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Toronto

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

(Court Seal)

MICHELLE LATIMER

Plaintiff

and

CANADIAN BROADCASTING CORPORATION,
KA'NHEHSÍ:IO DEER, JORGE BARRERA, ANGELA STERRITT,
and GILLIAN DEACON

Defendants

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.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue
Toronto ON
M5G 1R7

TO: **CANADIAN BROADCASTING CORPORATION**
250 Front Street West
P.O. Box 500, Stn A
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AND TO: **KA’NHEHSÍ:IO DEER**
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AND TO: **JORGE BARRERA**
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AND TO: **ANGELA STERRITT**
c/o Canadian Broadcasting Corporation
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AND TO: **GILLIAN DEACON**
c/o Canadian Broadcasting Corporation
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THIS ACTION IS BROUGHT AGAINST YOU UNDER THE SIMPLIFIED PROCEDURE PROVIDED IN RULE 76 OF THE RULES OF CIVIL PROCEDURE.

CLAIM

1. The Plaintiff claims:
 - (a) the sum of \$200,000;
 - (b) pre- and post-judgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (c) the costs of this proceeding, plus all applicable taxes; and
 - (d) such further and other Relief as to this Honourable Court may deem just.

Parties

The Plaintiff

2. The Plaintiff, Michelle Latimer (“Ms. Latimer”), is a renowned Canadian writer, director and filmmaker.
3. Ms. Latimer directed the film *Inconvenient Indian*, a critically acclaimed documentary adaptation of Thomas King’s book exploring the cultural colonization of Indigenous peoples in North America which was released in 2020. The film won The Amplify Voices Award for Best Canadian Feature Film, as well as the People’s Choice Award for documentary, at the 2020 Toronto International Film Festival, among other awards.
4. Ms. Latimer also directed and co-wrote the first season of the television series *Trickster*, based on a trilogy of novels by Indigenous-Canadian author Eden Robinson. The series was

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broadcast on CBC. A second series had been officially approved by CBC when it was abruptly cancelled following publication of the Articles and Broadcasts, as defined and pleaded herein.

5. Ms. Latimer is - and has always self-identified as - a non-status Indigenous person of Algonquin and European heritage (or, “Algonquin Métis”).

6. After questions were raised around the authenticity of her Indigenous identity, Ms. Latimer was pressured to provide further specificity regarding her ancestry. Ms. Latimer advised that her ancestors were from the Maniwaki region in Quebec, which is the geographical home of the Kitigan Zibi Anishinabeg First Nation (“Kitigan Zibi”). As a Métis person from the Maniwaki region, reference to Kitigan Zibi, the best-known Indigenous community in proximity to Maniwaki, seemed the best way for her to specifically situate her heritage. In making this statement, Ms. Latimer did not claim to be a status or enrolled member of Kitigan Zibi, but rather meant to draw an affiliation with the Kitigan Zibi community based on her family’s undeniable historical ties over several centuries to the Maniwaki region in which Kitigan Zibi is located.

The Defendants

7. The Defendant Canadian Broadcasting Corporation (“CBC”) is a corporation which broadcasts throughout Canada. It is incorporated pursuant to the provisions of the *Broadcasting Act*.

8. The Defendants Ka’nehsí:lo Deer (“Ms. Deer”) and Jorge Barrera (“Mr. Barrera”) were respectively the authors of the December 17th Article and Broadcast, as defined herein.

9. The Defendant Angela Sterritt (“Ms. Sterritt”) was the author of the January 19th Article, as defined herein.

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10. The Defendant Gillian Deacon (“Ms. Deacon”) was the host of the January 21st Broadcast and January 26th Broadcast, as defined herein.

11. In the Summer of 2020, CBC took it upon itself to initiate a purported investigation (described below) into Ms. Latimer’s ancestry and Indigenous identity and to draw its own conclusions in relation to the controversial and complex issue of Indigenous ancestry and self-identification in Canada, particularly as it relates to Métis identity. In December 2020 and January 2021, the investigation culminated into CBC’s broadcasting and publishing several statements concerning Ms. Latimer’s indigeneity which were false and misleading, as pleaded herein.

