

ONTARIO  
Superior Court of Justice

**Plaintiff's Claim**  
Form 7A Ont. Reg. No.: 258/98



Oshawa Small Claims Court

SC17000024940000

Small Claims Court

Claim No.

150 Bond Street East Oshawa ON  
L1G 0A2

Address

(905) 743-2800

Phone number

Electronically issued: 2017/11/03  
Oshawa SCJ

**Plaintiff No. 1**

Additional plaintiff(s) listed on attached Form 1A.  Under 18 years of age.

Last name, or name of company Otavnik		
First name Joseph	Second name	Also known as
Address (street number, apt., unit) 299 Dover Street		
City, town or village Oshawa	Province Ontario	Phone no. (905) 728-2133
Postal code L1G 6G7	Canada	Fax no.
Representative		LSUC #
Address (street number, apt., unit)		
City, town or village	Province	Phone no.
Postal code		Fax no.

**Defendant No. 1**

Additional defendant(s) listed on attached Form 1A.  Under 18 years of age.

Last name, or name of company Robertson		
First name Carmen	Second name	Also known as
Address (street number, apt., unit) 3737 Wascana Pwky (University of Regina)		
City, town or village Regina	Province Saskatchewan	Phone no. (306) 337-2227
Postal code S4S 0A2	Canada	Fax no.
Representative		LSUC #
Address (street number, apt., unit)		
City, town or village	Province	Phone no.
Postal code		Fax no.

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[www.ontariocourtforms.on.ca](http://www.ontariocourtforms.on.ca) . Visitez ce site pour des renseignements sur des formats accessibles.

**REASONS FOR CLAIM AND DETAILS**

Explain what happened, including where and when. Then explain how much money you are claiming or what goods you want returned.

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

**What happened? Where? When?**

See Enclosed Plaintiff's Claim for Slander of Title and Defamation

How much? \$ 25,000.00  
(Principal amount claimed)

ADDITIONAL PAGES ARE ATTACHED BECAUSE MORE ROOM WAS NEEDED.

The plaintiff also claims pre-judgment interest from \_\_\_\_\_ under:  
(Date)

(Check only one box)  the Courts of Justice Act  
 an agreement at the rate of \_\_\_\_\_ % per year

and post-judgment interest, and court costs.

Prepared on: 11/03, 20 17 Submitted online by: Otavnik Joseph  
(Signature of plaintiff or representative)

Issued on: \_\_\_\_\_, 20 \_\_\_\_\_  
(Signature of clerk)

<b>CAUTION TO DEFENDANT:</b>	<b>IF YOU DO NOT FILE A DEFENCE</b> (Form 9A) and an Affidavit of Service (Form 8A) 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. Forms and self-help materials are available at the Small Claims Court and on the following website: <a href="http://www.ontariocourtforms.on.ca">www.ontariocourtforms.on.ca</a> .
<b>CAUTION TO PARTIES:</b>	Unless the court orders or the rules provide otherwise, <b>THIS ACTION WILL BE AUTOMATICALLY DISMISSED</b> if it has not been disposed of by order or otherwise two (2) years after it was commenced and a trial date or assessment under subrule 11.03(2) has not been requested.



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# Plaintiff's Claim

The Plaintiff seeks damages for Defamation under common law and Slander of Title under the Ontario Libel and Slander Act R.S.O. 1990 c.12.

## Background

Plaintiff and his family donated four (4) works of art by Norval Morrisseau to the Thunder Bay Art Gallery (in 2004) under the strict rules of the Canadian Cultural Properties Export and Import Act. The Thunder Bay Art Gallery (**TBAG**) which is a Class "A" Gallery duly accepted, verified, vetted and accepted the artwork for review and final application to the Canadian Cultural Property Export Review Board (**CCPERB**). Since the title of the painting would transfer to the Thunder Bay Art Gallery the Gallery (after approval by the **CCPERB**) the **TBAG** was the applicant to the **CCPERB**. The **CCPERB** then accepted, verified, vetted the application, verified the authenticity of the paintings', approved their Fair Market Value, outstanding significance and national importance of the paintings' and certified/approved the application submitted by the **TBAG**. The plaintiff and his family then received a Cultural Property Income Tax Certificate issued through Revenue Canada after of course approval by the **CCPERB**.

Despite the approval of the **TBAG**, **CCPREB**, Revenue Canada etc , in September 2017, the Plaintiff became aware of a "Expert Report" by the defendant that was to be used in court case in which the defendant clearly , identified and called "fakes" or "attributed to Norval Morrisseau" the same paintings' as above and approved by the parties mentioned as above. The defendant included pictures of the paintings' the plaintiffs' family donated and description of them can clearly be considered defamatory under the common sense usage of the terms she described them as.

Again, the paintings' in question and subject of this suit identified as "fakes" by the defendant have been vetted by over 20 professional independent experts, the staff of the , **TBAG** , **CCPERB** Board and the full ten (10) Member Board of the **CCPERB**. The Canadian Government then issued a Cultural Property Tax Certificate for the fair market value of these paintings'.

