

**Court File No. CV-12-455650**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**KEVIN HEARN**

**Plaintiff**

**-and-**

**ESTATE OF JOSEPH BERTRAM MCLEOD, DECEASED  
AND MASLAK-MCLEOD GALLERY INC.**

**Defendants**

**AFFIDAVIT OF JIM WHITE**

I, Jim White, of Egbert, in the Province of Ontario, AFFIRM:

1. I, Jim White, am the sole shareholder and Officer and Director of 2439381 Ontario Inc. and White Distribution Limited, two of the potential intervenors in the within action and as such I have knowledge of the matters hereinafter deposed. Where I have been informed by others, I state the source of the information, and verily believe it to be true.
2. I have read both the Statement of the Claim and the Statement of Defence tendered in the within matter, both of which are annexed hereto as Exhibit A to this my affidavit.

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My Introduction to the Art of Norval Morrisseau

3. In or about 1988, I learned from Mr. Peter Fried, at that time an art gallery owner in Kleinberg, Ontario, about an opportunity to purchase the inventory of limited edition prints signed by A.J. Casson (the "Inventory"), one of the members of the Group of Seven, which were a group of Canadian landscape painters.
4. My then employer, Tom Taylor Limited, paid approximately \$2,000,000.00 for the Inventory and formed the Black Creek Art Studios ("BCA") in Toronto, Ontario to market and sell the Inventory. From in or about 1988 to in or about 1992, I managed the BCA and marketed and sold the Inventory throughout Canada. My work at the BCA provided me with the opportunity to build business relationships with many other art galleries, and it was through those relationships that I discovered the art of Norval Morrisseau ("Norval").
5. In or about 1999, I began purchasing the art of Norval from both auctions and individuals. I recall that the former individual defendant, now deceased, in this matter, Joseph McLeod, and another person, Don Robinson, also bought the art of Norval during some of the same auctions as well.
6. Don Robinson is one of the principals of Kinsman Robinson Galleries (the "KR Gallery") in Toronto, Ontario.
7. In or about early May 2001, I took 23 Norval paintings to the KR Gallery for appraisal, as the advertisements for the KR Gallery stated that it was the authorized representative of Norval. Mr. Robinson complimented me on my collection of Norval paintings and advised me to adequately insure them.

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8. On or about May 17, 2001, Mr. Robinson telephoned me, and advised that my Norval paintings were “fake”, and that the National Post would publish that statement in its next edition. He did not even give me a chance to respond to his allegations, and simply hung up on me.
  9. On or about May 18, 2001, the National Post article (the “NP article”) claimed that Norval, himself, advised that my Norval paintings were fake. No proof of any kind was offered in the NP article, and I understand that no one from the National Post ever actually spoke to Norval, because I understand that Norval was being held on the direction of his business manager, Mr. Gabor Vadas, and possibly other parties, incommunicado at a hospital in Vancouver, British Columbia.
  10. Following the publication of the NP Article, the market for the art of Norval suffered greatly, in terms of both the value of Norval paintings and the number of Norval paintings sold.

Ritchie Sinclair

11. Throughout my work marketing and selling Norval Paintings and throughout the time I have been collecting Norval Paintings, an individual, Ritchie Sinclair, has been making claims at various galleries, at various showings, and in various proceedings that certain Norval Morriseau paintings are fake.

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12. In that regard, in or about 2011, Margaret Hatfield was convinced to bring a claim against Artworld of Sherway alleging a fake Norval. I understand that Ms. Hatfield did not speak to Artworld to address her concerns. The result of the that action established the authenticity of the Norval, praised the now deceased Joe McLeod for this devotion to Norval art, and rejected Don Robinson's evidence, as well of that of Ritchie Sinclair.
13. On or about August 5, 2015, I obtained Judgment against Mr. Sinclair for \$25,000.00 plus \$3,750.00 for costs for defamation. In that proceeding, Mr. Sinclair offered no explanation for the totally fabricated lies that he told about me.
14. In that regard, I do verily believe that the genesis of this action was a comment made by Ritchie Sinclair to the Art Gallery of Ontario with respect to the authenticity of "Sprit Energy of Mother Earth" – the painting that is the subject matter of these proceedings. I also understand that Ritchie Sinclair maintains an Internet Blog that, among other things, discusses the paintings of Norval.

My Relationship with the Norval Morrisseau Family

15. Despite the narratives persistently perpetuated by Don Robinson and Ritchie Sinclair since in or about 2001, I have and continue to have full confidence in the art of Norval and in his legacy as both an First Nations Artist and as individual who contributed significantly to both First Nations and Canadian art and culture. Annexed hereto and marked as Exhibit B to this my affidavit is a list of the art of Norval that I own, which list details the cost at which I purchased each painting and the estimated value of each

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painting based on my knowledge of the art of Norval and the market for the art of Norval.

16. In that regard, I have, since in or about 2006, developed a relationship with the Morriseau Family, including, his son, Christian Morriseau, who is also a painter, his son, Eugene, and his daughter, Victoria.

17. Since in or about 2000, I have held several Norval shows across Canada, and I often incorporated the paintings of his son, Christian, into those shows and Christian, himself would often appear at those shows to promote his and his father's art.

18. Over time, my relationship with the Norval Morriseau family matured.

19. In 2006, for example, I took Christian, and Christian's wife to visit Norval at a Nanaimo, British Columbia Care Home. Annexed hereto and marked as Exhibit C to this my affidavit is a true copy of a photograph that was taken of Christian Morriseau visiting Norval at Norval's care home in Nanaimo, British Columbia, on or about December 6, 2006.

20. On or about December 4, 2007, Norval died, and around that time, I learned of his death as I listened to the radio. Upon learning of Norval's death, I contacted, by telephone, his family who were living on the Keewaywin First Nation, which is a Oji-Cree First Nation band located in Northern Ontario, north of Red Lake, Ontario.

21. His family was unaware that Norval had died, as they were not close to him at that time, as he had only remained in sporadic contact with them.

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22. Norval died in Toronto, Ontario. So, I paid for some of his family to come to Toronto, so that they could retrieve his remains, as his body was scheduled to be cremated. I understand that Norval's family, after arriving in Toronto had discussions with the parties in possession of Norval's remains, chiefly Mr. Gabor Vadas, and retrieved them. I also understand that Norval's remains are now buried next to his wife on the Keewaywin First Nation lands.

23. In or about 2016, Allen Fleishman, the principal of Auction Networks, and I provided an artist studio in Markham, Ontario, for Christian to live at and paint. For several months, Christian painted and entertained the public in this studio. During this time, money was sent weekly to Christian's family in Keewaywin and the "Kyle Morrisseau" Scholarship Fund was established, as Christian's son, Kyle died in 2009. An account of his son's death is told in the recent book by Tanya Talaga entitled: Seven Fallen Feathers: Racism, Death, and Hard Truths in a Northern City.

24. In recent years, I have arranged several shows to exhibit the art of Norval and his son, Christian, at Artworld of Sherway, Gallery on the Lake, and most recently, on October 27, 2017 at the Kawartha Gallery in Lindsay, Ontario, which show was attended by Christian.

25. Annexed hereto and marked as Exhibit D to this my affidavit is a true copy of some appraisals for some of the Norval art that I own by Bremner's Appraisal Services and Gallery Sunami.

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26. I have read Rule 13 of the *Rules of Civil Procedure*. Annexed hereto and marked as Exhibit

E to this my affidavit is a true copy of the Rule 13 of the *Rules of Civil Procedure*.

27. I affirm that I have an interest in the subject matter of this proceeding, because of the, but not necessarily in order of importance to me, following reasons:

- a. I own many Norval Paintings;
- b. I have a direct and enduring relationship with Christian Morriseau and the Morriseau Family;
- c. I do verily believe that this proceeding is a matter that is of great public interest to Canada, and specifically, the First Nations and Aboriginal Communities comprising our country.

28. I also confirm that as an owner of many Norval paintings, I would probably be adversely affected by a judgment in the within proceeding that found as a fact that "Spirit Energy of Mother Earth" by Norval Morriseau is a forgery, and was in fact not painted by him.

29. I understand that the test for a person that is not a party to a proceeding to move for leave as an added party is:

- a. Whether the person has an interest in the matter being decided or question being considered by the Court;
- b. Whether the person would be adversely affected by any judgment in the proceeding in respect of any legal or proprietary right;
- c. Whether the intervention of the person would cause delay or complication during the Trial of the matter; and,

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d. Whether the intervention of the person would add to the costs and complexity of the litigation.

30. I do verily believe that the within motion for leave to intervene in the within matter satisfies the test comprising the elements listed above.

31. The interest of 2439381 Ontario Inc. and White Distribution Limited is broader than merely a legal or commercial interest. My companies have consistently demonstrated through their actions and my actions as an Officer and Director of those corporations that it and me have a genuine interest in promoting and protecting the art of Norval, the legacy of Norval, and the art of his son, Christian, and the contribution by the Morrisseau Family to the art and culture of the Aboriginal Community and Canada.

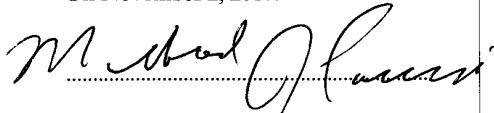
32. I do verily believe that the practical result of a Judgment that finds that "Spirit Energy of Mother Earth" is a forgery will be that a campaign will be launched to discredit paintings that are signed by Norval as fakes thus dramatically increasing the value and marketability of paintings that purported to be those painted by Norval and dramatically eroding the value and marketability of the Norval paintings that are signed by him.

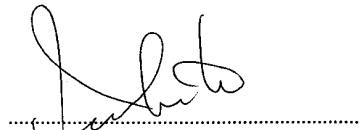
33. Finally, I confirm, once again, as I did in my Affidavit of October 2, 2017 that I only learned of the death of the former individual defendant, Joseph Betram McLeod, in or about late August 2017. I confirm that I did not know that the former Joe McLeod had died prior to that time.