CBC’s Investigation

12. Ms. Latimer learned that, unbeknownst to her, in or around the Summer of 2020, Ms. Deer and Mr. Barrera contacted several members of the Canadian film and arts industry in relation to an ongoing CBC investigation commenced into Ms. Latimer’s Indigenous identity. As a result of their inquiries, Ms. Deer and Mr. Barrera led many in the community to question Ms. Latimer’s longstanding self-identification as an Algonquin Métis.

13. Ms. Latimer learned that Mr. Barrera contacted Jesse Wente, Executive Director of the Indigenous Screen Office (“ISO”) several times in or around October 2020 regarding Ms. Latimer’s indigeneity and to discuss genealogical information about Ms. Latimer that had been gathered through CBC’s investigation into Ms. Latimer’s Indigenous ancestry.

14. On October 20, 2020, after several months of purported investigation and after Ms. Latimer had heard from several different sources that CBC had been investigating her lineage, Ms. Deer contacted Ms. Latimer for the first time. Ms. Deer advised that she had learned about

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“questions around [her] identity on Facebook.” Ms. Latimer learned that filmmaker Jeff Barnaby had contacted CBC and provided email correspondence in which Mr. Barnaby complained to the Indigenous Screen Office about Ms. Latimer’s ancestry.

15. That same day, Ms. Deer spoke with Ms. Latimer on the telephone. Ms. Latimer inquired whether CBC and Ms. Deer were in possession of personal genealogical information relating to Ms. Latimer. During this conversation, Ms. Deer advised that members of Kitigan Zibi were questioning Ms. Latimer’s identity. She indicated that members of the community had come to Ms. Deer asking her to investigate Ms. Latimer’s ancestry, and had provided her with some genealogical information concerning Ms. Latimer.

16. At that time, no member of Kitigan Zibi had approached Ms. Latimer in this regard.

17. After Ms. Latimer requested to review the genealogical information in CBC’s possession, Ms. Deer indicated that she required authorization from Mr. Barrera in order to share Ms. Latimer’s own genealogical information with her. Subsequently, Ms. Deer advised that she would only agree to share the genealogical information with Ms. Latimer in exchange for an immediate on-record interview.

18. After learning that CBC had supposedly obtained personal genealogical information about her family, Ms. Latimer contacted the Membership Coordinator at the Kitigan Zibi Band Office. She was informed that an individual had contacted the Band Office asking to look up Ms. Latimer’s ancestry. The individual was advised by the Membership Coordinator that this information was not accessible without permission from a member of Ms. Latimer’s family. To Ms. Latimer’s knowledge, no such permission was ever given by herself or any member of her family.

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19. In or around late October 2020, Ms. Latimer learned that CBC journalists, including Mr. Barrera, were advising individuals in the arts community that a CBC investigation had concluded that Ms. Latimer had no lineage linking her to Indigenous ancestry, and that she was not Algonquin Métis as she claimed. At that time, Ms. Latimer had not been given the opportunity to even review – let alone respond to – the fruits of this purported investigation.

20. In subsequent email exchanges between Ms. Latimer and Ms. Deer, the Plaintiff repeatedly requested time to conduct her own proper genealogical research into her ancestry with the assistance of her family, experts, elders, and available records.

21. On November 19, 2020, after several requests from Ms. Latimer, Ms. Deer provided some purported genealogical information to Ms. Latimer. Having done so, Ms. Deer demanded that Ms. Latimer participate in an on-the-record interview on the following Monday, November 22, 2020, at 9:00 a.m. Ms. Latimer refused.

