

AMENDED / MODIFIÉ
 RÈGLE/LA RÈGLE 26.02 (A)
 PURSUANT TO / CONFORMÉMENT À
 THE ORDER OF / L'ORDONNANCE DU
 DATED / FAIT LE May 01 1998
 CLERK / GREFFIER LOCAL
 ONTARIO COURT (GEN. DIV.) / COUR DE L'ONTARIO (DIV. GÉN.)

Court File No. 96-CU-110595CP

**ONTARIO COURT
 (GENERAL DIVISION)**

BETWEEN:

HEATHER ROBERTSON

- and -

**THE THOMSON CORPORATION,
 THOMSON CANADA LIMITED, THOMSON AFFILIATES
 and INFORMATION ACCESS COMPANY
 and BELL GLOBEMEDIA PUBLISHING INC.**

AMENDED THIS / MODIFIÉ LE May 01 1998
 PURSUANT TO / CONFORMÉMENT À
 RÈGLE/LA RÈGLE 26.02 (A)
 CLERK / GREFFIER LOCAL
 ONTARIO COURT (GEN. DIV.) / COUR DE L'ONTARIO (DIV. GÉN.)



Proceeding under the *Class Proceedings Act, 1992*

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served

Defendants
 AMENDED THIS / MODIFIÉ LE 16 February 2001
 PURSUANT TO / CONFORMÉMENT À
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outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

IF YOU PAY THE PLAINTIFF'S CLAIM and \$5,000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$100.00 for costs and have the costs assessed by the court.

Date: September 10th, 1996

Issued by: S. J. Chaudhurat
Local Registrar

361 University Ave.
Toronto, Ontario
M5G 1T4

TO: THE THOMSON CORPORATION
T.D. Bank Tower, Suite 2706
Toronto-Dominion Centre
Toronto, Ontario
M5K 1A1

TO: THOMSON CANADA LIMITED
T.D. Bank Tower, Suite 2706
Toronto-Dominion Centre
Toronto, Ontario
M5K 1A1

TO: **THOMSON AFFILIATES**
c/o T.D. Bank Tower, Suite 2706
Toronto-Dominion Centre
Toronto, Ontario
M5K 1A1

TO: **INFORMATION ACCESS COMPANY**
362 Lakeside Drive
Foster City, California
U.S.A. 94404-9675

TO: **GLOBEMEDIA PUBLISHING INC.**
c/o Tory, Tory, DesLauriers & Binnington
Suite 3000 Aetna Tower
P.O. Box 270
Toronto-Dominion Centre
Toronto, Ontario M5K 1N2

CLAIM

1. The plaintiff claims:
 - (a) an interim, interlocutory, and permanent injunction restraining the defendants and any person with knowledge of the injunction from infringing the rights of the Class (defined in paragraph 7 below) under the Copyright Act through the reproduction, distribution and/or communication to the public by telecommunication of the Works (defined in paragraph 7 below) in any Electronic Media (defined in paragraph 7 below);
 - (b) compensatory damages, including damages for conversion and aggravated damages, in the sum of \$50 million;
 - (c) punitive and exemplary damages in the sum of \$50 million;
 - (d) an accounting of all revenues generated and profits earned through the defendants' infringement of the rights of the Class under the Copyright Act through the reproduction, distribution and/or communication to the public by telecommunication of the Works in any Electronic Media;

(e) prejudgment interest and postjudgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(f) full indemnity for the costs of this action; and

(g) such further and other relief as may seem just.

Parties

2. The plaintiff is a Canadian citizen and freelance writer who resides in the Regional Municipality of York. The plaintiff was both a Canadian citizen and Canadian resident at all material times herein.

3. The defendant The Thomson Corporation ("TTC") is a corporation incorporated under the laws of Ontario and carries on a publishing and information business in Toronto, Ontario and throughout the world.

4. The defendant Thomson Canada Limited ("TCL") is a corporation incorporated under the laws of Ontario, and is a wholly-owned subsidiary of the TTC. TCL carries on a publishing and information business in Toronto, Ontario and throughout the world. Among other activities, it operates *The Globe and Mail* and an Electronic Media business known as Globe Information Services.

5. The defendant Information Access Company ("IAC") is a corporation incorporated under the laws of the United States of America and is a wholly-owned subsidiary of TTC. IAC carries on an information business in Foster City, California and throughout the world.

