is trade, this is trade libel. The painting has been called and deemed a fake by Mr. Sinclair and his website. That has slandered the title of the painting, and those are the economic damages I have suffered because of the....

THE COURT: Okay. Thank you. Okay.

MR. OTAVNIK: You understand? Yes. And that's...

THE COURT: All right.

MR. OTAVNIK: ...why I have....

THE COURT: All right.

MR. OTAVNIK: Thank you. And it's not, yes, sir.

THE COURT: All right. Sir, you want to come back in the witness box now?

MR. SINCLAIR: Your Honour, I think it's, uh, it's important that I do file this

affidavit so....

THE COURT: Well, you can show it to him and ask him to identify it, and then we can mark it an exhibit.

MR. SINCLAIR: Uh, unfortunately I'm going to have to, perhaps at lunch break, I'll go home and retrieve it. Um....

THE COURT: Well, you don't have it here to....

MR. SINCLAIR: I don't have it here. I brought an awful lot of material, but this other case, it's in their materials. So, uh, perhaps I could bring that up after lunch, that particular thing, or at least file it.

THE COURT: Well, again, I'm not sure the relevance of, of whether he bought it or didn't buy it. I mean, it is, the importance of it being what? Whether he bought...

MR. SINCLAIR: The importance....

THE COURT: ...something from Mr. Morrisseau or not?

MR. SINCLAIR: Oh, um, well, maybe we'll carry on and we'll, perhaps we'll see. I mean, it's....

THE COURT: All right. Let's move on.

MR. OTAVNIK: Um, I'm not sure what your direction to him was, Your Honour. I mean....

THE COURT: Well, I....

MR. OTAVNIK: I mean, the painting is here.

The physical painting is here. I own the painting. Is that...

THE COURT: Oh, no, no.

MR. OTAVNIK: ...is that the issue?

THE COURT: He is talking about...

MR. OTAVNIK: Oh, Mr. McLeod?

THE COURT: ...the statement that he...

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

THE COURT: ...is claiming...

MR. OTAVNIK: ...what I thought, Your Honour.

THE COURT: ...the witness made as to whether he bought or....

MR. SINCLAIR: Paintings from Norval Morrisseau.

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

THE COURT: But I am not sure that, again, I am not sure the relevance of whether he did or did not.

MR. SINCLAIR: Q. Right. Well, Mr. McLeod said to the plaintiff that he considers himself to be an expert with regard to Morrisseau paintings.

A. I didn't say that.

Q. You didn't? Okay. So you're not an expert with regards to Norval....

A. Yes, I am.

THE COURT: Well, wait a second.

MR. SINCLAIR: Okay.

THE COURT: Let him ask the question before you say "yes..."

A. Okay.

THE COURT: ...I am." Because I am not sure...

A. Sure.

THE COURT: ...what the question was.

A. Yeah. I am sorry.

MR. SINCLAIR: Q. So you consider yourself a Norval Morrisseau expert?

A. Yes.

Q. I see. Uh, and how many Morrisseaus did you say you have bought over the years?

A. I can't tell you.

Q. More than ten?

A. Many more.

Q. Many more than ten?

A. Yeah.

Q. More than 100?

A. Probably.

Q. Directly from Norval Morrisseau himself?

A. Not necessarily.

Q. From, uh, directly from one of his art dealers?

A. I'm sorry?

Q. Directly from his principle art dealer....

A. A dealer would never buy from a dealer. What I would buy from would be an auction house in the past, where you could actually double your money. But in the last three or four, or even five years, that has changed. And so auction houses are frequently getting as much, if not more, than a dealer could. And so I would be purchasing paintings from Norval Morrisseau, from people who purchased from Norval Morrisseau in Red Lake and Cochenour and North Bay, anywhere, who have, at a later date, decided that they wanted to sell their paintings, and the job of the dealer, or the gallery, would be to buy and

try to make a profit.

Q. So, that, did you buy paintings from, uh, Randy Potter Auctions...

A. Yes.

Q. ...formerly Kahn Auctions?

A. Yes.

Q. More than 50?

A. No.

Q. Less than 50?

A. Less than ten.

Q. Less than ten you bought from them?

Okay.

A. I would think.

Q. But from Norval Morrisseau himself, we're talking directly from Norval Morrisseau, 50 paintings?

A. No. Up until the time that I opened the gallery, which is approximately 15 years past, Norval Morrisseau was a private individual who was an artist, I was a private individual who was interested in his art, and when I could afford to buy them, I bought them. I also bought from various sources as a private individual, so I had a considerable collection of art before I opened the gallery. And I think the statement that you're dealing with is, if you check our *raison d'être*, the way we work, our gallery deals with the work up to 1985. We did that because we felt we were experts particularly in that area. And so after 1985, and once he had made whatever commitment he had with Kinsman Robinson Galleries I never bought from Norval Morrisseau again.

Q. But you're, but you claim that up until 1985 you were buying paintings from Norval directly?

5 A. No. I said I did buy paintings from Norval Morrisseau, but I can't put a date on them, and I was buying from a variety of other sources.

Q. Okay. When did you open your gallery, sir?

A. Directly after I retired from Seneca College, which would be approximately 15 years ago.

Q. Uh, so we're talking 1995?

A. I, I would have to look up the date.

10 Q. In 1990 - have you ever received a letter from Norval Morrisseau with regard to your sale of and promotion of Norval Morrisseau, of paintings that are purported to be Norval Morrisseau's that didn't, that he believed weren't his?

15 A. No.

Q. You have never received a letter from him...

A. No.

20 Q. ...with regard to this? Do you recognize these letters?

THE COURT: Is this part, this is part of what, sir?

25 MR. SINCLAIR: Q. Uh, sorry, Your Honour. Maybe I'll pre-empt this with, before introducing it. Mr. McLeod, it's my assertion that you're a biased witness because, is it, it's true that you have sued me? It's true that you have sued me in higher court. Is it?

A. I'm sorry. We attempted to sue....

30 Q. Is it correct that you have sued me in higher court, sir?

A. Do you mean that there was a culmination to that suit, or that we attempted to sue you?

Q. Um, sir, did you sue me for \$17,000,000.00 along with four other plaintiffs in Superior Court in November of 2008.

A. Yes.

MR. OTAVNIK: Um, I'm failing to see the relevance, Your Honour.

THE COURT: Well, I will, I am prepared to let him go ahead..

MR. OTAVNIK: Okay.

THE COURT: ...for the moment.

MR. SINCLAIR: Q. Yes, you did. What happened to that case, sir?

A. Uh, there was an offer on your lawyer's part to withdraw, and that you would take down the website, and that you would then correct many of the problems that I saw as relevant, and I recommended to the lawyer that we take that route.

Q. Which lawyer are you talking about, sir?

A. Symes and Street.

Q. I see.

A. The other four people decided that they wanted, frankly, to put you in jail. And, uh, I said, "I would prefer to go and get the mediation completed." The other four people said, "no," they wanted to continue with the suit. And so I instructed the lawyer, the lawyers, that I was unwilling to take that route because, number one, it was too expensive, and number three, my purpose was to aid the market and my own business. And so I withdrew.

Q. You withdrew? Your lawyers, Symes and Street that you mentioned, are they still your lawyers...

A. No.

Q. ...in this case? Is the case still

ongoing in trial?

A. I have no idea. I withdrew. I don't know what's happened to it now.

Q. Is it true that Symes and Street sued you and your plaintiffs for, uh, ethical concerns and for not paying your fees?

A. Certainly not. All of my fees were paid before I withdrew. Check Symes and Street.

Q. Okay.

A. And, in fact, they returned money to me, \$6,000.00.

Q. Well, it's my understanding that you were sued for approximately \$50,000.00, is that correct?

A. You are wrong.

THE COURT: All right. Okay, well, I am going to, I think that now we are definitely getting off the topic.

MR. SINCLAIR: Off the, off the track here. Okay.

A. I was never...

MR. SINCLAIR: With regard to this....

A. ...sued by Symes and Street.

THE COURT: Sir, we are not in that area at all.

MR. SINCLAIR: Q. Um, with regard to this lawsuit that, that you were talking, I believe you were talking about a settlement offer at one point with regard to this other lawsuit? Right? Is that what you were talking about?

A. Your lawyer offered a mediation solution.

Q. But you never showed up for mediation?

5 A. I am sorry, I wasn't physically there. I directed the lawyers, Symes and Street, who were representing me, that I was in favour of the mediation, and that that is the route we should take, because it would be, it would solve our problem. It would get your blog off the air, and it would settle, uh, whatever problems I had with your blog and your actions. And so I then instructed them that I preferred...

10 Q. I understand.

A. ...to take mediation. The other four people, as I suggested, wanted to take you to a legal court and put you in jail.

15 Q. So this, uh, Superior Court, they pulled, when - just hold on a moment.

MR. OTAVNIK: Your Honour, uh, I'm failing to see the relevance in this matter.

THE COURT: Well, okay.

MR. OTAVNIK: I just, I....

20 THE COURT: I am, I think we have dealt enough with the question of, of...

MR. OTAVNIK: Thank you, Your Honour.

THE COURT: ...the action in the Superior Court, sir.

25 MR. SINCLAIR: With regard to this action, did you file a sworn affidavit?

MR. OTAVNIK: He's testified....

A. To my lawyer?

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

30 MR. SINCLAIR: To the higher court. Did you file this....

THE COURT: Okay, again, do you have affidavits here that....

MR. SINCLAIR: Yes, I do, sir.

THE COURT: If you are going to ask him questions. Have you...

MR. SINCLAIR: I would love to.

THE COURT: ...provided to the other side that you had these documents...

MR. SINCLAIR: Uh....

THE COURT: ...before you came?

MR. SINCLAIR: The other side was, was ordered by Judge Thomson at this Court to provide the....

THE COURT: I asked you if you provided the plaintiff with copies of the documents you are going to rely on.

MR. OTAVNIK: For what, for what case?

THE COURT: No, no, sir...

MR. OTAVNIK: Sorry.

THE COURT: ...I am not asking for your comments, I am speaking to the defendant.

MR. SINCLAIR: Yes, they have been provided. They were filed at, I believe, on September 23rd with the....

THE COURT: Did you get....

MR. OTAVNIK: I don't know what he's referring to, Your Honour.

THE COURT: Well he has got...

MR. OTAVNIK: Affidavits of....

THE COURT: ...a book of documents there.

MR. OTAVNIK: Affidavits of what?

MR. SINCLAIR: Well, really, all I wanted to do, what these are are sworn affidavits from Norval Morrisseau sent to Mr. McLeod, and I

want Mr. McLeod to verify that he received these sworn affidavits with regard to...

THE COURT: Well, okay.

MR. SINCLAIR: ...fake paintings....

THE COURT: Okay, but just one moment. Were those affidavits served on the plaintiff to indicate that you are going to rely on these today?

MR. SINCLAIR: They were, uh....

THE COURT: It is a "yes" or "no," I do not know....

MR. SINCLAIR: Yes, sir. Not all of these documents, but sworn declarations that Norval signed....

THE COURT: Well how do I know which ones that you are talking about were provided to him and which ones were not provided to him?

MR. SINCLAIR: Well I....

THE COURT: Is there a book on your, you are looking at a book that looks, appears to be tabbed. Have you provided me and, and the plaintiff with a copy of these tabbed documents? I am looking at the file, which is quite thick, but I am not sure I see anything with yellow tabs on it like yours, so....

MR. SINCLAIR: No....

MR. OTAVNIK: Your Honour, it's, it's my submission that these affidavits are inadmissible because Mr. Morrisseau is dead, has no, then has no corroborating....

THE COURT: Well, that does not make it, in

itself...

MR. OTAVNIK: I....

THE COURT: ...inadmissible. Let us deal with one....

MR. OTAVNIK: No. Okay, fair enough.

THE COURT: Let us deal with one issue...

MR. OTAVNIK: Thank you.

THE COURT: ...at a time...

MR. OTAVNIK: Thank you, Your Honour.

THE COURT: ...that I am concerned about.

Okay.

MR. SINCLAIR: Okay, uh...

THE COURT: So....

MR. SINCLAIR: ...I did file a sworn, one, or several sworn declarations. It will take me a few minutes to come up with it. There is a lot going on here, Your Honour, and I apologise for that. But I did file the, on September 23rd, in an additional filing, these documents: a sworn declaration to Randy Potter from Norval Morrisseau...

THE COURT: No, no, no.

MR. SINCLAIR: ...and this one....

THE COURT: I want to see something. I want to see a list of documents, or all of the documents that you want to rely on today that you are claiming you served the plaintiff copies of those documents. If you have not served them, then I am not looking at them today.

MR. OTAVNIK: Yeah, Your Honour....

MR. SINCLAIR: Well, if they are in your

file there, sir, correct?

THE COURT: Well, they may be in my file. I do not read through the whole file, especially when, you know, it appears to be about five inches thick...

MR. OTAVNIK: Thank you, Your Honour.

THE COURT: ...because I do not know what is going to be relied upon and what is not going to be relied upon. So I do not...

MR. SINCLAIR: Okay. Just give me...

THE COURT: ...I, I take a quick look at the pleadings...

MR. SINCLAIR: ...a moment, please, Your Honour.

THE COURT: ...and, just one moment.

MR. SINCLAIR: Okay. It's filed July 30th, uh....

THE COURT: Well, you are going to have to show him exactly what you're claiming you served him. I do not care what I have got because, I mean, I only care what I got in relation to the fact that there is ultimately a copy I can look at and follow along.

MR. SINCLAIR: I understand, sir.

MR. OTAVNIK: Well, he can serve it to the, I, I don't know what he has right now.

THE COURT: Well, first of all...

MR. SINCLAIR: Exhibit H....

THE COURT: ...I thought you were objecting to it, now you are saying that....

MR. OTAVNIK: Well, no, Your Honour, what

I'm saying is, I object to any further delays because I have come in here and I have been, my case has been pretty efficient. My witnesses have been....

THE COURT: All right, so...

MR. OTAVNIK: I haven't fumbled....

THE COURT: ...what is your objection, then?

MR. OTAVNIK: Well, I mean, let's just get this on the road. My objection is, I mean, I'm not going - if, if this has been filed, show me where it's been filed...

THE COURT: Okay.

MR. OTAVNIK: ...and show me....

MR. SINCLAIR: So it's filed on July 30th. It's Exhibit H.

THE COURT: Okay, just, you are confusing me. You said, I thought you made a statement previously, before you said, "let's get this moving along," that it is okay that he shows it to the witness?

MR. OTAVNIK: Well, I thought you said had, taking a 15 minute delay, another 15 minute delay, if he just wants to show it to the witness that I would not object. I just object to Mr. Sinclair just fumbling around saying, "I need this, I need this, I don't know where this is, I don't know where this is," that's all.

THE COURT: All right. So you do not care if he shows...

MR. OTAVNIK: Yeah, just...

THE COURT: ...this document?

MR. OTAVNIK: ...go ahead now. I mean, let's just get it....

THE COURT: Do you want to show this document to the witness, then?

MR. SINCLAIR: Q. Yes, Your Honour. This is a June 3rd, 1993 letter from Norval Morrisseau to yourself, is that correct, sir?

A. Yes.

Q. This is a December 3rd, 2003 letter from Norval Morrisseau's lawyers to yourself?

A. Yes.

Q. Uh, this is a December 13th letter from yourself to Norval Morrisseau's lawyers?

A. Yes.

Q. And this, let's see, this is a July 24th, 2003 from Norval Morrisseau's lawyers to yourself?

A. Yes.

Q. This is, did you ever see this letter from, from Norval Morrisseau?

A. No.

Q. Okay. Have you ever sworn this sworn declaration - let's see, it, notarized April, 2003?

A. Yes.

Q. Is this the cover of a catalogue that you produced...

A. Yes.

Q. ...with regard to Norval Morrisseau?

A. Yes.

THE COURT: All right, now that you have shown all that and he has identified it....

MR. SINCLAIR: Why?

THE COURT: Well, I...

MR. SINCLAIR: I'd like to....

THE COURT: ...unless you want him to, unless you want to ask him to clarify what is in there and the....

MR. SINCLAIR: Yes, that's what I want to do, sir.

THE COURT: Well, then go ahead. I do not know what it says. The plaintiff does not know what it says. So, I mean, if you are just going to say, "is this a letter," and that is the end of it, then I am not sure why you are showing it to him.

MR. SINCLAIR: Well, I wanted them to be verified that he received all these letters.

THE COURT: All right, well....

MR. SINCLAIR: Q. These, do you know the general subject matter of all these letters that I have shown you?

A. Yes.

Q. And, and what would you say that Norval Morrisseau was trying to tell you? Uh, summarize it.

A. Norval Morrisseau was attempting to tell me that he questioned works that were either used as covers to, uh, one of my catalogues, and pieces of art that were in my gallery.

Q. In fact, it says, 37 out of 61 paintings in that catalogue cover that I showed you, Morrisseau identified as fake or fraudulent pieces of art work... .

A. I am not sure...

Q. ...is that correct?

A. ...that "fake" was used, but yes.

Q. When Norval Morrisseau sent you a

declaration in December, 2003, how did you respond to his declaration, sir?

A. I wrote back....

Q. Did you stop selling them?

5 A. I wrote back to his lawyers in great detail, and explained the entire letter and/or information was both garbled and wrong, and I told them that I would wait to hear from them. They replied to me and asked me if I would pay them a premium on each one of the paintings that I sold, and I told them that if they were as such that they declared, I wouldn't sell them, and they were withdrawn.

Q. So, you did respond to his sworn affidavits...

15 A. Absolutely.

Q. ...saying - because if, why did you respond to those, sir?

A. I respond to all....

Q. Why, why didn't you take those paintings down?

20 A. I respond to all letters.

Q. So you, you, but in the, in this sense, this is your business, you're selling these pictures.

A. I'm not...

25 Q. You get....

A. ...selling them. I just told you.

Q. You're re-selling them. And you get a letter from Norval Morrisseau, multiple letters from Norval Morrisseau...

30 A. I'm sorry?

Q. ...saying....

A. If she would....

THE COURT: Let him finish the question, sir.

MR. SINCLAIR: Q. Multiple letters from Norval Morrisseau saying you're selling fraudulent paintings, to stop selling them, right? You took those paintings down, you're saying, so they were never sold again. What happened to those paintings?

A. They were returned to the consigner.

Q. They were returned to the consigner? I see. And, uh, since then, you've been continuing to sell Norval Morrisseau paintings...

A. Absolutely...

Q. ...correct?

A. ...that's my business.

Q. And it, and with regard to Norval Morrisseau's copyright, with regard to this catalogue that you produced, right? Did you ask permission for the use of the copyright?

A. Yes.

Q. And did you get a written permission from Norval Morrisseau with regard to that copyright?

A. From his family, who hold the copyright.

Q. No, we're talking years ago, and we're talking Norval Morrisseau.

THE COURT: All right, I cannot, this gentleman...

MR. OTAVNIK: I'm going to....

THE COURT: ...just one moment, this gentleman is not on trial for...

MR. SINCLAIR: I understand, sir.

THE COURT: ...for getting copyright permission or not...

MR. OTAVNIK: Thank you.

THE COURT: ...so...

MR. OTAVNIK: Thank you.

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

MR. SINCLAIR: Well....

MR. OTAVNIK: Thank you.

MR. SINCLAIR: Q. Is this one of your catalogues...

A. Yes.

Q. ...of Norval Morrisseau artwork? Did you receive letters from Norval Morrisseau about this one too?

A. No. And by the way, copyright is only infringed if a fee is charged for the catalogue. A fee was never charged for any catalogue out of my gallery. They were given freely to any customer or anybody who walked into the gallery. And so, in actual fact, I was illustrating an item that I had for sale. The only way copyright would fit into that situation was if I put it on a t-shirt, or on a plate.

THE COURT: All right, sir, we do not have to get into...

A. Yeah.

THE COURT: ...the, we do not have to get into the law...

A. But I'm being....

THE COURT: ...of copyright. No, no, sir, I said, I indicated previously that you are not on trial here for potential copyright infringement...

A. Okay.

THE COURT: ...and that was the end of it.

MR. SINCLAIR: Q. But 37 of the 61 pictures

in the, in the first catalogue you took off from sale, they were never sold even though this was your sales catalogue?

A. I would have to go back and see each individual painting and go through the garbled description. It almost looked as if that description was given over the telephone. The sizes are wrong, the description is wrong, the titles are wrong, and so it was very difficult to make sense out of that. And if you had a copy of my letter to Purvice (ph) you would see that that's exactly what I said.

Q. Are you a member of, uh, the Art Dealers Association of Canada...

A. No.

Q. ...Mr. McLeod? Were you formerly a, a member of the Art Dealers Association...

A. Yes.

Q. ...of Canada?

MR. OTAVNIK: Relevance, Your Honour?

MR. SINCLAIR: Q. What, what result, why are you no longer a member of the Art Dealers Association of Canada?

A. The Art Dealers Association of Canada decided that no member of the ADAC would do an appraisal or, on works by Norval Morrisseau. I disagreed, and I withdrew.

Q. So you didn't do, continue to do appraisals and authentications?

A. That's right.

Q. You did continue to do...

A. I did not...

Q. ...authentications. So why....

A. ...but I withdrew.

Q. Oh.

A. And by the way, they've just switched and they've gone back.

Q. So your membership wasn't revoked?

A. My membership...

THE COURT: Okay, you cannot....

A. ...as far as I know, was....

THE COURT: Okay, just one moment. Just one moment. I am not sure, again, why, this gentleman is not on trial as to his memberships, his copyright infringements....

MR. SINCLAIR: You see, the reason, Your Honour, the reason, my understanding from the Art Dealers Association...

THE COURT: Do you have...

MR. SINCLAIR: ...they had revoked....

THE COURT: ...anybody here from the Art Dealers Association as a witness?

MR. SINCLAIR: Uh, no, Your Honour.

THE COURT: All right, so then you cannot tell me anything but what you heard from the Art Dealers Association.

MR. SINCLAIR: Q. Okay, with regards to this issue, specifically, the subject painting, you do appraise Morrisseaus and you have, correct?

A. Of course.

Q. Right? And do you, but you no longer continue to, or you do?

A. I just told you that.

Q. You do continue to appraise them?

A. I said, "no, I don't."

Q. Why don't you, sir?

A. I've just, because of all this

confusion.

