

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**PHYLLIS MORRIS**

Plaintiff

and

**RICHARD JOHNSON, WILLIAM "BILL" HOGG  
and ELIZABETH BISHENDEN,  
JOHN DOE a.k.a 'auroracitizen.ca',  
JANE DOE a.k.a. 'For a fistful of dollars',  
JAMES DOE a.k.a. 'For a few dollars more', and  
and AUTOMATTIC, INC. d/b/a wordpress.com**

Defendants

**AMENDED FACTUM OF THE PLAINTIFF**

**PART I – NATURE OF THE MOTION**

1. In this motion, the Plaintiff is seeking only to compel the identities of the Anonymous Defendants who have made defamatory and threatening statements against her so that she may pursue this Action against those responsible for these statements.

**PART II – THE POSITION OF THE PLAINTIFF**

2. From at least August 20, 2010 to October 2, 2010, the Anonymous Defendants published false and defamatory statements in respect of the Plaintiff by way of blog postings using the website auroracitizen.ca. The Plaintiff requires the information sought in order to proceed with this action.

3. It is just and convenient that the mandatory order be granted as requested in the Notice of Motion and the attached Draft Order.

**PART III – THE FACTS**

4. As at October 19, 2010, the Plaintiff was the Mayor of the Town of Aurora. As at the date of the hearing of this motion, the Plaintiff is no longer the Mayor of the Town of Aurora.

**Affidavit of Christopher C. Cooper affirmed October 19, 2010 (the “Cooper Affidavit”) at para. 3, Motion Record p. 7. Cross-examination of Christopher C. Cooper dated December 14, 2010 (“Cooper Cross”) at Q. 20-21, p. 6.**

5. The Notice of Action commencing this proceeding was issued on October 8, 2010.

**Cooper Affidavit at para. 2, Exhibit “A”, Motion Record pp. 2, 12.**

6. In the time period between August 20, 2010 to October 2, 2010 a series of internet postings on a blog were made on the website located at <http://auroracitizen.ca>. These postings make false and defamatory statements regarding the Plaintiff, and further threaten the Plaintiff physically.

**Cooper Affidavit at para. 5, Exhibits “C”, “D”, “E”, and “F”, Motion Record p. 7, 37-58.**

7. The words contained in the blog postings in their natural and ordinary meaning meant and were intended to mean that the Plaintiff:

- (a) has a low reputation;
- (b) accepts that the libellous statements on the auroracitizen blog are true;
- (c) is a compulsive liar;
- (d) as the leader of her administration is guilty of many acts of malfeasance;
- (e) has no regard whatsoever or knowledge of good government;

- (f) has made decisions that have resulted in the total waste of hundreds of thousands of dollars in relation to the Town's involvement in Ontario Municipal Board appeals;
- (g) on behalf of the Town, has knowingly engaged corrupt lawyers;
- (h) has purposefully engaged a "puppet" as an Integrity Commissioner;
- (i) behaves in a completely unaccountable fashion;
- (j) behaves as would the devil, that she is evil and that she has committed illegal acts while in office;
- (k) is a liar;
- (l) wilfully and knowingly distorts and twists the truth;
- (m) holds herself to a lower standard than political opponents; and
- (n) should be hanged with her own mayoral chains of office.

**See Cooper Affidavit at paras. 8-11, Exhibits "C", "D", "E", and "F", Motion Record p. 7-9, 37-58.**

**By "for a fistful of dollars"**

**"Her worthless is the same lying hypocrite today that she was on December 5, 2006. Only now we have dozens of examples of her administration's malfeasance, her utter disregard for and ignorance of the phrase "good government," the squandering of hundreds of thousands of dollars of public money on corrupt lawyers, OMB appeals, and a lackey Integrity Commissioner. Transparent and accountable are non-existent in her vocabulary. It is as though we have invited the Serpent into our once innocent Garden of Eden.**

**The only politician who compares favourably is Richard Nixon.**

**Geoff Dawe's campaign should order and distribute 5,000 pennants that could be proudly displayed on mini-flagpoles on our cars to indicate our distaste for the incumbent.**

**Cooper Affidavit, para. 9, Exhibit “D”, Motion Record p. 8, 55.**

**By “auroracitizen”:**

**“So folks, Phyllis Morris is many things – many of which we will not print on this blog – but one thing we can say – and prove – is that Phyllis Morris wilfully and knowingly distorts and twists the truth to try to serve her own purposes.**

