

Superior Court of Justice
Cour supérieure de justice



Plaintiff No. 1 / Demandeur n° 1

Plaintiff's Claim

Demande du demandeur

Form / Formule 7A Ont. Reg. No. / Règl. de l'Ont. : 258/98

WHITBY
Small Claims Court / Cour des petites créances de
601 Rossland Rd East
Address / Adresse

629 79/09
Claim No. / N° de la demande

(905) 430-5800
Phone number / Numéro de téléphone

- ☐ Under 18 years of age.
Moins de 18 ans.
- ☐ Additional plaintiff(s) listed on attached Form 1A.
Le ou les demandeurs additionnels sont mentionnés sur la formule 1A ci-jointe.

OTAVNIK
Last name of individual or name of company, etc. / Nom de famille du particulier ou nom de la compagnie, etc.
JOSEPH
First given name / Premier prénom
299 Dufferin Cr., Oshawa, Ont.
Second given name / Deuxième prénom
Also known as / Également connu(e) sous le nom de
Address for service (street & number, unit, municipality, province) / Adresse aux fins de signification (numéro et rue, unité, municipalité, province)
L1B 6B7
Postal code / Code postal
(905) 738-2133
Phone no. / N° de téléphone
Fax no. / N° de télécopieur

Representative / Représentant(e)
LSUC # (if applicable) / N° du BHC (le cas échéant)
Address for service (street & number, unit, municipality, province) / Adresse aux fins de signification (numéro et rue, unité, municipalité, province)
Postal code / Code postal
Phone no. / N° de téléphone
Fax no. / N° de télécopieur

Defendant No. 1 / Défendeur n° 1

- ☐ Under 18 years of age.
Moins de 18 ans.
- ☐ Additional defendant(s) listed on attached Form 1A.
Le ou les défendeurs additionnels sont mentionnés sur la formule 1A ci-jointe.

BAKER
Last name of individual or name of company, etc. / Nom de famille du particulier ou nom de la compagnie, etc.
RICHARD
First given name / Premier prénom
10 King Street East, Sixth Floor, Toronto, Ont.
Second given name / Deuxième prénom
Also known as / Également connu(e) sous le nom de
Address for service (street & number, unit, municipality, province) / Adresse aux fins de signification (numéro et rue, unité, municipalité, province)
M5C 1C3
Postal code / Code postal
(416) 863-1717
Phone no. / N° de téléphone
(416) 368-3133
Fax no. / N° de télécopieur

Representative / Représentant(e)
LSUC # (if applicable) / N° du BHC (le cas échéant)
Address for service (street & number, unit, municipality, province) / Adresse aux fins de signification (numéro et rue, unité, municipalité, province)
Postal code / Code postal
Phone no. / N° de téléphone
Fax no. / N° de télécopieur

Within seven (7) calendar days of changing your address for service, notify the court and all other parties in writing.
Dans les sept (7) jours civils qui suivent tout changement de votre adresse aux fins de signification, veuillez en aviser par écrit le tribunal et les autres parties.

CAUTION TO DEFENDANT(S): If you do not **FILE A DEFENCE (FORM 9A)** with the court **WITHIN TWENTY (20) CALENDAR DAYS** after you have been served with this Plaintiff's Claim, **JUDGMENT MAY BE OBTAINED WITHOUT NOTICE AND ENFORCED AGAINST YOU.**

AVERTISSEMENT AU(X) DÉFENDEUR(S): Si vous ne **DÉPOSEZ PAS DE DÉFENSE (FORMULE 9A)** auprès du tribunal **AU PLUS TARD VINGT (20) JOURS CIVILS** après avoir reçu signification de la présente demande du demandeur, **UN JUGEMENT PEUT ÊTRE OBTENU SANS PRÉAVIS ET ÊTRE EXÉCUTÉ CONTRE VOUS.**

PLAINTIFF'S CLAIM / DEMANDE DU DEMANDEUR

The plaintiff(s) claim(s) from you \$ 10,000, court costs, interest in accordance with
 Le ou les demandeurs vous (Principal amount / \$, ainsi que des dépens et des intérêts conformément
 demandent paiement de Montant en principal)

the Courts of Justice Act or payable by agreement at a rate of 5% % per year, being
 à la Loi sur les tribunaux judiciaires ou exigibles par accord au taux de pour cent par an,

pre-judgment interest of \$ _____ to the date this claim was prepared, and post-judgment
 soit des intérêts antérieurs au jugement de \$ jusqu'à la date de préparation de la présente demande

interest.
 et des intérêts postérieurs au jugement.

To obtain forms and self-help materials to assist you in filing a Defence (Form 9A), attend the nearest Small Claims Court or access the following website: www.ontariocourtforms.on.ca.
 Vous pouvez obtenir les formules et la documentation à l'usage du client qui pourront vous aider à déposer une défense (formule 9A) auprès de la Cour des petites créances de votre localité ou en consultant le site Web suivant : www.ontariocourtforms.on.ca.

TYPE OF CLAIM / NATURE DE LA DEMANDE

(Check as many as apply / Cochez la ou les cases qui s'appliquent)

☐ Construction/Renovation
 Construction/rénovation

☐ Motor Vehicle Accident
 Accident de véhicule automobile

☐ Real Estate
 Bien immeuble

☐ Contract
 Contrat

☒ Negligence
 Négligence

☐ Sale of Goods
 Vente d'objets

☒ Damage to Property
 Dommages causés à des biens

☐ N.S.F. Cheque
 Chèque sans provision

☐ Services Rendered
 Services rendus

☐ Estates/Wills
 Successions/testaments

☐ Professional Malpractice
 Négligence professionnelle

☐ Unpaid Account/Invoice
 Compte/facture impayé(e)

☐ Landlord/Tenant
 Locateur/locataire

☐ Promissory Note
 Billet

☐ Wrongful Dismissal
 Congédiement injustifié

☒ Other: slander title of painting
 Autre :

PLAINTIFF'S CLAIM / DEMANDE DU DEMANDEUR

REASONS FOR CLAIM AND DETAILS / MOTIFS DE LA DEMANDE ET PRÉCISIONS

In separately numbered paragraphs, give a full explanation of what happened, including the dates and places involved. Calculate and explain the amount of money which you are claiming.

Indiquez en détail sous forme de paragraphes numérotés ce qui est arrivé, y compris la ou les dates et le ou les lieux en cause. Calculez et précisez la somme d'argent que vous demandez, en l'expliquant.

If you are relying on any documents or other material, you **MUST** attach copies to the claim. If evidence is lost or unavailable, you **MUST** explain why it is not attached.

Si vous vous appuyez sur des documents ou d'autres pièces, vous **DEVEZ** en annexer des copies à la demande. Si une preuve est perdue ou n'est pas disponible, vous **DEVEZ** expliquer pourquoi elle n'est pas annexée.

see attached documentation
and EXHIBITS

(If more space is required, attach and number separate sheets. / Si vous avez besoin de plus d'espace, annexe et numérotez une ou des feuilles supplémentaires.)

Prepared on:

Fait le :

Sept 18th

, 20 09

(Signature of plaintiff or representative / Signature du demandeur/de la demanderesse ou du/de la représentant(e))

Issued on:

Délivré le :

, 20

(Signature of clerk / Signature du greffier)

**Superior Court of Justice
Cour supérieure de justice**

**Affidavit for Jurisdiction
Affidavit établissant la compétence**
Form / Formule 11A Ont. Reg. No. / Règl. de l'Ont. : 258/98

AFFIDAVIT FOR JURISDICTION / AFFIDAVIT ÉTABLISSANT LA COMPÉTENCE

WHITBY
Small Claims Court / Cour des petites créances de
601 Rossland Rd EAST
Address / Adresse

Claim No. / N° de la demande

(905) 430-5800
Phone number / Numéro de téléphone

Plaintiff No. 1 / Demandeur n° 1

☐ Additional plaintiff(s) listed on attached Form 1A.
Le ou les demandeurs additionnels sont mentionnés
sur la formule 1A ci-jointe.

OTAVNIK
Last name of individual or name of company, etc. / Nom de famille du particulier ou nom de la compagnie, etc.
JOSEPH
First given name / Premier prénom
299 DOWY CRT, OSHAWA, ONT
Second given name / Deuxième prénom
Address for service (street & number, unit, municipality, province) / Adresse aux fins de signification (numéro et rue, unité, municipalité, province)
L1G 6G7
Postal code / Code postal
(905) 738-2133
Phone no. / N° de téléphone
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Representative / Représentant(e)
LSUC # (if applicable) / N° du BHC (le cas échéant)
Address for service (street & number, unit, municipality, province) / Adresse aux fins de signification (numéro et rue, unité, municipalité, province)
Postal code / Code postal
Phone no. / N° de téléphone
Fax no. / N° de télécopieur

Defendant No. 1 / Défendeur n° 1

☐ Additional defendant(s) listed on attached Form 1A.
Le ou les défendeurs additionnels sont mentionnés
sur la formule 1A ci-jointe.

