

THE COURT: Mr. Robinson?

DONALD C. ROBINSON - SWORN

EXAMINATION IN-CHIEF BY MR. SINCLAIR:

5 THE COURT: You can be seated, Mr. Otavnik.
Okay, go ahead Mr. Sinclair.

10 MR. SINCLAIR: Q. Thanks, thank you for
coming Mr. Robinson. So, uh, you've been Norval
Morrissette's, you were Norval Morrissette's principle art
dealer, were you?

A. Yes.

Q. For how long?

A. Twenty, about 20 years.

Q. So since 1989, since around then?

15 A. Yes.

Q. And you've had multiple art shows for
Norval Morrissette over the years?

A. Yes.

20 Q. And you're considered by most people to
be....

THE COURT: Well, let him tell us his
qualifications instead of you leading him
through what they are.

25 MR. SINCLAIR: Q. Oh, okay. So, could you
tell me about your background with regard to Norval
Morrissette and, and authenticating his artwork, selling his
artwork, and in particular, being his confidant and friend?
Like, could you tell me a little bit about your
relationship with Norval Morrissette?

30 A. Well, I've been running an art gallery
for, I guess, since 1980. And prior to that I published
something called The Canadian Art Investor's Guide for five

5 years. And I did, in fact, write an article, or publish an article about Norval Morrisseau at that time. Um, I had heard about him for some, for some years, and I had always admired his work. And about, prior to representing Norval I, I sold secondary market paintings. These are paintings sold to us, sold by us from private owners. Prior to that, I'm sorry, um, in about 1989, I approached Norval Morrisseau with quite a bit of trepidation and asked if I could be his dealer. He, at the time, did not have a dealer, that I recognized at least.

10 And so I presented him my strategy for improving the market for his works, and what I thought our gallery could do for him, and he agreed, so I became, I signed an exclusive written agreement to represent him. After that time we, the gallery, had several exhibitions, full-scale
15 exhibitions of his work, usually consisting of 25 to 40 large, good-sized canvasses. Prior to, after representing him I told him that I was hoping my strategy was to achieve consistent prices across Canada because the prices were not consistent, they were, from coast to coast they had, uh,
20 varied rather substantially. And so I asked him if we could begin to sell them at a relatively low price in order to, and then gradually increase those prices, and that's what he agreed to.

25 Over the years, we did achieve that. The prices increased gradually, we'll say ten or 15 per cent every year, on average, for the next 19 years. We were immensely successful at selling his work. The first, almost all the exhibitions we had were total sell-outs. We had people
30 lining up down the street to buy, to get in the door to buy them. So this carried on until, for quite a long period of time, and, to my knowledge, he never broke the exclusive

5 agreement. Neither he nor his business manager sold paintings to anybody else in Ontario while we had that agreement. The agreement, first of all, was for Canada-wide, and then it seemed rather foolish for us to try to manage his paintings in BC when we were primarily located in Ontario, so we later amended that agreement to include Ontario and the Eastern part of Canada. And we sold them very successfully right up to the time he died. And since he died, we have continued to sell them very 10 successfully. We're, we have a, we are now doing an annual retrospective exhibition, and last year's exhibition sold immensely well. The sales have been better than they were prior to his death, and the prices were higher. And there's certainly, from our point of view, there is 15 certainly a very strong market for his works, much stronger than it ever was in the past.

Q. Really?

A. That is my experience.

20 Q. Did Norval ever show up for any of your art shows, any of his exhibitions at your gallery?

A. Norval showed up for most of them, and he attended most of the exhibition openings, yes.

25 Q. Did you hear testimony here that, with regard to the fact that the market is so bad that you can't sell a Morrisseau no matter how hard you try to anybody?

A. I did.

Q. But you haven't, but your gallery hasn't had that same issue?

30 THE COURT: Well, "has your," don't lead the witness.

MR. SINCLAIR: Oh.

THE COURT: Ask him what his experience has

been.

MR. SINCLAIR: But your - well....

THE COURT: What is your experience....

MR. SINCLAIR: What is your experience....

5 THE COURT: I don't want you to ask him a question that he is going to answer "yes" or "no" and that is all.

MR. SINCLAIR: I see.

THE COURT: All right?

10 MR. SINCLAIR: Yeah. Okay.

THE COURT: So you can ask him what his experience is as opposed to saying, "well, your experience is such and such, isn't?" and, you know, trying to...

15 MR. SINCLAIR: Right.

THE COURT: ...it's leading the witness.

MR. SINCLAIR: I see.

THE COURT: Are you abandoning that line....

MR. SINCLAIR: But in your experience....

20 THE COURT: Okay, you are thinking the question?

MR. SINCLAIR: Yeah.

THE COURT: Okay.

25 MR. SINCLAIR: Q. Uh, selling, how, what's it like to sell a Norval Morrisseau painting right now, then? I know you kind of answered it - let's do it again.

30 A. Well, the thing we have to be careful of, of course, is fakes. And, as it is very well known in the market place, my experience, right now, is that it's relatively easy to sell authentic Morrisseau paintings. We don't have any problem with that. Our last exhibition, retrospective last year was almost a total sell-out, and

I've forgotten how many paintings were in that brochure, in that exhibition, but it was quite a substantial number and we had no problem selling them, and we're certainly planning to do it again this year.

5 Q. What would be the reason why people would buy paintings from your gallery, almost to a sell-out, or sell-outs, but others, with, like Mr. McLeod with his gallery, is saying he can't sell any? What would be the possible reason why yours are still selling?

10 A. Well we, all I can say is that, from our own experience, we take great care to make sure that the authenticity is correct, and we pride ourselves on that reputation of selling authentic paintings. And, um, I don't know what else to say. I wouldn't want to comment about Mr. McLeod's experience.

15 Q. Yes. So you provided an expert report on the tenth of September, I believe it was filed on the 14th with regard to this issue?

A. Yes.

20 Q. Is this it?

A. Yes.

THE COURT: Do you have a copy of that?