**Cooper Affidavit, para. 11, Exhibit “F”, Motion Record p. 9, 61.**

**By “for a few dollars more”**

**“She should be hanged with [her Mayoral Chain]. End of Phyllis and end of story.**

**Cooper Affidavit, Exhibit “E”, Motion Record p. 57.**

8. The auroracitizen.ca website is what is known as a “Blog account”, which is hosted by the Defendant Automattic, Inc. d/b/a/ WordPress.com. Communications with WordPress.com’s abuse-report email address, through a user named “Anthony”, indicated that it is Automattic, Inc.’s policy to only provide information pursuant to a valid U.S. Court Order.

**Cooper Affidavit at para. 12, Exhibit “G”, Motion Record p. 9, 62.**

9. The comments sent from the anonymous person(s) using the blog website are malicious, false and defamatory and have caused serious irreparable harm to the Plaintiff, and to the reputation of the Plaintiff.

10. The individual Defendant Mr. William “Bill” Hogg is a “moderator” of the auroracitizen.ca web page, and has the power to publish, republish, encourage or delete postings or comments made thereon. The individual Defendant Ms. Elizabeth Bishenden was also at one time a moderator of the website. The individual Defendant Mr. Richard Johnson is a frequent poster and commentator on the website.

**Cooper Affidavit at paras. 4, 6, 7 Exhibit “B”, Motion Record p. 7, 19.**

11. The non-party, Mr. Jordan Goldblatt, is a lawyer who has acted for the named individual Defendants. He does not represent the Anonymous Defendants. Mr. Goldblatt transmitted a

settlement offer to the Plaintiff on behalf of the Anonymous Defendants, and therefore either knows the Anonymous Defendants, or has means of determining their identity. Further, Mr. Goldblatt has been named as a contact person in a press release available on the auroracitizen.ca website that discusses this Action. The press release makes reference to an unfiled Notice of Motion which could only have originated from Mr. Goldblatt or his clients. Either Mr. Hogg or Mr. Goldblatt have provided the details of the Action to the auroracitizen.ca website, or to others who have provided the details to the auroracitizen.ca website. These individuals are therefore likely to have knowledge of the individual or individuals who are in control of the website, or other individuals who do have this knowledge.

**Jordan Goldblatt phoning. It is about 4:45. Calling of course about this defamation matter. The rest of the email [sic] is all without prejudice because it recounts one of the strangest outcomes or possible outcomes of a case I've ever had. I've been approached and I can't tell you by whom but what I've been told is that the people who made the anonymous post are prepared to have settlement discussions with you, if you are prepared to have those discussions, along the lines that they would [terms of offer to settle removed] I can tell you I don't represent these people. What I have been asked to convey to you is that if you are amenable to those kind of settlement discussions, then I will find a way to get this information back into these peoples' hands. I'm saying plural but for all I know it could be one person and they will find a way to contact you. I suppose the other side of that at least from my clients' perspective [discussion concerning settlement with the clients of Mr. Goldblatt removed]**

**Cooper Affidavit at paras. 13, 14 Exhibits "H", "I" Motion Record p. 9, 10, 64-68.**

12. There is no other source of information for the information sought regarding the name and identity of the person(s) posting the blog posts other than Automattic, Inc.; the three individual Defendants, Richard Johnson, William "Bill" Hogg and Elizabeth Bishenden, or Mr. Jordan Goldblatt and/or his law firm

**Cooper Affidavit at para. 15.**

13. The repetitiveness and the maliciousness of the defamatory comments and postings has caused or will cause reputational harm and distress to the Plaintiff.

**Cooper Affidavit at para. 16**

14. The Plaintiff has undertaken to abide by any order concerning damages that the court may make if it ultimately appears that the granting of the order has caused damage to any of the responding parties for which the moving party ought to compensate any of the responding parties.

**Cooper Affidavit at para. 20, Exhibit "J".**

15. The Defendants have filed no evidence on this motion, and have refused to permit the Defendants to be cross-examined as witnesses in support of this motion.