BAKER
Last name of individual or name of company, etc. / Nom de famille du particulier ou nom de la compagnie, etc.
RICHARD
First given name / Premier prénom
10 KING STREET EAST, SIXTH FLOOR, TORONTO, ONT
Second given name / Deuxième prénom
Address for service (street & number, unit, municipality, province) / Adresse aux fins de signification (numéro et rue, unité, municipalité, province)
M5C 1C3
Postal code / Code postal
(416) 863-1717
Phone no. / N° de téléphone
(416) 368-3133
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Representative / Représentant(e)
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Phone no. / N° de téléphone
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Dans les sept (7) jours civils qui suivent tout changement de votre adresse aux fins de signification, veuillez en
aviser par écrit le tribunal et les autres parties.**

Claim No. / N° de la demande

My name is
Je m'appelle

JOSEPH OJAVNIK

(Full name / Nom et prénoms)

I live in
J'habite à

OSHAWA

(Municipality & province / Municipalité et province)

and I swear/affirm that the following is true:

et je déclare sous serment/j'affirme solennellement que les renseignements suivants sont véridiques :

1. In this action, I am the

Dans la présente action, je suis le/la



plaintiff

demandeur/demanderesse



representative of the plaintiff(s)

représentant(e) du/de la/des

demandeur(s)/demanderesse(s)

(Name of plaintiff(s) / Nom du/de la/des demandeur(s)/demanderesse(s))

2. I make this affidavit in support of the plaintiff's request to note the defendant(s) in default, where all the defendants have been or will be served outside the court's territorial division [R. 11.01 (3)].

Je fais le présent affidavit à l'appui de la demande du demandeur de faire constater le ou les défendeurs en défaut étant donné que tous les défendeurs ont reçu ou recevront la signification en dehors de la division territoriale du tribunal [par. 11.01 (3)].

3. The plaintiff is entitled to proceed with this action in this territorial division because this is:

Le demandeur a le droit de poursuivre cette action dans cette division territoriale parce que :



where the event (cause of action) took place.

l'événement (cause d'action) a eu lieu dans cette division territoriale.



where the defendant lives or carries on business.

le défendeur réside dans cette division territoriale ou y exploite une entreprise.



the court nearest to the place where the defendant lives or carries on business [R. 6.01].

c'est dans cette division territoriale que se trouve le greffe du tribunal qui est le plus près de l'endroit où le défendeur réside ou exploite une entreprise. [règle 6.01].

Sworn/Affirmed before me at
Déclaré sous serment/Affirmé
solennellement devant moi àWhitby
(Municipality / municipalité)

in

à/en/au

(Province, state or country / province, État ou pays)

on
le

Sept 18

, 20

09

Commissioner for taking affidavits

Commissaire aux affidavits

Amanda Christine Bawks, a Commissioner, etc.

Regional Municipality of Durham,

for the Government of Ontario,

Ministry of the Attorney General.

Expires June 14, 2012.

(Type or print name below if signature is illegible.)

(Dactylographiez le nom ou écrivez-le en caractères d'imprimerie ci-dessous si la signature est illisible.)

Joe Ojawnik

Signature

(This form is to be signed in front of a lawyer, justice of the peace, notary public or commissioner for taking affidavits.)

(La présente formule doit être signée en présence d'un avocat, d'un juge de paix, d'un notaire ou d'un commissaire aux affidavits.)

WARNING:

IT IS AN OFFENCE UNDER THE CRIMINAL CODE TO KNOWINGLY SWEAR OR AFFIRM A FALSE AFFIDAVIT.

AVERTISSEMENT :

FAIRE SCIEMMENT UN FAUX AFFIDAVIT CONSTITUE UNE INFRACTION AU CODE CRIMINEL.

Affidavit of Joseph Otavnik

The painting which is the subject of this suit has clearly had its title slandered and defamed by the characterizations of it as being "Counterfeit", "Inferior", "Inauthentic" etc on www.morrisseau.com. I include as per Exhibit "1" these characterizations with a copy of the picture from the web site www.morrisseau.com. The owner of this web site did so in co-ordination with the Kinsman Robinson Gallery and the Norval Morrisseau Heritage Society. The Norval Morrisseau Heritage Society is a phony construct who has been used to create and spread distortions about the actual state of the market for the works' of Norval Morrisseau. The head of this construct Mr. Baker has been made aware of the misrepresentations promoted and fostered through this construct and has done nothing to disassociate himself from that conduct. Moreover, I will point out how Mr. Baker's own public statements have contributed to the state of the marketplace for the works' of Norval Morrisseau. I further enclose Exhibit "2" where in motion court in case # 09-82782 Mr. Baker agreed to inspect a painting from that same site. I did not request nor make any representations to Mr. Baker and Mr. Baker interjected himself into the matter by agreeing to inspect the painting and then was to offer an opinion on its authenticity. As per Exhibit "3" it is clear the Mr. Baker will now not offer an opinion on that painting. The damage to the marketplace and to this painting is clear-the existence of this web site and its initial promotion by the Kinsman Robinson Gallery and the Norval Morrisseau Heritage Society have been devastating. I will if necessary file the particulars of CV-08-00366828 in which several art dealers clearly lay out and describe the damages done to their businesses and reputation due to this web site and the whole construct to question the integrity of the marketplace for the artist-that construct which I have previously mentioned includes Mr. Baker and the Norval Morrisseau Heritage Society. The appropriate value of this painting and the basis for my claim is \$10,000. I estimate this amount by the method of comparables which simply said is the price of similar paintings sold by Norval Morrisseau in the marketplace. It represents true prices paid by parties who deal at arm's length with each other.

As laid out in the statement of claim Mr. Baker as the lawyer for the Norval Morrisseau Heritage Society has in concert with the Kinsman Robinson Gallery helped perpetuate the "myth" of fake Norval Morrisseau painting in the marketplace. I will first concentrate on the misrepresentations of the Kinsman Robinson gallery and then prepare a whole section on how Mr. Baker and the Norval Morrisseau Heritage Society has contributed to the myth of fakes in the marketplace. I repeat it should be know that all this information was presented to Mr. Baker and still he did nothing to disassociate himself of the committee with respect to the Kinsman Robinson Gallery.

Misrepresentations By Kinsman Robinson

It is our belief that this submission will affirm the fact of the ongoing nature and context of the misrepresentations being made and resulting damage done to the competitive process and to the marketplace. The marketplace for the artwork of Mr. Morrisseau is now wrought with confusion, rumour and innuendo. It is our submission that it was Mr. Robinson et al who started these rumors and have disseminated them in a carefully orchestrated manner through the various media outlets since May 18th, 2001 to present. These parties have done so in a deliberate, calculated manner in order to gain control of the market and gain a monopoly on how a authentic Norval Morrisseau is to be defined and what is and what is not, in fact, an authentic work of art by Norval Morrisseau. Mr. Robinson et al have even enlisted some of Canada's most respected National galleries/public institutions and an art industry association in his scheme by using their good name(s) to achieve his goal.

Norval Morrisseau and his importance to Canadian Art

Norval Morrisseau burst into the art scene on September 12th, 1962 at the Pollock Gallery in Toronto where his first show sold out in less than 24 hours. Mr. Morrisseau was an internationally known artist since then and has had many shows and exhibitions that were done around the world. Among his many accomplishments and highlights of his career include his sixteen (16) foot mural for the *Indians of Canada Pavilion* at Expo 67; his receiving the Order of Canada on December 18th, 1978 and his inclusion in 1989 *Magicians of the Earth* on the occasion of the Bicentennial of French Revolution at the Pompidou Centre in Paris. Mr. Morrisseau has the singular distinction of being the only artist from Canada to be invited to this prestigious event. He has graced the cover of *Time* and *Maclean's* magazine etc. In 2005, a documentary film about his life was shown on CBC's called *A Separate Reality-The Life & Times of Norval Morrisseau*. Before this, the last Canadian painter so honored was Tom Thomson of the Group of Seven. In 2006 Mr. Morrisseau became the first First nations Artist to have a solo exhibition in the 136 year old history of the National gallery of Canada. In 2007 he became the first Canadian First Nation artist to have a show at the Smithsonian National Museum of the American Indian at the George Gustav Centre in New York, City, NY. Please refer to Exhibit # 4 which is a *Curriculum Vitae* of Norval Morrisseau.

During the above time timeframe (1962-2001) there was never any suggestion in any article, art review magazine etc ever the idea that there were "fake" Norval Morrisseau paintings' in the marketplace. It was almost four decades after his initial show that the notion of Norval Morrisseau "fakes" ever came up in any newspaper, art magazine etc in any way, shape, matter or form until it was done by Mr. Don Robinson in the *National Post* article dated May 18th, 2001.

I now refer to Exhibit 5 which is the National Post Article of May 18th, 2001 called "Morrisseau fakes alleged". In the second paragraph of the article Mr. Robinson states that he was suspicious of the authenticity of 23 paintings brought to him by another collector (Mr. James White) who purchased them at Kahn Auctions.

"Donald Robinson, Mr. Morrisseau's gallery representative in Toronto, was approached last month by a collector who bought several paintings attributed to Mr. Morrisseau at Kahn's County Auctions in Pickering Ontario. The collector wanted the works appraised, but Mr. Robinson was suspicious of their authenticity"

I enclose Exhibit # 6 which is a statement from that collector. In that statement it is clear that Mr. Robinson told that individual that he had bought wisely and to insure the paintings because they were valuable. Mr. Robinson in the same National Post article only suggests that he bought "some" paintings. He is deliberately vague on this issue and does not even mention Mr. Morrisseau's name or disclose what he actually bought at Kahn Auctions. In fact, later on in his Blog from the Kinsman Robinson gallery he denies this suggestion that he bought "some" but I will deal with that in this submission..

