

ONTARIO

Superior Court of Justice  
Cour supérieure de justice

Plaintiff's Claim  
Demande du demandeur

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



~~Orangeville~~ **Toronto** **50-10-109226-0**  
Small Claims Court / Cour des petites créances de **Claim No. / N° de la demande**  
~~10 Louise St,~~ **47 SHEPPARD AVE. E. 3RD Floor**  
~~Orangeville, ONT~~ **TORONTO ON**  
~~L9W 8P9~~ **M2N 5N1**

Address / Adresse

~~519-941-5802~~ **416-326-3554**

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 <b>White</b>		
First name / Premier prénom <b>James</b>	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) <b>16568 Mount Hope Road</b>		
City/Town / Cité/ville <b>Caledon</b>	Province <b>Ont</b>	Phone no. / N° de téléphone <b>416 850 7850</b>
Postal code / Code postal <b>L7E 3K8</b>		Fax no. / N° de télécopieur <b>416 850 7859</b>
Representative / Représentant(e)		LSUC # / N° du BHC
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 defendant(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 / Nom de famille ou nom de la compagnie <b>Sinclair</b>		
First name / Premier prénom <b>Ritchie</b>	Second name / Deuxième prénom	Also known as / Également connu(e) sous le nom de <b>Stardreamer</b>
Address (street number, apt., unit) / Adresse (numéro et rue, app., unité) <b>Apt 1604, 30 Hillsboro Ave</b>		
City/Town / Cité/ville <b>Toronto</b>	Province <b>ONT</b>	Phone no. / N° de téléphone <b>416 968 2838</b>
Postal code / Code postal <b>M5R 1S7</b>		Fax no. / N° de télécopieur
Representative / Représentant(e)		LSUC # / N° du BHC
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

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

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

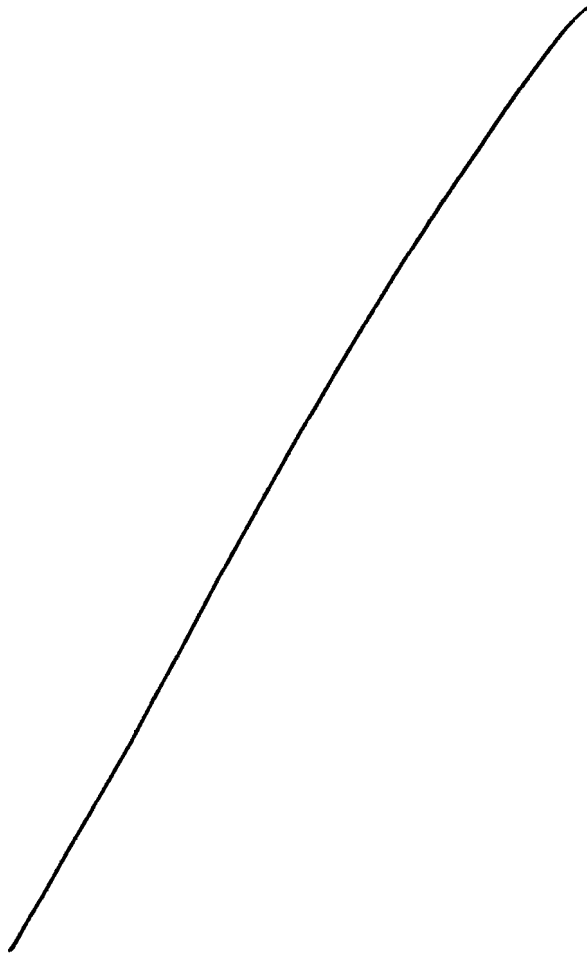
*Expliquez ce qui s'est passé, en précisant où et quand. Ensuite indiquez la somme d'argent que vous demandez ou les biens dont vous demandez la restitution, explication à l'appui.*

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.

*Si vous vous appuyez sur des documents, 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.*

What happened? I claim slander of title of painting and defamation under the Libel and Slander Act of Ontario.  
Where?  
When?

