

Oshawa
 Small Claims Court / Cour des petites créances de

00000-373/14
 Claim No. / N° de la demande

150 Bond Street East
Oshawa, ON L1G 0A2
 Address / Adresse

905-743-2630
 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. Under 18 years of age.
 Moins de 18 ans.

Last name or name of company / Nom de famille ou nom de la compagnie Otavnik		
First name / Premier prénom Joseph Jr.	Second name / Deuxième prénom	Also known as / Également connu(e) sous le nom de
Address (street & number, apt, unit) / Adresse (numéro et rue, app., unité) 299 Dover Street		
City/ Town / Cité/ville Oshawa	Province Ontario	Phone no. / N° de téléphone 905-728-2133
Postal code / Code postal L1G 6G7		Fax no. / N° de télécopieur
Representative / Représentant(e)		LSUC # (if applicable) / N° du BHC (le cas échéant)
Address (street & number, apt., unit) / Adresse (numéro et rue, app., unité)		
City/ Town / Cité/ville	Province	Phone no. / N° de téléphone
Postal code / Code postal		Fax no. / N° de télécopieur

Defendant No. 1 / Défendeur n° 1 Additional defendants(s) listed on attached Form 1A.
 Le ou les défendeurs additionnels sont mentionnés sur la formule 1A ci-jointe. Under 18 years of age.
 Moins de 18 ans.

Last name, or name of company, etc. / Nom de famille ou nom de la compagnie CTV, a Division of Bell Media Inc. (named as CTVGlobeMedia)		
First name / Premier prénom	Second 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) 299 Queen Street West		
City/ Town / Cité/ville Toronto	Province Ontario	Phone no. / N° de téléphone 416-924-6664
Postal code / Code postal M4P 1A6		Fax no. / N° de télécopieur
Representative / Représentant(e) Peter M. Jacobsen		LSUC # (if applicable) / N° du BHC (le cas échéant) 17803P
Address (street & number, apt., unit) / Adresse (numéro et rue, app., unité) 33 Yonge Street, Suite 201		
City/ Town / Cité/ville Toronto	Province Ontario	Phone no. / N° de téléphone 416-982-3800
Postal code / Code postale M5E 1G4		Fax no. / N° de télécopieur 416-982-3801

THIS DEFENCE IS BEING FILED ON BEHALF OF:

CTV, a Division of Bell Media Inc. (named as
CTVGlobeMedia)

LA PRÉSENTE DÉFENSE EST DÉPOSÉE AU NOM DE :

Name of defendant(s) / Nom du/de la ou des
défendeur(s)/défenderesse(s)and I/we: (Check as many as apply / Cochez la ou les cases qui s'appliquent.)
et je/nous :

- Dispute the claim made against me/us.
conteste/contestons la demande présentée contre moi/nous.
- Admit the full claim and propose the following terms of payment:
reconnais/reconnaissons être redevable(s) de la totalité de la demande et propose/proposons les modalités de paiement suivantes :
- \$ (Amount / Montant) per \$ par Week/month / Semaine/mois commencing à compter du
- Admit part of the claim in the amount of \$ and propose the following terms of payment:
reconnais/reconnaissons être redevable(s) Amount/Montant \$ et propose/proposons les modalités de paiement suivantes :
- \$ Amount/ Montant per \$ par Week/month/ Semaine/mois commencing à compter du

REASONS FOR DISPUTING THE CLAIM AND DETAILS:**MOTIFS DE CONTESTATION DE LA DEMANDE ET PRÉCISIONS :**

Explain what happened, including where and when. Explain why you do not agree with the claim made against you.
Expliquez ce qui s'est passé, en précisant où et quand. Expliquez pourquoi vous contestez la demande présentée contre vous.

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

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

What happened? See attached.

Where?

When?

Que s'est-il passé?

Où?

Quand?

Why I/we disagree See attached.

with all or part of
the claim: /

*Je conteste/Nous
contestons la
totalité ou une
partie de la
demande pour les
motifs suivants :*

ADDITIONAL PAGES ARE ATTACHED BECAUSE MORE ROOM WAS NEEDED.
DES FEUILLES SUPPLÉMENTAIRES SONT ANNEXÉES EN RAISON DU MANQUE D'ESPACE.

