

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Civil Division)

No: 500-17-114189-205

JON RAFMAN, artist, domiciled at 5366 St-Laurent Blvd., in the city and district of Montreal, province of Quebec, H2T 1S1;

Plaintiff

v.

MONTREAL GAZETTE, English-language daily newspaper published in Quebec, having its place of business at 2055, Peel Street, Suite 700, in the city and district of Montreal, province of Quebec, H3A 1V4;

-and-

T'CHA DUNLEVY, journalist at the *Montreal Gazette*, having its place of business at 2055, Peel Street, Suite 700, in the city and district of Montreal, province of Quebec, H3A 1V4;

-and-

POSTMEDIA NETWORK INC., a media group having its place of business at 365 Bloor Street East, in the city of Toronto, province of Ontario, M4W 3L4;

Defendants

RE-AMENDED ORIGINATING APPLICATION FOR DAMAGE TO REPUTATION

IN SUPPORT OF ITS ORIGINATING APPLICATION, THE PLAINTIFF RESPECTFULLY SUBMITS THE FOLLOWING:

I. THE PARTIES

1. The applicant, Jon Rafman, is a Quebec artist, filmmaker and essayist who was born in Montreal in 1981 and is primarily interested in the impact of technology on contemporary consciousness. His art has attracted international attention as he has exhibited his work in the world's leading museums, such as *The New Museum* in New York, the *Stedelijk Museum* in Amsterdam, the *National Gallery of Canada* in Ottawa, the *Fridericianum* in Kassel, Germany and the *Musée d'art contemporain* in Montreal as well as in many prestigious galleries such as the *Zach Feuer Gallery* in New York, the *Saatchi Gallery* in

London and the *Sprueth Magers* gallery in Berlin and Los Angeles. Jon Rafman holds a Master of Fine Arts from the Chicago Art Institute School of Art and a BA in Philosophy and Literature from McGill University.

2. The defendant, the *Montreal Gazette*, is the leading English-language daily newspaper published in Quebec. It is published daily in print and online.
3. The defendant, T'Cha Dunlevy, is a journalist with the *Montreal Gazette* who is particularly interested in artistic, film and musical events. He is the author of three articles published in July 2020 about the plaintiff Jon Rafman, which are the subject of these defamation proceedings.
4. The defendant, Postmedia Network Inc. ("Postmedia"), is a Canadian media group created in 2010 and headquartered in Toronto, Ontario. Among other things, this group owns the *Montreal Gazette* newspaper.

II. THE CONTEXT THAT LED TO THESE PROCEEDINGS BEING INSTITUTED

5. On July 16, 2020, on the *Instagram* platform, Anne-Marie Trépanier, a 27-year-old woman, posted a testimony on an account entitled "*Surviving_the_artworld* " with the trigger warning "*Emotional abuse - Sexual abuse - Predatory behaviour*" about plaintiff Jon Rafman, in which she essentially states the following:

"It's summer 2014, I'm 21 and I've been in Montreal for only two years now. I'm studying at Concordia University in visual arts and work part-time for a big art institution. I have but one desire: to dive head-in into the local contemporary art scene.

You're 33, there's a huge buzz around you, everyone I know talks about you: your art is internationally praised, critically acclaimed. At this point I've known your work for quite some time, I'm enthralled by the dystopian atmosphere and the twisted ideas that radiate from it. The dark web, strange fetishes, screen eroticism, accelerationism: intriguing and enticing subjects. I have a couple friends who work for you as an assistant, and I just keep hearing more and more about your activity in Montreal.

One day, in the hopes of possibly accessing the bigger picture, I muster up the courage to add you to Facebook. You didn't wait a second to write to me. You tell me you're in a chic hotel in New York; you send me pictures of the luxurious bath tub and sprawling windows. I'm immediately impressed. You ask if we've ever met, I answer no.

You tell me that yes;

We have met before;

That we were black-out drunk and slept together;

And that when you woke up, I was gone :(;

And you wanted me to know that we have a child together, Little Jon, 2 years old now.

This type of convoluted story came up a lot in our exchanges, as if you lived in some kind of fiction; that what was happening wasn't reality. Suddenly, a month later, you invite me to "visit our kid" before bringing him along to a residency in Switzerland. You leave Sunday for Art Basel and I should "really come by" before your departure. I can't believe it: adrenaline shoots up with me. I know exactly what might transpire, but I tell myself, that this might be a chance to have a drink and chit-chat about digital art. I don't "have" to do anything. And also, I'll possibly decipher the "Jon Rafman" mystery. You insist it take place on this particular evening.

Firstly you invite me to a restaurant with your mom and one of your curator friends (someone I know, who's name I won't divulge), you tell me I shouldn't be weirded out, since I'm "your child's mother".

[...]

Finally, you message me past-midnight to give me your St-Laurent studio address and tell me to come over. I'm in a bar; for me to accept immediately, I must be already pretty uninhibited. I take my courage in both hands, and meet-up with you. Things get hazy here on out. You offer me tequila, I try to stimulate conversation which ends up being completely futile, you're not listening to me at all. I don't know what to do with myself.

I don't know exactly know how or what ensued, but we end up sleeping together. You wake up in the middle of the night to punish your air conditioner; I don't understand what's going on. You mumble and I start to get scared, I'm so drunk and confused I feel like I'm hallucinating.

[...]

On the eve of July 1st, you've reserved a room in a "Boutique" Montreal hotel because you're A/C is broken. It's peak Summertime and I'd give anything to escape the suffocating heat. You're with this same curator friend (again?!), I start wondering if he knows about all the stuff going on between us, and probably others too. You warn me that you're going to "keep me up all night"; I ask myself what the hell I've gotten myself into again. Hours later, you write back; "Come, Hotel Germain. 507." I suggest going out for a drink first, because I'm scared of being alone with you in this room; a drink or two might take the edge off.