MR. OTAVNIK: Yes, I do, sir.

25 MR. SINCLAIR: Q. It's entitled, "An Examination Into the Authenticity of an Alleged 1970s Norval Morrisseau Painting." It's not there?

THE COURT: Well, do you want to hand it up here so I can have it? Okay. This is a report done by you, sir..

30 A. Yes.

THE COURT: ...on the painting in question?

D. Robinson - In-Ch.

A. Yes.

THE COURT: All right. What do you want to ask him about it?

A. I have a copy.

THE COURT: Oh, you have a copy. Okay. We will mark this as an exhibit.

EXHIBIT NUMBER ONE - Report of Mr. Robinson
- Produced and Marked.

MR. SINCLAIR: Q. I guess the first question is, how do you feel about the subject painting?

A. If, if you're asking me what my opinion of the subject painting is...

Q. Is it an authentic?

A. ...a fake.

Q. It is a fake? Uh, what would make you, how did you come to that conclusion? Can you, not - can you summarize your report so that, so that Your Honour could get a sense of it, because it is so extensive?

A. I examined the painting, um, in many respects. I immediately recognized it as a fake, but I realize that one has to prove it's a fake, not just state it's a fake. So I did all kinds of analysis on the painting, over a course of over six months. And I looked at the provenance, I looked at the style of painting, I looked at the writing, the writing on the back, the signature on the front. I found, in every single thing I looked at I found things that convinced me that this painting was, could not have ever been by the hand of Norval Morrisseau.

Q. At first glance, I think you mentioned,

at first glance you, you knew it was a fake?

A. Yes, I did.

Q. Now, how is it possible that you could just glance at a picture and, even with your extensive experience with Norval Morriseau, and consider it a fake?

A. Well, over the many years, initially, of course, I purchased, as has been said here a couple of times, a number of paintings at Randy Potter Auction, to my great regret later on, and, um, I learned with, with sad experience and lots of years of trying to learn what constitutes a fake Norval Morriseau. I sat with the, with the artist several times discussing the subject. I looked at, there are many ways of faking a Morriseau, I believe I know at least three or four different methods of faking Morriseaus, but this particular one, the method of doing, or the method of painting this, the style of painting, is very distinctive. It's, um, representative, it's representative of a very large volume of paintings, somewhere, I estimate around 3,000 paintings circulating the marketplace that are all painted with exactly the same characteristics, and they are painting characteristics that are, I believe, from an artist, one single artist who paints in his own particular, recognizable style, and tries to imitate Norval Morriseau, but doesn't do a good job of it. These, these paintings are, in my opinion, are very bad fakes, they are not good fakes. There aren't many good fakes - there are some good fakes in the marketplace which require real experts to, to notice them, to notice the differences, but these particular ones are so bad, in my opinion, that almost anybody, even if they just did a little bit of study, would certainly realize that they are fakes and not authentic.

Q. M'hm. So you mentioned, uh, Randy Potter, which is the source of this painting, and that you had your own issues with, you purchased some paintings and...

THE COURT: All right, well...

Q. ...and when was it you....

THE COURT: ...we are not getting into those because those are not dealing with the subject matter of this painting, so....

MR. SINCLAIR: Excellent.

THE COURT: It is not relevant to his other experiences.

MR. SINCLAIR: Q. No. You're right. Um, so are you 100 per cent sure that, that the subject painting is a fake?

A. Yes.

Q. After six months of study of this painting, and you did - I keep leading the witness. Sorry, Your Honour. Well, is there anything in particular you would like to discuss from, from this report?

A. Well, I think the report speaks for itself and I am happy to answer questions on any part of it.

Q. Sure. Section seven of this report has an extensive sworn declaration by Norval Morrisseau, on November, 2004 it was sworn. Right?

A. Yes.

Q. Okay. Now, the source of these paintings, can you tell me where these paintings, the paintings that are, the images that are on page six, seven, eight, nine, um, yeah, can you tell me where, are these paintings, these paintings Norval Morrisseau himself believed were fake, right?

D. Robinson - In-Ch.

A. That is my understanding, yes.

Q. Do you know what the source of these paintings, where they came from, with regard to this declaration? Have you seen other declarations, first of all?

A. Yes, I have seen other declarations.

Q. Multiple ones from Norval Morrisseau, right?

A. Yes, I have.

Q. Sent to multiple galleries that were selling these disputed works?

A. Yes.

Q. And this one that you've included here in your report, why have you included it?

A. I included this particular one because, just because it has a, a painting in it that's pretty much similar, on page two of the report, to the painting, the painting under dispute here in this court. So I just included it because it's another example of, of very much the same theme.

Q. Right.

A. The same title, essentially, "Black Robe," or something close to it.

Q. Right.

A. And that was my only reason for including it.

Q. Okay. Um, looking at Tab Two, I, I see a, I see your agreement with Norval Morrisseau, right?

A. Yes.

Q. Did you have an agreement to authenticate artworks with Norval? Is that what....

A. I didn't, I didn't have a specific

agreement to authenticate works.

Q. Okay.

A. Although he did grant me, uh, a letter stating I had the authority, in his opinion, had the authority to authenticate them.

Q. I see, I see.

A. I think that's included in the report, somewhere in the appendix. Appendix four.

Q. Yeah, I'm looking at, at, in Tab Five, here, where it says, "to whom it may concern," signed by Norval Morrisseau and Gabe Vadas.

A. Yes.

Q. And paragraph three says, "I hereby confirm that any paintings whose provenance is in doubt, bearing what is purported to be my signature, should be authenticated by Don Robinson, Kinsman Robinson Galleries, or Gabe and Michelle Vadas, or myself." That was sent to you by Norval Morrisseau, was it?

A. Yes.

Q. Now, particular in section six, this deals with Randy Potter Auctions, why did you include these three pages in this section?

A. Well, one thing these pages show, document is, how many of these paintings are, are out there, that he has, Randy Potter has stated, in the copies in the report here, that he's sold over, approximately 2,000 paintings, and that may be one reason. I don't remember every reason why I put this in.