*Que s'est-il  
passé?  
Où?  
Quand?*



Please see attached Statement of Claim and Exhibits.

How much? \$ 25,000.00  
Combien? (Principal amount claimed / Somme demandée) \$


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

The plaintiff also claims pre-judgment interest from October 20th, 2010 under:  
Le demandeur demande aussi des intérêts (Date) conformément à :  
antérieurs au jugement de

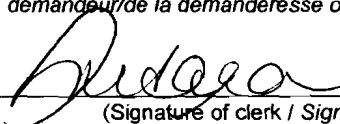
(Check only one box / Cochez une seule case)  
 the Courts of Justice Act / la Loi sur les tribunaux judiciaires  
 an agreement at the rate of .5 % per year / un accord au taux de % par an

and post-judgment interest, and court costs.  
et des intérêts postérieurs au jugement, ainsi que les dépens.

Prepared on: October 22nd, 20 10  
Fait le :

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

Issued on: Oct. 25, 20 10  
Délivré le :

  
(Signature of clerk / Signature du greffier)

**CAUTION TO DEFENDANT:** 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. Forms and self-help materials are available at the Small Claims Court and on the following website: [www.ontariocourtforms.on.ca](http://www.ontariocourtforms.on.ca).  
**AVERTISSEMENT AU DÉFENDEUR :** 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. Vous pouvez obtenir les formules et la documentation à l'usage du client à la Cour des petites créances et sur le site Web suivant : [www.ontariocourtforms.on.ca](http://www.ontariocourtforms.on.ca).

# Statement of Claim

My statement of claim is based on the well established legal principles of

- 1) Slander of title of goods and of the plaintiff's official, professional and business reputation
- 2) Defamation

For both these torts the controlling legal authority is the Libel and Slander Act of Ontario. I could have also easily claimed damages for the intentional interference of economics relations due to the content of Mr. Sinclair's web site but limit my claim to the above. Mr. Sinclair's web site at [www.morrisseau.com](http://www.morrisseau.com) and [www.norvalmorrisseaublog.blogspot.com](http://www.norvalmorrisseaublog.blogspot.com) identifies and names over 1,000 painting by Norval Morrisseau as "fakes". One of the paintings owned by me as per Exhibit "A" called "Great Moose" has been labelled and characterized as "Inferior Counterfeit Morrisseau" # 898. As per Exhibit "B" Mr. Sinclair has listed a whole series of adjectives to describe this specific painting and the other paintings by Norval Morrisseau as "Counterfeit", "Forged" "Bogus", "Fake", "Fraudulent" etc. As per Exhibit "B" Mr. Sinclair clearly defines to and for the reader the meaning of the words used. The plain and ordinary meaning of these words are well understood. They are deliberately used to defame and slander the title of these and in particular this specific painting. There can be no other inference drawn from the use and common sense and everyday meaning of these words and description right beside the picture of the painting identified as such.

Defamation of Plaintiff on Mr. Sinclair's web site.

In addition to Mr. Sinclair's web site specifically identifying so called Norval Morrisseau "fakes" Mr. Sinclair has identified the owner by name of these so called "fakes" and even states as fact that this named person (the plaintiff) is selling these painting with the full knowledge that they are "fakes". Naming someone who is engaging in fraud is a clear attempt to defame that person. In the description of the painting in the first sentence Mr. Sinclair as per Exhibit "C" asks Did you buy this 70's style forgery from Jim White? In Exhibit "D" Mr. Sinclair again clearly names the plaintiff Mr. Jim White as the seller of these so called "fake" pieces of work by Norval Morrisseau on his web site. Mr. Sinclair also clearly identifies the auction house (S & J Auctions) Mr. Sinclair states that Mr. White is using to knowingly sell these so called fraudulent art through. He even goes as far as per Exhibit "E" on page 2 to identifying where the plaintiff works' and where he (Mr. White) is even producing "fake" Norval Morrisseau prints. Again, the plain and ordinary meaning of these words along with the images leave no doubt in the viewers' mind of what Mr. Sinclair is trying to do. He is clearly and openly stating that the plaintiff is involved in nefarious and criminal conduct. Everybody knows that selling any "fake" anything is criminal and against the law. It's that simple. Moreover, as per Exhibit "F" the plaintiff Mr. Jim White is also included in Mr. Sinclair's Wall Of Shame along with over 61 other galleries, people, auction houses etc.