**Affidavit of Ranita Ramcharan sworn January 5, 2011, at paras. 2-3, Exhibits "A" and "B".**

**PART IV – THE LAW**

**A. GENERALLY**

**The Rules of Civil Procedure**

16. The Rules of Civil Procedure shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

***Rules of Civil Procedure, R.R.O. 1990, Regulation 194, Rule 1.04(1)***

17. When making an order under the *Rules of Civil Procedure*, the court may impose such terms and give such directions as are just.

***Rules of Civil Procedure, R.R.O. 1990, Regulation 194, Rule 1.05***

18. A failure to comply with the *Rules of Civil Procedure* is an irregularity and does not render a proceeding or a step or document in a proceeding a nullity and the court may grant all necessary relief on such terms as are just to secure the just determination of the real matters in dispute.

***Rules of Civil Procedure, R.R.O. 1990, Regulation 194, Rule 2.01(1)(a)***

19. The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule of the Rules of Civil Procedure at any time.

***Rules of Civil Procedure, R.R.O. 1990, Regulation 194, Rule 2.03***

20. The court may by order abridge any time prescribed by the Rules of Civil Procedure on such terms as are just.

***Rules of Civil Procedure, R.R.O. 1990, Regulation 194, Rule 3.02***

21. On a motion for a mandatory order, the moving party shall, unless the court orders otherwise, undertake to abide by any order concerning damages that the court may make if it ultimately appears that the granting of the order has caused damage to the responding party for which the moving party ought to compensate the responding party.

***Rules of Civil Procedure, R.R.O. 1990, Regulation 194, rule 40.03***

22. The Court may grant leave, on such terms respecting costs and other matters as are just, to examine for discovery any person who there is reason to believe has information relevant to a material issue in the action if the Court is satisfied that the moving party has been unable to obtain the information from other persons whom the moving party is entitled to examine for discovery or from the person the party seeks to examine.

***Rules of Civil Procedure, R.R.O. 1990, Regulation 194, rule 31.10***

**The Courts of Justice Act**

23. In the Ontario Superior Court of Justice, a mandatory order, on such terms as are considered just, may be granted where it appears to a judge of the court to be just or convenient to do so.

***Courts of Justice Act, R.S.O. 1990, c. C.43, ss. 101(1) and (2)***

**B. THE ISSUES**

24. The Plaintiff respectfully submits that the issue before this Honourable Court is whether an order should be given that the named Defendants and Mr. Goldblatt provide certain information regarding the identity of the owner of the blog account and the blog commenters so that the true identity of the persons posting defamatory messages may be determined.

**Disclosure of Account Information**

25. The Plaintiff seeks to obtain the identity of the message poster(s) in order that she might properly bring action against the proper Defendant(s) against whom she makes the allegations in these proceedings.

26. The ultimate issue is whether the identity of the person who is alleged to have defamed the Plaintiff can be revealed despite the fact that their privacy may be violated.

***Warman v. Fournier*, 2010 ONSC 2126 (Div. Ct.) at paras. 30, 31 and 34, see also *BMG Canada Inc. v. John Doe*, [2005] F.C.J. No. 858 (F.C.A.) and *York University v. Bell Canada Enterprises*, [2009] O.J. No. 3689 (S.C.J.)**

27. The Divisional Court in *Warman* held that in the case of a Defamation action:

- (1) the Plaintiff must establish a *prima facie* claim against the unknown alleged wrongdoer;
- (2) the court must balance whether the alleged wrongdoer has a reasonable expectation of anonymity in the particular circumstances;
- (3) the court must determine that the Plaintiff has taken reasonable steps to identify the anonymous party and been unable to do so; and
- (4) the court must weigh whether the public interests favouring disclosure outweigh the legitimate interests of freedom of expression and right to privacy of the persons sought to be identified if the disclosure is ordered.

***Warman v. Fournier*, 2010 ONSC 2126 (Div. Ct.) at para. 34**

28. The earlier decision in *Irwin Toy* also involved a motion for disclosure from ISPs. Wilkins J. held that Rule 30.10 and Rule 31.10 of the *Rules of Civil Procedure*, which in the case of Rule 31.10 is similar to Federal Rule 238, could be used to compel production from an ISP of the identity of a subscriber for whom the plaintiffs had obtained the IP address. While Wilkins J. did not expressly adopt the principles in *Norwich Pharmacal*, he did, in substance, consider the factors enumerated in that decision and addressed in *BMG*. In particular, Wilkins J. expressly

considered whether the applicant had demonstrated on the affidavit evidence a *prima facie* case of defamation against the John Doe defendant in that action.