## FACTS

1) The defendant has identified the paintings' as "fakes" or in her words " Attributed to Norval Morriseau " which be the normal understanding and use of the terms in the art world/business. The defendant clearly knew or should have known what she was implying by her words , identification and inclusion of these paintings' in her Report as "fakes".

2) In law since she has Slandered the Title of these paintings' she must prove her conclusions and the burden of proof is on her. She has also defamed me and my family by calling them "fakes". The implication of my family donating "fake" works of art either suggest we are idiots who don't know what a real Norval Morriseau is or we have deliberately tried to mislead and defraud the Government of Canada. Again, it is not on the Plaintiffs' burden to proof the paintings' are authentic but will.

3) The defendant simply cannot provide evidence of justification , fair comment, qualified privilege, truth or truth that it is the public interest. I have contacted her employer (The University of Regina) and they assure me that the defendant has prepared her report as a private citizen.

4) As per Exhibit "A" please find a copy of a of the application prepared by the Thunder Bay Art Gallery and the accompanying report. In it the Gallery highlights the significance of the donated paintings', their authenticity, historical significance etc. The paintings' are clearly labelled, named with accompanying pictures, titles and other description(s). I will further note that the application was signed off by the register, Head curator and Galley director, then of course further vetted by the entire Board of Directors' of the Gallery.

5) I do not have at this time a copy of the decision by the **CCPREB** since only the receiving Institution (The **TBAG** ) does as the Gallery is the actual applicant. The plaintiff never asked for a copy from the **TBAG** since the **CCPREB** signed off on it and the plaintiff saw no need for it. The plaintiff has spoken to and communicated with the **CCPREB** and have been assured they will provide whatever document I require.

6) Same is true for the Cultural Property Income Tax Certificate. Since the application was approved over thirteen (13) years ago the plaintiff has had difficulty finding it but can and will since it was issued. The point is that the **CCPREB** or Revenue Canada will have a copy somewhere.

7) As per Exhibit "B" please find an "Expert Report" prepared by the defendant in CV-12-0455650 were on pages 4,5,11,12,13,14,15,16,20,21,22,57,58,59 the identification and labelling as "fakes" the paintings' subject to this lawsuit. There can be no doubt that the paintings which are the subject of this suit were in fact donated by the plaintiff. (Not in the filings in order to not exceed the 20MB limit, however, since it is your Report who should know the contents).

8) The defendants' "Expert Report" is nothing but her opinion and backed by no forensic evidence. The Plaintiff on the other hand can show the various reports from several different independent forensic handwriting experts all of which can conform the signature on the paintings' in black dry paint as those of the artist-Norval Morrisseau. Plaintiff can and will provide reports on the spectrum analysis of the paint on the paintings' as being from the 1970's etc due to the lead content and other chemicals used at that time in paint. The defendant cannot provide anything but her half baked opinions which have been disproven in the courts.

9) The main conclusion of the defendants' "Expert Report" and proof of these paintings' as "fakes" are based on the premises that the artist-Norval Morrisseau did not sign the back of his paintings' in black dry paint in the 1970's. This is the distinguishing feature of these "fakes" and other such paintings with this specific feature as claimed by the defendant.

10) The defendant's claims of "fakes" based on this fact clearly show the carelessness, recklessness, and lack of due diligence on her part. The defendant could have easily discovered what the courts, experts, auction house and worldwide internationally respected Galleries have concluded and communicated to the public at large. She could have done all this at her computer.

11) The defendant could have easily researched the judge's decision in Margaret Hatfield v Donna Child in SC 09-87264 as per Exhibit "C" which the plaintiff easily found on the internet vs. a simple search on the Google search engine. In it the Judge clearly states "the court finds overwhelming evidence that Norval Morrisseau signed paintings in Black Dry Paint".

12. The defendant could have simply searched the auction results of any major auction house. If she had done so she would have seen many paintings of the same type, style, time period which were sold at auction were signed in Black Dry paint. She would have seen the front and back of the paintings and the detailed descriptions which would, have clearly highlighted the signature on the back of the paintings' signed in black dry paint and even described as such in the auction information section. This, in addition to the **TBAG**, **CCRERB**, and the courts you can add major National and International auction houses to the list of people who seemingly don't know what constitutes a "fake" Norval Morrisseau painting is except of course the defendant.

13) The plaintiff successfully sued Gabe Vadas who was Norval Morriveau's manager over allegations that he tried to sell a "fake" Norval Morriveau at Heffel Auction house in 2008 as per Exhibit "D". Mr. Gabe Vadas contended that since the painting was signed in Black Dry Paint it was a "fake". The painting is/was from the same source as the four (4) which are subject to this suit. Heffel pulled the piece from the auction. I sued for loss of potential sale. I had a forensic hand writing analysis performed and other forensic tests on the painting. I ask the court to review the analysis and results. I then offered up the paintings' for inspection for him (Gabe Vadas) for his experts to examine. He declined and just paid out the full amount of the claim with costs. I leave it to this court to draw its own conclusions.