## **Libel and Slander Act of Ontario**

Under the Libel and Slander Act of Ontario (Exhibit "G") material placed on a website and made available through the Internet constitutes a "broadcast". I refer to Bahlieda v Santa as per paragraph 2 Exhibit "H" . I will reproduce that section herein,

### **Libel and Slander Act**

R.S.O. 1990, Chapter L.12

#### **Definitions**

1. (1) In this Act,

"broadcasting" means the dissemination of writing, signs, signals, pictures and sounds of all kinds, intended to be received by the public either directly or through the medium of relay stations, by means of,

(a) any form of wireless radioelectric communication utilizing Hertzian waves, including radiotelegraph and radiotelephone, or

(b) cables, wires, fibre-optic linkages or laser beams,

and "broadcast" has a corresponding meaning; ("radiodiffusion ou telediffusion", "radiodiffuser ou telediffuser")

"newspaper" means a paper containing public news, intelligence, or occurrences, or remarks or observations thereon, or containing only, or principally, advertisements, printed for distribution to the public and published periodically, or in parts or numbers, at least twelve times a year, ("journal) R.S.O. 1990, cL.12s,s.1 (1)

Thus, there should be no question that these posting on the Internet by Mr. Sinclair constitutes a broadcast. The limitation period for a claim for defamation or Libel for slander) under this section is six (6) weeks if you are a newspaper otherwise it's two years (2) under the Limitations Act, I refer to Warman V Fromm as per Exhibit " I " at para. 89 and 90. I will enter the comments from paragraph 89 and 90 which reinforce the original decision and reflect and foresee what future legislation may entail.

[89] At this time, an extremely broad application of the Notice provision of the Acts original purpose might not serve the legislation. The original purpose was to allow a newspaper to mitigate its damages by retracting or apologizing for words published as a mistake in good faith.

[90] Extending the Act's application to a medium where words can be instantaneously disseminated around the entire globe repeatedly and with no viable possibility of effective retraction requires further examination.

I have included the whole decision here as to allow your honour to review the context of this case and refer you specifically to para 71 through to 92 which rely on this notice requirement and the Libel and Slander Act, R.S.O. 1990, C- L-12 (the "Act"). I will reproduce that section here

#### Notice of Action

S. (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.

I bring this to your attention because as Warman V Fromm clearly state this section applies only to newspapers. The point that policy makers were trying to in this section was to allow newspapers the ability to mitigate or retract a story. It was not meant nor does it apply to these circumstances where Mr Sinclair has knowingly and willingly identified the painting subject of this suit (and over 1,000 others ) as " Inferior Counterfeits" as well as the specific identification of the plaintiff knowingly engaging in criminal activity. etc. The policy makers did not intend and the law does not allow this defence to be used by anyone but a newspaper.

Mr. Sinciairs web site is a broadcast and I have included some background information on this issue in "A PRIMER ON THE LAW OF DEFAMATION IN ONTARIO", by Suzanne F. White and "THE LAW OF DEFAMATION", by Siskinds law firm. They are short, concise and to the point as per Exhibit's J & K.

From Siskinds

#### THE LAW OF DEFAMATION

Uniquely among the world's legal system, English common law divides defamation into two categories: libel, which covers publication in a form with some permanence such as books or newspapers, and slander, which deals with the more transitory publication by spoken word or gesture.

Ontario's Libel and Slander Act, deems the broadcast of defamatory words, pictures, visual images, gestures and other methods of signifying meaning to constitute libel.