Q. Okay. The second page, what does it say in the second page? That, so this appears to be a letter from Norval Morrisseau and Gabe Vadas to Randy Potter. Is it?

A. Maybe. I, I can't remember right off hand where that particular letter came from, exhibit eight from Mr. Otavnik's previous court filings.

Q. Um....

5 A. And, I don't know, I guess there's no doubt that that was to, although it doesn't say, it seems to be not addressed to Randy Potter, but because I have it in this, in this source, it must have been, it must have been part of the letter to Randy Potter, yes.

10 Q. I see. The particular one that really interests me is on page three. Would you mind, uh, reading that last paragraph? This is a statement, I believe, by Randy Potter, right?

15 A. You want me to read the whole paragraph, the last paragraph?

Q. Maybe just read the first couple of lines and the question.

A. I do not have any, except my....

Q. Well, the question is....

20 A. The question was, "what provenance do you have in this painting?" "I do not have any except my reputation for selling these for nine to ten years, and my personal guarantee. My description will tell you about the fact that I sell these to the biggest native art galleries in Canada, sold approximately 2,000, without ever having a
25 single complaint or return."

Q. Okay. So, now, Mr. Robinson, you were party to this case before, is that correct?

A. Yes.

30 Q. But, but it's been since settled on, on your, with regard to Kinsman Robinson..

A. Yes.

D. Robinson - In-Ch.

Q. ...with regard to your galleries?

A. Yes.

Q. Would, would you be willing to disclose
the....

5 THE COURT: I am not sure the settlement....

MR. SINCLAIR: Can be disclosed?

THE COURT: What is the relevance?

MR. SINCLAIR: The relevance? Uh, I believe
10 that the settlement, the agreement to settle
was based on, on Mr. Otavnik agreeing to
drop them off the suit if they made anything
about me, Kinsman Robinson Gallery,
disappear on the internet. So, that's my
belief with regard to that.

15 THE COURT: Well, you know what, I am
concerned about hearing settlement
discussions that took place with another
defendant in this court, because I - I mean,
I cannot hear settlement discussions between
20 you and the plaintiff, and I, it gives me
some concern whether my entitlement to hear
settlement discussions with another
defendant might prejudice my ability to be
objective, so I am not....

25 MR. SINCLAIR: Maybe I'll ask Mr. Otavnik
those questions.

THE COURT: Well, I am not even sure that I
am entitled to know the....

MR. SINCLAIR: To know why?

30 THE COURT: To know what the settlement was
with the other party.

MR. SINCLAIR: I see.

D. Robinson - In-Ch.

MR. OTAVNIK: It's actually part of the record.

THE COURT: Unless you are satisfied with me knowing, sir?

MR. OTAVNIK: No, I mean, I'm saying it was, it was requested of me to provide that, upon, with their consent, which I did provide to Mr. Sinclair and the court.

THE COURT: Well, I am not aware of it.

MR. OTAVNIK: Okay.

THE COURT: I have not seen it...

MR. OTAVNIK: Yes.

THE COURT: ...and I am not sure I am...

MR. OTAVNIK: I'm just....

THE COURT: ...entitled to know about it.

MR. OTAVNIK: I'm saying....

THE COURT: Okay.

MR. SINCLAIR: Q. Um, could you tell the court a little bit about who I am, Mr. Robinson, and what you know of who I am and my relationship with Norval Morrisseau?

A. Well, I understand that you were, you were once, but you knew Norval Morrisseau a number of years, and that you were painting with him. I am not sure what else I can say.

Q. Do you remember the first time that you and I met with Norval Morrisseau at your gallery? Um, I walked in and you said, "who is this Mr. Sinclair?" In 1989, '90, maybe '91?

A. I don't remember that, but I do remember Norval, I invited Norval to my house and Gabe when they were, came for an exhibition many, many years ago, and

Norval asked if he could bring you along. And I said, "yes."

Q. Yeah.

A. I think that was my first real exposure to you.

Q. Do you remember 1997, a special ceremony that took place at the grounds of the McMichael Canadian Collection?

A. Yes.

Q. Do you remember what happened? Would you tell the court?

A. Yes. What happened there was that, we were having an exhibition at the gallery, at our gallery in Toronto, and at the same time there was, I am not sure how it came about, Norval and Gabe and Ritchie Sinclair, with myself, travelled to McMichael and I distinctly remember it because it's very rare that one gets to drive one's car onto, right onto the front door of McMichael, but that's what happened that day, I drove Norval right to the front door. And, anyway, what happened was that there was some photography, McMichael officials were there, and Norval performed or organized to perform a bear dance, which was important to him, and I do remember, uh, Ritchie Sinclair and Gabe Vadas in costume along with Norval performing on the front lawn of McMichael, and I do remember the fact that it was being photographed and recorded.

Q. Right. Did you attend that, were you at the 2006 National Gallery show of Norval Morrisseau?

A. No.

Q. I wondered. I didn't see you.

A. No, I did not attend.

THE COURT: All right, well it is not a

conversation.

MR. SINCLAIR: Thank you.

THE COURT: Any other questions?

MR. SINCLAIR: Q. Um, so my understanding
5 is that, that you settled with Mr. Otavnik this lawsuit
that you were a party to?

A. Yes.

Q. What's happened with Mr. Otavnik since?

THE COURT: I am not sure what that means.
10 It has got to be more specific.

MR. SINCLAIR: Q. Did Mr. Otavnik sue you
once again?

A. Yes, he did.

Q. He sued your gallery once again?

A. He sued the gallery, and he attempted
15 to, serve me, unsuccessfully.

Q. Yeah....

A. And part of the settlement....

THE COURT: All right, well I...

MR. OTAVNIK: That is....

THE COURT: ...we are not getting into that...

MR. OTAVNIK: Thank you.

THE COURT: ...because that is going to be a
25 separate lawsuit, somebody else will have to
deal with that.