Q. See, I'm, I'm having a hard time understanding...

A. I know.

Q. ...why ADAC took your...

A. Go ahead.

Q. ...why, why you removed yourself from ADAC who had stopped anybody authenticating Norval Morrisseau's art because of the issue...

A. It was my....

Q. ...and now you're no longer a member of ADAC, how is it possible that you're not, that you have not appraised or authenticated this man's painting?

A. I also sell Inuit carvings, and if someone came into my gallery and said, "I don't think that's carved by an Inuit," uh, I would have proof that that was carved by an Inuit. If someone comes into my gallery and says, "I question that painting," I would take into consideration what they are saying to me. And if there was a wholesale, national confusion about the market of Norval Morrisseau, I would fall back on that which I knew exactly and totally, and that is Morrisseau prior to 1985. Doing appraisals is a joe job. Who cares? It's about \$150.00 for an afternoon of work, and so it doesn't really affect my business. And so my business is in my reputation. And so if I see a question to my reputation, then until I am absolutely certain of what I am doing, I say, "sorry, I'm not doing appraisals just now. Contact me in a year from now. You're not, you don't have to have this in a week. You don't have to have it in a month. And so, contact me later."

Q. Did the plaintiff ask you for an

appraisal of this picture?

A. Who is the plaintiff?

MR. OTAVNIK: Me.

A. Oh. No.

MR. SINCLAIR: Q. He never asked you for one?

A. No.

Q. And you spent this time coming here to court and going through all of this, but, and you consider yourself an expert, but you have chosen not to provide an appraisal or an expert report with regard to the subject painting?

A. He never asked me.

MR. OTAVNIK: Mr. McLeod has testified that....

THE COURT: All right, he has given his answer...

MR. OTAVNIK: Uh....

THE COURT: ...let us move on, please.

MR. SINCLAIR: Q. Okay. Have you ever heard of a man, man named Tony Colella?

A. Tony....

Q. Colella.

A. No. Uh, I might have...

Q. Tony Colella...

A. ...but....

Q. C-O-L-E-L-L-A.

A. I could have, but I don't remember.

Q. Um, you appraised four paintings that were, that the plaintiff is using to substantiate his damages. These four paintings were donated on the basis of your authentication, and, and on the basis of Tony

Colella's authentication, from Thunder Bay, is that correct?

A. I don't know. I don't know him, I can't remember the name.

Q. Do you, well, do you remember appraising four paintings for the plaintiff, here, for the Thunder Bay Art Gallery?

A. For Mr., uh, no...

Q. You don't?

A. ...I don't.

Q. I see. Okay. Maybe I can refresh your memory.

MR. OTAVNIK: Your Honour, uh....

THE COURT: Okay, again, I am not sure the relevance.

MR. SINCLAIR: It's in the plaintiff's claim.

MR. OTAVNIK: I, I, again, I mean, I've already....

THE COURT: So what is the relevance of whether he....

MR. SINCLAIR: The relevance is, sir, that we have appraisals by this gentleman and another gentleman that provide, provide the \$33,000.00 tax credit....

THE COURT: So what has that got to do with this case?

MR. SINCLAIR: This, because this is, because these four paintings in this case, in this one, several exhibits here have to do with four donations that were donated to the Thunder Bay Art Gallery....

THE COURT: Well, wait a second, wait a second. I, let me get it clear, how many paintings are you...

MR. OTAVNIK: No, one...

THE COURT: ...suing over?

MR. OTAVNIK: ...Your Honour.

THE COURT: Just one?

MR. OTAVNIK: This, this suit is....

THE COURT: Is on that one painting.

MR. OTAVNIK: That one painting, sir.

THE COURT: That is all he...

MR. OTAVNIK: That's all....

THE COURT: ...is concerned about, this one painting.

MR. SINCLAIR: Yes, but to value his one painting, he has used....

THE COURT: I have not heard how he has valued his painting, sir, so I'm not sure....

MR. SINCLAIR: It's here in his claim, Your Honour.

MR. OTAVNIK: I, I....

THE COURT: Well, it may be in his claim, I, the only evidence I consider is what is given in the witness box, not what is in the claim. Claims are allegations. They have to be proven under oath, et cetera. So presumably he will get in the witness box later, he has still got one more witness, and tell me how he valued the painting, and then you can ask him questions on that.

MR. OTAVNIK: Thank you, Your Honour.

MR. SINCLAIR: Q. Right. Okay. Do you recognize these four paintings on the plaintiff's claim?

A. No.

Q. Uh, that's in black and white.

A. It's a much, oft repeated image.

Q. Okay, well, according to this exhibit you, you appraised this...

A. Show me the first....

Q. ...and gave the valuation.

THE COURT: Okay, well let us....

MR. SINCLAIR: Just....

THE COURT: Let's, just one moment. Just one moment. It is not the painting in issue, so why, it does not matter whether he did or he did not. If we are talking about damages...

MR. SINCLAIR: See....

THE COURT: ...for one painting...

MR. SINCLAIR: We are.

THE COURT: ...I am dealing with that painting, not others.

MR. SINCLAIR: The four other paintings, Your Honour, were used to evaluate the damages...

THE COURT: I do not know...

MR. SINCLAIR: ...on this one painting.

THE COURT: ...I have not heard any evidence on the question of how his painting is being evaluated.

MR. SINCLAIR: Right.

THE COURT: I have not heard anything that it is in comparison to those. If they are,

then we can get into that. But I have not heard any evidence on the question of what his damages are yet...

MR. SINCLAIR: Right.

THE COURT: ...and how he is assessing them.

MR. OTAVNIK: Thank you.

MR. SINCLAIR: Q. Right. Brian Marion, do you know who Brian Marion is?

A. Of course.

Q. Who is he?

A. Uh, he was an early companion of Norval Morrisseau's. He is a painter and he's in ill health. If you look on the book by Lister Sinclair and Jack Pollock where they have pictures of the tea party in Cochenour, Brian Marion is the young man in the white pants lighting the fire. If you look at Norval Morrisseau's picture in the National Gallery when he's receiving the Order of Canada, the hansom young man standing next to him there is Brian Marion.

Q. So he is considered Norval Morrisseau's protégé, or one of them?

A. I don't know what you mean by "protégé." He worked with and worked for Norval Morrisseau and learned to paint through Norval.

Q. Well, in the art world often great artists have protégés.

THE COURT: All right. Again...

MR. OTAVNIK: Uh, and....

THE COURT: ...I am not sure where we are going with...

MR. OTAVNIK: Thank you, Your Honour.

THE COURT: ...the questioning, sir.

MR. SINCLAIR: Um....

THE COURT: Now, sir, look. We have got to move this trial along. I do not see any relevance to the question. Now unless you can satisfy me with some relevance, we are moving on.

MR. SINCLAIR: Brian Marion and I visited Joe McLeod at his gallery. We went through his paintings and we went through his catalogue, pointing out....

THE COURT: So what is the relevance of the question you are asking. I am not sure what you are....

MR. SINCLAIR: Well, the relevance is, is that, my assertion is, is that Mr. McLeod is an extremely biased witness who has made his living selling Morrisseaus...

THE COURT: Well....

MR. SINCLAIR: ...against the will of Norval Morrisseau...

THE COURT: Well, that has got no....

MR. SINCLAIR: ...because they weren't painted by him.

THE COURT: No, that does not make him biased. That just, I don't know how it makes him biased in relation to the plaintiff's claim. I know it is....

MR. SINCLAIR: Well, all I am doing is pointing out that there have been many instances....

THE COURT: No, no, sir, we are not going into all these off-shoot incidences,

because, you know...

MR. SINCLAIR: Yeah.

THE COURT: ...it is just not relevant. You know, we have got to cut off, you know, there has got to be some relevance to the question you are asking. You cannot just keep going on and on about different incidences that really do not pertain to the...

MR. SINCLAIR: To this...

THE COURT: ...main issue.

MR. SINCLAIR: ...particular case. Right. But pertaining to this particular case....

THE COURT: The only thing pertaining to this particular case, to me, appears to be, were there certain statements by you that somehow affected the value of the painting? On what basis did you make those statements? And what is the plaintiff claiming by way of damages? That is all I have to - I am focusing on.

MR. SINCLAIR: Right.

THE COURT: I am not focusing on anything else in relation to this gentleman, you know....

MR. SINCLAIR: But that is...

THE COURT: No, no, it is not...

MR. SINCLAIR: ...Your Honour....

THE COURT: ...it is not.

MR. SINCLAIR: I apologise, but....

THE COURT: He has given evidence on certain things...

MR. SINCLAIR: Yeah.

THE COURT: ...sir. If you want to, you cross-examine him on, on the points that have, the evidence, or the material evidence that he's given, that is fine.

MR. SINCLAIR: I see. Okay, that is all, Your Honour, for now.

THE COURT: Any...

MR. OTAVNIK: Yes.

THE COURT: ...redirect.

RE-EXAMINATION BY MR. OTAVNIK:

MR. OTAVNIK: Q. The net effect is, you were served all these letters by Norval Morrisseau, you continued to sell Norval Morrisseau's work, and none of Norval Morrisseau's legal representatives ever sued you?

A. Never.

Q. And, and again, you have viewed this painting in question?

A. Yes.

Q. And you believe it to be an authentic Norval Morrisseau?

A. Yes.

MR. OTAVNIK: Thank you.

THE COURT: I just need some clarification before you step down, sir. The reason you consider this to be an original is because of what? What factors exist? You mentioned something before about comparing his handwriting, and *et cetera*, you know with an expert at handwriting. Is that how you determine that to be a....

A. Just a small part. It's, it's everything. Uh, number one, when they got to Mr. Voss, they didn't go behind Mr. Voss because the actual source of most of the paintings is a man who was a....

5 THE COURT: No, that is not the question, sir.

A. Okay.

THE COURT: Okay, I am asking you...

A. Uh....

10 THE COURT: ...what leads you to believe....

A. It has to do with the content of the painting, it had to do the way the painting was put on the canvass. It had had to do with the subject matter of the painting, and how that fits into the general direction that Norval normally took when he was painting a painting. It takes into consideration the time when Norval Morrisseau painted the painting, which was...

15 THE COURT: What....

A. ...in the 1970s.

20 THE COURT: This painting is a 1970s painting?

A. I think so.

MR. OTAVNIK: Yes, sir.

25 A. And I think it's dated. And it also has on the front, in Cree syllabics Norval's usual signature of Copper Thunderbird, and on the back, as he was doing at that time, in the remainder of the black paint still on his brush, he frequently titled them in a very grand manner, and then signed them in English. And so we hired a man who works for the mounted police who is a forensic expert and he looked at the signature, he looked at 35 prints in my gallery, he looked, signed by Norval Morrisseau, he looked

30

at letters that were written to me by Norval Morrisseau, he looked at other illustrations that I could give him that other people who had received letters from Norval Morrisseau, and he established that the signature on the back was the English signature of Norval Morrisseau. So the, the front of the painting, the content of the painting, the way it was painted, the structure of the painting all led me to believe that this was a painting by Norval Morrisseau. And then the signature on the back helped me...

THE COURT: All right.

A. ...to make that decision.

THE COURT: Okay, now let me ask the next question. You said that, whatever statements were made, you can have a seat, sir, while I am asking this. Whatever is on the defendant's website, I think it was a question asked you by the plaintiff, "how does this affect people?" and you, and I think you distinguished it - well, first of all you said, "it does not affect the institutional buyer." I am not sure why it does not affect the institutional buyer.

A. Because they are sophisticated, wise, and knowledgeable, and they don't fall for slander.

THE COURT: Okay. So how...

A. They are easily convinced.

THE COURT: ...who does it affect? So who does it affect?

A. People who are not really knowledgeable about art, people who have no background in choosing. The idea that Norval Morrisseau had help, nobody, nobody, uh,

Rembrandt had help.

THE COURT: Okay, but that's not the question I have.

MR. OTAVNIK: Your Honour, I think I....

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

MR. OTAVNIK: Okay, sorry.

THE COURT: Just wait. I have not finished.

MR. OTAVNIK: I don't....

THE COURT: You will be able to ask questions based on what I ask. Right now I am just trying to get some clarification.

MR. OTAVNIK: My apologies, Your Honour.

A. So there are, there are....

THE COURT: No, just wait a moment sir.

A. There are sophisticated...

THE COURT: Sir....

A. ...buyers....

THE COURT: Sir, I said what...

A. Okay.

THE COURT: Okay. So you are distinguishing between the sophistication of the buyer. So if, so how does that ultimately affect the price of the art?

A. Greatly.

THE COURT: Well, a sophisticated buyer can always determine the price and buy the painting.

A. Well, a sophisticated buyer has to his, uh, available checking all the prices in the auction houses in Toronto, finding out which auction houses are selling Norval Morrisseau, and how much they are getting for them.

THE COURT: Right.

A. A sophisticated buyer has already probably bought five, six, seven, eight, nine paintings.

THE COURT: All right.

A. And so, he knows the difference between a really great Norval Morrisseau hanging in the National Gallery, or a Morrisseau that's really not that good a painting. And he also knows the complication of the content of the painting as very important, how does it fit into what Norval was talking about.

THE COURT: Okay, but that is not - the question, here, is, presumably the concerns, on the defendant's website, is in relation to the authenticity of the painting. So how does that affect the value *vis-à-vis*, in general? If I own a Morrisseau, how does that affect if I want to sell it? Like how is that affecting the price?

A. If you owned a Morrisseau and it was a very good Morrisseau, what would affect the price is how long you've had it...

THE COURT: No, no, no, I am saying....

A. ...how clear is the provenance....

THE COURT: No, no, no. The provenance - okay, let us, you have mentioned the word "provenance." Provenance is what? It means....

A. A record.

THE COURT: A record of title?

A. No, a record...

THE COURT: Where it came from?

A. ...of where....

THE COURT: The origin?

A. Yeah.

THE COURT: The origin?

A. Yes.

THE COURT: Okay. So is there anything in here - I mean, as I understood from, well, when it was sold, was, at the auction, is there, what provenance - well, I guess I have to hear from the plaintiff as to what...

A. Right.

THE COURT: ...how he was satisfied as to the provenance, of the origin. I mean, origin....

A. There was no secret to the provenance at the auction. When, if you were at the auction and you were buying a painting and Norval Morrisseau's gallery was there buying a painting, and the auctioneer told you, he didn't know a lot about art, but he knew who he got it from and his name was David Voss, and he gave you access to David Voss, and David Voss told you exactly where he got the painting, and the painting led right back to the period, the time, the place Kakabeka Falls, and the storage unit, then you've got a pretty good provenance.

THE COURT: So again, in this particular painting, if somebody alleged it wasn't authentic, again, I am still having difficulty how that ultimately affects the price if, in fact, people can establish the authenticity the way you establish the authenticity.

A. Well, I am a gallery owner...

THE COURT: I know that, I....

A. ...and I have been dealing with the work

for a long time.

THE COURT: I know that. But how does that, ultimately, affect the price? If I want to buy it from the plaintiff, let us say, and I am saying, "well, jeeze, I have heard rumours that these aren't all authentic, and I am concerned, therefore I do not know if I want to offer you the money that you are asking, or whatever we are talking" - you know, can I say to him, "can't you authenticate this for me in some way"?

A. Absolutely.

THE COURT: To justify the price?

A. Absolutely.

THE COURT: So then how do the statements of the lack of authenticity affect the price?

A. It goes zero.

THE COURT: It goes zero until you can authenticate it?

A. Absolutely. Anybody who....

THE COURT: But if it can't be authenticated....

A. Anybody, anybody who has a question about an art object, it's like asking a child, "do you want an ice-cream?" And if the ice-cream is right in front of him, and he wants the ice-cream, he will buy it. But if you tell the child, "this is vomit," he's not going to buy it. And so if someone comes to you and your initiate, and you don't know the art market, you don't know how auctions work, auctions are not priced by the auctioneer, auctions are priced by the people who are bidding. And so they make the decision on how much money you pay for it. In a

5 gallery it's different. When it comes to a gallery, in the past, one expected to get double your money, because you may have the painting for a year or two, and you have to pay rent, and you have to pay salaries, and you have to pay all of these expenses. And so in a gallery pricing can be entirely different than at an auction. But at an auction the price is controlled by the buyer. Authenticity can be demanded, and should be presented to anybody who is bidding.

10 THE COURT: All right. Any questions based on what I just said?

MR. OTAVNIK: No. I was going to say, Your Honour, I will be able to clear all...

THE COURT: Okay, well then, in...

15 MR. OTAVNIK: ...a lot of these questions up during, during my....

THE COURT: ...when you come in the witness box next we will - any other questions of this gentleman?

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

MR. SINCLAIR: Q. Yes. So you, you, uh, just stated, Your Honour, that a painting without proper provenance, without provenance is worth zero?

25 A. To a buyer. But not necessarily to a gallery, because he may disagree with what you're saying.

Q. Right. And you mentioned, uh, Mr. David Voss?

A. Yes.

30 Q. Have you met Mr. David Voss?

A. Yes.

Q. And did, uh, he, himself sell you

paintings?

A. No.

Q. So you didn't meet him in the course of business?

A. Yes. He offered me a group of about eight paintings and he wanted me to pay \$8,000.00 for the paintings, and I said, "no."

Q. Because?

A. I didn't have the \$8,000.00. I had a great deal of stock. I've got a lot of Morrisseaus in my gallery, and at that stage of the game I didn't want to buy them.

Q. Ah. When, how long ago was this, that happened?

A. Uh, five, six years. Some....

Q. And you can evaluate a painting. You, you know the value of these paintings, right?

A. Yes.

Q. So let's say we take one of those eight that was \$1,000.00.

A. Yes.

Q. What would the market, what would you selling that for on the market?

THE COURT: All right, well, again, we are talking about....

MR. OTAVNIK: Again, we're....

THE COURT: Just one moment. If we are - I think we are talking about something that is not the subject matter of the case. So it does not....

MR. OTAVNIK: Thank you, Your Honour.

THE COURT: You know what, it is like,

presumably you cannot look at one painting and say that is, that represents the, a similar mark-up on every other painting. As he has already indicated, some are worth more than others depending on a number of factors.

MR. SINCLAIR: Right.

THE COURT: So I am not getting, let us not get into that.

MR. SINCLAIR: Okay, uh, only point being that it....

THE COURT: No, you can...

MR. SINCLAIR: Well, I'll bring it up later.

THE COURT: ...summarize your points later.

MR. SINCLAIR: Yeah.

THE COURT: Okay, you can step down, sir.

All right, we're going to hear from you now?

MR. OTAVNIK: Mr. Baker, please....

THE COURT: Oh, I thought you had - how many witnesses?

MR. OTAVNIK: Oh....

THE COURT: Are you giving evidence too?

MR. OTAVNIK: Yes, sir.

THE COURT: So there is four witnesses?

MR. OTAVNIK: So, yeah. Well, I didn't think, Mr. Baker, I didn't see him in the morning, so, and I wasn't sure he was going to be here, so....

THE COURT: All right.

MR. OTAVNIK: I, I apologise, Your Honour. We'll be very brief, Your Honour. I don't want to waste, waste time.

RICHARD HUGH BAKER - SWORN**EXAMINATION IN-CHIEF BY MR. OTAVNIK:**

5 MR. OTAVNIK: Q. Okay, Mr. Baker, how did you get involved in this case?

A. You subpoenaed me here.

Q. Well no, I mean before. In, January, in....

10 A. You sued me in Small Claims Court this, in the Whitby Small Claims Court, and the case was transferred to the Toronto Small Claims Court.

Q. I am talking about Mr. Sinclair's contact with you in June of, in June, 2009.

15 A. I was requested by Mr. Sinclair, who was involved, I gather, in this case at the time...

Q. Right.

A. ...uh, to provide a venue, a place where the painting in question in his litigation could be examined.

20 Q. On his, I did not contact you with respect to that?

A. No...

Q. From his, it was....

A. ...it was an email contact initially...

25 Q. Thank you.

A. ...from Mr. Sinclair.

Q. Thank you. Now, Mr. Baker, were you aware of the contents of Mr. Sinclair's website, uh, before you, before he contacted you?

30 A. Only in the most general terms. I haven't had the time to read all the websites on the Morrisseau matter.

Q. And did you know that the website by Mr. Sinclair is called "Paintings in the Smithsonian Fake," "Winnipeg Art Gallery," "Art Gallery Nova Scotia"?

A. I don't know that because I...

Q. Fair enough.

A. ...I...

Q. Fair enough.

A. ...don't know the website.

Q. Fair enough. Fair enough. How long was the painting at your office?

A. Well, I'm going - I can give you the precise, but it was probably ten days.

Q. Fair enough. Uh, did Mr. Don Robinson ever inspect the painting?

A. Yes, he did.

Q. Okay. And for how long?

A. He, Mr. Ritchie Sinclair, and John Newman of the Kinsman Robinson Gallery came to my office one, noon time or morning.

Q. Okay.

A. Uh, they looked, examined the painting, they photographed it.

Q. Thank you. Um, what is your opinion of the painting?

A. Your Honour, I should indicate that, that I'm a practicing litigation lawyer in Toronto. I am a defendant in a case where Otavnik is the plaintiff, which is in this court, coming up for trial. He has sued me on my involvement in connection with that particular day, this very painting, and I ask the Court to consider...

Q. I withdraw the question.

A. ...whether or not I should be compelled to

answer questions about facts which relate to the very lawsuit that he has against me pending.

Q. They are, they are unrelated, but I withdraw the question, Your Honour.

THE COURT: Okay.

MR. OTAVNIK: It's a separate action....

THE COURT: All right. That is enough.

MR. OTAVNIK: Fair enough.

THE COURT: Let's move on.

MR. OTAVNIK: Q. Now, um, Mr. Baker, as the lawyer for the Norval Morrisseau Heritage Society, um....

A. As what?

Q. As the lawyer for the Norval Morrisseau Heritage....

A. I am not the lawyer for that society. I am a member of it. I have, uh, it does not have a lawyer. I just happen to be one.

Q. Did Mr. Robinson deliver various paintings to the society as, as a donation?

A. Yes, he did.

Q. And you are in possession of those - uh, the society is?

A. Yes, it is.

Q. Okay. No further questions.

THE COURT: Any questions, sir?