In short, Libel is written defamation in a fixed medium ( the Internet). The labelling, identification and visual presentation of the painting in question and indeed the over 1,000 are labelled among other written words as "Inferior Counterfeits" are clearly defamatory. Moreover, the notion that the plaintiff is knowingly engaged in the production/selling of "fake", "bogus" and "fraudulent" works' of art is obvious defamatory.

I further rely on section 1,sub 2 sub and section 2 of the Libel and Slander Act of Ontario

Meaning of words extended

(2) Any reference to words in this Act shall be construed as including a reference to pictures, visual images, gestures and other methods of signifying meaning . R.S.O. 1990, c. L12, s. 1(2)

**Libel**

What constitutes libel

(2) Defamatory words in a newspaper or a broadcast shed be deemed to be published and to constitute libel. R5.O. 1990, c. L12 s2.

The plain and ordinary meaning of these statements is that the painting subject in this suit and the others are not authentic artworks by Norval Morrisseau, it's that simple. In addition, the identification of Mr. White as selling so called "fake" paintings are clearly understood by anybody viewing Mr. Sinclair's web site. Ontario's Libel and Slander Act, deems the broadcast of defamatory words ,pictures, visual images, gestures and other methods of signifying meaning to constitute Libel. in reference to the reasonable man I refer to Arland v Taylor, [9.55] 3 DI R. 358 ONT C.A. a reasonable man is

" He is a person of normal intelligence who makes prudence a guide to his conduct. He does nothing a prudent man would not do and does omit to do anything a prudent man would do. He acts in accord with the general and approved practice. His conduct is guided by considerations which ordinary regulate the conduct of human affairs- His conduct is the standard adopted in the community by persons of ordinary Intelligence and prudence°

Moreover, in Prud'homme v. Prud'homme, [2002] SCR- 663 at paragraph 36,

A reasonable person will generally refrain from giving out unfavourable information about other people if he or she has reason to doubt the truth of the information.

I further rely on the Libel and Slander Act of Ontario as per sections, 17 and 19 here.

Slander of title, etc.

17. in an action for slander of title, slander of goods or other malicious falsehood, it is not necessary to allege or prove special damage,

(a) if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff and are published in writing or other permanent form; or

(b) if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff in respect of any office, profession, calling, trade or business held or carried on by the plaintiff at the time of the publication,

and the plaintiff may recover damages without averment or proof of special damage. R.S.O. 1990, c. L12 s. 17.

**I will highlight here and again " In an action for slander of title ,slander of goods or other malicious falsehood, it is not necessary to allege or prove special damage.**

Thus, I submit that the characterization and specific identification of my painting on the web constitutes a slander of goods or other malicious falsehood. The characterization and identification as "Inferior Counterfeit", "fakes" "forged" also with the image/picture of the painting with these characterizations repeated can leave no doubt in the viewer mind. It's meant to defame and lower the value of the painting in any potential buyer's eye and in general and is clearly malicious. One cannot identify and label the painting as such and not suggest it was done intentionally with malice with the objective of putting into question the authenticity of the specific painting subject to this suit and also the entire body of work of the artist, It is even clear that the existence and characterization of the artist's work on [www.morrisseau.com](http://www.morrisseau.com) and [www.norvalmorrisseaublog.blogspot.com](http://www.norvalmorrisseaublog.blogspot.com) would negatively affect the value of the artist work held by people who own his artwork but which are not identified on this web site.

**From A Primer on the Law of Defamation In Ontario, by Suzanne E. White at Exhibit "J".**

As per page 2 under section 2 bottom of page and top of page 3 in highlights

Section 17 of the Act deals with slander of title, goods and other malicious falsehoods. Slander of title and goods relates to where slanderous comments are made about an individual's or corporations property that they own or where they sell. again, In these sorts of situations a plaintiff does not have to allege or prove special damages:

(a) if the words upon which the action is founded are calculated to cause pecuniary damages to the plaintiff and are published in writing or other permanent form; or



(b) if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff in respect of any office, profession, calling, trade or business on the plaintiff at the time of publication and the plaintiff may recover damages without averment or special damages.

