

MAY 05 2017

No.  
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

VIVIAN KRAUSE

PLAINTIFF

AND:

OBSERVER MEDIA GROUP INC.,  
LINDA SOLOMON WOOD, JENNY UECHI,  
SANDY GAROSSINO, MYCHAYLO PRYSTUPA,  
and MICHAEL DE SOUZA

DEFENDANTS

**NOTICE OF CIVIL CLAIM**

**This action has been started by the Plaintiff for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.**

**Part 1: STATEMENT OF FACTS**

**Parties**

1. The Plaintiff, Vivian Krause, is a researcher and writer with an address for service at 900 – 1040 West Georgia Street, Vancouver, British Columbia, V6E 4H1.
2. The Defendant, Observer Media Group Inc. ("**Observer Media**") is a corporation incorporated pursuant to the laws of British Columbia with a registered and records office located at 215 – 209 Carrall Street, Vancouver, British Columbia, V6B 2J2.
3. Observer Media is, and at all material times was, the owner and operator of the Vancouver Observer and the National Observer. The Vancouver Observer and the National Observer are online newspapers.
4. Observer Media has at all material times owned, operated, and controlled the content of the Internet websites located at the following URLs:
  - (a) <http://www.nationalobserver.com>
  - (b) <http://www.vancouverobserver.com>(collectively, the "**Observer Websites**")
5. Observer Media publishes articles of the National Observer and the Vancouver Observer on either or both of the Observer Websites; many of those articles are available free of charge to anyone with access to the Internet, while others are only available to subscribers. Articles published on either or both of the Observer Websites remain available indefinitely.

6. The Defendant, Linda Solomon Wood, is the sole registered director and officer of Observer Media with a mailing address at 300 – 422 Richards Street, Vancouver, British Columbia, V6B 2Z4.
7. Ms. Solomon Wood was at all material times employed by Observer Media. Ms. Solomon Wood is the founder of both the Vancouver Observer and the National Observer and the CEO of Observer Media. At all material times, Ms. Solomon Wood was the Publisher and Editor-In-Chief of the National Observer and the Publisher of the Vancouver Observer. Ms. Solomon Wood is the sister of Joel Solomon, co-founder of Tides Canada Foundation and former contractor and Chairman of the Board for the Tides Foundation (“**Tides USA**”).
8. The Defendant, Jenny Uechi is Managing Editor of both the National Observer and the Vancouver Observer. Ms. Uechi is also Managing Director of Observer Media and a Special Projects Reporter for the National Observer. Ms. Uechi was at all material times employed by Observer Media. Ms. Uechi has an office located at Suite 414 – 207 West Hastings Street, Vancouver, British Columbia, V6B 1H7.
9. The Defendant, Sandy Garossino, has been Editor-in-Chief of the Vancouver Observer since on or about April 22, 2015 and was an associate editor of the National Observer until in or about spring of 2017. Ms. Garossino has been an occasional columnist for both the Vancouver Observer and the National Observer. Ms. Garossino is the lead author of one of the articles that is the subject of this action. Ms. Garossino was at all material times employed by Observer Media. Ms. Garossino has an office located at Suite 414 – 207 West Hastings Street, Vancouver, British Columbia, V6B 1H7.
10. The Defendant, Michael De Souza, is Managing Editor of the National Observer. Mr. De Souza is formerly a political editor and senior reporter for the National Observer. Mr. De Souza is the author of one of the articles that is the subject of this action. Mr. De Souza was at all material times employed by Observer

Media. Mr. De Souza has an office located at 123 Slater, Unit 600, Ottawa, Ontario, K1P 5H2.

11. The Defendant, Mychaylo Prystupa, is an independent video journalist and news photographer. At all material times, Mr. Prystupa was a reporter for both the National Observer and the Vancouver Observer. Mr. Prystupa is the co-author of one of the articles that is the subject of this action. Mr. Prystupa was at all material times employed by Observer Media. Mr. Prystupa resides at 1405 – 212 Davie Street, Vancouver, British Columbia, V6B 5Z4.

### **The Plaintiff's Work**

12. In or about 2007, the Plaintiff began writing a series of letters to Tides Canada Foundation ("**Tides Canada**") and its American parent organization, Tides USA, inquiring into the American funding of environmental activism in Canada. The Plaintiff wrote these letters entirely of her own initiative, as a private citizen.
13. Since in or about 2010, the Plaintiff has been operating as an independent researcher and writer. The Plaintiff has published numerous articles on the subject of American funding of environmental activism in Canada, including articles in the Financial Post, the Vancouver Sun, Alberta Oil Magazine, and on her own blog, "Fair Questions". On the merit of her published articles, since 2012, the Plaintiff has been invited to speak at a variety of events, including various community meetings and conferences.
14. The Plaintiff has, based on her research, publicly alleged the involvement of Tides USA in the funding of an anti-pipeline campaign in Canada called the Tar Sands Campaign, among other things. The Tar Sands Campaign's express goal is to "land-lock" oil sands crude, keeping it out of overseas markets where it could fetch a higher price. The Plaintiff has alleged that the Tar Sands Campaign serves a purpose that is non-charitable and, as such, is something that registered charities should have no part in.

