

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

**Affidavit
Affidavit**

Form / Formule 15B Ont. Reg. No. / Règl. de l'Ont. : 258/98

Toronto
Small Claims Court / Cour des petites créances de

SC-09-00082782-0000
Claim No. / N° de la demande

47 Sheppard Ave E. 3 fl, Toronto ON
Address / Adresse

Phone number / Numéro de téléphone

Plaintiff No. 1 / Demandeur n° 1

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

Otavnik

Last name of individual or name of company, etc. / Nom de famille du particulier ou nom de la compagnie, etc.

Joseph

First given name / Premier prénom 299 Dover Court, Oshawa Ontario Second given name / Deuxième prénom Also known as / Également connu(e) sous le nom de

Address for service (street & number, unit, municipality, province) / Adresse aux fins de signification (numéro et rue, unité, municipalité, province)
L1G6G7 (905)729-2133

Postal code / Code postal Phone no. / N° de téléphone Fax no. / N° de télécopieur

Representative / Représentant(e)

LSUC # (if applicable) / N° du BHC (le cas échéant)

Address for service (street & number, unit, municipality, province) / Adresse aux fins de signification (numéro et rue, unité, municipalité, province)

Postal code / Code postal Phone no. / N° de téléphone Fax no. / N° de télécopieur

Defendant No. 1 / Défendeur n° 1

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

Ritchie

Last name of individual or name of company, etc. / Nom de famille du particulier ou nom de la compagnie, etc.

Sinclair

Stardreamer

First given name / Premier prénom 30 Hillsboro Avenue Apt. # 1604, Toronto ON Second given name / Deuxième prénom Also known as / Également connu(e) sous le nom de

Address for service (street & number, unit, municipality, province) / Adresse aux fins de signification (numéro et rue, unité, municipalité, province)
M5R 1S7 416-968-2838

Postal code / Code postal Phone no. / N° de téléphone Fax no. / N° de télécopieur

Representative / Représentant(e)

LSUC # (if applicable) / N° du BHC (le cas échéant)

Address for service (street & number, unit, municipality, province) / Adresse aux fins de signification (numéro et rue, unité, municipalité, province)

Postal code / Code postal Phone no. / N° de téléphone Fax no. / N° de télécopieur

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

AFFIDAVIT / AFFIDAVIT

My name is Ritchie Sinclair

Je m'appelle _____

(Full name / Nom et prénoms)

I live in Toronto, Ontario

J'habite à _____

(Municipality & province / Municipalité et province)

1. I make this affidavit in support of:

Je fais le présent affidavit à l'appui de :

Notice of Motion (Form 15A)
l'avis de motion (formule 15A)

Other: Responding Affidavit
autre : _____

and I swear/affirm that the following is true:

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

Set out the statements of fact in consecutively numbered paragraphs. Where possible, each numbered paragraph should consist of one complete sentence and be limited to a particular statement of fact. If you learned a fact from someone else, you must give that person's name and state that you believe that fact to be true.

Indiquez les faits, sous forme de dispositions numérotées consécutivement, chacune étant, dans la mesure du possible, une phrase complète limitée à l'exposé d'un seul fait. Si vous avez pris connaissance d'un fait par l'entremise d'une autre personne, vous devez indiquer le nom de cette personne et déclarer que vous croyez que ce fait est véridique.

Please see Attached Responding Affidavit of Ritchie Sinclair

Put a line through any blank space left on this page. / Tracez une ligne en travers de tout espace laissé en blanc sur la présente page.

If more space is required, attach and initial separate sheets. / Si vous avez besoin de plus d'espace, annexez et paraphez une ou des feuilles supplémentaires.

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

in Ontario
à/en/au (Province, state or country / province, État ou pays)

on December 14, 20 09
le

Commissioner for taking affidavits
Commissaire aux affidavits
(Type or print name below if signature is illegible.)
(Dactylographiez le nom ou écrivez-le en caractères d'imprimerie ci-dessous si la signature est illisible.)



Signature

(This form is to be signed in front of a lawyer, justice of the peace, notary public or commissioner for taking affidavits.)
(La présente formule doit être signée en présence d'un avocat, d'un juge de paix, d'un notaire ou d'un commissaire aux affidavits.)

WARNING: IT IS AN OFFENCE UNDER THE CRIMINAL CODE TO KNOWINGLY SWEAR OR AFFIRM A FALSE AFFIDAVIT.
AVERTISSEMENT : FAIRE SCIEMMENT UN FAUX AFFIDAVIT CONSTITUE UNE INFRACTION AU CODE CRIMINEL.

Responding Affidavit of Ritchie Sinclair

To the Plaintiff's Motion of December 17th 2009

Background as it pertains to this Motion

1. I am Norval Morrisseau's artistic protégé. The late Norval Morrisseau, who passed away on **December 4th 2007**, is one of Canada's most famous fine artists. The proliferation of Norval Morrisseau forgeries is a significant crime that the R.C.M.P. has given credence to and committed many resources to resolving.
2. Since at least **August 27th 2008** Plaintiff, Joseph Otavnik ("Otavnik" or "the Plaintiff") has carried out a premeditated harassment campaign against individuals and organizations associated with Norval Morrisseau. In particular, those who speak out about the prevalence of Norval Morrisseau forgeries have been targeted.
3. From **September 6th 2008** through **October 6th 2008** an exhibition of my artwork ran at the Scollard Street Gallery in Toronto. During this time collectors and media spoke with me about my show and about the Norval Morrisseau forgery issue. Though I'd been aware of Norval Morrisseau fakes for years, and had spoken up where possible, I was not aware of the massive scope of this organized fraud. I began to ask questions and I learned that there were thousands of these inferior counterfeit Norval Morrisseau paintings on the market. I also learned that Norval, ill with Parkinson's disease, had helplessly witnessed this ongoing theft of both his identity and his legacy. The realization shocked and saddened me. As his protégé I knew that I had an obligation of conscience to stand by my mentor and share what I understood about the paintings Norval Morrisseau referred to as "abominations".
4. On or around **October 3rd 2008** I began posting images of inferior counterfeit Norval Morrisseau paintings in an internet art gallery I had created at www.Morrisseau.com.
5. On or around **January 8th 2009** Otavnik served me with a lawsuit directed against myself and Morrisseau's principal art dealer, the Kinsman Robinson Gallery ("K.R.G.").
6. Otavnik's lawsuit claims that I slandered the title to a purported Norval Morrisseau painting that he owns because I included it in my internet art gallery of inferior counterfeit Norval Morrisseau paintings. He included K.R.G. in his Claim for acknowledging that I was Norval Morrisseau's protégé and for publishing their video interviews with me.
7. I filed a Defendant's Claim on **June 10th 2009** against Otavnik for harassment, defamation and vexatious litigation.
8. On **August 17th 2009** a Plaintiff's Motion to Strike paragraphs 18 and 19 of the Defendant's Claim was heard. Further particulars were filed by the Defendant on September 23rd 2009 pursuant to an August 17th 2009 Order though it appears that only the Plaintiff read the extensive materials filed. The Plaintiff understandably finds them to be "legally deficient".

