

CV-10-40366700CP

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

LORNE WALDMAN

Plaintiff

- and -

THOMSON REUTERS CORPORATION and
THOMSON REUTERS CANADA LIMITED

Defendants

Proceeding under the *Class Proceedings Act, 1992*

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 outside Canada and the United States of America, the period is sixty days.

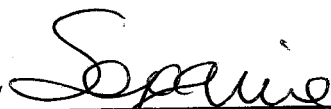
Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

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.

Date

May 25 2010

Issued by



M. Sagaria
Registrar

Local registrar

Address of court office 393 University Avenue
Toronto, Ontario
M5G 1E6

TO: THOMSON REUTERS CORPORATION
Toronto Dominion Bank Tower
Suite 2706, 66 Wellington Street West
Toronto, ON M5K 1A1

AND TO: THOMSON REUTERS CANADA LIMITED
Toronto Dominion Bank Tower
Suite 2706, 66 Wellington Street West
Toronto, ON M5K 1A1

CLAIM

1. The plaintiff claims:

- (a) an order pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (“CPA”) certifying this action as a class proceeding and appointing him as representative plaintiff;
- (b) an order pursuant to s. 24 of the CPA, directing an aggregate assessment of damages;
- (c) general damages for the class in the amount of \$50,000,000;
- (d) a disgorgement of any profit the defendants made by infringing the *Copyright Act*, R.S. 1985, c. C-42;
- (e) in the alternative, statutory damages for the class under the *Copyright Act* in an amount to be assessed;
- (f) a permanent injunction preventing the defendants from dealing with, in any way, sort or otherwise, documents that were authored by the plaintiff or any member of the plaintiff class, or where the plaintiff or any member of the plaintiff class is the owner of copyright;
- (g) punitive damages in the amount of \$1,000,000;
- (h) an order directing a reference or giving such other directions as may be necessary to determine issues not determined in the trial of the common issues;

- (i) prejudgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C. 43;
- (j) costs of this action, including the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes; and
- (k) such further and other grounds as may be required by the CPA, or as the lawyers may advise and this Honourable Court may deem just.

OVERVIEW

2. Copyright subsists in all original written works that are the product of the author's skill and judgment. This includes legal documents such as facta, pleadings and affidavits. Such documents are imbued with an individual author's use of skill, ingenuity, creativity, rhetoric, persuasiveness and experience. These documents are prepared at great expense and have considerable value.

3. The defendants have established a service known as "Litigator" by which they seeks to license to their subscribers legal documents without consent of the copyright owners of those documents. The defendants took more than 50,000 legal documents created by members of the proposed class, removed them from court files and copied them, scanned them into a downloadable format, posted them in their database, and then made them available to their subscribers for a fee.

4. The defendants brand documents with a statement asserting that they are the owner of copyright. The statement reads: "© Thomson Reuters Canada Limited or its

Licensors. All rights reserved.” The defendants neither sought permission from the owners to deal in the documents in any way, nor did they offer payment or obtain a licence of any kind from the copyright owners to do anything that the copyright owners have the exclusive right to do.

5. In addition to asserting that they own copyright in legal documents they did not create, the defendants seek to trade on the name and reputation of the lawyer and/or firm who actually drafted the document by showing (and permitting searching by) lawyer and firm names.

6. The defendants further authorize and encourage their subscribers to infringe copyright by suggesting in their marketing material that the purloined intellectual property be used to “get a head start on [their] own document creation.” After downloading the copied court documents, the defendants’ subscribers can then copy-and-paste from the downloaded documents into their own.

7. The defendants have infringed copyright by doing acts which only the owner of the copyright had the right to do, including selling or renting a copyrighted document, distributing such document so as to prejudicially affect the owner, trading, distributing, offering for sale or renting the document, and possessing the document for the purposes of doing any of these acts. Furthermore, the defendants have infringed the author’s moral rights in the documents. The defendants are not the owners of the intellectual property in these documents, yet they claim rights and take action as if they were.

8. In short, the defendants have created a service whose sole purpose and effect is to carry out mass copyright infringement for their own financial profit.

THE PARTIES

9. The plaintiff, Lorne Waldman, is a lawyer who is ordinarily resident in and practices law in the City of Toronto. He is one of Canada's leading lawyers, specializing in the areas of immigration and refugee law.