"I had long thought there was something wrong with these paintings" said Mr. Robinson who bought some himself."

The fact is that over the period between late 1999 and early 2000 Mr. Robinson not only purchased 28 paintings from the auction house for a total of \$ 54,000. (Exhibit # 7), he openly encouraged other people to buy them and he also unsuccessfully bid on another 40 to 60 paintings from the same auction house (Kahn Auctions). Enclosed please find a copy of the actual receipts and statements from the owner of Kahn Auctions Mr. Randy Potter. Please also refer to Exhibit # 8 which is a statement from Donna Shea Vice President of Kahn Auctions. In that statement Mr. Robinson was not worried about the authenticity of the paintings at Kahn Auctions but rather the fact that he (Mr. Robinson) couldn't sell them as fast as they were coming into Kahn Auctions. Mr. Robinson even tried to get the individual (Mr. David Voss) who supplied Kahn Auctions to sell to him directly in an attempt to bypass Kahn Auctions. I enclosed a statement as per Mr. David Voss (as per Exhibit 9). In it Mr. Voss states

"The collector friendships are more important to me than selling art so I send Randy Potter painting paintings by mostly Morrisseau to sell at auction. It was shortly after this that I had my first contact with Robinson. He told me to leave the auction house and to do only business with him and he could make me more money. Normally I would have taken this offer but it was the way he said it, more like a threat than an offer"

The rest of Mr. Voss statement which is also part of Exhibit # 9 echoes the same. Mr. Robinson wanted to buy directly from Mr. Voss. Why would Mr. Robinson do so if he thought the paintings supplied by Mr. Voss to Kahn Auctions were "fakes". The fact is and it will be shown that Mr. Robinson only called the paintings from Kahn Auction "fakes" after Mr. Voss thwarted his attempt to sell to him (Don Robinson) only.

Mr. Robinson also points out in the National Post article of May 18th, 2001 that the alleged "fakes" came through his attention via the RCMP in Thunder Bay. Moreover, Mr. Robinson also states in the article that Mr. Morrisseau told him that Mr. Morrisseau even knew who were paintings these alleged "fakes".

"Allegations of forgeries of Mr. Morrisseau's work are nothing new. "He's being telling us for years about the fakes and even the people who were painting them" Mr. Robinson said" and

"The allegations of fakes first came through Mr. Robinson's attention through the Thunder bat RCMP, which had received a tip through Crime-stoppers."

These are I believe deliberately false statements with the intent of placing the artwork of Mr. Morrisseau in the secondary market into question. If Mr. Robinson says Norval told him he knew who these people were why hasn't he found and identified these people. Mr. Robinson talks about an RCMP investigation. I believe that no complaint was ever filed and no investigation was ever undertaken. The reference to Crime-stoppers is ridiculous and the RCMP does not even have jurisdiction in any such matter. Mr. Robinson's assertion that "Allegations of forgeries of Mr. Morrisseau's work are nothing new " is false. It was Mr. Robinson who was the first person to every bring up this subject and I will go into that issue in detail later on in this submission.

Please now refer to Exhibit # 10 which is a letter from Don Robinson to his clients dated May 19th, 2001 the day after the National Post article. Please pay special attention to the first sentence. "Some extraordinary information has come to our attention that may be of Interest to you". This is clearly misleading and is clearly misrepresentation. Mr. Robinson was the sole source behind the allegation of Norval Morrisseau fakes for the National Post article called "Morrisseau fakes Alleged". In this letter to his clients he makes it sounds as if he just stumbled upon the information. Mr. Robinson fails to mention the name of the auction hall (Kahn Auction) and fails to mention the fact to his own clients that he bought over 28 painting from the source (Kahn Auction) which he calls "fakes" in his letter to them. Moreover, Mr. Robinson in the same letter admits to communicating these statements to an even larger audience Live on National TV.

In the same letter to his clients he mentions a painting by Robert Davidson the he said he bought from Kahn Auctions which he called a "fake" also. The artist (Mr. Davidson) never in fact called the painting in question a "fake" and never communicated anything to

Mr. Potter. The mentioning of this "fake" by Mr. Robinson is to purposely reinforce this notion of "fakes" in the marketplace being associated with an unscrupulous seller-Kahn Auctions-which again I point out to the reader Mr. Robinson did not name in the National Post article nor in his letter to his clients. Mr. Robinson is simply trying to discredit Kahn Auctions which was and is the single largest seller of Mr. Morrisseau's artwork. Mr. Randy Potter of Kahn Auctions denied that the Robert Davidson painting bought by Don Robinson was a "fake" but he nevertheless refunded Mr. Robinson his money (\$250) for the painting as per Exhibit # 7. It is also fact that Mr. Robinson never, never asked for a refund on the 28 paintings of Norval Morrisseau he personally bought at Kahn Auctions.

Mr. Robinson never publicly explained the whereabouts or status of these twenty-eight (28) paintings. Even when on June 10th, 2005 a longtime collector of Norval Morrisseau works informed the Norval Morrisseau Heritage Society that he personally saw Mr. Robinson purchase works of art by Norval Morrisseau from Kahn Auctions as per Exhibit # 11 Mr. Robinson was silent and made no public statement. Mr. Robinson's lawyer R. Brendan Bissell responded to Mr. Humphries as per Exhibit # 12. Please note point # 5 where Mr. Robinson's lawyer states that Mr. Robinson was "taken" in and these works were removed from the market. It is our belief that Mr. Robinson sold these paintings to his clients in the normal course of business. Please refer back to Exhibit # 5, the statement from Donna Shea the Vice President of Kahn Auctions. Please note in item 4. That Mr. Robinson never complained about the authenticity of the paintings but "was worried that he could not sell the Morrisseau paintings that he bought fast enough as they were coming into Kahn Auctions". He now wants you to believe that in fact he never sold these paintings. He wants you to believe that he bought the paintings found out they were "fakes" never asked for his money back and kept them for future reference and even available as evidence in the continuing investigations in the future.

It is interesting to note that Mr. Robinson was silent on the issue of these 28 Norval Morrisseau painting he bought between September 1999 and March 2008, which he says were "fakes" but still in his possession. It was only after the existence of these twenty eight (28) painting were made known in a web site to the members of the Norval Morrisseau Heritage Committee (NMHS), (as per Exhibit # 13) on Friday August 29th, 2008 did Mr. Robinson ever publicly acknowledge them.

On the Kinsman Robinson blog on Saturday August 30th, 2008 Mr. Robinson has the title of an Entry called Fighting Smears:Auction canvases which should be labeled Exhibit # 14. This entry on the blog was posted on the blog on Saturday but the date on top of the article is Thursday August 28th, 2008 one day before Mr. Otavnik actually emailed the truth about these 28 painting to the individual member(s) of the NMHS. Interesting again that Mr. Robinson was silent on this issue, Mr. Otavnik sent an email and then his respond is backdated to the day before Mr. Otavnik sent it.

On the Kinsman Robinson blog on August 30th, 2008 Mr. Robinson as per Exhibit #15, called "Our favorite top 10 lies" page 2, item 4 Mr. Robinson contends that the 28

paintings were delivered to the office of a board member of the Norval Morrisseau Heritage Committee. I believe that these paintings have been sold and are not being held by anyone. I have communicated such as per Exhibit # 13 to the various members of the Norval Morrisseau Heritage Society. To date I have received no acknowledge or reply.

Appraisals done by Kinsman Robinson for painting(s) purchased from Kahn Auctions

Kinsman Robinson claims to be experts with respect to the authenticity of Norval Morrisseau paintings. I have an appraisal done by Kinsman Robinson from a client who clearly states that the painting was purchased at Kahn Auctions. The appraisal is dated August 18th 1999 which is before the time that Mr. Robinson started buying Norval Morrisseau paintings from the same auction house (Kahn Auctions). Mr. Robinson started buying his paintings from Kahn Auction shortly after this appraisal starting in September 29th, 1999 as per Exhibit # 7. The other appraisal is dated October 30th, 2001 which is after the date of the National Post article. It was also purchased at Kahn Auctions. Kinsman Robinson has appraised two (2) paintings from the source he claims sold "fakes" as per Exhibit # 16. In both cases Kinsman Robinson accepted the authenticity and provenance of the paintings, placed a value on them and issued the appraisals. It is our position that Mr. Robinson knew of the source of the paintings, he appraised them, started buying from Kahn Auctions and only questioned their authenticity after he realized he couldn't control the market for them.

Robinson's Questioning of the Morrisseau Secondary Market

The various misrepresentation of Don Robinson have to be put in content of his overall scheme to control the market for Norval Morrisseau works' of art. The previous mentioned article in the National Post is designed to question the secondary market for the works' of Norval Morrisseau. The next public statements of Mr. Robinson in the Toronto Star article of June 5th, 2004 named " Say it isn't so, Morrisseau" (as per Exhibit 17) the article states

"It's the secondary market" says Robinson, that's the problem."