34. I make this affidavit in support of this motion to obtain leave to intervene as a party at  
the Trial of the within matter and for no other or improper purpose.

Sworn before me at the City of Toronto  
In the Province of Ontario,  
On November 2, 2017.

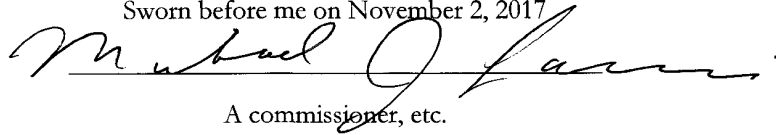
  
Commissioner for Taking Affidavits

  
Jim White

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This Exhibit A to the Affidavit of Jim White

Sworn before me on November 2, 2017

A handwritten signature in cursive script, reading "Michael J. Lanni", written over a horizontal line.

A commissioner, etc.

Court file no.

CV-12-455650

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

KEVIN HEARN

Plaintiff

and

JOSEPH BERTRAM MCLEOD and MASLAK-MCLEOD GALLERY INC.

Defendants

(Court seal)

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$2500 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

Date June 8, 2012

Issued  
by

Local registrar

Address of  
court office:

150 Bond Street East  
Oshawa ON L1G 0A2

393 UNIVERSITY AVE. 393 AVE. UNIVERSITY  
10TH FLOOR 10E ÉTAGE  
TORONTO, ONTARIO TORONTO, ONTARIO  
M5S 1E5 M5S 1E5

TO

JOSEPH BERTRAM MCLEOD  
118 Scollard St. Toronto, Ont.  
MSR 1G2 Canada  
Tel: 416-944-2577  
Fax: 416-922-1636

AND TO:

MASLAK-MCLEOD GALLERY INC.  
118 Scollard St. Toronto, Ont.  
MSR 1G2 Canada  
Tel: 416-944-2577  
Fax: 416-922-1636

THIS ACTION IS BROUGHT AGAINST YOU UNDER THE SIMPLIFIED PROCEDURE PROVIDED IN  
RULE 76 OF THE RULES OF CIVIL PROCEDURE.

## CLAIM

1. The plaintiff claims as against both defendants:
  - (a) The sum of \$20,000.00 representing the purchase price of the Painting (as described below);
  - (b) The sum of \$25,000.00 representing the loss of investment return on the Painting (as described below);
  - (c) The sum of \$50,000.00 in punitive damages;
  - (d) pre-judgment and post-judgment interest on the sums claimed in subparagraph (a) pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
  - (e) post-judgment interest on the sums claimed in subparagraphs (b), (c) and (d) pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
  - (f) costs on a substantial indemnity basis; and
  - (g) such further and other relief as to this Honourable Court seems just.

The Parties

2. The plaintiff is an individual who resides in the City of Toronto in the Province of Ontario, and is a member of the famous Canadian music group *Barenaked Ladies*.
3. The defendant Joseph Bertram McLeod ("McLeod") is an individual who resides in the City of Toronto in the Province of Ontario, and who from time to time has carried on business as Maslak-McLeod Gallery and through Maslak-McLeod Gallery Inc., a corporation acting as his personal agent, for which he is the sole officer, director and shareholder.

4. The defendant Maslak McLeod Gallery Inc. ("MMGI") is an Ontario corporation carrying on business as an art gallery, one location of which is located in the City of Toronto, in the Province of Ontario.

#### Background

5. Long prior to his dealings with the defendants, the plaintiff had a deep admiration for the art of Norval Morrisseau, the Native Canadian artist known as "The Picasso of the North". It was his long-standing desire to own one of Morrisseau's paintings, both for his personal pleasure, and for its investment value.
6. Beginning in the 1990's, the plaintiff's fame grew, as he performed as a member of, *inter alia*, such internationally-known groups as *Corky and the Juice Pigs*, *Barenaked Ladies*, and *The Rheostatics*. In recent years, he has performed with *Barenaked Ladies*, *The Tragically Hip*, Lou Reed's band, and *Kevin Hearn and Thin Buckle*, his own band. He is an active celebrity, performing at many important Canadian events, including, most recently, at Jack Layton's state funeral.

#### Purchase of the Painting

7. On or about May 3<sup>rd</sup>, 2005, the plaintiff visited the defendants' art gallery, which advertises to the public that it is a gallery specializing in the works of Native artists and, especially, that of Norval Morrisseau. The plaintiff advised the defendants that he was a novice collector, and was interested in the works of Norval Morrisseau. The plaintiff also told the defendants who he was, and they expressed their awareness of his celebrity status.
8. The defendants hold themselves out to be experts who thoroughly and critically investigate the provenance of the works they sell. Furthermore, they hold themselves out as trustworthy agents to their clients on whose expertise such clients may comfortably rely.

9. At the defendants' gallery, the defendant McLeod showed the plaintiff several alleged Norval Morrisseau paintings, including a painting titled "Spirit Energy of Mother Earth" which was dated 1970 (the "Painting"). The price of the Painting was \$20,000.
10. Prior to committing to the purchase of the Painting, the plaintiff asked the defendant McLeod about the Painting's provenance. McLeod responded by assuring the plaintiff that the painting was an authentic Norval Morrisseau, and that his gallery was the best and safest place to purchase a Norval Morrisseau work. McLeod also represented that if the plaintiff purchased the Painting, a written statement describing the Painting's provenance could be provided to substantiate his claim that it was authentic.
11. Relying on and believing the defendants' representations regarding the authenticity of the Painting, the plaintiff purchased the Painting on or about May 4<sup>th</sup>, 2005. The Painting was delivered to the plaintiff by the defendants on or about May 24, 2005.
12. At the time of the Painting's purchase, the plaintiff's reasons for buying it were that he admired Norval Morrisseau's work and he believed that such works represented a sound financial investment. Prior to purchasing the Painting, he communicated these reasons to the defendants. The defendants then advised the plaintiff that Norval Morrisseau was very ill and was expected to die shortly, at which time the Painting's value would increase significantly.
13. In or about early 2009, at the plaintiff's request, the defendants provided some basic documentation regarding the Painting which included information about value, date and a few other details.
14. At no time did the defendant disclose to the plaintiff certain other critical information relevant to the Painting that was within the defendants' knowledge, which information included, *inter alia*, the facts that the Painting is of a species of Morrisseau painting that is the subject of significant and persistent disagreement regarding authenticity, and that the defendants were specifically prohibited by Morrisseau himself from acting as

authenticators of his work on the basis that the defendants had, *inter alia*, allegedly been selling and authenticating large quantities of fake and/or forged Morisseau paintings as a part of a fraud scheme.

15. Had the plaintiff known that the Painting was a fake or forgery, or had he known all of the relevant facts regarding the Painting's lack of provenance, the disputes over the provenance of the Painting, and the prohibition and complaints made by Morisseau against the defendants, he never would have purchased the Painting in the first place.

#### The AGO Show

16. In or about April of 2010, the Art Gallery of Ontario (the "AGO") invited the plaintiff to act as a celebrity guest curator for an AGO art show (the "AGO Show"). The AGO Show would feature works from the plaintiff's art collection, some of his own drawings, and works similar to the art in his collection, drawn from participating galleries and from the AGO's own collection. The plaintiff agreed.
17. The defendants were made aware of the AGO Show and encouraged the plaintiff to display the Painting at that show. The defendants also made arrangements to have two alleged Norval Morisseau paintings from their own collection displayed at the AGO Show.
18. On June 11, 2010 the AGO Show opening took place, and was well attended, but approximately one week later the AGO advised the plaintiff that numerous individuals, including the head curator of the AGO, had suggested that the Painting was most likely a fake. For these reasons, the Painting was removed from the AGO Show by the AGO. As a result of similar concerns, the two paintings provided by the defendants to the AGO Show were also removed.
19. The removal of the Painting from the AGO Show caused the plaintiff great humiliation and embarrassment.



20. Following the AGO Show, the plaintiff contacted the defendants and demanded that the defendants provide him with the Painting's provenance. The defendants advised that the painting had been sold on consignment and so the defendant's files would have to be searched. The defendants offered to refund the plaintiff's purchase price for the Painting if, after evidence of provenance was provided, the plaintiff was still unhappy with the Painting.
21. A few days later, the defendants furnished the plaintiff with several documents purporting to provide the provenance for the Painting. The documents provided failed to establish such provenance, and actually contradicted previous statements that the defendants had made to the plaintiff about same.
22. The plaintiff then demanded that the defendants refund his money for the purchase of the painting, but the defendants responded that they would only refund the plaintiff's money if he obtained a letter from the AGO apologizing and confirming the Painting's authenticity, or stating that it is a fake or forgery.
23. The plaintiff subsequently engaged experts to provide their opinions as to the authenticity of the Painting, with the result that such experts concluded that either it was a fake or forgery and/or that its authenticity could not be established.

#### The Plaintiff's Position

24. The plaintiff states that the Painting is a fake or forgery, and that the defendants knew at all material times that such is the case.
25. Given that the Painting is a fake or forgery, the value of the Painting at the time of purchase was approximately \$300, which is \$19,700 less than what the plaintiff paid. If the Painting were an authentic Matisse, it would, as of the date of this pleading, be worth approximately \$45,000, which would represent an investment return of \$25,000. Accordingly, the plaintiff claims said loss of purchase price and said loss of investment return.

