

FEDERAL COURT
Simplified Action

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| FEDERAL COURT COUR FÉDÉRALE | |
| FILED | JUN 29 2015 |
| Valérie Jean-Gilles | |
| OTTAWA, ONT | |

BETWEEN:

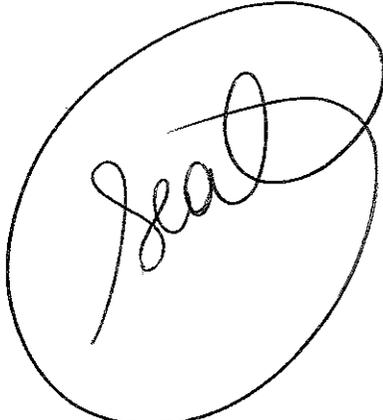
1395804 Ontario Ltd., operating as Blacklock's Reporter

Plaintiff

-and-

Attorney General of Canada

Defendant



STATEMENT OF CLAIM

TO THE DEFENDANT:

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 a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the Plaintiff's solicitor or, where the Plaintiff does not have a solicitor, serve it on the Plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served 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 for serving and filing your statement of defence is sixty days.

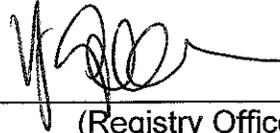
Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the

Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

June 29, 2015

Issued by: _____



(Registry Officer)

Federal Court of Canada
90 Sparks Street, 1st Floor
Ottawa, Ontario K1A 0H9
Tel: 613-992-4238
Fax: 613-947-2141

TO: William F. Pentney
Deputy Attorney General of Canada
284 Wellington Street
Ottawa, ON K1A 0H8
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Solicitor for the Defendant

CLAIM

1. The Plaintiff, 1395804 Ontario Ltd., operating as Blacklock's Reporter ("**Blacklock's Reporter**"), claims:
 - i) Damages for breach of the *Copyright Act*, R.S.C., 1985, c. C-42, for unauthorized use and/or distribution of its subscription based content in the amount of \$25,922.20;
 - ii) Punitive damages in the amount of \$10,000;
 - iii) Prejudgment and post judgment interest in accordance with the provisions of the *Federal Courts Act*, (R.S.C., 1985, c. F-7);
 - iv) Costs of this action together with any applicable goods and services tax; and,
 - v) Such further and other relief as this Honourable Court may deem just.

The Parties

2. The Plaintiff, Blacklock's Reporter ("**Blacklock's**"), is a subscription based news corporation that covers politics, bills and regulations, reports and committees as well as Federal Court and public accounts in Canada. It is a reporter-owned and operated newsroom in Ottawa that provides news on a subscription basis to business, labour and associations.
3. The Plaintiff maintains its online articles as pay walled meaning that the general public cannot access its articles without a subscription. Single use electronic subscriptions are available for \$157 and Blacklock's material is copyright protected and may not be disseminated as set out in its terms and conditions, which are posted on its website. Bulk rate subscriptions for organizations may be purchased by contacting Blacklock's directly further to which a licensing contract is negotiated between the parties.
4. The present claim against the Defendant relates specifically to the actions of the Competition Bureau of Canada ("the Competition Bureau" or "the Bureau"), a unit of the Department of Industry managed by the Competition Commissioner,

appointed pursuant to the *Competition Act* (R.S.C., 1985, c. C-34). The Competition Bureau defines itself as an independent law enforcement agency charged with the administration and enforcement of the *Competition Act*, the *Consumer Packaging and Labelling Act* (except as it relates to food), the *Textile Labelling Act* and the *Precious Metals Marking Act*.

Donald Paquette Subscription and Renewal

5. On or about October 29, 2013, Mr. Donald Paquette, an employee of the Competition Bureau, with the email Donald.Paquette@cb-bc.gc.ca, purchased a single membership to Blacklock's for \$157.00 plus applicable taxes. Mr. Paquette subsequently distributed the Plaintiff's standard notice internally through the Competition Bureau indicating that institutional subscribers who would like to share or distribute content in-house were requested to contact Holly Doan for custom bulk rates.
6. Only individual membership subscriptions can be purchased online through the Plaintiff's website. The Plaintiff's website clearly indicates that Blacklock's content is protected by copyright under Canadian and foreign laws and that one subscription is allotted per subscriber. The terms and conditions further state that distribution of Blacklock's content is prohibited.
7. On or about July 29, 2014, the Plaintiff made an Access to Information Request (ATI) under the *Privacy Act* in respect of distribution and dissemination of Blacklock's content from the subscription in the name of Donald Paquette. This ATI request by the Plaintiff was made as part of its periodic due diligence attempt to monitor compliance by users.
8. On or about August 19, 2014, approximately two and a half weeks following the filing of the Plaintiff's access to information request, a communications officer with Industry Canada, Katia Filiatrault, contacted the Plaintiff by telephone and

email requesting to obtain the rate for bulk distribution of Blacklock's to "roughly 300 people" at the Competition Bureau indicating that such distribution would not include dissemination to Industry Canada *per se*.