I will refer now back to the last sentence of Section 17 of the Act

**"and the plaintiff may recover damages without averment or proof of special damages"**

and now part of. section (a) if the words upon which the action are calculated to cause pecuniary damage. It should be clear the words used by Mr. Sinclair describing the painting subject to this suit (and over 1,000 others) along with their images further inscribed with the some words causes direct economic and future economic damages with respect to all painting described as such. Furthermore, and the plaintiff may recover damages without averment or proof of special damages clearly focus the burden of proof in statement and in monetary terms lie damages). I have not set out and filed definitions of the legal terms above nor supplied your honour with case law on point for these terms, if your honour requires further clarification I will respectfully submit more case law on point.

#### **Slander of Goods Cases**

As per Exhibit "L", I enclose Magnotta Winery Ltd V Ziraldo. I could not find a similar case on point with this action. Moreover, I can't think of a situation where any responsible corporation or business ever set out to deliberately harm a whole category or product or any type of asset or good en mass like Mr Sinclair has. There is simply no precedent for such. In Magnotta V Ziraldo, Magnotta Winery won a gold medal in a wine tasting competition in an International competition for best Canadian wine in that particular category. Mr. Ziraldo who was the President of Inniskillin wine and chairman of the V.Q.A. (Vinters Quality Alliance) made statements to the effect that the wine was not a true product of Canada and was not entitled to the medal because there were more foreign grapes in the wine blend than domestic grapes as per page one (1). The blend which was a 75 percent imported grape and 25 percent domestic grape product did however meet the V.Q.A. standard, as per page 2 and page 3. It would have been an interesting case but I could not find any evidence of a trial and assume it was settled out of court. The whole point of this discussion is that the tort of slander of goods is available in Ontario and is to me in this claim and the Libel and Slander Act of Ontario was the correct controlling legal authority on the issues in that case and for this action.

## Libel and Slander

### Averments

19. In an action for libel or slander, the plaintiff may aver that the words complained of were used in a defamatory sense, specifying the defamatory sense without any prefatory averment to show how the words were used in that sense, and the averment shall be put in issue by the denial of the alleged libel or slander, and, where the words set forth, with or without the alleged meaning show a cause of action, the statement of claim is sufficient. R.S.O. 1990, c L12, s.19.

Again, I could focus on each legal term in this sentence suffice to say that it is ~~clear that since~~ Mr. Sinclair's positive action of calling the painting a "Inferior Counterfeit Morrisseau" etc it is he who must prove his characterization and labelling of the painting is in fact correct. That is he must prove it is a fake.

It is clear that the specific identification and characterization of my painting along with the over 1,000 other paintings by Mr. Sinclair are defamatory. Mr Sinclair's listed definition as per Exhibit "B" of the Plaintiffs claim and then the specific identification and re-characterization of the repetition of the definition alongside a image of the painting as per Exhibit "A" which is subject of this suit leave no doubt In anybody viewing the web site.

From Siskinds,

In an action for libel, the plaintiff is required to prove:

- (a) that the libellous statement has been communicated to some person other than the person of whom it is written (when published through the mass media that is presumes);
- (b) that the libel refers to him or her(or it, because a corporation too has a reputation to protect) and
- (c) that the statement is defamatory, that is, that the plaintiffs reputation has been adversely affected.

The fact that Mr. Sinclair's characterization and specific identification of the painting as an "Inferior Counterfeit" etc on the world wide web via [www.morrisseau.com](http://www.morrisseau.com) and three (3) tests are clearly met.

### Legal Presumptions(Reverse Onus)

Once the plaintiff has proven the three essential elements(four in the case of slander), the law presumes that:

- (a) The statement is false;

(b) It was published with malice, that is, without an honest belief in its truth or recklessly as to its truth, or was published for some ulterior purpose; and

(c) The plaintiff has suffered damage.