15. According to the Plaintiff's research, and as described in her published articles, Tides USA acts as a hub for the coordination and funding of anti-pipeline activism, having made more than 400 payments totalling \$30 million to environmental and First Nations activist groups in Canada, the United States, and Europe.
16. The Plaintiff has been asked to testify before committees of the Senate and the House of Commons on multiple occasions on the basis of her research. The Plaintiff was before a committee of the House of Commons in or about December of 2010 and was before committees of the House of Commons and Senate four times in the spring of 2012.
17. Since the fall of 2010, the Plaintiff has also provided extensive information to the Canada Revenue Agency (the "**CRA**") concerning questionable payments and potential corruption at several registered charities, including Tides Canada and the Endswell Foundation. The Plaintiff's research prompted a series of audits of registered charities by the CRA.
18. On November 1, 2016, the Plaintiff testified to the Standing Committee of the Senate of Canada. The Plaintiff testified that Tides Canada appeared to have broken the law by acting as a conduit of funds to ineligible recipients, in violation of the **Income Tax Act**. The Plaintiff's testimony was based on extensive correspondence that she had during 2015 and 2016 with Tides Canada regarding payments involving Tides Canada, Tides USA, the owners of a travel agency called "Collette Travel" based in Pawtucket, Rhode Island, and Collette Foundation Canada, a registered charity based in Mississauga, Ontario.
19. The Plaintiff's testimony included a report written by her detailing allegations that between 2010 and 2015, Tides Canada operated an entity called the Tides Canada Foundation Exchange Fund (the "**Exchange Fund**"), also referred to as an "international donation matching system". The Plaintiff testified that Tides

Canada processed at least \$22 million via this fund. The Plaintiff's testimony included details of one case of the use of the Exchange Fund in which Tides Canada received \$3.1 million from Collette Foundation Canada. The Plaintiff's report alleged that rather than spending this money on charitable activity in Canada, Tides Canada funneled most of it to a pair of charities operated by the original donors in Pawtucket, Rhode Island. This allegation was based on American tax returns and other documents, which described a transfer of \$2.7 million from Tides USA to the Pawtucket charities. This transfer was effected via the Exchange Fund, which charged a ten percent fee.

20. The Exchange Fund has also been a topic of the Plaintiff's articles and research. The Plaintiff has reported in the Financial Post that the Exchange Fund has been used to fund anti-pipeline activism in such a way that payments made to Canadian registered charities are not itemized in the tax returns of Tides USA. Based on her research, the Plaintiff has publicly alleged that the Exchange Fund ran afoul of the law because it served non-charitable purposes. At the end 2016, the Exchange Fund was closed. The Plaintiff has alleged that it was closed or should have been closed as a result of an audit of Tides Canada by the CRA.
21. In or about December of 2016, the CRA announced the results of its audits of registered charities: of the 42 charities that were audited for their political activity, 41 were in non-compliance with only one being rated "No Problems". In the case of five of the audited charities, the CRA ruled that their charitable status should be revoked. The Plaintiff repeatedly wrote to Tides Canada and Joel Solomon inquiring as to the outcome of any audit of Tides Canada by the CRA.

### **The Ties Between Observer Media and Tides Canada Foundation**

22. Ms. Solomon-Wood is director and CEO of Observer Media. She is the founder of both the Vancouver Observer and the National Observer and has served and/or continues to serve as Publisher of both publications and the Editor-in-Chief of the National Observer.

23. Ms. Solomon Wood's brother, Joel Solomon, is the co-founder of Tides Canada and a former contractor and Chairman of the Board of Tides USA. Mr. Solomon has also been the president of the Endswell Foundation and has been a director of at least seven other Tides-related charities. Tides USA, Tides Canada, and the Endswell Foundation have all been the subject of the Plaintiff's work, including publications in the Financial Post, the Vancouver Sun, and on her blog, "Fair Questions".
24. Mr. Solomon himself has also been the subject of the Plaintiff's work. The Plaintiff has published articles drawing attention to certain payments of \$979,527 to Mr. Solomon himself and more than \$1 million to Interdependent Investments Ltd., one of Mr. Solomon's investment firms, as well as the purchase by Tides USA of a USD \$2 million ocean-front property in Cortes Island, adjacent to property owned by Mayor Gregor Robertson.

### The First Article

25. On or about April 10, 2015, one or more of the Defendants published or caused to be published an article titled "Duffy Diaries Indicate Senator Co-Ordinated Efforts with Krause And Levant to Attack Charities" (the "**April 2015 Article**") on the Vancouver Observer's website. The April 2015 Article was co-authored by Danny Kresnyak and Ms. Uechi.
26. From April 10, 2015 to April 12, 2015, one or more of the Defendants linked and promoted the April 2015 Article via the Vancouver Observer's Twitter account. These tweets were re-tweeted more than 200 times to several thousand people, including Elizabeth May, the leader of the Green Party who, in turn, had at the time more than 140,000 "followers" on Twitter. During this period, Ms. Solomon Wood had "blocked" the Plaintiff on Twitter from viewing Ms. Solomon Wood's Twitter account, such that the Plaintiff was unable to read Ms. Solomon Wood's tweets.