At the bar, you barely make eye-contact with me, I'm obviously irritating you; poor clingy girl who serves no purpose other than satisfying your desires. I'm an accessory. Looking around the bar, I'm afraid of familiar faces: What will they think if they see us together? But more importantly: What will they think of me? Because you, you have it all: the hype, money, stability, fame and success, insurance. I'm only there to add a bit of flesh to the skewer.

In the few encounters we've had over this period of time you've always treated me like a disposable rag doll. You never once asked me if I was into it, if I wanted it, if everything was alright. You tackle me into the wall and violently kiss me. You penetrate me while excessively salivating on my face. You finger me with so much violence; I feel your hand ripping through me, for hours afterwards; my crotch area feels completely numb. You don't protect yourself nor do you protect me. I feel disgusting, soiled, I'm embarrassed, so embarrassed. I'm not excited whatsoever, freezing like a

deer-in-headlights every time you approach me, I don't know what else to do other than take your violent and degrading caresses.

After this night at the hotel, everything's too heavy. We continue to exchange messages, but I promise myself to never see your red-eyed glare loom over me ever again".

[...]

"I've been called a "pathetic girl"; people have spread rumours about me saying I was "easy". These words, that have been floating around me since the ages of 17-19; they'll always haunt me. I've felt dirty, abused, discarded, yet have always been made to feel like I was the one looking for trouble. A "tease", they called me.

After a while I took the habit of looking for validation with men of power; men I admired that I wanted to learn and nourish myself from, but in the end, they simply always took advantage of my integrity, trust and flesh.

If I've chosen to open-up about my story, it's in the hopes of throwing caution to the wind within the Montreal visual-arts scene.

[...]"

[Emphasis added]

A copy of the message posted on July 16, 2020 by Anne-Marie Trépanier on *Instagram*, on the "*Surviving_the_artworld*" account, constitutes Exhibit **P-1**.

6. On the same day, July 16, 2020, Emily Cadotte posted on *Instagram*, on the "*Surviving_the_artworld*" account, a text about the plaintiff Jon Rafman, which reads, among other things, as follows:

"In 2014 I was in my final year of a studio arts program at Concordia, and was desperate to find a way to stay in Montreal upon completion of my BFA. I didn't want to move back in with my parents in small town southwestern Ontario but my financial situation at the time didn't leave me with many options.

Against my better judgment I swiped right on Rafman on Tinder and we matched. He started a conversation with me, and I told him I wasn't interested in any kind of relationship because a close friend of mine had been hooking up with him (at the time she hadn't reported any abuses to me, only sort of bizarre sexual escapades) so I didn't feel right about encounters that exceeded platonic. That being said I was a fan of his work and had seen him speak not long before at an artist talk... I think it was at the DHC as part of the Cory Arcangel show if I remember correctly, anyway I digress.

So he offered instead that we could get together for a drink at his studio and talk about his practice. I think it was the next evening after we had been messaging I biked over to his nearby "studio" on St.Laurent in the Mile End to meet up, which I quickly found out was also his loft apartment and realized I had been pretty naïve. Before we even sat down, not five minutes into me arriving, he looked at me and said "I think it's clear we're both attracted to each other" and pulled me in for a very aggressive kiss.

We then had unprotected sex that I can only describe as hurried, sweaty and uncomfortable. I didn't fear for my safety and knew I could have left, but because of the clout around him I wanted his approval. I left feeling shaken (literally my body trembling) about the whole thing and worried that I now had this horrible secret to hide from my close friend and felt like I couldn't talk to many people about my discomfort.

We continued messaging for a while, because I saw him as a gatekeeper in the Montreal art scene that I so deeply wanted to be a part of."

[...]

"Earlier in the year I completed a course in slip casting and had been working with that medium for other projects. I felt excited about the prospect of this project (with Jon Rafman) despite my instincts telling me to get away from him. We had several other very similar sexual interactions at his place that I felt shameful about. He convinced me to come over when I told him I couldn't because I was studying for an exam the next day, then made me feel stupid for doing so when I complied.

[...]

I now recognize this as an abusive maneuver that had clearly given him results with other young women in the past. I invested some time in researching and contacting ceramics studio in the city to get quotes for studio membership. I contacted my profs to ask about crating and shipping ceramics oversees. I reported back to him about the work I had been doing and then never heard from him again. In recognizing my own complicity in this situation it took me a long time to identify what had happened over the span of a month or two as sexual coercion and an abuse of power."

[...]"

[Emphasis added]

A copy of the message posted by Emily Cadotte on July 16, 2020 on *Instagram* on the "Surviving_the_artworld" account constitutes Exhibit **P-2**.

7. At the same time, in an anonymous testimonial posted on *Instagram*, another woman wrote that she had met the plaintiff on Tinder and agreed to meet him at his home in the evening. After being intensively kissed by Jon Rafman, she alleged that she was undressed by him and they had sex. She further states that she had sex with the plaintiff three times, adding that "it wasn't rape, but it was abuse of power, manipulation and emotional gaslightning". A copy of this anonymous post constitutes Exhibit **P-3**.
8. Less than a week after these *postings* on *Instagram* (P-1, P-2 and P-3), at the insistence of Jon Rafman's public relations consultant who knew that he was preparing an article on this issue, journalist T'Cha Dunlevy of the *Montreal Gazette* finally contacted the plaintiff, who was then residing in Los Angeles, to obtain his views on the denunciations. In an interview lasting approximately 25 minutes, Jon Rafman categorically denied the allegations contained in the *postings* on *Instagram* by Anne-Marie Trépanier, Emily Cadotte and an anonymous woman and insisted that the relationships had been between consenting adults, that he had never been previously informed by any of these

women that they were uncomfortable with the relationships in question and that he had evidence of the consensual nature of the relationships that had occurred on several occasions a few years earlier, evidence that he was willing to provide to the journalist. In this interview, which was recorded, we can hear the following exchanges, among others:

“[...]”

