

File No. C68148

**SCOURT OF APPEAL FOR ONTARIO**

Between:

**Qiangli Cao**

Plaintiff and Appellant

- and -

**CITY OF MARKHAM and MARKHAM PUBLIC LIBRARY**

Defendants and Responding

**Appeal Book and Compendium**

**February 4, 2021**

Qiangli Cao

XXX

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**Appeal Book and Compendium****Index**

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Tab A

Court of Appeal File No.C68148

**COURT OF APPEAL  
FOR ONTARIO**

Between:

Qiangli Cao

Plaintiff and Appellant

- and -

CITY OF MARKHAM and MARKHAM PUBLIC LIBRARY

Defendants and Respondents

**NOTICE OF APPEAL**

**The APPELLANT APPEALS** to the Court of Appeals for Ontario from the judgement of the Honourable Justice Sossin J, dated on Feb. 10, 2020 from Superior Court in Toronto Ontario.

**THE APPELLANT ASKS** that the judgment be set aside, allowing plaintiff's action to proceed to a trial, and such further and other order as I may request and this Honourable Court deems just.

**THE GROUNDS OF APPEAL** are as follows:

1. **Basically, His Justice Sossin J. erred in ignoring completely the fact that dismissing CPCL's action was based on the term of "termination without cause".** His justice knows well that the issue of "termination without cause" in CPCL's action is argued both in writing and orally in this summary judgement motion. Defendants' lawyer, Mr. Boghosian tried to hide the fact in his factum. I argued on it with evidences. Under normal circumstances, his justice Sossin J. should give his response on this argument in his judgment. However, I find that the phrase of "termination without cause" only appears once in a manner of repeating my argument (para. 37) in his judgement. **There is no any comments or remarks on it anywhere. My crucial argument was neglected. This is weird, and can not be acceptable.**
2. **His Justice Sossin J. erred in concluding that CPCL's case was based on breach of contract in his overview** (judgement para.4 ). This conclusion is much different from defendants' argument in CPCL's action, in which defendants' lawyer claimed the termination without cause in a lot of space in his factum". Their lawyer even warned her justice Krisjanason that: **"even if a judge finds CPCL was not in breach of contract, "terminating the contract without cause" was still within City's right."** **His justice conclusion is also different from her justice Krisjanason's, in which "termination without cause" was confirmed as the basis.** Her justice took those breaches defendants

listed only as the materials to show “**there is no bad faith in the without cause termination**”. Her justice also said to me in the hearing that “**importantly they have without cause term.**”. I can not accept that his Justice Sossin J. makes such a conclusion that is even different from defendants arguments and her justice Krisjanason judgement.

3. **Now, his Justice Sossin J. makes a conclusion that even defendants and her justice Krisjanason were unable to reach at in CPCL’s action.** As a result of this conclusion, by turning CPCL’s litigation into a complete breach based case, his Justice Sossin J. makes his judgement logical and perfect. Any questions on those breaches raised by termination without cause are gone. The breaches based case naturally makes it to connect to a situation that I am attempting to relitigate CPCL action in maximum probability. (Judgement para. 9). **This conclusion helps defendants successfully clean up from CPCL’s action dismissed with the help of a disgraced term “termination without cause”.**
4. **Next, his Justice Sossin J. erred in changing the concepts when he tests if I was a privy to the previous action.** His Justice Sossin J. quotes from my argument that, “In a word, the corporation’s action and my personal action are absolutely different cases (para.103 in my factum)” out of the context (judgement para.20). I state clearly, from para. 98-103 in my factum, when I argue they are different cases, I argue the two actions are different in litigating subjects and goals in meaning. However, his Justice Sossin J. brought this argument to the issues of separate parties or the same party. This is changing the concepts. **In fact, his Justice Sossin J. needn’t test this issue at all. I have stated myself in my factum that CPCL and me are the same party (para.104 in my factum). My argument is that CPCL’s damages are all transferred to my individual.** It is a fact that I had to pay off all my business loans from the bank and debts from friends by myself personally.
5. From the neglecting the term of termination without cause, conclusion on breach based action, and changing the concepts on two or one parties, I have reason to suspect that his Justice’s decision is partial to defendants and he tries to assemble the elements for his test to dismiss our action. **I believe that there is a conduct of officials shield one another here.**
6. **This suspicion also comes from what Mr. Boghosian says in his moving materials.** I copy some of them: “Plaintiff’s action cannot succeed. It must be dismissed with cost”, “If the plaintiff were to succeed in the litigation, this court would have to come to a decision opposite to that of Justice Kristjanson in the previous action.”, and “the allegations of defamation were grave, especially when levelled against a public authority. Mr. Cao ought to have expected a robust defence.”. Those expressions are not defence of defamation, but they are more like hints of pressure to the judge.
7. **His Justice Sossin J. erred in confirming all her Justice Krisjanason’s words “without condition” in his decision.** He failed to see that her justice Krisjanason made her decision in a rash based on the term of “termination without cause”. I confirm that her justice misunderstood many issues in CPCL’s case and even misread the most important part in the contract which effected her decision. I am not appealing CPCL’s case now. I’d rather not complain CPCL’s case at this moment. **I know that her justice Krisjanason was fooled by defendants’ lawyer for many issues in CPCL’s**