MR. OTAVNIK: Thank you.

THE COURT: Is that it?

MR. SINCLAIR: Well, I guess one more time,
the subject painting that you looked at....

THE COURT: No, he has already commented on
30 the subject painting and the reason why he
believes it to be not authentic.

D. Robinson - Cr-Ex.

MR. SINCLAIR: Okay.

THE COURT: All right. Any questions?

MR. SINCLAIR: Thank you, Mr. Robinson.

5 CROSS-EXAMINATION BY MR. OTAVNIK:

MR. OTAVNIK: Q. Yes. Mr. Robinson, let's, uh, just get a date clear, when did you first view the painting?

A. I don't remember the exact date.

10 Q. You said six months before? You said the report....

A. I don't remember exactly when it was.

15 Q. Okay, the report dated September the ninth, you have just testified that you've reviewed it for six months prior to that, before preparing the report, correct?

A. Possibly - that's my best guess. I don't know how long ago it was.

20 Q. It was actually two months Mr. Robinson.

A. That's okay.

Q. Would that be more accurate?

A. I don't know.

25 Q. You don't, you don't know. Your Honour, I will bring you the motion record of June 29th....

THE COURT: All right, well, he, he says, let's just move on.

MR. OTAVNIK: Q. Okay. So you agree it's two months then.

A. No, I don't agree. I just don't know.

30 Q. Your Honour, I'm going to have to have him go through this, Your Honour. I'm going to bring in a motion record. Because the painting, the motion of June

29th, I agreed to turn the painting over to Mr. Baker, so June 29th was the earliest date you could have viewed it. That is not six months back from September.

A. Are you asking me a question?

Q. Yes, I am asking you a question.

A. What is the question?

Q. Did you view it in July?

A. I don't remember, but I believe I viewed it on the internet many, quite a...

Q. Right, but...

A. ...quite a long time.

Q. ...personally, you viewed it in July in Mr. Baker's office.

A. Is there a question?

Q. Yes, you, my question is, did you view it in Mr. Baker's office in July, first week of July?

A. I viewed it in Mr. Baker's office, but I do not remember the exact date.

Q. Now, let's go to your report now Mr. Robinson. You spoke to the preface. Last, um, sentence, "my role is to assist the court in matters of my expertise. I believe in my opinion, I speak from neither my side nor that of the defendant." Were you not a, a previous defendant in this case?

A. I'm sorry, I don't, I don't....

Q. Kinsman Robinson, were you not a...

A. In this...

Q. ...previous defendant?

A. ...particular case?

Q. Yes, sir. Yes, sir.

A. Previous to what? I don't understand.

Q. Well, Mr. Robinson, here is the - you

were co-defendant in this action originally, correct?

A. Probably, yes.

Q. Yes. Right. Now, and you're not a co-defendant now, correct?

A. No.

Q. Do you recall why?

A. Yes. We, the gallery agreed to, we were in the process of removing our, our...

Q. Yes.

A. ...particular blog, and so...

Q. Oh.

A. ...we agreed, we had no concern...

Q. Yeah.

A. ...when asked by you...

Q. M'hm.

A. ...to eliminate any reference to Ritchie Sinclair in order to settle.

Q. Mr., uh...

A. I'm trying...

Q. ...Robinson....

A. ...to finish the question.

Q. Sure, go ahead.

A. Let me answer the question. We had no concern, so we simply eliminated the, our blog.

Q. Mr. Robinson, is this one of your publications?

A. Yes.

Q. Thank you. Can you please go, and, you, and everything in this publication is authentic?

A. I hope so.

MR. OTAVNIK: Okay. Let's go. Let's go to page 97. Your Honour, I'll be going from

the additional filing.

THE COURT: Additional filing of what?

MR. OTAVNIK: What, see, what happened was....

5 THE COURT: No, you do not have to give me a - I said, "additional filing of what?"

MR. OTAVNIK: In, no, in, it was part of the record of this case. It would, the, after, after the original....

10 THE COURT: Additional filing to your claim?

MR. OTAVNIK: Yes.

THE COURT: It says, it is entitled, "additional filing." Okay...

MR. OTAVNIK: Yes, Your Honour.

15 THE COURT: ...I have it here. All right.

MR. OTAVNIK: Q. Turn to page, uh, 97, Mr.

Robinson.

A. M'hm.

20 Q. Is that an authentic Norval Morrisseau in your opinion?

A. I think so.

Q. It was labelled as a fake on Mr. Sinclair's website. You're aware of that, right?

A. No, I wasn't aware of it.

25 Q. Oh. Okay. Now, Mr. Robinson, can you go to page 103?

A. Where....

30 Q. Where is, is that it, right there? Mr. Robinson, you were...

A. M'hm.

Q. ...you just passed it. Right there. Is that an original, uh, Norval Morrisseau?

A. I hope so.

5 Q. It's also labelled a fake on Mr. Sinclair's website. Can you turn to page 109, Mr. Robinson? Is that an original Norval Morrissette? It's in your book.

A. I believe it is.

10 Q. It's also labelled a fake by Mr. Sinclair on his website. Can you turn the page to 111? No, you just passed it. Is that a real Norval Morrissette in your opinion?

A. Yes.

Q. Also called a fake by Mr. Sinclair. Do you know where that's hanging?

A. No.

15 Q. In the Smithsonian Institution.

THE COURT: No, you can't give evidence, sir. You can ask him....

MR. OTAVNIK: Q. Oh yeah. Do you know where it's hanging? Do you know where it's hanging, sir?

20 A. No.

Q. Okay.

A. Well, maybe I do now.

25 Q. You do, you do now. Fair enough, Mr., fair enough, fair enough. Now, isn't it a fact that we came to an out of court settlement after that was disclosed, after the first pre-settlement?