27. The April 2015 article reported that the Plaintiff was part of a planned attack on environment charities, including Tides Canada, coordinated by Senator Mike Duffy and Ezra Levant, a former broadcaster for Sun News. At the time, Senator Duffy was facing criminal charges, of which he was subsequently acquitted.
28. None of the allegations against the Plaintiff in the April 2015 article were true. By way of example, the Plaintiff had, in fact, been openly critical of Mr. Levant and had published an article to that effect in the Vancouver Sun.
29. After 10:00pm on April 12, 2015, one or more of the Defendants, via the Vancouver Observer's Twitter account, apologized for its tweeting of the April 2015 Article, stating that these were "scheduled auto-tweets" that "went out in error". There was no apology for the content of the April 2015 Article.
30. On or about noon of April 11, 2015, Ms. Uechi contacted the Plaintiff. The Plaintiff explained the numerous, serious errors contained in the April 2015 Article and, further, suggested that the Vancouver Observer disclose the relationship between Ms. Solomon Wood and Mr. Joel Solomon.
31. The Vancouver Observer subsequently retracted 15 sentences from the April 2015 Article, including the entirety of its headline, and substantially rewrote another eight sentences. In addition, the Vancouver Observer removed photos of Mr. Duffy, Mr. Levant, and the Plaintiff, which it had patched together. Further, as per the Plaintiff's suggestion, the Vancouver Observer added a disclosure statement acknowledging that its Publisher, Ms. Solomon Wood, was the sister of Joel Solomon. Initially, this disclosure statement was placed at the top of the April 2015 Article and made reference not only to Mr. Solomon, but also to Tides Canada. It was later moved to the end of the April 2015 Article. The reference to Tides Canada was subsequently removed entirely.
32. At or around 1:00am on or about August 25, 2015, the Vancouver Observer retracted the entirety of the April 2015 article. This retraction was announced by Ms. Garossino on Twitter as follows:



“I have removed a contentious @VanObserver piece concerning @FairQuestions [Ms. Krause’s Twitter account] that was published prior to my taking over.”

33. When the Plaintiff requested that Ms. Garossino make proper corrections to the April 2015 Article rather than quietly removing it at 1:00am, Ms. Garossino stated that:

“All requisite corrections & apology were made months ago. I was unhappy w truncated result.”

34. As a result, while the April 2015 Article was retracted in full, along with the disclosure statement, its inaccuracies and errors were never fully and publicly corrected.

### **The Second Article**

35. On or about April 15, 2015, Mr. Prystupa e-mailed the Plaintiff with a series of 17 questions concerning the Plaintiff’s speaking engagements during the spring of 2012 and whether these engagements had been set up by Senator Duffy. The Plaintiff replied to these questions the following day, prompting a further six questions from Mr. Prystupa exploring similar issues. The Plaintiff promptly responded to these questions as well.
36. On or about May 1, 2015, Mr. Prystupa sent a further series of 17 questions to the Plaintiff, imposing a deadline of Sunday, May 3, 2015 at 9:00am for a response. The Plaintiff provided a brief response.
37. At no point did Mr. Prystupa inform the Plaintiff that he was co-authoring an article with Ms. Garossino, nor did he inform the Plaintiff that Ms. Garossino would be the lead author.

38. On or about May 7, 2015, Observer Media, Ms. Solomon Wood, Ms. Uechi, Ms. Garossino, and Mr. Prystupa libelled the Plaintiff by publishing, or causing to be published, on both of the Observer Websites certain false, malicious, and defamatory words of and concerning the Plaintiff contained in an article titled “Duffy Connected Charity Critic to Lucrative Industry Cash” (the “**May 2015 Article**”). The May 2015 Article was co-authored by Ms. Garossino and Mr. Prystupa and was edited by Ms. Solomon Wood and Ms. Uechi. The May 2015 Article ignores and/or distorts information that the Plaintiff had provided to Mr. Prystupa in answer to his earlier e-mails.
39. One or more of the Defendants heavily promoted the May 2015 Article by using the Vancouver Observer’s Twitter account to “tweet” the May 2015 Article no fewer than 16 times.
40. At 11:32am on May 7, 2015, Mr. Prystupa republished the May 2015 Article via his personal Twitter account, with the following accompanying tweet:
- “#Duffy linked enviro-charity critic to pipeline + mining gigs...#Duffy Trial #OilSands”
41. Earlier that same morning, Mr. Prystupa tweeted a photograph of two birds sitting on the same rock with the accompanying words “2 different birds, same rock”.
42. On or about May 7, 2015, Ms. Garossino published a numbered series of seven sequential tweets via her personal Twitter account. In sequence, they read as follows:
- “1. Witnesses shd declare or be free of \$\$ ties to political parties & anyone interested in outcome of Parliamentary hearings.

2. Krause specifically critiqued funding of Ducks Unlimited--a day after taking \$10k (undisclosed) from its opponent.
3. Biased process: Charities targeted by Krause were never given opportunity to make full answer & defense.
4. Senators shdn't be arranging income for a parliamentary witness. Does this need to be said? #cdnpoli
5. Revealing video raises q's about PM's role in Krause testimony at hearings: [ezrrelevant.com/protecting\\_canfr/s\\_aeud...](http://ezrrelevant.com/protecting_canfr/s_aeud...) #cdnpoli One month pre-Duffy story.
6. Krause's claims have never been substantiated by an independent review: KPMG, Deloitte, E&Y, PWC, etc/
7. We've spent 3 years & \$8M on #CRA audits against charities based on rigged process, tainted evidence, undue influence. #cdnpoli"

The seventh tweet was deleted shortly after being published.

43. The May 2015 Article published the following false, malicious, and defamatory statements of and concerning the Plaintiff:
  - a) The headline – “Duffy Connected Charity Critic to Lucrative Industry Cash”;
  - b) “Poorly redacted entries in Mike Duffy’s diary suggest that the then-senator used his influence and connections during early 2012 to set in motion a lucrative flow of petroleum and mining industry speaking fees to Vivian Krause...”
  - c) “Entries in Duffy’s calendar show that he met with, assisted and promoted the controversial charities critic.”

