

**ONTARIO COURT OF JUSTICE
(GENERAL DIVISION)**

THE HONOURABLE) THURSDAY, THE 11TH DAY
MR. JUSTICE SHARPE) OF FEBRUARY, 1999.

BETWEEN:

HEATHER ROBERTSON

Plaintiff

- and -

**THE THOMSON CORPORATION,
THOMSON CANADA LIMITED, THOMSON AFFILIATES
and INFORMATION ACCESS COMPANY**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the plaintiff for an order certifying this action as a class action and providing for notice to the Class, was heard on 18 and 19 January 1999 at the Court House, 361 University Ave., Toronto, and by teleconference on 12 March 1999,

ON READING the affidavits of Heather Robertson, Earle Gill, Roy Megarry, Michael Doody, Jeff Sherman, Christine Gordon, and John Sullivan, filed, the cross examinations of Heather Robertson, Michael Doody, and Christine Gordon, and on hearing the submissions of counsel for the plaintiff and the defendants,

Certification

1. **THIS COURT ORDERS** that this action be maintained as a class proceeding on behalf of the following class (herein referred to as the "Class"):

A. All persons who were the authors or creators of original literary works or original artistic works (collectively "Works") which were published in Canada in any newspaper, magazine, periodical, book, newsletter, journal or other paper-based form whatsoever (collectively "Print Media") which Print Media have been reproduced, distributed and/or communicated to the public by telecommunication by the Defendants through any computer database, CD-ROM, diskette, on-line service, or other electronic system or device (collectively "Electronic Media"), on or after 24 April 1979 except:

(a) persons who by written document assigned all of the copyright in their Works to the Defendants or their predecessors in interest in the subject Print Media; or

(b) persons who by written document granted to the Defendants or their predecessors in interest in the subject Print Media a license to publish or use their Works in Electronic Media; or

(c) persons who were unionized employees of the Defendants or their predecessors in interest in the subject Print Media are excluded regarding any Works created for the subject Print Media at times when their unions' collective agreements governed the use of their Works in Electronic Media.

Where the Print Media publication was a Canadian edition of a foreign publication, only Works comprising the content exclusive to the Canadian edition shall qualify for inclusion under this definition.

(Persons included in clause A shall hereinafter be referred to as "Creators").

B. All persons (except the Defendants or their predecessors in interest in the subject Print Media) to whom a Creator, or an Assignee, assigned, granted or transmitted a right to publish or use their Works in Electronic Media. (Persons included in clause B shall hereinafter be referred to as "Assignees").

C. Where a Creator or Assignee is deceased, the personal representatives of the estate of such person unless the date of death of the Creator was on or before December 31, 1943.

with respect to the following claims against the defendants:

- (a) injunctive relief restraining infringement of rights under the *Copyright Act*;
- (b) compensatory damages;
- (c) punitive and exemplary damages;
- (d) an accounting of revenues and profits;
- (e) prejudgment and postjudgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (f) the costs of this action together with GST; and
- (g) such further and other relief as this Honourable Court deems just.

2. **THIS COURT ORDERS** that, subject to further order of the court, Heather Robertson be and hereby is appointed as the representative plaintiff on behalf of the Class and that McGowan & Associates be and hereby is appointed as Counsel for the Class.

3. **THIS COURT ORDERS** that the issue of liability for infringement of rights under the *Copyright Act*, the issue of injunctive relief restraining infringement, and the issue of liability for, and quantum of, punitive and exemplary damages are common issues for the Class.

4. **THIS COURT ORDERS** that a Class member may opt out of the lawsuit by delivering to McGowan & Associates the Opt Out Coupon contained in Schedule "A" or some other legible, written, signed request to opt out containing substantially the same information as the Opt Out Coupon on or before the expiry of the 60th day after the date this order is entered.

5. **THIS COURT ORDERS** that Class members may not opt out after the expiry of the 60th day after the date this order is entered.

6. **THIS COURT ORDERS** that McGowan & Associates serve on the defendants and file with the court, within 74 days after the date this order is entered, an affidavit exhibiting a list of persons who have opted out of the lawsuit.

Notice

7. **THIS COURT ORDERS** that notice be provided to the Class by the defendants' forthwith causing notices substantially in the form attached hereto as Schedule "A" to be published in the national edition of *The Globe and Mail* on 2 occasions, 7 days apart.