9. On **October 20th 2009** a final settlement conference in the Otavnik v Sinclair action was held. Otavnik made it clear at the conference that he was not prepared to go forward to trial. He said that he required still another Motion so I received permission from Judge Skolnik and personally filed the appropriate documents to set down his lawsuit against me for trial.

The Plaintiff's Motion of December 17th 2009

10. The Defendant continues to oppose the Plaintiff's Motion to Strike paragraphs 18 and 19 of the Defendant's Claim. The paragraphs in question constitute material facts which underpin my over-riding claim of harassment at the hands of Otavnik.
11. The Defendant claims that Otavnik produced the information specified in paragraph 19 of the Defendant's Claim which he then published to the website norvalmorriseau.blogspot.com.
12. It is the Defendant's assertion that if one closely reads *Otavnik's Claim* one will see a significant association between Otavnik and the website venue that he operates in collusion with Ugo Matulic ("Matulic") as an internet "front" for their "business" operation.
13. Furthermore, the *Defendant's Responding Affidavit* filed in response to Otavnik's Motion to Strike of August 17th 2009 clearly indicates that Otavnik wrote and published the defamatory comments identified in the Defendant's Claim against him.
14. Further still, if one explores the *Additional Particulars to the Defendant's Claim* filed on September 23rd 2009 pursuant to the Order of August 17th 2009, one will see a preponderance of evidence showing Otavnik to be the publisher of the defamatory statements specified.
15. Otavnik is colluding with Matulic. They have used their internet platform to discredit the Defendant's work and reputation, threaten him and defame him. They have also used their website to promote Otavnik's paintings, perspectives and one side of his many Claims.
16. It will be proven at trial that the defamatory statements referred to in the Defendant's Claim, and other defamatory statements directed at the Defendant, are the handiwork of Otavnik.
17. If required the Defendant will request that this Court provide an Order directing "Google", the company that owns the "Blogger" platform that the Plaintiff's website and comments appear on, to disclose log files and author identities from the Plaintiff's website.
18. To respond specifically to the Plaintiff's December 17th 2009 Motion to Strike I have provided additional new particulars which are provided below.

Otavnik's Defamation of Sinclair on www.norvalmorriseau.blogspot.com

19. On **October 11th 2008** I received a phone call from Matulic who is man that operates a Norval Morrissette focused website in return for forged Morrissette paintings. Matulic, who

wished to befriend me, called about an email he received from his associate Otavnik. Matulic read me Otavnik's letter. He ordered Matulic to immediately delete anything published about me, which Matulic did soon after speaking with me. In the email Otavnik called Matulic a "moron" because he had unwittingly published positive articles about my art exhibition on their website while I at the same time went about exposing their purported Norval Morrisseau paintings as forgeries on Morrisseau.com. Otavnik also wrote that I was about to be sued.

20. On or about **October 17th 2008** I was contacted by Norval Morrisseau researcher, John Zemanovich ("Zemanovich"), who operated a website dedicated to Norval Morrisseau at www.honouringnorvalmorrisseau.blogspot.com. Zemanovich published an acknowledgement stating that I was a chosen protégé of Norval Morrisseau on October 14th 2008 and wrote soon after to inform me that he had been threatened by Otavnik and had no choice but to take down his Norval Morrisseau website. He also stated that Otavnik defamed me in letters sent to Zemanovich on October 16th through 18th 2008.
21. On the morning of **Saturday Oct 18th 2008** I received an email from Otavnik included herein as **Exhibit "A"** to this my **Defendant's Responding Affidavit**. The following excerpt from his email clearly indicates that it was Otavnik who published the statements referred to in paragraph 19 of the Defendant's Claim;

"If you do not respond to my last email and give me your current address for legal service I will be forced to posted[sic] your last address and phone number in the public record and offer a reward to anybody who can find you. You have called some of my Norval Morrisseau paintings which are in my house "fakes" and I will not stand for it. You are just jealous that you can't[sic] paint worth a crap and nobody will buy your garage art. How many paintings do you sell in your last show? You can't paint you loser!!!!!" Joe Otavnik

22. I felt intimidated by Otavnik's malicious intentions which I feared also endangered my roommate. On **Saturday Oct 18th 2008 at 2:12 PM** I wrote back to tell Otavnik that he could verify the validity of my address with his associate, Joe McLeod, who had recently served documents to my home address successfully.
23. On the evening of **October 17th 2008** Matulic published a lengthy article on their website at norvalmorrisseau.blogspot.com. Their article was laced with defamatory allegations about me. In the hours and days that followed 33 comments were published that were attached to this article, including the following excerpt from a comment published by Otavnik as "**anonymous**" on or around **October 18th 2008 at 10:15 a.m.**;

"Does anyone know of Ritchie Sin-clair's address so that my lawyer can serve him with a lawsuit? The Metro Police Department in Toronto are looking for this guy folks. I know that several lawsuits are being launched against this idiot as we speak"

24. And another comment published by Otavnik on **October 19th 2008** at around **11:11 a.m.** as the author, "**thehabs1**" states;

"Hello Collectors.

I shut down www.honouringnorvalmorriseau.blogspot.com. I am now offering a reward for the whereabouts of Richite[sic] Sinclair. I already have his last known address at

1604-30 Hillsboro Ave

Toronto, ONT

M5R 1S7"

25. And still another portion of a comment published by Otavnik as **"anonymous"** on **October 19th 2008** at around **10:04 p.m.** reads as follows;

"How stupid can you be Ritchie? I think its time that these guys like Ritchie and his associates get what's coming. He is already being looked for and wont take long to find. We have already hired an individual to hunt him down..."

26. On **Sunday October 19th 2008** at around **10:19 a.m.**, I received a phone call at my studio from my roommate, Garth Cole ("Cole"). He was calling from our Yorkville apartment to tell me that a phone call he had received earlier that morning had scared him. He told me that the man sounded like a criminal. Cole told me that the man said that *"the police were looking for me"*. Out of concern for my safety Cole told this unidentified man that he wasn't sure where I was or when I would be back. This man told Cole that he was an owner of Norval Morriseau paintings and that he didn't believe Cole's story about my whereabouts. Cole said that he was particularly concerned because this man knew where we lived, including our apartment and telephone numbers. I told him that I believed that his caller was a man named Joe Otavnik who had been sending me threatening emails.