10. The plaintiff has a well-deserved and hard earned reputation as a leader in the Canadian legal community.

11. Currently, the plaintiff is the principal of the law firm of Lorne Waldman & Associates which has its office at 281 Eglinton Avenue East, Toronto, Ontario M4P 1L3.

12. The plaintiff brings this action on his own behalf and on behalf of all persons who are the authors of original legal documents, and all persons, law firms, or other legal entities, who own copyright in the Works, as defined below. The legal documents in question include, without limiting the generality of the foregoing, pleadings, affidavits, facta, and notices of motion that the defendants have copied, used or otherwise dealt with in connection with their Litigator service (the "Works", and each individually a "Work").

13. The defendants, Thomson Reuters Corporation and Thomson Reuters Canada Limited (collectively, "Thomson Reuters") are companies incorporated

pursuant to the laws of the province of Ontario, with their Canadian offices in the city of Toronto.

14. At all material times, Thomson Reuters marketed and sold to its customers the "Westlaw Litigator" ("Litigator") service. The Litigator service is part of the Westlaw legal research service, and provides on-line access to the Works, as well as to an expert database, a damage quantification service, and other features. Only the court document collection referred to at paragraphs 29 and following of this claim, and which forms part of the Litigator service, is the subject of this proceeding.

THE PLAINTIFF'S WORK

15. The plaintiff was counsel to Maher Arar, an intervenor in Court File No. C38295 before the Ontario Court of Appeal (the "Appeal Proceeding"). The plaintiff is the author of a work, entitled "Factum of the Intervenor, Mr. Arar" (the "Arar Factum").

16. The Arar Factum was created in November, 2003, and was otherwise unpublished. The Arar Factum was filed at the Court House in Toronto in accordance with the rules of that court. The Arar Factum is an original literary work which the plaintiff created and is imbued with his own skill and ingenuity, learned from years in practice.

17. Copyright subsists in the Arar Factum created by the plaintiff.

18. The copyright in the Arar Factum is owned by the plaintiff, as he is the author. The plaintiff has not assigned title to the Arar Factum to any third party.

19. The defendants have reproduced the Arar Factum in its entirety in their Litigator service and have made it available for download to Litigator subscribers without the consent of the plaintiff.

20. Marked as Schedule "A" to this claim is a copy of the Arar Factum, as downloaded in portable document format (".pdf") from Litigator.

21. Marked as Schedule "B" to this claim is a copy of the Arar Factum, as it appears on the Litigator site

22. Marked as Schedule "C" to this claim is a copy of the Arar Factum, as downloaded in Microsoft Word from Litigator.

23. Marked as Schedule "D" to this claim is a copy of the plaintiff's Certificate of Registration of copyright with the Canadian Intellectual Property Office.

THE PLAINTIFF'S RIGHTS IN THE WORK

24. As the owner of the Arar Factum, the plaintiff had, and continues to have, the sole right to do any of the following:

- (a) produce or reproduce the work or any substantial part of the work in any material form ("Reproduction Right");
- (b) as an unpublished work, the right to publish the work or any substantial part of the work ("Publication Right");
- (c) to produce, reproduce, or publish any translation of the work ("Translation Right");

- (d) to communicate the work to the public by telecommunication (“Telecommunication Right”); and
- (e) to authorize any third party to do any of the foregoing.

25. As the author of the work, the plaintiff has unassignable moral rights, which include the right to the integrity of the work, and the right to be associated with the work.

THE LITIGATOR SERVICE

26. Westlaw is a legal research service operated by the defendants. It contains a number of “sources” within which information is stored. Litigator is one of the sources made available to Westlaw subscribers. The defendants charge an annual fee for access to the Litigator service.

27. As part of their subscription, Litigator subscribers may obtain access to a fixed number of databases, grouped by case reporters, such as *Canadian Cases on the Law of Torts*, *Canadian Cases on Pensions and Benefits*, and *Estates & Trusts Reports*. Those reporters selected by individual subscribers become the subscriber’s default databases from which he or she can access the Works. The Works found in a subscriber’s default databases are available to the subscriber to view or download for no additional charge beyond the subscription fee.

28. In the alternative, a subscriber to Westlaw who does not have access to Litigator, or a Litigator subscriber who seeks access to cases not reported in one of his or her default reporters, may still search for Works within the Litigator database. If

the search yields a relevant Work, the subscriber will be alerted, and can then view or download the Work for \$65.00.