A. I don't understand the question. After what was disclosed to who?

30 Q. To you.

A. This....

Q. This....

A. What was...

Q. These contents.

A. ...disclosed to me? That was not disclosed to me.

5 Q. Yeah, it was disclosed to your firm and that's why you settled out with me.

A. No.

Q. It removed all, all references from Mr. Sinclair...

A. No.

10 Q. ...from your website.

A. No, we settled with you because we couldn't be bothered with a, with a ridiculous lawsuit, and it was costing...

Q. Oh, so you...

15 A. ...us money and effort.

Q. ...you were promoting Mr. Sinclair as an expert, you found out that Mr. Sinclair called some of your own paintings fake in your own publication, and just thought nothing of it.

20 A. What's the question?

Q. The question is, on the original filing, you did not settle with me until this was filed with the court after the first settlement conference, correct?

A. No.

25 Q. That's - what do you mean, "no"?

A. Well, I didn't see that document. You didn't file that document with us.

Q. Yeah, absolutely did.

THE COURT: All right, well...

30 A. Well I don't remember it.

THE COURT: ...just one moment. Wait a minute.

MR. OTAVNIK: This is....

THE COURT: Don't argue with the witness's answers.

MR. OTAVNIK: Yes.

5 THE COURT: Whether you like his answer or not, all you can do is ask another question. If you want to present evidence later in reply, you can do that. But do not start arguing back and forth or, or comment on his answers.

10 MR. OTAVNIK: Q. Mr. Robinson, the date of our, uh, confidentiality agreement was after the date of this filing, correct?

15 THE COURT: The date of your confidentiality agreement?

MR. OTAVNIK: Yes. What happened was, is, well, after the first settlement conference....

20 THE COURT: Wait a second, are you telling me the settlement was confidential between you?

MR. OTAVNIK: Yes.

THE COURT: Well why were you bringing it up then?

25 MR. OTAVNIK: Well, because he..

THE COURT: I am not....

30 MR. OTAVNIK: Q. ...breached it by testifying today. But that's, here, neither here nor there right now. So, I'll get this straight, you were promoting Mr. Sinclair on your website at the same time he was calling stuff from your, paintings from your gallery a fake on his website?

A. What's the question?

Q. That's my question. You were promoting Mr. Sinclair as an expert on your website, with a link from your website to his, at the same time he was calling paintings from your own publications fake on his website.

5 A. I don't know, that sounds like a statement, not a question, but what was happening was...

Q. Your Honour....

A. ...we were referring....

THE COURT: Let him, let him try and answer.

10 A. We were referring on our website to, uh, Mr. Sinclair and his, and his, what, and various references to him. I would not go so far, I would never go so far as to say we were promoting Ritchie Sinclair.

MR. OTAVNIK: Q. Was....

15 A. Just because he was mentioned on our website doesn't mean we were promoting him.

Q. Was Mr., at the same time Mr. Sinclair was on your blog, and you had a link from your blog to Mr. Sinclair's website, was he, at the same time, not calling those particular paintings from your own publication fake on his website?

A. He may have been. I can't verify that.

Q. Do you know that even today those paintings are still on his website called fakes?

25 A. Uh, no I don't. I don't follow his website day-to-day.

Q. You don't follow his website day-to-day?

A. No, I don't.

Q. So you're the principle art dealer for Norval Morrisseau. This man has defamed some of your own paintings and you don't know about it?

30 A. I don't say I didn't know about it, I

said I don't follow it day...

Q. Have you taken...

A. ...day by day.

5 Q. ...any steps to remove those paintings
from Mr. Sinclair's website?

A. No.

Q. Well, I mean he's....

A. He has a right to his opinion.

10 Q. Sure, I mean, as a, I mean, there's a
painting here from in the Smithsonian in your book he's
calling fake, and you don't think, as a principle art
dealer of Norval Morrissette, I have no interest in taking
it off your, your, his website?

15 A. He has a right to his opinion and I'm
not, and I don't worry about these, these small points.

Q. Oh, these small points.

A. M'hm.

20 Q. So some, do, well, my following
question, do you believe the Smithsonian is right, or Mr.
Sinclair?

A. I have no idea.

Q. Oh, the....

A. I would have to...

Q. Oh.

25 A. ...look at the painting, examine it, and
you're asking me questions I can't answer right here.

Q. Oh, you mean the Smithsonian
Institution, you think they'd be more qualified....

THE COURT: All right, he has...

30 MR. OTAVNIK: Okay...

THE COURT: ...answered the question.

MR. OTAVNIK: ...fair enough.

THE COURT: He has answered the question.

MR. OTAVNIK: Q. Now, the one of the paintings, also, in here is in the Fred Jones Jr. Museum in the University of Oklahoma, which is featured on your website. Is it a fake too?

A. I have no idea what you're talking about.

Q. Oh, well, let's get right to it. This painting is featured on your website and, as, from one of your selected collections, on your website, being from the Fred Jones Jr. Museum, and that's one Mr. Sinclair has called a fake. Do you believe it's a fake?

A. I really wouldn't want to comment. I don't know at this point. I would need to examine the painting, look at the provenance, and this is a long..

Q. So we can..

A. ...time ago.

Q. ...agree that there are paintings in, you, that you, as far as you're concerned, there's paintings here that, are all authentic, but they're labelled as fake on Mr. Sinclair's website?

A. I did not say that.

Q. What did, what, what was your comment?

THE COURT: All right, he has already indicated..

MR. OTAVNIK: All right.

THE COURT: ...he is not sure exactly what is on the site.

MR. OTAVNIK: Q. Okay, fair enough. Fair enough. And, now, you were Norval Morrisseau's principle art dealer, you said, for 25 years, right?

A. Uh, 20 years I think I said.

Q. And you, it says in your, in your introduction in your expert report that you have personally handled a thousand Morrisseau paintings and conducted hundreds of formal appraisals, correct?

5 A. Yes.

Q. Did your firm ever appraise any, uh, paintings from Kahn Auctions before....

A. Yes.

10 Q. Yes. And you have actually, the ones that you appraised from Kahn Auctions you thought were, you gave positive opinions on them?