- d) "Krause was featured prominently in the Harper government's ambitious agenda targeting charities."
- e) "What was not disclosed in her evidence in parliamentary hearings, even under direct questioning, was that Krause was earning tens of thousands of dollars for paid appearances from oil, pipeline and mining interests. And what was also unknown – until Mike Duffy's diaries were released in his bribery and corruption trial – was the role Duffy played in connecting her to that income."
- f) "Prior to 2012, Krause was a relatively unknown figure reportedly living off the proceeds of the sale of her home. That abruptly changed in early 2012, after Duffy's diary entry shows he took steps to help her."
- g) "How the payments began to flow is illuminated by the recent publication of the 'Duffy diaries,' which reveal a nexus among Enbridge, the Canadian Energy Pipelines Association (CEPA), BC mining interests, Duffy and Krause. Krause denied knowledge of any steps by Duffy to assist her financially."
- h) "The Jan. 6 entries show Duffy had separate phone calls that day with influential Conservative pollster Dave Crapper, Krause and Enbridge senior executive Steve Wuori, who was a board member (and former chair) of CEPA...Later that evening, he reached to his speakers bureau agent Marilyn Cassidy, and Ed Odishaw – a lawyer, long-time Conservative fundraiser, and a member of the BC mining community. The entry reads: 'e-Mail Marilyn Cassidy, Ed Odishaw re: helping Vivian Krause.' Duffy then followed up on January 13, 2012 from his Caribbean cruise vacation to both Krause and Cassidy 'from the ship.' Two months later, the mining and pipeline money started flowing to Krause as speaking fees."

- i) "But on April 29 in a later email response to a follow-up question, Krause responded, 'Mr. Duffy introduced me to Marilyn Cassidy, so in that sense, yes, he was helpful and I appreciate that very much.'"
- j) "Krause also stated Cassidy 'did paper work' for most of her engagements that spring, including the CEPA and Taseko-funded events."
- k) "Duffy's diary entries indicate he met with Krause again on March 20 in Ottawa, two days before her \$10,000 presentation to the AMEBC...the Diaries indicate Duffy spoke to Enbridge's Wuori on the evenings of April 2 and April 4, the dates immediately before and after Krause's April 3 address to CEPA in Calgary."

(collectively, the "**May 2015 Defamatory Statements**")

44. In their natural and ordinary meaning, the May 2015 Defamatory Statements meant and were understood to mean that:

- a) The Plaintiff's professional success is largely, if not wholly, attributable to "behind the scenes" assistance from Senator Duffy;
- b) The Plaintiff received substantial sums of money thanks to the efforts of Senator Duffy;
- c) Senator Duffy initiated, obtained, orchestrated, and/or financed Ms. Krause's speaking engagements;
- d) The Plaintiff concealed information from the Senate that she was obligated to disclose;
- e) The Plaintiff received financial assistance directly or indirectly from Senator Duffy;

- f) The Plaintiff was part of a “flow” of money that ran between herself, Senator Duffy, Enbridge, the Canadian Energy Pipelines Association, and unspecified British Columbia mining interests;
- g) The Plaintiff is unfairly biased as a researcher;
- h) The Plaintiff is dishonest, untrustworthy and/or lacks integrity; and
- i) The Plaintiff is unethical and lacking in moral judgment.

Each of these meanings is false, malicious, and defamatory.

- 45. On or about May 11, 2015, the Plaintiff delivered a letter to Mr. Prystupa, Ms. Garossino, and Ms. Solomon Wood, demanding corrections to the May 2015 Defamatory Statements. On or about May 13, 2015, Ms. Garossino informed the Plaintiff that the matter was “high on [their] agenda.” None of the errors that were brought to the Defendants’ attention on May 11, 2015 were corrected.
- 46. On or about May 15, 2015, Ms. Krause again contacted Ms. Garossino and Ms. Solomon Wood, demanding that the May 2015 Defamatory Statements be corrected. No corrections were forthcoming.
- 47. On or about June 3, 2015, the Plaintiff sent a letter to the Defendants that included correspondence from the following organizations, all of which had hosted events at which the Plaintiff had spoken in the spring of 2012:
  - (a) the Vancouver Board of Trade;
  - (b) the Association of Mineral Exploration of British Columbia; and
  - (c) the Canadian Energy Pipelines Association.

48. In that correspondence, all of these organizations verified that Senator Duffy had played no role in the Plaintiff's being invited to speak at their respective events. The Plaintiff also informed the Defendants that the organizers of the Inuvik Petroleum Show, where the Plaintiff had spoken in June of 2012, had expressed a similar position. Nonetheless, no corrections were forthcoming.
49. On or about January 11, 2016, the Plaintiff contacted Ms. Garossino and Mr. Prystupa, again demanding that the May 2015 Defamatory Statements be corrected. The Plaintiff advised Ms. Garossino and Mr. Prystupa of the false and misleading nature of the May 2015 Article and conveyed her concerns over the damage done to her reputation and her employability as a result. Nonetheless, the Defendants refused the Plaintiff's demands.

### The Third Article

50. On or about October 4, 2016, after having been informed that Mr. De Souza may be writing an article concerning herself and her work, to be published in the National Observer, the Plaintiff wrote to Mr. De Souza, requesting that what he write be accurate and fair.
51. On or about October 7, 2016, Observer Media, Ms. Solomon Wood, Ms. Uechi, and Mr. De Souza libelled the Plaintiff by publishing or causing to be published on the National Observer website certain false, malicious, and defamatory words of and concerning the Plaintiff in an article titled "My former employer just attacked me" (the "**October 2016 Article**"). The October 2016 Article was authored by Mr. De Souza and edited by Ms. Solomon Wood and Ms. Uechi.
52. The October 2016 Article is an extended attack on the Plaintiff's character, and work, arising out of an article published on or about October 3, 2016 by the Financial Post titled "Vivian Krause: The cash pipeline opposing Canadian oil pipelines", authored by the Plaintiff (the "**Cash Pipeline Article**").