14) The defendant should have know that the paintings' with the same feature she claims to be distinguishing feature of a "fake" Norval Morriveau are even hanging in the National Gallery of Canada and the Smithsonian Institution in Washington . With the Smithsonian you can access the permanent collection and again you will see a picture of the front and back with the signature labelled as being in Black Dry Paint.

15) Even in the case where her Report is being used in, one of the witnesses (Richie Sinclair) has also claim 'fakes' that are in the Smithsonian Institution which were in a publication " Travels to the House of Invention" produced by another witness (Don Robinson of Kinsman Robinson) for the same case for the same plaintiff. I am not making this up. This is also available via the public record and in court transcripts. Again, and to be clear one of the witnesses for the plaintiff in CV-12-455650 has claimed the other witness published in a book pictures of paintings' in the Smithsonian he considers to be "fakes". This is not my opinion but in court transcripts, filings' and actual Exhibits.. Again, these are all part of the public record and could have been checked by the defendant again through a quick and easy Internet search.



16) Don Robinson (of Kinsman Robinson) claimed that Kahn Auctions was/were selling "fake" Morriseau paintings' because again they were signed in Black Dry Ink. He changed his tune, (in court again) once confronted with the sales receipts of Norval Morriseau paintings' he bought at Kahn Auction who you guessed it were signed in the back in Black Dry Ink. Again, this was in court , part of the public record and should have been know by the defendant. I have a copy of the sales receipts and transcripts' which I will include in an additional filing as I am rushing to complete the Statement of Claim but will provide them within (one week) of this filing.

17) Don Robinson as per above and per Exhibit "E" you can see the results for Levis Auction House showing the Provenance from Kinsman Robinson which is identified as being signed, tilted and dated verso. This means it was signed in Black Dry Paint on the back. After this was pointed out to Mr Robinson (in court) he suffered from memory loss. Also as per Exhibit "F" you can see an appraisal from Kinsman Robinson of a client who purchased a painting from Kahn Auctions which again was signed and dated on the back in Black Dry Ink (faded). Again, the same people who claimed the same features as being "fakes" of course which again in court they just couldn't remember.

18) As per the defendants' " Expert Report "in CV -12-455650 the defendant highlights the importance of a Provenance of a painting (Spirit Energy of Mother Earth) and concludes that the provenance given in this case was not credible. (page 15). Despite this conclusion for that paintings' the defendant had no clue of the provenance of the four (4) paintings ' subject to this suit. I spoke Sharon Godwin who is the current Director of the Thunder Bay Art Gallery now and when I donated the four (4) paintings' who knows me well. She has confirmed to me the defendant has no idea of who donated the paintings' nor does she have any clue of the Provenance of these paintings.

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19) As far as provenance goes please refer to Exhibit "G" from the Kinsman Robinson website which highlights a painting for sale with the clear description of being "acquired directly from the artist". However, you will note from Exhibit that Kinsman Robinson actually bought the painting at Waddington's off the wall auction. So much for provenance.

20) The plaintiff can point to and highlight several different independent forensic examiners who all verify that Norval Morrisseau painted the back of his paintings' in Black Dry Paint and verified the signature. Please refer and find a report by Mr. Brian Lindblom as per in Exhibit "D". Also, please find the findings' of Judge J. Martial with respect to the report prepared Dr. Atual K Singla as per Exhibit "C". Also please find as per Exhibit " H" a Forensic Report prepared by Mr. Kenneth Davies for the painting subject to the lawsuit in CV-12-455650.

21) Plaintiff is also preparing a Motion for intervener Status in CV-12-455650. I have enclosed a copy of that endorsement as per Exhibit "I".

22) Experts who are considered experts by the Tax Court of Canada who testified in Whent, Pustina et al v R, 96 D.T.C. 1597, [1996] 3 C.T.C. 2542 also reviewed the paintings in question and deemed them to be authentic.

23) The defendants use of her "Morellian Analysis" to again suggest a "fake" was already used in another court case and dismissed. The judge dismissed the analysis which is the same one used in this case by the defendant. However, since each case in court is judged on its own merits the defendant will have her chance to do so in court.

24) Also please find as per Exhibit "J" A copy of a reason court decision involving Ritchie Sinclair or a.k.a "The Star Dreamer". It's quite the read and he is involved with Jonathan J. Sommer right through all their lost and abandoned cases with respect to Norval Morrisseau.

19) The plaintiff concedes that if the whole art world is wrong including the National Gallery of Canada, the Smithsonian, the courts, independent forensic experts the CCPREB, Revenue Canada , Tax Court of Canada etc and the defendant is right then I (the plaintiff will lose).

All eight (8) pages of which is respectfully submitted