CROSS-EXAMINATION BY MR. SINCLAIR:

MR. SINCLAIR: Yes. Um, Your Honour, with regard to the defendant's claim....

THE COURT: No, no, sir. Do you want to ask him any questions?

MR. SINCLAIR: I do, with regard to the

defendant's claim.

THE COURT: All right.

MR. SINCLAIR: Q. Thank you for coming Mr. Baker. With regard to your relationship with Joe Otavnik, and the fact that he's sued you. Do you think there's any legitimacy to the lawsuit that he's launched against....

THE COURT: All right.

MR. OTAVNIK: Irrelevance.

THE COURT: Okay, okay, that is, that is up to me to decide, as to if there is any basis to his....

MR. SINCLAIR: Do you feel harassed by Mr., have you felt harassed..

THE COURT: Again...

MR. SINCLAIR: ...by Mr. Otavnik?

THE COURT: ...I am not sure that is part of this lawsuit...

MR. OTAVNIK: Thank you, Your Honour.

THE COURT: ...so I don't see the relevance.

MR. SINCLAIR: You know my defendant's claim is harassment?

THE COURT: Well, against you, not against him.

MR. OTAVNIK: Yeah, it's just....

THE COURT: All right, you can step down. Thank you.

MR. OTAVNIK: I am ready to testify, Your Honour.

THE COURT: All right. Want to come in the witness box, then.

MR. OTAVNIK: Thank you, Your Honour.

JOE OTAVNIK - SWORN**EVIDENCE IN-CHIEF:**

5 A. It's a very simple case of trade libel, Your Honour. Mr. Sinclair has slandered the title of the painting, and the burden is on him to prove the painting is false. I will start off, Your Honour, if you take the plaintiff's claim, and go to exhibit one, uh, at the very, at the very start, Your Honour.

10 THE COURT: Yes, well, I will find it.

A. Yeah, fair enough. Exhibit, yes. You will notice the, um, definition of the paintings given by, by Mr. Sinclair, "counterfeit, meaning passed off fraudulently, deception, forged, unreal, et cetera." So that is how he has labelled the painting. And I now turn to....

15 THE COURT: Well, wait a second.

A. Yes. Go ahead, Your Honour.

20 THE COURT: This is a general definition. I do not....

A. Exactly, then it, then, yeah, he's actually done the same thing actual, on the actual painting.

25 THE COURT: So....

A. If you go to exhibit number six, Your Honour - next page.

THE COURT: All right, all right. Go....

30 A. That is the subject title, that is the painting that is subject of this suit, and you will notice the, um, the description of the painting: "inferior, counterfeit Morrisseau, false, falsified, unauthorized, un-genuine, unreal, forged."

THE COURT: Okay, I am, one second....

A. So just....

THE COURT: Where are you reading?

A. Oh, right here it is, Your Honour.

THE COURT: Oh, just....

5 A. The point being that there is no doubt
as to how he has described the painting. Now....

THE COURT: And this is the painting that
you own? And....

10 A. Correct, sir. And is, that is the one
that is subject of this suit.

THE COURT: And how do we cross-reference
this particular painting to the one you own?

A. That is the painting I own, Your Honour.

15 THE COURT: No, no, well, you are saying it
looks like the painting. How do I know....

A. Oh, no, I said it is, it is, it is. It
is the painting I own. It....

20 THE COURT: Well, how do we determine that
it is the painting you own as opposed to a
painting....

A. Oh, somebody else owns?

THE COURT: Not that somebody else owns,
that there may be another painting....

A. Oh, I, I have it here, Your Honour.

25 THE COURT: Oh, no, no.

A. Yes, it's here.

THE COURT: How do we know the one that is
shown here is the one in your possession?

30 The exact same one as opposed to a similar
one that, there may be another one out there
that looks like it?

A. Well, it's identified as being from,

Hugo Metuvick's (ph) blog, and it was taken from Potter Auction website. So, I bought the painting at Potter Auction.

THE COURT: Okay. Well, wait a second, let us see if we can - is there an agreement that that, the painting that you are talking about is his painting?

MR. SINCLAIR: Do I agree that it is?

THE COURT: Yes.

MR. SINCLAIR: I agree that this is the image of the painting that he owns.

THE COURT: Owns. And the image in the sense that, what, that you photographed it?

MR. SINCLAIR: I had no idea it was his when it....

THE COURT: No, no, no, that is not the questioning I am asking, sir. You are, you are, that is the image of his...

MR. SINCLAIR: Yes.

THE COURT: ...painting? Okay, so that gets over that hurdle.

A. Okay. Thank you. Now, in addition to this painting, Mr. Sinclair has set up a website where 1,000 paintings, including this one, the ones, paintings, paintings from the Smithsonian he has called fake, from the Fred Jones Jr. Museum, called fake, uh, he's called paintings from Europe both real and fake. He has called paintings in public museums in Canada fake, including the Winnipeg Art Gallery, Nova Scotia Art Gallery, and the Thunder Bay Art Gallery, which are all Class A institutions. And if you want, if we, why don't you, if you want to go through those, Your Honour....

THE COURT: No, no. What, you do not have to go through those...

A. Okay.

THE COURT: ...but....

5 A. Yeah, my only point about the Class A institutions is....

THE COURT: Now, when....

A. Yes?

THE COURT: And again, he does not identify you as the owner of this painting.

10 A. Well, no, he didn't. But I am the owner.

THE COURT: I know that....

A. He didn't...

THE COURT: Okay....

15 A. ...he did not know I was the owner.

THE COURT: When he did this?

20 A. Correct. He just took it from another person's website and called it a fake, not knowing it was mine as he just admitted to saying. And I, I point to more examples, Your Honour, where he has called the same painting both real and fake. And all, all kinds of stuff. And I will go, Your Honour, to exhibit number 17. This is from Mr. Sinclair's, 17, Your Honour, next one. This is his, Mr. Sinclair's website, that he used to have up, where he even admits on there, and I'll read it to the Court....

25 THE COURT: Let me, wait a second.

A. Okay.

THE COURT: Okay, go ahead.

30 A. "The images posted in this archive are not for sale. They are simply pictures of artwork that I have collected from various internet art sources years ago,

and then posted here for inspiration and enjoyment. With the exception of paintings that I witnessed painted or exhibited by Morrisseau, I have no way of discerning whether the images shown here are all authentic Morrisseau originals. Nevertheless, enjoy." So he even admits on his own website he cannot determine what a real Morrisseau is. He is, uh, he will admit that he hasn't even, he didn't even see the painting in question.

THE COURT: He is talking - well, is yours on this website?

A. No, Your Honour...

THE COURT: I mean....

A. ...my point is, he has a website, and he was....

THE COURT: No, but he is talking about specific pictures.

A. Yeah, no, no, no. My point is, he had a website, where he said, "these are real Norval Morrisseaus." He, but he's basically saying, "other than the ones I've seen..."

THE COURT: Can I see....

A. ...all of the, other than the ones I've seen, I have no idea which ones are real." And my point is, he never saw this painting. You following me?

THE COURT: All right. So....

A. Okay.

THE COURT: Go ahead.

A. Okay. Now, when his website first came out, I, the 1,000 paintings being, Norval Morrisseau paintings being fake, I thought it was a joke. I thought nobody would believe it. But, however, it has had major market consequences, as, as Mr. McLeod and Donna Shea has

explained. There is, effectively, now, Your Honour, no market for the, the work of Norval Morrisseau. I have tried, I have approached various auction, auction halls, Heffel's, Sotheby's, and they simply don't want it. When you, it's, Your Honour, it's like this: it's like, integrity of the artist, Your Honour, is a corner stone of the business. It's kind of like in this profession if you were to get rid of solicitor/client privilege, and say, "well, you know what, I can change the system except for that." It's the absolute cornerstone of the business. And when you put into question the artist's integrity, even by putting a website like that, you really affect the market. People, people don't think rationally about this. They say, "oh, it's on the internet? Oh, it must be real." And that puts a seed of doubt in people. And right now, Your Honour, the market is completely dead. The paintings cannot be sold. There is, in effect, there is no market. I mean, it's like, you know, you're saying to me, "well, how can this be possible, Mr. Otavnik? How can a simple website do all this harm?" I say to you, Your Honour, "how did Bernie Madoff get away with what he did?"

THE COURT: Well....

A. It's, no, but it's, but it's the same principle, Your Honour. I mean, the, the website had....

THE COURT: I am not sure there is any closeness in principle.

A. Well, the point is, Your Honour, the website has caused direct economic damages. This painting could have been sold for the ten to \$12,000.00 range. And now, Your Honour, it's....

THE COURT: Well what do you have to show me that it could be sold for ten to \$12,000.00?

5 A. Well, I'll give you a, well, sure, I'll
give you a - I used for valuation is, um, my sister did a
donation to the Thunder Bay Art Gallery, as per Exhibit
Seven. And these are similar paintings of similar size, in
the same rough timeframe, the same quality. And that was
done in 2004, before the artist died. And they were
roughly worth around \$8,000.00 each. This painting is
worth a little bit more because, one, the artist is
deceased, or should be worth more because the artist has
10 deceased, and the subject matter is that of a religious
nature, which are less frequent for Norval Morrisseau and
do, uh, go for a bit more of a premium than a regular
Norval Morrisseau. So the basis, uh, so what I am doing
is, here, I am just using a comparative basis as in a
house. You know, a house down the road sold for this, I
15 can expect my house to sell for this. So the idea here is,
these paintings from the same source, same style, same
quality, were worth approximately \$8,000.00 a piece.
Before the, while he was alive, now that he is dead, given
the subject matter, it should be worth ten to \$12,000.00,
20 but now has absolutely no value. You could not give the
painting away. You could not give...

THE COURT: All right....

25 A. ...a Norval Morrisseau painting away now.
It is very difficult as...

THE COURT: Well....

A. ...as Mr. McLeod and, he was....

THE COURT: Well, what made, I mean, to say
you could not even give it away...

30 A. Well....

THE COURT: ...it sounds like a bit of an
exaggeration.

5 A. Well, Your Honour, I mean, no auction hall will take it for a consignment.

THE COURT: Just because no auction hall - and do you have any - and why the, no auction will take it because?

A. Because of the controversy.

THE COURT: Okay, but what if you can authenticate it?

10 A. Well they, I mean, if you're, if you're Heffel's and you selling million dollar paintings, you don't want to sell a \$20,000.00 Morrisseau and have it in, in the newspaper, "Heffel's selling fake paintings, alleged fakes by Norval." It's, it's so toxic when you talk about integrity of the artist and you call into question fakes. I mean, I mean, if you set up a website calling 1,000
15 Picassos fake, you don't think someone would say, "hey, wait a second. What's going on?"

THE COURT: So you're saying there wouldn't be any market for Picassos?

20 A. I'm saying there, I'm saying there would be still a market, but I'm just saying, you put a seed of doubt in people's minds, especially the art market, and especially integrity, you, you're essentially destroying the market.

25 THE COURT: All right. You have this painting?

A. Yes.

30 THE COURT: Your intention is to do what with the painting? Keep it? Sell it? Do you want to sell it one day, or are you just saying that, "if I want to sell it, the value has gone down"?

A. Exactly, Your Honour. I mean, I mean, I, yes, exactly.

THE COURT: But I guess in theory, have you suffered any damage until you try to sell it?

A. Well, it's, it has, in effect, it has no value, 'cause I, 'cause there is no market. I mean, you're saying to me, "potentially, you could lose the money." I'm saying I have actually lost the money. Because there is no market there...

THE COURT: But the....

A. ...the value of my holdings....

THE COURT: But is the sole market through selling it through auctions?

A. Pardon?

THE COURT: You can't sell it privately?

A. Oh, it would be hard to do. People know about the website and they....

THE COURT: But I just asked your last, or not your last witness, I asked Mr. McLeod...

A. M'hm.

THE COURT: ...you know, and he thinks it is, he thinks it is an original.

A. Oh, it is an original...

THE COURT: Okay.

A. ...but it is hard to, it is still hard to sell it in the current climate.

THE COURT: But....

A. People say, "oh, we still have doubts about it because," even if you have, people are like that. I mean, the nature of the market is that when you put a seed of doubt in people's minds, even if they really,

5 really think it is, and they kind of 100 per cent know it is, it's kind of like, boy, you know, I heard - because for them, if they were to buy it they would have the same problem. I mean, Your Honour, I have a, I have a Norval Morrisseau. The painting has been called fake. But do you want to buy it? And then say you bought it, you say to someone else, "hey, you know, I've got a real Norval Morrisseau." "Yeah, but I heard there's a lot of fakes out there on this website." Do you want to buy it? You see my point? I have a painting which has no transactional value.

10 THE COURT: Just give me a minute.

A. Sure.

THE COURT: Anything else you want to tell me, sir?

15 A. No. Basically, Your Honour, that I know it may not sound rational, but this one website has caused this much damage. 'Cause like I say, in this market, when you put the seed of doubt in people's minds, I mean, it's really un-sellable. And until this situation gets resolved, there will be no recovery in the market. And there is, to me, if there is no market, the loss is complete, because there is no market; there is no transaction, nobody wants it, you can't sell it.

20 THE COURT: All right.

25 A. Thank you.

THE COURT: Any questions?

CROSS-EXAMINATION BY MR. SINCLAIR:

30 MR. SINCLAIR: Q. This is focused particularly on the painting, right, not the harassment issue? When did you start collecting Norval Morrisseau paintings?

5
A. That would be in the, uh, the mid-80s I believe.

Q. Mid-80s?

A. I believe.

Q. Who did you buy the first one from?

A. Uh, somebody private. I don't remember.

Q. When did you buy your first Randy Potter painting?

10
A. Uh, I don't remember. Maybe 2003. Maybe, I don't know.

Q. That's the first one? Okay. Did you buy the four paintings that you sent to, uh, that you donated, you and your sister donated to the Thunder Bay Art Gallery?

15
A. Did I buy them?

Q. Did you buy them from Randy Potter Auctions?

A. Yes, I did.

Q. And, and when did you buy those?

20
A. Uh, it's in the - I'm not sure if it's in there. Well, if the donation was, the donation was 2004, it had to be, obviously, before then. I can't tell you the exact time. The, that would have been part of the - I don't know. It was before then, obviously.

25
Q. Okay. With regard to this painting.

A. M'hm.

THE COURT: Can I have the exhibit back?

A. Oh, sorry, Your Honour. Sorry.

30
MR. SINCLAIR: Q. You bought it at auction at Randy Potter, that's correct?

A. Correct.

Q. How much did you pay for it?

5 A. Approximately, uh, I'm, I'm not sure. I'm not sure. I think around three and a half, \$4,000.00. Because it's, because of the subject matter it is, it was one of the ones that would sell for more at Randy's auction just because of the subject matter.

Q. Given it's so important and we're in here in a lawsuit with regard to it, how come you don't know how much you paid for it?

10 A. Because that's not, that's irrelevant, really. It's the value that what it was, what I could have sold it for, compared to what it's worth now. That would be my loss. The difference between what I paid for it and what I sold it for is not really relevant.

15 Q. Is this the only receipt that you, um, exhibit nine, is the only receipt that you ever received?

A. No, that's the receipt for the painting in question.

Q. This one?

A. Yeah.

20 Q. For the painting in question...

A. That....

Q. ...this is the only receipt you ever received?

A. Of course.

25 Q. And it has no price on it?

A. I took it out.

Q. You took it out?

A. Of course.

Q. But you don't remember how much?

30 A. Uh, I said approximately \$3,500.00. I didn't think that was relevant.

Q. Thirty-five hundred. How big is the

painting?

A. Well, it's, it's right here. I believe it's, it's labelled, the size is labelled in the - 26 by 24.

Q. Okay. Have you ever auctioned paintings yourself? Morrisseau, Norval, purported Norval Morrisseau paintings, have you ever auctioned any off yourself? Sent any off to auction?

A. Yes. Yes.

Q. Which auction houses?

A. Uh, Heffel.

Q. Heffel's?

A. Yes.

Q. Did they sell?

A. No. Gabe Vadas sent them an email saying it was fake, and they I sued Gabe and Gabe paid me out.

Q. Who is Gabe Vadas?

A. He is Norval's business manager.

Q. So what happened here?

A. Gabe, I, I, along with other - there was about six paintings that were put on one of Heffel's online auction, I believe September of '06, and about three days in my painting, along with other clients' paintings were taken off of Heffel's website. So I called Heffel up and I said, "well, what's going on? I mean, you just consigned my Norval Morrisseau painting, you did your due diligence, you thought it was a real one, you put it up, what happened?" They go, and they didn't give me an answer. I got an email from another collector who corresponded with Heffel, and Heffel said to him, they had email from Gabe Vadas saying that the paintings in Heffel's were all fake,

including mine, that's why we withdrew them. So I said, okay, to Heffel. Then I sued Mr. Vadas for, um, for the loss of sale, and Mr. Vadas paid me out of court. He, he paid...

Q. Was this....

A. ...he paid the full amount of my claim.

THE COURT: Okay, well, that is not....

A. Yes. Yes.

MR. SINCLAIR: Q. Um, these, this notification to Heffel's, Norval Morrisseau was a part of that. He signed those documents...

A. No.

Q. ...is that correct?

A. Absolutely - it was, it was an email by Gabe Vadas. It was an email by Gabe Vadas

Q. Did Gabe, did Gabe Vadas, in 2006, as Norval's business manager and with Norval sick, did he have power of attorney over Norval Morrisseau's....

A. No, he didn't.

Q. You don't, well, okay....

A. No, he didn't.

Q. Well.

A. That came up in pre-trial.

Q. So what has Gabe Vadas got to do with this? You think just Gabe alone called Heffel's?

A. Yes. I have the email.

Q. That's actually filed. So, okay, you sued Norval Morrisseau and Gabe Vadas....

A. No, no, I sued, I sued, I sued Gabe Vadas.

Q. You said - who was....

A. I, Gabe Vadas wrote the email. I sued

Gabe Vadas, yes.

Q. Well, what happened with that lawsuit?

A. They paid out. Two days before trial I got an email from Fraser Milner Casgrain saying, "here's your cheque for \$10,000.00." I asked for my costs, with respect to the forensic report then, and they said, "come on down, pick it up." Gabe couldn't get anybody to call it a fake, including Mr. Robinson, who wouldn't testify for him. And, and, by the way, Mr., when, this is what happened, Your Honour: when Morrisseau was still alive, first pre-trial they said, we want to inspect the painting....

THE COURT: All right, well I do not want...

A. Okay, sure.

THE COURT: ...to hear...

A. Sure, sure.

THE COURT: ...about the other action.

A. Sure, sure.

THE COURT: So....

MR. SINCLAIR: Okay....

A. The point is, Norval was alive, and he could have inspected it, and didn't. But, but go ahead....

MR. SINCLAIR: Q. The point is, Norval Morrisseau, through his business manager, contacted Heffel's, Heffel's took down the paintings, is that correct?

A. He took - Heffel....

Q. Took down the paintings that were for sale.

A. He, Heffel took down every painting after getting an email from Gabe Vadas, correct.

Q. How many of those were yours, sir?

A. Uh, I believe a lot of two, and another lot. Two, two in total, I believe. Two lots, three paintings in total, two lots.

Q. Okay. What happened to those paintings? Did you sell them subsequently?

A. Well, no, well, when I, when Gabe Vadas paid me out I, um, I had to turn over the painting. He, in effect, bought the painting.

Q. What about the other two?

A. No, that was - the one lot was two.

Q. But....

A. Those were the ones that Gabe had to pay me out, he basically got possession of the paintings and, uh, I got my money. He, in a sense, bought the paintings.

MR. SINCLAIR: Your Honour, I need a recess before I can carry on with this right now. Can we have lunch or something?

THE COURT: Well, what is the reason, what....

MR. SINCLAIR: The reason for it?

THE COURT: Yes.

MR. SINCLAIR: I'm having a hard time thinking.

A. That's not, not sufficient.

THE COURT: All right. Well, we're going to have to take a lunch break anyway, whether we do it now or in a half hour.

A. I mean he, he should be able to get through my testimony.

THE COURT: No, that is, that is all right. Well, it is not the end of the world if he doesn't finish it. We are going to break in a half hour anyway, let's

take, let us say at a quarter after one we will reconvene.

A. Sure. Thank you.

MR. SINCLAIR: Thank you.

R E C E S S

U P O N R E S U M I N G :

THE COURT: Return to the witness box, sir.

A. Thank you.

THE COURT: All right, let's continue.

MR. SINCLAIR: Q. So the subject painting, uh, Mr. Otavnik, you bought it from Randy Potter auctions. Have you met the person, or the source, do you know where this painting came from beyond Randy Potter, or were you just, you just....

A. I bought it off, I bought it at Potter Auctions. I was satisfied with the authenticity at Potter Auctions.

Q. Right. Do you remember your witness, Donna Shea saying that they don't check the provenance of their paintings unless there's an issue with regard to that?

A. I don't understand your, your question.

Q. Uh, do you remember your witness, Donna Shea...

A. Yes.

Q. ...saying they don't check the provenance of the paintings they get...

A. Well....

Q. ...unless there is an issue?

A. There was never an issue. I mean, the paintings were, were bought as Morrisseaus by various art

dealers, collectors. As, as they mentioned, over 200 clients. I mean, if 200 clients bought them and no one had a problem with, with the paintings, I didn't have a problem. I knew the artist's work, I was satisfied, had the....

Q. How do you know the artist's work, sir?

A. Well, I've been collecting for, for many years. I mean, I am familiar with his work. I am no, I am no expert. But I have seen enough to know what a Morrisseau is.

Q. And everything, uh, so what you do know, though, is, you have seen enough to know what a legitimate Morrisseau is? Do you know that there is an ongoing concern in the marketplace, though?

A. Caused by you, yes. Caused by you and Mr. Robinson. Which, I will say, the issue of authenticity never came up until Mr. Robinson spoke to the National Post, which we'll get into, I'm sure. Go ahead.

Q. Do you have any, are, are you involved in the arts?

A. No, I am an art collector. I am a risk, I am a risk management analyst.

Q. Do you have - so you, you can confirm, you have no qualifications to authenticate paintings yourself?

A. Of course not. I, I am a collector. I know what the average collector knows. I mean, I am an educated buyer, I educate myself, but do I have a formal education in native arts? Do I have a formal education in, uh, any evaluation for art? No. I am, I am an educated buyer.