26. In the alternative, the plaintiff states that if the defendants did not know that the Painting is a fake or forgery (which is denied) then such lack of knowledge has been the result of their negligence in failing to properly investigate the provenance of the Painting, and/or their wilful and/or reckless disregard for the truth, and such negligence resulted in their failure to fully advise the plaintiff of the lack of solid provenance for the Painting.
27. In the further alternative, the plaintiff states that in the event that the Painting is an authentic Morriseau (which is denied), then the defendants failed to advise the plaintiff at the time of the Painting's purchase of all of the critical facts relevant to the plaintiff's decision to purchase the Painting, which facts included, *inter alia*, disclosure to the plaintiff that the Painting is of a species of Morriseau painting that is the subject of significant and persistent disagreement regarding authenticity, and that the defendants were specifically prohibited by Morriseau himself from acting as authenticators of his work.
28. The plaintiff states that the defendants' actions constitute, *inter alia* and in the alternative, deceit, fraudulent misrepresentation, negligent misrepresentation, breach of fiduciary duty, breach of contract, innocent misrepresentation, and/or mistake.
29. The plaintiff states that as a result of the defendants' actions he is entitled to be awarded the relief claimed herein.
30. The plaintiff states that the plaintiff's embarrassment and humiliation that resulted from the withdrawal of the Painting from the AGO Show was the direct result of the defendants' fraudulent, deceitful, and negligent conduct, and that such result was foreseeable by the defendants as a result of their knowledge of the plaintiff's celebrity status and of his intention to place the Painting in the AGO Show.
31. The plaintiff states that the defendants have persisted in perpetrating their fraud upon the plaintiff, and have even attempted to improperly and illegally enlist the assistance of the plaintiff to obtain a letter from the AGO in order to

further such fraud so that said fraud could be perpetrated upon other unsuspecting persons. Because of this, and because of the deceptive and fraudulent behaviour of the defendants, the plaintiff states that the defendants have acted in a manner that is properly described as high-handed, malicious, arbitrary or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour, and which justifies the claim of punitive damages herein.

32. The plaintiff states that the failure of the defendants to supply an authentic Norval Morrisseau painting as promised constitutes, *inter alia*, a breach of warranty.
33. The plaintiff pleads and relies upon the provisions of the *Sale of Goods Act*, R.S.O. 1980, c. 462 and, without limitation, sections 15 and 51 thereof.

The plaintiff proposes that this action be tried in the City of Toronto.

June 8, 2012

**SOMMER'S BUSINESS LAW FIRM**

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**Jonathan J. Sommer**  
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Lawyer for the Plaintiff

TO :

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AND TO:

MASLAK-MCLEOD GALLERY INC.  
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KEVIN HEARN and JOSEPH MCLEOD  
(plaintiff) (defendant)

(Court file no.)

C-12-45650

ONTARIO  
SUPERIOR COURT OF JUSTICE  
PROCEEDING COMMENCED AT TORONTO  
STATEMENT OF CLAIM

SOMMER'S BUSINESS LAW  
FIRM

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Lawyer for the Plaintiff

Court File No. CV-12-455650

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

KEVIN HEARN

Plaintiff

-and-

JOSEPH BERTRAM MCLEOD and MASLAK-MCLEOD GALLERY INC.

Defendants

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STATEMENT OF DEFENCE

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1. The defendants admit the allegations contained in paragraphs 2, 3 (except for the allegation that the corporate defendant is a personal agent for Mr. McLeod), 4, 5, 9, (other than the word "alleged") 11 (other than to what representations Mr. Hearn relied upon), and 16-18 of the statement of claim.
2. The defendants deny the allegations contained in paragraphs 1, 7, 8, 10-15, 19-22, and 24-32 of the statement of claim.
3. The defendants have no knowledge of the allegations contained in paragraphs 6 and 23 of the statement of claim.
4. The defendants deny that Mr. Hearn is entitled to the relief claimed, or at all, and Mr. Hearn is put to the strict proof of the entitlement to the relief claimed in paragraph 1 of the statement of claim.

**Mr. Hearn falsely alleges fraud**

5. The allegations of fraud as set out in paragraphs 14, 15, 24, 25, 28, 30 and 31 of the statement of claim are scandalous, frivolous and vexatious.
6. Mr. Hearn is a famous Canadian. He is a member of the musical band the Barenaked Ladies. He publicized his statement of claim in this proceeding. As a result of his fame his allegations in the statement of claim have received widespread notoriety in the press. Mr. Hearn is also extremely well liked and respected as a musician and the public would never believe him to make unsubstantiated allegations. As a result, the public assumes the allegations of fraud made in his statement of claim are true.
7. The allegations of fraud and, more particularly, of taking part in a widespread criminal fraud scheme as alleged in paragraph 14 of the statement of claim, are entirely false and have irreparably damaged the business of the defendants. Mr. Hearn should be condemned to pay to the defendants their substantial indemnity costs of this action. Mr. Hearn's conduct in this regard was reckless and showed a total disregard for the reputation and livelihood of the defendants.

**The defendants are experts in authenticating Morrisseau's art**

8. The defendant gallery has significant experience and expertise in the field of native art and has exhibited numerous native artists throughout Canada.
9. Mr. McLeod has been qualified by the Federal Court of Canada as an expert who may provide opinion evidence regarding works of art by the late artist Norval Morrisseau ("Morrisseau"). Mr. McLeod has been a student of Morrisseau's art for more than 50 years, has exhibited his art and has a particular expertise in the content and form of Morrisseau's paintings in the period from 1960 to 1980.

10. Mr. McLeod has extensive experience buying, consigning and selling the art of Morrisseau and has a profound respect for the legacy of the artist. He would never knowingly sell any painting that was a forgery or a fake. Neither of the defendants has in fact knowingly, or otherwise, sold paintings that were represented to be paintings by Morrisseau when they were not.
11. To this day, Mr. McLeod maintains a relationship with Morrisseau's children and has attempted to assist them in benefiting financially from their father's legacy.

**The provenance of Morrisseau's art**

12. Norval Morrisseau was a prolific artist. By some accounts he painted as many as 15,000 works of art in his lifetime. The exact number is unknown and will never be known. He painted from the late 1950s until some time in the 1990s. The exact date when he could no longer paint due to his ill health is unknown.
13. Morrisseau was an alcoholic who was burned over a significant percent of his body in a fire in 1972 and suffered two strokes in the 1980s. By 1985 Morrisseau was confined to a wheelchair. In or about 1995, Morrisseau was diagnosed with Parkinson's disease. By the time of his death in 2007, Morrisseau had no use of his hands, could not speak and was being carted around by his supposed caregivers who used and abused him for their personal financial gain.
14. During his lifetime, Morrisseau lived and worked in many places. He painted while living on the street, in jail and in many communities around Northern Ontario. At times, he traded paintings for sustenance or alcohol. He could paint many paintings at one time. Much of the art he produced was masterful. However, many of the paintings he produced were inferior and simply uninspiring. He signed the front of his paintings using Cree syllabics to spell out his native name Copper Thunderbird



15. At various times, Morrisseau signed his English name on the back of his paintings. He used various mediums to sign his English name. There are paintings by Morrisseau in the 1960s, 1970s and 1980s that are signed in pencil, pen and marker. At times, at least in the 1960s and 1970s, Morrisseau signed the backside of some of his paintings in black acrylic paint. Typically, the last part of a painting that Morrisseau would complete was the black lines around the images. Once he finished painting the black lines, he would turn the canvass over, date, sign and identify the painting using the remnants of the black paint on his brush. Because of this, frequently the paint was faded in his signature, the date and the identification of the painting.
16. Like many famous artists, determining the provenance of a work of art by Norval Morrisseau can prove difficult. Many of his works were painted and sold in small communities throughout Northern Ontario over a long period of time.
17. Like numerous famous artists, including Picasso, Warhol, Basquiat and Modigliani, many of Morrisseau's paintings cannot be traced directly back to him and the authenticity of his art is often controversial. In fact, the vast majority of Morrisseau's paintings cannot be traced directly back to him.

#### **The Khan Auction Paintings**

18. Commencing in or about 1999, many paintings by Morrisseau came up for auction through an auction house named Khan Auctions. Most of those paintings were dated in the 1970s and Morrisseau signed the back of some of the paintings in dry brush, black acrylic paint. Those paintings are in fact the easiest paintings by Morrisseau to

authenticate as many samples of his signature and writing are available for comparison.

19. The Khan Auction paintings trace their origins through a private art collector named David Voss. David Voss has advised Mr. McLeod that he acquired many Morrisseau paintings from various individuals in Northern Ontario over several years commencing in or about 1980. He has even provided to Mr. McLeod the names of many of those people.
20. Both Mr. MacLeod and an art dealer named Donald Robinson, purchased Morrisseau paintings from Khan Auctions. Donald Robinson purchased 28 paintings at the Khan Auctions.
21. Mr. Robinson is an individual who resides in the Province of Ontario and has a gallery in Yorkville called the Kinsman Robinson Gallery. For a period of time from 1989 onward, Mr. Robinson had a business relationship with Morrisseau and has been, and is, in possession of a large quantity of paintings received directly from Morrisseau.
22. In addition to purchasing paintings from Khan Auctions, Mr. Robinson's gallery appraised paintings purchased from Kahn Auctions that they did not purchase.
23. Mr. Robinson also re-sold many of the Khan Auction paintings and represented those paintings as works of art by Morrisseau.
24. Mr. McLeod also bought some paintings from Khan Auctions, but not as many as Mr. Robinson. When Mr. McLeod attended Khan Auctions, he formed the opinion that the paintings he viewed and purchased were authentic works of art by Morrisseau.

Mr. Robinson also formed the opinion that the Khan Auction paintings were authentic and advised other prospective bidders that they were authentic.