27. From **October 20th 2008** through **October 22nd 2008** I received a number of intimidating and obscene emails from Otavnik which included the following statements;

"Give it up you loser. You have no talent. Go back to your coffee joint job for work because nobody will buy your worthless paintings. You can't paint you worthless piece of shit! ..." **October 20th 2008 at 11:58a.m.**

"Your[sic] still a pathetic loser with no artistic talent. Nobody will buy your paintings because they are crap. ..." **October 20th 2008 at 8:30p.m.**

"How stupid are you? Gabe has two homes, nine bank accounts and Norval died penniless with the clothes on his back and you live in a shithole apartment. What haven't you figured out?" **October 20th 2008 at 11:43p.m.**

"No Richtie[sic]. I will see you[sic] but you won't see me coming. You are being used by Gade[sic] and Don Robinson. I suggest you cut a deal to get you of the hook. ..." **October 21st 2008**

"Hey Richtie[sic] I never knew that you and Norval were Bum Buddies. Do your children know? I guess you got the ass and Gade[sic] got the cash. Yeap, Gabe's got two homes nine bank accounts and you are in your shit hole apartment." **Oct 22nd 2008**

Otavnik's Defamation of Sinclair on Wikipedia

28. On or about **January 19th 2009** Otavnik created an author's identity named "**123thehabs**" at Wikipedia.com and proceeded to delete my existence and the Norval Morrisseau Heritage Society ("N.M.H.S.") from the Wikipedia historic biography of Norval Morrisseau. On **January 19th and 20th 2009** Wikipedia editors replaced text about me numerous times which Otavnik would then delete again. Otavnik eventually gave up deleting the section about my history with Morrisseau but only after calling the Wikipedia editors derogatory names.
29. Each time Otavnik would delete my historical account from the record he would leave defamatory comments which are published at Wikipedia under his **123thehabs** author's identity. They comments left behind read as follows;

"Again, no such scool[sic] exists and the NMHS does not exist. Try contacting them. Again, this is not a forum to distribute lies.)"

And

"Once again, there is no ThunderBird School and there is no Norval Morrisseau hertigage[sic] Society.)"

And

"Again, this school does not exist. I ask the editor to try and locate it. This is just a blog for these people to spread their lies. The only accurate thing on this page is that they s)"

And

"Again, no such school exists. Anyone, can set up a web site and call it whatever. The truth should be posted or the site should be shut down.)"

30. In the aforementioned statements Otavnik calls me a liar and discredits the *Thunderbird School of Shamanistic Arts*, a school of art created by Norval Morrisseau, which I lead.

Otavnik's Defamation of Sinclair to the Ottawa Citizen

31. On or around **Jan 22nd 2009** Otavnik slandered me to reporters and editors of the Ottawa Citizen newspaper in an attempt to stop the publication of a story about the Morrisseau forgery issue, as evidenced by the following excerpt from the Ottawa Citizen article.

Mr. Otavnik's conversation with the Citizen was peppered with insults directed at many prominent players in the Morrisseau drama. Some of his harshest criticism was directed at the Brownes. He is also no fan of Mr. Sinclair and has launched a suit in Small Claims Court in Whitby seeking damages that he says Mr. Sinclair's website and Kinsman Robinson Gallery in Toronto have done to his business.

Mr. Otavnik is not part of the much larger defamation suit by the five art dealers against Mr. Sinclair, who claims to have worked with Mr. Morrisseau for several years before the artist's death Dec. 4, 2007. However, all five art dealers, in affidavits filed in court, say Mr. Otavnik was the person who first notified them of Mr. Sinclair's website.

32. On **Jan 22nd 2009** Dr. Browne, a Morrisseau collector who has spoken out about the prevalence of Morrisseau forgeries, called to inform me that he spoke with a Senior Editor and with article writer, Paul Gessel. Dr. Browne told me that Otavnik left abusive, obscene and unprintable voicemails, slandering both Dr. Browne and myself to the Ottawa Citizen.

Otavnik's "Death Threat" Allegation and Public Mischief

33. On or around **April 18th 2009** Otavnik phoned to demand that I give him Morrisseau.com. He told me that giving it to him was the only way I was going to get him to stop from suing Mr. Cole. He didn't say why he wanted to sue my roommate. I told him that he was being taped, not to call anymore, and to put his beefs and proposals in writing.
34. On or around **April 18th 2009** I received an email from Otavnik, included herein as **Exhibit "B"** to this my **Defendant's Responding Affidavit**. In the email Otavnik alleges that on March 28th 2009 I sent an email comment to their website threatening him, his subordinate Matulic, and others. I had nothing whatsoever to do with this unpublished comment yet *months later* Otavnik and Matulic chose to publish this comment themselves on their website under the misleading title "*Death Threat by Ritchie Stardreamer Sinclair*". They foolishly claim to have tracked this comment to my computer in downtown Toronto using Google maps.
35. On **September 13th 2009** Otavnik and Matulic published their allegations that I made a death threat on their website along with a photograph of me above the article and below the title "*Death Threat by Ritchie Stardreamer Sinclair*". Furthermore, they published to the general public, and made it known to me, that on April 20th 2009 they had reported their fictitious story about me to the Calgary police as Case # 09137075. This statement has already been filed as **Exhibit "G"** to the **Plaintiff's Motion Record**.
36. On **September 14th 2009** I wrote to Sgt. Jones who was the officer in charge of a Crown v. Otavnik criminal harassment investigation. In this case Otavnik was convicted on October 22nd 2009 of two counts of Criminal Harassment, included herein as **Exhibit "C"** to this my **Defendant's Responding Affidavit**. I sought direction from Sgt. Jones and I wrote that I too have been harassed by Otavnik as evidenced in the following excerpt from my letter to him;

"This morning Mr. Otavnik and his partner in harassment, Ugo Matulic, published my picture under the statement "Death Threat by Ritchie Stardreamer Sinclair". The article below makes clear Mr. Otavnik's involvement. I never made this statement however it is one of many forms of intimidation I have suffered at the hands of these criminals over the past year. I have been criminally harassed by Otavnik in every way possible including assault, which I reported to 32 division on July 17th 2009. Otavnik

has filed lawsuits against me personally, and to harass me further he has filed suits against my roommate, my lawyer, my lawyer's wife and my mentor's art dealer. He has also threatened many others affiliated with me into silence about all this. "