Prepared on: **October 3, 2014**
 Fait le :

Date

 for PMJ.
 (Signature of defendant or representative / Signature du défendeur/de
 la défenderesse du du/de la représentant(e))

NOTE:	Within seven (7) calendar days of changing your address for service, notify the court and all other parties in writing.
REMARQUE :	<i>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.</i>

CAUTION TO PLAINTIFF(S):	If this Defence contains a proposal of terms of payment, you are deemed to have accepted the terms unless you file with the clerk and serve on the defendant(s) a Request to Clerk (Form 9B) for a terms of payment hearing WITHIN TWENTY (20) CALENDAR DAYS of service of this Defence [R. 9.03(3)].
AVERTISSEMENT AU(X) DEMANDEUR(S) :	<i>Si la présente défense comprend une proposition à l'égard des modalités de paiement, vous êtes réputé(e)s les avoir acceptées, sauf si vous déposez auprès du greffier et signifiez au(x) défendeur(s) une demande au greffier (formule 9B) pour la tenue d'une audience relative aux modalités de paiement DANS LES VINGT (20) JOURS CIVILS de la signification de la présente défense [par. 9.03 (3)].</i>

SCHEDULE "A"

Claim No.: 00000-373/14

**ONTARIO
SUPERIOR COURT OF JUSTICE
SMALL CLAIMS COURT**

BETWEEN:

JOSEPH OTAVNIK JR.

Plaintiff

-and-

CTVGLOBEMEDIA

Defendant

DEFENCE

1. The Defendant CTV, a Division of Bell Media Inc. ("CTV"), improperly named as CTVGlobeMedia, admits the allegation contained in the first sentence of paragraph 21 of the Plaintiff's Claim.
2. Except as hereinafter admitted, the Defendant, CTV denies the balance of the allegations contained in the Claim and puts the Plaintiff, Joseph Otavnik Jr. (the "Plaintiff" or "Otavnik") to the strict proof thereof.

The Parties

3. The Defendant, CTV, is a corporation incorporated pursuant to the laws of Canada. It is a division of Bell Media Inc. which owns and operates multiple television channels in Canada.
4. The Plaintiff, Otavnik, is an individual residing in the province of Ontario.

Claim Barred by *Libel and Slander Act*

5. CTV pleads and relies upon the *Libel and Slander Act*, R.S.O. 1990, c. L.12, as amended.
6. The Plaintiff has not served a notice of libel upon CTV, in accordance with the *Libel and Slander Act*. Section 5 of the *Act* provides:

5. (1) No action for libel in a newspaper or in a broadcast lies unless the plaintiff has, within six weeks after the alleged libel has come to the plaintiff's knowledge, given to the defendant notice in writing, specifying the matter complained of, which shall be served in the same manner as a statement of claim or by delivering it to a grown-up person at the chief office of the defendant.

7. The Plaintiff's action contravenes s. 6 of the *Act* which provides:

6. An action for a libel in a newspaper or in a broadcast shall be commenced within three months after the libel has come to the knowledge of the person defamed, but where such an action is brought within that period, the action may include a claim for any other libel against the plaintiff by the defendant in that same newspaper or the same broadcasting station within a period of one year before the commencement of the action. [emphasis added]

8. The Plaintiff issued the Claim on September 12, 2014, over seven months after CTV's February 7, 2014 broadcast of the Canada AM segment at issue in this Claim. The Plaintiff's action is barred for failure to comply with ss. 5 and 6 of the *Libel and Slander Act*. The Plaintiff had knowledge of the broadcast in and around February 7, 2014.

Background

9. On February 7, 2014, CTV broadcast a segment on its program Canada AM (the "Broadcast") on the subject of Canadian painter Norval Morrisseau ("Morrisseau"). During the Broadcast, a guest on the program, Ritchie Sinclair ("Sinclair"), discussed his history with Morrisseau, his opinions about the existence of forged Morrisseau paintings and his assertion that Morrisseau did not sign his paintings in black with a dry brush.

10. Sinclair's comments were expressed as his personal opinions. During the Broadcast, Sinclair specifically indicated that the Small Claims Court did not accept his testimony that a particular Morrisseau work was a fake and instead determined that the painting was authentic. The Plaintiff refers to this decision in paragraphs 35 and 36 of his Claim.

11. Well before the CTV Broadcast of February 7, 2014, Norval Morrisseau's legacy was a matter of public interest, with allegations of fake Morrisseau paintings circulating in the art world for years, even before Morrisseau died in 2007 at age 75. Morrisseau even alleged that there were fakes being sold and police investigations were undertaken due to accusations that a well-organized forgery ring was operating in Thunder Bay to produce some of these fakes. The

issue of alleged Morrisseau forgeries and questions surrounding the providence of some of his paintings has been the subject of numerous publications and lawsuits.

12. Furthermore, at the time of the Broadcast, the issue of the authenticity of Morrisseau's works had additional notoriety due to litigation initiated in Ontario Superior Court by Canadian musicians John McDermott and Kevin Hearn, alleging that the Morrisseau paintings they purchased from an art dealer were fraudulent (court file nos. CV-13-490894 and CV-12-455650, respectively).

13. The host of the segment on Canada AM stated that the contention that certain of Morrisseau's works were forgeries was "all before the courts". At no time did CTV adopt a position on the authenticity of any particular Morrisseau paintings.

14. On April 23, 2014, CTV broadcast a second program relating to Morrisseau (the "second broadcast") in order to allow those who disagreed with Sinclair to respond to what he said in the Broadcast of February 7, 2014. The plaintiff was given notice by CTV of its intention to air the second broadcast.