case. And I didn't make things clear myself. So her justice Krisjanason was innocent to some extend and I should be responsible mainly for the failure in that case myself. However, since his Justice Sossin J. gives his judgement in a premise that all her justice Krisjanason's words in her judgment were right, I have to give my different views directly and frankly to her justice Krisjanason's decision in my following legal materials.

8. I alleged in the hearing that none of those breaches defendants listed existed. In order to save his justice's precious time, I begged his justice to allow me to argue two or three breaches on the spot. Defendants could select whatever the breaches for the argument. But my request was put aside. His justice said that he would read our materials again carefully after the proceeding. I was happy to hear that with many thanks. Because my writing is much better than my spoken English. But **I find later in his judgement, his justice Sossin J. didn't investigate a single breach himself**, but only traced the legal process for that action, disregarding all my arguments in my factum. His conclusion is that all the issues were resolved by her justice Krisjanason ( Judgement para.38), her justice's decision is the final and court of appeal upheld her justice's decision. I have to stress again here that his justice ignores the fact that her justice's decision and the appeal court's decision were both based on "termination without cause". His justice Sossin J. can easily find the words termination without cause in both of their judgements.
9. This is not an appeal case, but his Justice Sossin J. makes a big circle to analysis the process of CPCL's action. **His Justice Sossin J. would rather spend much more time on the complicated and confusing analysis which involves more than 2000 materials, than to see directly himself if there is a possibility of defamation involved. To see such a possibility is very easy for a judge.** So, I have reason to suspect that his Justice attempts to protect her justice Krisjanason as Mr. Boghosian reminds him in his factum. I believe again here there is a conduct of officials shield one another.
10. **His Justice Sossin J. erred in accepting defendants' cheating in the action.** I alleged that the evidence her justice Krisjanason depends on was a tempered document. His Justice Sossin J. put it aside by the reason that I didn't state how the allegation of tampering relates to any specific claim in defamation. I didn't believe his justice should say so. It encourages cheating in court by saying so. To my knowledge on the law, any evidence tampering is a big violation to the law. Moreover, defendants hid the motivation of terminating our contract from the report. That is the key issue for CPCL's case. This new evidence is enough to overturn her justice Krisjanason's judgment.
11. Defendants hid the fact that library terminated a single contract with us early in August in 2015 (contract for the opening contract for Southeast branch) for higher budget. They told the committee in the report that because library had got \$354,7755.00 extra budget by shifting the opening contract of the Southeast branch from CPCL to LSC, all CPCL's contracts had to be terminated (It is impossible for library to have two vendors that provide Chinese materials at the same time). That is the exact reason that library terminated our contract when entering 2016. Defendants' lawyer never mentioned this early termination in August in 2015 in their legal materials in CPCL's action. I

didn't realize that was a trick and I didn't mention it neither. The motivation of terminating our contracts was hid from her Justice Krisjanason then. This explains the defendants' irrational conduct that while they claimed CPCL had breaches, they tried very hard (even making lies on contract) to allege that they terminated our contracts based on the term of "termination without cause". I believe **if her Justice Krisjanason knew that they terminated our contract for higher budget, she would not grant defendants' summary judgement motion.** Now, to his justice Sossin J., this evidence of cheating should draw his attention that there was a possibility that library terminated our contract for money, and those breaches library listed may require to be questioned at least.