37. On **September 16th 2009** I filed a Criminal Harassment Report with the Toronto Police.

38. On **November 27th 2009** another article rife with libelous allegations was added to Otavnik and Matulic's lengthy list of articles about me on their website. Amongst other things, in this article I am blatantly called a criminal, as exhibited by the following excerpt;

*"Progress is being made in the courts to **bring this criminal to justice** and the small group of people that have supported him in the past which have evidently been abandoning him as well."*

39. Matulic can barely write English so he has relied upon Otavnik and other involved parties to develop his articles to discredit me. In an article written on **August 30th 2009** they published my photograph with a line through my face. On **September 13th 2009** they published my photograph with a claim that I made death threats. In their recently published article of **November 29th 2009** I am called a prostitute and a thief. On multiple occasions I am called a liar. The following is a list of major articles they have written to discredit me;

- Blog Master's Public Address V - **October 17th 2008**
- Blog Master's Public Address VI - **October 30th 2008**
- Changing Faces of Ritchie "Stardreamer" Sinclair (Part I) - **February 16th 2009**
- Changing Faces of Ritchie "Stardreamer" Sinclair (Part II) - **February 19th 2009**
- Changing Faces of Ritchie "Stardreamer" Sinclair (Part III) - **February 26th 2009**
- Changing Faces of Ritchie "Stardreamer" Sinclair (Part IV) - **February 28th 2009**
- Changing Faces of Ritchie "Stardreamer" Sinclair (Part V) - **March 1st 2009**
- Changing Faces of Ritchie "Stardreamer" Sinclair (Part VI) - **March 20th 2009**
- Changing Faces of Ritchie "Stardreamer" Sinclair (Part VII) - **April 1st 2009**
- Changing Faces of Ritchie "Stardreamer" Sinclair (Part VIII) - **April 10th 2009**
- Changing Faces of Ritchie "Stardreamer" Sinclair (Part IX) - **April 13th 2009**
- Changing Faces of Ritchie "Stardreamer" Sinclair (Part X) - **April 23rd 2009**
- Where in the KRG World is Ritchie "Stardreamer" Sinclair? - **May 9th 2009**
- Changing Faces of Ritchie "Stardreamer" Sinclair (Part XI) - **June 10th 2009**
- Changing Faces of Ritchie "Stardreamer" Sinclair (Part XII) - **August 21st 2009**
- Changing Faces of Ritchie "Stardreamer" Sinclair - **August 30th 2009**
- Death Threat by Ritchie 'Stardreamer' Sinclair - **September 13th 2009**
- Morrisseau History Detective Stories (Part V) - **November 27th 2009**
- How Ritchie 'Stardreamer' Sinclair met Norval Morrisseau - **November 29th 2009**
- Deceptions of the main 'Norval Morrisseau Conspirators': - **December 13th 2009**

40. Added to all the aforementioned published libel are numerous derogatory and threatening comments made against me. Furthermore, comments are moderated (i.e. controlled) so dissenting opinions are never published.

Continuing Harassment of my Witnesses by Otavnik

41. For my defence in the Otavnik v. Sinclair Claim I required high resolution photographs of Otavnik's purported Morrisseau painting so that Expert Reports could be prepared to prove my case. Otavnik opposed my Motion to examine the painting that he had sued me for discrediting. He then lost at the Hearing. It was agreed by all parties that the painting would be delivered and held at the offices of Richard Baker, a member of the N.M.H.S., for safekeeping while I had it photographed and inspected. On **September 18th 2009** Otavnik sued Richard Baker for doing this.
42. On or around **November 17th 2009** I received a series of harassment emails sent by Otavnik to Dr. Wang, who is a witness for my defence. Dr. Wang is the professor in charge of a Pennsylvania University forensics group who are providing me with Expert Reports on Morrisseau forgeries. In these letters Otavnik has defamed me and interfered with my witness by threatening Dr. Wang with lawsuits against him and his University for assisting me.
43. On or around **April 27th 2009** Otavnik settled his lawsuit against K.R.G. in return for the removal of all published articles or interviews that mention me from K.R.G.'s website. On or around **September 23rd 2009** KRG provided me with a comprehensive Expert Report on Otavnik's purported Norval Morrisseau painting. On or around **October 27th 2009** Otavnik filed Minutes of settlement in the Otavnik v. Kinsman Robinson Claim and on or around **November 2009** Otavnik sued K.R.G. yet again.
44. The aforementioned witnesses are included in my witness list for this action. All three are important to my case. Dr. Wang and K.R.G. are integral to my case in that they are providing Expert Reports. The third, Richard Baker, is a member of, and the lawyer for, the Norval Morrisseau Heritage Society ("N.M.H.S."), an organization of art luminaries created by Norval Morrisseau to assist in dealing with the prevalence of Norval Morrisseau fakes.
45. Will the Court provide me with a remedy to Otavnik's ongoing harassment of my witnesses?

Otavnik's Vexatious Litigation

46. Otavnik has been vexatiously litigating or threatening legal action to intimidate those who were close to Norval Morrisseau into silence. There are numerous boiler-plated lawsuits directed by Otavnik against me, or those associated with me, that have been brought in order to further intimidate, harass and discredit me. The lawsuits filed by Otavnik are as follows;

1. **Otavnik v Sinclair**
2. **Otavnik v. Kinsman Robinson Gallery**
3. **Otavnik v. Cole**
4. **Otavnik v. Zak Muscovitch**
5. **Otavnik v. Cathy Muscovitch**
6. **Otavnik v. Baker**
7. **Otavnik v. Art Dealers Association of Canada**

47. Otavnik's lawsuits where he is named as the plaintiff are filed in Small Claims Court where the bar is set so low that he can wield multiple lawsuits for the price of filing them and then intrude on the lives of innocent people until they bend to his will.
48. In addition to Otavnik's Small Claims lawsuits is the multi-plaintiff, **McLeod et al v. Sinclair** higher Court action that Otavnik secretly initiated, directed and co-funded.