15. During the second broadcast, individuals expressed opinions contrary to those discussed by Sinclair during the first February 7, 2014 Broadcast. In particular, during the second broadcast, the program guests discussed the decision of the Court which found that Morrisseau did sign paintings in "black dry ink". Specifically, one of the guests during the second broadcast was a handwriting expert, Dr. Atul Singla, who had testified in the Small Claims Court litigation previously referenced by Sinclair, involving the authenticity of a Morrisseau painting. Dr. Singla indicated that the signature on the back of a painting he examined was a real signature painted with a dry brush by Morrisseau.

Defamation

16. The Plaintiff has not identified the words complained of as defamatory in the Claim.

17. CTV denies that any of the words spoken during the Broadcast, in their plain and ordinary meaning, or by innuendo, are capable of bearing any meaning that is defamatory of the Plaintiff.

18. Otavnik is not mentioned or referred to during the Broadcast. None of the statements made by Sinclair or the host of Canada AM refer to Otavnik.

19. Furthermore, only one painting, Wheel of Life, was described as allegedly inauthentic during the Broadcast. The Plaintiff is not the owner of Wheel of Life.

20. CTV denies that a reference to Sinclair's website address constitutes republication of the material contained therein.

21. CTV has no control over the content or any affiliation with the website www.morrisseau.com.

22. Without limiting the generality of the foregoing, CTV specifically denies the Plaintiff's allegation at paragraph 4 that CTV was "successfully sued" or "lost" in the proceeding bearing court file number CV-07-1776SR.

23. In the alternative, if any statements from the Broadcast are found to be defamatory, which is denied, CTV pleads and relies upon the defences of fair comment and responsible communication.

24. The subject of the Broadcast was a matter of public interest regarding the allegations of forgeries of Morrisseau's works raised in two separate public legal proceedings by high profile Canadian musical artists. The issues discussed during the Broadcast were timely as both Mr. McDermott and Mr. Hearn's separate claims were before the Court.

25. Further, CTV took active steps to portray both sides of the debate over the issue of forgeries of Morrisseau works in the Canadian art market.

26. In the alternative, CTV relies on the defence of Reportage.

Other Causes of Action Alleged

Slander of Title

27. CTV denies that the statements made during the Broadcast are capable of injuring Otavnik with respect to any title of a Morrisseau work, in which he allegedly holds a proprietary interest.

28. The Plaintiff has not pleaded nor particularized his proprietary interest in a Morrisseau work.

29. CTV denies that the segment was broadcast by CTV with malice and denies that it had any intention to injure the Plaintiff or any improper motive.

30. As pleaded at paragraphs 11, 12 and 23, the subject of the Broadcast was an issue of public interest both because of the notoriety of Morrisseau's works and the two separate legal claims brought by Mr. Hearn and Mr. McDermott referred to above.

Negligent Investigation

31. CTV denies that it owed the Plaintiff a duty of care or that a relationship of proximity existed between CTV and the Plaintiff at the material time.

32. CTV denies that it breached any standard of care or that its actions or omissions caused the Plaintiff's damage, which damage is specifically denied.

Interference with Economic Relations

33. CTV denies that the airing of the Broadcast, or any of its alleged actions or omissions in connection thereto, were intended to injure or cause a loss to Otavnik and puts Otavnik to the strict proof thereof.

34. CTV denies that it interfered with Otavnik's business or livelihood by illegal or unlawful means.

35. CTV denies that the Broadcast, or any actions or omissions in relation to the Broadcast, were in any way illegal or unlawful.

36. CTV denies that a third party has any actionable claims against CTV in relation to the Broadcast.

37. Finally, CTV denies that Otavnik suffered any economic loss caused by CTV's actions or omissions towards a third party and puts Otavnik to the strict proof thereof.

Relief Claimed

38. CTV pleads and relies upon section 96(3) and 97 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. CTV denies that this Honourable Court has jurisdiction to order injunctive or

declaratory relief, including the relief sought by the Plaintiff at paragraphs 13, 17, and 33 of the Claim.

39. CTV denies that the Plaintiff has been injured or suffered any of the damages or harm as alleged in the Claim.

40. In the alternative, if the Plaintiff has suffered any damage, which is not admitted but expressly denied, CTV pleads that the damages claimed are excessive, exaggerated, remote, unrecognized at law, unmitigated by the Plaintiff and unconnected with any alleged act or omission on the part of CTV, and puts the Plaintiff to the strict proof thereof.

41. CTV pleads and relies upon section 2(b) of the *Canadian Charter of Rights and Freedoms*.

42. CTV requests that the Claim be dismissed as against it with costs.

SCHEDULE "B"

1. DVD with video clips of CTV broadcasts dated February 7, 2014 and April 23, 2014