Q. Right. So all you know about these

paintings is what you have been told by other people?

A. No, and, and my own research.

Q. Uh, and what kind of research are we talking about?

5 A. Well, just looking at, through past auction price histories. Going to Waddington's books, checking out the artwork, looking at the style, form, substance, the, the signatures on them and....

10 Q. Where were you told that your painting came from?

A. I, I bought it at Potter Auctions. That, that's all I was concerned with.

15 Q. What did they tell you, though, when you, when you asked them since this time, since they're here in the court and whatnot, um, did you ask them, "who is the original owner of this painting?"

A. Original owner of....

Q. The original owner. The owner...

A. I do not know...

20 Q. ...of the painting before...

A. ...the original....

Q. ...Randy Potter.

A. I, I....

Q. Whoever put it up for auction.

25 A. It came, Mr. Potter's consigner is Mr. David Voss.

Q. For this painting? The one that you own?

A. Yes, correct.

30 Q. So it came from this, this purported storage locker in...

A. I....

Q. ...Kakabeka Falls?

A. I knew Mr. Voss supplied Mr. Potter.
Where Mr. Voss got this particular painting, whether it was
a reserve, whether it was one of his father's friends, I do
not know. I bought it off Mr. Potter as an authentic
Morrisseau.

Q. I see. Okay. Um, so with regard to
this painting, another thing that's been mentioned is that
forensics, at least a signature forensics person works with
yourself, is that correct? Or...

A. I did not....

Q. ...with Mr. McLeod only?

A. I, I did not get a forensic expert for
this particular case because I did it so in the past and it
was the same thing, it's a real Morrisseau and it's up to
you to prove it's not, and, uh, you can't. But no, I did
not use, I have not supplied this Court with a forensic
report on this particular painting.

Q. So....

A. I believe Mr. McLeod's testimony and
Donna's testimony, and your burden is sufficient.

Q. So your suggestion is, it's up to me
to prove that your painting is....

A. That is the law. It's trade libel...

THE COURT: All right...

A. ...you've slandered it....

THE COURT: ...well, okay, wait a second.

Let's not get into the question of law.

That is something I am going to have to
decide, so let's just move on.

MR. SINCLAIR: Q. Is that your suggestion...

A. Yes.

Q. ...Mr. Otavnik?

A. Yes.

Q. So you, you didn't do, you didn't do forensics on the painting, even though it's going to be in court?

A. No.

Q. And was there any other steps you took to authenticate the artwork?

A. No. I mean, and the same, the same steps that I purchased it. They were, I mean, the Thunder Bay Art Gallery was happy. They vetted the whole same source, so I thought, same source, same style, same everything. Joe McLeod's testimony, Donna Shea's testimony, I was happy with...

Q. But....

A. ...that being the basis of my case.

Q. I see. Why didn't you ask Mr. McLeod, as he mentioned in the witness stand, for an appraisal of this painting? It would have taken ten minutes. Why didn't you ask Mr. McLeod...

A. Because I already, I already...

Q. ...to provide one?

A. ...I already determined its value by the method of comparables, which I have explained to this Court.

Q. But you, sir...

A. Mr. McLeod....

Q. ...have mentioned that you have no qualifications to do so, to determine this, such....

A. Well, Mr. Sinclair, if you notice, anybody can use a method of comparables. I am a risk management analyst. Method of comparables is, what did a

comparable painting, same size, same style, sell for before, and you use that as a basis going forward. As I mentioned, the value put on the paintings were, were, were such, and the fact that Morrisseau has now died generally means the price should go up, plus the specific matter of this painting makes it more valuable. So how I received my, my valuation is quite logical, it's done in very many markets, just like, uh, in the housing. You determine a house, same house, same street, you can estimate the value. The actual value is when it's actual sold, but you can, for an, for, for a value of estimating what your house can sell for, or whatever, it's the same principle. The method of comparables. Same artist, same source...

Q. Does....

A. ...everything.

Q. Now, I, I believe, is it, can you confirm that you paid Mr. McLeod to provide appraisals for the four pictures that you're using to substantiate your damages?

A. No. My sister was involved in that. Her, arms-length with Mr. McLeod.

Q. And where did she get the painting?

A. Where did she get the paintings? Well, part of our, our family collection, as I've already mentioned.

Q. Family collection?

A. Correct. I, I have purchased....

Q. So it's not your collection?

A. My sister is the donor, not me. She contracted with Mr. McLeod.

Q. What's your sister's name?

A. Irene Siegner (ph). It's part of

the....

Q. So she went and saw Mr. McLeod..

A. Of course.

Q. ...for the appraisal?

A. Of course.

Q. Did you go to Thunder Bay and meet with the people with regard to this....

A. I take care of all my family business this way. I went up there...

Q. So you....

A. ...personally. I went up there personally. I showed them the paintings, I explained what was going on. They were quite happy with the donation, they were quite happy with the process. I do that always to create a comfort level with the museum and, and, and to do business.

Q. All right. But you said it had nothing to do with you, this was your sister?

A. My sister donated the artwork. I handled the process with the gallery simply because that's what I feel comfortable doing.

Q. Okay. And your witness Mr., your witness in this trial, Mr. McLeod did appraise this painting for your sister, is that correct?

A. Well, that's part of the process.

Q. These four paintings?

A. That is part of the process.

Q. Right.

A. That is part of the process.

Q. Oh....

A. He, the process is that you need to have people, art galleries, what art galleries do is they put an

appraisal on it. It then goes to the art gallery. The gallery then does their provenance, their research, they check the painting out...

Q. I understand.

A. ...and then....

Q. I am....

A. Well just wait, let me, you asked the question, let me finish.

Q. Not that one.

A. Then, then, after the art gallery is satisfied, they bring it to their board, and they are satisfied. And the actual application, which goes through the Cultural Property Review Board, is not that of the applicant, it is that of the museum. And the museum has to be a Class A museum, which means they have to have certain standards of excellence, certain, certain, uh, humidity control, certain climate control, and....

Q. What bothers me...

A. Just...

Q. ...Mr. Otavnik....

A. ...I'm not finished.

THE COURT: Let him finish the answer.

A. And then after the museum puts in their application to the Cultural Property Review Board, staff at the Cultural Property Review Board review the file. You review their files, and then it goes before a full ten-member board of the Cultural Property Review Board, and then they okay the donation. And they okay the valuation, they okay, they say, "yes, we accept this donation. We accept Thunder Bay Art Gallery's, or any museum's, uh, what they put forward, and it gets, it's, it's approved after that process.

5 Q. What I was wondering was, you obviously have a relationship with Mr. McLeod, you've had a year and a half before this came to Court, and yet you didn't take this, you have had him do appraisals for your sister, even though you were the, taking care of your family, including her, and yet this man has not done an appraisal. I wonder why you would choose to not let this man, have this man do such a thing. Just wondering.

10 A. Because I already, I had established it in another way. You, if I, if Joe gave me an appraisal you would question that. This is arms length.

THE COURT: All right. He has given his answer, let us just move on.

MR. SINCLAIR: Yeah.

15 A. I mean, this is an arms length process....

MR. SINCLAIR: Q. Okay, so it's, okay, simply, it's your position that you don't have to prove it's a fake so you didn't have to do any of that?

20 A. No, I believe I've brought in sufficient witnesses to prove that the paintings aren't fake - Mr. McLeod said he thought the painting was real. Donna Shea has sold 1,200, she thought the painting was real. And the burden is on you.

25 Q. Okay. So you, you say you bought this for \$3,500.00...

A. Approximately.

30 Q. ...thereabouts. Do you have, uh, some, some cancelled cheque or anything like that to identify that you did buy it?

A. Well, I, I believe the receipt's there.

Q. That receipt has a different title, no

picture...

A. No, no...

Q. ...no money....

A. ...what do you mean, "different title"?

5 My name is on the receipt, the title of the painting is on the receipt. And the painting...

Q. It's another title.

A. ...and the painting's - well, Donna's already....

10 THE COURT: Okay, let us not argue back and forth.

A. I, I agree that's, it's....

THE COURT: It is....

A. It's established that I bought the painting at Potter Auctions.

15 MR. SINCLAIR: Q. Okay.

A. And the painting is here and for inspection if you don't....

Q. How did you pay for it?

A. I believe I paid with my Visa card, I believe.

Q. Okay. So since you bought this painting, uh, how long ago was it you bought it?

A. It's in the record.

25 Q. How long ago was it?

A. It's, the receipt is here. I believe it's exhibit nine. Uh, July first, 2008.

Q. July 2008.

A. July first, 2008. That's the, on the receipt right there.

30 Q. Okay. So, since July 2008, which was before, um, my website...

A. Correct.

Q. ...was available, you never tried to sell it?

A. No, I love the piece. It's a fantastic piece. I wish I was never here.

Q. But your business is collecting and selling Morrisseau art?

A. No, I don't, I don't - I, I collect, I do not sell. Uh, the odd dealer I will make a trade for and say, "you know what, I like this painting, you have a few Carl Rays", but no, I am not in the market of selling Norval Morrisseaus. I have never sold, I have never put the retail, I have never put a business up saying, "I sell Norval Morrisseaus." Never. I collect. I simply collect, and with the odd dealer I will make a trade saying, "you know what, I have got this nice painting. I will give you this painting, and you give me back the Carl Ray." I am not in the business of selling Morrisseaus, never have.

Q. How many Morrisseaus do you have?

A. Oh, I think now, I think about 22 or so. I'm not sure.

Q. M'hm. Okay. And so, of these 22 pictures, you're saying that you didn't, you have not tried to sell any of these 22 pictures...

A. No, I love....

Q. ...on Craigslist or....

A. I'm a collector, I love them. I love the artwork.

Q. So you've never tried to sell a picture through, and specifically this one, through Ebay, through any gallery? Did you offer it to Joe McLeod?

A. No, no, no. Not at all. I love the

painting. I wish I didn't have to bring it here.

Q. Why?

A. Because it's a beautiful piece. It's a religious piece, that's, piece that that's, uh, very rare, and it's worth, when the market finally turns around, if it ever does, it could be worth some money. But as of right now, it has no value because of your, your website.

Q. Okay. So you're saying this all happened because of me and my website?

A. Well, yes. I mean, people....

Q. That you can't sell paintings? But you don't want to sell paintings?

A. Well, the paintings have no value.

Q. In fact, how is it, if you never intend to sell this painting, why are you so concerned about the market valuation of this painting, would be a question?

A. Because anybody who has an inventory of anything, of any asset, wouldn't be happy with the fact that that asset is now worth, effectively, zero. And I am protecting the value of my, uh, my investments in art. I mean, you have rendered it worthless with your website, because people, unfortunately, have viewed your website and said, "my god, I have a painting that looks just like that, it must be worth, it must, it must be a fake also." And try selling a fake painting to somebody.

Q. Have you ever seen newspaper articles about the Morrisseau, fake Morrisseau painting issue?

A. Of course. Mr. Robinson started it.

Q. You've seen, um, these...

A. Articles, of course.

Q. ...you've seen newspaper articles?

A. Yes. And they are all innuendo. And if

you want to bring them as evidence I will go through them.

Q. Well, sure. There was a National Post article, "Morrisseau Fakes Alleged."

A. Certainly, let me, let me grab it.

THE COURT: Oh no, sir, stay in the witness box.

A. Okay, sir, go ahead. Yes.

THE COURT: Now, what is the next question?

MR. SINCLAIR: Q. Uh, in fact there were multiple newspaper articles, right, over the years? The Globe and Mail wrote articles - many of the newspapers wrote articles, right?

A. Yes.

Q. There were pictures of Norval making statements...

A. Um....

Q. ...with regard to this, right?

A. I don't, I'm not sure about that. There were - Norval never made any statements. There were statements attributed to Norval Morrisseau from other people, not from Norval. Like if....

Q. So why do you think there were, why would you think there would be pictures of Norval Morrisseau, like, for example, this one, do you mind if I...

A. Sure.

Q. ...show it to Your Honour?

A. Sure.

Q. This appears to be Norval Morrisseau explaining that they were fakes.

A. No, picture of Norval Morrisseau and the painting with Mr., Mr. Robinson, giving the substance of the article. When I sued Norval, when I sued Gabe

Vadas....

Q. Behind there, Your Honour, you can see pictures there above that he is talking about.

THE COURT: All right. Well he is....

A. I mean....

THE COURT: Is your, is, a specific picture is mentioned, or just generally?

MR. SINCLAIR: Q. There is two...

A. No, just, just general.

Q. ...pictures there.

A. Well, and I mean, that painting there, for example, that article there....

Q. Behind you see there is two.

A. That article there, it just had the picture of Norval, it doesn't have, it doesn't say these two paintings are fake.

THE COURT: Okay. You can hand that back, we do not have to....

MR. SINCLAIR: Q. So don't you think this might have effected the market where there is all these newspaper articles, national, you know?

A. Of course. And you added to it...

Q. Two page...

A. ...with your website.

Q. ...articles? Pardon me?

A. Yes, of course, and then....

Q. I added to it?

A. Absolutely.

Q. Okay. So I didn't do it, you're saying I added to it, right?

A. Well, Mr. Sinclair, those articles were 2001, your website came out in 2008 alleging, but those

articles didn't, didn't identify specific paintings. You, you identified over 1,000 specific paintings, including those in the Smithsonian Institute, and the Winnipeg Art Gallery, and the Nova Scotia Art Gallery, and the Thunder Bay Art Gallery...

Q. Have you seen the....

A. ...and the Fred Jones Jr. Museum. Those are your postings identifying those articles...

Q. You have read the sworn...

A. ...those paintings.

Q. ...legal declarations that pictures that Norval Morrisseau wrote to Randy Potter Auctions? You have seen that?

A. Yes, I have.

Q. It's in the materials. And you have seen that, uh, other sworn declarations? Joe McLeod's, for example?

A. Yes. But I mean, I mean, Mr. Morrisseau is dead. The affidavits you presented have no corroborating evidence with them. But I have seen the, I have seen them, and none of them identify this painting in question.

Q. Okay, so there is an issue out there before I ever arrived on the scene, right? Before you even knew I existed...

A. No argument....

Q. ...there was an issue?

A. No argument there, Mr. Sinclair.

Q. Right?

A. No argument there.

Q. And, and pretty big issue, because it was written up in the papers multiple times, right? You

saw that these articles, dealers....

A. Yes. There were, they were, they were in papers...

Q. Okay, you see....

A. ...however, you see, those, those newspaper articles never identified any paintings. You've identified 1,000 as being fake. You just....

Q. Didn't that give you concern, when you went to buy paintings at auction, though? I mean, after reading these paper - you bought that in 2008?

A. Yeah.

Q. July first, 2008. There is multiple newspaper articles, multiple declarations from Norval Morrisseau, and you're getting a price that's so far under the market value....

A. Wasn't worried at all.

Q. But you know, you know the market value, obviously, you've been, you've sworn that you do.

A. You're assuming newspapers do the....

THE COURT: Okay, let him finish. Just wait a second...

A. You were....

THE COURT: ...what is, what....

A. Oh, he was just....

THE COURT: No. It is not a conversation going...

A. I....

THE COURT: ...back and forth. Let him phrase the question so you know what to respond to.

A. Thank you.

MR. SINCLAIR: Well, there's, there's an ongoing issue...

THE COURT: All right, sir...

MR. SINCLAIR: ...you will agree...

THE COURT: ...try to...

MR. SINCLAIR: ...right?

THE COURT: ...try to phrase a question he can respond to without prefacing it by a long explanation ahead of time. Because he keeps interrupting as you are prefacing the question, and then you start getting into some argument. He does not know what the question is, so he is jumping on your preface, your...

MR. SINCLAIR: I understand.

THE COURT: ...your initial statements.

MR. SINCLAIR: Q. Yeah. Okay, in, since 2001 there have been...

A. M'hm.

Q. ...newspaper articles. Have you, what, given that you know all the, have all this knowledge about Morrisseau or...

A. M'hm.

Q. ...why is it you would still go through Randy Potter Auctions and buy these paintings at, at, you know, at bargain basement value...

A. Because I...

Q. ...below that?

A. ...knew the paintings were real.

Q. And how did you know that?

A. Because I did my own research. I am an educated buyer. The problem with your website is that people who may be potential buyers of Norval's work are put off by the fact of this.

Q. But my question is, don't you think that all this stuff affected the marketplace, um, long before I was around? And, even though you were in business doing this, did you not respond to this?

A. Mr. Sinclair....

Q. Did that not make you wary?

A. Uh, I was not worried about buying paintings from Potter Auctions. I knew they were authentic, I knew they were real. Uh, I, yes, the Globe and Mail and the National Post, in their articles, did hurt the market. That is no doubt about that. But your website calling 1,000 fakes, even ones in national galleries, really put the nail to the market...

Q. Okay....

A. ...besides the fact that you were being promoted at...

Q. That's enough.

A. ...that time by Kinsman Robinson Galleries, which we will get into when Mr. Robinson testifies.

Q. So the existence of those newspaper articles, uh, and would you confirm the, the declarations have an impact on the marketplace too?

A. I don't think the - I, I don't...

Q. Either....

A. ...know how many people saw the declarations. But, I mean, the newspaper articles definitely affected the market, and your website just, uh, topped it up.

Q. So you, you, okay, and then the declarations, which are available through your website....

A. I haven't got a website.

with...

A. I haven't....

Q. ...they are available there...

A. You know, Mr. Sinclair...

Q. ...you know, for the public....

A. ...I have no interest in any....

Q. No impact. Okay.

A. I have, I have no, I have no website in operation. I am the owner of nothing. I have never posted anything anywhere. I, do you have a, anything to add, I mean, please.

Q. Okay, but given all that, you still think it is up to me to prove your painting is....

THE COURT: All right, sir, the question of what he has to prove and what you have to prove is something I decide. It does not matter what his opinion on it is, or what your opinion is. I make that finding of legal fact.

MR. SINCLAIR: Okay.

A. You have slandered the painting....

THE COURT: All right, sir.

A. I mean, you know he's....

THE COURT: No, no, sir...

A. Uh, I am done.

THE COURT: ...I am not asking.

A. I'm done. Yes. Sir, I appreciate....

THE COURT: Anything else of this witness?

MR. SINCLAIR: Uh, yes. Just a moment, please. With regard to that issue, Your Honour, that law....

5 THE COURT: Okay, legal points are the final argument. You can raise, your summation is a legal position, what you think the legal positions are in final argument. It is not part of the evidence. If you want to convince me where the onus lies, you can do that in final argument. You do not to do it as part of the introduction of the evidence.

10 MR. SINCLAIR: Okay.

15 THE COURT: At the end, when everybody has said, had their say, you will have an opportunity to summarize your position and try to convince me why I should hold in your favour, and tell me why, the reasons, you know, the basis of why I should rule in your favour.

20 MR. SINCLAIR: Okay, well I guess that we will go through the defendant's claim, uh, with Mr. Otavnik.

25 THE COURT: Yes, when you get in the witness box you will tell me your side of the story and your defendant's claim. I think is this the...

30 A. I think you have it. Yeah, this is my copy.

THE COURT: No, this is the claim. This is the Court's copy of the claim.

A. I think, that's your Court's copy?

THE COURT: Yeah, it is....

35 A. I think that's my, could by my, the Court's copy, but I think I brought it up from my own....

THE COURT: I do not have another one, sir,

so I assume it is mine. I am sure it is mine. It was the one I had with me when I - if you cannot find yours, well....

5 A. Yeah, well, it doesn't, it, if we need to refer back we will.

MR. SINCLAIR: So, you know, uh, you know that I have worked with Norval Morrisseau for a long time, or at least you have heard this, right?

10 A. Uh, never. You claim to have worked with him. You claim to be his protégée.

Q. Do you see exhibit 14?

THE COURT: No, you will tell, if you have....

15 MR. SINCLAIR: I will, I will do that.

THE COURT: You know what, you will tell me in your evidence how, you know, that is - there is no point in him just referring to a...

20 MR. SINCLAIR: Okay. That's enough.

THE COURT: ...document that is a statement, perhaps, from you, without you giving that evidence under oath.

25 MR. SINCLAIR: Okay, Your Honour.

THE COURT: All right. You can step down.

MR. OTAVNIK: Thank you.

THE COURT: That is the case for the plaintiff. Who am I going to hear from first for your defence?

30 MR. SINCLAIR: Uh, Don Robinson of the...

THE COURT: All right.

MR. SINCLAIR: ...Kinsman Robinson Gallery.

THE COURT: Mr. Robinson?

DONALD C. ROBINSON - SWORN

EXAMINATION IN-CHIEF BY MR. SINCLAIR:

THE COURT: You can be seated, Mr. Otavnik.

Okay, go ahead Mr. Sinclair.

MR. SINCLAIR: Q. Thanks, thank you for coming Mr. Robinson. So, uh, you've been Norval Morrisseau's, you were Norval Morrisseau's principle art dealer, were you?

A. Yes.

Q. For how long?

A. Twenty, about 20 years.

Q. So since 1989, since around then?

A. Yes.

Q. And you've had multiple art shows for Norval Morrisseau over the years?

A. Yes.

Q. And you're considered by most people to be....

THE COURT: Well, let him tell us his qualifications instead of you leading him through what they are.

MR. SINCLAIR: Q. Oh, okay. So, could you tell me about your background with regard to Norval Morrisseau and, and authenticating his artwork, selling his artwork, and in particular, being his confidant and friend? Like, could you tell me a little bit about your relationship with Norval Morrisseau?

A. Well, I've been running an art gallery for, I guess, since 1980. And prior to that I published something called The Canadian Art Investor's Guide for five

5 years. And I did, in fact, write an article, or publish an article about Norval Morrisseau at that time. Um, I had heard about him for some, for some years, and I had always admired his work. And about, prior to representing Norval I, I sold secondary market paintings. These are paintings sold to us, sold by us from private owners. Prior to that, I'm sorry, um, in about 1989, I approached Norval Morrisseau with quite a bit of trepidation and asked if I could be his dealer. He, at the time, did not have a dealer, that I recognized at least.