**Robinson seeks to control the market in Morrisseau paintings**

25. As the market in Morrisseau art became saturated with paintings sold at Kahn Auctions, the value of Mr. Robinson's paintings that he possessed through his business relationship with Morrisseau declined. This is because large numbers of Morrisseau paintings were readily available in the market place.
26. Mr. Robinson went public in a National Post article and stated that there were serious concerns with the Khan Auction paintings. Mr. Robinson raised suggested that all Morrisseau paintings sold at Khan Auctions are fakes. He was held out in the article as a leading expert on Morrisseau art. Many years later, he provided supposed expert testimony that Morrisseau never signed the back of his paintings in black acrylic paint. The conclusion therefore is that the signature on the back of the Khan Auction paintings that purports to be that of Norval Morrisseau is in fact a forgery. This allegation by Mr. Robinson has resulted in buyers, like Mr. Hearn, falsely accusing gallery owners of fraud where no fraud exists.
27. Shortly after the National Post article, Mr. Robinson sent out a letter to prospective Morrisseau art purchasers telling them that the market was saturated with fake painting and that if purchasers wanted to be sure that they were buying an authentic Morrisseau, they should buy from *his* gallery.
28. The only expert to challenge the authenticity of the Khan auction paintings is Mr. Robinson. Mr. Robinson is unqualified to determine the authenticity of a Morrisseau painting as he is untrustworthy and has sought to destroy the secondary Morrisseau

market for his own financial gain and that of his gallery. Mr. Robinson obtained paintings directly from Morriseau in the 1990s and has gained an advantage in the sale of Morriseau's paintings by effectively telling the world that his gallery is the only gallery to trust when purchasing a Morriseau.

29. Starting in or about 2003, Mr. McLeod received correspondence from a lawyer purporting to act on behalf of Morriseau. Mr. McLeod was told that paintings he was exhibiting for sale in the defendant Gallery and in catalogues were fakes.
30. Mr. McLeod was told that he was not permitted to appraise works of art by Morriseau and that he was not entitled to show images of Morriseau's works of art in any catalogues. These prohibitions carried no legal weight.
31. In reality, Morriseau was in very poor physical and mental health and was simply being manipulated by others for their own financial gain. In the last several years of his life, Morriseau suffered from elder abuse. He had no control of his finances or his legacy.
32. Despite Mr. McLeod's repeated efforts to address the allegations that were supposedly coming from Morriseau, no detail or response was ever provided. Despite the expressed threat of litigation by Morriseau's controllers, no proceedings were ever commenced and none of the allegations were ever substantiated. The allegations were not coming from Morriseau. In fact, in April, 2002, Mr. Morriseau personally authenticated paintings that were signed by him on the back in black acrylic paint and dated in the 1970s. He did so by looking at them, and then signing them again and putting his thumb print on them. There are several eyewitnesses to this occurring and there is videotape of Mr. Morriseau undertaking the authentication process.

33. Norval Morrisseau died on December 4, 2007. The level of control by his supposed caregivers was so all encompassing that they sought to cremate him without any permission from the Morrisseau family who had to step in and stop the cremation so that Morrisseau could be buried next to his wife on the Keewaywin Native Reserve where he belonged. Morrisseau's supposed caregivers had taken control of his financial affairs and attempted to exclude his children from his estate. His children were forced to retain counsel and litigate for the right to take part in their own father's legacy.
34. Numerous of the Khan Auction paintings have been studied by forensic examiners who have determined that the signatures on dozens of Khan Auction paintings are authentic signatures of Morrisseau.
35. At the relevant times, the Morrisseau family considered the Khan Auction paintings as authentic and galleries across Canada exhibited and sold Khan Auction paintings. To this day, the Morrisseau family does not dispute the authenticity of the Khan Auction paintings.
36. Today, as a direct result of Mr. Robinson's knowingly false statements concerning the Khan Auction paintings, the market for Morrisseau's art is stagnant. Mr. Robinson has assisted in destroying Morrisseau's financial legacy for his own financial gain. To this day, Mr. Robinson emphasizes the alleged "second-tier" of Morrisseau's art that is dangerous to purchase. He falsely states this to increase his sales while diminishing the sales of other galleries who sell legitimate works of art by Morrisseau. The Kinsman Robinson Gallery holds itself out as the only trustworthy place to buy a Morrisseau painting as they have distanced themselves from the taint

of the Khan Auction paintings – a taint manufactured and manipulated by Donald Robinson himself.

37. To compound the problem, an individual named Ritchie Sinclair, who falsely calls himself a protégé of Morriseau, has deceitfully labeled approximately 1,000 paintings by Morriseau as fake and has assisted Mr. Robinson in propagating the myth that the Khan Auction paintings are fakes. Mr. Sinclair is a failed artist who has absolutely no expertise or qualifications to determine the authenticity of a Morriseau painting. However, prospective purchasers of a Morriseau painting undoubtedly do Internet searches and are easily directed to Sinclair's fraudulent web site.
38. The defendants brought action against Sinclair to do what they could to mitigate their losses and the Ontario Superior Court of Justice ordered Sinclair to make it clear on his web site that the allegations he was making were disputed. Sinclair complied with the court order.
39. The defendants are not aware of any other supposed experts in Morriseau art who have claimed that the Khan Auction paintings are fakes.

**Mr. Hearn purchases a Morriseau painting from the defendant gallery**

40. In or about May, 2005 Mr. Hearn attended the defendant Gallery for the purpose of purchasing a painting by Morriseau.
41. Contrary to what is alleged in paragraph 7 of the statement of claim, Mr. Hearn attended the defendant Gallery on many occasions. He told Mr. McLeod of his long-time interest in Morriseau and that he was shopping around for a painting. Mr. Hearn is also a painter.

42. Mr. Hearn became interested in a painting entitled "Spirit Energy of Mother Earth" (the "Painting"). The Painting was on consignment to the defendant and had been purchased at Kahn Auctions.
43. It is an important work of art by Morrisseau and Mr. Hearn recognized this. Mr. McLeod and Mr. Hearn talked at length about the stories told by Morrisseau's art. By 2005, Mr. McLeod had gathered more than 40 years of experience and extensive knowledge of Morrisseau's art and he explained to Mr. Hearn that the Painting depicted the spirit, like in Christianity, as having the ability to alter its shape, to float, to act as a gage and reveal. The depictions in the Painting include birds, snakes, and other living things as having spirits that become uniform. Colour was extremely important to Morrisseau. The Painting is a vivid green. Morrisseau saw the colour green as a representation of life.
44. Mr. Hearn purchased the Painting for the sum of \$20,000 as alleged in paragraph 9 of the statement of claim.
45. Contrary to the allegations in paragraph 10 of the statement of claim, prior to his purchase of the Painting, Mr. Hearn did not ask the defendants about its provenance. Further, Mr. McLeod did not and would never advise anyone that the defendant gallery "was the best and safest place to purchase a Norval Morrisseau work". In fact, that is a slogan that Mr. Robinson used to advertise the Kinsman Robinson Gallery's sale of Morrisseau art at or around the time the Painting was purchased by Mr. Hearn. Mr. McLeod knew the painting was authentic and its provenance was never an issue in his discussions with Mr. Hearn. The defendants are certain to this day that the Painting is authentic.

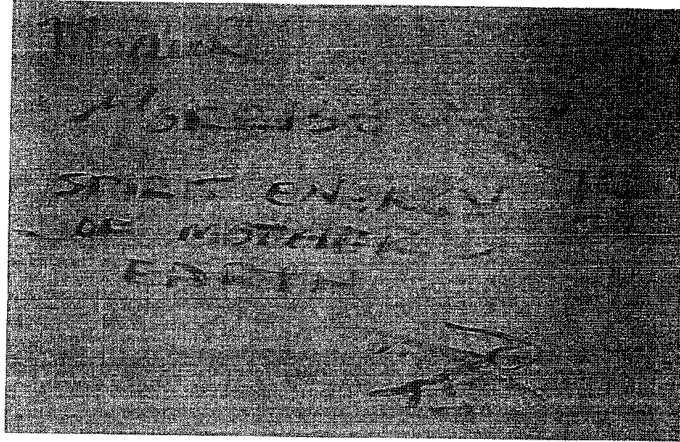
- 11 -

46. Contrary to the allegations in paragraph 12 of the statement of claim, at no time did Mr. McLeod advise Mr. Hearn that Morrisseau "was very ill and was expected to die shortly". While the defendant Gallery seeks to purchase art for resale in the hope that the art will appreciate in value, it can never know this for certain and never guarantees to its customers that their purchases will appreciate in value.

**The Provenance of the Painting**

47. His Catholic grandmother and his animistic shaman grandfather raised Morrisseau. He was constantly being told stories that spoke of animate and inanimate things and their relationship to the universe. The stories Morrisseau was told, for example, spoke of the beaver and how it goes into the body and becomes the spirit. Mr. Hearn was told about the meaning of the use of circles in the painting – the representation of the sun, of up and down and how these images form the basis for understanding the living.
48. Mr. McLeod explained the significance of the fact that all lines in the Painting join together. This is what Morrisseau considered to be the center of his being. Mr. Hearn was told that the Painting is very complex.
49. Further, Mr. Morrisseau signed, titled, dated and drew a sketch of a Copper Thunderbird on back of the Painting as follows:





50. The sketch of a copper thunderbird on the back is rare but Mr. Morrisseau did draw them on some of his paintings. Mr. McLeod has provided to Mr. Hearn examples of other paintings by Morrisseau that contained a copper thunderbird sketch on the back. The sketch adds to the value and importance of the Painting. At the age of 19, Morrisseau was very ill. It was feared that he would die. In a renaming ceremony in the hospital, a medicine woman gave Morrisseau the new name Copper Thunderbird. According to the traditions of Morrisseau's people, giving a powerful name to a dying person can save their lives. Morrisseau recovered and almost always signed his works with his Anishnaabe name in Cree syllabics on the front of his paintings.
51. Contrary to the allegation in paragraph 9 of the statement of claim, the date indicated on the back of the Painting is 1974 and not 1970.
52. The Painting was on consignment to the Defendant and had been purchased from Khan Auctions. Mr. Hearn has been told the name of the individual who consigned

the Painting to the defendants, where that individual obtained the Painting and its ownership as far back as was possible.