12. **His Justice Sossin J. erred in confirming that I was fairly treated in the hearing in CPCL's action.** His justice Sossin J. must fail to read the court transcripts for CPCL's case carefully. It is clear that my human right was deprived of in that hearing because of my poor English. That hearing is in breach of the Constitution I firmly believe that. **The court transcripts is the solid evidence itself.** This hearing is protected by the termination without cause at the moment. I dare to say that, soon or later, this hearing will be recognized that it was a shame of Canadian court. The transcripts shows that an immigrant whose English is limited was misunderstood and overlooked in this hearing. **I will never stop complaining this hearing.**
13. **His Justice Sossin J. erred in neglecting My damages I claimed from defendants' defamation, and failed to deal with humane issues.** My damages are real and huge. I suffer each day for the huge debts. This huge damage is enough to push a vulnerable person to end his life ( Please be advised that I am not vulnerable. So, don't consider it as a life threatening. I just make a fact here.). I believe that the core of civil law is concerned on the damages for people or parties. Such huge damage to a person definitely is a genuine issue! To say it is not a genuine issue shows irresponsibility to people's fortune, and to some extent, disregards people's life (life risk by huge damages). I have to say that it is against humanity.
14. **His Justice Sossin J. fails to figure out that this summary judgement motion is not a trial to make a decision on defamation. It only decides whether I am given an opportunity to argue for my damage.** I absolutely have the right, or deserve for a trial with such huge damages. It is a fact, or at least there is a possibility that , because CPCL's case was based on "termination without cause", the breaches defendants alleged are not approved in a high standard level by her justice Krisjanason. Besides, some defamatory actions happened after CPCL's case, and most of my damages appeared after CPCL's case. Importantly, there is no any danger at all that defendants will be unfairly treated, or wrongly judged in a normal trial if they have no defamatory actions. There is no reason that defendants show so nervous to come to a trial if they are innocent.
15. Public authority is important of course, but the correct way to have it is to approve it is well performed by law. It they do well, a normal trial is a good chance to find back their authority in a situation that thousands of people, who have already known this case, especially who are criticizing them at the moment. **Banning of arguing by law is not the thing we do in a modern law society.** It

creates unjust cases and even hatred. Court is not a machine that helps the power politics bully or oppress normal people, especially new immigrants who belong to weak groups. I often heard that offering the legal protection to the disadvantaged groups is the embodiment of legal justice. I find that it is just the opposite for my case in this court. I don't expect any legal protection and I need only a claiming opportunity.

16. His Justice Sossin J. erred in many more issues in his judgement. I will argue about them in the coming appeal.

**THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:**

1. The judgment is the final order of the Superior Court of Justice.
2. Section 6 (1) (b) of the court of Justice Act, R.S.O. 1990, c. C.43.
3. Leave to appeal is not required for this appeal.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. An appeal book and compendium
2. An exhibit book
3. Factum
4. Such further and other material as we may submit this Honourable Court permits.

March 4, 2020

Qiangli Cao

XXX

XXX

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Court of Appeal File No. C68148

**COURT OF APPEAL  
FOR ONTARIO**

Between:

Qiangli Cao

Plaintiff and Appellant

- and -

CITY OF MARKHAM and MARKHAM PUBLIC LIBRARY

Defendants and Respondents

**Appellant Certificate Respecting Evidence**

Appellant certifies that the following evidence is required for the appeal in the appellant opinion:

1. All of the oral and documentary evidences heard and considered in the proceeding on Dec. 19, 2019 appealed from.
2. Affidavit of Qiang Li Cao ( Dec.19, 2019) & Affidavit of Larry Pogue (Dec.19, 2019).
3. Such other documents as counsel may advise and this Honorable Court permit.

March 4, 2020

XXX

XXX

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Court File No. CV-19-618275-00

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE  
MR. JUSTICE SOSSIN

)  
)  
)

MONDAY, THE 10TH  
DAY OF FEBRUARY, 2020

B E T W E E N:



QIANGLI CAO

Plaintiff

and

CITY OF MARKHAM and MARKHAM PUBLIC LIBRARY

Defendants

**JUDGMENT**

**THIS MOTION**, made by the Defendants for Summary Judgment, was heard on December 19, 2019 at the courthouse, 330 University Avenue, 9th Floor, Toronto, Ontario, M5G 1R7.

**ON READING** the Moving Parties' Motion Record and Factum as well as the Responding Party's Motion Record and Factum, and on hearing submissions of Counsel for the Defendants/Moving Parties City of Markham and Markham Public Library, the Plaintiff/Respondent appearing in person,

1. **THIS COURT ORDERS** that this action is dismissed.