To Summarize

49. This is Otavnik's second attempt at striking paragraphs 18 and 19 of my Defendant's Claim against him. Otavnik's states in his Claim that he gave Matulic a picture of the subject painting to publish on their site. He states in his Claim that under his direction Matulic published the picture and under Otavnik's direction Matulic did not disclose to the public, and in turn the Defendant, the fact that Otavnik was the owner of the painting. Otavnik's Claim clearly indicates a back-door association between Matulic and Otavnik.
50. Otavnik is responsible for publishing the defamatory and threatening comments specified in my Defendant's Claim because, amongst other things, it is a fact that;
- i. ...*only* Otavnik telephoned my roommate to make it known to us that he had our address and that the police were allegedly looking for me.
 - ii. ...*only* Otavnik sent me prior emails threatening to publish my personal information and wrote to tell me that his "associates" would be hunting me down for a reward that he was offering them.
 - iii. ...*only* Otavnik threatened and harassed John Zemanovich into removing his Norval Morrisseau website. The "**habs1**" author identity that takes credit for removing the Zemanovich website also defames and threatens me.
 - iv. "**123thehabs**" is an author's identity on Wikipedia that claims ownership to some of Otavnik's websites, takes credit for taking down Zemanovich's website, defames me, and interferes with my business on Wikipedia.
 - v. Otavnik is a Montreal Canadian's ("**habs**") fan that sells and trades hockey cards, thus the associated author identities, "**habs1**" and "**123thehabs**".
 - vi. I have an abundance of obscene, threatening emails from Otavnik, as do others associated with me who have received similar letters and telephone calls from Otavnik that defame me and threatening them.
 - vii. Otavnik has been convicted of criminal harassment for similar activities in the recent past and is now under investigation for his malicious acts against me.

- viii. Otavnik has an ongoing business association with his subordinate Matulic. He exerts control over Matulic and their website venue which comprises the lion's share of material related to Otavnik on the internet.

In Conclusion

51. The final years of Norval Morrisseau's life were spent defending his art and fighting for his legacy against organized crime. The last year of his life he and his caretakers were required to defend his name against Otavnik because Morrisseau himself, with all moral and legal rights to do so, stated to Heffels, "*I didn't paint those abominations*" so Otavnik sued him.
52. It is my personal view that Otavnik's unconscionable action against my mentor was opportunistic and premeditated. His actions were responsible for making the final moments of Norval Morrisseau's life miserable. Otavnik should be ashamed. Instead he is proud of his actions. Otavnik believes that he has the right to do whatever he wishes to me or to Norval Morrisseau if it aids him in his cause of selling forgeries as this excerpt from Otavnik's 2007 Claim against Norval Morrisseau makes evident;

"Moreover, it is clear that Mr. Morrisseau has not rendered any opinion on anything nor does he care about his past work. He has made it abundantly clear in many interviews and newspaper articles. I can find articles and can attest to the fact that Norval doesn't even care if people are copying his style of painting or even if they are selling fakes. Norval Morrisseau is a true artist in the sense that he painted for himself and does not care about anything other than receiving satisfaction from his painting." **Joe Otavnik**

53. Joseph Otavnik is involved in a forgery ring with Ugo Matulic that is the subject of a nationwide R.C.M.P. investigation. Their website at www.norvalmorrisseau.blogspot.com has been utilized to spread disinformation, promote their fake Morrisseau artwork and discredit those closest to Norval Morrisseau. I, in particular, have been targeted by Otavnik.
54. An often published statement on their website specifically identifies Morrisseau's two principal art dealers and individuals closely associated with Norval Morrisseau's as targets. An excerpt from this statement, attached as **Exhibit "F"** to the **Plaintiff's Motion Record**, reads as follows;

"The reason why I started this blog more than two years ago was due to false statements made by Kinsman Robinson Galleries, Coghlan Art Studio & Gallery and individuals closely associated with Norval Morrisseau regarding paintings in question." **Ugo Matulic**

55. I make this Responding Affidavit in opposition to the Plaintiff's 2nd Motion to Strike paragraphs 18 and 19 of the Defendant's Claim and for no other or improper purpose.

EXHIBIT "A"

If you do not respond to my last email and give me your current address for legal service I will be forced to posted your last address and phone number in the public record and offer a reward to anybody who can find you. You have called some of my Norval Morrisseau paintings which are in my house \"fakes\" and I will not stand for it. You are just jealous that you cann't paint worth a crap and nobody will buy your garage art. How many paintings do you sell in your last show? You can't paint you loser!!!!

from Joe Otavnik

with email jotavnik@hotmail.com

From: **Ritchie Sinclair** <contact@stardreamers.com>

Date: Sat, Oct 18, 2008 at 2:12 PM

Subject: Re: Your address for legal service

Don't spend your \$ on rewards. Just call Joe McLeod. He had no problem delivering legal service to me last week. I'm sorry that you have been fooled Joe. You and your brother have been fooled and now that you are heavily invested in the forged artworks you are between "a rock and a hard place". Norval is a rock.

From: "joseph Otavnik" <jotavnik@hotmail.com>
To: <contact@7fires.com>
Sent: Saturday, April 18, 2009 11:22 AM

Hello Ritchie,

I received a copy of your anonymous email which was sent to Ugo's blog on Mar 28. In that email you further defamed me, threatened to put Ugo "through the meat grinder" etc and even named Mike M. We have been able to finally verify that the comments did indeed come from your IP address. The only question is whether or not you (or Garth) actually wrote it. I was not able to verify this information before the last settlement conference but now I can. Mr. Sinclair you keep digging a hole for yourself. You might start to consider how you are going to "save" yourself.

Sincerely,

Joe Otavnik
1 905 728 2133

Create a cool, new character for your Windows Live™ Messenger. [Check it out](#)

ONTARIO COURT OF JUSTICE

B E T W E E N :

HER MAJESTY THE QUEEN

— AND —

JOSEPH OTAVNIK

2009 ONCJ 501 (CanLII)

Before Justice K. Caldwell
Reasons for Judgment released on October 22, 2009

Ms. Cidalia C. Faria for the Crown
Mr. David Berg for the accused **Mr. Joseph Otavnik**

K. Caldwell J.:

[1] Mr. Otavnik is charged with three counts of criminal harassment under section 264(1)(b) of the Criminal Code:

264. (1) No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them

Prohibited conduct

(2) The conduct mentioned in subsection (1) consists of

(b) repeatedly communicating with, either directly or indirectly, the other person or anyone known to them.

[2] The complainants work for CSI Global Education Inc. ("CSI"). This company offers courses in order to educate people who wish to work in a licensed capacity in the securities industry. The complainants are: (1) Dr. Roberta Wilton, Chief Executive Officer (CEO); (2) Mr. Mitchell Marcus, General Counsel; and (3) Mr. Steve Lowden, Vice President, Strategic Capabilities. Mr. Lowden's position involves overseeing the human resources function of the corporation.

Background and Facts

[3] By all accounts, Mr. Otavnik has had a long and difficult history with the company. He took a number of courses with CSI, but was unhappy with what he perceived to be his unfair treatment. He then applied for an employment position with the company and was unhappy when he was not hired. It was the latest contact – the contact in relation to his potential hiring – which led to the behaviour and resultant charges that are before the court.