53. As a result of the deliberately false allegations by Donald Robinson that were published in the National Post in May, 2001, Mr. McLeod had a number of the Khan Auction paintings reviewed by a forensic examiner to determine if the handwriting on the backside of the paintings was that of Morrisseau. Mr. McLeod possesses handwriting samples from Morrisseau as a result of the fact that he knew and dealt with Morrisseau for several decades. For example, Mr. McLeod is in possession of a letter sent to his wife that was written and signed by Morrisseau on December 30, 1968.
54. The forensic examinations concluded that in some instances it was impossible to match the handwriting due to smudging of paint, the faintness of the handwriting and the difference in the writing instruments used. The forensic examiner was able to assess the signatures on many other paintings and reached the conclusion that the handwriting on the paintings had many similarities to Morrisseau handwriting samples and that there was strong support for the conclusion that the signatures on the back of typical Khan Auction paintings were written by Morrisseau.
55. The defendants did not simply determine that the paintings were authentic based on the handwriting on their backs and Mr. McLeod's expertise; they also looked into the provenance of the paintings and did so long before they met Mr. Hearn.
56. Mr. McLeod determined that the paintings came to the Khan Auction through David Voss. On further investigation, he learned that Mr. Voss lived in Northern Ontario in the early eighties, had met Morrisseau, had seen him paint and was very successful in purchasing paintings by many artists including ...

McLeod also met with David Voss years prior to meeting Mr. Hearn. Mr. Robinson takes the position that Mr. Voss has never existed.

57. For Mr. McLeod, this information was consistent with his understanding of the whereabouts of Morrisseau at the time the paintings were created.

58. Mr. McLeod also had knowledge that Morrisseau had been in jail frequently in Northern Ontario and that he had done a great deal of painting from jail in or around the time that many of the Khan Auction paintings were created. For instance, Morrisseau's first art dealer, Jack Pollack, wrote in his book *Dear M, Letters from A Gentleman of Excess* (1979) of the following experience in 1974 (the same year the Painting is dated):

I knew that Norval was in the Kenora jail. He had been there for over four months. On more than one occasion, I had bailed him out of jail. But this time the Kenora police chief refused bail, stating that if Morrisseau was to survive, he would have to dry out completely. Reluctantly, I allowed him to remain in prison.

Two months later, I visited him in jail and found he was well and being treated like a prince. He had one cell in which to sleep and another one he used as a studio. Some of his finest pictures were painted during that period.

59. Mr. McLeod was well aware of Mr. Pollack's writings long before he met Mr. Hearn.

60. While Mr. McLeod was satisfied with the provenance of the Khan Auction paintings, in November, 2001 he also came into possession of a notarized statement from David Voss that provided the following information:

- a. While living in Northern Ontario, he collected for resale acrylic on canvas paintings by Norval Morrisseau;
- b. That he placed those paintings for sale in a number of galleries, with collectors and in auction houses; and

c. That the sources of his paintings included five (5) individuals who he named in his statement.

61. Mr. McLeod was also in contact with some or all of Morrisseau's seven children. Many of them viewed some of the Khan Auction paintings and were of the view that they were works by their father.

**Post purchase conduct of Mr. Hearn**

62. The defendants did not hear from Mr. Hearn again until some four years later in 2009. In the intervening period (on December 4, 2007), Morrisseau passed away.
63. Further to the allegations in paragraph 13 of the statement of claim, in 2009 Mr. Hearn did make a request for certain information of and concerning the Painting and received the information requested. The information related to the provenance of the Painting and included an appraisal by Mr. McLeod that placed a value on the Painting of \$25,000. The appraisal is dated May 5, 2009 and was likely requested by Mr. Hearn for insurance purposes. Mr. McLeod made it clear on the face of the appraisal that "for legal reasons, this appraisal is not to be considered a scientific fact, but rather as a professional opinion on the art object described".
64. Contrary to the allegations in paragraph 14 of the statement of claim, there was no critical information to provide to Mr. Hearn. At no time did Morrisseau state in writing or otherwise that the Painting was a fake or that the signature on the back was a forgery.
65. The Painting is not "of a species of Morrisseau painting that is the subject of significant and persistent disagreement regarding authenticity". No such species exists. The only purported expert who has suggested that all of the Khan sourced paintings are fakes is Mr. Robinson. In the eight years that Morrisseau was alive

following the commencement of sale of the Kahn-sourced paintings he never stated publicly that (i) signatures on the back of his paintings in black acrylic dry brush were forgeries or (ii) all of the paintings sold at Khan auctions were fake. In fact, other than some questionable affidavits purportedly by Morrisseau, he has never questioned any Khan-sourced paintings. Moreover, Morrisseau himself authenticated 1970s style paintings signed on the back in black acrylic paint contrary to Mr. Robinson's flawed expert opinion.

66. Contrary to the allegation of criminality alleged in paragraph 14 of the statement of claim, the defendants were not "selling and authenticating large quantities of fake and/or forged Morrisseau paintings as a part of a fraud scheme." Mr. Hearn has no evidence of such a scheme as no scheme exists.
67. The allegations in paragraphs 16 and 17 of the statement of claim are accurate except the paintings that the defendant Gallery exhibited at the AGO show are genuine works of art by Morrisseau and were not purchased from Khan Auctions.
68. With respect to the allegations in paragraph 18 of the statement of claim, Mr. Hearn contacted the defendants by email dated June 28, 2010 to relate what had happened at the AGO show. He wanted to know:
  - a. Where the Painting came from;
  - b. Who owned it before him; and
  - c. If there was any further information that Mr. McLeod could provide to him concerning the authenticity of the Painting.
69. On June 30, 2010 Mr. McLeod responded to Mr. Hearn's email and advised as follows:

- a. He had tried to contact Mr. Hearn by telephone but was unsuccessful in reaching him;
- b. He asked Mr. Hearn to call him;
- c. He related to Mr. Hearn that he contacted "Jennifer" at the AGO and had a "positive conversation" with her and that she indicated to him that there was no investigation of the Painting being undertaken, that only AGO staff members were aware of the issue and that a letter of apology was going to be sent to Mr. McLeod to clear up the misunderstanding; and
- d. He assured Mr. Hearn that the Painting was authentic;

70. Despite her assurances, Jennifer never did provide a letter of apology.
71. On July 10, 2010 the defendants provided to Mr. Hearn details of the provenance of the Painting known to them and a forensic report of other Khan Auction paintings. Mr. McLeod also explained to Mr. Hearn that the Painting was a "spirit" painting and he provided to Mr. Hearn examples of spirit paintings from the publication "Morrisseau", from Methuen Publication, Jack Pollock and Lister Sinclair. This is the definitive book of art by Morrisseau that was published in 1979. Mr. McLeod explained to Mr. Hearn that the other spirit paintings establish the bald or smooth head of the spirit known as "Enkenkar" that is exhibited in the Painting. Mr. Hearn was told that this was a repeated use of imagery in Morrisseau's work when he was depicting spirit beings. Mr. McLeod also informed Mr. Hearn that the Painting and the examples from the Pollack and Sinclair book were all paintings from the 1970s that were painted by Morrisseau in Northern, Ontario in the Kakebeka Falls area. Finally, Mr. McLeod let Mr. Hearn know that Morrisseau would sketch a Copper Thunderbird on the back of the painting when he considered the painting to be of special worth.

72. Mr. McLeod and Mr. Hearn spoke on the phone a few times. Mr. McLeod asked Mr. Hearn to contact the AGO and demand that they state in writing that the Painting was a fake. Mr. Hearn did not wish to do so. Mr. McLeod asked if he could contact the AGO and Mr. Hearn agreed.
73. Mr. McLeod wrote to the curator of Native Art at the AGO on July 10, 2010 and insisted on being a party to any investigation of the Painting that would be undertaken. The AGO did not respond to the July 10, 2010 letter.
74. Mr. McLeod then spoke to Mr. Hearn again and explained that the AGO had not responded to his letter. Mr. McLeod suggested that Mr. Hearn should contact the Director of the AGO for an explanation. Mr. Hearn did not wish to do so but told Mr. McLeod he could do so if he wished.
75. On August 6, 2010, Mr. McLeod wrote to the Director of the AGO demanding an explanation. The Director of the AGO never responded.
76. Mr. Hearn never made any demands of the defendants other than those set out above and never sought to return the Painting.
77. Mr. Hearn never contacted Mr. McLeod again. He waited almost two years and started this lawsuit.
78. The defendants expressly deny that Mr. Hearn demanded his money back as alleged in paragraph 22 of the statement of claim or at all.
79. If Mr. Hearn has the opinions of experts that the Painting is a fake as alleged in paragraph 23 of the statement of claim, he has never provided those opinions to the

defendants. Following service of the statement of claim, the defendants sought production from Mr. Hearn of the opinions and he refused to provide them.

80. The defendants plead that the signature, sketch and description on the back of the Painting is the authentic handwriting of Norval Morrisseau and the Painting is an authentic work of art by Norval Morrisseau.
81. The defendants deny that they have acted fraudulently, deceitfully or negligently as alleged, or at all, and Mr. Hearn is put to the strict proof thereof.
82. The defendants deny that they have breached any warranty to Mr. Hearn and he is put to the strict proof of that allegation.
83. The defendants plead and rely upon the *Negligence Act*, R.S.O. 1990, c. N. 1. The defendants also plead and rely upon the *Limitations Act*, R.S.O. 2002, S.O. 2002, c. 24.
84. The defendants ask that this action be dismissed with costs payable on a substantial indemnity basis.