Mr. Robinson further states in the same article

"As part of this secondary market, the Maslak McLeod Gallery at 118 Scollard Street has received a warning from Gade Vadas and Kinsman Robinson that it is advertising for sale a number of "fake" Morrisseaus".

The problem with this statement is that Mr. Morrisseau was a well known and internationally famous artist for over twenty five (25) years before Mr. Robinson says Morrisseau choose him to be his agent. The secondary market is now defined as the period of Mr. Morrisseau career that wasn't with the Kinsman Robinson Gallery according to Mr. Robinson. This is incorrect. At any time including his time with his former agent Jack Pollock any works' done by Mr. Morrisseau would constitute the primary market at that time. By definition any sales transaction done after the initial sale

would constitute a secondary market. Mr. Robinson is making the impression that works' in the secondary market are questionable and should not be as trusted as primary (or First sales and he just happens to be Mr. Morrisseau primary (or original) dealer now. There is an implication that primary pieces should be viewed as being more authentic than previously sold pieces which would constitute the secondary market.

The fact that the sale of any product after the initial sale is in the secondary market. If you buy a share of BCE today for example, that's the secondary market because you are buying the stock and somebody else is selling it. By referring it as the "secondary market" Mr. Robinson is implying that works' of Norval Morrisseau that are being resold are different and/or not as good as the "primary market" which to his suggestions imply a direct sale from him to you the purchaser. This implied difference in potential quality or authenticity to differentiate between the two markets is a deliberate attempt to mislead and confuse buyers in the marketplace. Given that Mr. Morrisseau painted a majority of his work before Mr. Robinson claims to have exclusive representation of Mr. Morrisseau is an attempt to discredit the quality or authenticity of everything Norval painted before Mr. Robinson says he represented him. I will get to this actual or implied exclusivity of the artist later on in this submission.

Also if Mr. McLeod is selling "fakes" as Mr. Robinson directly states in the article why hasn't he pursued action against Mr. McLeod. Mr. McLeod is in Toronto, everybody knows where he is. If he is violating the laws and copyright etc then sue him. Mr. Robinson is accusing Mr. McLeod of some very serious charges. I would suggest that if Birks' Jewellers were selling "fake" Gucci's they (Birks') would face the legal consequences yet these people have never pursued anyone in court.

Robinson's attempt to Control the Market

I have already established as per Exhibit # 9 and the several statements given by Mr. David Voss that Don Robinson did indeed try to get Mr. Voss to stop supplying Kahn Auctions and sell to him directly. This in conjunction with his attempts through the media, his public advertisements which indicate that he is the sole authorized agent for Norval Morrisseau and his public statements which bring into question the secondary market is a clear attempt to control the market. It is my position that Mr. Robinson has made two separate sets of representations that are part of an overall campaign to adversely effect competition and distribution channels for the artwork of Norval Morrisseau.

- 1) It is he (Don Robinson) who is the only part capable of authenticating the artwork of Norval Morrisseau ?
- 2) Don Robinson representations of the actual relationship between Norval Morrisseau and Robinson-namely that Robinson is the exclusive or official representative of

1. Don Robinson is the only party capable of determining authentic Morrisseaus.

1. In the May 19th, 2001 letter to his clients, the day after the article on Norval Morrisseau "fakes" Mr. Robinson alleges that certain Morrisseau paintings that are in the marketplace are not authentic. Even though he was the source of this information he makes it clear to his clients that they should go to him to get their Norval Morrisseau paintings appraised by him because only he and his firm (Kinsman Robinson) were "the official representatives of Norval Morrisseau" as per Exhibit # 10.
2. I submit as per Exhibit # 18 a statement from a couple Tammy and John MacDougall who contend that Don Robinson said that works of Norval Morrisseau sold by other reputable galleries in the Toronto area should be looked upon suspiciously and that he (Don Robinson) is the sole arbiter of what is and what is not an authentic work of Norval Morrisseau.
3. In the National Post article of May 18th, 2001 it is only Mr. Robinson who is casting doubts and giving an opinion on so called Norval Morrisseau "fakes" in the marketplace. If he is such an expert then how did he get as the lawyer says as per Exhibit # 13 "taken in". Thus Mr. Robinson in effect holds no special ability to discern between real and allegedly fake Morrisseau. Indeed, Mr. Robinson by his own actions and admissions was "taken in" twenty-eight (28) times. After the collector (Mr. James White) asked Mr. Robinson why all of a sudden he considered the artwork that he was to appraise a fake Mr. Robinson contends that it was Norval Morrisseau who called them fakes. The question is If Mr. Robinson was such an expert then why would he need Norval's input in assessing the authenticity of his works? Mr. Robinson further contends that one of the main reasons he was suspicious of the artwork of Norval Morrisseau from Kahn Auctions is that the work was "shoddy". It is a well known fact that Mr. Morrisseau was a transient, had a history of substance abuse and frequently painted in exchange for food and shelter and was not always sober when he painted. Indeed, in the CBC documentary in the series "Life and Times" it was well established that in the 1970's Mr. Morrisseau accepted cocaine in lieu of money for his work. Moreover, he was put up in a hotel in Toronto by a well-known mobster who supplied him with booze and drugs in lieu of money. It is also a well known fact that when Norval was homeless and destitute in Vancouver he openly painted on the streets of Vancouver for bottles of wine. Indeed, it was on the streets of Vancouver where he met his so called manager Mr. Gade Vadas. They were both homeless. The fact that some of his work was "shoddy" given Mr. Morrisseau's circumstances throughout his life is irrelevant. The artwork can be "shoddy" and still be an original.
4. Mr. Robinson has also tried to extend his knowledge of Norval's art to that of an expert by claiming certain features of Norval's art that are shared by

nobody else. In his web site blog as per Exhibit # 14. In it he states that "After investigation, we found that none of these paintings had heavy black, faded writing on the back. Even today. I have never seen a Morrisseau painting, with a provenance traceable back to the artist, with this kind of writing on the back". I will deal with the issue of provenance latter on in this submission but I ask the reader to keep this in mind. This ideal that Norval rarely if ever signed the back of his painting is clearly intended to cause confusion in the marketplace. This contention with respect to the work of Norval Morrisseau is completely false, misleading and clearly wrong. Mr. Morrisseau at times only signed the front of his painting, sometimes only the back with his Cree syllabics on the front, sometimes only his Cree syllabics on the front etc. There was no set manner in which Norval signed his work throughout his career.

5. Please refer to Exhibit # 19, which is a submission by Irene Seetner to the Thunder Bay Art Gallery. All three (3) works of art by Norval Morrisseau were signed in black acrylic on the back. This submission was approved by the Registrar Gail Fikis. The paintings were then declared authentic by the curator Mr. Glenn Allison of the Thunder Bay Art Gallery and then by the Board of the Thunder Bay Art Gallery. It was then further vetted and approved by the Cultural Property Review Board (CPRB) in Ottawa and approved. Moreover, in the Toronto star article dated June 5th, 2004 (Exhibit # 17) "Say it ain't so Morrisseau" Mr. Robinson states that "I've seen him paint and sign his work". I have also submitted a statement as per Exhibit # 20 in which Mr. Marlowe Goring states that he personally saw Mr. Morrisseau sign the backs of his painting.
6. In *Moniz Vs CTV Globemedia Publishing and Val Ross* (CV-07-1776-SR) the authenticity of several paintings for sale on Ebay was put into question by an article written in The Globe & Mail by the reporter Val Ross. Enclosed please find as per Exhibit # 21 a detailed forensic handwriting analysis report from DEC Inc. That report concludes that the signatures on the backs of the paintings put in question in the Globe & Mail article were in fact signed in black, in acrylic by Norval Morrisseau. The conclusion of the forensic report is definitive and contradicts and refutes the public assertions made by Mr. Robinson et al in the marketplace-namely that Mr. Morrisseau "rarely if ever signed the back of his paintings". The Globe & Mail and Val Ross, Patricia Feheley, Mr. Vadas, Mr. Milrad and Robinson have never produced any evidence to the contrary. Please now refer to Exhibit # 9 and a statement as of November 10th, 2008 by Mr. David Voss. In it Mr. Voss points out the fact that he and other art dealers sold their paintings through Don Robinson and he (David Voss) knew for a fact that all of these paintings were signed and dated on the back by the artist-Norval Morrisseau. As per Mr. Voss's statement

“ It was the mid 90’s that I met several business men who showed an interest in Norval’s work. We bought and traded art from a large array of outlets. Some of the individuals, who I traded with, asked not to be named. They sold their paintings through Donald Robinson and I know for a fact were all signed and dated on the back. Something that seems to be in varying degree of question today”