- **Jon Rafman:**

I want to start by giving a little bit of context. In the mid of 2010's, I was newly single following a series of long-term relationships and my art career was taking off after a decade of toiling in relative obscurity. I spent most of my time online where I met friends and collaborators and my current partner of the past five years, Polina, who is sitting next to me. During this time, I was on Tinder, meeting women and having casual romantic encounters, like many people, that were consensual and often brief and admittedly not committal.

But the stories described in the testimonies recently published online, they took place in this period.

And while they were regrettable experiences for the women who came forward, I want to be very clear that they were consensual interactions between adults and I reject effort to label these stories the way they were labelled online such as "predatory", "sexually violent" and various forms of abusive, and they even been called "rape" not but the accusers themselves but other third parties who wanted I think to stir the pot. I want to deny all these allegations as mischaracterization of my behaviour.

So after the publication of these testimonies on Instagram last week, these intimate and deeply personal stories were weaponized as part of a defamation campaign coordinated by "Surviving the artworld".

The individuals administering the account and a circle of online supporters had aggressively targeted the institutions I work with in Canada, and internationally, demanding an immediate response to their allegations and calling for the cancellation of my shows.

They've even actively reached out to students at HEAD Geneve, the art school I teach at, to come out with stories, and they created an atmosphere that, according to a student who reached out to me, that was frightened and confusing.

Even friends in Montreal and colleagues privately shared experiences of being pressured to support this campaign or contribute testimonies to denounce me.

In general, I felt that the way people behaved online was ill-spirited and cruel. There was actually no way to address the testimonies because they closed the comments section.

[...]

But it is troubling that many people I spoke with, while admitting I am not guilty of any wrong doing and condemning this defamation campaign against

me, shared concerns about speaking out publicly for fear of being attacked and shamed online themselves. I can see this as symptomatic of our times. It is a sad testament to the state of our current hyper-polarized discourse. And how these can debase important conversations that need to be had.

[...]

- **T'Cha Dunlevy:**

I want to touch on a few things, particulars that were mentioned in the Instagram posts and give you a chance to answer to them

- **Jon Rafman:**

I don't have emotional energy right now but you can ask them [your questions] and I will respond right soon by writing you. You can ask and you'll be answered. Do you know these allegations are so serious that I don't want to mince words...

[...]

- **T'Cha Dunlevy:**

Preferably would be for us to talk it out right now because I am quoting you on what you have to say. You have requested to send answers afterwards which is also possible. It's as you wish. I will ask you and you can see...

One person mentioned "sexual coercion" and that seem to be, whether the term was used or not, a running theme in some of the posts. So how do you respond to that?

- **Jon Rafman:**

I deny that there was sexual coercion whatsoever....yes, whatsoever.

- **T'Cha Dunlevy:**

There were also different people who referred to unprotected sex non-consensual, that they haven't been giving occasion to consent because it moved very quickly?

- **Jon Rafman:**

I also deny that and ...

- **Polina [Jon Rafman's partner]:**

I don't think anyone mentioned unconsensual sex in any of those testimonies. They all said that it was They were doing it on their own account.

- **Jon Rafman:**

Ya. That's the same feeling I got. If I felt that it was otherwise...

- **T'Cha Dunlevy:**

One person said something like you never asked if I was okay, if I want this for me or something like that. Several people mentioned the fact that you didn't use protection.

- **Polina:**

I've known Jon for 5 years. Through my whole experience of my relationship with him, which has started out amazing and has been amazing after, I have never once not only not seen him involved in any form of abuse, but even the slightest form of disrespect. Never once [...]

[...]

- **Jon Rafman:**

We will send you screenshots so that you can see what was beyond the actual Instagram account.

- **T'Cha Dunlevy:**

I just want to give a chance to respond to one other thing Jon. People mentioned violent sex and one woman said she had she called lesions and that seems to be a recurrent theme of kind of forceful sex?

- **Jon Rafman:**

I don't think I should comment on this but I do have evidence. I can go back into it if it was ever required to, I could show evidence from our conversations back in the day, our private messages that reveal very consensual relationships occurred and that do not exactly link to what was...

The only thing I would say about this is that I was never informed - for example - I was never asked by my partners ... I think I am very open to communication and if anybody were to tell me that they felt uncomfortable, I am incredibly sensitive to people. I am empathetic, I know in my heart's core that if I was told that I am being violent, I would have stopped. So it doesn't make sense. If you know me (and most of the people who were slandering me don't know me), it doesn't match up with my character. That's why I am so emotional about it, because I truly believe this is a mischaracterization of my behaviour. It's hard to speak about it because I really respect... I don't discredit the trauma that these women feel for their relationship with me. And I regret, it hurts me to know that when they think of me or when they see my work, that it hurts them or that it... But, I think that at some level, it's so much mischaracterization going on of who I am... It's difficult to even respond because I just feel...

[Emphasis added]

A copy of the recording of the interview conducted by T'Cha Dunlevy with Jon Rafman on Wednesday, July 21, 2020 constitutes Exhibit **P-4**.