Costs

8. **THIS COURT ORDERS** that the defendants forthwith pay the plaintiff her party and party costs of this motion in an amount to be agreed by the parties or fixed by this court.

Metaphor 9.

ENTERED AT/INSCRIT À TORONTO
ON/BOOK NO:
LE/DANS LE REGISTRE NO:

JUN - 4 1999

PER/PAR:



Schedule A
ONTARIO COURT OF JUSTICE

[*Coat of Arms*]

Notice published under the Ontario *Class Proceedings Act*

**TO ALL WRITERS,
PHOTOGRAPHERS AND
CARTOONISTS**

If you are a writer, photographer, cartoonist, or any other creator of original literary or artistic works which have been published in any newspaper, magazine or other print media in Canada, or an assignee of the rights to such literary or artistic works, this notice will be important to you. A lawsuit has been commenced which may make it possible for you to obtain money or other remedies in the event your rights under the *Copyright Act* have been infringed because of the inclusion of such works in computer databases, on line services, or any other electronic media.

This notice is published by order of the Honourable Mr. Justice Sharpe of the Ontario Court of Justice and explains:

1. The lawsuit;
2. Who might benefit from the lawsuit;
3. Special comments regarding Employees;
4. Your right to choose whether or not to be part of the lawsuit;
5. Financial consequences for you; and
6. Other matters.

1. The Lawsuit

Ms. Heather Robertson of King City, Ontario has sued The Thomson Corporation, Thomson Canada Limited, Information Access Company (of Foster City, California), and their affiliates (collectively referred to as the "Defendants") for damages and injunctive relief arising from the Defendants' alleged infringement of rights under the *Copyright Act*.

The lawsuit claims compensatory damages, punitive and exemplary damages, and injunctive relief against the Defendants.

Ms. Robertson claims that the Defendants have infringed the rights under the *Copyright Act* of the creators or assignees of original literary or artistic works published in print media in Canada by disseminating copies of such works through computer databases, on line services, or other electronic media.

The Defendants claim they have the requisite rights to act as they have, and deny Ms. Robertson's claim.

The Court has not yet determined whether the lawsuit will be successful.

2. Who might benefit from the case

Ms. Robertson asked the Court to let her represent a group of people (the "Class") consisting of certain creators or assignees of original literary or artistic works, or their estates, more particularly described as follows:

Creators: All persons who were the authors or creators of original literary works or original artistic works (collectively "Works") which were published in Canada in any newspaper, magazine, periodical, book, newsletter, journal or other paper-based form whatsoever (collectively "Print Media") which Print Media have been reproduced, distributed and/or communicated to the public by telecommunication by the Defendants through any computer database, CD-ROM, diskette, on-line service, or other electronic system or device (collectively "Electronic Media"), on or after 24 April 1979 except:

- (a) persons who by written document assigned all of the copyright in their Works to the Defendants or their predecessors in interest in the subject Print Media; or
- (b) persons who by written document granted to the Defendants or their predecessors in interest in the subject Print Media a license to publish or use their Works in Electronic Media; or
- (c) persons who were unionized employees of the Defendants or their predecessors in interest in the subject Print Media are excluded regarding any Works created for the subject Print Media at times when their unions' collective

agreements governed the use of their Works in Electronic Media.

Where the Print Media publication was a Canadian edition of a foreign publication, only Works comprising the content exclusive to the Canadian edition shall qualify for inclusion under this definition.

Assignees All persons (except the Defendants or their predecessors in interest in the subject Print Media) to whom a Creator, or an Assignee, assigned, granted or transmitted a right to publish or use their Works in Electronic Media.

Estates Where a Creator or Assignee is deceased, the personal representatives of the estate of such person unless the date of death of the Creator was on or before December 31, 1943.

On February 11, 1999 the Honourable Mr. Justice Sharpe allowed Ms. Robertson to represent this Class of people in what is known as a "class action" lawsuit.

3. Special comments regarding Employees

Special issues arise in connection with Works created by employees rather than freelancers.