-2-

2. **THIS COURT FURTHER ORDERS** that The Plaintiff shall pay to the Defendants their costs of the action and summary judgment motion fixed in the amount of \$10,000, inclusive of fees, disbursements and HST payable within thirty (30) days.

**THIS JUDGMENT BEARS INTEREST** at the rate of 2.00 per cent per year commencing on February 10, 2020.

  
(Signature of Judge) Registrar.

**ENTERED AT / INSCRIT À TORONTO**  
**ON / BOOK NO:**  
**LE / DANS LE REGISTRE NO.:**

**DEC 17 2020**

**PER / PAR:**



QIANGLI CAO  
Plaintiff

-and- CITY OF MARKHAM et al.  
Defendants

Court File No. CV-19-618275-00

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
MILTON AND TRANSFERRED TO TORONTO

**JUDGMENT**

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Lawyers for the Defendants

Tab D

**CITATION:** Cao v. City of Markham et al., 2020 ONSC 764  
**COURT FILE NO.:** CV-19-618275  
**DATE:** 2020-02-10

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** QIANGLI CAO, Plaintiff

**AND:**

CITY OF MARKHAM and MARKHAM PUBLIC LIBRARY, Defendants

**BEFORE:** Sossin J.

**COUNSEL:** Qiangli Cao, for himself

David Boghosian and Matt Brown, Counsel for the Defendants

**HEARD:** December 19, 2019

**REASONS FOR JUDGMENT**

**OVERVIEW**

[1] This case involves the question of when a claim may be dismissed because it has already been litigated.

[2] The defendants, the City of Markham (“Markham”) and Markham Public Library (the “Library”) (collectively, the “defendants”), move for summary judgment dismissing the action brought by Qiangli Cao (“Cao”) under Rule 20 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (the “*Rules of Civil Procedure*”).

[3] Cao is the CEO of Chinese Publications for Canadian Libraries Ltd. (“CPCL”) which was under contract with the Library between June, 2014 and May, 2016.

[4] Following the termination of this contract, Cao sued Markham for a range of damages and specific performance based on alleged breach of contract (the “CPCL action”).

[5] Markham moved for summary judgment in the CPCL action. Justice Kristjanson granted this motion on June 20, 2017.

[6] Justice Kristjanson’s decision was upheld by the Court of Appeal on May 2, 2018.

[7] Subsequently, on July 19, 2018, Cao launched this action against both Markham and the Library alleging defamation.



[8] On September 10, 2018, the defendants delivered their statement of defence.

[9] The defendants' basis for summary judgment is that this action raises no new issues and is at attempt to relitigate the CPCL action.

### ANALYSIS

[10] The test for summary judgment under Rule 20.04(2)(a) of the *Rules of Civil Procedure* is well-established. The question I must address is whether there is a genuine issue for trial. There is no genuine issue for trial where, as set out by Karakatsanis J. in *Hryniak v. Mauldin*, 2014 SCC 7 at para 66:

A judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

[11] As the moving party, the defendants have the burden to show there is no genuine issue for trial.

[12] Parties are required to put their "best foot forward" on a motion for summary judgment, and cannot rely on the fact that additional evidence may be able to substantiate their position; *McPeake v. Cadesky & Associates*, 2018 ONCA 554 at para. 11; and *Mahoney v. Sokoloff*, 2015 ONCA 390, at para. 5.

[13] The defendants argue that issue estoppel applies to preclude this action by Cao, and that, therefore, there is no genuine issue for trial.

[14] In *Angle v. Minister of National Revenue*, [1975] 2 S.C.R. 248 at 254; and *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44 ("*Danyluk*") at para. 25, the Supreme Court of Canada held that the requirements of issue estoppel are:

- a. The same parties or their privies were involved in the subsequent and prior actions;
- b. The decision in the prior action was final; and
- c. The same issue was decided in the prior action as raised in the subsequent action.

[15] The Supreme Court also set out that where these requirements are met, the Court retains a residual discretion to decline to apply issue estoppel to avoid an injustice; *Danyluk*, at para. 67.

[16] I will consider each of these elements of the issue estoppel requirements in the circumstances of this motion.

**Was Cao a Privy to the First Action?**

[17] The defendants argue that Cao was a privy to the first action, as Cao was the sole officer, director and shareholder of CPCL.