A. At that time.

Q. At that time, yes. And, uh, you ended up buying 28 from Potter Auctions...

15 A. Yes.

Q. ...correct?

A. Yes.

Q. Now, do you remember the article that you helped write in the National Post?

20 A. I did not help write any article for the National...

Q. Oh, no...

A. ...Post.

25 Q. ...you, you were, you are the only source in here, Mr. Robinson. Do you remember, do you remember Murray Right (ph), their reporter approaching you and discussing it?

A. No.

30 Q. You don't. So all this stuff attributed to you, you don't know about?

A. I didn't say I didn't know about it, I said I don't remember who the, who the reporter was, or,

or...

Q. Well....

A. ...when it happened.

5 Q. Well, Mr. Robinson, the article says that, "the alleged fakes first came to Mr. Robinson's attention through the RCMP, Thunder Bay, which has received a tip through Crime Stoppers." Is that how, where you first heard about the Norval Morrissette fakes?

10 A. I did receive a, a letter from the RCMP. It was a Crime Stoppers tip according to the RCMP. They sent me four, four photographs, but, does that answer your question?

Q. And that was in 2001, right?

A. It may have been.

15 Q. And what's the status of that investigation? You, it's, it's quite prominently...

A. Well, there...

Q. ...featured here.

20 A. ...there is - but this is, how old is this article?

Q. 2001.

A. Well, that's like nine years ago.

25 Q. So the point is nothing's been, nothing, the RCMP hasn't come to any conclusions, right?

A. I am, I am not aware of, they didn't tell me anything they may have concluded or not concluded from that letter and that, that investigation.

30 Q. Fair enough. Now, in the article, here, um, you're basically saying that you bought, Potter Auction is selling fakes, correct?

A. Um, you know, I haven't read the article for like nine years.

D. Robinson - Cr-Ex.

Q. Well, yeah, but you....

A. And you're asking me if I, I didn't write the article.

Q. Yeah.

A. And, you know, quite often people get misquoted so I don't know what's in the article right now.

Q. Oh, okay. Okay, Mr. Sinclair. Okay, Mr., uh..

A. I do remember being misquoted a couple of times in...

Q. Oh, okay.

A. ...previous articles.

Q. Okay. Did you ever disclose to your clients the fact that you bought from Potter Auctions?

A. I doubt it.

Q. You doubt it. So, you bought 28 paintings from Potter - oh, first of all, first of all, first question, um, Norval says here, "'allegations of forgeries of Mr. Morrisseau's work are nothing new. He's been telling us for years about the fakes and even the people who were painting them', Mr. Robinson said."

A. Oh.

Q. Who were painting them? Article states that Norval Morrisseau told you, that he told you who was, who were painting the fakes.

A. He did tell me some names.

Q. Who were they?

A. But, uh, they weren't the same people that, obviously, have painted these...

Q. Well, how do you know?

A. ...later paintings.

Q. Tell us.

A. I don't know.

Q. Well okay. So, you bought 28 paintings from Potter Auctions, and you paid approximately how much?

5 A. I think it was in the order of a little over \$50,000.00.

Q. \$50,000.00? Yes. Yes. And then, you didn't say to Mr. Potter, "hey, they're fakes. I want my money back." Why not?

10 A. Well, it took me a long time to realize they were fakes. I, um, I, first of all, I wanted to buy them because I thought they were authentic. I had heard that, and observed that, Joe McLeod was purchasing them, and, at that time I believed that he had a long-term, longstanding experience with Norval, even going back earlier than I did.

15 Q. So you were....

A. So I trusted....

THE COURT: Let him finish...

MR. OTAVNIK: Sure.

20 THE COURT: ...the answer.

A. So I trusted, at that time, to my great regret, in his particular credibility, and I started to buy the paintings, with two purposes in mind, really.

MR. OTAVNIK: Q. M'hm.

25 A. One was to - I was always concerned, looking back a little bit, I was always concerned that Norval Morrisseau might...

Q. M'hm.

30 A. ...leave the gallery, so I wanted to have some, even though our first priority was to sell the paintings that Norval Morrisseau supplied for the gallery..

Q. M'hm.

A. ...I always wanted some backups in case, you know, in case Norval left, went with someone else.

Q. M'hm.

5 A. And so, purchasing a few of these paintings was part of my, part of my objective was to build up a bit of an inventory, just put away for a rainy day, so to speak. And the other thing I noticed was that, um, the paintings were selling for ridiculously low prices compared to what we were marketing for in the gallery..

10 Q. M'hm.

15 A. ...and as Norval's exclusive dealer and, and considering what I also mentioned previously about my understanding with him, that I would try to achieve Canada-wide uniform pricing, I went to the auction with another objective in mind too, and that was to bid on a few, on more paintings than I wanted, just to make sure that people didn't get them too cheap. So I did bid on many more paintings than I bought. I didn't really care very much which particular paintings I bought as a result of bidding on them, and I, that's how I - I've forgotten now your question - but that's how I came to..

20 Q. Well what happened..

A. ...buy the paintings.

Q. ...to the 28 paintings?

25 A. Well, we immediately resold some of them, quite a few of them, actually, to a few, a very few to private collectors, mostly to another auction, out of town auction.

Q. As Morrisseau's?

30 A. Yes. Because at that time I believed they were authentic.

Q. Oh, and have you gone back and corrected

that with those clients?

5 A. We actually have. We have bought back two or three paintings already from our private clients. I haven't done anything about the auctions because everyone knows in the art business that auctions are buyer beware. When you buy, it's your risk.

Q. Do you remember a letter you sent out to your clients the day after the National Post article came out?

10 A. I remember sending letters out to clients. I don't know the date.

Q. Oh. I'll get you a copy of that. And in that letter, did you ever, perhaps, mention to your clients the fact that you bought from the same place you are now calling fakes?

15 A. No, I wouldn't, I, we wouldn't reveal our source, normally.

Q. No, I mean, I mean, Mr. Robinson, I mean, the article says, you know, I, uh, this, this auction house is selling fakes. You bought some. Do you tell your clients, "hey, I found this new information"?