[4] The acts which form the subject matter of the charges are not in dispute. The primary dispute between the parties concerns, first, Mr. Otavnik's intent when committing the acts in question and, secondly, whether the complainants were fearful as a result of this conduct and, if fearful, whether this fear was objectively reasonable.

[5] On March 7, 2006, Mr. Otavnik sent an email to CSI expressing concern about its hiring practices as he noticed that the company was continually recruiting for the same job positions yet did not acknowledge its receipt of his application for these jobs nor his resume.

[6] We then move to April 20, 2006. At that time, the March 7th email was brought to Mr. Lowden's attention given a number of phone calls that Mr. Otavnik had apparently made to the company after he sent the March 7th email. Mr. Lowden then contacted Mr. Otavnik by email in an attempt to address his concerns. What followed was a series of emails that were sent over the days that followed, culminating in Mr. Otavnik's arrival at CSI on April 26, 2006. I will summarize the contents of Mr. Otavnik's emails to CSI.

[7] On April 24, 2006, Mr. Otavnik emailed Dr. Wilton, expressing dismay that he had not heard back again from Mr. Lowden. He attached a copy of his response to Mr. Lowden's April 20th email. In that response, he complained of CSI's exam practices which he claimed had disadvantaged him sometime in the past. He then stated, "I didn't litigate it. I am not in such a generous mood now". He then complained of CSI's current hiring policies, and went on to state "[p]lease tell Dr. Wilton that her PhD in 17th Century literature won't prepare hear (sic) for what I can do. And yes my lawyers are better than yours".

[8] At that point, a decision was made to involve Mr. Marcus. He wrote a response to Mr. Otavnik, acknowledging receipt of Mr. Otavnik's email to Dr. Wilton, and said that the matter had been referred to him for his review.

[9] Mr. Otavnik responded on April 24, 2006 at 3:17 pm, correcting Mr. Marcus' spelling, and stating "I hope you pay closer attention to information in any of your court filings' because I can assure you that I do. Please don't make me wait for Dr. Wilton's call. I can be reached at 1-905-728-2133. I look forward to hearing from Dr. Wilton".

[10] Mr. Marcus responded a few minutes later by telling Mr. Otavnik that all communications should be sent to him and that no one else in the company would be dealing with Mr. Otavnik. A few minutes after that email was sent, Mr. Otavnik emailed back to Mr. Marcus, stating in part "Don't be so stupid as to insult my intelligence by suggesting you have contacted Dr. Wilton as she has directed you to handle this case in this manner. Whereas you may be stupid enough to not understand where any action may go you (sic)

employer will not allow you to be as foolish. I have no intention of contacting you and you really don't want not to tell Dr. Wilton to call me. You are making decision(s) above your pay scale now Sir and I suggest you think long and hard about your next decision. Dr. Wilton has until 5:00 (sic) pm tomorrow to call me”.

[11] At that point, Mr. Marcus emailed Mr. Otavnik, telling him that “your communications are rude, harassing and your threats are intended to serve no purpose other than to intimidate”. He told him that all further communication should be done through legal counsel and that he must stop communicating directly with any of the complainants.

[12] Mr. Otavnik then replied that he was acting as counsel, and that “I will contact who I want when I want. If you want me to stop I suggest you get an injunction (sic)-you do know what that is right?...I did not contact you. As a litigant I have the option to sue and serve when I want and who I want. Perhaps I should wait for Dr. Wilton to give a speech before the Toronto Board of Trade etc and serve her personally in front of a crowd. If you don't think I have the stones to do it you really don't know me....Have a nice day”.

[13] The next day, Mr. Otavnik contacted Dr. Wilton directly by email, stating that he looked forward to hearing from her that day. He then followed up in the late afternoon with an email to Mr. Marcus, stating that he would be at CSI the next day in order to deliver “one final notice before I contact ONCAP and Onex Corporation”. My understanding is that ONCAP invests in CSI and that it is part of the Onex Corporation.

[14] Mr. Otavnik did arrive at CSI the next day and was stopped by security. He had a letter directed to Dr. Wilton that said in part “if I do not hear from you soon I will be contacting you in a manner and form which you may not appreciate”.

The Elements of Criminal Harassment

[15] What the Crown is required to prove under section 264 is outlined in the Alberta Court of Appeal decision R. v. Sillipp (1997), 11 C.R. (5th) 71, adopted by the Ontario Court of Appeal in R. v. Kosikar , [1999] O.J. No. 3569:

18 In the result, a proper charge to a jury in a criminal harassment case must include reference to the following ingredients of the crime, all of which must be proved beyond a reasonable doubt:

- 1) It must be established that the accused has engaged in the conduct set out in s. 264(2) (a), (b), (c), or (d) of the Criminal Code.
- 2) It must be established that the complainant was harassed.
- 3) It must be established that the accused who engaged in such conduct knew that the complainant was harassed or was reckless or wilfully blind as to whether the complainant was harassed;
- 4) It must be established that the conduct caused the complainant to fear for her safety or the safety of anyone known to her; and
- 5) It must be established that the complainant's fear was, in all of the circumstances, reasonable.

[16] Further, though the Crown must prove that the accused knew or was reckless or was wilfully blind to the fact that the complainant was harassed, the Crown does not need to establish that the accused knew or was reckless or was wilfully blind to the fact that his conduct caused the complainant to fear for his safety – the Crown must simply prove beyond a reasonable doubt that such fear existed, regardless of whether the accused intended by his actions to cause such fear - see R. v. Sillipp, supra, and R. v. Krushel, [2000] O.J. No. 302 (Ont. C.A.).

Charge involving Mr. Lowden

[17] I find that the Crown has established beyond a reasonable doubt that Mr. Otavnik is guilty of the charges involving Dr. Wilton and Mr. Marcus. I find, however, that the elements of the offence have not been proven in relation to Mr. Lowden. Specifically, I find that the Crown has not proven that the communication with Mr. Lowden was repeated.

[18] It is clear that the primary focus of the emails is the CEO of CSI, namely, Dr. Wilton. The Crown contends that though the emails are directed at various individuals, Mr. Otavnik's intent was that all of the communications were to be conveyed to all three complainants.

[19] The particular subsection under which Mr. Otavnik has been charged requires repeated communication. While repeated communication is not required for certain subsections of criminal harassment, such as section 264(2)(d), it is required for the subsection under which Mr. Otavnik has been charged.

[20] I do not agree with the Crown's submission that the generalized communication of March, 2006 was directed towards Mr. Lowden. Though the complaints dealt with hiring policies, which clearly could fall under the rubric of "human resources" that Mr. Lowden headed, I find the communication was of too general a nature to conclude that it was directed at Mr. Lowden.