The only defences available then are

1. Justification
2. Fair Comment
3. Privilege
- 4 Innocent Dissemination

The evidence of this case clearly makes these defences unavailable to Mr. Sinclair, Mr. Sinclair's assertions that the over 1,000 painting labelled as "fakes" and "Inferior Counterfeit's" and the one subject of this suit are simply not believable. Mr. Sinclair has even called painting from the same era, style, form and substance from the Smithsonian Institution similarly as "fakes". He has admitted as such at trial (Otavnik V Sinclair SC 82782/09) as per Exhibit "M" and is simply not believable. One would have to believe the whole art world was wrong and Mr. Sinclair is right. All the public museums, private galleries, auction houses, curators and even the Cultural Property Review Board etc . It comes down to do you believe the Smithsonian or Mr. Sinclair? In addition, Mr. Sinclair in a letter to Prime Minister Steven Harpers' Office of Canada (among other cabinet members) as per Exhibit "N" where Mr. Sincalir claims that a paintings called *Circle of Four* which is in the Senate of Canada is also a "fake". Moreover, Mr. Sinclair claims in that letter that he has posted on his own web site as of October 16th, 2010.

**"Municipal, provincial and federal authorities were also made aware of the issue, yet these criminal acts, in part sustained by organized crime, continue unchallenged."**

The conspiracy that Mr. Sinclair is alleging this activity/conduct does not however stop there. Mr. Sinclair continues as per Exhibit "O" which is again on his web site now includes the RCMP, The Government of Canada, Toronto Police Department , various First Nations associations and of course the CBC as organizations who are also complicit and not doing their duty by exposing this so called "conspiracy" of "fake" works' of art by Mr. Morrisseau being sold to the public. As he states on page 3

**" I will be shouting from the rooftops. "You let us down Canada. You knew, and you let this madness grow. You failed us already!"**

The doctrine of fair comment is not applicable because the defamatory words/images are by Mr. Sinclair. There is no privilege and it cannot be innocent dissemination because he is the creator of this web site and he has proactively spread these misrepresentations on the world wide web.

I will now as per *Warman v Fromm* set out the standard of the defence of fair comment as per paragraph 94. I realize that it is not required as per my above arguments but I refer to it here

[94] The law of defamation protects a person's reputation from defamatory false. In the case at bar the defamation has been established. However, the defendant relies on the defence of fair comment. Brown states in *The Law of Defamation in Canada, supra*, at pp 14,15 that for the defence to succeed, the defendant must prove that a statement is;

- (1) a comment, not a statement of fact,
- (2) based upon true facts
- (3) on a matter of public interest
- (4) made honestly and fairly
- (5) without malice

I submit that Mr. Sinclair cannot meet one of these tests. It is clear through the web site he clearly states as fact that the painting subject to this suit is a "fake" etc. His position is not based on any true fact, there is no public interest in him doing so and to suggest it was done honesty and fairly is simply not believable, I will not introduce any case law on (1) through (4) because it is clear and obvious Mr. Sinclair's defence cannot meet any of these tests. I will now describe the test for malice as per para 101 of the same *Warman V Fromm* at page 20.

Malice is commonly understood, in the popular sense, as spite of ill-will. However, it also includes [...] "any indirect motive or ulterior purpose" that conflicts with the sense of duty or the mutual interest which the occasion created [...] Malice may also be established by showing that the defendant spoke dishonestly, or in knowing or reckless disregard for the truth.

My loss is complete because in effect there is no market for the works' of Norval Morrisseau in general and specifically for the painting in question due to the specific identification and characterization of this painting as "fake". Do you want to buy a painting labelled as "fake" on a web site. Moreover, how could or anybody sell or even donate this painting without disclosing this? Any such disclose could only hurt the value. I would have to say to a prospective purchaser here is an excellent Morrisseau except it and another 1,000 are labelled as "fakes" by Mr Sinclair who was being promoted by KRG a gallery which was/is associated with Norval Morrisseau. Any number of people could/should sue Mr. Sinclair for

anything from the tort of the Intentional Interference of economic relations and irreparable harm for the existence of this obviously defamatory website.