The copyright in Works created by employees in the course of their employment is owned by their employers unless the employer and employee agreed otherwise. Employees who create Works in the course of their employment for inclusion in a newspaper, magazine or similar periodical, in the absence of an agreement to the contrary, have the right to restrain the publication of the Works otherwise than as a part of a newspaper, magazine or similar periodical. It is the latter group of employees who may form part of the Class unless those employees are governed by a Collective Agreement which governs the use of employees' materials in Electronic Media ("Class Employees").

Ms. Robertson asserts that reproduction of Works of Class Employees in Electronic Media is not permitted (in the absence of the Class Employees' agreement) because Electronic Media are not "newspapers, magazines or similar periodicals". Ms. Robertson also asserts that the Class Employees may obtain from the court both an injunction and monetary damages.

The Defendants assert that the Electronic Media are “newspapers, magazines or similar periodicals” and that they have the right to reproduce the Class Employees’ Works in Electronic Media. The Defendants also assert that even if it is ultimately found that the Class Employees may restrain publication of their Works in Electronic Media, they are not entitled to monetary damages.

4. Your right to choose whether or not to be part of the lawsuit

(a) How to be Included in the Class.

If you are a person falling within the Class described above, then you will automatically be included in the Class unless you opt out of the Class.

(b) How to be Excluded from the Class.

To opt out of the Class you must fill out the coupon below and send it to McGowan & Associates the lawyers for the Class. The deadline for opting out is [60 days after order entered], 1999. If your written request to opt out is not received by that date you will remain a member of the Class.

5. Financial consequences for you

If the class action lawsuit is successful in showing the Defendants infringed the Class’ rights under the *Copyright Act*, the court will go on to determine the compensation or other relief to which the Class members are entitled. If it is determined that some Class members are entitled to damages, the court will also determine how the damages should be distributed to or for the benefit of the people affected.

If the class action lawsuit is not successful, the members of the Class will not be responsible for any legal costs of the class action lawsuit and will not have any other financial obligations because of the class action lawsuit. (However, persons who have voluntarily chosen to pledge funds to indemnify Ms. Robertson if costs are awarded against her may be required to pay the amounts of their pledges.)

If Ms. Robertson is successful in the class-wide aspects of the case, the court will go on to consider whether it is necessary for class members to participate individually regarding their personal claims, or whether the entire lawsuit can be determined without individual participation by class members. If the court requires individual participation and if you decide to

participate but are unsuccessful in your personal claim, then the court might award costs against you regarding your personal claim. If the court requires individual participation, a further court notice will be issued explaining the procedures and class members can decide at that time whether or not to participate individually.

Whether or not the class action lawsuit is successful, all members of the Class who do not opt out of the class action will be bound by the judgment. This means, for example, that after this lawsuit is over you could not start your own lawsuit against the Defendants for the same claim.

6. Other matters

Ms. Robertson has retained the law firm of McGowan & Associates to represent her and the Class in the lawsuit. The law firm will be paid legal fees only if the lawsuit is successful. Subject to court approval, if the lawsuit is successful the legal fees will be 20% of the amounts recovered plus any legal costs awarded against the defendant.

If you wish to participate personally in the lawsuit, you may apply to the court for permission to do so.

For further information about the class action lawsuit you may contact McGowan & Associates, Barristers & Solicitors, Suite 405, 133 Richmond Street West, Toronto, Ontario, M5H 2L3, Attn. Kirk M. Baert, telephone (416) 363-2035, fax (416) 363-1875.

The court papers in this lawsuit are available for inspection at the office of the Ontario Court of Justice, Court House, 393 University Ave., Toronto, court file # 96-CU-110595.

Please DO NOT CALL Mr. Justice Sharpe or the registrar of the court. They will not be able to answer your questions about the lawsuit.

February 11, 1999

OPT OUT COUPON

To: McGOWAN & ASSOCIATES
Suite 405
133 Richmond Street West
Toronto, Ontario
M5H 2L3

Attn. Kirk M. Baert

I wish to opt out of the *Robertson v. Thomson*
class action.

Signature

Name:
please print
Address:

Postal code:
Telephone:

*Note: To opt out this coupon must be completed
and received at the above address before [60 days
after order entered], 1999.*

HEATHER ROBERTSON

- and -

THE THOMSON CORPORATION, ET AL

Plaintiff

Defendants

ONTARIO COURT (GENERAL DIVISION)

PROCEEDING COMMENCED AT TORONTO

ORDER

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SOLICITORS FOR THE PLAINTIFF