22. By this time, Ms. Latimer had retained a professional genealogist who advised that the material then in the possession of CBC, and from which CBC had drawn conclusions regarding Ms. Latimer's identity as an Algonquin Métis, did not meet the standards of the genealogical profession. Nevertheless, Ms. Latimer learned that CBC journalists continued to use this information to spread misinformation about Ms. Latimer's Indigenous identity and ancestry throughout the arts community and beyond.

23. On November 25, 2020, Ms. Latimer wrote again to Ms. Deer to reiterate her request for more time to conduct proper genealogical research. CBC ignored this request and instead

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published the December 17th Article and aired the December 17th Broadcast (together, “The December 17th Article and Broadcast”).

The December 17th Article and Broadcast

24. The December 17th Article and Broadcast contained intimate personal details of Ms. Latimer and her family history. They denigrated Ms. Latimer’s claim to indigeneity by, inter alia, quoting a researcher and supposed genealogical expert, Dominique Ritchot (“Ms. Ritchot”), who asserted that Ms. Latimer’s ancestors could not have been Indigenous because they were not identified either as “Indians”, as “Sauvages”, or recognized by an identified nation in historical records.

25. The December 17th Article and Broadcast stated or implied that Ms. Latimer was not in any meaningful way Indigenous and did not have Algonquin ancestry as she had claimed. The December 17th Article and Broadcast further implied that Ms. Latimer, who is and identifies as Algonquin Métis, had acted dishonestly in claiming Indigenous ancestry and/or Algonquin ancestry and that she had sought to claim advantage in claiming these traits.

26. The December 17th Article and Broadcast amounted to an intrusion upon the seclusion to which Ms. Latimer was entitled. CBC invited Ms. Ritchot to share intimate details of Ms. Latimer’s personal family history, and broadcast Ms. Ritchot’s account. These matters ought to have been private matters. Ms. Latimer pleads that she was entitled to a measure of solitude as to the precise outline of her indigeneity. The December 17th Article and Broadcast not only invaded Ms. Latimer’s privacy, but did so in a way which disparaged her family history and claim to indigeneity.

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27. Ms. Latimer pleads that there was no matter of public interest which, according to CBC's own Journalistic Standards and Practices, justified CBC intruding upon her privacy as pleaded herein.

28. Further, Ms. Ritchot is a highly controversial figure in genealogy. She uses idiosyncratic methods and has drawn upon discredited sources in support of her work. CBC failed to disclose this to its audience who were left with the impression that Ms. Ritchot was a qualified expert whose conclusions were unimpeachable. Ms. Ritchot subsequently made further inappropriate disclosures about Ms. Latimer's ancestry on Twitter and engaged in discussions with followers on this subject.

29. The December 17th Article and Broadcast were further tortious, in that they gave publicity to matters which placed Ms. Latimer before the public in a false light. Ms. Latimer was presented to CBC's audience and readers as being something other than she was, namely, an Indigenous person of mixed descent. In addition to the matters pleaded herein, CBC cast Ms. Latimer in a false light by the following:

- (a) CBC failed to report that Annie Smith, an Elder of Kitigan Zibi supported Ms. Latimer's claim to an ancestral connection to the community and had advised CBC to leave Ms. Latimer the time and space to retrace her ancestry out of the media spotlight.
- (b) CBC included, without comment, a statement from Elder Commanda that Ms. Latimer had insulted and engaged in appropriation of the culture of Kitigan Zibi.

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- (c) Further, CBC obscured the fact that Ms. Latimer had never claimed to be enrolled in the Kitigan Zibi community or to have obtained Band status which she had clearly noted in her discussion with Ms. Deer on October 20, 2020.
- (d) Finally, CBC implied that Ms. Latimer had been awarded various prizes and a grant intended for Indigenous artists. With the exception of one of the prizes, which is awarded to woman filmmakers, none of the prizes cited are awarded based on artists' identity, let alone indigeneity.

All of this created the false narrative that Ms. Latimer was an imposter who had gained advantage by claiming an Indigenous background that she did not have.