10 And so I presented him my strategy for improving the market for his works, and what I thought our gallery could do for him, and he agreed, so I became, I signed an exclusive written agreement to represent him. After that time we, the gallery, had several exhibitions, full-scale exhibitions of his work, usually consisting of 25 to 40 large, good-sized canvasses. Prior to, after representing him I told him that I was hoping my strategy was to achieve consistent prices across Canada because the prices were not consistent, they were, from coast to coast they had, uh, varied rather substantially. And so I asked him if we could begin to sell them at a relatively low price in order to, and then gradually increase those prices, and that's what he agreed to.

25 Over the years, we did achieve that. The prices increased gradually, we'll say ten or 15 per cent every year, on average, for the next 19 years. We were immensely successful at selling his work. The first, almost all the exhibitions we had were total sell-outs. We had people lining up down the street to buy, to get in the door to buy them. So this carried on until, for quite a long period of time, and, to my knowledge, he never broke the exclusive

5 agreement. Neither he nor his business manager sold paintings to anybody else in Ontario while we had that agreement. The agreement, first of all, was for Canada-wide, and then it seemed rather foolish for us to try to manage his paintings in BC when we were primarily located in Ontario, so we later amended that agreement to include Ontario and the Eastern part of Canada. And we sold them very successfully right up to the time he died. And since he died, we have continued to sell them very 10 successfully. We're, we have a, we are now doing an annual retrospective exhibition, and last year's exhibition sold immensely well. The sales have been better than they were prior to his death, and the prices were higher. And there's certainly, from our point of view, there is certainly a very strong market for his works, much stronger 15 than it ever was in the past.

Q. Really?

A. That is my experience.

20 Q. Did Norval ever show up for any of your art shows, any of his exhibitions at your gallery?

A. Norval showed up for most of them, and he attended most of the exhibition openings, yes.

25 Q. Did you hear testimony here that, with regard to the fact that the market is so bad that you can't sell a Morrisseau no matter how hard you try to anybody?

A. I did.

Q. But you haven't, but your gallery hasn't had that same issue?

30 THE COURT: Well, "has your," don't lead the witness.

MR. SINCLAIR: Oh.

THE COURT: Ask him what his experience has

been.

MR. SINCLAIR: But your - well....

THE COURT: What is your experience....

MR. SINCLAIR: What is your experience....

THE COURT: I don't want you to ask him a question that he is going to answer "yes" or "no" and that is all.

MR. SINCLAIR: I see.

THE COURT: All right?

MR. SINCLAIR: Yeah. Okay.

THE COURT: So you can ask him what his experience is as opposed to saying, "well, your experience is such and such, isn't?" and, you know, trying to...

MR. SINCLAIR: Right.

THE COURT: ...it's leading the witness.

MR. SINCLAIR: I see.

THE COURT: Are you abandoning that line....

MR. SINCLAIR: But in your experience....

THE COURT: Okay, you are thinking the question?

MR. SINCLAIR: Yeah.

THE COURT: Okay.

MR. SINCLAIR: Q. Uh, selling, how, what's it like to sell a Norval Morrisseau painting right now, then? I know you kind of answered it - let's do it again.

A. Well, the thing we have to be careful of, of course, is fakes. And, as it is very well known in the market place, my experience, right now, is that it's relatively easy to sell authentic Morrisseau paintings. We don't have any problem with that. Our last exhibition, retrospective last year was almost a total sell-out, and

I've forgotten how many paintings were in that brochure, in that exhibition, but it was quite a substantial number and we had no problem selling them, and we're certainly planning to do it again this year.

Q. What would be the reason why people would buy paintings from your gallery, almost to a sell-out, or sell-outs, but others, with, like Mr. McLeod with his gallery, is saying he can't sell any? What would be the possible reason why yours are still selling?

A. Well we, all I can say is that, from our own experience, we take great care to make sure that the authenticity is correct, and we pride ourselves on that reputation of selling authentic paintings. And, um, I don't know what else to say. I wouldn't want to comment about Mr. McLeod's experience.

Q. Yes. So you provided an expert report on the tenth of September, I believe it was filed on the 14th with regard to this issue?

A. Yes.

Q. Is this it?

A. Yes.

THE COURT: Do you have a copy of that?

MR. OTAVNIK: Yes, I do, sir.

MR. SINCLAIR: Q. It's entitled, "An Examination Into the Authenticity of an Alleged 1970s Norval Morrisseau Painting."

It's not there?

THE COURT: Well, do you want to hand it up here so I can have it? Okay. This is a report done by you, sir...

A. Yes.

THE COURT: ...on the painting in question?

A. Yes.

THE COURT: All right. What do you want to ask him about it?

A. I have a copy.

THE COURT: Oh, you have a copy. Okay. We will mark this as an exhibit.

EXHIBIT NUMBER ONE - Report of Mr. Robinson
- Produced and Marked.

MR. SINCLAIR: Q. I guess the first question is, how do you feel about the subject painting?

A. If, if you're asking me what my opinion of the subject painting is...

Q. Is it an authentic?

A. ...a fake.

Q. It is a fake? Uh, what would make you, how did you come to that conclusion? Can you, not - can you summarize your report so that, so that Your Honour could get a sense of it, because it is so extensive?

A. I examined the painting, um, in many respects. I immediately recognized it as a fake, but I realize that one has to prove it's a fake, not just state it's a fake. So I did all kinds of analysis on the painting, over a course of over six months. And I looked at the provenance, I looked at the style of painting, I looked at the writing, the writing on the back, the signature on the front. I found, in every single thing I looked at I found things that convinced me that this painting was, could not have ever been by the hand of Norval Morrisseau.

Q. At first glance, I think you mentioned,

at first glance you, you knew it was a fake?

A. Yes, I did.

Q. Now, how is it possible that you could just glance at a picture and, even with your extensive experience with Norval Morrisseau, and consider it a fake?

A. Well, over the many years, initially, of course, I purchased, as has been said here a couple of times, a number of paintings at Randy Potter Auction, to my great regret later on, and, um, I learned with, with sad experience and lots of years of trying to learn what constitutes a fake Norval Morrisseau. I sat with the, with the artist several times discussing the subject. I looked at, there are many ways of faking a Morrisseau, I believe I know at least three or four different methods of faking Morrisseaus, but this particular one, the method of doing, or the method of painting this, the style of painting, is very distinctive. It's, um, representative, it's representative of a very large volume of paintings, somewhere, I estimate around 3,000 paintings circulating the marketplace that are all painted with exactly the same characteristics, and they are painting characteristics that are, I believe, from an artist, one single artist who paints in his own particular, recognizable style, and tries to imitate Norval Morrisseau, but doesn't do a good job of it. These, these paintings are, in my opinion, are very bad fakes, they are not good fakes. There aren't many good fakes - there are some good fakes in the marketplace which require real experts to, to notice them, to notice the differences, but these particular ones are so bad, in my opinion, that almost anybody, even if they just did a little bit of study, would certainly realize that they are fakes and not authentic.

Q. M'hm. So you mentioned, uh, Randy Potter, which is the source of this painting, and that you had your own issues with, you purchased some paintings and...

THE COURT: All right, well...

Q. ...and when was it you....

THE COURT: ...we are not getting into those because those are not dealing with the subject matter of this painting, so....

MR. SINCLAIR: Excellent.

THE COURT: It is not relevant to his other experiences.

MR. SINCLAIR: Q. No. You're right. Um, so are you 100 per cent sure that, that the subject painting is a fake?

A. Yes.

Q. After six months of study of this painting, and you did - I keep leading the witness. Sorry, Your Honour. Well, is there anything in particular you would like to discuss from, from this report?

A. Well, I think the report speaks for itself and I am happy to answer questions on any part of it.

Q. Sure. Section seven of this report has an extensive sworn declaration by Norval Morrisseau, on November, 2004 it was sworn. Right?

A. Yes.

Q. Okay. Now, the source of these paintings, can you tell me where these paintings, the paintings that are, the images that are on page six, seven, eight, nine, um, yeah, can you tell me where, are these paintings, these paintings Norval Morrisseau himself believed were fake, right?

A. That is my understanding, yes.

Q. Do you know what the source of these paintings, where they came from, with regard to this declaration? Have you seen other declarations, first of all?

A. Yes, I have seen other declarations.

Q. Multiple ones from Norval Morrisseau, right?

A. Yes, I have.

Q. Sent to multiple galleries that were selling these disputed works?

A. Yes.

Q. And this one that you've included here in your report, why have you included it?

A. I included this particular one because, just because it has a, a painting in it that's pretty much similar, on page two of the report, to the painting, the painting under dispute here in this court. So I just included it because it's another example of, of very much the same theme.

Q. Right.

A. The same title, essentially, "Black Robe," or something close to it.

Q. Right.

A. And that was my only reason for including it.

Q. Okay. Um, looking at Tab Two, I, I see a, I see your agreement with Norval Morrisseau, right?

A. Yes.

Q. Did you have an agreement to authenticate artworks with Norval? Is that what....

A. I didn't, I didn't have a specific

agreement to authenticate works.

Q. Okay.

A. Although he did grant me, uh, a letter stating I had the authority, in his opinion, had the authority to authenticate them.

Q. I see, I see.

A. I think that's included in the report, somewhere in the appendix. Appendix four.

Q. Yeah, I'm looking at, at, in Tab Five, here, where it says, "to whom it may concern," signed by Norval Morrisseau and Gabe Vadas.

A. Yes.

Q. And paragraph three says, "I hereby confirm that any paintings whose provenance is in doubt, bearing what is purported to be my signature, should be authenticated by Don Robinson, Kinsman Robinson Galleries, or Gabe and Michelle Vadas, or myself." That was sent to you by Norval Morrisseau, was it?

A. Yes.

Q. Now, particular in section six, this deals with Randy Potter Auctions, why did you include these three pages in this section?

A. Well, one thing these pages show, document is, how many of these paintings are, are out there, that he has, Randy Potter has stated, in the copies in the report here, that he's sold over, approximately 2,000 paintings, and that may be one reason. I don't remember every reason why I put this in.

Q. Okay. The second page, what does it say in the second page? That, so this appears to be a letter from Norval Morrisseau and Gabe Vadas to Randy Potter. Is it?

A. Maybe. I, I can't remember right off hand where that particular letter came from, exhibit eight from Mr. Otavnik's previous court filings.

Q. Um....

A. And, I don't know, I guess there's no doubt that that was to, although it doesn't say, it seems to be not addressed to Randy Potter, but because I have it in this, in this source, it must have been, it must have been part of the letter to Randy Potter, yes.

Q. I see. The particular one that really interests me is on page three. Would you mind, uh, reading that last paragraph? This is a statement, I believe, by Randy Potter, right?

A. You want me to read the whole paragraph, the last paragraph?

Q. Maybe just read the first couple of lines and the question.

A. I do not have any, except my....

Q. Well, the question is....

A. The question was, "what provenance do you have in this painting?" "I do not have any except my reputation for selling these for nine to ten years, and my personal guarantee. My description will tell you about the fact that I sell these to the biggest native art galleries in Canada, sold approximately 2,000, without ever having a single complaint or return."

Q. Okay. So, now, Mr. Robinson, you were party to this case before, is that correct?

A. Yes.

Q. But, but it's been since settled on, on your, with regard to Kinsman Robinson...

A. Yes.

Q. ...with regard to your galleries?

A. Yes.

Q. Would, would you be willing to disclose
the....

THE COURT: I am not sure the settlement....

MR. SINCLAIR: Can be disclosed?

THE COURT: What is the relevance?

MR. SINCLAIR: The relevance? Uh, I believe
that the settlement, the agreement to settle
was based on, on Mr. Otavnik agreeing to
drop them off the suit if they made anything
about me, Kinsman Robinson Gallery,
disappear on the internet. So, that's my
belief with regard to that.

THE COURT: Well, you know what, I am
concerned about hearing settlement
discussions that took place with another
defendant in this court, because I - I mean,
I cannot hear settlement discussions between
you and the plaintiff, and I, it gives me
some concern whether my entitlement to hear
settlement discussions with another
defendant might prejudice my ability to be
objective, so I am not....

MR. SINCLAIR: Maybe I'll ask Mr. Otavnik
those questions.

THE COURT: Well, I am not even sure that I
am entitled to know the....

MR. SINCLAIR: To know why?

THE COURT: To know what the settlement was
with the other party.

MR. SINCLAIR: I see.

MR. OTAVNIK: It's actually part of the record.

THE COURT: Unless you are satisfied with me knowing, sir?

MR. OTAVNIK: No, I mean, I'm saying it was, it was requested of me to provide that, upon, with their consent, which I did provide to Mr. Sinclair and the court.

THE COURT: Well, I am not aware of it.

MR. OTAVNIK: Okay.

THE COURT: I have not seen it...

MR. OTAVNIK: Yes.

THE COURT: ...and I am not sure I am...

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

THE COURT: ...entitled to know about it.

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

THE COURT: Okay.

MR. SINCLAIR: Q. Um, could you tell the court a little bit about who I am, Mr. Robinson, and what you know of who I am and my relationship with Norval Morrisseau?

A. Well, I understand that you were, you were once, but you knew Norval Morrisseau a number of years, and that you were painting with him. I am not sure what else I can say.

Q. Do you remember the first time that you and I met with Norval Morrisseau at your gallery? Um, I walked in and you said, "who is this Mr. Sinclair?" In 1989, '90, maybe '91?

A. I don't remember that, but I do remember Norval, I invited Norval to my house and Gabe when they were, came for an exhibition many, many years ago, and

Norval asked if he could bring you along. And I said, "yes."

Q. Yeah.

A. I think that was my first real exposure to you.

Q. Do you remember 1997, a special ceremony that took place at the grounds of the McMichael Canadian Collection?

A. Yes.

Q. Do you remember what happened? Would you tell the court?

A. Yes. What happened there was that, we were having an exhibition at the gallery, at our gallery in Toronto, and at the same time there was, I am not sure how it came about, Norval and Gabe and Ritchie Sinclair, with myself, travelled to McMichael and I distinctly remember it because it's very rare that one gets to drive one's car onto, right onto the front door of McMichael, but that's what happened that day, I drove Norval right to the front door. And, anyway, what happened was that there was some photography, McMichael officials were there, and Norval performed or organized to perform a bear dance, which was important to him, and I do remember, uh, Ritchie Sinclair and Gabe Vadas in costume along with Norval performing on the front lawn of McMichael, and I do remember the fact that it was being photographed and recorded.

Q. Right. Did you attend that, were you at the 2006 National Gallery show of Norval Morrisseau?

A. No.

Q. I wondered. I didn't see you.

A. No, I did not attend.

THE COURT: All right, well it is not a

conversation.

MR. SINCLAIR: Thank you.

THE COURT: Any other questions?

MR. SINCLAIR: Q. Um, so my understanding
5 is that, that you settled with Mr. Otavnik this lawsuit
that you were a party to?

A. Yes.

Q. What's happened with Mr. Otavnik since?

THE COURT: I am not sure what that means.
10 It has got to be more specific.

MR. SINCLAIR: Q. Did Mr. Otavnik sue you
once again?

A. Yes, he did.

Q. He sued your gallery once again?

A. He sued the gallery, and he attempted
15 to, serve me, unsuccessfully.

Q. Yeah....

A. And part of the settlement....

THE COURT: All right, well I...

MR. OTAVNIK: That is....

THE COURT: ...we are not getting into that...

MR. OTAVNIK: Thank you.

THE COURT: ...because that is going to be a
25 separate lawsuit, somebody else will have to
deal with that.

MR. OTAVNIK: Thank you.

THE COURT: Is that it?

MR. SINCLAIR: Well, I guess one more time,
the subject painting that you looked at....

THE COURT: No, he has already commented on
30 the subject painting and the reason why he
believes it to be not authentic.

MR. SINCLAIR: Okay.

THE COURT: All right. Any questions?

MR. SINCLAIR: Thank you, Mr. Robinson.

5 CROSS-EXAMINATION BY MR. OTAVNIK:

MR. OTAVNIK: Q. Yes. Mr. Robinson, let's, uh, just get a date clear, when did you first view the painting?

A. I don't remember the exact date.

10 Q. You said six months before? You said the report....

A. I don't remember exactly when it was.

15 Q. Okay, the report dated September the ninth, you have just testified that you've reviewed it for six months prior to that, before preparing the report, correct?

A. Possibly - that's my best guess. I don't know how long ago it was.

20 Q. It was actually two months Mr. Robinson.

A. That's okay.

Q. Would that be more accurate?

A. I don't know.

25 Q. You don't, you don't know. Your Honour, I will bring you the motion record of June 29th....

THE COURT: All right, well, he, he says, let's just move on.

MR. OTAVNIK: Q. Okay. So you agree it's two months then.

A. No, I don't agree. I just don't know.

30 Q. Your Honour, I'm going to have to have him go through this, Your Honour. I'm going to bring in a motion record. Because the painting, the motion of June

29th, I agreed to turn the painting over to Mr. Baker, so June 29th was the earliest date you could have viewed it. That is not six months back from September.

A. Are you asking me a question?

Q. Yes, I am asking you a question.

A. What is the question?

Q. Did you view it in July?

A. I don't remember, but I believe I viewed it on the internet many, quite a...

Q. Right, but...

A. ...quite a long time.

Q. ...personally, you viewed it in July in Mr. Baker's office.

A. Is there a question?

Q. Yes, you, my question is, did you view it in Mr. Baker's office in July, first week of July?

A. I viewed it in Mr. Baker's office, but I do not remember the exact date.

Q. Now, let's go to your report now Mr. Robinson. You spoke to the preface. Last, um, sentence, "my role is to assist the court in matters of my expertise. I believe in my opinion, I speak from neither my side nor that of the defendant." Were you not a, a previous defendant in this case?

A. I'm sorry, I don't, I don't....

Q. Kinsman Robinson, were you not a...

A. In this...

Q. ...previous defendant?

A. ...particular case?

Q. Yes, sir. Yes, sir.

A. Previous to what? I don't understand.

Q. Well, Mr. Robinson, here is the - you

were co-defendant in this action originally, correct?

A. Probably, yes.

Q. Yes. Right. Now, and you're not a co-defendant now, correct?

A. No.

Q. Do you recall why?

A. Yes. We, the gallery agreed to, we were in the process of removing our, our...

Q. Yes.

A. ...particular blog, and so...

Q. Oh.

A. ...we agreed, we had no concern...

Q. Yeah.

A. ...when asked by you...

Q. M'hm.

A. ...to eliminate any reference to Ritchie Sinclair in order to settle.

Q. Mr., uh...

A. I'm trying...

Q. ...Robinson....

A. ...to finish the question.

Q. Sure, go ahead.

A. Let me answer the question. We had no concern, so we simply eliminated the, our blog.

Q. Mr. Robinson, is this one of your publications?

A. Yes.

Q. Thank you. Can you please go, and, you, and everything in this publication is authentic?

A. I hope so.

MR. OTAVNIK: Okay. Let's go. Let's go to page 97. Your Honour, I'll be going from

the additional filing.

THE COURT: Additional filing of what?

MR. OTAVNIK: What, see, what happened was....

THE COURT: No, you do not have to give me a - I said, "additional filing of what?"

MR. OTAVNIK: In, no, in, it was part of the record of this case. It would, the, after, after the original....

THE COURT: Additional filing to your claim?

MR. OTAVNIK: Yes.

THE COURT: It says, it is entitled, "additional filing." Okay...

MR. OTAVNIK: Yes, Your Honour.

THE COURT: ...I have it here. All right.

MR. OTAVNIK: Q. Turn to page, uh, 97, Mr. Robinson.

A. M'hm.

Q. Is that an authentic Norval Morrisseau in your opinion?

A. I think so.

Q. It was labelled as a fake on Mr. Sinclair's website. You're aware of that, right?

A. No, I wasn't aware of it.

Q. Oh. Okay. Now, Mr. Robinson, can you go to page 103?

A. Where....

Q. Where is, is that it, right there? Mr. Robinson, you were...

A. M'hm.

Q. ...you just passed it. Right there. Is that an original, uh, Norval Morrisseau?

A. I hope so.

Q. It's also labelled a fake on Mr. Sinclair's website. Can you turn to page 109, Mr. Robinson? Is that an original Norval Morrisseau? It's in your book.

A. I believe it is.

Q. It's also labelled a fake by Mr. Sinclair on his website. Can you turn the page to 111? No, you just passed it. Is that a real Norval Morrisseau in your opinion?

A. Yes.

Q. Also called a fake by Mr. Sinclair. Do you know where that's hanging?

A. No.

Q. In the Smithsonian Institution.

THE COURT: No, you can't give evidence, sir. You can ask him....

MR. OTAVNIK: Q. Oh yeah. Do you know where it's hanging? Do you know where it's hanging, sir?

A. No.

Q. Okay.

A. Well, maybe I do now.

Q. You do, you do now. Fair enough, Mr., fair enough, fair enough. Now, isn't it a fact that we came to an out of court settlement after that was disclosed, after the first pre-settlement?

A. I don't understand the question. After what was disclosed to who?

Q. To you.

A. This....

Q. This....

A. What was...

Q. These contents.

A. ...disclosed to me? That was not disclosed to me.

Q. Yeah, it was disclosed to your firm and that's why you settled out with me.

A. No.

Q. It removed all, all references from Mr. Sinclair...

A. No.

Q. ...from your website.

A. No, we settled with you because we couldn't be bothered with a, with a ridiculous lawsuit, and it was costing...

Q. Oh, so you...

A. ...us money and effort.

Q. ...you were promoting Mr. Sinclair as an expert, you found out that Mr. Sinclair called some of your own paintings fake in your own publication, and just thought nothing of it.

A. What's the question?

Q. The question is, on the original filing, you did not settle with me until this was filed with the court after the first settlement conference, correct?

A. No.

Q. That's - what do you mean, "no"?

A. Well, I didn't see that document. You didn't file that document with us.

Q. Yeah, absolutely did.

THE COURT: All right, well...

A. Well I don't remember it.

THE COURT: ...just one moment. Wait a minute.

MR. OTAVNIK: This is....

THE COURT: Don't argue with the witness's answers.

MR. OTAVNIK: Yes.