[18] The defendants further point to Cao's presence at the hearing, as he was granted leave to represent CPCL in its litigation with Markham. Cao attended and made submissions on behalf of CPCL before Justice Kristjanson.

[19] The defendants rely on *Rasanen v. Rosemount Instruments Limited* (1994), 17 O.R. (3d) 267 (C.A.) ("*Rasanen*"), where the Court of Appeal found the presence of a plaintiff throughout the prior action, including submitting or reviewing all of the documentation filed and giving evidence and argument, constituted the party as a privy for purposes of issue estoppel in the subsequent action.

[20] Cao argues that, "In a word, the corporation's action and my personal action are absolutely different cases." (Cao factum, at para. 103)

[21] There is no question that Cao and CPCL are separate parties. I am persuaded, however, that Cao meets the test for a privy in light of the standard set out by the Court of Appeal in *Rasanen*. He participated throughout the CPCL action as its sole representative.

[22] I find the first element of the test for issue estoppel is met.

**Was the Prior Decision Final?**

[23] The decision in the prior action was final, in that it was a summary judgment motion which dismissed the action by CPCL against Markham, and was upheld on appeal.

[24] I find the second element of the test for issue estoppel is met.

**Did the Prior Decision Deal with the Same Issues?**

[25] The CPCL action was resolved in Markham's favour on summary judgment. Justice Kristjanson found that CPCL had failed to comply with the price requirement of the contract, missed delivery targets, breached collection profile targets and made cataloguing errors.

[26] Kristjanson J. found that Markham had communicated notice of the defaults to CPCL and offered opportunities for the defaults to be remedied. She held that Markham was justified in terminating the contract with CPCL and that there was no genuine issue requiring a trial.

[27] This action is framed in defamation, not breach of contract. The key question, however, is whether the same material facts which were fundamental to the prior decision are being litigated in the present action.

[28] In *The Catalyst Capital Group Inc. v. VimpelCom Ltd.*, 2019 ONCA 354, Tulloch J.A. described the relationship between the two proceedings as follows (at para. 27):

[27] Different causes of action may have one or more material facts in common. Issue estoppel prevents re-litigation of the material facts that the cause of action in the prior action embraces: *Danyluk*, at para. 54. However, the question out of which the estoppel arises must be “fundamental to the decision arrived at” in the prior proceedings: *Angle v. M.N.R.*, 1974 CanLII 168 (SCC), [1975] 2 S.C.R. 248, at p. 255. Accordingly, the question must be “necessarily bound up” with the determination of the issue in the prior proceeding for issue estoppel to apply: *Danyluk*, at paras. 24, 54.

[29] In this case, the material facts raised by Cao include the affidavits filed in support of Markham in the CPCL litigation and a City Council report recommending cancellation of the contract.

[30] One affidavit was sworn by Verna Gilchrist, the Manager of Technical Services and C3 Support for the Library. Her affidavit detailed the failures of CPCL to meet its contractual obligations with Markham.

[31] A second affidavit was sworn by Larry Pogue (“Pogue”), the Special Projects Assistant at the Library.

[32] Justice Kristjanson found in favour of Markham with respect to the breaches of contract by CPCL and the validity of Markham’s termination of the contract, based on the same affidavit evidence.

[33] The defendants argue that attempting to impugn those affidavits in this action in the context of defamation addresses issues necessarily bound up with the prior proceeding.

[34] Further, the defendants submit that a finding that either affidavit was defamatory toward Cao would be an inconsistent finding with Justice Kristjanson’s reasons, which rejected CPCL’s assertion that the affidavits were false. Kristjanson J. held, “There was a general submission by Mr. Cao that all the evidence of the City’s three affiants is false. Given that the evidence is based on contemporaneous documents and notes, is consistent with the contractual issues identified, there is no merit in this submission.” (at pp. 9-10)

[35] Cao also challenges Pogue’s Report to the General Committee of City Council (the “City Council Report”). Again, Justice Kristjanson’s reasons substantiated the material facts in the Report, particularly the failure of CPCL to meet price requirements in the contract, collection profile requirements and catalogue accuracy.

[36] Cao’s statement of claim alleges that certain statements and testimony arising in the context of the prior action was “libel,” and “slander” but to meet the threshold for defamation, Cao must establish that the statements were false. The only way he can do this is to argue that Kristjanson J. erred in her acceptance of the evidence in question.