53. The false, malicious, and defamatory words contained in the October 2016 Article are clearly directed at the Plaintiff. While the October 2016 Article does not refer to the Plaintiff by name, it does refer to the Cash Pipeline Article and contains a hypertext link embedded in its second sentence that instantly directs readers to the Cash Pipeline Article which, in turn, clearly identifies the Plaintiff as its author and, hence, the October 2016 Article's target. Further, through the language used in that sentence, the Defendants encourage readers to click this link. The sentence reads as follows:

“*National Post*, a Postmedia publication, just published one of the most irresponsible pieces of journalism on Monday I have seen in over 15 years working in the business.”

54. The October 2016 Article contains the following false and defamatory statements:

a) “[The Cash Pipeline Article] was an attack on investigative journalism. It was an attack on the public’s right to know and on democracy.

It was an attempt to bully and intimidate investigative journalists out of doing their jobs. This is an attack on you and me and I think it’s a public disgrace.”

b) “Then there was this false and vicious article in the *National Post* that attacked both your values and mine.”

c) “But the attacks on me by the *National Post* indicate just how desperate some people are getting to put a stop to investigative journalism.”

d) “[The Cash Pipeline Article] went down from there into a rabbit hole of conspiracy theories about sources of environmental funding across North America with no relation to journalism or *National Observer*.”



- e) "The National Post article alleged that we were getting money from a U.S. foundation and that I declined to answer questions. These are irresponsible fabrications, apparently the figment of someone's imagination."
- f) "The Post article was written by [sic] researcher who attacked me over funding. I'm going to let you in on some details she didn't disclose."

This researcher told me on Tuesday that she received \$10,000 to attend a conference in Newfoundland and Labrador that was hosted in September by the Canadian Association of Petroleum Landmen.

This isn't the only time she's accepted a contract or money from an oil and gas industry lobby group.

In fact, she's admitted in recent years that her standard \$10,000 fee for appearing at resource industry events is her primary source of income.

She has received tens of thousands of dollars worth of contracts from the Canadian Energy Pipeline Association, the Canadian Association of Petroleum Producers, the Inuvik Petroleum Show, Taseko Mines, and others.

This researcher claimed that I declined to answer her questions."

- g) "If she thinks people shouldn't make connections between the funding she receives and what she writes, why does she feel it's important to write about funding for National Observer?"
- h) "And here's another point that should upset anyone with integrity: The researcher asked us questions, without disclosing that she planned to write an article for the Post – a blatant contravention of journalistic principles."

- i) “The National Post’s irresponsible attack is the exact opposite of my approach to journalism.

In its latest hatchet job, the National Post seeks to undermine your hope for a better future. When they attack National Observer, what they are really attacking is a reader like you.”

- j) “The solutions to our society’s challenges won’t come if we accept the messages of a few extremists running a national newspaper.”
- k) “We’ve met with a number of different people to seek new funding in recent weeks for our reporting – including with Canadian foundations. None of these meetings have produced anything and I can’t help wondering if the National Post’s article was meant to bully and intimidate anyone who wants to step forward to support us.”

(collectively, the “**October 2016 Defamatory Statements**”)

55. In their natural and ordinary meaning, the October 2016 Defamatory Statements meant and were understood to mean that:

- a) The Plaintiff attacked and wishes to halt the practice of investigative journalism (see paras. 54 (a) and (c) of Part 1 of this Notice of Civil Claim) ;
- b) The Plaintiff attacked the freedom of information (see para. 54 (a) of Part 1 of this Notice of Civil Claim) ;
- c) The Plaintiff attacked principles of democracy (see para. 54 (a) of Part 1 of this Notice of Civil Claim);
- d) The Plaintiff bullied and intimidated investigative journalists (see para. 54 (a) of Part 1 of this Notice of Civil Claim);

- e) The Plaintiff's work is false and vicious (see para. 54 (b) of Part 1 of this Notice of Civil Claim);
- f) The Plaintiff's work is irresponsible (see paras. 54 (e) and (i) of Part 1 of this Notice of Civil Claim);
- g) The Plaintiff has contravened journalistic principles (see paras. 54 (f), (h), and (i) of Part 1 of this Notice of Civil Claim);
- h) The Plaintiff is an extremist (see para. 54 (j) of Part 1 of this Notice of Civil Claim);
- i) The Plaintiff is dishonest and/or lacks integrity (see paras. 54 (f), (g), and (h) of Part 1 of this Notice of Civil Claim);
- j) The Plaintiff's work is based in conspiracy theories and figments of imagination (see para. 54 (e) of Part 1 of this Notice of Civil Claim);
- k) The Plaintiff has attacked the readership of the National Observer (see paras. 54 (a) and (i) of Part 1 of this Notice of Civil Claim);
- l) The content of the Plaintiff's work is wholly or in part determined or influenced by her alleged sources of funding (see paras. 54 (f) and (g) of Part 1 of this Notice of Civil Claim); and
- m) The Plaintiff is part of, and has participated in, a conspiracy to prevent the National Observer from obtaining funding (see para. 54 (k) of Part 1 of this Notice of Civil Claim).

Each of these meanings is false, malicious, and defamatory.

56. The October 2016 Article also contained numerous attempts to solicit its readers, including the following:

(a) "Today, with National Observer, I pursue investigations about the issues that matter thanks to the support of readers like you. If you want to see more of this type of journalism, it is urgent that you come forward now to subscribe or make donations to help me pursue this work with a team."

(b) "But the attacks on me by the National Post indicate just how desperate some people are getting to put a stop to investigative journalism. They also demonstrate why it's so important for you to subscribe to National Observer and allow me to pursue this investigation and countless others."