7. In Otavnik (Plaintiff) Vs Vadas (Defendant) as per Exhibit # 22, where Mr. Otavnik sued Mr. Gabe Vadas (who claimed to be Norval’s manager) Mr. Robinson refused to give an opinion on Norval Morrisseau painting Mr. Vadas called a fake. Mr. Robinson claims to have special knowledge, he claims to be an expert and yet when Mr. Otavnik sued Mr. Vadas and Mr. Robinson dealt with Mr. Vadas in that Mr. Vadas supplied Mr. Robinson with current works of Norval- he was silent. Please take note of the date of the lawsuit April 16th, 2007 and the date that Norval Morrisseau died December 4th, 2007. Please now refer to Exhibit # 23 which is the 1st pre trial endorsement of June 26th, 2007. It clearly states in point 4 that the plaintiff (Otavnik) was to provide a copy of the painting to the defence in order for the defence to inspect the painting and have their experts examine it for a period not to exceed two (2) weeks. The fact is that defence failed to have their experts inspect it before Mr. Morrisseau died despite repeated attempts from the plaintiff to deliver the painting to the defence. In the second pre-trial endorsement of March 28th, 2008 (as per Exhibit # 24) the order of June 26th, 2007 was extended to a period of four (4) weeks. Mr. Vadas and Mr. Robinson have had a close relationship since the late 1980’s. In pre-trial Mr. Otavnik asked Mr. Otavnik asked Mr. Vadas why he just didn’t take the painting to Don Robinson since he (Gabe Vadas) was Norval’s so called manager and Mr. Robinson claimed to be an expert and the “official agent of Norval Morrisseau”. Mr. Vadas declined to comment. The point is that the source of the painting that Mr. Vadas called a fake in the Heffel on-line auction was from Kahn (now Randy Potter Auctions) which was the same source that Mr. Robinson previously brought from which he knew that I knew.
8. In Otavnik Vs. Richie Sinclair (SC 09 82782) as per Exhibit # 25 please find a statement from Kathleen McMullan Debassige. In it she highlighted the provenance of the painting (Rolf Schneider), the size, dated and title of the paintings which were at the Nimkee Gallery of which she was a co-owner. The statement also shows the front and back of the paintings in the Gallery which clearly show the signature of Norval Morrisseau and date and title of the paintings and pictures of Mr. Gabe Vadas and Norval Morrisseau at the gallery with the paintings. Despite this Mr. Vadas and Mr. Robinson et al keep spreading the ridiculous notion that Norval did

not sign the back of his paintings. This is a deliberate attempt to confuse confusion in the market which I will go into much further detail in the second part of this submission. I leave you now and refer to Exhibit # 26 which is from the blog of the Kinsman Robinson Gallery where Kinsman Robinson Galleries infer that Norval didn't title his paintings on the front- rarely on the back side either.

9. Mr. Robinson claims to be an expert yet he had to rely on Mr. Morrisseau to determine that the paintings that he was to authenticate for Mr. James White were in fact as Mr. Robinson said Norval told him were fake. If he was a expert he could declare them fake but did not because then he could be sued and chose to hid behind the artist.
10. We have a forensic report dated January 24th by DEC which indicates that some of the paintings that Mr. Robinson contended in the National Post Article were in DEC's expert opinion to be consistent with the signatures of known Norval Morrisseau examples. Please see Exhibit # 27.
11. Given the fact that Mr. Morrisseau had a minor stroke in 1994 and the public knowledge that he suffers from Parkinson's disease and his advanced age there is a question as to at what point could he identify his own art. Given his known and admitted substance abuse and the fact that he may even have Korsakoff's syndrome it is doubtful that even Mr. Morrisseau could have identified his own work while he was in the later stages of his life. We even have a statement as per Exhibit # 28 where Mr. Morrisseau contended that a certain painting at a Robinson exhibition was fake, but quickly altered his position after being encouraged by Mr. Robinson to do so. I would also like to point out that the writer (Mr. Karl Comete) even disclosed that he bought a painting from Mr. Robinson in 1993 where the title on the back was signed, faded and virtually unreadable. This directly contradicts Mr. Robinson's public statements. It is consistent with the fact that Mr. Robinson bought from Kahn Auctions which sold paintings from the 1970's which due to aging was signed in black acrylic and faded. Mr. Comete then explains a brief but concise history of the differing types or ways Mr. Morrisseau signed the various pieces of artwork that he did.
12. Enclosed also please find as per Exhibit # 29 an affidavit from Norval with respect to certain paintings by him. In the affidavit dated April 24th, 2003 certain paintings in the Maslak Mcleod catalogue fake and other paintings in the same catalogue are implied to be authentic. The paintings not identified as fake were previously declared so by Robinson and Norval in the Toronto Star article of June 5th, 2004 article. Mr. Morrisseau even claimed that the painting called "Spiritual Battle for Life" but was featured in the Globe and Mail as per Exhibit # 30. This is in contrast with Norval's affidavit as per Exhibit # 31 dated March 14th, 2003 he identifies are fake

are not identified as such in the affidavit of April 24th, 2003. It can't be both and it is our position that Mr. Robinson knew this.

2. Is Don Robinson the official agent for Norval Morrisseau ?

1. Mr. Robinson has implied that his special relationship with Mr. Morrisseau conveys with that a standing above other galleries with respect to the implied authenticity of Norval's work in the secondary market. I believe I have covered that issue in the sense even if he was Norval's official representative that fact would not have a bearing on whether a painting Mr. Morrisseau painted forty (40) or so years ago was authentic or not. I believe that in fact that Mr. Robinson is not Mr. Morrisseau official agent nor does he have any contract with Norval. Thus, he stated he was Norval's official representative when in fact he was not. Enclosed please find Exhibit # 32 which is the defence to the plaintiff claim in Otavnik (Plaintiff) Vs Vadas (Defendant) in SC-07-51428. Mr. Vadas has claimed to be Norval's manager since they met on the streets of Vancouver when they were both homeless. In Schedule "A" point 2) & 3) Mr. Vadas points to a Power of Attorney as giving him the authority to act on Norval's behalf. Before, the case was settled out of court in favour of the plaintiff it was revealed in pre-trial that Mr. Vadas had no power of attorney and certainly no contract between himself and Mr. Morrisseau. Thus, it was Gabe Vadas who dealt with Don Robinson (of Kinsman Robinson) and he had no authority to deal on behalf of Norval Morrisseau.

It is my contention and belief that Mr. Robinson knew this and chose to deceive the public and the marketplace by stating that he was the "official agent of Norval Morrisseau" knowing that he wasn't. Moreover, Mr. Robinson advertised in the Globe & Mail as being the sole authorized representative of Norval Morrisseau. In doing so Mr. Robinson is trying to cast doubt on all dealers not affiliated with the exclusive or official representative of Norval Morrisseau-himself.

Basic Market Construct of Kinsman Robinson Gallery and The Norval Morrisseau Heritage Society and Mr. Baker

Mr. Robinson after claiming that there were widespread fakes the marketplace through various media outlets, then set up the Norval Morrisseau Heritage Society (herein referred to as NMHS) to be the conduit to be used by the public/art buyers to determine what is and what is not a authentic Morrisseau. The NMHS facilitated, aided and abetted Mr. Robinson by not using due diligence and care in the public statements attributed to their committee by Mr. Robinson. The NMHS showed their willful negligence of the facts that even when other independent third parties informed them of the misrepresentations with respect to Mr. Robinson et al. Even when

they were confronted by these people and the facts they took no steps to ascertain the truth or try to disassociate themselves from Mr. Robinson et al. They clearly failed the reasonable man test in that had they bothered to investigate the real facts after being reasonably informed Mr. Robinson's attempt to control that market and spreading of misinformation with respect to the state of the market with respect to Mr. Morrisseau's could have been easily stopped. These parties especially the Mr. Baker have been and were given access to all the facts and chose to ignore all representations made to them. Any fact or evidence provided to them which didn't fit with the assertions as stated by Mr. Robinson et al were flatly ignored and discounted.

Representations from Third parties which questioned the veracity of Mr. Robinson et al public statements of which were ignored by the NMHS

I now redirect the reader back to Exhibit # 11 dated June 10th, 2005 which is an email from Mr. Martin Humphries to the members of the Norval Morrisseau Heritage Society. The members at that time in this email were

- 1) e.mcluhan@uwinnipeg namely Dr. Elizabeth McLuhan now Regina Public Library and still a member of the NMHS
- 2) ghill@gallery.ca Mr. Greg Hill of the National Gallery then and current member
- 3) lee-ann.martin@civilization.ca Lee Ann Martin of the Museum of Civilization then and now President of the NMHS
- 4) Grayv@ainc-inac.gc.ca Vivian Grey now of the Indian and Inuit Art Center and still a member of the NMHS

In this email Mr. Humphries points out the fact the he personally saw Mr. Robinson buy the artwork of Norval Morrisseau at the public auction (Kahn Auctions) that Mr. Robinson says was selling "fakes" paintings' by Norval Morrisseau in the National Post article of May 18th, 2001. Mr. Humphries is making a clear unequivocal statement that directly contradicts the public statements make by Mr. Robinson and Mr. Milrad. I quote from the email directly

"I have personally seen Mr. Robinson purchase dozens of paintings bearing Morrisseau's signature at public auction, including many at the very auctions that were subject of his 2001 utterances in the press"

Mr. Humphries is clearly pointing out a material fact that if the NMHS had bothered to ascertain it's truth would have realized that Mr. Robinson was not truthful to them or in his public statements. Mr Humphries statements (which are true) directly undermines the credibility of Mr. Robinson and the raison d'être behind the establishment of the NMHS. It is clear that Mr. Humphries is pointing out the lies that have been spread by Mr. Robinson in the marketplace. The members of the committee did read it and sent it to Fraser Milner Casgrain. These people read Mr. Humphries email did nothing but forward it to Mr. Robinson who in turn forwarded it to FMC. This committee which is supposed

to authenticate the works' of Norval Morrisseau did no independent investigation or even respond to Mr. Humphries.