February 7, 2013

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- 20 -

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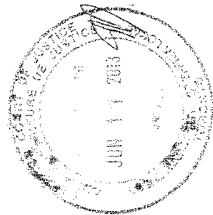
Lawyers for the Plaintiff

KEVIN HEARN  
Plaintiff

-and-

JOSEPH BERTRAM MCLEOD and  
MASLAK-MCLEOD GALLERY INC.  
Defendants

Court File No. CV-12-455650



ONTARIO  
SUPERIOR COURT OF JUSTICE  
Proceeding commenced at Toronto

STATEMENT OF DEFENCE

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McLeod and Maslak-McLeod Gallery Inc.

Service of a true copy  
hereof admitted this

26<sup>th</sup> day of February 2013

Solicitors for the Plaintiff

*Stouffer* per Jonathan Sommer

KEVIN HEARN V. ESTATE OF JOSEPH BERTRAM MCLEOD,  
DECEASED, ET AL.,

Court File No. CV-12-456650

ONTARIO  
SUPERIOR COURT OF JUSTICE  
PROCEEDING COMMENCED AT TORONTO  
  
AFFIDAVIT OF NATHANIEL BIG CANOE  
  
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Michael J. Panacci (LSUC NO. 508480)  
Lawyer for the Intervenor

This Exhibit B to the Affidavit of Jim White

Sworn before me on November 2, 2017

A handwritten signature in black ink, appearing to read "Michael J. Lunn", written over a horizontal line.

A commissioner, etc.

# LIST OF Paintings

Oct 30/17

Nawal Nipissian		Cost.	Value
Big Chief	30x22.5	1500.	2500.
Headdress	✓	1500.	2500.
Owl	✓	1500.	2500.
Bear Clan Warrior	30x22.5	1500.	2500.
Child + Tree of Life	✓	1500	2500.
Child of Bird Clan	30x24	1500	2000
Bear Speaks to T Bird	30x22.5	1500	2000
T Bird with Bear + Fish	✓	1500	2500
Grandchildren	45x40	1600	2750
T Bird Family on Lake	45x44	1600	2750
Harriet	42x33	1600	2500
Bear Shaman	49x36	1600	2750
Spirit Bear + T.B.	41x34.5	1500	2250
Shaman Colling	44x36	1600	2250
Fish Bird Unity	30.5x47.5	1600	2250
Portrait of Artist	41.5x30.5	1500	2750
Man connected	51x31	1600	2750
Animals Both Worlds	35x45	1500	2250
Becoming one nature	40x46	1500	2250
Shaman with nature	42x35	1500	2500
Medicine Bear	30.5x41	1500	2250
Thunderbear	34x40	1500	2500
Thunderbirds	48x31	1500	2250
Garden of peace	5x5.75	1250	1000
Sacred T Birds	3.25x11	1250	1000
Ancient in the Stars	6.25x2.75	1250	1000
Woodland Bear	6x7.25	1250	1000
Ancient Games	3.5x4.25	1250	1000
Mermaid Trans.	5.5x5.25	1250	1000
Inorganic Being	5.75x2.25	1250	1000
Ancient Trans.	9x2.75	1250	1000

# List of Paintings

Oct 30/17

Nowal Mairiyeau

		<u>Cost</u>	<u>Value</u>
Inorganic Beings II	47.5 x 9.25	1250	1000
Father Shaman	30 x 22.5	1500	2250
Acrylic on linen	53 x 60	1000	1000
Child Speaks to bird	30 x 22.5	1500	2250
Ancient Pow-wow	52.5 x 4	1250	1000
Ancient Journey	4.75 x 6	1250	1000
Remembering the Harvest	34 x 58	6000	7500
Bird Family	34.5 x 44	1600	2500
Shaman Speaks	42 x 29.5	1600	2750
Shaman & Animals	48 x 24	1500	2250
Mighty Shaman	48 x 24	1500	2250
Husband and Wife	36 x 30	1500	2250
artist Portrait	38.5 x 36.5	1500	2500
Loon Family	23.25 x 29.5	1800	3000
Children of Bear Claw	44.5 x 30.5	1500	2500
Grandson with Headdress	30 x 22.5	1500	2500
Grandchildren / Tree	✓	1500	2250
Loons and Fish	22.5 x 30	1500	2250
Arrangement in Orange	✓	1500	2250
Brother + Sister	40 x 32	1600	2500
Nature's Family	30 x 47	1700	2750
River Otter	44 x 30	1700	3000
Sacred Fish	28 x 44	1500	2250
Spiritual Unity	30 x 48	1500	2250
Loons watching	30 x 40	1500	2500
Woodland Beaver	22.5 x 30	1500	2250
Owl and Young	30 x 38	1600	2500
Thunderbirds / Fish	30 x 48	1600	2500
Flower of Peace	40 x 30	1500	2750
Speaking to Inner Sh.	45 x 38	1500	2000
I speak to Inner T/Bird	47 x 43	1500	2500
Fish Shaman	30 x 46	1400	2250

(2)

# List of Paintings

Oct 30/17

Nowal upon 1 year

Cost Value

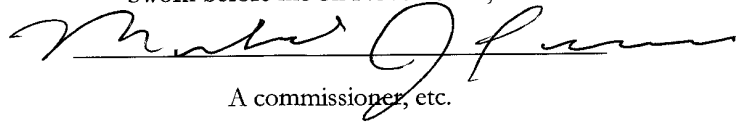
T/Bird and Ancients	22.5 X 25.5	2000	3500
Chief with T/Birds	48 X 24	1400	2250
Fish over Loons	24 X 48	1400	2250
Grand Shaman	34.125 X 27.875	2500	4000
Fracturation	25.5 X 23.5	1250	2500
Shaman offer Peace	25.25 X 26.75	1400	3000
Survival - strength	35.5 X 53.5	2750	4500
Arrangement on Green	55.5 X 42	9000	5000
Temptations of Man	35 X 60.25	5000	5000
Flowers and Birds	62 X 30	3500	5000
Shaman & Wife / Family	37 X 59	3500	5000
A dream of life	35 X 90	7500	10,000
Sealed Mopst	30 X 45	2600	4000
Fish Protected	24 X 30	1200	2000
Dance of Morning Glory	40 X 31	2400	4000
Shaman Talking T/Bird	37.5 X 47	3100	5000
Fish Shaman	37.25 X 59	2800	4500
Shaman Speak to Creator	36 X 20	1500	2750
Fish and Loons	23.75 X 35.75	1900	3000
Brothers	28.5 X 26.5	1700	2500
Grand Shaman	36 X <del>40</del> 24.75	2100	3500
Shaking Tent	46 X <del>54</del>	3100	5000
23 T.B Teaching Shaman	69 X 169	70,000	80,000

TOTAL 86

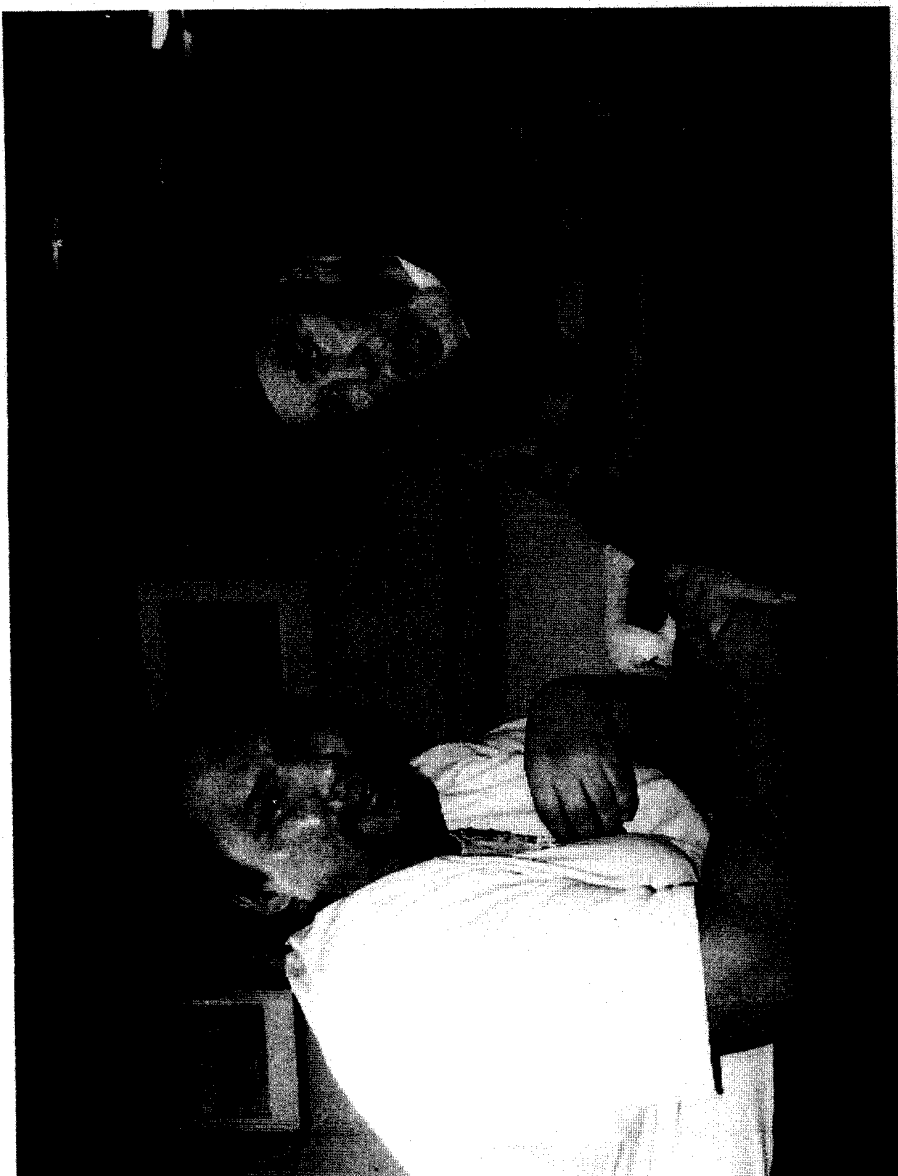
---

This Exhibit C to the Affidavit of Jim White

Sworn before me on November 2, 2017

  
A commissioner, etc.