(c) "As you may know, my colleague, Linda Solomon Wood, is National Observer's editor-in-chief.

She's relentless in her dedication to finding support for public service journalism and keeping National Observer's reporting strong, even in this grim environment for media.

If you haven't already, you can read Linda's letter about how extremely difficult this can be. Our goal over the next 18 months is to become 100 per cent reader-funded through your ongoing subscriptions that can secure our independence for years. Please help us build more independent reporting in Canada and subscribe."

(d) "That's why National Observer launched a subscription drive two weeks ago with the goal of welcoming 1,000 new subscribers in 30 days. We're only at about 30 per cent of this goal with about two weeks to go. I'm worried we won't get all the way there and this will put an end to many of my investigations.

Whatever I accomplish over the next few months, saving a life, changing a law, protecting a river, helping our economy, it will only be because you subscribed this month.”

(e) “Meantime, there are all these documents on my desk with stories that need to be told. Linda [Solomon Wood] wrote to you about them here.

Some of these documents contain material that could help save lives, if only I could get the information out.

But I don’t have the team or the resources to move forward on them.

So, please, subscribe today.

If you already subscribe, maybe you might consider adding a donation, or perhaps even giving someone you care about the gift of a National Observer subscription. Every dollar counts. And if you like to subscribe or donate by sending a cheque, our mailing address is: National Observer, 417 – 207 W. Hastings Street, Vancouver, B.C. V6B 1H7.”

(collectively, the “**October 2016 Solicitations**”)

57. Each of the October 2016 Solicitations contains one or more embedded hypertext links, directing readers to pages on the National Observer’s website where they can sign up for a paid subscription to the National Observer or donate money to the National Observer or, more accurately, Observer Media.

### **Authorization to Publish**

58. Observer Media published the May 2015 Defamatory Statements on the Observer Websites with the prior knowledge, consent, and authorization of Ms. Solomon Wood, Ms. Uechi, Ms. Garossino, and Mr. Prystupa.

59. Observer Media published the October 2016 Defamatory Statements on the National Observer website with the prior knowledge, consent, and authorization of Ms. Solomon Wood, Ms. Uechi, and Mr. De Souza.

### **Republication by Third Parties**

60. Any or all of the Defendants knew, intended, and expected that the May 2015 Article and the October 2016 Article would be republished by third parties on the Internet, which has in fact occurred. Alternatively, such republication by third parties on the Internet was the natural and probable result of the Defendants' publication of the May 2015 Article on the Observer Websites and of the October 2016 Article on the National Observer website.

61. Examples of such republication include but are by no means limited to the following:

(a) <https://www.facebook.com/leadnowcanada/posts/1097772893572231>

(b) [https://www.reddit.com/r/canada/duplicates/357m3p/duffy\\_connected\\_charity\\_critic\\_to\\_lucrative/](https://www.reddit.com/r/canada/duplicates/357m3p/duffy_connected_charity_critic_to_lucrative/)

(c) [https://www.reddit.com/r/CanadaPolitics/comments/3575v2/duffy\\_connected\\_charity\\_critic\\_to\\_lucrative/](https://www.reddit.com/r/CanadaPolitics/comments/3575v2/duffy_connected_charity_critic_to_lucrative/)

(d) <http://theeco-senior.blogspot.ca/2015/05/follow-cash-duffy-connects-dots.html>

(e) <https://twitter.com/Mivasair/status/787131702132875264>

(f) <https://twitter.com/PaulHBeckwith/status/784563911580323844>

62. The Plaintiff will provide further particulars of republication as and when they become known to the Plaintiff.
63. Any or all of the Defendants have expressly authorized, invited, encouraged, and facilitated republication of the May 2015 and October 2016 articles by any and every person who accesses those articles by including prominent hypertext links, or “buttons”, in their publications on the Observer Websites. These buttons allow and encourage any reader to easily republish either article via their own Facebook, Twitter, Google+, Reddit, and/or LinkedIn accounts, with one button being provided for each of these social media platforms. Indeed, the buttons for Facebook and Twitter republication expressly invite readers to “share” the articles. Republication of the May 2015 Defamatory Statements and the October 2016 Defamatory Statements have occurred as a result.

#### **Removal of the May 2015 Article and the October 2016 Article**

64. On or about April 27, 2017, Plaintiff’s counsel delivered a letter to the Defendants identifying the defamatory nature of the May 2015 Article and the October 2016 Article and demanding that both articles be retracted by Observer Media and removed from all platforms owned, operated, or otherwise controlled by Observer Media by no later than 3:00pm on May 1, 2017.
65. This deadline passed without any meaningful response from the Defendants. On or about May 4, 2017, the May 2015 Article and the October 2016 Article were removed from the National Observer’s websites. The page on the National Observer’s website where the May 2015 Article was published now reads “This story has been removed from the National Observer.” The page on the National Observer’s website where the October 2016 Article was published now reads “The Page You are Looking for Cannot Be Found”.
66. The May 2015 Article, in part, remains published on the Vancouver Observer’s website. The defamatory headline and the lead photo of the article remain, as

well as the phrase "Star witness attacking charities plays star role in Duffy's Diaries. But what does it mean?"

67. As of the time of the filing of this Notice of Civil Claim, no formal statement of retraction has been issued by any of the Defendants.