Please note that the response from Fraser Milner Casgrain as of July 19th, 2005 as per Exhibit # 12 is not from Mr. Milrad but from another lawyer Mr. Bissell. Let's refer to point # 5 on page 2

" You have stated you have personally seen Mr. Robinson purchase dozens of paintings bearing Morrisseau's signature at public auction. Mr. Robinson was in fact taken in in 1999 and 2000 when these fakes first appeared on the market and did purchase some in the belief they were authentic until in conversations with Mr. Morrisseau it became clear there were a group of people creating copies and fake Morrisseau works. These work were removed by Mr. Robinson and will never be identified as works by Norval Morrisseau. They will also be available as evidence in the continuing investigations."

If Mr. Robinson has to depend upon Norval Morrisseau because he can't tell what is and what is not an authentic Morrisseau and he is the expert then how can the Norval Morrisseau Heritage Committee do so? It is my submission and contention that Mr. Robinson and Mr. Milrad and Mr. Bissell never disclosed the content of this to the Norval Morrisseau Heritage Society.

Thus, Mr. Robinson admits that he was taken in twenty eight times (28) times. It is interesting that Mr. Bisell puts an actual number on it because Mr. Humphries only stated that he saw Mr. Robinson buy "dozens " of painting. These painting we submit were sold and Fraser Milner Casgrain knew it as per Donna Shea's statement as per Exhibit # 8 and that's why the new lawyer of record at (FMC) was appointed. Mr. Milrad was front and centre for over five (5) years but yet he didn't respond to Mr. Humphries email.

It's clear that he cannot because of his past statements and what he knows to be the truth. These painting were sold by Mr. Robinson and Mr. Milrad and FMC know this and are deliberately misleading. Please also note that in Mr. Bissell's response to Mr. Humphries there is no indication that Mr. Bissell communication the contents of his response to any members of the NMHS.

Jackie Bugera-Bearclaw Gallery

Enclosed please find a per Exhibit # 33 a true copy of letter sent by Mr. Milrad to BearClaw Gallery inferring and suggesting that she (Jackie Bugera) was selling fakes. Mr. Milrad even provides a list of the paintings that he says Mr. Morrisseau identified as "fakes". As it turns out and as the gallery owner (Jackie Bugera) pointed out to the NMHS that several galleries who sold Norval's works' received the same general letter.

Now as per Exhibit # 34 please find a series of emails sent on July 5th, 2005 by Jackie Bugera to the individual members of the Norval Morrisseau Heritage Society, namely Vivianne Grey, Greg Hill, Lee Ann Martin and Elizabeth McLuhan and at that time Mr. Tom Hill. In that email she points out the letter from Mr. Milrad and her concerns about the role of the NMHS. She further communicates her desire to work with them and inform them of Mr. Milrad's use of their committee's name in order to discredit commercial galleries which are involved in the selling of Mr. Morrisseau's art work. It is clear that there is the concern that the NMHS's name is being used to legitimate and differentiate the perceived quality of paintings' for sale by the artist into two distinct unequal categories. Those which have gone through and which have been endorsed by the Committee and those that have not.

It is clear that the Committee members should have been aware of the market consequences of Mr. Milrad's use of the Committee's name. The Committee never acknowledged nor it ever respond to the concerns outlined and highlighted by Jackie Bugera. This was done in light of the previous email sent by Mr. Martin Humphries who one month earlier provided the Committee was some straight forward evidence which directly contradicted Mr. Robinson et al's characterizations' about the state of the market of the works' of Norval Morrisseau. Two independent people who didn't know each other who both highlighted some important information were ignored by the NMHS. These people clearly communicated their concerns but the information provided did not fit the template of what was communicated to them by Mr. Robinson et al it was ignored.

Establishment of Norval Morrisseau Heritage Society

The Norval Morrisseau Heritage Society is a creature of Mr. Donald Robinson. It is controlled by him and operates through him. Since, Mr. Robinson has no control in the sense that Mr. Morrisseau painted what he painted in the thirty years (30) before Mr. Robinson represented Norval Morrisseau, he is trying to determine what is and what is not a authentic piece by Norval Morrisseau now though the NMHS. By creating doubt in the public's eye and then setting up the so called arm's length NMHS to safeguard Mr. Morrisseau's work, Mr. Robinson is attempting to control the market not through sales, but by controlling the levers that will in the public's eye determine what is and what is not an authentic Norval Morrisseau painting. I will show that the Norval Morrisseau Heritage Society is simply not an independent organization and the member's of that organization have made no effort to ascertain the real motives and intentions of Mr. Robinson et al.

The NMHS can only reached/contacted through Mr. Don Robinson's blog which is on his corporate web site and through the email address norvalmorrisseauheritage@gmail.com or through a Post Office box as per Exhibit # 35. The NMHS does not even provide the public with a phone number to contact them. Nobody even knows who the email goes through. For all we know all the email goes through Mr. Robinson who then gives it to

the individual members after he has filtered it etc. In Exhibit # 36 in response to a question on their corporate blog KRG states in the last paragraph

“ KRG is not affiliated with the NMHS. We will act as a conduit to facilitate communication at our sole discretion”

It's clear that KRG decides on what messages if any they choose to send from their own clients' to the NMHS through contact directly from their blog. It is not clear here whether KRG decides on what messages if any are forwarded to the NMHS or what messages were even sent to the NMHS through www.norvalmorriseauheritage@gmail.com. Moreover, who is Crystal Parsons and how can she be contacted?

Please further note that the pronouncement on the web site with respect to the authentication of Norval 's work is completely contradictory to Mr. Robinson's public statements. These people are responsible for the public statements' accuracy that are made in their name or behalf.

As per Exhibit # 35 the statement on the blog tells you that the MMHS will not be able to engage in the authentication of individual works until a later date. It clearly states

“ Until it is well advanced, the Norval Morrisseau Heritage Society will not be able to engage in the authentication of individual works.”

This is said and done in the content of him (Don Robinson) saturating the marketplace with statements which are the complete opposite of which I have already gone into great detail about. I will now show that the members of the NMHS and their respective institutions have had to access and knowledge of information which was in contrast to Mr. Robinson's presentations and they (NMHS) did nothing.

As per Exhibit # 37 dated August 29th, 2008 Joe Otavnik emailed (among others) each member of the NMHS. In that email Mr. Otavnik pointed out two sites www.norvalmorriseaulawsuit.com and www.norvalmorriseaulegaldefencefund.com both which contained information which should have left the Committee with serious doubts about the truthfulness of Mr. Milrad, Mr. Robinson and Mr. Vadas. In it Mr. Otavnik challenges the Committee to produce evidence or proof of one “fake” just one. Mr. Otavnik has never received a response from any member of the NMHS. In the email the two email links provided proof of the fact that Mr. Robinson had bought painting(s) from Randy Potter Auctions –a source he denounced as “fakes” in the National Post article of May 19th, 2001. This is another example of the NMHS simply turning a blind eye to a material fact which should have raised suspicion on the assertions of Mr. Robinson to the NMHS. The fact is, that Mr. Robinson never admitted publicly to the purchase of these 28 painting(s) until the day after proof was sent to the NMHS. As I previously pointed out this admission which is on the Kinsman Robinson blog is dated for the day before the email was sent (August 28th, 2008) to the NMHS it was actually posted the day after the NMHS received this information (August 30th, 2008). This is

clearly an attempt by Mr. Robinson to try and get ahead of this information which has presented to the NMHS and also into the public domain via the aforementioned web sites.

In any case, The NMHS members should have viewed this disclosure at this late date with respect to such a material disclosure with some skepticism. It does appear however, that even this didn't.

I refer now back to the statement of Mr. Robinson as per Exhibit # 14, page 2 .

“ Before I became suspicious of these paintings, KRG sold a small number of lesser works at a different out-of-town auction and we stored the rest of them in rolls for long-term use as a hedge in case our regular supply of paintings, directly from the artist, ceased for any reason. Later, when Norval came to Toronto, I showed him about a dozen of them for the first time. Norval said “I’ve never seen these before.” We thought the best use for all of these canvases was to give them to the Norval Morrisseau Heritage Society (NMHS) for their exclusive use-examples of known fakes discredited by the artist. In 2007, I shipped them all off to the office of a board member of the NMHS. KRG wrote off a significant loss on these purchases. The paintings that I purchases were by a proficient artist, who might more appropriately be labeled “School of Morrisseau”, with his own-easily recognizable –style, but they were not by Norval. “

This statement is dishonest in it's form, structure and content. Mr. Robinson starts out by saying he sold a small number of lesser works of then refers to a dozen of them for the first time. What is he saying ? That Norval called the ones he sold were “fakes “or the ones he has admitted to buying at Kahn Auctions ? Then he claims that the paintings he purchased were not by Norval Morrisseau but by another artist in the so called “School of Morrisseau”. This is an outright lie and deception. Mr. Robinson has already admitted that he was taken in by Mr. Potter and bought 28 “fake” paintings by Norval Morrisseau.