29. The moving party has been unable to obtain the information from other persons or from Automattic, Inc.. and it would be unfair to force the Plaintiff to proceed with this action without having the opportunity of identifying the true Defendant.

***Irwin Toy Ltd. v. Doe*, [2000] O.J. No. 3318 (S.C.J.) at para. 14**

30. The test to be applied in determining whether or not to order the disclosure of the information sought on this motion is whether the Plaintiff has demonstrated a *prima facie* case against John Doe.

***Irwin Toy Ltd. v. Doe*, *supra*, at para. 18, *Warman* at para. 45**

## **The Law of Defamation**

31. The Plaintiff in a defamation action is entitled to rely upon several presumptions:

- (a) There is a presumption upon proof of publication that the statement was published maliciously. This is called malice at law.
- (b) There is a presumption upon proof of publication that the statement is false.
- (c) Presumption of damage: once publication of a libel has been proven, there is a presumption that the plaintiff has suffered damage. This presumption is enshrined in the common law.

**Canadian Libel Practice, J. Porter and D. Potts, page 120**

***Hodgkinson v. Economical Mutual Insurance Co.*, [2003] O.J. No. 5125 (C.A.) at para. 33**

**The Law of Defamation in Canada (Second Edition) 1994, R. Brown, in Volume 2, page 25-2**

32. In light of the aforesaid presumptions, as well as an analysis of the threatening and defamatory language as shown above, a *prima facie* case of defamation by the Anonymous Defendants has been made out by the Plaintiff.

33. In any event, on their face, the blog postings and comments are defamatory of the Plaintiff. In their plain and ordinary meaning, *inter alia*, they refer to the Plaintiff as a compulsive

liar and suggest that she behaves as would the devil, that she is evil and she has committed illegal acts while in office. One of the anonymous commenters goes so far as to suggest that the Mayor should be hanged with her Mayoral chain of office.

34. Further, the defamatory statements relied on by the Plaintiff are more than sufficient to provide a *prima facie* case of defamation. As examples, courts have found the following types of words to be defamatory:

- (a) allegations that a municipal councillor is corrupt;

***Racco v. Spoletini* [2002] O.J. No. 5236 (S.C.) at para. 28**

- (b) allegations that a senior civil servant deliberately lied;

***Peckham v. Mount Pearl (City)*, [1994] N.J. No. 302 (S.C.T.D.) at para. 34**

- (c) allegations that a public civil servant was a liar and was corrupt; and

***Strudwick v. Lee*, [2006] S.J. No. 564 (Q.B.) at paras. 28, 30.**

- (d) allegations that a firefighter was a “cowboy” and a “goon”;

***Doucette v. Brunswick News*, [2010] N.B.J. No. 235 (Q.B.) at para. 17**

35. The Plaintiff’s position is that none of the defamatory statements raised against her are true and that they have caused and will cause further harm to the Plaintiff’s reputation, and further that they are causing the Plaintiff emotional distress and fear for her safety.

36. The Plaintiff submits that she has established a *prima facie* case of defamation against the Anonymous Defendants and therefore respectfully requests that this Honourable Court grant an order the named Defendants provide the information specified in the Notice of Motion.

#### **Intervention by the Canadian Civil Liberties Association (“CCLA”)**

37. The Court has ordered that the CCLA be granted intervener status in this Action by Order of Whitaker J. dated 31 December, 2010. It is the Plaintiff’s understanding that this intervention was based on the following grounds, although counsel for the CCLA has declined to

provide the Plaintiff with the precise arguments to be raised at the hearing of the motion as at the date of the writing of this document:

- (a) the Court will be called upon to reconcile the interests of a party seeking to sue for defamation and the public interest served by protecting privacy and anonymous expression, including political speech, on the internet;
- (b) this Court's decision on the Motion, including the interpretation of the freedom of expression rights guaranteed by the *Canadian Charter of Rights and Freedoms*, will have an impact beyond the interests of the immediate parties;
- (c) the CCLA will serve the public interest by protecting political speech at issue here; and
- (d) the CCL will assist the Court with the relevance of perceived threats against the Plaintiff in the application of the test for the production of identity information of an anonymous Defendant in an action for defamation.