**Part 2: RELIEF SOUGHT**

1. General Damages;
2. Aggravated Damages;
3. Punitive Damages;
4. An interlocutory and permanent injunction to restrain the Defendants, by themselves or by their agents, servants, employees, directors, or otherwise, directly or indirectly, from any further publication of the May 2015 Defamatory Statements.
5. An interlocutory and permanent injunction to restrain the Defendants, by themselves or by their agents, servants, employees, directors, or otherwise, directly or indirectly, from any further publication of the October 2016 Defamatory Statements.
6. An interlocutory and permanent injunction requiring the Defendants to permanently remove the May 2015 Article from any electronic database under any of the Defendants' control where the May 2015 Article is publicly accessible, including without limiting the generality of the foregoing, the Observer Websites.;
7. An interlocutory and permanent injunction requiring the Defendants to permanently remove the October 2016 Article from any electronic database under any of the Defendants' control where the October 2016 Article is publicly



accessible, including without limiting the generality of the foregoing, the Observer Websites;

8. An Order requiring the Defendants to assign and grant in writing to the Plaintiff, all right, title or interest they have in the copyright for the May 2015 Article so that the Plaintiff may in her sole discretion take any legal proceedings she considers necessary to restrain any continued republication of the May 2015 Article by third parties on the Internet or elsewhere;
9. An Order requiring the Defendants to assign and grant in writing to the Plaintiff, all right, title or interest they have in the copyright for the October 2016 Article so that the Plaintiff may in her sole discretion take any legal proceedings she considers necessary to restrain any continued republication of the October 2016 Article by third parties on the Internet or elsewhere;
10. A mandatory injunction requiring the Defendants to publish a full and complete retraction of the May 2015 Article on the Observer Websites in a form agreed to by the Plaintiff, and that failing such agreement, the Plaintiff be at liberty to apply to this Court for directions concerning the form and content of such retraction;
11. A mandatory injunction requiring the Defendants to publish a full and complete retraction of the October 2016 Article on the National Observer website in a form agreed to by the Plaintiff, and that failing such agreement, the Plaintiff be at liberty to apply to this Court for directions concerning the form and content of such retraction;
12. An Order requiring the Defendants to assist the Plaintiff in obtaining the removal of electronic copies of the May 2015 Article and/or the October 2016 Article from Internet search caches, from any electronic database where they are accessible, and/or from any Internet websites operated by third parties, whether or not those third parties were authorized by one or more of the Defendants to republish the May 2015 Article and/or the October 2016 Article;

13. Interest pursuant to the *Court Order Interest Act*;
14. Special costs or, in the alternative, costs; and
15. Such further and other relief as this Honourable Court may find just.

**Part 3: LEGAL BASIS**

**Defamation – the May 2015 Article**

1. Observer Media, Ms. Solomon Wood, Ms. Uechi, Ms. Garossino, and/or Mr. Prystupa published or caused to be published the May 2015 Defamatory Statements. Further, the May 2015 Article, and hence the May 2015 Defamatory Statements, were authored by Ms. Garossino and Mr. Prystupa and were edited by Ms. Uechi and Ms. Solomon Wood.
2. The May 2015 Defamatory Statements meet all of the elements of the tort of defamation. They clearly refer to the Plaintiff and were published to the public on both of the Observer Websites.
3. The May 2015 Defamatory Statements, individually and in the aggregate:
  - (a) tended to lower the Plaintiff's reputation in the eyes of a reasonable person;
  - (b) disparaged the Plaintiff in her calling and lawful profession;
  - (c) tended to excite against the Plaintiff the adverse opinions or feelings of other persons;
  - (d) made imputations of immorality against the Plaintiff;

- (e) injured the Plaintiff's personal and professional reputation;
  - (f) accused the Plaintiff of dishonest and/or disgraceful conduct;
  - (g) exposed the Plaintiff to hatred, contempt, and/or ridicule; and
  - (h) caused others to shun, avoid, or exclude the Plaintiff.
4. The October 2016 Defamatory Statements have caused and will in the future continue to cause damage, loss, and injury to the Plaintiff and have compromised the Plaintiff's ability to publish her research or find meaningful employment in her chosen profession.
  5. The falsity of the May 2015 Defamatory Statements is presumed. The May 2015 Defamatory Statements are malicious and defamatory. As a result of their respective roles in the publication of the May 2015 Defamatory Statements, one or more of Observer Media, Ms. Solomon Wood, Ms. Uechi, Ms. Garossino, and Mr. Prystupa are liable in defamation.
  6. Actions for libel are actionable per se. As a result, the Plaintiff is not required to show actual damage. Further, the damages to the Plaintiff are at large.

**Defamation – the October 2016 Article**

7. Observer Media, Ms. Solomon Wood, Ms. Uechi, and Mr. De Souza published or caused to be published the October 2016 Defamatory Statements. Further, the October 2016 Article, and hence the October 2016 Defamatory Statements, were authored by Mr. De Souza and were edited by Ms. Uechi and Ms. Solomon Wood.

8. The October 2016 Defamatory Statements meet all of the elements of the tort of defamation. They referred to the Plaintiff and were published to the public on the National Observer website.
  
9. The October 2016 Defamatory Statements, individually and in the aggregate:
  - (a) tended to lower the Plaintiff's reputation in the eyes of a reasonable person;
  
  - (b) disparaged the Plaintiff in her calling and lawful profession;
  
  - (c) tended to excite against the Plaintiff the adverse opinions or feelings of other persons;
  
  - (d) made imputations of immorality against the Plaintiff;
  
  - (e) injured the Plaintiff's personal and professional reputation;
  
  - (f) accused the Plaintiff of dishonest and/or disgraceful conduct;
  
  - (g) exposed the Plaintiff to hatred, contempt, and/or ridicule; and
  
  - (h) caused others to shun, avoid, or exclude the Plaintiff.
  