20 THE COURT: All right, well, wait a second. Again, I am not sure how all this - Mr. Robinson is not a defendant in this action.

25 MR. OTAVNIK: No, no.

THE COURT: So the only questions that really...

MR. OTAVNIK: Is....

THE COURT: ...listen...

30 MR. OTAVNIK: Yes.

THE COURT: ...to me, sir - that you can really ask him in regard to, perhaps, his

opinion as to whether this is a fake or not a fake. The question...

MR. OTAVNIK: Right.

THE COURT: ...of what he did, and sending letters out, and...

MR. OTAVNIK: Yes.

THE COURT: ...and his business practices, having bought the other Morrisseaus that may or may not be authentic is not an issue before me. So...

MR. OTAVNIK: So....

THE COURT: ...let's limit it...

MR. OTAVNIK: Yeah, sure.

THE COURT: ...like I limited...

MR. OTAVNIK: Sure.

THE COURT: ...the defendant...

MR. OTAVNIK: Sure.

THE COURT: ...you are going to be limited to questions that are relevant.

MR. OTAVNIK: Q. So if, yes, yes. So, in effect, Mr. Robinson, you bought 28 fake paintings, right?

A. Yes.

Q. Okay. And you were an expert in Norval's work for years before that, correct?

A. I didn't, no, I didn't say that. I think I was quite naïve about, back ten years ago, how, whether the paintings were authentic or not. I just trusted they were authentic.

Q. Did you ever hear of a gentleman called, um, Martin Humphries?

A. I've heard the name, yes.

Q. The name. And didn't he also write to

5 your lawyer, or actually wrote to several, the Norval
Morrissette Heritage Committee and said, you know, I have
seen Mr. Robinson but paintings off Kahn Auction, he's now
in the papers calling them fake, and do you remember what
your lawyer's response was?

THE COURT: Again, I am not sure the
relevance....

MR. OTAVNIK: Yeah.

THE COURT: No. No.

10 MR. OTAVNIK: Yes.

THE COURT: It is not relevant to the
question of this particular painting.

MR. OTAVNIK: Yes, okay. The fact is, Mr.
Robinson....

15 THE COURT: No, no.

MR. OTAVNIK: Yeah, okay.

THE COURT: Let us get something..

MR. OTAVNIK: Yes.

THE COURT: ...that is...

20 MR. OTAVNIK: Yes.

THE COURT: ...relevant. Not what....

MR. OTAVNIK: Q. Yes. Mr. Robinson, you've
been fooled 28 times, correct? You bought 28 fake
Morrissettes that you admit to buying?

25 A. I was fooled three or four times when,
the auctions I attended, yes.

Q. Now, Mr. Robinson, did you ever return a
painting?

A. Only one.

30 Q. Only one? For how much was it for?

A. I don't really remember. It wasn't that
much money.

THE COURT: Okay....

MR. OTAVNIK: Q. It's \$250.00, wasn't it?

THE COURT: All right. You know what....

MR. OTAVNIK: No, no, no, it's, it's - go ahead, Your Honour.

THE COURT: No, it is not relevant.

A. It was not a Morrisseau.

THE COURT: Again...

MR. OTAVNIK: Yes.

THE COURT: ...what he returned, did not return...

MR. OTAVNIK: Yes.

THE COURT: ...we are dealing...

MR. OTAVNIK: Yes.

THE COURT: ...with a particular painting...

MR. OTAVNIK: Yes.

THE COURT: ...that you are alleging...

MR. OTAVNIK: Yes.

THE COURT: ...has been somehow, the title has been...

MR. OTAVNIK: Yes.

THE COURT: ...challenged as being authentic, and certain losses to you as a result of it. So let us leave it...

MR. OTAVNIK: Yes.

THE COURT: ...at that.

MR. OTAVNIK: Yes.

THE COURT: Okay? This gentleman is not a litigant in these proceedings, and you are not going to continue...

MR. OTAVNIK: Yes.

THE COURT: ...going after him as to...

MR. OTAVNIK: Yes.

THE COURT: ...what his practices were.

MR. OTAVNIK: Q. Yes. Yes. So, again, how
do you know you are right this time when you already bought
28, you've been fooled 28 times, as you say?

A. I didn't say I was fooled 28 times.

But...

Q. Well, you bought, you bought...

A. ...uh, I...

Q. ...28 paintings.

A. ...I was fooled in 1999, late 1999, early
2001, 2000, sorry, yes, I was fooled.

Q. The Potter....

A. And I learned, I lived to regret that
deeply.

Q. The Potter paintings, did you ever, uh,
bring them to Norval...

A. No...

Q. ...and ask him....

A. ...never. Never.

THE COURT: Again, I am not sure the
relevance. I....

MR. OTAVNIK: Yeah, well, I mean, he....

THE COURT: No, no. Let's not, let's talk
about...

MR. OTAVNIK: Okay.

THE COURT: ...this painting.

MR. OTAVNIK: Q. Okay. Okay. So, you
were, you were aware of the, um, the process involved in
the Cultural Property Review Board, right?

A. Yes.

Q. Would you say it is quite rigorous?

A. It is also open to all kinds of..

Q. Okay.

A. ...skulduggery.

5 Q. So, for this painting here, what is your expertise, you claim why it's not a Morrisseau painting? I mean, you've been fooled 28 times....

THE COURT: All right, so we...

MR. OTAVNIK: Okay, fair enough.

THE COURT: ...keep going over that....

10 MR. OTAVNIK: Fair enough. Fair enough.

THE COURT: You have asked him the question...

MR. OTAVNIK: Fair enough.

THE COURT: ...what is his criteria...

MR. OTAVNIK: Fair enough.

15 THE COURT: ...and let him explain it.

MR. OTAVNIK: Q. Are you a handwriting expert?