THE COURT: Whether you like his answer or not, all you can do is ask another question. If you want to present evidence later in reply, you can do that. But do not start arguing back and forth or, or comment on his answers.

MR. OTAVNIK: Q. Mr. Robinson, the date of our, uh, confidentiality agreement was after the date of this filing, correct?

THE COURT: The date of your confidentiality agreement?

MR. OTAVNIK: Yes. What happened was, is, well, after the first settlement conference....

THE COURT: Wait a second, are you telling me the settlement was confidential between you?

MR. OTAVNIK: Yes.

THE COURT: Well why were you bringing it up then?

MR. OTAVNIK: Well, because he...

THE COURT: I am not....

MR. OTAVNIK: Q. ...breached it by testifying today. But that's, here, neither here nor there right now. So, I'll get this straight, you were promoting Mr. Sinclair on your website at the same time he was calling stuff from your, paintings from your gallery a fake on his website?

A. What's the question?

Q. That's my question. You were promoting Mr. Sinclair as an expert on your website, with a link from your website to his, at the same time he was calling paintings from your own publications fake on his website.

5 A. I don't know, that sounds like a statement, not a question, but what was happening was...

Q. Your Honour....

A. ...we were referring....

THE COURT: Let him, let him try and answer.

10 A. We were referring on our website to, uh, Mr. Sinclair and his, and his, what, and various references to him. I would not go so far, I would never go so far as to say we were promoting Ritchie Sinclair.

MR. OTAVNIK: Q. Was....

15 A. Just because he was mentioned on our website doesn't mean we were promoting him.

Q. Was Mr., at the same time Mr. Sinclair was on your blog, and you had a link from your blog to Mr. Sinclair's website, was he, at the same time, not calling those particular paintings from your own publication fake on his website?

A. He may have been. I can't verify that.

Q. Do you know that even today those paintings are still on his website called fakes?

25 A. Uh, no I don't. I don't follow his website day-to-day.

Q. You don't follow his website day-to-day?

A. No, I don't.

30 Q. So you're the principle art dealer for Norval Morrisseau. This man has defamed some of your own paintings and you don't know about it?

A. I don't say I didn't know about it, I

said I don't follow it day...

Q. Have you taken...

A. ...day by day.

Q. ...any steps to remove those paintings
5 from Mr. Sinclair's website?

A. No.

Q. Well, I mean he's....

A. He has a right to his opinion.

Q. Sure, I mean, as a, I mean, there's a
10 painting here from in the Smithsonian in your book he's
calling fake, and you don't think, as a principle art
dealer of Norval Morrisseau, I have no interest in taking
it off your, your, his website?

A. He has a right to his opinion and I'm
15 not, and I don't worry about these, these small points.

Q. Oh, these small points.

A. M'hm.

Q. So some, do, well, my following
20 question, do you believe the Smithsonian is right, or Mr.
Sinclair?

A. I have no idea.

Q. Oh, the....

A. I would have to...

Q. Oh.

A. ...look at the painting, examine it, and
25 you're asking me questions I can't answer right here.

Q. Oh, you mean the Smithsonian
Institution, you think they'd be more qualified....

THE COURT: All right, he has...

MR. OTAVNIK: Okay...

THE COURT: ...answered the question.

MR. OTAVNIK: ...fair enough.

THE COURT: He has answered the question.

MR. OTAVNIK: Q. Now, the one of the paintings, also, in here is in the Fred Jones Jr. Museum in the University of Oklahoma, which is featured on your website. Is it a fake too?

A. I have no idea what you're talking about.

Q. Oh, well, let's get right to it. This painting is featured on your website and, as, from one of your selected collections, on your website, being from the Fred Jones Jr. Museum, and that's one Mr. Sinclair has called a fake. Do you believe it's a fake?

A. I really wouldn't want to comment. I don't know at this point. I would need to examine the painting, look at the provenance, and this is a long..

Q. So we can..

A. ...time ago.

Q. ...agree that there are paintings in, you, that you, as far as you're concerned, there's paintings here that, are all authentic, but they're labelled as fake on Mr. Sinclair's website?

A. I did not say that.

Q. What did, what, what was your comment?

THE COURT: All right, he has already indicated..

MR. OTAVNIK: All right.

THE COURT: ...he is not sure exactly what is on the site.

MR. OTAVNIK: Q. Okay, fair enough. Fair enough. And, now, you were Norval Morrisseau's principle art dealer, you said, for 25 years, right?

A. Uh, 20 years I think I said.

Q. And you, it says in your, in your introduction in your expert report that you have personally handled a thousand Morrisseau paintings and conducted hundreds of formal appraisals, correct?

A. Yes.

Q. Did your firm ever appraise any, uh, paintings from Kahn Auctions before....

A. Yes.

Q. Yes. And you have actually, the ones that you appraised from Kahn Auctions you thought were, you gave positive opinions on them?

A. At that time.

Q. At that time, yes. And, uh, you ended up buying 28 from Potter Auctions...

A. Yes.

Q. ...correct?

A. Yes.

Q. Now, do you remember the article that you helped write in the National Post?

A. I did not help write any article for the National...

Q. Oh, no...

A. ...Post.

Q. ...you, you were, you are the only source in here, Mr. Robinson. Do you remember, do you remember Murray Right (ph), their reporter approaching you and discussing it?

A. No.

Q. You don't. So all this stuff attributed to you, you don't know about?

A. I didn't say I didn't know about it, I said I don't remember who the, who the reporter was, or,

or...

Q. Well....

A. ...when it happened.

Q. Well, Mr. Robinson, the article says that, "the alleged fakes first came to Mr. Robinson's attention through the RCMP, Thunder Bay, which has received a tip through Crime Stoppers." Is that how, where you first heard about the Norval Morrisseau fakes?

A. I did receive a, a letter from the RCMP. It was a Crime Stoppers tip according to the RCMP. They sent me four, four photographs, but, does that answer your question?

Q. And that was in 2001, right?

A. It may have been.

Q. And what's the status of that investigation? You, it's, it's quite prominently...

A. Well, there...

Q. ...featured here.

A. ...there is - but this is, how old is this article?

Q. 2001.

A. Well, that's like nine years ago.

Q. So the point is nothing's been, nothing, the RCMP hasn't come to any conclusions, right?

A. I am, I am not aware of, they didn't tell me anything they may have concluded or not concluded from that letter and that, that investigation.

Q. Fair enough. Now, in the article, here, um, you're basically saying that you bought, Potter Auction is selling fakes, correct?

A. Um, you know, I haven't read the article for like nine years.

Q. Well, yeah, but you....

A. And you're asking me if I, I didn't write the article.

Q. Yeah.

A. And, you know, quite often people get misquoted so I don't know what's in the article right now.

Q. Oh, okay. Okay, Mr. Sinclair. Okay, Mr., uh...

A. I do remember being misquoted a couple of times in...

Q. Oh, okay.

A. ...previous articles.

Q. Okay. Did you ever disclose to your clients the fact that you bought from Potter Auctions?

A. I doubt it.

Q. You doubt it. So, you bought 28 paintings from Potter - oh, first of all, first of all, first question, um, Norval says here, "'allegations of forgeries of Mr. Morrisseau's work are nothing new. He's been telling us for years about the fakes and even the people who were painting them', Mr. Robinson said."

A. Oh.

Q. Who were painting them? Article states that Norval Morrisseau told you, that he told you who was, who were painting the fakes.

A. He did tell me some names.

Q. Who were they?

A. But, uh, they weren't the same people that, obviously, have painted these...

Q. Well, how do you know?

A. ...later paintings.

Q. Tell us.

A. I don't know.

Q. Well okay. So, you bought 28 paintings from Potter Auctions, and you paid approximately how much?

A. I think it was in the order of a little over \$50,000.00.

Q. \$50,000.00? Yes. Yes. And then, you didn't say to Mr. Potter, "hey, they're fakes. I want my money back." Why not?

A. Well, it took me a long time to realize they were fakes. I, um, I, first of all, I wanted to buy them because I thought they were authentic. I had heard that, and observed that, Joe McLeod was purchasing them, and, at that time I believed that he had a long-term, longstanding experience with Norval, even going back earlier than I did.

Q. So you were....

A. So I trusted....

THE COURT: Let him finish...

MR. OTAVNIK: Sure.

THE COURT: ...the answer.

A. So I trusted, at that time, to my great regret, in his particular credibility, and I started to buy the paintings, with two purposes in mind, really.

MR. OTAVNIK: Q. M'hm.

A. One was to - I was always concerned, looking back a little bit, I was always concerned that Norval Morrisseau might...

Q. M'hm.

A. ...leave the gallery, so I wanted to have some, even though our first priority was to sell the paintings that Norval Morrisseau supplied for the gallery...

Q. M'hm.

A. ...I always wanted some backups in case, you know, in case Norval left, went with someone else.

Q. M'hm.

A. And so, purchasing a few of these paintings was part of my, part of my objective was to build up a bit of an inventory, just put away for a rainy day, so to speak. And the other thing I noticed was that, um, the paintings were selling for ridiculously low prices compared to what we were marketing for in the gallery...

Q. M'hm.

A. ...and as Norval's exclusive dealer and, and considering what I also mentioned previously about my understanding with him, that I would try to achieve Canada-wide uniform pricing, I went to the auction with another objective in mind too, and that was to bid on a few, on more paintings than I wanted, just to make sure that people didn't get them too cheap. So I did bid on many more paintings than I bought. I didn't really care very much which particular paintings I bought as a result of bidding on them, and I, that's how I - I've forgotten now your question - but that's how I came to...

Q. Well what happened...

A. ...buy the paintings.

Q. ...to the 28 paintings?

A. Well, we immediately resold some of them, quite a few of them, actually, to a few, a very few to private collectors, mostly to another auction, out of town auction.

Q. As Morrissey's?

A. Yes. Because at that time I believed they were authentic.

Q. Oh, and have you gone back and corrected

that with those clients?

5 A. We actually have. We have bought back two or three paintings already from our private clients. I haven't done anything about the auctions because everyone knows in the art business that auctions are buyer beware. When you buy, it's your risk.

Q. Do you remember a letter you sent out to your clients the day after the National Post article came out?

10 A. I remember sending letters out to clients. I don't know the date.

Q. Oh. I'll get you a copy of that. And in that letter, did you ever, perhaps, mention to your clients the fact that you bought from the same place you are now calling fakes?

15 A. No, I wouldn't, I, we wouldn't reveal our source, normally.

Q. No, I mean, I mean, Mr. Robinson, I mean, the article says, you know, I, uh, this, this auction house is selling fakes. You bought some. Do you tell your clients, "hey, I found this new information"?

THE COURT: All right, well, wait a second. Again, I am not sure how all this - Mr. Robinson is not a defendant in this action.

25 MR. OTAVNIK: No, no.

THE COURT: So the only questions that really...

MR. OTAVNIK: Is....

THE COURT: ...listen...

30 MR. OTAVNIK: Yes.

THE COURT: ...to me, sir - that you can really ask him in regard to, perhaps, his

opinion as to whether this is a fake or not a fake. The question...

MR. OTAVNIK: Right.

THE COURT: ...of what he did, and sending letters out, and...

MR. OTAVNIK: Yes.

THE COURT: ...and his business practices, having bought the other Morrisseys that may or may not be authentic is not an issue before me. So...

MR. OTAVNIK: So....

THE COURT: ...let's limit it...

MR. OTAVNIK: Yeah, sure.

THE COURT: ...like I limited...

MR. OTAVNIK: Sure.

THE COURT: ...the defendant...

MR. OTAVNIK: Sure.

THE COURT: ...you are going to be limited to questions that are relevant.

MR. OTAVNIK: Q. So if, yes, yes. So, in effect, Mr. Robinson, you bought 28 fake paintings, right?

A. Yes.

Q. Okay. And you were an expert in Norval's work for years before that, correct?

A. I didn't, no, I didn't say that. I think I was quite naïve about, back ten years ago, how, whether the paintings were authentic or not. I just trusted they were authentic.

Q. Did you ever hear of a gentleman called, um, Martin Humphries?

A. I've heard the name, yes.

Q. The name. And didn't he also write to

5 your lawyer, or actually wrote to several, the Norval
Morrissette Heritage Committee and said, you know, I have
seen Mr. Robinson but paintings off Kahn Auction, he's now
in the papers calling them fake, and do you remember what
your lawyer's response was?

THE COURT: Again, I am not sure the
relevance....

MR. OTAVNIK: Yeah.

THE COURT: No. No.

10 MR. OTAVNIK: Yes.

THE COURT: It is not relevant to the
question of this particular painting.

MR. OTAVNIK: Yes, okay. The fact is, Mr.
Robinson....

15 THE COURT: No, no.

MR. OTAVNIK: Yeah, okay.

THE COURT: Let us get something...

MR. OTAVNIK: Yes.

THE COURT: ...that is...

20 MR. OTAVNIK: Yes.

THE COURT: ...relevant. Not what....

MR. OTAVNIK: Q. Yes. Mr. Robinson, you've
been fooled 28 times, correct? You bought 28 fake
Morrissettes that you admit to buying?

25 A. I was fooled three or four times when,
the auctions I attended, yes.

Q. Now, Mr. Robinson, did you ever return a
painting?

A. Only one.

30 Q. Only one? For how much was it for?

A. I don't really remember. It wasn't that
much money.

THE COURT: Okay....

MR. OTAVNIK: Q. It's \$250.00, wasn't it?

THE COURT: All right. You know what....

MR. OTAVNIK: No, no, no, it's, it's - go ahead, Your Honour.

THE COURT: No, it is not relevant.

A. It was not a Morrisseau.

THE COURT: Again...

MR. OTAVNIK: Yes.

THE COURT: ...what he returned, did not return...

MR. OTAVNIK: Yes.

THE COURT: ...we are dealing...

MR. OTAVNIK: Yes.

THE COURT: ...with a particular painting...

MR. OTAVNIK: Yes.

THE COURT: ...that you are alleging...

MR. OTAVNIK: Yes.

THE COURT: ...has been somehow, the title has been...

MR. OTAVNIK: Yes.

THE COURT: ...challenged as being authentic, and certain losses to you as a result of it. So let us leave it...

MR. OTAVNIK: Yes.

THE COURT: ...at that.

MR. OTAVNIK: Yes.

THE COURT: Okay? This gentleman is not a litigant in these proceedings, and you are not going to continue...

MR. OTAVNIK: Yes.

THE COURT: ...going after him as to...

MR. OTAVNIK: Yes.

THE COURT: ...what his practices were.

MR. OTAVNIK: Q. Yes. Yes. So, again, how do you know you are right this time when you already bought 28, you've been fooled 28 times, as you say?

A. I didn't say I was fooled 28 times.

But...

Q. Well, you bought, you bought...

A. ...uh, I...

Q. ...28 paintings.

A. ...I was fooled in 1999, late 1999, early 2001, 2000, sorry, yes, I was fooled.

Q. The Potter....

A. And I learned, I lived to regret that deeply.

Q. The Potter paintings, did you ever, uh, bring them to Norval...

A. No...

Q. ...and ask him....

A. ...never. Never.

THE COURT: Again, I am not sure the relevance. I....

MR. OTAVNIK: Yeah, well, I mean, he....

THE COURT: No, no. Let's not, let's talk about...

MR. OTAVNIK: Okay.

THE COURT: ...this painting.

MR. OTAVNIK: Q. Okay. Okay. So, you were, you were aware of the, um, the process involved in the Cultural Property Review Board, right?

A. Yes.

Q. Would you say it is quite rigorous?

A. It is also open to all kinds of...

Q. Okay.

A. ...skulduggery.

Q. So, for this painting here, what is your expertise, you claim why it's not a Morrisseau painting? I mean, you've been fooled 28 times....

THE COURT: All right, so we...

MR. OTAVNIK: Okay, fair enough.

THE COURT: ...keep going over that....

MR. OTAVNIK: Fair enough. Fair enough.

THE COURT: You have asked him the question...

MR. OTAVNIK: Fair enough.

THE COURT: ...what is his criteria...

MR. OTAVNIK: Fair enough.

THE COURT: ...and let him explain it.

MR. OTAVNIK: Q. Are you a handwriting expert?

A. No.

Q. Did, when you did, you viewed the painting, did you, you viewed the painting, did you do any paint analysis?

A. Paint analysis?

Q. Well, yes....

A. The types of paint?

Q. Types of paint...

A. No.

Q. ...age of the paint, anything like that?

A. No. Didn't do any scientific tests.

Q. No scientific tests at all?

A. That's right.

Q. And all of your, your handwriting analysis is your own analysis, that's it?

A. Uh, yes.

Q. And you have no, you have no, you are a, you have no education in that? You are not qualified to give an opinion on any handwriting? If I submitted handwriting analysis to you, uh, experts, and you couldn't do it?

A. I am not a handwriting analysis expert, no.

Q. So what, what in this report is actual fact besides your opinion?

A. I thought the purpose of a report is to give you my opinion.

Q. Well, uh, no, it's using, using fact or, or a scientific method. If I were to get a handwriting analysis expert, he'd say, "I'm educated in X, Y, Z, I did this type of an analysis, I am qualified." But yourself, you're not qualified to give a handwriting analysis, is that correct?

A. I still have the right to do so if I wish.

Q. Didn't say that.

A. I, uh, with regard to the handwriting analysis, I looked at the initials, for example, and they were so, so blatantly different from authentic pieces of Norval Morrisseau's handwriting that you didn't need to be an expert to - anyone in this courtroom could compare them and doesn't have to be an expert to identify that those, those signatures are completely different.

Q. Mr. Robinson, did you have a conversation with Donna Shea at the auction, ever?

A. I may have. I don't remember it.

Q. She testified that she remembers you,

uh, not, not at all? You don't remember any conversations at all?

A. No.

Q. Okay. Then why did you, why did you cooperate with the National Post with respect to the article?

THE COURT: All right. I....

MR. OTAVNIK: Okay. Fair enough.

THE COURT: Again, sir, it is now 2:30.

MR. OTAVNIK: Fair enough.

THE COURT: We are going no later than 4:30.

If we do not...

MR. OTAVNIK: I understand.

THE COURT: ...finish today, we will....

MR. OTAVNIK: I understand.

THE COURT: Well, let me finish, sir.

MR. OTAVNIK: I understand.

THE COURT: We will not get back, probably, until, what is it, probably not until May some time. So it is not going to be in anybody's interest to, sort of, have a hiatus of a couple of months before we...

MR. OTAVNIK: I understand.

THE COURT: ...get back. So let's try to ensure that we keep relevant and to the point.

MR. OTAVNIK: Okay. Just give me a second. May I have a two minute recess? No, I'm okay. I'm okay...

THE COURT: All right, let's go...

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

THE COURT: ...let's finish up with this

witness, and then maybe we will take a short break.

MR. OTAVNIK: Q. Have you posted anything on your Twitter account about Mr. Sinclair?

A. On which account?

Q. Uh, Twitter. You closed your blog down....

A. I don't follow every day, but...

Q. Okay, fair enough.

A. ...we may have.

Q. Just one second, Your Honour. You mentioned that you started buying the paintings because you thought, uh, Joe McLeod was buying them, correct?

A. That was one of the reasons.

Q. Right. And Joe McLeod testified today that, in his opinion, it was an authentic Norval Morrisseau, right?

A. Yes.

MR. OTAVNIK: Okay. No more questions.

THE COURT: Any other questions of this witness...

MR. SINCLAIR: Um....

THE COURT: Which arise out of his questions... Nothing...

MR. SINCLAIR: I see.

THE COURT: ...new. Okay?

RE-EXAMINATION BY MR. SINCLAIR:

MR. SINCLAIR: Q. Yeah. Um, how much is the subject painting worth in your estimation as a thing?

A. \$200.00.

Q. With regard to the, *Norval Morrisseau*:

5 *Travels to the House of Invention* book that was, uh, brought up here, are any of those pictures that he was showing you anything remotely like the Randy Potter Auction pictures and the subject painting that came from Randy Potter Auctions?

A. No, I, they are - I call the type of painting we are talking about here I call, in the class of factory-type fakes as opposed to fakes that are quite authentic, uh, authentic looking.

10 Q. Yes.

A. And if some of these paintings in the book are fake they are very authentic looking and completely different, no comparison whatsoever, to the, what I call the factory-style fakes that are so prevalent in the market.

15 Q. Right. Meaning the 3,000 paintings that you mentioned?

A. Three-thousand, yes.

20 Q. Yes. Okay. Uh, you brought up the Norval Morrisseau Heritage Society, would you tell the court who the Norval Morrisseau....

THE COURT: All right....

MR. OTAVNIK: This isn't going to work, yeah....

25 THE COURT: Yes. Okay, it is not relevant.

MR. SINCLAIR: It is very relevant.

THE COURT: No, it is not relevant.

MR. SINCLAIR: Do you know who they are, sir?

30 THE COURT: It's not relevant. I do not care who they are. It is not relevant to what I have to decide today. It may be

relevant in the artistic world, but it is not relevant to me making a decision as to whether you, there is any liability in this case. So, next question.

MR. SINCLAIR: Okay, you have limited me again.

THE COURT: Okay, you can step down, sir. How many more witnesses, just yourself, Mr. Sinclair?

MR. SINCLAIR: Uh....

THE COURT: Or is there another, another witness? I can't remember.

MR. SINCLAIR: No, it's....

THE COURT: Just you? Okay, let's take a five minute recess, and we will reconvene....

CLERK OF THE COURT: All rise, please.

MR. SINCLAIR: Uh, Your Honour?

THE COURT: Yes, sir?

MR. SINCLAIR: You said it would be two months? Don't we have this court for tomorrow?

THE COURT: I am not here tomorrow, sir.

MR. OTAVNIK: I'm not aware of it being tomorrow....

MR. SINCLAIR: But we were listed for a two to three day trial. If haven't had a chance to begin my....

THE COURT: I do not, well, sir, you may have been listed for two days...

MR. OTAVNIK: Well, I....

THE COURT: ...I am not sitting tomorrow.

There is some other judge sitting and there is different cases being heard. Okay?

MR. SINCLAIR: Okay. When will I have a chance to call this brief, then, Your Honour?

THE COURT: When you get in the witness box.

MR. SINCLAIR: Okay.

R E C E S S

U P O N R E S U M I N G :

THE COURT: Mr. Sinclair, do you want to come to the witness box, please?