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I will now turn to recent court decision which highlight the potential damage due to falsehoods, lies and other slander being disseminated on the Internet. I would like to point out that the effects of this type of dissemination of false information has the ability to hamper even a powerful corporation like Barrick Gold. By extension, it is easy to image, how even if a corporation with many financial and legal resources can be effected by the spreading of lies on the Internet how this could affect smaller companies and in this case the work of an artist Norval Morrleasu and even on Individuals like me.

#### **Recent Court Decision and the effect of the Internet**

In Barrick V Lopendandia Mr. Lopendandia as per Exhibit "P" after a dispute with Barrick Gold started posting defamatory statements about Barrick on various web sites and on line forums and chat rooms. Mr. Lopendandia did not even set up a specific web site but merely posted defamatory material in the form of statement son these on line forums. He denounced and claimed Barrick and it's director's, company officials etc) were guilty of tax fraud, money laundering manipulating world gold prices, attempted murder, arson and even genocide. Barrick who at this time was well run respected internationally known company; It had a market cap of Approx 112 Billion dollars during the time of Mr. Lopendandia's statements on line. These statements no matter how farfetched and ridiculous even effected a blue chip company like Barrick, in Barrick Gold Corporation v .Lopenhandia, 2004 CanLii 12938 (On Cal and as per Tab 7 the Ontario Court of Appeal increased a trial judge's damage award for Internet- based defamation from \$15,000 to \$75,000, with an additional \$ 50,000 in punitive damages, on the grounds that the Internet has the distinctive capacity " to cause instantaneous, and irreparable damage to the business reputation of an individual and corporation by reason of it's interactive and globally all-pervasive nature" as well as its potential to be taken at face value. Barrick in this case was able to prove actual harm by showing that it's shareholders had seen the defamatory statements. As per paragraphs 17, 31 and 32

"There is evidence that Mr. Lopendandia's numerous postings were read by users of the Internet, including people in Ontario, and that they have prompted enquiries from Barrick's shareholders, from financial analyst's, and from regulatory agencies including the Toronto stock Exchange. These Inquiries continue. Moreover, Mr. Lopendandia's messages have elicited their own constituency of support and encouragement, thus amplifying the spread of defamation throughout the Internet.

Communication from the Internet is instantaneous, seamless, inter-active ,blunt ,borderless and far-reaching. It is also impersonal, and the anonymous nature of such communications may itself create a greater risk that the defamatory remarks are believed.

The extraordinary capacity of the Internet to replicate almost endlessly any defamatory message tends credence to the notion that 'the truth rarely catches up With a lie"

Thus, I submit that if a corporation like Barrick can be effected so would the market of the works' of Norval Morrisseau given the representations of Mr. Sinclair's web site.

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Moreover, as per paragraph 82 the judges added another requirement on Mr. Lopendendia

[62] I would accordingly allow the appeal, set aside the judgement of the motions judge and in its place order

(a) that the defendants pay to the plaintiff general damages in the amount of \$ 75,000;

(b) that the defendants pay to the plaintiff punitive damages in the amount of \$ 50,000;

(c) that the defendants are permanently restrained from dissemination, posting on the Internet or publishing in any manner whatsoever, either directly or indirectly any defamatory statements concerning Barrick or its officers, directors or employees, all as claimed in paragraph 2 of the notice of motion for judgement before the motions judge,

I submit to your honour, although not asked in this action and highly unusual this remedy is statutorily available to your honour and this court.

I would recommend that every judge read this decision along with Garrick. V Blanchard for these types of cases and place special attention to the various jurisdictional issues brought up in these cases.

The list of companies and court cases I could include in this submission due to the reckless lies of people could be endless. I will present one more because I believe the language in one of the paragraphs in the summary are particularly insightful. From Exhibit " Q" in Vaquero Energy Ltd V Weir 2004 at page 3.