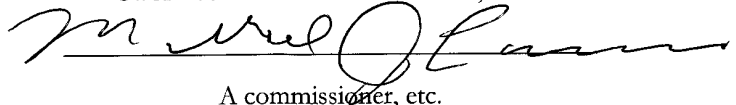




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This Exhibit D to the Affidavit of Jim White

Sworn before me on November 2, 2017

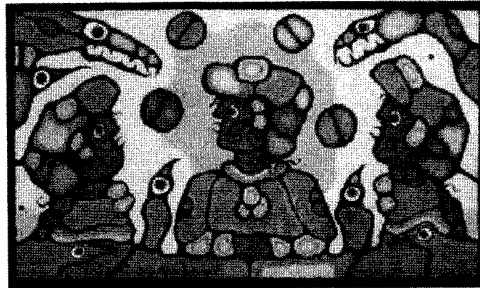
A handwritten signature in cursive script, appearing to read "M. M. O'Leary", is written over a horizontal line.

A commissioner, etc.

# **BREMNER'S**

## **APPRAISAL SERVICES**

Canadian Personal Property Appraisers Group - Accredited Member  
USPAP Compliant



**TITLE: TEMPTATIONS OF MAN**  
**ARTIST: NORVAL MORRISSEAU**  
**ACRYLIC ON CANVAS**  
**SIZE: 35" X 60.25"**  
**YEAR: 1975**

\$ 32,000

[www.bremnersappraisalservices.com](http://www.bremnersappraisalservices.com)  
[pbremner@bremnersappraisalservices.com](mailto:pbremner@bremnersappraisalservices.com)

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# **BREMNER'S**

## **APPRAISAL SERVICES**

Canadian Personal Property Appraisers Group – Accredited Member  
USPAP Compliant

### ***Certificate of Authenticity and Appraisal***

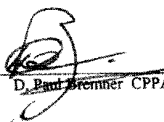
Bremner's Appraisal Services  
guarantees the following original work of art to be authentic.

Artist: Norval Morrisseau (1932 – 2007)  
Title: Temptations of Man  
Signed in syllabics – Copper Thunderbird  
Signed and dated 1975 verso  
Medium: Acrylic on canvas  
Size: 35 inches x 60 inches  
Provenance: Private Collection, Thunder Bay, Ontario  
Appraised Value: \$32,000.00 Fair Market Value (Canadian Dollars)  
(Thirty Two Thousand)

In my opinion, the above price represents a fair market value.

December 17, 2015

Date

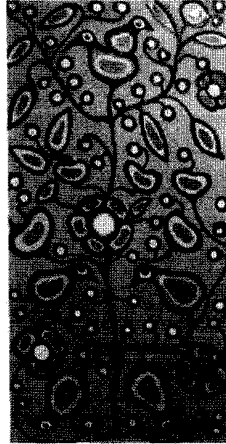
  
D. Paul Bremner CPPA

[www.bremnersappraisalservices.com](http://www.bremnersappraisalservices.com)  
[pbremner@bremnersappraisalservices.com](mailto:pbremner@bremnersappraisalservices.com)

# **BREMNER'S**

## **APPRAISAL SERVICES**

Canadian Personal Property Appraisers Group - Accredited Member  
USPAP Compliant



**TITLE: FLOWERS AND BIRDS**  
**ARTIST: NORVAL MORRISSEAU**  
**ACRYLIC ON CANVAS**  
**SIZE: 62" X 30"**  
**YEAR: 1979**

*\$ 32,000.*

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# **BREMNER'S**

## **APPRAISAL SERVICES**

Canadian Personal Property Appraisers Group – Accredited Member  
USPAP Compliant

### ***Certificate of Authenticity and Appraisal***

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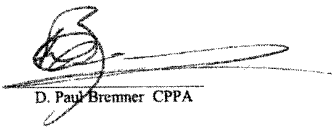
Bremner's Appraisal Services  
guarantees the following original work of art to be authentic.

Artist: Norval Morrisseau (1932 – 2007)  
Title: Flowers and Birds  
Signed in syllabics – Copper Thunderbird  
Signed and dated 1979 verso  
Medium: Acrylic on canvas  
Size: 62 inches x 30 inches  
Provenance: Private Collection, Thunder Bay, Ontario  
Appraised Value: \$32,000.00 Fair Market Value (Canadian Dollars)  
(Thirty Two Thousand)

In my opinion, the above price represents a fair market value.

December 17, 2015

Date



D. Paul Bremner CPPA

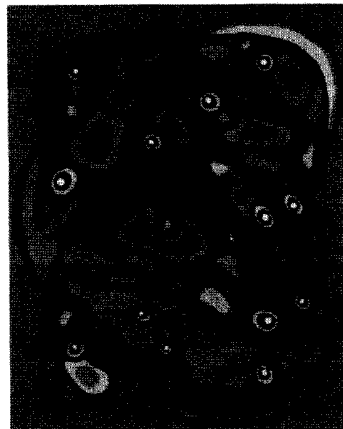
[www.bremnersappraisalservices.com](http://www.bremnersappraisalservices.com)  
[pbremner@bremnersappraisalservices.com](mailto:pbremner@bremnersappraisalservices.com)

---

# **BREMNER'S**

## **APPRAISAL SERVICES**

Canadian Personal Property Appraisers Group - Accredited Member  
USPAP Compliant



**TITLE: ARRANGEMENT ON GREEN**  
**ARTIST: NORVAL MORRISSEAU**  
**ACRYLIC ON CANVAS**  
**SIZE: 55.5" X 42"**  
**YEAR: 1977**

*\$ 23,500.*

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# **BREMNER'S**

## **APPRAISAL SERVICES**

Canadian Personal Property Appraisers Group – Accredited Member  
USPAP Compliant

### ***Certificate of Authenticity and Appraisal***

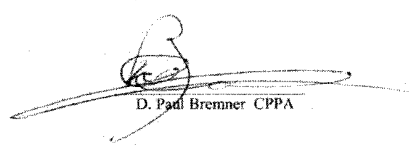
Bremner's Appraisal Services  
guarantees the following original work of art to be authentic.

Artist: Norval Morrisseau (1932 – 2007)  
Title: Arrangements on Green  
Signed in syllabics – Copper Thunderbird  
Signed and dated 1977 verso  
Medium: Acrylic on canvas  
Size: 55.5 inches x 42 inches  
Provenance: Private Collection, Thunder Bay, Ontario  
Appraised Value: \$23,500.00 Fair Market Value (Canadian Dollars)  
(Twenty Three Thousand and Five Hundred)

In my opinion, the above price represents a fair market value.

November 11, 2015

Date



D. Paul Bremner CPPA

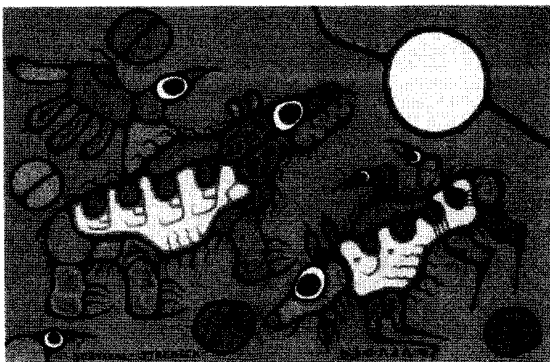
[www.bremnersappraisalservices.com](http://www.bremnersappraisalservices.com)  
[pbremner@bremnersappraisalservices.com](mailto:pbremner@bremnersappraisalservices.com)



# **BREMNER'S**

## **APPRAISAL SERVICES**

Canadian Personal Property Appraisers Group - Accredited Member  
USPAP Compliant



**TITLE: SURVIVAL - STRENGTH**  
**ARTIST: NORVAL MORRISSEAU**  
**ACRYLIC ON CANVAS**  
**SIZE: 35.5" X 53.5"**  
**YEAR: 1978**

25,000

[www.bremnersappraisalservices.com](http://www.bremnersappraisalservices.com)  
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General Delivery, Locust Hill, Ontario L0H 1J0 Telephone (416) 678-3949

## **BREMNER'S** APPRAISAL SERVICES

Canadian Personal Property Appraisers Group – Accredited Member  
USPAP Compliant

### *Certificate of Authenticity and Appraisal*

---


Bremner's Appraisal Services  
guarantees the following original work of art to be authentic.

Artist: Norval Morrisseau (1932 – 2007)  
Title: Survival - Strength  
Signed in syllabics – Copper Thunderbird  
Signed and dated 1978 verso  
Medium: Acrylic on canvas  
Size: 35.5 inches 53.5 inches  
Provenance: Private Collection, Thunder Bay, Ontario  
Appraised Value: \$25,000.00 Fair Market Value (Canadian Dollars)  
(Twenty Five Thousand)

In my opinion, the above price represents a fair market value.