9. Without waiting for evidence of the manifestly consensual nature of the relations denounced by Anne-Marie Trépanier, Emily Cadotte and the anonymous woman on

Instagram which the plaintiff offered to provide him, the next day, July 22, 2020, on the front page, the *Montreal Gazette* published a text under the signature of the defendant T'Cha Dunlevy, the title of which read as follows: "*Local art star Rafman the subject of allegations of sexual coercion*". Below the headline, in bold letters there was the following text: "Warning: this article contains sexual violence". A copy of this text published on the front page of the *Montreal Gazette* on July 22, 2020 constitutes Exhibit **P-5**.

10. In this article (P-5), the journalist relates the allegations of Anne-Marie Trépanier, Emily Cadotte and an anonymous person and writes, about the relationship with Anne-Marie Trépanier:

"Over the next few months, they had "3 or 4" unprotected sexual encounters that Trépanier describes as non-consensual."

[Emphasis added]

11. However, not only did Jon Rafman repeatedly tell the journalist in his interview that the relationship was consensual, but there is nothing in Anne-Marie Trépanier's testimony to suggest or infer that her sexual relations with Jon Rafman were either against her will or non-consensual.

12. When confronted with the inaccuracy and highly defamatory nature of this assertion by the public relations professional whose services had been retained by Jon Rafman, T'Cha Dunlevy stated that he had inferred that the relationship between Rafman and Trépanier was not consensual from the following lines of the latter's testimony:

"In the few encounters we've had over this period of time you treated me like a disposable rag doll. You never since ask me if I was into it, If I wanted it, If everything was alright."

13. Moreover, without pointing out that the fact of having "three or four" sexual relations is difficult to reconcile with his characterization of the relations in question as "non-consensual", in his telephone conversation with Jon Rafman's public relations consultant, journalist Dunlevy clearly acknowledged that Trépanier had never characterized their relations as "non-consensual", and in an email stated that he was ready to remove this allegation from the website version of the article but that the editor refused to change the story. A copy of this email dated July 22, 2020 constitute Exhibit **P-6**.

14. In the same vein, by writing "*Thus began a series of strange, disorienting exchanges with the artist that led, a month later, to her being invited, after midnight, to Rafman's studio (which, she discovered, had a bed) to talk about digital art*", the journalist falsely led readers to believe that Trépanier and Rafman had a semi-professional relationship and that he had lured her to his studio under false pretenses, when, on the one hand, their relationship and correspondence was openly and clearly romantic and sexual from the outset and, on the other hand, it had nothing to do with work. While Trépanier may have thought that getting physically close to the plaintiff might have given her the opportunity to have conversations about digital art, she does not allege in the message posted on *Instagram* that the plaintiff invited her on the pretext that they would have a discussion about digital art. Moreover, in the *Facebook* messages exchanged between

Rafman and Trépanier, neither expressed their intention or desire to talk about digital art while scheduling their date. Nor does Trépanier ever mention the “discovery” of a bed in her detailed description of the date on *Instagram*. This is a complete fabrication of the journalist.

15. In addition, the journalist states that when the plaintiff and Trépanier met at a downtown boutique hotel to spend the night, “*he forced himself on her*”, which in no way corresponds to the message posted on *Instagram* by Anne-Marie Trépanier and is strongly denied by Rafman. Again, this is a pure invention of the journalist.
16. With respect to Emily Cadotte’s testimony, the journalist uses it to describe Jon Rafman’s relationship as “*sexual coercion*” in the title of the article as well as in its first paragraph, without mentioning right away (in the title or first paragraphs) that she had several sexual relationships with the plaintiff she had met on the dating site Tinder, which blatantly contradicts the coercive nature of these relationships and the lack of consent of this woman to have sex. These very significant facts and circumstances are actually mentioned for the first time 25 paragraphs later in page A3 of the newspaper.
17. The journalist’s and *Montreal Gazette*’s assertions that plaintiff Rafman was the subject of allegations of “*sexual coercion and abuse of power*” were repeated for the three next days, July 23, 2020, on page A9 of the newspaper and on July 25, 2020, at page A2, but without any mention of the fact that the plaintiff had categorically denied the allegations of coercion. A copy of these two articles respectively entitled “*Gallery drops Rafman after allegations*” and “*City puts Jon Rafman artwork on hold after sexual coercion allegations*” constitute jointly Exhibit **P-7**.
18. These articles with somewhat modified titles such as “*Montreal Art star Jon Rafman facing allegations of sexual coercion*” and “*Montreal Gallery drops star Jon Rafman after allegations of sexual coercion*” (with a big picture of Rafman) were posted on the *Montreal Gazette* website and are still posted today. A hard copy of the articles posted on the *Montreal Gazette* website constitutes Exhibit **P-8**.
19. Reading these articles and their headlines in the *Montreal Gazette* in paper form or on its website, the reader was not able to learn that Jon Rafman had categorically denied having had a non-consensual or coercive relationship until he or she reads six (6) short paragraphs appearing at the very end of the article (P-4), on page A3 of the July 22, 2020 issue of the newspaper. This quote was a very limited part of the interview the plaintiff gave to the *Montreal Gazette* journalist the previous day.
20. The reader would also not be able to understand that these women were not and have never been Jon Rafman’s employees, students, interns nor were they subordinate to him in any other way. The use of the expression “*abuse of power*” leads the reader to conclude otherwise in a very prejudicial way toward Rafman.
21. Lastly, if the journalist had taken the trouble to wait to allow Jon Rafman to provide him with evidence of the consensual nature of his relations with the women who had posted testimonials on the *Surviving_the_artworld* account, as he had offered and undertaken to do, he would have been able to see that the denunciations were obviously false and unfair and that the sexual relations between these women and the plaintiff were clearly consensual. In fact, the article was sent to print a few hours after the interview with Jon Rafman.