30. On January 19, 2021, CBC published an article entitled: "Indigenous filmmaker wants fines, jail time for 'pretendians' who misrepresent their identity" ("the January 19, 2021 Article").

31. Ms. Latimer complains of the entirety of the January 19, 2021 Article and in particular the following words ("the Words Complained Of"):

- (i) Bell's move comes on the heels of Indigenous elders exposing filmmaker Michelle Ms. Latimer's unfounded claims that she was Indigenous. Ms. Latimer, who recently directed the CBC television series *Trickster* and the documentary *Inconvenient Indian*, is in fact primarily French Canadian, Irish and Scottish.

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- (ii) "It is reprehensible in all measures, so I think as Indigenous people, we have to draw a line in the sand," Bell said Monday at a news conference in Vancouver.
- (iii) Right now, most Canadian institutions — even those that administer funds allocated specifically for Indigenous people — use self-identification as the gold standard for identifying who is Indigenous. That means anyone can simply say "I am Indigenous" to authenticate their Indigeneity.
- (iv) Some, like Ms. Latimer and author Joseph Boyden, have used the ease of self-identity to access grant money and opportunities that could have gone to Indigenous people.
- (v) Bell is proposing an Indigenous Identity Act, which she hopes will deter what she and others call "pretendians" from assuming Indigenous identity.
- (vi) She pointed to legislation in the United States known as the Indian Arts and Crafts Act of 1990, a truth-in-advertising law that makes it illegal "to offer or display for sale, or sell any art or craft product in a manner that falsely suggests it is Indian produced." A first-time violation of the act could land a person a five-year prison term or a \$250,000 fine, or both.
- (vii) "Unfortunately, Canada often turns a blind eye to the wholesale theft and exploitation of Indigenous identity, which has become a widespread problem all too frequently," Bell said.

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32. Thereafter, CBC repeatedly, and recklessly, pursued this false narrative.

33. The Words Complained Of in the January 19, 2021 Article bore the following meanings, both in their natural and ordinary meaning of the words and by way of innuendo:

- (i) Ms. Latimer has claimed to be Indigenous, of mixed identity with Algonquin identity;
- (ii) Ms. Latimer is not in any meaningful way Indigenous and does not have Algonquin ancestry;
- (iii) Ms. Latimer's claims to be Indigenous are unfounded;
- (iv) Ms. Latimer has lied in claiming Indigenous ancestry and/or Algonquin ancestry;
- (v) Ms. Latimer has sought to gain advantage by claiming Indigenous and/or Algonquin ancestry;
- (vi) Ms. Latimer, like the author Joseph Boyden, has used the ease of self-identity to access grant money and opportunities that could have gone to Indigenous people;
- (vii) Ms. Latimer's receipt of grant money and opportunities that could have gone to Indigenous people is illegitimate.

34. Ms. Latimer also complains about a broadcast on CBC Radio One Toronto on January 21, 2021 ("the Radio One January 21st Broadcast").

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35. Ms. Latimer complains of the whole of the Radio One January 21st Broadcast, and in particular the following passages:

- (i) (0:39) Host: “Can you start by reminding our audience a bit about how this all got started, in terms of Michelle Latimer’s story and how she was found to be non-Indigenous?”
- (ii) Angela Sterritt: “Yeah, so as you said there, Latimer was considered one of Canada’s most prominent names in Indigenous filmmaking. But, a CBC investigation found that the acclaimed film director was not actually from the Algonquin community as she claimed, but of French Canadian, Scottish and Irish heritage. On a Facebook post, Latimer said she sincerely apologized to members of the Kitigan Zibi community after they called the misrepresentation an insult, an exploitation –that lead to a lot of conversations around what it means to make false claims about Indigenous identity.”
- (iii) (1:28) Host: “So now another Indigenous filmmaker, Tamara Bell, or sorry I should say... that was a misspeak... an Indigenous filmmaker, Tamara Bell.”
- (iv) (2:50) Angela Sterritt: “Tamara [Bell]... thinks an Act like this could stop those like Latimer from exploiting Indigenous identity.”
- (v) (7:50) Host: “That’s Angela Sterritt, she is CBC reporter who she has been following the fallout from the Michelle Latimer story.”