**With Its global reach, capacity for instantaneous re-publication in limitless numbers, and permanent accessibility in electronic databases, Internet Libel might do irrevocable damage to a business reputation before it comes to the attention of its targets.**

Conclusion and Summary of Slander of Title

I submit that the relevant sections of the Ontario Libel and Slander Act are the correct controlling authorities in this matter. The characterization and identification by Mr. Sinclair of this painting constitutes Libel. I meet all the conditions of Libel and Mr. Sinclair's defence simply can't and did not meet the legal presumptions required in order to overcome the legal threshold required.

If I were to set up a web site and call over 1,000 Paintings by Pablo Picasso as "Counterfeit Inferior", "fakes" etc including ones in the Guggenheim, Louvre, or the Museum de Picasso or ones sold by Sotheby's and Christie's auction houses as " fake" etc Do you think I might have a few people trying to sue me? How about Van Gogh why stop at Picasso ? Would you (or anybody) take me seriously. I would hope not.

In conclusion, Mr. Sinclair has slandered the title/goods which is painting subject of this suit. Not only has he not met required burden, I believe that even if the burden was on me, I have proven it is in my evidence provided to this court in this submission.

As per Exhibit # 7, I turn to section 16 of the Libel and Slander Act of Ontario.

**Slander affecting official, professional or business reputation**

16. In an action for slander for words calculated to disparage the plaintiff in any office, calling, trade or business held or carried on by the plaintiff at the time of the publication thereof, it is not necessary to allege or prove special damage, whether or not the words are spoken of the plaintiff in the way of the plaintiff's office, profession, calling, trader or business, and the plaintiff may recover damages without averment or proof of special damage. R.S.O 1990,c L.12,s.15.

It is clear that the written words on Mr. Sinclair's web site along with photographs' stating that the plaintiff not only has fake Norval Morrisseau paintings in his possession but knowingly sells them obviously damages the plaintiffs' reputation. Mr. Sinclair is well aware that the plaintiff (Mr. Jim White) is a well know retailer /seller/wholesaler of Norval Morrisseau painting(s). The plaintiff has done so through White Distribution Limited of which Mr. Sinclair is well aware of. The characterizations by Mr. Sinclair about Mr. White can only be calculated to raise suspicions about the integrity of Mr. White and therefore damage his reputation. There is simply no other conclusion. It is meant to damage the reputation of Mr. White and destroy the value of the artwork of Norval Morrisseau in the marketplace. I refer to Exhibit "R" which a copy of an affidavit of Mr. White in McLeod et al Vs Sinclair as per CV-08-366828. Indeed, I offer the affidavits' of many other reputable retailers whose business(es) have been damaged by Mr. Sinclair's web site. I introduce the affidavits' of Sunny Kim, Joe McLeod and Don Child as per Exhibit's "S", "T" and "U".

**Specific Identification of the Plaintiff as a Partner in S & J Auctions**

The defendant (Mr. Sinclair) clearly and deliberately goes out of his way to specifically identify the plaintiff as one of the owners of S & J Auctions who Mr. Sinclair claims are knowingly selling "fake" works of art through that business. Mr. Sinclair as per Exhibit's "D" and "E" even posts photos' of the business, along with the address and specifically identifies the plaintiff as one of the owners on the defendant's web site. The attempt to damage the plaintiffs' reputation is clear and obvious.

**Burden of Proof**

As I have pointed out that in law, the onus of proof is on Mr. Sinclair since his words and images and accompanying use of those descriptions with the photos of the paintings are the words he states as fact and those words and images are clearly defamatory. Nevertheless, I introduce a Forensic Report as prepared by Dr. Atul Singla of Worldwide Forensic Services Inc as per Exhibit # "V" . The report is/was prepared under normal standards and practices within the industry. I include Dr. Singla's *Curriculum Vitae* as Exhibit "W" and a copy of the report and detailed photographs and hand writing analysis as per Exhibit "X". Thus even though not required to do so I have proved that the painting subject to this suit an authentic original painting by the artist Norval Morrisseau.

In conclusion, I ask for damages in the amount of \$25,000 which includes the value of the painting and damages due to the defendant' s defamatory comments about me on his web site.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.