29. On the Litigator site, subscribers are invited to peruse four different “galleries” where the Works are stored: pleadings, court motions, facta (motions and applications), and facta (appeals). In particular,

- (a) the pleadings gallery invites the subscriber to search for Statements of Claim and Defence by type of pleading, area of practice, jurisdiction, level of court, counsel, and law firm;
- (b) the court motions gallery invites the subscriber to search for notices of motion and affidavits by rule name or number, date of motion, counsel, law firm and court level;
- (c) the factum/brief gallery (motions and application) invites the subscriber to search for motion and application factums by rule name or number, date of motion or application, counsel, law firm and court level;
- (d) the factum/brief gallery (appeal) invites the subscriber to search for appeal factums from a number of topical galleries, sorted by area of practice, jurisdiction, date, counsel, law firm and court level.

30. After a successful search, Works on the Litigator service are viewed initially as web-based images. That is, as soon as a pertinent document is identified by the system, i.e., as a result of a search, the text of that document is reproduced on-screen for the subscriber in hypertext mark-up language (“HTML”) format. At the top of the document the defendants states: “© Thomson Reuters Canada Limited or its Licensors. All rights reserved.” The defendants also state that the “Document

appears as reproduced from court files, including any omissions or deficiencies arising from the reproduction process.”

31. From this initial view, a subscriber may select a link to a .pdf image of the Court document. By clicking on a .pdf icon, the subscriber is invited to either “open” or “save” the document. Clicking “open” reproduces an identical image of the court filed document. Clicking “save” allows the subscriber to save the document onto his or her computer hard-drive as a .pdf file.

32. Also from the initial view, a subscriber is provided with access to a “download” button. By selecting “download”, the subscriber may download the document onto his or her computer in either Microsoft Word, WordPerfect, HTML, plain text format, .pdf or rich text format (“.rtf”). When a subscriber downloads the court document, the downloaded document appears with a notation on every single page stating: “© Thomson Reuters Canada Limited or its Licensors. All rights reserved.” The front page of the downloaded document also cautions: “Document appears as reproduced from court files, including any omissions or deficiencies arising from the reproduction process.”

THE DEFENDANTS HAVE CARRIED OUT A MASS INFRINGEMENT OF COPYRIGHT

33. Over a period of months or years, the defendants attended at court houses across Canada, and sought out court files from leading Canadian civil litigation proceedings.

34. Once in possession of the court files, the defendants made copies of the documents in the court file, including the Works, without regard as to any copyright that subsisted in these documents. The sole purpose of this copying was to create a database of legal documents as part of a commercial venture for profit. By reproducing the Works in this manner, the defendants have infringed the sole rights of the members of the proposed class as copyright owners, contrary to sections 3(1) and 27(1) of the *Copyright Act*

35. In furtherance of their commercial venture, the defendants then converted the Works into electronic documents (including.pdf, Microsoft Word, WordPerfect, HTML, Plain Text and .rtf) for inclusion in the Litigator database. To date more than 50,000 Works have been copied, posted and made available for download for a fee in the Litigator database. By copying, translating and distributing the Works in this manner, the defendants have infringed the rights of the members of the proposed class as copyright owners, contrary to sections 3(1) and 27(1) of the *Copyright Act*.

36. The transfer of the Works from hard copy reproduction to electronic document required no skill or original thought by the defendants, and was a purely mechanical process. To that end, the defendants acknowledge on their copies of the Court documents that they are “reproduced from court files”. Therefore, the defendants have no rights in the Works by virtue of this mechanical process.

37. Downloaded Works are branded on every page with a statement that copyright in the document is owned by Thomson Reuters Canada Limited or its Licensors in the following form: “© Thomson Reuters Canada Limited or its Licensors. All rights

reserved.” (except in .pdf format, where no such notice exists). This assertion of copyright is made notwithstanding the defendants’ admissions in their marketing material that the authors are in fact the members of the proposed class. The marketing material provided to subscribers (or potential subscribers) states that “the name of the authoring lawyer and firm are retained for each document, providing immediate insight into the document quality and reliability”. The documents were “written by counsel that have the skill and ingenuity to yield exceptional results”. The defendants therefore acknowledge the authorship, ownership, and value of the Works by the members of the proposed class.