38. The law of defamation is clear – there is no blanket protection granted to those who wish to defame public servants with respect to the execution of their public duties. In Canada, Defendants have several defences that may be raised against defamation actions, including the defence of fair comment. Rather than insulating anonymous persons from suit for clearly defamatory statements, this Court should order their identities be compelled. The Anonymous Defendants can thereafter plead their defences. Without knowledge of the identities of the Anonymous Defendants, the Plaintiff has no ability to defend her reputation in a court of law. The American approach that has led to open season on public figures has been rejected in Canada by the Supreme Court of Canada.

***Hill v. Church of Scientology*, [1995] 2 S.C.R. 1130 at para. 137.**

39. Bloggers and other media participants must take responsibility for their publications, subject to the various defences available at law.

**58. Canadian law recognizes that the right to free expression does not confer a licence to ruin reputations.** In assessing the constitutionality of the *Criminal Code's* defamatory libel provisions, for example, the Court has affirmed that “the protection of an individual’s reputation from wilful and false attacks recognizes both the innate dignity of the individual and the integral link between reputation and the fruitful participation of an individual in Canadian society”: *R. v. Lucas*, [1998] 1 S.C.R. 439 *per* Cory J., at para 48. **This applies both to private citizens and to people in public life.** People who enter public life cannot reasonably expect to be immune from criticism, some of it harsh and undeserved. **But nor does participation in public life amount to open season on reputation.**

62. The press and others engaged in public communication on the matters of public interest, like bloggers, must act carefully, having regard to the injury to reputation that a false statement can cause. [...] “The law of defamation is one of the comparatively few checks upon [the media’s] great power”. The requirement that the publisher of defamatory material act responsibly provides accountability and comports with the reasonable expectations of those whose conduct brings them within the sphere of public interest. People in public life are entitled to expect that the media and other reporters will act responsibly in protecting them from false accusations and innuendo. [...]

*Grant v. Torstar Corp.* 2009 SCC 61 at paras. 58-65 *per* McLachlin C.J. See also *Boland v. The Globe and Mail Limited* [1960] S.C.R. 203 at 208.

40. The CCLA had previously indicated that it further has an interest in preventing public bodies such as municipalities from bringing actions against private individuals. On this issue, we note that the Plaintiff is an individual and not a municipality. We further note that whether the Town of Aurora funds this litigation or not, which fact is not in evidence, is irrelevant to the determination of this motion.

21. The intervenor [the CCLA] has been unable to cite any Canadian authority where a court has ruled that a government is prohibited from funding defamation litigation commenced by a public servant.

[...]

29. To the extent that this issue has been considered in Canada, the trend of the cases suggest that there is no constitutional prohibition against the conduct complained of in this action. As the court states in *Halton Hills*, it may well be open to a government to fund such litigation in the appropriate circumstances. In *Hill* the Supreme Court of Canada held that the mere fact

of government funding of litigation does not convert a lawsuit commenced by an individual into government action.

*Whitcombe v. Manderson* [2009] O.J. No. 5482 (S.C.) at paras 21-29.

**PART IV - ORDER SOUGHT**

41. The moving party respectfully submits that it be granted the relief requested in its Notice of Motion and set out at paragraph 1 of its Factum and in the form as attached hereto.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

Date: January 6, 2011



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**Howard W. Winkler – LSUC # 23943N**  
**Kenneth R. Clark – LSUC # 44522C**

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Solicitors for the Plaintiff

**SCHEDULE 1**  
**FORM OF ORDER SOUGHT**

[To be provided at hearing]

## SCHEDULE A

### List of Authorities

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3.	<i>York University v. Bell Canada Enterprises</i> , [2009] O.J. No. 3689 (S.C.J.) (QL)
4.	<i>Irwin Toy Ltd. v. Doe</i> , [2000] O.J. No. 3318 (S.C.J.)
5.	Canadian Libel Practice, J. Porter and D. Potts
6.	<i>Hodgkinson v. Economical Mutual Insurance Co.</i> , [2003] O.J. No. 5125 (C.A.)
7.	The Law of Defamation in Canada (Second Edition) 1994, R. Brown
8.	<i>Racco v. Spoletini</i> [2002] O.J. No. 5236 (S.C.)
9.	<i>Peckham v. Mount Pearl (City)</i> , [1994] N.J. No. 302 (S.C.T.D.)
10.	<i>Strudwick v. Lee</i> , [2006] S.J. No. 564 (Q.B.)
11.	<i>Doucette v. Brunswick News</i> , [2010] N.B.J. No. 235 (Q.B.)
12.	<i>Hill v. Church of Scientology</i> , [1995] 2 S.C.R. 1130
13.	<i>Grant v. Torstar Corp.</i> 2009 SCC 61
14.	<i>Boland v. The Globe and Mail Limited</i> [1960] S.C.R. 203 at 208.
15.	<i>Whitcombe v. Manderson</i> [2009] O.J. No. 5482 (S.C.)