- 21.1 From the correspondence between Rafman and Anne-Marie Trépanier, the journalist would have found out that, after adding Rafman on *Facebook* and having their first flirtatious conversation, it was in fact Trépanier, not Rafman, who suddenly reached out to Rafman a month later with the following flirtatious messages:

“AMT: How’s our son? [...] Would you let me visit him?”

[...]

AMT: I really want to see him. Please.”

22. [...] In the *Facebook* correspondence with Anne-Marie Trépanier that ensued the day after their first sexual relationship, we can see that Trépanier proactively and repeatedly reached out to Rafman with friendly and positive messages from the early morning and through the late night. Amongst others, we can read the following exchange between Jon Rafman (J.R.) and Anne-Marie Trépanier (AMT):

“AMT: Cancelled work. Win!

[...]

AMT: When are you coming back to mtl again?

[...]

AMT: What are you doing tonight?

J.R.: I’m exhausted. Not sure. Fantasizing about continuing where we left off. “Babysitting”.

AMT: It was fun babysitting with you.

[...]

AMT: Is it just me or you were very agitated yesterday night?

J.R.: I’m always anxious. But this is a high-stress time.

AMT: I can relate. My presence probably wasn’t helping.

J.R.: Not true.

[...]

AMT: Done.

J.R.: Wat

AMT: With work.

J.R.: And what now

AMT: Dreamed of you, lil Jon and me in Istanbul”

23. A week later, Trépanier again reaches out to Rafman on her own initiative with the following text messages [...]:

« AMT: Bonne Saint-Jean!

J.R.: Merci! Happy st. Jean to you too. From St. Louis.

AMT: Thanks! Btw I'm leaving for real, on July 6th.

J.R.: Om my! Where are you going? Oh ya. I'll be in tonight and gone in two weeks. Going to Istanbul in August. What are you doing tonight?

[...]

AMT: I'm actually free every day this week. There's not much going on at the Phi. Only working tomorrow night and Friday night. So no worries, we can find another time. Totally wish I had air conditioning right now.

J.R.: I wouldn't mind getting sweaty with you tho. And then take a cold shower together.

AMT: I won't mind that either. It's still going to be warm outside for a few days so...

J.R.: Good.

AMT: Yep.

[...]

J.R.: why did you message me that you were here for 7 days?

AMT: Because I want to see you.

J.R.: did I say something?

AMT: No...I just have a hard time trying to understand you.

J.R.: Now I regret.

AMT: Don't regret anything.

[...]"

[Emphasis added]

24. These exchanges, accompanied by a flirtatious selfie sent by Anne-Marie Trépanier, clearly demonstrate the free, consensual and mutually satisfying nature of the sexual relationship that took place between the two adults in question. A copy of these exchanges of text messages under confidential cover constitutes Exhibit **P-9** for which a confidentiality order will be requested from the court given the nature of the comments exchanged.

25. In another exchange of text messages that the journalist could have seen if he had waited for the proposed evidence from Jon Rafman, the following correspondence occurred the day of the meeting between Anne-Marie Trépanier and the plaintiff at a boutique hotel in downtown Montreal:

“J.R.: Might keep you up.

AMT: Hmmm that’s fine. Maybe you are the one who will fall first. zzzz”

26. The journalist would also have learned, by reading the chain of text messages exchanged between Anne-Marie Trépanier and Jon Rafman, that she had distorted the history of their meeting at the hotel. While Jon Rafman told her that he was about to rent a hotel room because there was no air conditioning in his studio and he hadn’t slept the night before, it was Anne-Marie Trépanier who provided him with a list of luxury hotels. Rafman asked which one she wants to stay at, and the following exchange ensued:

“AMT: Ritz Carlton is probably the best. But the W seems surreal.

[...]

AMT: [sends image of hotel bath tub] I’m obsessed now, they really caught my attention.

JR: Well that’s nice, I like that bathroom.

AMT: Same. We should go and hang out with the yuppies.”

- 26.1 Later that day, Trépanier again reaches out to Rafman with the message *“Do you still want to hang out tonight?”*. Finally, the plaintiff booked the Hotel Germain and provided her with the room number, while Anne-Marie offered to get a drink before going to the hotel.

- 26.2 Following this last meeting at the hotel, Trepanier again reaches out to Rafman in a proactive and positive manner with the *Facebook* message: *“Any good life experiences today?”*. A few days later, she messages again: *“Sir Rafman, how was your presentation?”* As seen in the further *Facebook* correspondence, after the meeting at the hotel, Jon Rafman and Anne-Marie Trepanier had numerous positive conversations on *Facebook* that continued for over 6 months. Moreover, in this correspondence, on July 11, 2014, Anne-Marie Trépanier informed Jon Rafman not once but twice that she will be returning to Montreal on that day from her residence knowing Rafman was briefly in the city before leaving for a long trip abroad, which contradicts the statement in her *Instagram* post that after the meeting at the Hotel Germain, she promised herself never to see his *“red-eyed glare loom over”* her again. In total, she reaches out to Rafman on her own initiative 9 times after their last meeting at the hotel, with the last exchange (AMT: *Hey, whats up man? Happy new year [...]*) taking place in January 2015. A copy of this exchange of text messages constitutes Exhibit **P-10** for which a confidentiality order will be sought from the court given the nature of the comments exchanged.

27. With respect to Emily Cadotte, by reading certain text messages she exchanged with the plaintiff at the relevant time, Mr. Dunlevy would have learned that, while in her posting on *Instagram* she alleges that after matching with Rafman on *Tinder*, he *“offered instead that we could get together for a drink at his studio to talk about his practice”*, it was, in

fact, Cadotte who made sure the meeting was taking place, that it was secret and that Rafman had alcohol at his studio with the following exchange:

“EC: Is this happening?”

JR: Yes

EC: No one will know right?”

