

ONTARIO  
*SUPERIOR COURT OF JUSTICE*

BETWEEN:

JOHN MCDERMOTT

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 and 8 (other than the word "alleged") of the statement of claim.
2. The defendants deny the allegations contained in paragraphs 1, 6, 7, 9, and 12-30 of the statement of claim.
3. The defendants have no knowledge of the allegations contained in paragraphs 10 and 11 of the statement of claim.
4. The defendants deny that Mr. McDermott is entitled to the relief claimed, or at all, and Mr. McDermott is put to the strict proof of the entitlement to the relief claimed in paragraph 1 of the statement of claim.

**Mr. McDermott falsely alleges fraud**

5. The allegations of fraud as set out in paragraphs 13, 14, 15, 20, 26, 27 and 29 of the statement of claim are scandalous, frivolous and vexatious.
6. The allegations of fraud and, more particularly, of taking part in a widespread criminal fraud scheme as alleged in paragraph 15 of the statement of claim, are entirely false and have irreparably damaged the business of the defendants. Mr. McDermott should be condemned to pay to the defendants their substantial indemnity costs of this action. Mr. McDermott'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**

7. The defendant gallery has significant experience and expertise in the field of native art and has exhibited numerous native artists throughout Canada.
8. 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.
9. 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.

10. 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**

11. 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.
12. 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.
13. 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.
14. 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.

15. 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.
16. 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**

17. 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.
18. 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.

19. 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.
20. 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.
21. In addition to purchasing paintings from Khan Auctions, Mr. Robinson's gallery appraised paintings purchased from Kahn Auctions that they did not purchase.
22. Mr. Robinson also re-sold many of the Khan Auction paintings and represented those paintings as works of art by Morrisseau.
23. 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**

24. 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.

25. Mr. Robinson went public in a National Post article and stated that there were serious concerns with the Khan Auction paintings. Mr. Robinson 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. McDermott, falsely accusing gallery owners of fraud where no fraud exists.
26. 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 paintings and that if purchasers wanted to be sure that they were buying an authentic Morrisseau, they should buy from *his* gallery.
27. 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 Morrisseau in the 1990s and has gained an advantage in the sale of Morrisseau's paintings by effectively telling the world that his gallery is the only gallery to trust when purchasing a Morrisseau.
28. Starting in or about 2003, Mr. McLeod received correspondence from a lawyer purporting to act on behalf of Morrisseau. Mr. McLeod was told that paintings he was exhibiting for sale in the defendant Gallery and in catalogues were fakes.



29. Mr. McLeod was told that he was not permitted to appraise works of art by Morrisseau and that he was not entitled to show images of Morrisseau's works of art in any catalogues. These prohibitions carried no legal weight.
30. In reality, Morrisseau 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, Morrisseau suffered from elder abuse. He had no control of his finances or his legacy.
31. Despite Mr. McLeod's repeated efforts to address the allegations that were supposedly coming from Morrisseau, no detail or response was ever provided. Despite the expressed threat of litigation by Morrisseau's controllers, no proceedings were ever commenced and none of the allegations were ever substantiated. The allegations were not coming from Morrisseau. In fact, in April, 2002, Mr. Morrisseau 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. Morrisseau undertaking the authentication process.
32. 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.

33. 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.
34. 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.
35. 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.
36. To compound the problem, an individual named Ritchie Sinclair, who falsely calls himself a protégé of Morrisseau, has deceitfully labeled approximately 1,000 paintings by Morrisseau 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 Morrisseau



painting. However, prospective purchasers of a Morriseau painting undoubtedly do Internet searches and are easily directed to Sinclair's fraudulent web site.

37. 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.
38. The defendants are not aware of any other supposed experts in Morriseau art who have claimed that the Khan Auction paintings are fakes.

**Mr. McDermott purchases four Morriseau paintings from the defendant gallery**

39. Mr. McDermott did purchase the three paintings that are pleaded in paragraph 8 of the statement of claim. He also purchased a fourth painting entitled Loons. The plaintiff apparently does not believe that Loons is a fake or imitation. The plaintiff apparently believes that the defendants sell both authentic and fake paintings.
40. The defendants agree that the three paintings set out in paragraph 11 of the statement of claim were purchased for a total of \$15,500. This case should have been launched in the Small Claims Court and the defendants accordingly seek their full indemnity costs of having to defend this action.
41. The defendants plead that all three paintings were purchased at Khan Auctions and that they are genuine paintings by the hand of Norval Morriseau.

**The Provenance of the Paintings**

42. 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.

43. 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.
44. 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. McDermott.
45. 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 Morrisseau, at very low prices. Mr. McLeod also met with David Voss years prior to meeting Mr. McDermott. Mr. Robinson takes the position that Mr. Voss has never existed.
46. For Mr. McLeod, this information was consistent with his understanding of the whereabouts of Morrisseau at the time the paintings were created.

47. Mr. McLeod also had knowledge that Morrissette 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, Morrissette'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:

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 Morrissette 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.

48. Mr. McLeod was well aware of Mr. Pollack's writings long before he met Mr. McDermott.
49. 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 Morrissette;
  - 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.
50. Mr. McLeod was also in contact with some or all of Morrissette'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. McDermott**

51. The defendants did not hear from Mr. McDermott until his counsel wrote a demand letter in February, 2013. In the intervening period (on December 4, 2007), Morrisseau passed away.
52. Contrary to the allegations in paragraph 13 of the statement of claim, there was no critical information to provide to Mr. McDermott. The communications from supposed representatives of Morrisseau that were received by the defendants completely contradicted what members of the Morrisseau family were telling the defendants. In particular, members of the Morrisseau family advised the defendants that Morrisseau was extremely ill and that his “caregivers” who were controlling Morrisseau’s life and his art were manipulating him.
53. The paintings are not “of a species of Morrisseau painting that was then (and still 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.
54. Contrary to the allegation of criminality alleged in paragraph 15 of the statement of claim, the defendants are not involved in any fraud ring. Neither defendant has ever

met with or spoken to Gary Lamont, Benjamin Morrisseau or Timothy Tate. If such a fraud ring exists, which is expressly denied, the defendants have had no involvement at all with the fraud ring and Mr. McDermott is put to the strict proof of that allegation. The allegation of criminality is all the more outrageous because Mr. McDermott or his counsel forwarded the statement of claim to the Globe and Mail and knew that the fraud ring allegations would be published. The Globe and Mail published a story with the headline ““Fraud Ring produced fake Morrisseau Paintings, claim alleges” on October 25, 2013. No evidence of this supposed fraud ring has ever been produced to the defendants. Mr. McDermott’s conduct is egregious and he should be condemned to pay the defendants’ substantial indemnity costs.

55. The defendants deny that they have acted fraudulently, deceitfully or negligently as alleged, or at all, and Mr. McDermott is put to the strict proof thereof.
56. The defendants deny that they have breached any warranty to Mr. McDermott and he is put to the strict proof of that allegation.
57. 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 and state that this action is barred as the defendant failed to commence proceedings within two years from the date that the cause of action arose.
58. The defendants ask that this action be dismissed with costs payable on a substantial indemnity basis.

January 10, 2014

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Court File No. CV-13-490894

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**STATEMENT OF DEFENCE**

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