## **SCHEDULE B**

### **List of Rules and Statutes**

**1. Rule 1.04(1) of the Rules of Civil Procedure**

1.04(1) General Principle – These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

**2. Rule 1.05 of the Rules of Civil Procedure**

1.05 When making an order under these rules the court may impose such terms and give such directions as are just.

**3. Rule 2.01(1)(a) of the Rules of Civil Procedure**

2.01(1)(a) A failure to comply with these rules is an irregularity and does not render a proceeding or a step, document or order in a proceeding a nullity, and the court,

(a) may grant all necessary amendments or other relief, on such terms as are just, to secure the just determination of the real matters in dispute; or

**4. Rule 2.03 of the Rules of Civil Procedure**

2.03 The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time.

**5. Rule 3.02 of the Rules of Civil Procedure**

3.02(1) General powers of court – Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just.

(2) A motion for an order extending time may be made before or after the expiration of the time prescribed.

(3) Times in appeals – An order under subrule (1) extending or abridging a time prescribed by these rules and relating to an appeal to an appellate court may be made only by a judge of the appellate court.

(4) Consent in writing – A time prescribed by these rules for serving, filing or delivering a document may be extended or abridged by consent in writing, except as provided in subrule 77.01(4) (no extension by consent in case management).

**6. Rule 40.03 of the Rules of Civil Procedure**

40.03 On a motion for an interlocutory injunction or mandatory order, the moving party shall, unless the court orders otherwise, undertake to abide by any order concerning damages that the court may make if it ultimately appears that the granting of the order has caused damage to the responding party for which the moving party ought to compensate the responding party.

## 7. **Rule 31.10 of the Rules of Civil Procedure**

### **DISCOVERY OF NON-PARTIES WITH LEAVE**

#### **General**

31.10 (1) The court may grant leave, on such terms respecting costs and other matters as are just, to examine for discovery any person who there is reason to believe has information relevant to a material issue in the action, other than an expert engaged by or on behalf of a party in preparation for contemplated or pending litigation. R.R.O. 1990, Reg. 194, r. 31.10 (1).

#### **Test for Granting Leave**

(2) An order under subrule (1) shall not be made unless the court is satisfied that,

(a) the moving party has been unable to obtain the information from other persons whom the moving party is entitled to examine for discovery, or from the person the party seeks to examine;

(b) it would be unfair to require the moving party to proceed to trial without having the opportunity of examining the person; and

(c) the examination will not,

(i) unduly delay the commencement of the trial of the action,

(ii) entail unreasonable expense for other parties, or

(iii) result in unfairness to the person the moving party seeks to examine. R.R.O. 1990, Reg. 194, r. 31.10 (2).

#### **Costs Consequences for Examining Party**

(3) A party who examines a person orally under this rule shall serve every party who attended or was represented on the examination with the transcript free of charge, unless the court orders otherwise. R.R.O. 1990, Reg. 194, r. 31.10 (3).

(4) The examining party is not entitled to recover the costs of the examination from another party unless the court expressly orders otherwise. R.R.O. 1990, Reg. 194, r. 31.10 (4).

#### **Limitation on Use at Trial**

(5) The evidence of a person examined under this rule may not be read into evidence at trial under subrule 31.11 (1). R.R.O. 1990, Reg. 194, r. 31.10 (5).

8. **Courts of Justice Act, R.S.O. 1990, c. C.43, ss. 101(1) and (2)**

101(1) Injunctions and receivers – In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

(2) Terms – An order under subsection (1) may include such terms as are considered just.

**PHYLLIS MORRIS**

and

**RICHARD JOHNSON et. al.**

Plaintiff

Defendants

Court File No. CV-10-00412021-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**Proceedings commenced at Toronto**

**AMENDED FACTUM OF THE PLAINTIFF**

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