[21] Further, other than the one communication directed at Mr. Lowden specifically, I find that it cannot be inferred that Mr. Otavnik was trying to communicate with Mr. Lowden indirectly through his subsequent emails. In my view, it is clear that the primary intended recipient of all of the emails was Dr. Wilton, whether or not they were addressed to her specifically. I reach this conclusion after examining the totality of the emails, his expressed repeated intention to contact Dr. Wilton, and his intent as expressed in email to serve Dr. Wilton publicly and further to attend at the CSI offices personally.

[22] Given my finding that the "repeated" requirement in relation to Mr. Lowden has not been established, it is unnecessary for me to deal with the other elements of the offence involving Mr. Lowden. The count relating to Mr. Lowden is therefore dismissed.

Charges involving Dr. Wilton and Mr. Marcus

(a) Intention to Harass

[23] It is conceded by the defense that Mr. Otavnik's communications with both Mr. Marcus and Dr. Wilton were repeated and that both were harassed by that conduct.

[24] In Kosikar, supra, the state of being harassed is defined as being "tormented, troubled, worried continually or chronically, plagued, bedevilled and badgered" (para. 25). I agree and find as a fact that Mr. Otavnik engaged in harassing conduct in relation to Mr. Marcus and Dr. Wilton.

[25] Though the defense concedes that Mr. Marcus and Dr. Wilton were harassed, it is not conceded that Mr. Otavnik knew, or was reckless or was wilfully blind to this harassment.

[26] The Supreme Court of Canada, in R. v. Sansregret, [1985] S.C.J. No. 23, compared and contrasted the civil concept of negligence and the higher standard required for the criminal concept of recklessness. Negligence carries with it the objective standard of the reasonable man. Recklessness must carry with it the additional requirement of subjectivity:

It is found in the attitude of one who, aware that there is danger that his conduct could bring about the result prohibited by the criminal law, nevertheless persists, despite the risk. It is, in other words, the conduct of one who sees the risk and who takes the chance. It is in this sense that the term "recklessness" is used in the criminal law and it is clearly distinct from the concept of civil negligence (para 16).

[27] The Court then differentiates between recklessness and wilful blindness:

Wilful blindness is distinct from recklessness because, while recklessness involves knowledge of a danger or risk and persistence in a course of conduct which creates a risk that the prohibited result will occur, wilful blindness arises where a person who has become aware of the need for some inquiry declines to make the inquiry because he does not wish to know the truth. He would prefer to remain ignorant. The culpability in recklessness is justified by consciousness of the risk and by proceeding in the face of it, while in wilful blindness it is justified by the accused's fault in deliberately failing to inquire when he knows there is reason for inquiry. (para. 22).

[28] Justice Doherty described wilful blindness as "deliberate ignorance" – see R. v. Lagace (2003), 181 C.C.C. (3d) 12 (Ont. CA) at para. 28. Further, in R. v. Malfara, [2006] O.J. No. 2069, the Ontario Court of Appeal noted that the question was whether the accused was in fact suspicious as opposed to whether he should have been suspicious (para. 2).

[29] Mr. Berg argues that Mr. Otavnik's stated intention was simply to commence civil litigation and thus he did not intend to harass. To further substantiate this argument, it is noted that CSI is the exclusive provider of the courses that must be taken before one can

work in a licensed capacity in the securities industry. Mr. Otavnik thus had no option but to deal with CSI.

[30] I find that Mr. Otavnik did intend to harass both Mr. Marcus and Dr. Wilton. I also agree that Mr. Otavnik thought that he would pursue civil litigation if matters could not be otherwise resolved in his favour. The fact that Mr. Otavnik wished to seek redress for the alleged wrongs he had suffered and to obtain that redress through civil litigation proceedings is not dispositive of the issue of whether he intended to harass.

[31] Further, intent and motive must not be confused; they are separate concepts. The distinction has been emphasized in many judgments, most recently in R. v. Cromwell, [2008] N.S.J. No. 283 (N.S.C.A). In the Cromwell case, the defense argued that the mens rea component had not been proven because Mr. Cromwell had communicated with the complainant in an attempt to reconcile. In rejecting this argument, the Court stated:

With respect that is not the law. The mens rea on a charge of criminal harassment contrary to s. 264 of the Criminal Code is whether the accused knew, or was reckless, or wilfully blind as to whether the complainant was harassed. The mental element is the intention to engage in the prohibited conduct with knowledge, or with recklessness, or with willful blindness that such conduct causes the victim to be harassed. Thus, the mens rea of the offence is the intention to engage in the prohibited conduct with the knowledge that the complainant is thereby harassed. R. v. Sillipp, supra; and R. v. Krushel (2000), 31 C.R. (5th) 295, 142 C.C.C. (3d) 1 (Ont. C.A.).

40 The appellant appears to be confounding intent with motive. In the criminal law the two terms are distinct. An innocent motive to reconcile is not dispositive of the required mens rea on a charge of criminal harassment. It is well established in the criminal law that the mental element of a crime ordinarily involves no reference to motive. For example, while motive, or the absence of motive, may be compelling evidence to prove identity, it is legally irrelevant to criminal responsibility. See, for example, R. v. Lewis, [1979] 2 S.C.R. 821 at para. 27, 35; R. v. Chartrand, [1994] 2 S.C.R. 864, para. 57-58. (at paras. 39-40)

[32] Mr. Otavnik stated on April 24 at 10:57 a.m. that he didn't litigate when he was previously wronged by C.S.I. but he was "not in such a generous mood now". Further, in the same email, he made the comment that Mr. Marcus should "tell Dr. Wilton that her PhD in 17th Century literature won't prepare her (sic) for what I can do. And yes my lawyers are better than yours". Approximately four hours later, he told Mr. Marcus not to "make me wait for Dr. Wilton's call". Then, forty minutes later, "I have no intention of contacting you and you really don't want not to tell Dr. Wilton to call me".

[33] After Mr. Marcus tells him that he is being harassing and intimidating, he continues along the same vein. He tells Mr. Marcus, at 4:31 pm, that "I will contact who I want when I want", and that an injunction must be obtained to stop him. He also states "[p]erhaps I should wait for Dr. Wilton to give a speech before the Toronto Board of Trade etc and serve her personally in front of a crowd. If you don't think I have the stones to do it, you really don't know me". Finally, of course, he says that he will be delivering a final notice to the company in person the next day and, in fact, he does show up at CSI the following day.