10. The October 2016 Defamatory Statements have caused and will in the future continue to cause damage, loss, and injury to the Plaintiff and have compromised the Plaintiff's ability to publish her research or find meaningful employment in her chosen profession.
  
11. The falsity of the October 2016 Defamatory Statements is presumed. The October 2016 Defamatory Statements are malicious and defamatory. As a result of their respective roles in the publication of the October 2016 Defamatory

Statements, one or more of Observer Media, Ms. Solomon Wood, Ms. Uechi, and Mr. De Souza are liable in defamation.

12. Actions for libel are actionable per se. As a result, the Plaintiff is not required to show actual damage. Further, the damages to the Plaintiff are at large.

### **Vicarious Liability**

13. All of the acts and omissions of Ms. Solomon Wood, Ms. Uechi, Ms. Garossino, Mr. Prystupa, and Mr. De Souza complained of in this Notice of Civil Claim occurred during the course and scope of their employment by Observer Media. Observer Media is thus vicariously liable for those acts and omissions.
14. Ms. Solomon Wood is also liable for each of the May 2015 Defamatory Statements and October 2016 Defamatory Statements by virtue of her role and responsibility as Publisher of the National Observer and the Vancouver Observer and by virtue of her role and responsibility as Editor-in-Chief of the National Observer.

### **Express Malice**

15. The May 2015 Defamatory Statements and the October 2016 Defamatory Statements are part of a campaign of malicious attacks against the Plaintiff by the Defendants via defamatory statements. Other components of this campaign include, but are not limited to, the April 2015 Article, the May 2015 Article as a whole, the October 2016 Article as a whole, and the tweets described at paragraphs 39-42 of Part 1 of this Notice of Civil Claim.
16. The Defendants each published and/or authorized to be published the May 2015 Defamatory Statements and/or the October 2016 Defamatory Statements with the knowledge that the meanings conveyed therein were false, or alternatively, with reckless indifference whether they were true or false.

17. The predominant purpose of one or more of the Defendants in so doing was to harm the Plaintiff and to expose her to hatred, ridicule, and contempt, to lower her in the estimation of others, and to cause her to be shunned and avoided. In essence, one or more of the Defendants sought to destroy the Plaintiff's reputation such that she would have no professional credibility with the general public or decision makers.
18. In addition, one or more of the Defendants have acted in bad faith, having been driven to publish or cause to be published the May 2015 Defamatory Statements and/or the October 2016 Defamatory Statements as a result of ulterior motives incompatible with journalistic objectivity or integrity.
19. The Plaintiff's work has repeatedly exposed, and been highly critical of, various actions of and activities carried on by Tides USA, Tides Canada, and Mr. Solomon. Ms. Solomon Wood's familial connection with Mr. Solomon and Observer Media's having been at least partially funded by Tides USA provide one or more of the Defendants, particularly Observer Media and Ms. Solomon Wood, with vested interests in discrediting the Plaintiff and her work.
20. In addition, the October 2016 Defamatory Statements were published alongside and in support of the October 2016 Solicitations. The October 2016 Defamatory Statements were clearly published or caused to be published by one or more of the Defendants as part of a fund-raising strategy by and for Observer Media.
21. The Plaintiff has also on multiple occasions requested that the May 2015 Article either be corrected or retracted. All such requests have either not received any meaningful response or have been refused.

### **Punitive and Aggravated Damages**

22. The Defendants are guilty of deliberately cruel, malicious, and oppressive conduct, as particularized above, and such conduct by one or more of the Defendants justifies this Court in imposing a substantial penalty of punitive damages on the Defendants and an award of special costs in favour of the Plaintiff, in addition to any award of general damages. The Plaintiff will rely upon the entire conduct of the Defendants before and after the commencement of this action to the date of judgment.
  
23. One or more of the Defendants were actuated in publishing any or all of the May 2015 Defamatory Statements and/or the October 2016 Defamatory Statements by express malice as described in paragraphs 15-21 of Part 3 of this Notice of Civil Claim. This caused the Plaintiff to suffer increased distress, belittlement, and embarrassment and, hence, increased injury, which justifies this Court in imposing a substantial penalty of aggravated damages on the Defendants, in addition to any award of general damages.

### **Injunctive Relief**

24. Any and all of the Defendants have continued and will continue to publish the May 2015 Defamatory Statements and the October 2016 Defamatory Statements on either or both of the Observer Websites, and hence continue to cause damage to the Plaintiff, unless the Defendants are restrained from doing so by Order of this Honourable Court.
  
25. The May 2015 Defamatory Statements and the October 2016 Defamatory Statements will continue to be republished by third parties as pleaded at paragraphs 60-63 of Part 1 of this Notice of Civil Claim unless the Defendants expressly withdraw their consent to such republication and all necessary steps are taken to restrain further republication of the May 2015 Defamatory Statements and the October 2016 Defamatory Statements.

**Time for response to civil claim**

A response to civil claim must be filed and served on the Plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

**Plaintiff's address for service:**

Church & Company  
Barristers  
900 - 1040 West Georgia Street  
Vancouver, BC  
V6E 4H1

**Attention: David P. Church, Q.C.**

Fax number address for service (if any): None

Email address for service (if any): None

Place of trial: Vancouver, British Columbia

The address of the registry is:

Law Courts  
800 Smithe Street  
Vancouver, BC V6Z 2E1

Dated: 5 May 2017

  
Signature of

plaintiff  lawyer for the plaintiff  
David P. Church, Q.C.

CHURCH & COMPANY



Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
  - (a) prepare a list of documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.

## APPENDIX

### Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The Claim is for damages for fraud, breach of contract and proprietary estoppel.

### Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the lending of money
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

### Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

### Part 4:

Nil