[37] Cao argues that this action is distinct from the CPCL action: “Different from CPCL’s action, this is my individual action. I am suing the defendants for their defamatory actions, claiming for remedy of my huge personal damages caused by defendants’ defamation... Defendants could argue that they were entitled to terminate CPCL’s contract without cause, but they were not entitled to badmouth me as [sic] individual.” (Cao’s factum, at para. 102-3)



[38] Defamation is clearly a different cause of action than breach of contract; however, I am persuaded that the issues in this action were fundamental to, and resolved by, the prior action.

[39] Cao also raises two issues which were not before Justice Kristjanson.

[40] First, Cao alleges that certain comments from a City Councillor in a Chinese-language publication dated December 11, 2017 constitute defamation. The Councillor, according to a translation provided by Cao, stated “City terminated library’s contract for Chinese services with the book company providing library’s service. The reasons were the unqualified service and delayed delivery.” (Cao factum, at para. 114).

[41] The article in question references CPCL, not Cao personally. Further, neither Markham nor the Library can be liable for the comments to the media of a specific Councillor; *St. Elizabeth Home Society v. Hamilton (City)*, 2005 CanLII 46411 (ON SC), at para. 264.

[42] Therefore, while not part of issue estoppel, this allegation cannot sustain an action by Cao against the defendants in defamation.

[43] Second, Cao alleges that the City Council Report was altered through “tampering.” He stated that the alleged tampering involved blocking out certain passages. This allegation was not part of the CPCL action, and was not argued before Justice Kristjanson, as Cao argues it only came to his attention afterwards.

[44] Cao does not state how the allegation of tampering relates to any specific claim in defamation. Rather, he alleges that the portions of the report allegedly blocked out were “the key issues in the report.” (Cao factum, at para. 125)

[45] Cao’s reference to the report and its “false statements” is yet a further attack on Justice Kristjanson’s reasons; he submits that “I found that our “errors” approved by judge were all from this report.” (Cao factum, at para. 127)

[46] For these reasons, I find the third element of the test for issue estoppel is met, as the issues dealt with in the CPCL action are the same issues raised in this action, and no new issues have been raised which could sustain an action against the defendants in defamation.

[47] Where the three elements of issue estoppel are met, a further discretion exists not to apply issue estoppel where to do so could result in an injustice, as in *Danyluk* where the plaintiff had been denied procedural fairness in the prior action.

[48] In this case, the Court of Appeal, in upholding Justice Kristjanson’s decision, held that, “The allegations of procedural unfairness are without merit.” (at para. 6)

[49] In oral submissions on this motion, Cao raised the issue of his poor comprehension of English as another potential fairness concern. A similar issue was raised during the CPCL action.

[50] While Cao stated that he had some difficulty following the submissions of counsel for the defendants, I am satisfied on the basis of Cao’s own submissions at the hearing, and the written

submissions from Cao on this motion, that any language barriers he may have did not impair his ability to present his arguments or respond to the arguments of the defendants.

[51] It is clear that Cao continues to believe he has been treated unfairly. However, I find that there is no basis on which to decline to apply issue estoppel. This is not a situation like *Danyluk* where there has yet to be a fair hearing on the merits of Cao's allegations. That fair hearing already occurred before Justice Kristjanson, and was affirmed by the Court of Appeal on appeal.

### CONCLUSION

[52] For the reasons set out above, there is no genuine issue for trial in light of the application of issue estoppel to Cao's action.

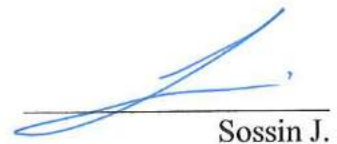
[53] Therefore, I find the defendants' motion for summary judgment will be granted.

[54] In these circumstances, a costs award against Cao is appropriate. Markham and the Library have been put to the expense of defending serious allegations of defamation which they had already defended in the CPCL action.

[55] On the other hand, Cao submits that his legal knowledge is limited, his knowledge of English is limited, and his livelihood and savings were lost as a result of the CPCL action.

[56] In these circumstances, I find costs of \$10,000.00, all inclusive, to be reasonable. Cao shall pay \$10,000.00 to the defendants within 30 days of this judgment.

[57] Cao's action against the defendants is dismissed.



Sossin J.