RITCHIE SINCLAIR - SWORN

EVIDENCE IN-CHIEF BY MR. SINCLAIR:

THE COURT: All right, what would you like to tell me, Mr. Sinclair?

A. I'm sorry Your Honour?

THE COURT: What would you like to tell me?

A. Uh, I am a graduate of Commercial Art at George Brown College, 1979. I, Norval Morrisseau put an advertisement in the newspaper seeking his protégé in 1979, the summer of. I responded to that advertisement. I was the 28th person interviewed personally by Norval Morrisseau and he took me on as an apprentice at that time. I painted with him from 1979 until he was no longer capable of painting. I believe the last time I painted with him was in 1999. I painted hundreds of backgrounds, wash backgrounds for Norval Morrisseau's paintings, himself.

THE COURT: I do not know what you mean, "wash backgrounds."

A. As his apprentice I, I would....

THE COURT: What is a wash background?

A. It is a, like, clouds, or underwater, you know, environmental, three-dimensional type of environment, and then Norval Morrisseau would, he liked these because they would make special paintings for him. Like, then he could develop on it, and help him with his vision. Um, with regard to - Norval Morrisseau authorized me in 1994 to teach students and children, and he signed that authorization. In 1997 at the McMichael Gallery, that bear dance ceremony that Mr. Robinson mentioned, that was my initiation for taking responsibility for the continuation of the Woodland School of Art, which is a school of art that Norval Morrisseau created himself. In other words, the style of art that Morrisseau created didn't exist before he created it. Um, there are hundreds of native artists that have been spawned from, from this, and I am one of them. I mixed his paints for years. Um, I know the smallest details about what he does, but the most indicative thing in the paintings that I have identified as fakes are things that he would never do; that is what really shows it.

THE COURT: Such as?

A. Well, the subject matter. Primarily....

THE COURT: Well, let us talk about the, the painting being in question that you...

A. Yeah.

THE COURT: ...claim is a fake. What, what, and I do not remember what exhibit number is that...

A. Well, first of all....

THE COURT: ...what exhibit number is that?

MR. OTAVNIK: Exhibit, uh, five, Your Honour.

THE COURT: So, particularly - if I can find it here.

5 A. Okay. The, the first and most obvious thing, which Mr. Robinson mentioned, is that these paintings, you can tell at a glance from 100 yards that they are not his, and it is because of the layout of the subject matter in particular. Every form, every line in,
10 in this picture, in particular, first of all, it's a Jesuit, held up as a religious painting, you know, and though Norval has, has done his share of them, of the great figures, Jesus, Mother Mary, you know, this idea of, of these Jesuit paintings, there's like 20 of them that are all fake that I have personally witnessed myself.
15 These teardrop, Norval Morrisseau wrote about these teardrop shaped birds that you can see here. I mean, they show no composition. See, it's the weakness in composition that's the first and most telling sign. Then, we could go on and on with regard to details of colour, the use of this grey, for example, and you'd be hard pressed to find any Morrisseau with floating rocks, which is standard of the 2,000 odd pieces that I consider to be fake that I
20 witnessed, probably 90 per cent of them take place underground. They are like creatures feasting on people. They tend to be dark, they tend to be grey.
25 This is a bit more colourful than some of them, but in, I mean - let me tell you what first set me off: 1979 I walked into Heffel's Gallery and, I mean, what was it, 2006, I
30 walk into Heffel's Gallery, after being at the National Gallery show accompanying Norval, and there's a bunch of paintings in there, all fake, and on the back of a bunch of

5 these is "1979" and "1980." And, and even though, you know, it, earlier on I thought, before I studied a bit more about the older pictures of Norval, 'cause they claimed all these pictures were before my time, early 70s, mid-70s and that, so I didn't make a big deal about them. I knew about the fakes or whatever, but what was I going to do about them? I just paint ducks. You know? And, but anyhow, I walk into Heffel's, and there is these pictures and they say, "1979" and "1980." My job, I was paid to stretch and put canvasses away during that time. And none of those are remotely like what he was doing. He was like, he was, he is a stupendous artist. It is embarrassing what these people have done. I mean, I would suggest that Don Robinson's expert report there, that is the work of months of effort. It is very particularized and, for one thing, if you flip this paper, painting over - would you like to show the judge your painting, Mr. Otavnik?

MR. OTAVNIK: I have a few questions before that, Mr. Sinclair.

20 THE COURT: Well, sir....

A. Um, anyhow, on the back of his painting, written in, in black paint that's, that's not properly liquefied, we call it, "dry brush," the mass of these forgeries, including this one, have been signed on the back in paint with a fraudulent Morrisseau name, usually a title, often a copyright symbol. You know, sometimes they'll write his actual name in English on the front, and, as well, in other words, they scream out, "please believe I'm a Morrisseau." But in this case, for example, it's painted on the back with this signature. In all the years I have known Norval, he would never do that. First of all, the first thing on the list for me, as a painter, was make

sure that the black paint was twice as liquefied as any other colour, because that's the colour that he uses to do the black lines that create the stained-glass effect. So, if you wanted, if someone were buying a Norval Morrisseau painting and I didn't have a chance to see it or whatever, and they asked me for my opinion, I would ask them, "was it painted in black dry-brush on the back of this thing?

'Cause if there was, it's a fake." Now, of course, I didn't see that. When I saw this picture on the internet, I didn't know, as Mr. Otavnik has said, I didn't know he had owned it. In fact, on purpose, I didn't identify the owners of the pictures. When I put these fakes up I just called them "inferior counterfeit Morrisseau number one, number two, number three," because, really, I didn't know who knew what. All I knew was those were fakes because I was there.

And, and so, I didn't know who was doing this or how, and, you know, Norval tried to protect me. He didn't, he knew I would get really upset about this. I went to, when I even went to the National Gallery he stayed at my place and, like, you know, a couple of times, in the midst of all this controversy, but he didn't want me being involved in this. And, because he knows me, and that I would do something about it. And, and so, out of concern, not wanting to hurt anybody, Mr. Otavnik or anybody that could have, you know, bought these paintings without knowing better, I put up images of these paintings and made clear that, in my opinion, that each of these were fakes. And I did it because I teach in schools. They are, this is an organized group of about 50 people who work together to sell these fake paintings, and they have programs going into the schools to, literally, bringing these underground, feasting

creatures in to teach children. Norval Morrisseau painted love. His theme was love. His theme was uplifting. His theme was light, it was beauty. It's the opposite, 180 degrees, you know.

5 THE COURT: All right.

A. Now, if that were a real Norval Morrisseau painting, this piece here, it's about this big, we're talking about \$10,000.00 is, you know, that's a minimum. Now, his market value has been held back, you know? And Norval Morrisseau actually died because he - well not, you know, he had Parkinson's for, for a long time. But he came to Toronto to defend himself, to appear in this very court with this very plaintiff and stand up and say these, you know, "I said this to Heffel's, I said that these were fakes they were selling there...."

15 THE COURT: All right, well, he is not here, unfortunately, to cross-examine. So....

A. Well he....

20 THE COURT: No, no. So I, you cannot tell me what he said. Okay, you have told me about the paintings. Tell me about your defendant's claim.

A. Oh.

25 THE COURT: What is the - what are you claiming is the basis of your defendant's claim?

A. Uh....

THE COURT: No, without going - no, just....

30 A. Your Honour, I just have, I would like to get my brief and at least give this to you. We can go into it.

THE COURT: Well, with, tell...

MR. OTAVNIK: It's....

THE COURT: ...me the evidence, I do not want to know - first of all, what is the basis? Are you claiming harassment?

5 A. Uh, you know, Your Honour, I am not done with speaking about my history with Norval Morrisseau, my background with regard to this issue and that painting, and all of the different aspects that come in here. This is a very...

10 THE COURT: Okay, hold on....

A. ...very important case. This is not something to get done as quickly as possible...

THE COURT: Okay. No, no...

A. ...and get out of here.

15 THE COURT: ...no, sir. Okay, the question is, I am not here, necessarily, I do not see it based on the pleadings, that I am here to make a finding of whether this is or is not a fake.

20 A. A fake.

THE COURT: And even if I was, my finding would only be for the purpose of this lawsuit, and it would not bind the rest of the world. So, you know, people would not come and say, "well, Justice Godfrey says it's a fake, therefore, ergo, it is a fake," or if I said it is authentic, "ergo, it is authentic."

A. I understand that.

30 THE COURT: Any finding I would be, even if I was prepared to make a definite finding, would be just for the purpose of this

5 action. So it does not solve anything by,
you know, going on and on and on about
whether this is a fake or is not a fake, and
what is the proof, and what is not the
proof. I do not see that as, necessarily,
the issue.

A. Ah.

10 THE COURT: You have been sued on
negligence, that you have made some
negligent statement which has harmed the
15 plaintiff. You have given me the reasons
why you think it is a fake, that is all I
have to hear. Okay? Now, if you want to
tell me the basis why you have issued a
claim against the plaintiff, you can tell me
that now. You do not have to get me the
whole brief as to - like, from my
understanding, you are suing on harassment,
on some form of harassment, and I do not
20 know if you mean harassment, this lawsuit
being harassment, or something outside the
lawsuit.

25 A. I see. So what, what are you going to
decide? And if you are not, I didn't expect when I walked
in here you were going to decide it was a fake or it was a
real painting...

THE COURT: Well, for....

A. ...but on the preponderance of proof....

THE COURT: I can...

30 A. You know....

THE COURT: ...if I thought it was important
for me to make a finding whether it is a

fake or not a fake, I would make it for the purpose of the case. I am not sure, in my own mind, that, at this moment, that that is the real issue I have to decide.

A. M'hm.

THE COURT: I think the real issue, based on the way the pleadings have been drafted by the plaintiff, I have to decide whether you made a negligent misrepresentation in your blog or your website.

A. M'hm.

THE COURT: That is totally different from whether it is or it isn't a fake.

A. Well, the, it is....

THE COURT: No....

A. Considering that the representation was about it being a fake, I think that is a very important issue.

THE COURT: No, whether you had reasonable grounds to make those representations.

A. Right.

THE COURT: Not - so the fact that you may have reasonable grounds to make them or not make them is a question of negligence, it doesn't have anything, necessarily, to do with the question of whether your representations being reasonable, determines that it is a fake or not a fake. That is not the issue though. I do not think I have to determine that.

A. Well, there are....

THE COURT: So, really, I do not really want

5 to hear anything else on the question,
because like you said, we could be here for,
for perhaps days going over the question of
whether it is a fake or not. And I will
tell you right now, even if that was my,
even if that was my obligation to make that
finding, you are not going to have anybody
in the outside world going to be relying on
my interpretation...

10 A. Oh, I am not expecting that, sir.

THE COURT: ...as being...

A. I am...

THE COURT: ...the foundation....

15 A. ...just expecting you to understand that I
have spoken honestly...

THE COURT: No, no....

A. ...and why I have spoken honestly.

THE COURT: Okay, well you have....

A. I have a right to bring this.

20 THE COURT: You have....

A. I have spent a year...

THE COURT: Sir....

A. ...and a half...

THE COURT: Sir, you have told...

25 A. ...of duress.

THE COURT: ...me the reasons why you believe
it to be a fake.

A. I told you some of the reasons.

30 THE COURT: Okay, well I think I have heard
enough of the reasons. I do not have to
hear...

A. Okay.

THE COURT: ...you know, if there is 100 reasons, I do not have to hear all 100. I think I have heard, generally, an explanation of why....

5 A. Do you know why, then, can I ask you a question?

THE COURT: No, no. I am not here to answer questions. I am here to decide the issue. I have heard what you have had to say, I think I have heard enough on that point. Okay? So the question I am asking you now is, what else do you want to tell me in regard to your defendant's claim? Again...

A. Okay.

15 THE COURT: ...if you want to come back...

A. Can I....

THE COURT: ...another day, sir, feel free. I do not think it is going to be to anybody's advantage, you know, doing this another day or two days. Look...

20 A. I have....

THE COURT: ...I am paid to sit here whether I listen to you or I listen to somebody else.

A. Yes.

25 THE COURT: It does not bother me.

A. Yeah. Then let's...

THE COURT: My experience...

A. ...do it.

30 THE COURT: ...tells me, I only have to hear so much information....

A. To know what you need to know.

THE COURT: To know what I...

A. I understand.

THE COURT: ...need to know.

5 A. Can I still pass out, I have a copy for the plaintiff. Uh, the brief is with regard to onus and my defendant's claim.

THE COURT: No, that is - we will do that later. That brief is final argument as to what the law is as to where onus is and things like that.

10 A. I see.

THE COURT: I only want to hear the evidence to suggest why you think you have a defendant's claim against him for harassment, or whatever your - so...

15 A. Okay.

THE COURT: ...you should be able to tell me that off the top of your head.

A. I can.

THE COURT: All right, so let's hear it.

20 A. Exhibit A of my defendant's claim....

THE COURT: Let me just find your defendant's claim.

A. Do you mind if I grab my copy too?

25 THE COURT: Go get your copy, sir. All right, I have got a copy of that.

A. Um, the website, morrisseau.com, where the alleged slander of title took place was only made available to the public with fake paintings on it....

30 THE COURT: Wait a second, morrisseau.com is whose website?

A. That's the website we're talking about today, sir.

THE COURT: Is that your, your website?

CLERK OF THE COURT: Was that a "yes" sir?
You have to answer....

A. It's a "yes." Yes.

THE COURT: What about that website then?

A. That it was only in - I had an art show
in Yorkville Toronto in September, through September to
October, and as was mentioned a few doors down from Mr.
McLeod's gallery, and, um, people were coming in, many
people, asking me about the fake issue. I got interviewed
for my own art show several times, and in the interview I
was, the question was asked about that issue and I said a
few things. I got some, the letters after putting up
pictures from multiple parties that were selling these
paintings, saying, you know, take them down or we'll sue
you, and I was, on November 21st sued by six plaintiffs for
\$17,000,000.00. My defence was....

THE COURT: Okay, well, that is not
something I am dealing with...

A. Okay.

THE COURT: ...or it has been dealt with,
because...

A. The, the reason...

THE COURT: We are dealing....

A. ...I bring this up...

THE COURT: I do not....

A. ...sir, is, is the plaintiff, himself, in
five affidavits that were submitted in this lawsuit was the
person who told each person that sued me to go get me. And
that's been admitted in these sworn affidavits by these
various plaintiffs.

THE COURT: So, how do....

A. Exhibit A....

THE COURT: Well, wait a second. How am I satisfied that he told these five people that that is what he told them? They are not here to tell me that.

A. No, they are not here to tell you that.

THE COURT: All right, so....

A. But it's been, it's in the Ottawa Citizen, I can...

THE COURT: No, the Ottawa...

A. ...produce that for you.

THE COURT: ...Citizen is....

A. A newspaper.

THE COURT: Well, newspapers are not the source of....

A. Well, I am here telling the truth. So I am telling you, I have five affidavits sworn by these people.

THE COURT: Well, you have got them here?

A. Uh, I might have a couple of them.

THE COURT: Have you given him...

A. It's another case...

THE COURT: ...a copy?

A. ...you see, you don't want to hear this case...

THE COURT: Well, no, no...

A. ...but, you know....

THE COURT: ...so, what do you mean there is another....

A. This is, these affidavits were from, not for this case. They were for another case that Joe Otavnik was....

THE COURT: Then I cannot hear that...

A. All right.

THE COURT: ...other case. You can, but....

A. Right.

THE COURT: But....

A. But nevertheless, Mr. Otavnik, this man was behind it, and, to begin with. So we're....

THE COURT: Okay.

A. I'm trying to tell you something very important...

THE COURT: I know....

A. ...about what....

THE COURT: But I....

A. They're related...

THE COURT: But....

A. ...the, they're locked.

THE COURT: Sir, I am not suggesting that what you are telling me is incorrect, or perhaps they are related, but I am saying, has he seen these affidavits that you are alleging that some of you have that, has he seen those before...

A. Absolutely.

THE COURT: ...today? No, have you given them saying, "I am going to be relying on these today, on the day - that is my intention, to rely on these affidavits"? Because if you don't, then he cannot cross-examine on the affidavit.

A. Well, anyhow....

THE COURT: Because some people are not here. If he knows they are coming, then he

5 has the option to say, "you know what," if
he is relying on their statements, then he
may say, "I want to cross-examine those
people on the affidavits they have sworn."
You can't just come in and say, "well, I
have got an affidavit," and he does not have
a chance to cross-examine the person if he
wishes to. I mean, I think this is a
10 problem with both of you. You have, you
know, you are both self-represented, and
neither of you have necessarily followed the
strict requirements of the procedure of the
court.

15 A. In my actual experience, the procedure
of this court is that rules are broken...

THE COURT: Well....

A. ...left and right...

THE COURT: Well....

A. ...and I'm, I wasn't...

20 THE COURT: Well, that may be....

A. ...the breaker, I was following it to the
letter...

THE COURT: Well....

A. ...you know....

25 THE COURT: I am - sir....

A. But, but I can't believe what's gone on
here.

30 THE COURT: Certain judges may be willing to
forgo certain formalities. In this
particular case, presumably, these
affidavits you want to rely on are crucial
evidence. And if they are crucial evidence,

then they have got to be served ahead of time. And if they are not served, then he is prejudiced, and he can't cross-examine. And if...

A. Okay.

THE COURT: ...and if it is a crucial thing, that it is not overlooked.

A. Anyhow, it is not, it is not crucial, I am trying to make a point with regard to Mr....

THE COURT: Well, if it is not crucial, then I am not even sure why it is mentioned.

A. The affidavits aren't crucial. The point is crucial.

THE COURT: Well then....

A. All you, all you need to do is just listen to my story and let me, like, do it.

THE COURT: But sir, I am telling you, I am not going to give any weight to what you say people told you unless I have an affidavit that is admissible. As...

A. And you're not...

THE COURT: ...to what they told you.

A. ...working tomorrow, though, right?

THE COURT: Well, sir, you know what....

A. There is a problem here. How can you make a two day trial, and I have a different judge tomorrow?

THE COURT: Well, you do not have a different judge tomorrow. I am going to remain seized of the case. The problem - I don't know if this is two separate....

A. This is a huge issue, Judge.

THE COURT: All right, just....

A. This is not something to make any
smaller...

THE COURT: Sir, I am not...

A. ...than it is.

THE COURT: ...trying to make light of the
issue. Let me just, first of all, seeing -
okay, somebody said two to three days, I see
that. Generally speaking, I have to tell
you, as a rule, we do not set things down
for two to three days, the big reason being
that quite often people either settle or
they have reason to adjourn, and if we set a
three day trial and for some reason it
adjourns, this court sits empty for three
days.

A. I am okay...

THE COURT: Okay, so we do not allow that.

A. ...with adjourning my claim until you come
back on, on one basis: I would like to get an order for
disclosure of the IP addresses where the defamation took
place, this is, for my defendant's claim. And I would be
quite fine...

THE COURT: Well I, sir...

A. ...with sitting there.

THE COURT: ...if you want, you are going to
have to make a particular motion to the
court that allows him an opportunity to
respond...

A. Absolutely.

THE COURT: ...without - if you want to, if
you want to hold your defendant's claim off

to another day, that is fine, because the way, it sounds like you want to present your defendant's claim, I am not sure we are going to finish today.

5 A. I think that would be a wise idea. I think if we focus, it's confusing to focus on, and try to finish up. See, this one painting we're talking about here represents...

THE COURT: All right, well, then let's....

10 A. ...represents thousands of paintings and many little people whose money is going out the door the wrong way. It's a very important issue. And then other issue is, why am I being harassed and everybody else who is directly connected with Morrisseau? So that's a big question. It's not a, there are many, many things that lead up to that, and I know this is Small Claims Court, I know I am not going to walk out of here with a fake or authentic judgment, and probably not \$10,000.00 for his defamation, you know, but at least this has to come to the surface at some point. I can't keep attending settlement conferences, getting assaulted in your courtroom. You know, this is, this is a big issue. So I would like to just...

15 THE COURT: Okay, just one....

20 A. ...I would like to just go through my defendant's claim. I filed multiple documents...

THE COURT: Well...

A. ...with regard to it.

25 THE COURT: ...just one moment. Do you have any objection to dealing just with your claim today, and then...

30 MR. OTAVNIK: No, yeah, I think that's....

THE COURT: ...because I have some question of, pardon?

MR. OTAVNIK: Yes, I agree with you, Your Honour. Yes, I have no, I have no objection.

THE COURT: All right. So let's just finish off the plaintiff's claim, and if necessary....

MR. OTAVNIK: Thank you.

THE COURT: Well, and then, I'll see if I can issue a judgment on today's claim, and then...

A. That would be....

THE COURT: ...we can set a date to come back another day for yours.

A. Thank you very much.

THE COURT: All right. So do you want to say anything else in regard to....

A. I'd just like to say one thing: I did all this as a public service, 100 per cent. I've never made a penny off morrisseau.com. I am protecting my great and noble friend's work, his legacy, which is tremendous, and, and because I am not in business, my attitude is such.

THE COURT: All right. Any questions you want to ask?

CROSS-EXAMINATION BY MR. OTAVNIK:

MR. OTAVNIK: Q. Yes, sir. Hopefully we'll get done today. So, Mr. Sinclair, in addition to the painting, the subject of this suit, how many paintings have you labelled fake?

THE COURT: How many what?

MR. OTAVNIK: Q. Paintings have you labelled fake? In, in totality, in your website, including my painting, how many have you labelled fake?

A. I believe 1,018.

Q. And those would be ones in the Smithsonian Institution, right?

A. What?

Q. The paintings that, some of the paintings you have labelled fake on your website are in the Smithsonian Institution.

A. Um, they may be.

Q. No, they are.

THE COURT: Okay, well, no, sir.

MR. OTAVNIK: Okay.

THE COURT: Do you...

MR. OTAVNIK: Okay.

THE COURT: ...know if...

MR. OTAVNIK: Okay.

THE COURT: ...they are Mr. Sinclair? Do you know if they are?

A. Uh, I believe there is a couple that are in the Smithsonian.

THE COURT: Okay.

A. Yeah.

MR. OTAVNIK: Q. And how about the, uh, Frank Jones Jr. Museum of Art in Okalahoma? Labelled as fake also in your website?