6. The defendant Thomson Affiliates ("Affiliates") represents one or more corporations or entities, the precise identities of which are not known to the plaintiff but are known to the defendants, and which are controlled directly or indirectly by TTC and which disseminate Electronic Media containing any of the Works referred to in paragraph 8 below.

6A. The defendant Bell Globemedia Publishing Inc. is a corporation incorporated under the laws of Canada and carries on a publishing and information business in Toronto, Ontario and throughout the world. As of 1 January 2001 it acquired from Thomson Canada Limited, and now owns and operates, *The Globe and Mail* and an Electronic Media business known as Globe Interactive.

Class Definition

7. The plaintiff brings this action pursuant to the *Class Proceedings Act, 1992* on behalf of the following class (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.

Ownership of Copyright

8. The Class members are the creators and/or owners of copyright in and to the Works which were published in Canada in Print Media (except Works which were created in the course of a Creator's employment by the defendants or their predecessors in interest in which case paragraph 8A applies). The Class members licensed limited rights to the Works to the publishers of the Print Media, typically only the right to publish the Works once in Canada. In no case did the Class members sell to the publishers the right to copy, produce, reproduce, communicate, disseminate or publish the Works in Electronic Media.

8A. The plaintiff states that if a Work was created in the course of a class member's employment and was an article or other contribution in a newspaper, magazine or similar periodical, then the class member has a right under s. 13(3) of the Copyright Act to restrain publication of the Work otherwise than as a part of the very newspaper, magazine or similar periodical in which the Work was published. The plaintiff states that Electronic Media are not newspapers, magazines or similar periodicals at all. In the alternative, Electronic Media are not the very newspapers, magazines or similar periodicals in which such works were published.

Infringement of Copyright

9. The defendants have reproduced and/or distributed the Works and/or communicated the Works to the public by telecommunication and/or authorized any of the aforesaid activities, through the use of Electronic Media operated by or through the defendants. The defendants have thereby infringed the Class' rights in the Works under the Copyright Act.

9A. TTC has since, at the latest, 1979, developed the overall strategy and made strategic decisions with respect to the involvement of its wholly-owned subsidiaries, TCL, Affiliates and IAC in the ownership and/or operation of Electronic Media and has thereby engaged in a deliberate, wilful and knowing course of conduct in which it expressly directed, ordered, authorized, aided and abetted TCL, Affiliates and IAC to perform the acts complained of in paragraph 9 above, participated therein and was a party thereto, or was indifferent to the likelihood that its strategic decisions would cause the TCL, Affiliates and IAC to commit copyright infringement.

Damages

10. As a result of the defendants' infringement of the Class' rights under the Copyright Act, the Class has sustained damages by

way of loss of income and the diminution of the value of their interest in the Works.

10A. The plaintiff states that those class members who are entitled to injunctive relief under s. 13(3) of the *Copyright Act* are also entitled to damages under s. 99 of the *Courts of Justice Act* for the period prior to the granting of the injunctive relief.

11. As a result of the infringement of the Class' rights under the *Copyright Act* by the defendants, the defendants have been unjustly enriched.

12. The plaintiff states that the infringement of the Class' rights under the *Copyright Act* by the defendants occurred as a result of the defendants' high-handed and arrogant conduct and their wanton and callous disregard for the rights of the Class. For reasons of monetary gain, the defendants knowingly violated the rights of the Class and attempted to appropriate to themselves the proprietary rights of the Class in the Works.

13. The plaintiff pleads and relies upon the provisions of the *Copyright Act*, R.S.C. 1985, c. C-42, as amended.

14. The plaintiff pleads and relies upon the provisions of rule 17.02 of the *Rules of Civil Procedure* in support of service of the statement of claim outside Ontario without leave and, in particular, clauses 17.02(a), (h), (i), (o) and (p).

15. The plaintiff proposes that the trial of this action take place in the City of Toronto.

- 10 September 1996 - NV.
Date: 5 February 2001

McGOWAN & ASSOCIATES

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HEATHER ROBERTSON - and - THE THOMSON CORPORATION, ET AL

Plaintiff Defendants

ONTARIO COURT (GENERAL DIVISION)

PROCEEDING COMMENCED AT TORONTO

AMENDED STATEMENT
OF CLAIM

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SOLICITORS FOR THE
PLAINTIFF.