[...]

EC: Okay I’ll be over in a bit. I hope you have wine or scotch or something to lubricate the situation. I am pretty dependent on alcohol for normal social interactions.”

27.1 The journalist would also have learned that, the next day after this meeting and her first sexual encounter with Jon Rafman, she explicitly stated that she could not wait to have sex again, and made complimentary comments about their sexual intercourse. [...] For example, Cadotte explicitly said that “[...] *all the sex I’ve ever had was just child’s play compared to that* (her sexual relationship with Rafman). *Just practice.*”, such statement being clearly in contradiction with her post on *Instagram*. These and other exchanges between Cadotte and Rafman demonstrate the extent to which the posting on *Instagram* is a dishonest distortion of reality. A copy of this text message exchange under confidential cover constitutes Exhibit **P-11** for which a confidentiality order will be sought from the court given the nature of the comments exchanged.

27.2 The journalist would also have learned that Cadotte’s claim that Rafman “*had the idea of hiring her as a studio assistant*” and that she reported on her work for him and never heard back, is completely distorted. In direct contradiction to this statement, their last exchange reads as follows:

“EC: Hey Jon, may I talk to you when you have a hot second?”

JR: Something wrong? How are you?”

EC: Nothing is wrong. I actually have a bit of a favor to ask you. I am applying for this [art position]. What do you think if we pretend that I actually did do some work for you, and you were one of my references?”

28. Finally, the text message exchanges with the anonymous accuser also reveal the totally consensual, mutually satisfying and shared nature of her relationship with Jon Rafman. Not only does she describe that she hopes to have erotic dreams where Jon Rafman would have sex with her, but she also sends him numerous sexually explicit and suggestive messages and photos of herself expressing her desire for him. (Some examples include: “*My brain is so full of fantasize it fuck me up I can’t work*”; “*Shhhh I want it so bad now I hate everything I hate technology*”; “*I want you make me explode*”, and others). A copy of these text message exchanges between the anonymous woman and Jon Rafman under confidential cover constitutes Exhibit **P-12** and the Court will be asked to issue a confidentiality order given its intimate nature.

III. THE DEFAMATORY NATURE OF THE INCRIMINATED ARTICLES

29. In sum, the two articles written by defendant T'Cha Dunlevy and published by the *Montreal Gazette* are manifestly defamatory, have the effect of discrediting the plaintiff in the eyes of the public, and contravene the applicable rules of journalism and recognized standards in the field of journalism, in particular for the following reasons:
- a) The journalist did not wait to obtain the evidence that the plaintiff offered to provide him - in particular the text messages exchanged with the three alleged victims of his behaviour - which indisputably demonstrate the voluntary and consensual nature of the relationships he had with them;
 - b) The journalist outright invented comments that were never made by Anne-Marie Trépanier, which led him to assert that the relationship he had with her was not consensual;
 - c) The journalist unduly led readers to believe that Jon Rafman had a semi-professional relationship with Anne-Marie Trépanier and that Anne-Marie Trépanier had been led to believe through subterfuge that she was heading to Jon Rafman's studio after midnight to have a conversation about digital art;
 - d) Both the title and the first paragraph of the July 22, 2020 article mislead the reader by not mentioning from the outset that Jon Rafman categorically denies allegations of having had non-consensual or coercive relationships;
 - e) While the plaintiff gave a nearly 25-minute interview to the journalist in which he explained how the allegations were unsubstantiated and that he was falsely categorized in this case, the journalist devoted only a few paragraphs at the very end of his article (on page A3) to report, in an incomplete and even skewed manner, Rafman's version;
 - f) The July 24, 2020 article mentions allegations of "*sexual coercion and abuse of power*", without indicating that Jon Rafman categorically denied these allegations and that he has never been involved with these women as an employer, teacher, superior or in any management role;
30. The malicious nature of the articles written by the defendant Dunlevy and published by the *Montreal Gazette* is clearly demonstrated by a false and slanderous Tweet message that the journalist circulated in the days following the publication of his articles in the *Montreal Gazette* in which he stated that Jon Rafman was facing "*sex-assault allegations*", a Tweet that was subsequently withdrawn following very negative comments from the public who considered it unfair and untrue.

IV. THE TRANSMISSION OF A FORMAL NOTICE TO THE DEFENDANTS AND THEIR REFUSAL TO COMPLY THEREWITH

31. On July 24, 2020, the plaintiff, through his attorneys, served a formal notice on the *Montreal Gazette* and journalist T'Cha Dunlevy to retract within 72 hours of receiving this correspondence the defamatory, unreliable, uncorroborated and false statements published on July 22, 2020 on the front page (and page A3) of this newspaper as well as on July 24, 2020 on page A9, and to immediately remove both articles from the website

of the *Montreal Gazette*. A copy of the formal notice of July 24, 2020 constitutes Exhibit **P-13**.

32. Less than three days later, the attorney for the *Montreal Gazette* responded to the plaintiff's formal notice, refusing to publish a retraction and to remove the articles from the newspaper's website and stating tersely the following:

"Our client Montreal Gazette is of the view that the articles in question are an accurate report of the allegations being made and they do not state or imply that the allegations are true. In fact, the articles say the allegations have not been tested. Furthermore, the articles give your client's version of the events."

A copy of this response to the formal notice constitutes Exhibit **P-14**.

33. To date, the defendants have not retracted their articles and have not published the retraction contained in the formal notice. Nor have they withdrawn the texts that are still accessible on the montrealgazette.com website.