A. No.

20 Q. Did, when you did, you viewed the painting, did you, you viewed the painting, did you do any paint analysis?

A. Paint analysis?

Q. Well, yes....

A. The types of paint?

25 Q. Types of paint...

A. No.

Q. ...age of the paint, anything like that?

A. No. Didn't do any scientific tests.

Q. No scientific tests at all?

30 A. That's right.

Q. And all of your, your handwriting analysis is your own analysis, that's it?

A. Uh, yes.

Q. And you have no, you have no, you are a, you have no education in that? You are not qualified to give an opinion on any handwriting? If I submitted handwriting analysis to you, uh, experts, and you couldn't do it?

A. I am not a handwriting analysis expert, no.

Q. So what, what in this report is actual fact besides your opinion?

A. I thought the purpose of a report is to give you my opinion.

Q. Well, uh, no, it's using, using fact or, or a scientific method. If I were to get a handwriting analysis expert, he'd say, "I'm educated in X, Y, Z, I did this type of an analysis, I am qualified." But yourself, you're not qualified to give a handwriting analysis, is that correct?

A. I still have the right to do so if I wish.

Q. Didn't say that.

A. I, uh, with regard to the handwriting analysis, I looked at the initials, for example, and they were so, so blatantly different from authentic pieces of Norval Morrisseau's handwriting that you didn't need to be an expert to - anyone in this courtroom could compare them and doesn't have to be an expert to identify that those, those signatures are completely different.

Q. Mr. Robinson, did you have a conversation with Donna Shea at the auction, ever?

A. I may have. I don't remember it.

Q. She testified that she remembers you,

uh, not, not at all? You don't remember any conversations at all?

A. No.

Q. Okay. Then why did you, why did you cooperate with the National Post with respect to the article?

THE COURT: All right. I....

MR. OTAVNIK: Okay. Fair enough.

THE COURT: Again, sir, it is now 2:30.

MR. OTAVNIK: Fair enough.

THE COURT: We are going no later than 4:30. If we do not...

MR. OTAVNIK: I understand.

THE COURT: ...finish today, we will....

MR. OTAVNIK: I understand.

THE COURT: Well, let me finish, sir.

MR. OTAVNIK: I understand.

THE COURT: We will not get back, probably, until, what is it, probably not until May some time. So it is not going to be in anybody's interest to, sort of, have a hiatus of a couple of months before we...

MR. OTAVNIK: I understand.

THE COURT: ...get back. So let's try to ensure that we keep relevant and to the point.

MR. OTAVNIK: Okay. Just give me a second. May I have a two minute recess? No, I'm okay. I'm okay...

THE COURT: All right, let's go..

MR. OTAVNIK: ...Your Honour, I'm okay.

THE COURT: ...let's finish up with this

witness, and then maybe we will take a short break.

MR. OTAVNIK: Q. Have you posted anything on your Twitter account about Mr. Sinclair?

A. On which account?

Q. Uh, Twitter. You closed your blog down....

A. I don't follow every day, but...

Q. Okay, fair enough.

A. ...we may have.

Q. Just one second, Your Honour. You mentioned that you started buying the paintings because you thought, uh, Joe McLeod was buying them, correct?

A. That was one of the reasons.

Q. Right. And Joe McLeod testified today that, in his opinion, it was an authentic Norval Morrisseau, right?

A. Yes.

MR. OTAVNIK: Okay. No more questions.

THE COURT: Any other questions of this witness...

MR. SINCLAIR: Um....

THE COURT: Which arise out of his questions... Nothing...

MR. SINCLAIR: I see.

THE COURT: ...new. Okay?

RE-EXAMINATION BY MR. SINCLAIR:

MR. SINCLAIR: Q. Yeah. Um, how much is the subject painting worth in your estimation as a thing?

A. \$200.00.

Q. With regard to the, *Norval Morrisseau*:

5 *Travels to the House of Invention* book that was, uh, brought up here, are any of those pictures that he was showing you anything remotely like the Randy Potter Auction pictures and the subject painting that came from Randy Potter Auctions?

A. No, I, they are - I call the type of painting we are talking about here I call, in the class of factory-type fakes as opposed to fakes that are quite authentic, uh, authentic looking.

10 Q. Yes.

A. And if some of these paintings in the book are fake they are very authentic looking and completely different, no comparison whatsoever, to the, what I call the factory-style fakes that are so prevalent in the market.

15 Q. Right. Meaning the 3,000 paintings that you mentioned?

A. Three-thousand, yes.

20 Q. Yes. Okay. Uh, you brought up the Norval Morrisseau Heritage Society, would you tell the court who the Norval Morrisseau....

THE COURT: All right....

MR. OTAVNIK: This isn't going to work, yeah....

25 THE COURT: Yes. Okay, it is not relevant.

MR. SINCLAIR: It is very relevant.

THE COURT: No, it is not relevant.

MR. SINCLAIR: Do you know who they are, sir?

30 THE COURT: It's not relevant. I do not care who they are. It is not relevant to what I have to decide today. It may be

relevant in the artistic world, but it is not relevant to me making a decision as to whether you, there is any liability in this case. So, next question.

5 MR. SINCLAIR: Okay, you have limited me again.

THE COURT: Okay, you can step down, sir. How many more witnesses, just yourself, Mr. Sinclair?

10 MR. SINCLAIR: Uh....

THE COURT: Or is there another, another witness? I can't remember.

MR. SINCLAIR: No, it's....

15 THE COURT: Just you? Okay, let's take a five minute recess, and we will reconvene....

CLERK OF THE COURT: All rise, please.

MR. SINCLAIR: Uh, Your Honour?

THE COURT: Yes, sir?

20 MR. SINCLAIR: You said it would be two months? Don't we have this court for tomorrow?

THE COURT: I am not here tomorrow, sir.

25 MR. OTAVNIK: I'm not aware of it being tomorrow....

MR. SINCLAIR: But we were listed for a two to three day trial. If haven't had a chance to begin my....

30 THE COURT: I do not, well, sir, you may have been listed for two days..

MR. OTAVNIK: Well, I....

THE COURT: ...I am not sitting tomorrow.