38. The defendants did not request permission from the authors of, or owners of the copyright in, the Works before copying the Works, placing them in their database and offering them for sale. Neither the plaintiff, nor any other class member, ever gave any authority or permission to the defendants to make use of their intellectual property or to do anything that the copyright owner had the exclusive right to do.

39. By reproducing the Works in this manner the defendants have infringed the exclusive rights of the members of the proposed class as copyright owners to do so, as particularized below.

Primary or Direct Infringement

40. It is an infringement of copyright for any person to do, without the consent of the owner of the copyright, anything that by the *Copyright Act* only the owner of the copyright has the right to do. In this instance, the plaintiff’s exclusive rights include

the Reproduction Rights, the Transmission Rights, the Translation Rights and the Telecommunication Rights in the Arar Factum.

41. The Litigator service has reproduced the Arar Factum, in its entirety, in its database. Without the plaintiff's authorization, the defendants reproduced a copy of the Arar Factum from Court files for a purpose other than permitted by *the Courts of Justice Act*, and placed the copy in their database. This act is a violation of the Reproduction Rights of the plaintiff, contrary to sections 3(1) and 27(1) of the *Copyright Act*.

42. The Arar Factum is available for download to Litigator subscribers through the defendants' website. Without the plaintiff's authorization, a Litigator subscriber may request a copy of the Arar Factum, which is then copied and delivered over a telecommunications network. These acts of reproduction and transmission violate both the Reproduction Rights and the Transmission Rights of the plaintiff, contrary to sections 3(1) and 27(1) of the *Copyright Act*.

43. The Arar Factum was never made available to the public in a format that could be edited, copied or revised. The Arar Factum is now available for download to Litigator subscribers in a file format that may be edited. The Arar Factum has been translated from an image file format into at least one other editable file format, which is encoded in a substantially different manner. This act of translation from one file format into another file format violates the Translation Rights of the Plaintiff, contrary to sections 3(1) and 27(1) of the *Copyright Act*.

Infringement by Authorization

44. The defendants have also infringed copyright by authorizing their subscribers to copy Works in breach of the *Copyright Act*.

45. In particular, the defendants set up the Litigator site to permit, sanction, approve, authorize or encourage their subscribers to copy substantial portions of the Works to their own court documents.

46. The plaintiff has the exclusive right to authorize any third party to exercise any of his rights under the *Copyright Act*, including the Reproduction Rights, the Transmission Rights, the Translation Rights and the Telecommunication Rights.

47. The defendants marketed the Litigator service on the basis that it provides a means for subscribers to copy legal precedents word for word, and in particular to “get a head start on [their] own document creation”. Other marketing material disseminated by the defendants advertises the availability of “precedents from many lawyers and law firms so you’ll always have access to the fresh and novel drafting”. The clear implication from these statements is that subscribers should feel free to copy substantial portions of the Works into their own work.

48. The defendants make no effort to curb or limit their subscribers’ use of the Works. In this respect, the Litigator service places no barriers, limits, or restrictions on how subscribers access or use the service. In particular, and without limiting the generality of the forgoing:

- (a) there is no pop-up or warning that cautions subscribers about “legitimate” use of the service prior to downloading or printing;
- (b) there are no limits on download capabilities;
- (c) there is no reminder to the subscribers that copyright law governs the use of the Works;
- (d) there is no reminder to subscribers to contact the authors of court documents should they wish to reproduce sections of the Works;
- (e) there is no electronic contract that a subscriber must sign on each visit, confirming awareness and acknowledgment of a usage policy;
- (f) there is no easily accessible usage policy; and
- (g) there is nothing that warns the subscriber that they may be infringing copyright depending on how they use the Litigator service.

49. The defendants are able to exercise control over their subscribers by determining who can access their services, how much they pay for that access, and what documents they may access. The defendants could put restrictions on how their subscribers deal with documents after they are accessed. It chooses not to do so, nor to take any step, whatsoever, to protect the plaintiff’s copyright in the Arar Factum and the class members’ copyright in the Works.