Mr. Robinson says he wrote off a significant loss and delivered them to a member of the NMHS. This implies that he took a taxable deduction on his or his company's tax return. I believe that Mr. Robinson did not actually claim such on his return(s) and these comments are false and are part of a deliberate strategy to deceive the buying public. Mr. Robinson as I have already reported asked Mr. Potter to refund him two hundred and fifty dollars (\$250) for a Robertson Davidson painting that Mr. Robinson bought and Kahn Auctions and which Mr. Robinson claimed was a fake. Please refer back to Exhibit # 7. Mr. Potter promptly refunded Mr. Robinson the \$250. Mr. Robinson wants you to believe that whereas he asked for his money back (\$ 250) for a painting he thought was “fake”, but didn't ask for his money back (\$53,750.23) for the 28 paintings he bought at the same auction which he later said were “fakes”. Mr. Robinson wants you to believe that he didn't ask for his money back even after Mr. Morrisseau personally told Mr. Robinson that the paintings in question were not done by him. This is all claimed in the context that Mr. Robinson was the sole source for the National Post article of May 18th, 2001.

I submit that he sold these paintings in his gallery as I have previously pointed out. Again, Mr. Robinson has never disclosed who he delivered them to and there has never been an admission from this member (NMHS) to confirm the actual receipt of such paintings.

At this point one would think that the members of the NMHS would start to question Mr. Robinson's motives. As per Exhibit # 38 which is an email as of September 13th, 2008 sent to the curator of the Museum of Civilization Dr. Victor Rabinvotich and Maya Graham of the National Gallery Mr. Otavnik pointed out in which articles/dated these public statement were made. This is a clear case of negligence and complicity. The public statements which Mr. Otavnik brought to their attention clearly highlight the difference between what the members of the NMHS state and what Mr. Robinson has said in the public domain. To date, Mr. Otavnik has never received a response from the Museum of Civilization. With respect to Maya Graham please refer further to Exhibit # 39 which is her response to his email as per September 13th, 2008. In it she states that her source of information is www.honoringnorvalmorriseau.blogspot.com. Please note that this web site is no longer in operation since the owner Mr. John Zemanovich of Toronto realized that he was being duped. Mr. Zemanovich can be reached at 1 905 483 2767. Mr. Zemanovich stopped but Mayo Graham has still done nothing to remedy the situation.

The members of the NMHS have aided directly and indirectly the falsehoods spread by Mr. Robinson. They have done so by not trying to become aware or try to ascertain the truth after being told about these misstatements by Mr. Robinson. As per Exhibit # 11 in Mr. Humphries statement to the then current members he stated that he saw Mr. Robinson fake from a source that Mr. Robinson called "fakes". This is a material fact and statement. The members of the NMHS did not respond nor care about the facts. Had the bothered to check the facts they would realize the Mr. Robinson was lying.

Moreover, in his email of September 18th, 2008 named "Don Robinson and 28 Norval Morrisseau Paintings" as per Exhibit # 40 Mr. Otavnik simply point out this basic fact again, after he had done so on many other occasions. He pointed out the lawsuit Otavnik Vs. Vadas and the sales receipts from Don Robinson and statements from other people who again saw Mr. Robinson buy Norval's work from a place he later said was selling "fakes" (Kahn now Potter Auctions) . He keep asking them the question "Where are the 28 Norval Morrisseau paintings bought at Kahn Auction" that Mr. Robinson has admitted to buying but which he says are "fake" but being held for investigative purposes by a member of the NMHS. Again, He (Mr. Otavnik) has never received a response or even an acknowledgement of his email and concerns. Nothing. Mr. Otavnik and Mr. Humphries were not the only people who complained to the NMHS individual members about the conduct of Mr. Robinson et al and the NMHS to no avail.

The NMHS has been trumpeted by Mr. Milrad and Mr. Robinson in the press as being the only legitimate conduit to establish the authenticity of a Norval Morrisseau painting yet the Committee is not independent. I urged the members of the NMHS to at least appear to be independent by getting their own web site, office space etc. Now, since the NMHS does not even have it's own web site, no phone, no office space etc. What exactly are the capabilities of this Committee? Even Mr. Baker who is one of the founding members of the NMHS questions the ability of the NMHS. As per Exhibit # 41 in an article from the Jan 2nd, 2007 article in the Ottawa Citizen Mr. Baker states as per page 2

"The Society has no funding and does its artistic sleuthing on a Volunteer basis".

Mr. Morrisseau is the first First Nations Artist from Canada to reach international fame. More importantly he is one of a few artists who claim that they developed a unique style of art, an art form called "Legends Painting" called the Woodland School of Art. It is referred to "Legends Paintings" because it involves the fact that Mr. Morrisseau was the first artist to translate his peoples' rich cultural oral history of his people's beliefs and tradition to pictures. Many of his own people didn't like the fact that in their eyes he was revealing their culture to white people. Mr. Morrisseau is a man who has received the Order of Canada. A man whose artwork in the secondary market is estimated to be valued in the neighborhood of \$100 million dollars Cdn.

Thus, given the stature and importance of Mr. Morrisseau (the NMHS) should have been well organized and funded. Moreover, given the public pronouncements of Robinson et al this committee (NMHS) should have realized the important and sensitive nature of their role in this overall scheme to discredit all works' in the marketplace of Norval before Mr. Robinsons association with Mr. Morrisseau.

Again, let's go back to the Kinsman Robinson blog which states as per Exhibit # 42

"The Norval Morrisseau Heritage Society (NMHS) was formed in October 2005 at the request of Norval Morrisseau to begin work on a catalogue raisonne-a comprehensive volume documenting every known work created by the artist-in order to deal with the growing number of paintings misattributed to Morrisseau. Their mission is to "research, document and promote the artistic achievement of Norval Morrisseau and to protect the integrity of his art"

The NMHS is trying to convey this picture to the public and art buyers while they have no office space, no web site, no phone and no funding and does artistic sleuthing (ie investigations) on a Volunteer basis. The ideal that these people (the NMHS) with all these shortcomings are now supposed to help determine and be the final and sole arbiter of what is and what will be an authentic piece of art from Norval Morrisseau is ridiculous. In short, the lack of resources of the (NMHS) severely limited their abilities to really perform the function of which has been publicly purported and stated Mr. Don Robinson and the NMHS. If the NMHS could not perform these functions as publicly stated and purported the Don Robinson then they had the obligation to disclose to the

public their actual abilities to perform these function given the status of Mr., Morrisseau and the allegation of many "fakes" piece of art in the marketplace. He like everybody else should have a higher standard.

Mr. Baker then in the same article further states that he was not aware of action by police, or other authorities to stop the production of "fake" Morrisseaus. Mr. Baker is aiding, abetting and reinforcing the impression that there are "fake" Norval Morrisseau paintings in the marketplace. Nobody knows when these people (NMHS members) meet. Nobody knows were they meet. Nobody knows how they determine what is and what is not a Norval Morrisseau. The NMHS does not even indicate when their work is to be finished. No interim annoucments on their progress. Nothing. They operate in the dark.

Mr Baker then points out in the article that people who are considering buying a Norval Morrisseau painting should be taken for authentication to the Art Dealers' Association (ADAC) of Canada. It will get to ADAC later in this submission. On page two Mr. Baker

" Mr. Baker declined to discuss the gallery situation but said consumers should be especially careful of buying on the Internet. If in doubt, according to the society's advisory, works should be taken to the Art Dealers Association of Canada"

Mr. Baker is telling people to go to a member of ADAC . I will later show that the ADAC takes an action role in advising their members to direct their inquiries to the NMHS. This is a deliberate attempt to confuse and mislead the public. Such contradictory statements simply serve no other purpose. However, before that please note what Mr. Baker states on page 1 of this Exhibit # 41

" The fakes are such a problem that the society issued a warning this holiday for shoppers to be aware of what they are buying."

Mr. Baker is commenting on the state of the market with respect to Norval Morrisseau. Clearly such comments have an effect on the commercial value of any such painting(s). He is a member of this so called committee and reinforces the notion of "fakes" in the marketplace. He can't back up these statements. The fakes according to him as such a problem but he has already admitted that he can't point out one single case of such.

" Mr. Baker said he was not aware of any action by police, or other authorities, to stop the production of fake Morrisseaus. It seems that the artist, or his representatives, must take the lead in fighting the problem"

Again, Mr. Baker talks about the "problem" concerning "fakes" but he cannot point to one case. As per Exhibit # 43 which is a copy of that warning reproduced on the Kinsman Robinson blog of August 15th, 2008 called "Cavet emptor" to Morrisseau Buyers

" The Norval Morrisseau Heritage Society (NMHS) issued the following public statement as far back as December 2006: " The NMHS is aware that there are many works available for sale to the public that are falsely attributed to Norval

Morrisseau. When buying a work of art, ask the dealer or art gallery about the origin and source of the work. Did it come from the artist directly, or from some other source? Inquiries about the work's provenance or history are advisable, as it is to become familiar with the artist's work and pricing in other galleries, auctions and exhibitions."