[34] The very tone and wording of these emails make it clear that Mr. Otavnik intended to torment, trouble, plague, bedevil and badger both Mr. Marcus and Dr. Wilton in order to convince them to meet his demands in advance of formally commencing civil proceedings. Mr. Berg argues that this is just Mr. Otavnik's style of communication. I agree from my observations of Mr. Otavnik in court and during the course of his testimony that his manner is abrupt and borders upon being both abrasive and arrogant. The fact that the correspondence in question is consistent with Mr. Otavnik's communication style does not leave me with a reasonable doubt, however, that Mr. Otavnik intended to harass Dr. Wilton and Mr. Marcus.

[35] Mr. Otavnik's ultimate motive of obtaining redress from CSI, and of obtaining it through civil proceedings, is not, as per Cromwell, dispositive of the issue of intent. I accept that this was his ultimate motive. Co-existing with that motive, however, was the intent to harass, as proven by the email communications and by Mr. Otavnik's personal attendance at CSI.

(b) Fear Component

[36] The fourth and fifth elements outlined in Sillipp, supra, are that the conduct must cause the complainant to fear for his safety and that such fear was, in all of the circumstances, reasonable. There is, therefore, a subjective and objective element to this part of the offence.

[37] It is important to note that the consequence of reasonable fear does not have to be intended by the accused. The mens rea component does not attach to this aspect of the offence – see R. v. Sillip, supra, at paras. 30-33 and R. v. Krushel, [2000] O.J. No. 302 (Ont. C.A.) at paras. 7-11.

[38] In R. v. Krushel, Justice Catzman quoted the Alberta Court of Queen's Bench decision in R. v. Sillip (1995), 99 C.C.C. (3d) 394 wherein Justice Murray outlined the mens rea of the offence, and its effect, as follows:

In my opinion, s. 264 does not suffer from vagueness. Certainly there are many facets of it that will have to be interpreted by the Court. I have no doubt that as time progresses it will be given a constant and settled meaning. I have no problem interpreting s. 264 so as to understand that certain conduct is subject to legal restrictions and the area of risk is set out namely, if you intentionally behave in certain ways knowing that by doing so you are harassing another person then if your conduct causes that person to reasonably fear for his or her safety you run the risk of being criminally sanctioned. I would think that anyone reading the section would receive that message loud and clear.

[39] I find that I am satisfied beyond a reasonable doubt that both Mr. Marcus and Dr. Wilton feared for their safety and that such fear was reasonable in the circumstances.

[40] Mr. Marcus testified that the tone of the emails was escalating and that he perceived them as both hostile and menacing (see September 5, 2008 at pp. 31-32, 39 and 41). His fear was stated most clearly at pp. 54-55 of September 5th:

A: I was uncomfortable, you know in the sense that, you've got to understand there's my own personal discomfort as well as I'm a family man. And you know...

Mr. Berg: Sorry?

A. I'm a family man, and you've got to look, and I'm sure of – the members here in the court here can understand when you – when I suggest that when you look at your own personal safety, you are looking in a larger context and have a sense of that as well in terms of appreciating when these type of communications start and where they can go. So...

Ms. Faria: So were...

A. ...yes, I was..

Q: ...you concerned about your...

A. ...concerned...

Q: personal safety?...

A. ...about what this could personally mean to me.

The Court: Sorry? About what that?

A. What these – where this could go and what it could personally mean and what type of impact it could have to me personally

[41] I accept Mr. Marcus' testimony on this point.

[42] I am aware that Mr. Marcus did not use the specific word "fear". I have also considered other aspects of his testimony, such as his testimony at pp. 62-64 on September 5, 2008 that he was feeling "uncertain" as a result of the communications. When I assess all of his evidence, however, I find that I am convinced beyond a reasonable doubt that he did fear for his safety.

[43] Further, I find that Dr. Wilton feared for her safety. Dr. Wilton testified that she felt that matters had become personal. She felt uncomfortable and extremely vulnerable. She felt that the risk might be physical. Further, she felt it necessary to bring in security to protect both her and the staff – see October 26, 2007 transcript at pp. 18-19, 25, 35, 43-44.

[44] I accept Dr. Wilton's testimony on this point and find that the totality of her comments relevant to this issue makes it clear that she was fearful for her safety.

[45] I have also considered the defense submission that the behaviour of both Mr. Marcus and Dr. Wilton on April 26th suggests that they were not fearful. Mr. Marcus spoke of going down to the underground during his lunch hour and bringing his lunch back up to the office. Dr. Wilton spoke of proceeding with a Board meeting despite observing a stranger (Mr. Otavnik) in the midst of those assembled. I do not find that such actions lead me to conclude that they lacked fear, and I find that upon considering their actions and their

comments about their feelings on this date I am convinced that they were fearful. I also note that extra precautions had been taken that day, namely, an increased security presence.

[46] I also find that their respective fears were objectively reasonable.

[47] It was submitted by the defense:

It seems, furthermore, that C.S.I. never really examined the litigation issue in the context of the communications from Mr. Otavnik (Testimony of Dr. Wilton, *ibid.* 73-75). Indeed, it is submitted that by ignoring the clear litigation context of the offending communications, the complainants were left misunderstanding the nature of the e-mails, etc. It is submitted that resulting fear cannot be characterized as 'reasonable' when it occurs through tunnel vision. (Written Submissions, para. 36)

[48] The references to litigation are clear in the correspondence. I acknowledge the defense submission that Mr. Marcus is not a litigator; however, it would be impossible for any counsel or, indeed, any individual to miss the references to litigation. Though the question may not have been put to the complainants directly, I find it impossible to conclude that either Dr. Wilton or Mr. Marcus missed these references. The fact remains that despite the references to litigation, the tenor of the emails was very emotional, hostile, and threatening. There is no question that they are of a far different quality than that found in communications that are simply speaking of court action.

[49] I will not reiterate the entirety of the email comments made by Mr. Otavnik which I have outlined above. In my view, however, the nature of these comments is self-explanatory and I find that a reasonable person at the receiving end of such communications would be fearful for his or her safety.

[50] I therefore find that the Crown has proven all of the elements of the offences in relation to both Dr. Wilton and Mr. Marcus and I therefore find Mr. Otavnik guilty of these two counts.

Addendum Re Directed Verdict Judgment

[51] There was a motion for a directed verdict in this case that I dismissed. Mr. Berg quite correctly pointed out that the year that I attributed to most of the emails was incorrect. I indicated that the emails that form the crux of this matter, namely, the April emails, were sent in 2007. As the charges indicate a date of 2006, clearly such charges cannot be based upon emails sent in 2007.

[52] The point requires clarification. I misstated the 2007 date, and meant 2006 instead of 2007. The substance of that judgment is not affected by this clarification as the reasoning that I put forth applies equally to the corrected dates.

Released: October 22, 2009