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36. The words and sounds of the Radio One January 21st Broadcast bore the following meanings, both in their natural and ordinary meanings of the words and by way of innuendo:

- (i) Ms. Latimer has claimed to be Indigenous, of mixed identity with Algonquin identity;
- (ii) Ms. Latimer is not in any meaningful way Indigenous and does not have Algonquin ancestry;
- (iii) Ms. Latimer's claim of Indigenous ancestry and/or Algonquin ancestry is a false claim;
- (iv) Ms. Latimer has sought to gain advantage by claiming Indigenous and/or Algonquin ancestry;

37. Ms. Latimer complains that the Radio One January 21st Broadcast was disseminated throughout Canada on various CBC afternoon broadcasts bearing the same name.

38. Ms. Latimer further complains of a broadcast of Ontario Today or, in the alternative, Here and Now ("the January 26th Broadcast"). The January 26th Broadcast took place on that date.

39. Ms. Latimer complains of the whole of the January 26th Broadcast and in particular the following words ("the Words Complained Of"):

- (i) Host: Should someone who claims to be Indigenous be fined or even face prison time if it's found that it's not in fact the case?

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A Haida filmmaker has called for new legislation to penalize people who pretend to be Indigenous in order to get grants, awards or jobs.

This comes in the wake of the Michelle Latimer case. She is a filmmaker, best known for directing acclaimed productions —things like the CBC television series *Trickster* and the documentary *Inconvenient Indian*.

A CBC investigation revealed that Michelle Latimer was not as Indigenous as she claimed to be for the last 20 years. [...]

Drew Hayden-Taylor is an Anishinaabe playwright author and filmmaker from the Curve Lake First Nation near Peterborough.

- (ii) Host: Drew —Good afternoon to you. First off can I ask what was your reaction to the investigation that called Michelle Latimer’s indigeneity into question?

Drew Hayden-Taylor: Well I mean this has been an ongoing argument for a number of years ever since the Joseph Boyden incident and some time before then. I just sort of considered the next stage in this argument about who is Native and who isn’t. I mean on the surface it’s a good idea. Speaking as an Indigenous person and an Indigenous artist, I can safely say that we are very annoyed, we are very angry...and we’ve put up with all these people claiming to be Native and not being Native and there must be some way of dealing with this ‘cause again, as you’ve just said, in some cases they applied for grants and funding that’s supposed to go to

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Indigenous artists or they win awards that are supposed to go to Indigenous artists and it sort of takes away from that—the principle of Indigenous people telling their stories. But I don't know if this is the right answer, sort of trying to make a law that will sort of put down in cement who is Native and who is not Native and how to tell this. I don't know if that can be legislated.

- (iii) Host: Let me ask. You say 'all these people' you mention Michelle Latimer, Joseph Boyden, of course a different circumstance several years ago but do you think this happens a lot? I mean those are perhaps the two most high-profile incidents, but how extensive is this issue of people claiming either because they don't understand their own heritage clearly or in any case calling themselves Indigenous and then turns out not actually being claimed by those communities that they say they are part of.

Drew Hayden-Taylor: I mean you can go all the way back to Grey Owl and in the current situation on Twitter, sometimes you hear—I actually heard about Michelle Latimer, rumours being put forth about her a couple months before it actually—before the hammer actually came down. And there are other people [...]

- (iv) Host: Can you explain so that people really understand it what is the feeling that you have in terms of misrepresentation —somebody who poses as, who

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claims to be and has success based upon, you know received as a member of an Indigenous community, how does that misrepresentation hurt you?