Again, the NMHS is reinforcing the notion of "fakes" in the marketplace. The NMHS has never in fact proven or referred one case of a fake, not one. This public pronouncements by Mr. Robinson on his blog are deliberate. The use of referring to the NMHS is meant to give added weight or credence to his false claims. Again, to date after almost seven (7) years from the date of the initial article in the National Post, Mr. Robinson or the NMHS have ever proven or even suggested they could prove any painting to be a "fake" etc. Not one.

Despite all of the above the members of this Committee and Mr. Robinson portray it as a bastion of integrity and independent of commercial aspirations. It is portrayed as pure. In essence a group of dedicated academic's who are preserving the integrity of Norval's work. It is not and the Committee ought to know it's being used by Mr. Robinson. Moreover, they should have stopped their conduct at least after knowing what the real facts were.

Moreover, it has only been within the last two months that the member name of the Institution of which they represent have been removed from the Kinsman Robinson blog. It just happens that I emailed the members complaining about this and then the member institution name (s) were removed.

Images of Fake Norval Morrisseau Paintings held by the NMHS

Mr. Robinson, Mr. Milrad and Mr. Vadas and the NMHS have all propelled the myth of these so called "fake" Norval Morrisseau paintings by their strategic placements of stories to that effect through the various newspapers and media outlets. In Exhibit # 15 from the Kinsman Robinson blog dated Saturday, August 31st, 2008 labeled " Our favourite top 10 lies" as per a response to point # 8 please note that Kinsman Robinson admits that the NMHS is in the possession of a disk of purported "fake" Norval Morrisseau paintings.

" Well actually, there are two disks full of Norval Morrisseau imagery-one of which has already been turned over to the NMHS. There's a binder full of images. And's there's an unauthorized catalogue with red stickers attached to the pieces that Norval disavowed"

After communicating over and over the myth of "fakes" in the marketplace why doesn't Mr. Robinson release the images of these so called "fakes" to the public? Why does the NMHS only have one disk if there are two? If Mr. Morrisseau claimed the paintings were

fake why didn't they disclose this prior to his death? Please note now the particular number of so called "fake" Norval Morrisseau paintings. Mr. Robinson in Exhibit # 14 without naming Kahn Auctions comes up with a figure of 1,200 paintings. This is the close to the 1,000 paintings mentioned by Mr. Baker (of the NMHS) to Paul Gessell in Exhibit # 41 of January 2, 2007.

"A six person committee of experts formed in 2005 to create a catalogue raisonne' listing all of Mr. Morrisseau's artworks has already identified about 1,000 pieces"

These pieces as Mr. Baker tells the reporter were in ones in most cases "were known to have been in gallery exhibitions and well documented". The implication of this is that these paintings are authentic. Mr. Milrad which is the Globe & Mail article stated as per Exhibit # 44 called "Old art scam surfaces on-line"

"to date, the committee has identified 1,200 pieces—those with proper provenance thanks to gallery exhibitions or conscientious owners".

It is interesting that Mr. Vadas also so per Exhibit # 44 in the third paragraph on page two (2) states that there are approx. 1,000 pieces that Mr. Morrisseau has told him are "fakes"

"All artists are entitled to do inferior works" says Milrad. 'The problem is the fakes'. He's referring to works Morrisseau knows he did not create. Often drably colored with wonky signatures, they turned up for more than a decade at auctions and in galleries. Vadas has more than 1,000 examples on file".

Again, please note that Mr. Vadas claims that so called "fakes" have been sold in the last decade or more yet he nor Mr. Milrad or Mr. Robinson have done nothing to stop it ? Since, the date of this article is Jan 2007 Mr. Vadas is suggesting that he started seeing so called "fakes" in at least 1997 yet Mr. Robinson was purchasing paintings from Kahn Auctions in 1999 and 2000. Moreover, If this was going on for more than a decade then why did Mr. Robinson only talk about the so called "fakes" to the National Post in the May 18th, 2001 article and not earlier. Again, by coincidence it just happens to coincide with the same time Mr. Robinson was thwarted by Mr. Voss who refused to sell directly to Mr. Robinson and choose to keep selling through Kahn (now Randy Potter) Auctions.

How many images do they really have and where did they come from ?

Mr. Milrad stated as per above that the committee has identified 1,200 pieces that he suggested were authentic yet in the same article Mr. Vadas claims that he has examples of 1,000 "fakes" on file. This suggests than Mr. Vadas et al and the NMHS should have at least 2,200 images on file. Again, what is the real number? I submit that these statements are deliberately vague and contradictory on purpose to further highlight their contention of "fake" Morrisseau's in the marketplace. In a letter dated January 9th, 2008 in response to the lawyer of Mr. Moniz in Moniz V. CTV Globemedia Publishing Inc et al Mr. Baker points out that the committee has

made no evaluation of authenticity of the art it has collected but puts the amount at 1,700 pieces as per Exhibit # 45. In it he admits that the NMHS has not contacted any outside experts except Kinsman Robinson who is his words "is a trusted dealer of Norval Morrisseau's art". This is the extend of the so called due diligence of this committee. They have not even gone to other experts. We still ask the question, Who provided these images of Norval Morrisseau paintings to the NMHS ? If the NMHS didn't contact any other experts where did they get the 1,700 pieces of artwork (as of Jan 8, 2008) . The answer is they got them from Mr. Robinson and Mr. Vadas. Two parties who of course would gain to benefit financially if they could convince the art community of the existence of so many "fakes" of Norval Morrisseau's in the marketplace. People who never stopping telling the public that they are the "primary dealers" and the "official representatives of Norval Morrisseau".

Even at the opening of the Norval Morrisseau Exhibition on September 30th, 2006 at the McMichael Gallery in Kleinburg, Ontario the notion of many "fakes" in the marketplace for Norval's work was publicly disseminated. Mr. Vadas at the opening told the crowd, "There's a lot of people out there who think they have Morrisseeau's but got nothing but canvas." He referred to a disk with 1,200 images on them with at least 800 of them being fake. In Exhibit # 46 which is a copy of the letter from Mr. Vadas's lawyer (Mr. Bruce Owen) in Vancouver were on the second page Mr. Marlowe Goring refers to the disk in Mr. Vadas's speech in point A (at McMichaels) all Mr. Vadas's lawyer does is admit that the disk exists.

Mr. Vadas as further per Exhibit # 47 in a email to Mr. Marlowe Goring can't understand why Mr. Goring does not want to send him pictures of Norval's art just like other gallery owners have. He further states that

"We fortunately have found your website and we have been able to view the art you have acquired there, so we no longer need you to send us images to accommodate Norval and his request."

These people are trying to give the impression that art collectors and galleries have been submitting their photos as per Norval's request when this is not the case. Mr. Vadas is simply searching the Internet finding images and downloading them and is now calling them fake. We submit that Mr. Morrisseau has never called or identified any pieces as fake. It is Mr. Vadas's et al that are behind these false allegations of "fakes" in the marketplace.

Did the NMHS ever disclose where they think these images came from? No. If they had bothered to check anything they would have realized that these images came from the web sites and catalogues of the various galleries that offered these paintings for sale to the public. Out of these 1,000 pieces referred to by Mr. Baker I doubt less than five percent came to them through the NMHS via the Kinsman Robinson blog. If only a few members of the public even asked the committee to review their paintings and they had over 1,000 images provided to them by Mr. Vadas and Mr. Robinson what's the point.

The point is where did they (the NMHS) members think the paintings came from? The individual members of the NMHS simply took Mr. Vadas et al representation's at there face value and echoed theses misstatements into the public arena. Had these people done any checked the veracity of Mr. Vadas's representations that could have uncovered the truth and realized that Mr. Vadas was lying. These images were provided to them by Mr. Vadas et al with no questions asked.

We are supposed to believe that Mr. Morrisseau asked for the creation of the catalogue raisonne which directly contradicts everything he said and did with respect to his artwork throughout his life. Mr. Vadas et al have done what they have done and are currently doing what they are doing to protect their business interests. To date, the family of Mr. Morrisseau have received nothing.

The NMHS was created in order to enrich everybody but Mr. Morrisseau. It was set up to control the copyrights and future royalties from publishing etc by claiming these rights on all the paintings (ie images) they could find on the Internet or if somebody did actually send an image to them. This is the reason why Mr. Vadas has scoured the Internet looking for galleries that sold Mr. Morrisseau's work. He then copies them to a hard disk, sent them to the NMHS and then told the NMHS that they were "fakes". It really a simple scheme. The NMHS believes Mr. Vadas because Mr. Vadas tells them that Norval told him they were not his and who would of course question the artist. The point is that Norval didn't say anything and Mr. Vadas communicated to the NMHS what was in his best interest and the NMHS didn't question anything.

I will stop at this point. I will if I have to file additional information on how the NMHS worked in conjunction with ADAC to further prorogate these misrepresentations into the marketplace. I will also include the continuing misrepresentations being further spread via KRG's twitter account etc.

To conclude, Mr. Baker's actions and knowledge have lead to the damages that I claim. He is aware of the misrepresentations which have been prorogated with respect to the works' of Norval Morrisseau and has done nothing to stop or mitigate these market damages which include the painting subject of this action. I therefore, ask for the maximum amount \$ 10,000 plus costs.