50. The defendants, through their advertising material and statements made in marketing seminars and presentations, authorizes Litigator subscribers to make use of the plaintiff’s Reproduction Rights, Transmission Rights, Translation Rights and Telecommunication Rights. The defendants wrongfully holds themselves out as the owner of the Arar Factum, and “licenses” access to and use of the Arar Factum. In

this manner, the defendants represent, falsely, to the Litigator subscribers that it has the right to authorize Litigator subscribers to use the Arar Factum. This attempt at authorization in the absence of any right to do so infringes sections 3(1) and 27(1) of the *Copyright Act*.

Secondary Infringement

51. The defendants infringe the plaintiff's copyright by:

- (a) selling or renting out the Arar Factum,
- (b) distributing the Arar Factum to such an extent as to affect prejudicially the plaintiff, and
- (c) possessing the Arar Factum for the purpose of doing (a) or (b).

52. The defendants have acted contrary to sections 3(1) and 27(2) of the *Copyright Act* and knew or should have known that their dealing in the Arar Factum as set out in the preceding paragraph infringed copyright.

53. The defendants, by way of this Statement of Claim, are hereby formally notified that their actions are infringing the copyright of the plaintiff and of the members of the proposed class. The continued sale, rental, distribution or possession for the purpose of sale, rental, and distribution infringes the rights of the plaintiff and the members of the class.

Moral Rights Infringement

54. The defendants have infringed the plaintiff's moral rights in the Arar Factum by undermining the work's integrity. The Arar Factum has been used in association with the Litigator service to the prejudice of the honour and reputation of the plaintiff, contrary to sections 14.1(1), 28.1, and 28.2(1)(b) of the *Copyright Act*.

THOMSON REUTERS' ACTS OF INFRINGEMENT WITH RESPECT TO THE PROPOSED CLASS

55. The plaintiff pleads that each act of infringement carried out by the defendants infringed equally the rights of the class members in respect of the Works. The plaintiff repeats and relies on the allegations of infringement in this regard.

REMEDY

56. The plaintiff and members of the proposed class are entitled to compensatory damages for, *inter alia*:

- (a) the loss of competitive advantage; and
- (b) the destruction of moral rights.

57. The plaintiff and members of the proposed class are entitled to a remedy by way of accounts or delivery up from the defendants in respect of the defendants' infringement of copyright.

58. The plaintiff and members of the proposed class seek a remedy by way of compensatory damages, accounts, and delivery up for infringement of their moral rights.

59. In addition to the above, the plaintiff seeks from the defendants a disgorgement of any profit it made in operation of the Works.

60. In the alternative, the plaintiff and members of the proposed class are entitled to statutory damages as set out in section 38.1 of the *Copyright Act* in respect of each of the Works.

61. The plaintiff seeks the maximum amount under the *Copyright Act* for statutory damages for each act of infringement, that is, \$20,000 for every Work included in the Litigator database.

62. The plaintiff seeks an order requiring the return and removal of all Works in the defendants' possession.

63. The plaintiff seeks a permanent injunction enjoining the defendants from making any further copies of the Works, and any other Court documents of any kind, without explicit consent to do so from the authors of those documents, pursuant to section 39.1 of the *Copyright Act*.

64. The plaintiff seeks a permanent injunction enjoining the defendants from dealing with, in any way or fashion, copies of the Works that it currently has within their power or possession.

65. Should this Honourable Court grant leave for this Action to be certified as a class proceeding, the plaintiff submits that he is entitled to recover the costs of administering the plan to distribute any recovery in this action.

PUNITIVE DAMAGES

66. The defendants knew, as a result of their status as a legal publisher, and their participation in this country's seminal case on copyright law, *CCH Canadian Ltd. v. Law Society of Upper Canada*, that the proposed class members owned copyright in the Works. It further knew that the copying and compiling of the Works, without permission, and authorizing their subscribers to infringe copyright in the Works is a

mass infringement of copyright in the Works. It proceeded notwithstanding their advanced understanding of copyright matters to blatantly infringe the copyright in the Works.

67. The defendants' conduct, in this regard, was flagrant, high-handed, and reprehensible, and constituted a marked departure from ordinary standards of decent commercial behaviour. Such conduct warrants an award of punitive damages.

OTHER

68. The plaintiff pleads and relies on the CPA, the *Courts of Justice Act*, and the *Copyright Act*.

69. The plaintiff proposes that this action be tried in the City of Toronto, in the province of Ontario.

May 25, 2010

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Plaintiff and CORPORATION et al.
Defendants

Court File No:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

STATEMENT OF CLAIM

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