**Released:** 2020-02-10

Court of Appeal No. C68148

SUPERIOR COURT OF JUSTICE

B E T W E E N :

QIANGLI CAO

Plaintiff

- and -

CITY OF MARKHAM et al

Defendants

E X C E R P T F R O M P R O C E E D I N G S

BEFORE THE HONOURABLE JUSTICE L. SOSSIN

on December 19, 2019, at TORONTO, Ontario

APPEARANCES:

Q. Cao

Plaintiff, In Person

D.G. Booghossian

Counsel for City of Markham

M. Brown

Counsel for Markham Public Library

**SUPERIOR COURT OF JUSTICE**  
**T A B L E   O F   C O N T E N T S**

**PROCEEDINGS . . . . . PAGE 1**

**LEGEND**

[sic] - indicates preceding word has been reproduced verbatim and  
is not a transcription error.

(ph) - indicates preceding word has been spelled phonetically.

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THURSDAY, DECEMBER 19, 2019

...EXCERPT FROM PROCEEDINGS

5 THE COURT: Okay, so Mr. Cao, this is now your  
opportunity to speak to me and I want to remind  
you that I have read your factum carefully, so I  
have all the arguments you make here, and you can  
take me to these arguments or to other parts of  
the record. Just let me know what you are  
referring to, and I think we will try to keep to  
10 about one hour...

MR. CAO: Okay.

THE COURT: ...which was the amount of time  
the...

MR. CAO: Okay.

15 THE COURT: ...City of Markham took, so that we  
would finish around lunch at one o'clock.

MR. CAO: Okay, and I try to finish in one hour  
and, yeah, and, and I am very glad to hear that  
Your Honour has read my factum and that's - I  
20 read this factum out (ph) on facts and I really  
wish and I can, and your justice and can ask  
questions about it. I can show the evidences.

And I just want to say three things roughly and  
thus I would have prepared before the motion.

25 And the first, my English, and I think from the  
beginning to the end of the case, and even in the  
- and library and troubled from my language, and  
because they say something behind me and don't  
let me know, and then they did something and  
30 abuse of power, I don't know, and then I just  
asked appeal to the City and then they had no  
cannot withdraw their words. And then the, the



5 committee passed their report. That report is a  
City (ph) report. And then they have to see  
these not (ph), and so many errors. That's not  
true. And I am providing Chinese materials and I  
know exact, I do the connected with Chinese  
[indiscernible] the whole life and not 30, and,  
and 62 already. I have best, the best  
[indiscernible] and understanding about the  
10 material and I provide the material for different  
immigrants from Hong Kong, Taiwan, and mainland  
China. Finally, and I know what they, they mean,  
you know, and then I try to contact with them,  
listen to their and speaking, and after I take,  
took over the service, everything changed. And  
15 the previous, and I see, and the vendor, they  
don't know Chinese at all. No Chinese in their,  
in, in, in their company. They just - and they  
took the service from a company in America.  
That's why it is very expensive, you know. But,  
20 you know, for the [indiscernible] library, just  
about it, this library I am not so happy. And  
because then, you know, my price, more than half  
lower than that price, than that company. That's  
the main point. I have fact. I have evidence and  
25 they were - you know, they more than, maybe your,  
Your Honour have a - see the facts if I, I will,  
I, I show them.

THE COURT: Well, here's....

MR. CAO: Okay.

30 THE COURT: Here's, Mr. Cao, Mr. Booghosian has  
said, well, these problems with the facts...

MR. CAO: Mm-hmm.

5 THE COURT: ...are what was discussed by you  
before Justice Christianson and was also appealed  
after her ruling. So one of his arguments is  
that you have already had a chance on behalf of  
the company to make these same arguments that you  
are now making on behalf of yourself.

MR. CAO: Okay. And Mister - would you mind I  
call David? I cannot....

MR. BOOGHOSIAN: Oh, that's fine.

10 MR. CAO: And Mr. David, and he didn't tell a  
fact. In the City sales (ph) and action, they  
stressed again and again termination without  
cause. You know, actually, we didn't talk about  
errors, only they talk, and then I say nothing.  
15 Because the judge told me in our, in, in, in the  
hearing, importantly they have a termination  
without cause provision. That's the point. In  
the previous hearing, only one hour. We finish  
already in this time...