9. On or about September 4, 2014, the Access to Information coordinator of Industry Canada contacted the Plaintiff to indicate that it was seeking a 120 day extension to provide records in response to the Plaintiff's ATI request.
10. On or about November 24, 2014, the Defendant applied for a second single-use account under the name Donald Paquette after the original 2013 account had expired.
11. On or about November 25, 2014, the Plaintiff informed Mr. Paquette that the renewed account was suspended pending the receipt of records from its Access to Information request and indicated that he must consult the Plaintiff's terms and conditions. The Plaintiff refunded Mr. Paquette the amount paid for his single use subscription.

ATI Request Results

12. On or about February 27, 2015, the Plaintiff received ATI record #A-2014-00206 in response to its July 29th request.
13. Upon receipt of the Access record, the Plaintiff was able to confirm that approximately thirty (30) stories published by Blacklock's were distributed within the Bureau from the Donald Paquette subscription and that Blacklock's content was also disseminated to a third party within a nine (9) month period between October 2013 to July 2014.
14. The Plaintiff also determined through review of its ATI production that on or about November 5, 2013, Mr. Paquette shared his Blacklock's password with Mr. Phil Norris, another employee of the Defendant. Mr. Norris also sought to change the membership's email from Mr. Paquette's email to that of the communications

branch of the Defendant.

15. The Plaintiff states that Donald Paquette's purchase of a Blacklock's subscription was made in his capacity as an employee of the Competition Bureau for the purpose of dissemination of Blacklock's content within the Competition Bureau. It is further stated that the dissemination of Blacklock's content to any person within the Competition Bureau and to third parties outside the Competition Bureau constitutes a breach of the Plaintiff's terms of use for its content and constitutes a breach of the *Copyright Act*.

No Payment by the Defendant for Copyright Infringement

16. On or about March 9, 2015, the Plaintiff contacted Donald Paquette via electronic mail indicating that he and the Competition Bureau had breached the Plaintiff's terms and conditions of use. The Plaintiff attached an invoice in the amount of \$25,922.20 which represents a \$11,470 charge for an institutional subscription as well as a further charge of \$11,470 for disseminating material to a third party, plus HST.

17. On or about April 14, 2015, the Executive Director of Public Affairs for the Competition Bureau wrote a letter to the Plaintiff seeking proprietary details including the Plaintiff's client list and paid licensing fees. The Defendant did not state in its correspondence that it was not aware of the existing copyright in the Plaintiff's work or that it had not breached the Plaintiff's copyright.

18. The Plaintiff states that the Defendant was attempting to negotiate its own special discounted institutional subscription rate, having already clearly breached the Plaintiff's copyright.

19. The Plaintiff states that the internal distribution list of the Competition Bureau constitutes over 100 persons. The bulk rate of \$11,470 is a discounted rate for

an institutional dissemination size of 100 persons while a non-discounted rate for 100 persons would be over \$15,000. The Plaintiff states that third party dissemination cannot be controlled or monitored by its very nature and so a retroactive charge of \$11,470 for unauthorized third party distribution is reasonable.

20. In the fiscal year 2013-2014, Industry Canada paid fees for media monitoring and news services for products and services ranging up to \$311,852 for a single service and for which it paid more than \$12,000 for more than 20 different products.

21. As of the date of filing, the Defendant has failed to pay the amount owing for breach of the Plaintiff's copyright.

General Damages Claimed

22. The Defendant's dissemination of and access to the Plaintiff's material was unauthorized and circumvented the Plaintiff's license of its copyright protected and pay walled electronic news content.

23. The Plaintiff relies upon the *Copyright Act* and states that the Defendant has violated *the Act* by virtue of its unauthorized access of its copyright protected material. Accordingly, the Plaintiff seeks damages in an amount equivalent to \$25,922.20 together with costs as well as prejudgment interest commencing at March 9, 2015, which is the date of its invoice to the Defendant.

Punitive Damages

24. The Plaintiff relies on the following facts for its claims for punitive damages against the Defendant in the amount of \$10,000:

- a) At the material times that the Defendant accessed the Plaintiff's material in 2013 and 2014, it was apprised of the fact that the content in question was paywalled and it was also aware that institutions require a bulk rate to access the Plaintiff's content;
- b) While the Defendant held an individual subscription with the Plaintiff in or about August 2014, it requested information on the subscription rate for a bulk distribution to 300 persons, thereby demonstrating knowledge of the Plaintiff's bulk rate subscription requirement for institutions;
- c) The Defendant was engaged in dissemination of multiple articles authored by Blacklock's and at no time contacted the Plaintiff to inform it of the fact of such dissemination;
- d) But for the Plaintiff's discovery of the extensive dissemination of Blacklock's content within the Competition Bureau and the distribution to third parties through an access to information request, the Plaintiff would not have discovered the Defendant's actions;
- e) The Defendant's conduct demonstrates disregard for its legal obligations and the value of the Plaintiff's economic interests, where as a matter of policy the Competition Bureau, as a self-styled "law-enforcement agency", should be setting a positive standard for honest and transparent market transactions compliant with the laws of Canada;
- f) Intentional circumvention of subscription based lawful access of online news content erodes the basis of the Plaintiff's business and its ability to charge a fee for its services;

g) The Defendant's attempt to negotiate a discounted custom institutional rate suitable to its needs, having surreptitiously and repeatedly breached the Plaintiff's copyright, is unethical, self-serving, high handed and capricious.

25. The Plaintiff pleads and relies upon the *Copyright Act*, R.S.C., 1985, c. C-42.

June 29, 2015



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Solicitor for the Plaintiff, Blacklock's Reporter