V. DAMAGES SUFFERED BY THE PLAINTIFF

34. By negligently, wrongfully and intentionally defaming the plaintiff, the defendants have caused him serious harm, notably by publicly and unjustly discrediting him before the population of Quebec and Canada but also internationally since the *Montreal Gazette's* comments were picked up by numerous media outlets specialized in the arts.
35. The defendants' defamatory statements are not only false and vexatious, but also create in the reader's mind a feeling of contempt for the plaintiff, which has the effect of discrediting him and bringing him into public disrepute.
36. As a result of the articles in question in these proceedings, several international museums, film and art festivals that were to present works by Jon Rafman in the short and medium term, including the *Hirshhorn Museum and Sculpture Garden* in Washington, D.C., U.S.A., the *Busan Biennial* in South Korea, the *Impakt Festival* in Holland, the *Kunstverein Hannover* in Germany and the *Gimly Film Festival* in Canada, have decided to suspend or cancel Jon Rafman's exhibitions notably because of the allegations touted by the *Montreal Gazette*. His teaching contract with HEAD Geneve has also been cut short.
37. Similarly, less than 24 hours after the article appeared on the front page of the *Montreal Gazette* on July 22, 2020, the *Bradley Ertaskiran* Gallery representing him in Montreal dropped him and removed his name from their website. The PR representative of the gallery expressed to the PR representative of Jon Rafman that the Gazette's report and specifically the words "non-consensual" "changed everything" and was the direct reason for this decision.
38. The *Montreal Gazette's* defamatory comments have in fact given credibility and visibility to unsubstantiated, uncorroborated, false, vexatious and unfair testimonies posted on *Instagram* by Ms. Trépanier, Ms. Cadotte and the anonymous woman.

39. Leaving aside the fact that Jon Rafman's career is seriously jeopardized by the *Montreal Gazette's* defamatory comments, these have caused him immense stress, insomnia, and an inability to pursue his artistic and creative activities for several months. The commercial value of his works has also been affected.
40. In the circumstances, the plaintiff is fully justified in claiming compensatory damages from the defendants in the amount of TWO HUNDRED THOUSAND DOLLARS (\$200,000) for the moral prejudice he suffered as a result of the defendants' fault.
41. The plaintiff is also entitled to claim compensatory damages for his loss of income, which amount is evaluated for now at ONE MILLION DOLLARS (\$1 000,000) an amount to be settled, considering notably the value of his art on the high-end market.
42. In addition, the plaintiff is entitled to claim punitive damages from the defendants, due to the intentional nature of the damage to his reputation for an additional amount of TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000).
43. The amounts claimed are fully justified in the context that the defendants' statements occupied an inordinate place in a newspaper published on a large scale in Quebec and Canada and that they were widely distributed throughout the world by way of the digital platform montrealgazette.com.
44. Furthermore, the plaintiff is entitled to demand the cessation of the violation of his fundamental right to the respect of his reputation, which can only be obtained by the withdrawal of the articles in question from the montrealgazette.com platform as well as from any other platform owned, controlled or used by the defendants, including their *Twitter* and *Facebook* accounts.
45. The plaintiff is also entitled to request that the following publication be ordered by court order, in the written and electronic versions of the *Montreal Gazette*, in a place and format at least as visible as those occupied by the incriminated texts. This retraction should be published on the first Saturday following the judgment of this Court, in the *Montreal Gazette* (paper version) and should be disseminated as of this first Saturday following the judgment of this Court and for a period of thirty (30) days on the montrealgazette.com platform:

“JUDICIALLY ORDERED RETRACTION

In three articles published and disseminated on Wednesday, July 22, 2020, Thursday July 23, 2020 and Saturday, July 25, 2020, entitled "*Local art star Rafman the subject of allegations of 'sexual coercion'*", "*Gallery drops Rafman after allegations*" and "*City puts Jon Rafman artwork on hold after sexual coercion allegations*", we wrote that internationally known Montreal artist Jon Rafman had had non-consensual or coercive sex with women. A verification of the facts should have led us to question some of the allegations posted on Instagram by certain people who alleged that they had been victims of Mr. Rafman and not to misrepresent some of these statements. Nothing allowed us to draw the conclusions or inferences appearing in these texts that did not fairly and equitably reflect Mr. Rafman's point of view, his categorical rebuttal of the allegations and the

evidence that he had proposed to submit to the newspaper to prove that the allegations posted on *Instagram* were false and slanderous. We apologize for any inconvenience our articles may have caused.”

46. Finally, the plaintiff has the legal right to request the publication of the entire judgment rendered in its favour, with visibility at least equivalent to that of the incriminated texts, and this, once in the *Montreal Gazette*, on page A3, on the first Saturday following the judgment of this Court, in a format and font at least equivalent to that of the incriminated texts, and for a period of thirty (30) days on the montrealgazette.com platform as well as on any other platforms owned, used or under the control of the defendants who disseminated the incriminating texts or posted an electronic link to these texts, including their *Facebook* and *Twitter* accounts.

WHEREFORE, MAY IT PLEASE THE COURT TO:

GRANT the plaintiff's application;

ORDER the defendants to pay jointly and severally, as compensatory damages for moral prejudice, an amount of TWO HUNDRED THOUSAND DOLLARS (\$200,000) to the plaintiff;

ORDER the defendants to pay jointly and severally, as compensatory damages, for loss of income, an amount of ONE MILLION DOLLARS (\$1 000,000), an amount to be settled;

ORDER the defendants to pay jointly and severally, as punitive damages, an amount of TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000) to the plaintiff;

ORDER the defendant to publish a retraction in the written version of the *Montreal Gazette* as well as on the montrealgazette.com platform, in a place and format at least as visible as those occupied by the incriminated texts. This retraction must be published on the first Saturday following the judgment of this Court, in the *Montreal Gazette* (paper version) and must be disseminated as of the first Saturday following the judgment of this Court and for a period of thirty (30) days on the montrealgazette.com platform. The wording of this retraction is as follows:

“JUDICIALLY ORDERED RETRACTION

In three articles published and disseminated on Wednesday, July 22, 2020, Thursday, July 23, 2020 and Saturday, July 25, 2020, entitled "*Local art star Rafman the subject of allegations of 'sexual coercion'*", "*Gallery drops Rafman after allegations*" and "*City puts Jon Rafman artwork on hold after sexual coercion allegations*", we wrote that internationally known Montreal artist Jon Rafman had had non-consensual or coercive sex with women. A verification of the facts should have led us to question some of the allegations posted on Instagram by certain people who alleged that they had been victims of Mr. Rafman and not to misrepresent some of these statements. Nothing allowed us to draw the conclusions or inferences appearing in these texts that did not fairly and equitably reflect Mr. Rafman's point of view, his categorical rebuttal of the allegations and the evidence that he had proposed to submit to the newspaper to prove

that the allegations posted on *Instagram* were false and slanderous.
We apologize for any inconvenience our articles may have caused.”

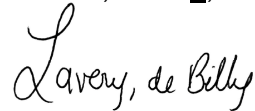
ORDER the defendants to remove the incriminated texts from the montrealgazette platform;

ORDER the defendants to remove any posts referring to these incriminating texts from their *Facebook* and *Twitter* accounts;

ORDER the Defendants to publish, on page A3 of the *Montreal Gazette*, on the first Saturday following the judgment of this Court, the complete version of the judgment rendered in his favour in a format and with visibility at least equivalent to those of the incriminated texts, as well as to disseminate this judgment for a period of thirty (30) days following the date on which it will be rendered on the montrealgazette.com platform and on any other platforms owned, used or under the control of the defendants that have disseminated the incriminated texts or made a reference to these texts electronically, including their *Facebook* and *Twitter* accounts;

ALL OF WHICH, with interest at the legal rate and the additional indemnity provided for in article 1619 of the *Civil Code of Québec*, as of the present proceedings, as well as legal costs.

Montreal, June 4, 2021



LAVERY, DE BILLY, L.L.P.

(Raymond Doray, Ad.E.)

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Our file: 138880-00001

SUMMONS
(articles 145 and following C.C.P.)

Filing of a judicial application

Take notice that the plaintiff has filed this originating application in the office of the Superior Court in the judicial district of Montreal.

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Notre-Dame Street East, Montreal, Quebec, within 15 days of service of the application or, if you have no domicile, residence or establishment in Quebec, within 30 days. The answer must be notified to the plaintiff's lawyer or, if the plaintiff is not represented, to the plaintiff.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgment may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Quebec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the

district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the Originating Application, the plaintiff intends to use the following exhibits:

- Exhibit P-1:** Copy of the message posted on or about July 16, 2020 by Anne-Marie Trépanier on *Instagram*, in the "*Surviving_the_artworld*" section;
- Exhibit P-2:** Copy of the message posted by Emily Cadotte on or about July 16, 2020 on *Instagram* in the "*Surviving_the_artworld*" section;
- Exhibit P-3:** Copy of the message posted anonymously on *Instagram*, in the "*Surviving_the_artworld*" section;
- Exhibit P-4:** Copy of the recording of the interview conducted by T'Cha Dunlevy with Jon Rafman on Wednesday, July 21, 2020;
- Exhibit P-5:** Copy of the article published on July 22, 2020 and titled "*Local art star Rafman the subject of allegations of sexual coercion*";
- Exhibit P-6:** Copy of the email dated July 22, 2020;
- Exhibit P-7:** Copy of the articles published on July 23, 2020 and July 25, 2020 entitled "*Gallery drops Rafman after allegations*" and "*City puts Jon Rafman artwork on hold after sexual coercion allegations*";
- Exhibit P-8:** Copy of the articles published on the *Montreal Gazette* website and titled « *Montreal Art star Jon Rafman facing allegations of sexual coercion* » and « *Montreal gallery drops star Jon Rafman after allegations of sexual coercion* »;
- Exhibit P-9:** **Under confidential cover**, text messages between Jon Rafman and Anne-Marie Trépanier;

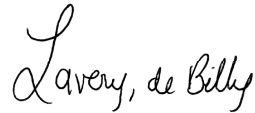
- Exhibit P-10:** **Under confidential cover**, text messages between Jon Rafman and Anne-Marie Trépanier;
- Exhibit P-11:** **Under confidential cover**, text messages between Jon Rafman and Emily Cadotte;
- Exhibit P-12:** **Under confidential cover**, text messages between Jon Rafman and an anonymous woman;
- Exhibit P-13:** Copy of the formal notice addressed to *Montreal Gazette* and T'Cha Dunlevy dated July 24, 2020;
- Exhibit P-14:** Letter from the attorneys of *Montreal Gazette* and T'Cha Dunlevy dated July 27, 2020.

These exhibits are available upon request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, June 4, 2021



LAVERY, DE BILLY, L.L.P.

(Raymond Doray, Ad.E.)

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Our file: 138880-00001

No. : **500-17-114189-205**

SUPERIOR COURT
(Civil Division)
DISTRICT OF MONTREAL

JON RAFMAN

Plaintiff

v.

MONTREAL GAZETTE

-and-

T'CHA DUNLEVY

-and-

POST MEDIA NETWORK INC.

Defendants

**RE-AMENDED ORIGINATING APPLICATION FOR
DAMAGE TO REPUTATION**

ORIGINAL

BL 1332

Our file: 138880-00001

Me Raymond Doray, Ad.E. / 514 877-2913

rdoray@lavery.ca

LAVERY, DE BILLY, S.E.N.C.R.L.

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