40. The Words Complained Of bore the following meanings:

- (i) Ms. Latimer is not Indigenous;
- (ii) Ms. Latimer has claimed to be “Native”, and is not “Native”;
- (iii) Ms. Latimer has been awarded grants, funding and awards which were supposed to go to Indigenous artists, but she is not Indigenous;
- (iv) Ms. Latimer is guilty of misrepresentation concerning her indigeneity;
- (v) Ms. Latimer has had success by falsely claiming to be part of an Indigenous community.

41. As a result of the Articles and Broadcasts published and aired by CBC as pleaded herein, Ms. Latimer has suffered, and will in the future suffer, emotional damage and profound damage to her reputation.

42. Ms. Latimer pleads that CBC, in the publication of the Articles and the airing of the Broadcasts pleaded herein, has caused significant and irreparable damage to her career. In particular, Ms. Latimer pleads that:

- (a) By reason of the false and defamatory Broadcasts of CBC’s various news divisions (CBC Indigenous, CBC Radio and CBC’s The National), Ms. Latimer was left with no option but to resign her role as producer on the acclaimed CBC series *Trickster*;

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- (b) As a result, she also lost her contract for the second season of *Trickster* which, by the time of CBC's Articles and Broadcasts, was in progress and did not ultimately move forward as a result of the controversy around Ms. Latimer's identity created by CBC. As a result, the cast members, who were primarily Indigenous, lost their employment, and the opportunities associated with taking part in a highly acclaimed television series;
 - (c) By reason of CBC's Articles and Broadcasts, the National Film Board of Canada ("NFB") withdrew her film *Inconvenient Indian* from the Sundance Festival, the Berlin Film Festival and other important global cinema festivals. Further, by reason of CBC's Articles and Broadcasts, NFB did not move forward with a high-profile USA distribution deal for the film;
 - (d) She was asked to return the DOC Institute Vanguard Award;
 - (e) She has lost two film contracts;
 - (f) She has lost two opportunities to adapt projects from other media to film;
 - (g) The Canadian Screen Awards disqualified all award nomination submissions bearing Ms. Latimer's name.
43. CBC's Articles and Broadcasts, as pleaded herein, have unleashed a torrent of misleading and abusive statements about Ms. Latimer on social media and elsewhere. They have led to the erasure of Ms. Latimer as a cultural figure in Canada.
44. CBC further aggravated the damages caused to Ms. Latimer by:

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- (a) publishing the Words Complained Of maliciously and in bad faith, with reckless disregard for their truth or falsity;
- (b) taking inadequate steps prior to the publication of the Words Complained Of to contact Ms. Latimer and provide her with an adequate opportunity to respond to the claims about her ancestry;
- (c) publishing the Words Complained Of, in particular in the December 17th Article and Broadcast, in a tone of language intended to discredit and belittle Ms. Latimer;
- (d) publishing the Words Complained Of on Twitter and other social media with the intent of drawing attention to the December 17th Article and Broadcast, and taking no steps on Twitter or other social media to modify the content of tweets or other social media posts once corrections were made by CBC.

45. The malicious, high-handed and arrogant conduct of the CBC defendants warrants an award of punitive or exemplary damages to ensure that the Defendants are appropriately punished for their conduct and deterred from such conduct in the future.

46. By Libel Notices dated January 27, 2021 and March 5, 2021, Ms. Latimer, through her counsel, provided detailed written complaints to CBC with respect to the Words Complained Of, and requested redress.

47. To date, CBC has not published any retraction or apology.

48. Ms. Latimer pleads and relies upon sections 5 and 6 of the *Libel and Slander Act*, 1990, c.L.12.

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49. Ms. Latimer brings this action under Rule 76 of the *Rules of Civil Procedure*.
50. Ms. Latimer proposes that this action be tried at the City of Toronto.

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MICHELLE LATIMER
Plaintiff

-and- CANADIAN BROADCASTING CORPORATION et al.
Defendants

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

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