A. I believe so.

Q. You believe so, or you know so? I can go to the record, Mr. Sinclair. Or, is it fake?

A. It's fake.

Q. It's fake. And, um, now, let's go to

the continent of Europe now. Haven't you called the same painting in the Gallery of the Netherlands both an inferior print and also a genuine original?

A. Are we talking about a Morrisseau painting?

Q. Yes, sir.

A. Are we talking about a Richard Bedwash painting?

Q. No, we're not, sir.

A. I don't know.

Q. Let's just get a copy of that picture. I'm into, Your Honour, uh, December 17th motion materials. Is that from your website, Mr. Sinclair?

A. Uh, yes. It says, "inferior print..."

Q. Right.

A. ...number two."

Q. Number three.

A. Okay, sorry, I....

Q. And then, on the next page....

A. It says, "authentic Morrisseau."

Q. That's the....

A. What is the date on these?

Q. Uh, it's the same painting, Mr.

Sinclair.

A. What is the date on these?

Q. There is no date, Mr. Sinclair, there is just....

A. See, they're different times and, you know, anything that comes out of that Netherlands...

Q. Yeah.

A. ...gallery is suspect to...

Q. Oh.

5 A. ...begin with. The, there are fakes of prints that they...

Q. Okay.

A. ...are producing now.

Q. So you, you....

A. That's, that's an authentic Morrisseau picture.

Q. Yeah, okay. All right.

A. The image is real, the print is not.

10 Q. Okay, okay. And now turning to Canada, have you called any paintings in the Winnipeg Art Gallery fake?

A. I don't know. I've never been there.

Q. Well let's, let's go to there, Mr.

15 Sinclair.

THE COURT: All right. Let us....

MR. OTAVNIK: Well I....

THE COURT: I mean, I am not sure why we have to go....

20 MR. OTAVNIK: Okay, I, okay, for, for....

THE COURT: I think you have made the point...

MR. OTAVNIK: Okay.

THE COURT: ...that perhaps he has called certain gallery...

25 MR. OTAVNIK: Yeah. Yeah.

THE COURT: ...pictures fake.

MR. OTAVNIK: I'll, I'll get on....

THE COURT: So why do we have to....

30 MR. OTAVNIK: Q. I'll get off, I'll get off that, Your Honour. Now, Mr. Sinclair, have you, have you ever called the same painting both real and fake on your website?

A. What are you talking about, Mr. Otavnik?
Do you have a....

Q. I absolutely do, Mr. Sinclair. Mr.
Sinclair, have you not called the same painting both fake
and real? And that is, one, on day, you said, "this
painting is fake," and another date said, "this painting is
real"?

A. Well, to make it easy, um, I, I have
made a couple of errors, a couple of mistakes, and as soon
as it, there was any notice of an error, I removed it. But
you will notice I didn't remove the Fred Jones picture, I
didn't remove those Smithsonian ones...

Q. 'Cause they're fakes.

A. ...because, in my opinion, Norval didn't
paint those.

Q. Yeah. Yeah. The....

A. In my opinion.

Q. Yeah.

A. But they...

Q. Right.

A. ...they had, they are not even remotely
similar to any Randy Potter painting, or your painting.

Q. Oh, so the Smithsonian is wrong, and you
are right, in your opinion?

A. Well, the Thunder Bay Art Gallery, for
one, is wrong...

Q. Oh.

A. ...because they accepted your paintings.

Q. Ah, of course. Of course they're wrong.
Have you, now, Mr. Sinclair, are you familiar....

CLERK OF THE COURT: Can I have quiet in the
court please?

Q. Are you familiar with the procedures required in order to get a Cultural Property Review Board designation for a painting?

A. Am I familiar...

Q. Yes.

A. ...with the procedure?

Q. Yes.

A. Yeah, more or less, I mean, in a simplistic fashion, you know...

Q. Okay.

A. ...and I have not been through....

Q. Well, Mr. Sinclair, you know, I will keep this short, Mr. Sinclair, what are your credentials in art? I mean....

A. What are my credentials?

Q. Yes, in art.

A. I am a born artist.

Q. Oh.

A. I have been painting all my life...

Q. Oh.

A. ...and I am not, uh, when it comes to credentials, my credentials are impeccable.

Q. Impeccable?

A. I have taught thousands of students...

Q. Impeccable?

A. ...I have created a massive mural that hung from, for the First International Powwow...

Q. So....

A. ...from the roof of the sky dome.

Q. Oh, okay.

A. I've, uh, created....

Q. So, but I mean, in terms of formal

education, you haven't got any master's degree in education, honours degree in education, no formal education in Inuit art, Indian art, First Nations art, anything like that?

5 A. Well, my formal education is George Brown College...

Q. Well, that was commercial....

A. ...and various apprenticeships. And in particular, I was the protégé of Canada's most famous...

10 Q. M'hm.

A. ...native artist.

Q. Well, getting to that, Mr. Sinclair, you claim to be Norval's protégé, yet no one in the art world recognizes you as such. Can you point to one article, one newspaper, one person who says, "yeah, Ritchie Sinclair is his protégé"?

15 A. Yeah. Section, what is it, 14 of your plaintiff's claim.

Q. My, my plaintiff's claim?

20 A. Yeah. Can I get my copy, Your Honour?

Q. That's, uh, from a blog...

A. Well, that's not...

Q. ...I've got nothing to do....

A. ...what you asked.

25 Q. This is, this is Kinsman Robinson Gallery's interview with Ritchie Sinclair.

A. Right. But you asked if there was anything...

Q. Oh.

30 A. ...out there, and then, there have been articles. When...

Q. Oh.

A. ...when I held the Norval Morrisseau society, Norval Morrisseau memorial service four days after Norval died...

Q. M'hm.

5 A. ...in Toronto, that went in the Toronto Star where Morrisseau's other protégé, Brian Marion and myself, both, uh, to develop the school. There's been many things.

10 Q. Now, Mr. Sinclair, did you not, indeed, scan images of Norval Morrisseau paintings off of Ebay calling them fake only to realize they were from Mr. Robinson's publication?

A. I always realized.

Q. Oh, so you, so you....

15 A. I wasn't, it was never, that's my opinion about very specific, high-quality forgeries that were done at that...

Q. Right, so you....

20 A. ...time. Nobody's suing me for those pictures.

Q. Right, so....

A. Mr. Robinson and I have a, you could say, a difference of opinion until provenance is developed for such things...

25 Q. Oh.

A. ...but that's not Randy Potter paintings.

30 Q. Oh, right, no, but my point is, you knowingly took paintings that were from Mr. Robinson's publications, calling them fake, and he's here testifying for you today.

A. That's, that's how...

Q. Oh.

A. ...big we both are.

Q. That's, that's big of you Mr. Sinclair. I'm, I'm very, I'm impressed, Mr. Sinclair. Now, Mr. Sinclair, can we turn, please, to Exhibit 16? And you are the Stardreamer, right?

A. Stardreamer is the name Norval Morrisseau gave me...

Q. Right.

A. ...on the day I met him.

Q. Right. So, it says here, under Stardreamer said, "thank you for posting my interview of, of September 4th, 2008, with John Newman of KRG." And here below it you say, "any pressure I feel from speaking the truth is relieved by a general sense of appreciation, especially, I believe, coming from Norval," right? Those are your words, right?

A. These are my, I wrote this.

Q. Yes. And that's October 20th, 2008, right?

A. Looks like it.

Q. Where was Norval then? Where was Norval?

A. What kind of question is that....

THE COURT: Okay, again...

MR. OTAVNIK: Where was Norval?

THE COURT: ...answer the questions.

A. Norval Morrisseau has long passed away.

MR. OTAVNIK: Oh. Yeah. Okay. So he was dead.

A. So are you questioning why....

THE COURT: Okay, no...

MR. OTAVNIK: Oh....

THE COURT: ...no, sir...

MR. OTAVNIK: I just....

THE COURT: ...you are not...

MR. OTAVNIK: I just....

THE COURT: ...asking him...

MR. OTAVNIK: Just, I'm...

THE COURT: ...questions now.

MR. OTAVNIK: Q. ...asking my questions.

Now, let's go to the second paragraph there: "my eyes are wide open now, and I see an overwhelming, ever-growing body of evidence that tells me that I absolutely must do what I can to stop this. What I see to date, are dangerous, dark pieces of art that I, one, would not hang on above my bed and expect a good night's sleep."

A. "That I, for one, would not hang above my bed and expect a good night's sleep." Yes.

Q. Well, I mean, you were his protégé for all these years, and all of a sudden in 2008 you say, "my eyes are wide open"?

A. M'hm.

Q. I mean, when you went to Potter Auctions you saw the auction, the paintings there. What, didn't you say, "hey, they're fake. What are you doing"?

A. I did.

Q. Oh, so....

A. I came with a friend and I said, who was wanting to buy some, and he, and I said, "don't buy one of those."

Q. Didn't....

A. I said, "they're inferiors," that's what I said.

Q. What did your friend buy that night?

A. What did he buy?

Q. Yes.

A. I'm not sure, but that's of no....

Q. Uh, he actually bought your paintings,
which were....

A. Right, which were stolen by Randy
Potter, thank you.

Q. Okay.

A. In my opinion.

Q. Okay.

A. Nice scam.

Q. Okay, so, um, why didn't you speak up
when Norval was still alive?

A. Why didn't I speak up?

Q. I mean...

A. I...

Q. ...yeah, I mean, he was alive.

A. ...was clear with the judge about that.
Well, you know, I did speak up. I spoke up multiple times.
I have a letter in 2001 that I sent to KRG with regard to
some fakes that I saw, and I, at that time I didn't know
who was doing it. But multiple times I have done things.
I went into Heffel's. I got, you know, that letter you got
from Norval, that came, that started...

Q. Yeah, well...

A. ...with me.

Q. ...just to clear, just....

A. I went into Joe McLeod's. I went
through his catalogues...

Q. Yeah.

A. ...with Brian Marion...

Q. Yeah. Yeah.

A. ...you know, I have done...

Q. Yeah.

A. ...everything I could...

Q. Yeah.

A. ...as an individual.

Q. Yeah. Now, just, uh, Mr. Sinclair, did, did you ever call any paintings in say, Heffel's state and, and say Bonhams? Any other galleries that you have called fakes? I mean, any, any auction houses you call fakes?

THE COURT: No, let us deal with....

MR. OTAVNIK: Okay.

THE COURT: No, we are not going outside....

MR. OTAVNIK: Q. Okay, were, okay, out of all these paintings, how many have you actually, personally seen?

A. How many of these...

Q. Yeah. Of the thousands you've called....

A. ...fake paintings?

Q. Of the 1,000 you've called fake, yes. How many have you actually, personally, seen?

A. Well, I've personally seen the images of the mass of every one I put up there.

Q. No, but I mean....

A. The actual, physically, now, one day I went to a warehouse, one day I went to a warehouse that was packed to the rafters with fake artwork of many artists, but primarily Norval Morrisseau and saw, maybe 15 massive paintings that were, uh, being sold out the back of this place. Uh, I have seen the 23 paintings that Norval discredited, that Jim White brought to market. I've seen those images. Uh, of course I've gone into Joe McLeod's

place. I mean, what, ballpark, I don't know, 100 of those...

Q. A hundred?

A. ...of those...

Q. Oh, 100.

A. ...of the fakes.

Q. So out of the 1,000 you....

A. Directly I have, I have, probably more than that. Of course, in fact, I went in the gallery, there's, I've probably seen 500 actually.

Q. Close, closer to 500, eh?

A. Yeah. But of the ones that are up there, no.

Q. Now, Mr. Sinclair, um, you said you met Norval in 1979, right?

A. Yeah.

Q. And how, from '79 to, I mean, how long were you, were you living together? I don't understand. Can you explain your living relationship with Mr. Norval Morrisseau? Were you living with him, were, were....

A. We were artists, comrades, friends.

Q. And you were living with him for all those years?

A. No.

Q. How many years were you living with him?

A. No, I, I worked for him.

Q. No, but he was, you were in, what city were you in, what city was he in? Were you both in the same city?

A. Depends on the year. I had multiple studios with Norval. I lived with him in multiple places, but, you know, I had my, I had my own life too.

Q. Mr., my point, Mr. Sinclair, is, were

you not married, living in Toronto, and Norval was in Buckhorn and other places in....

A. I lived in Buckhorn with Norval.

Q. For how long?

A. Off and on, 1981 to 1982.

Q. Okay. Okay. Now, how did you, how did you meet Norval Morrisseau again?

A. He put an advertisement in the newspaper seeking his protégé. I already explained that to the judge.

Q. M'hm. M'hm. Do you understand what, uh, what Mr. Wolf Morrisseau has stated about what Norval put an add in the paper for, correct?

A. Mr. Wolf Morrisseau is a criminal.

Q. Oh, okay.

A. And Mr. Wolf Morrisseau isn't here.

Q. Sure. Fair enough. Okay, I've just got, just a few more questions. Mr. Sinclair, you talked about - are you native by birth?

A. I am part native.

Q. Part native. Now, you talked about this Thunderbird School of Art. Um, where is it located?

A. Where is it located?

Q. Yeah.

A. On the internet at shamanisticarts.com.

Q. And you're an expert in shamanistic arts?

A. The school, itself, was created by Norval Morrisseau. It was created by him in 1979...

Q. Now....

A. ...and....

Q. Sure. Sure. Now, this painting, you,

you knew Norval in '79, right? When was this painting painted?

A. Which one, yours?

Q. The one subject to this suit.

A. The one that's the subject...

Q. Yes.

A. ...of the suit?

Q. Yes.

A. Certainly not in the '70s, certainly not in the '80s. Certainly not in the '90s. You know?

Q. Well, what if it was painted before, say, '74, '76? What would you say?

A. What...

Q. Is that....

A. ...would I say?

Q. Is that....

A. I would say, it's definitely painted in the '90s, and probably within the last few years.

Q. Oh. Okay. Okay. Now, Mr. Sinclair, just before we, and in with this, exhibit 17, Mr. Sinclair.

A. Did I say the '90s there, for the record? I meant in the 2000s. Sorry.

Q. Did you not used to have a website that linked now, which is, which is down...

A. M'hm.

Q. ...where you used to post Norval Morrisseau paintings in, in admiration, say...

A. M'hm. I had my own....

Q. ...of Norval, "Norval's a great artist, I love his work," everything, right?

A. M'hm.

Q. Okay.

THE COURT: You have to say "yes" or "no," sir.

A. Yes.

MR. OTAVNIK: Q. Was your disclaimer on there?

A. Well, this is my stardreamers.com website.

Q. Right.

A. The gallery hadn't been touched in years and, and as it says there, you know, I put that up because it became an issue. This, this little thing here? I went back to that gallery because people were saying, "well, how come you got some fakes in your...

Q. Well....

A. ...on your old website?"

Q. Well, your statement is, "the images posted in the archives are not for sale. They are simply images of artwork I have collected from various internet sources years ago, and I have posted here for inspiration and enjoyment. With the exceptions of paintings I witnessed painted or exhibited by Morrisseau, I have no way of discerning whether the images here shown are authentic Morrisseau originals. Nevertheless, enjoy." Did you, in fact, witness Norval Morrisseau paint, painting that painting?

A. First of all, let me respond to that.

Q. Did you - sure, go ahead.

A. I put up a website around 1999. I wrote a book about Norval the same year. It's stardreamers.com. I went around the internet, I saw whatever pictures were up there of Norval's, I uploaded them to this, to a small gallery that's one portion of this major website, and, and

I never looked at them again. At that time I was under that, the impression that works that came from before my time, maybe I didn't know. But what I did know was, when I started to study, when I started to really look, when I knew after the day walking into Heffel's, when I saw that '79 and '80, then right then, I was like, okay, start studying. Everything...

Q. Was....

A. ...after my time, I know.

Q. That was 25....

A. Everything before my time, where you guys have dated these paintings, you know...

Q. And that's....

A. ...I had to study...

Q. That's....

A. ...to learn the difference. But I actually have Norval Morrisseau's 1979 book right here, and you won't find one of your pictures, not one, in any publication...

Q. So...

A. ...anywhere.

Q. ...twenty-five years after you met Norval Morrisseau, and after you saw, in 2006, the Heffel, you said, "wow, man, now I know what a real Morrisseau is, and now I am going to do this"?

A. Actually, no. No, it wasn't 2006, 2006 I went, I called Norval and I said, "there's fakes at Heffel's," and they acted on it.

Q. The point is....

A. It was 2008...

Q. The point is....

A. ...when I decided to do something about

5 this issue. But I've been watching this for years. I just haven't pinpointed, I haven't gone, "that's a fake, and I'm willing to stand behind it, and that's a fake, and I'm willing to stand behind it." That, what you are reading there, is me saying, I'm, I'm, at that point, I wasn't willing to stand up. And why not?

Q. And...

A. Look what you...

Q. ...thirty...

10 A. ...have done.

Q. ...thirty - well, Mr. Sinclair, you called 1,000 paintings fake, you think a few people may be mad at you?

A. Obviously you are.

15 Q. Oh, Mr. Sinclair, this is not, this is, this is a monetary thing. I, actually, Mr. Sinclair, I kind of like you as a person. You're not a bad person. Not that...

THE COURT: All right...

20 MR. OTAVNIK: ...I mean...

THE COURT: ...let us move on.

MR. OTAVNIK: Q. ...I mean, okay. The point is, you did not see Norval Morrisseau paint this painting?

A. Your painting?

25 Q. No.

A. No, because he didn't paint it.

Q. Okay.

A. He was nowhere near it ever.

30 Q. Okay. Okay. Now, Mr. Sinclair, um, just, now, you had a show in October at a gallery, correct? How did that show go?

A. You mean how were the sales of that

show?

Q. Yeah.

A. What's it got to do with this?

THE COURT: The sale of whose....

A. My work.

MR. OTAVNIK: At his....

THE COURT: No, that has got nothing....

MR. OTAVNIK: What is, Mr....

THE COURT: No, no, no.

MR. OTAVNIK: Uh, yeah.

THE COURT: It is not relevant.

MR. OTAVNIK: Q. Mr. Sinclair, Mr. Mazlak testified to the fact that, after this show, you set out, you said to him that you were going to go out and get the Morrisseau establishment, and two weeks later, this website started, was inaugurated, is that correct?

A. No, that's an absolute lie. I never said anything of the sort to Joe McLeod, and I filed documents responding to that. Not in this court, Your Honour, because we're talking about another court case. And of course I didn't. It's not in my nature, nor would I ever say anything, nor did I ever consider Mr. McLeod to be part of the Morrisseau art establishment, as you wrote that I said such a thing. I went in there, asked him what was happening at different times.

Q. Okay, so again, my last question, you, you're certain 1,000 of these paintings, 1,000 of them - I mean, if I had a website called, "1,000 Picassos fake," would you say, or are, you're convinced that these 1,000 odd paintings, including mine, you have called fake, are fake?

A. Well, there is certainly ever the

possibility, without forensic testing, without the full provenance, that there might be a few that aren't. But I would, I would, my belief is, I haven't made a mistake.

Q. A thousand paintings, Norval Morrisseau....

A. I have, I made a few errors, you know, along the...

Q. Yeah, just....

A. ...and responded to them, um, or, you know, got some misinformation here and there, but....

Q. But 90 per cent...

A. Of those, of those....

Q. ...90 per cent...

THE COURT: Let him....

Q. ...right....

THE COURT: Let him finish...

MR. OTAVNIK: Okay.

THE COURT: ...the answers.

MR. OTAVNIK: Sorry, sorry, sorry.

A. Of those paintings that are up there, I would stand behind my word. That's why I wrote it.

MR. OTAVNIK: Q. One last question: you mentioned that Norval never signed the back of his paintings, right?

A. Yeah.

Q. In black acrylic?

A. In black acrylic...

Q. Right.

A. ...paint. Yeah.

Q. One is, the Smithsonian is identified as such.

A. Yeah. Well, that's the fake. Good

guess by my part, eh? I never saw the back.

MR. OTAVNIK: No further questions, Your Honour.

THE COURT: All right. You can step down, sir. You can have a seat.

MR. SINCLAIR: Thank you.

THE COURT: Anything in reply to his evidence? Did you want to comment on anything he raised?

MR. OTAVNIK: Uh, no, Your Honour.

THE COURT: Okay. Final argument, then. We can be off the record for this.

CLERK OF THE COURT: Yes, Your Honour.

FINAL SUBMISSIONS HEARD OFF RECORD...

THE COURT: On the record. The plaintiff to have until April 15th of 2010 to provide written submissions supporting his cause of action. Defendant's claim is adjourned to May the 11th of 2010 in this courtroom. I set it down for a full day of trial.

MR. SINCLAIR: Thank you, sir.

THE COURT: Any documents you are going to be relying on, sir, affidavits...

MR. SINCLAIR: Make sure - yeah.

THE COURT: ...or whatever, make sure he has got copies ahead of time. Otherwise...

MR. SINCLAIR: Okay.

THE COURT: ...we are going to be back into...

MR. SINCLAIR: Thank you.

THE COURT: ...the same...

MR. SINCLAIR: Thank you.

THE COURT: ...problem.

MR. SINCLAIR: Should we give you written summations or something after you get this law with regard to...

THE COURT: Well....

MR. SINCLAIR: ...the first issue?

THE COURT: Well, what else would you want to tell me?

MR. SINCLAIR: With regard to this?

THE COURT: Yes.

MR. SINCLAIR: Rule in my favor.

THE COURT: Well, I know that, you know....

MR. SINCLAIR: You want honestly, that's it. What else would I want to tell you? Some of the, um, documents that I didn't get to file....

THE COURT: Okay, we can go off the record again here.

CLERK OF THE COURT: Yes, Your Honour.

* * * * *

CERTIFICATE OF TRANSCRIPT

Evidence Act, Subsection 5(2)

I, Sarah van Houten, certify that this document is a true and accurate transcript of the recording of SC-09-00082782-0000, Otavnik v. Sinclair in Toronto Small Claims Court, held at 47 Sheppard Avenue East, taken from Recording No. 125/60 - 127/60 on March 18th, 2010, which has been certified in Form 1.

August 9, 2010
Date

Sarah Houten
Sarah van Houten,
Court Reporter

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