December 17, 2015

Date



D. Paul Bremner CPPA

[www.bremnersappraisalservices.com](http://www.bremnersappraisalservices.com)  
[pbremner@bremnersappraisalservices.com](mailto:pbremner@bremnersappraisalservices.com)

# **BREMNER'S**

## **APPRAISAL SERVICES**

Canadian Personal Property Appraisers Group - Accredited Member  
USPAP Compliant



**TITLE: SHAMAN OFFERS PEACE TO CREATOR**  
**ARTIST: NORVAL MORRISSEAU**  
**ACRYLIC ON CANVAS**  
**SIZE: 25.25" X 26.75"**  
**YEAR: 1976**

\$ 12,500

[www.bremnersappraisalservices.com](http://www.bremnersappraisalservices.com)  
[pbremner@bremnersappraisalservices.com](mailto:pbremner@bremnersappraisalservices.com)

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General Delivery, Locust Hill, Ontario L0H 1J0 Telephone (416) 678-3949

# **BREMNER'S**

## **APPRAISAL SERVICES**

Canadian Personal Property Appraisers Group – Accredited Member  
USPAP Compliant

### ***Certificate of Authenticity and Appraisal***

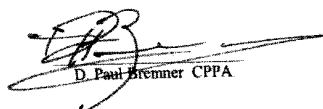
Bremner's Appraisal Services  
guarantees the following original work of art to be authentic.

Artist: Norval Morrisseau (1932 – 2007)  
Title: Shaman Offers Peace to Creator  
Signed in syllabics – Copper Thunderbird  
Signed and dated 1976 verso  
Medium: Acrylic on canvas  
Size: 25.25 inches x 26.75 inches  
Provenance: Private Collection, Thunder Bay, Ontario  
Appraised Value: \$12,500.00 Fair Market Value (Canadian Dollars)  
(Twelve Thousand and Five Hundred)

In my opinion, the above price represents a fair market value.

December 17, 2015

Date



D. Paul Bremner CPPA

[www.bremnersappraisalservices.com](http://www.bremnersappraisalservices.com)  
[pbremner@bremnersappraisalservices.com](mailto:pbremner@bremnersappraisalservices.com)

**Gallery Sunami**



**Certificate of Authenticity**

Collection of: James White

Date: May / 2009

#09-050

Artist: Norval Morrisseau

Title: Thunderbird Teaching  
Shaman People

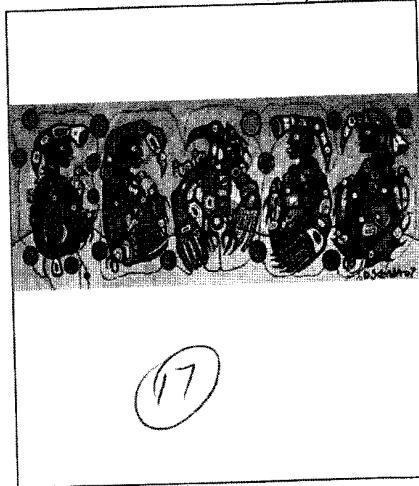
Size: 69" x 169"

Medium: Acrylic on Canvas

Period: 1977


Signed: Front Cree, Back English

Condition: Excellent



**Appraised Value: \$200,000.00**

In my opinion, based on examination, and my experience, I certify this to be an authentic Norval Morrisseau.

by:   
Sunny Kim, Director of Fine Art

6035 Yonge St. Toronto, Ontario, M2M 3W2

(416) 221-5056

(17)

**Gallery Sunami**



**Certificate of Authenticity**

Collection of: James White

Date: May / 2009

#9 - 009

Artist: Norval Morrisseau

Title: Fracturation

Size: 25.5" x 23.5"

Medium: Acrylic on canvas

Period: 1976

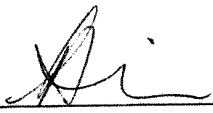
Signed: Front Cree, Back English

Condition: Excellent



Appraised Value: \$9000.00

In my opinion, based on examination, and my experience, I certify this to be an authentic Norval Morrisseau.

by:   
Sunny Kim, Director of Fine Art

6035 Yonge St. Toronto, Ontario, M2M 3W2

(416) 221-5056

**Gallery Sunami**

**Certificate of Authenticity**

Collection of: James White

Date: May / 2009

#09-040

Artist: Norval Morrisseau

Title: Grand Shaman

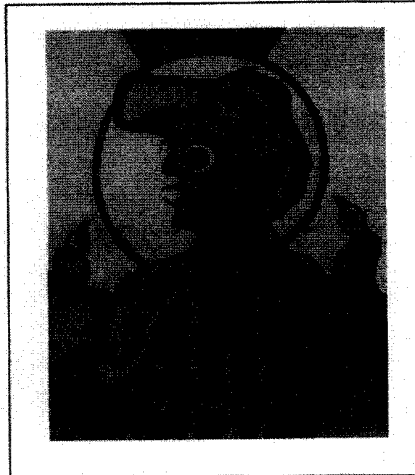
Size: 36" x 29.75"

Medium: Acrylic on Canvas

Period: 1976

Signed: Front Cree, English, Back  
English

Condition: Very Good



Appraised Value: \$21,500.00

11

In my opinion, based on examination, and my experience, I certify this to be an authentic Norval Morrisseau.

by: \_\_\_\_\_

Sunny Kim, Director of Fine Art

6035 Yonge St. Toronto, Ontario, M2M 3W2

(416) 221-5056

11

**Gallery Sunami**



**Certificate of Authenticity**

Collection of: James White

Date: May / 2009

Artist: Norval Morrisseau

Title: Brothers

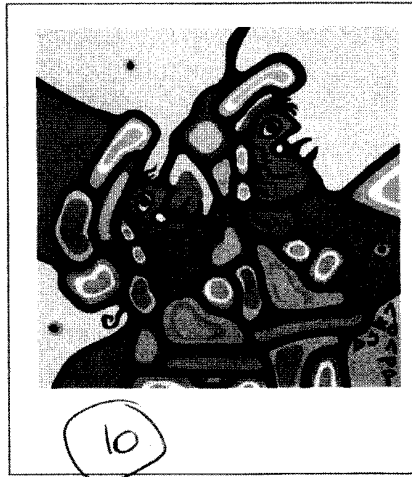
Size: 28.5" x 26.5

Medium: Acrylic on Canvas

Period: 1980

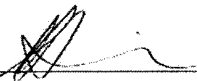
Signed: Front Cree

Condition: Very Good



**Appraised Value:** \$12,000.00

In my opinion, based on examination, and my experience, I certify this to be an authentic Norval Morrisseau.

by:   
Sunny Kim, Director of Fine Art

6035 Yonge St. Toronto, Ontario, M2M 3W2

(416) 221-5056

10



**Gallery Sunami**



**Certificate of Authenticity**

Collection of: James White

Date: May / 2009

#09-046

Artist: Norval Morrisseau

Title: Shaman Talking to  
Thunderbirds

Size: 37.5" x 47"

Medium: Acrylic on Canvas

Period: 1977

Signed: Front Cree, Back English

Condition: Excellent



**Appraised Value: \$27,500.00**

In my opinion, based on examination, and my experience, I certify this to be an authentic Norval Morrisseau.

by: 

**Sunny Kim, Director of Fine Art**

6035 Yonge St. Toronto, Ontario, M2M 3W2

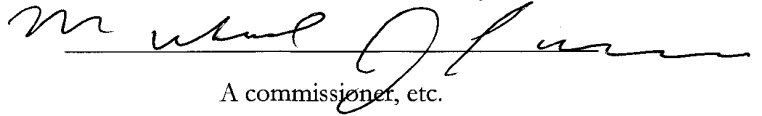
(416) 221-5056

(5)

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This Exhibit E to the Affidavit of Jim White

Sworn before me on November 2, 2017

A commissioner, etc.

## **RULE 13 INTERVENTION**

### **LEAVE TO INTERVENE AS ADDED PARTY**

**13.01** (1) A person who is not a party to a proceeding may move for leave to intervene as an added party if the person claims,

- (a) an interest in the subject matter of the proceeding;
- (b) that the person may be adversely affected by a judgment in the proceeding; or
- (c) that there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding. R.R.O. 1990, Reg. 194, r. 13.01 (1).

(2) On the motion, the court shall consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding and the court may add the person as a party to the proceeding and may make such order as is just. R.R.O. 1990, Reg. 194, r. 13.01 (2).

### **LEAVE TO INTERVENE AS FRIEND OF THE COURT**

**13.02** Any person may, with leave of a judge or at the invitation of the presiding judge or master, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument. R.R.O. 1990, Reg. 194, r. 13.02; O. Reg. 186/10, s. 1.

### **LEAVE TO INTERVENE IN DIVISIONAL COURT OR COURT OF APPEAL**

**13.03** (1) Leave to intervene in the Divisional Court as an added party or as a friend of the court may be granted by a panel of the court, the Chief Justice or Associate Chief Justice of the Superior Court of Justice or a judge designated by either of them. R.R.O. 1990, Reg. 194, r. 13.03 (1); O. Reg. 292/99, s. 4; O. Reg. 186/10, s. 2; O. Reg. 82/17, s. 16.

(2) Leave to intervene as an added party or as a friend of the court in the Court of Appeal may be granted by a panel of the court, the Chief Justice or Associate Chief Justice of Ontario or a judge designated by either of them. R.R.O. 1990, Reg. 194, r. 13.03 (2); O. Reg. 186/10, s. 2; O. Reg. 55/12, s. 1; O. Reg. 82/17, s. 16.

KEVIN HEARN V. ESTATE OF JOSEPH BERTRAM MCLEOD,  
DECEASED, ET AL.

Court File No. CV-12-455650

ONTARIO  
SUPERIOR COURT OF JUSTICE  
PROCEEDING COMMENCED AT TORONTO  
  
AFFIDAVIT OF JIM WHITE  
  
Michael J. Panacci, Lawyer  
214 Merton Street, Suite 209  
Toronto, Ontario  
M4S 1A6  
Tel: 416-560-0846  
Fax: 866-507-0105  
  
Michael J. Panacci (LSUC NO. 508480)  
Lawyer for the Intervenor