20 THE COURT: Right.

MR. CAO: ...and after his long talk, and then I  
just ask. I never interfere (ph) in this place,  
and I said to the judge, 'Oh, can I just say  
something according, according to my factum?'  
25 The judge said no, and then I couldn't say a  
word, no word, no one word. You can track the  
hearing, it's verify (ph). I never - I think  
that is a hearing is a, hearing is a shame. And  
then judge, and you have already, it's, you know,  
30 for my, my difficulty, when we talk something and  
I think I can follow it and you change your  
subject, I cannot follow. And then just, oh,

anyhow you already a [indiscernible]. You have, you have fought (ph), and then I say something else. No, you know, and then I think judge think, okay, you, you know, and - you know, and they stressed to me this without cause even they write in their factum, they say even judge cannot find the - oh, find they have no error, defendant can still terminate the contract because, you know, that's the fact. So and Mr. David never mentioned his factum about this issue, this stressed again and again. That's, you know, I, I, I - it's a, it's a - and also, and I found, because I found everything, and many the judge. My English is not good but my brain is, is, is okay. I found they - I learned a lot. And then they, they - and their factum only fixed models for a termination of a contract. But the evidence [indiscernible], so now I swear here no evidence are true. So I was - and it will come to question on that, and, and I, I quite - I would, that's why I, you know, I am so excited because I have no opportunity to, to speak. And then, oh, anyhow, they can terminate the contract without cause. So you, you know, my damage, my company gone, my whole life, and I am the - now, you know, I doing the Uber. I never did that before for a living. And my son help me. He has a very good job, but still doing Uber, helping. So I think now, today, is not a hearing decide to they have a, a, the information or not. It's only give me a chance to speak.

THE COURT: Right.

5  
10  
15  
MR. CAO: That's why, be, because I, I immigrate to Canada in 2008. I, I came for freedom, equality and freedoms, you know. But here, I cannot speak just because of my English. I try to learn English and, but still, you know, my writing is okay but my - you know, my age, spoken English and, you know, and not, and not - oh, I think that's the, my weakness thing, so I cannot speak out, no chance. If I, I don't think they have any vendor if they a normal court, a normal trail. If they have no for, not the information, I don't think, you know, yeah, but that's why and, you know, in the - and the, I, I appeal the case. And then, you know, and they just start a, a security, a security - oh, what's that, just asked me to deposit money.

THE COURT: Security for costs.

20  
25  
MR. CAO: Yeah, security for costs. That motion lasted for four hours, five hours almost. Not fair, and that previous one, one hour, you know. I think (ph) the charge they dismissed, and I have the ground (ph) to appeal. That's - I feel good. Even, you know, I know appeal is not a retrial, I understand, because I understand the judge even, and Her Honour Justice - oh, I'm sorry, I'm not - Christian....

THE COURT: Christianson.

30  
MR. CAO: Yeah, because - and termination without cause. I - since she, and confirmed that contract with that provision, is in her right, you know, but they tried to change the concept. Now they say, oh, everything erased (ph). No,

no, erase. Maybe erase that you erased it, but  
no, not this cost (ph), not argue. I never, I -  
you know, and also, you know, the - everybody, I  
am famous in, you know, the whole world in  
Chinese community because the newspaper media  
(ph), [indiscernible] is the biggest one, and  
even in other, you know, not in, in Canada, but  
they all know the issue, and they say, oh, I did  
something badly, because you have a contract but  
you do something badly, you know. So I just  
cannot stand that, you know. And all the, my -  
and I, and I used to provide books for  
[indiscernible] and Toronto Library and  
[indiscernible] library and several libraries,  
like because they, they knew the case, no, no  
business at home (ph). And all my, you know, 50  
(ph) shelves and books and all the machines were  
- and because I own, I cannot pay the - and the  
rent, they take all my things, stuff away. So,  
you know - and the, they - you know, they say,  
for example they say, oh, you have given equiv  
(ph) notices. What is equiv (ph) notices? And,  
you know, the equiv (ph) notices, they say, and  
they terminate the contract in January, the first  
month, January 2016.

THE COURT: Right.

MR. CAO: And then that's appeals of, I think,  
and they had no power (ph) to terminate that  
contract, but they terminated and then they say  
after four month, and then - oh, that's only a  
notice. What are you - we, you, for - you give  
me notice, we start the business. I just waiting

5 at home. My, I have five employees with, with  
have nothing to do. I pay the rent, everything,  
pay their tax, pay everything, and then you say  
gave you more than time, more than one 30-days.  
That's fair? But they say it, that's on the  
basis of that, they say in two bases, well,  
that's one of them.

THE COURT: Okay.

10 MR. CAO: Is that fair? Okay. And just now, and  
he mentioned simplified (ph) traditional. I  
don't know how they created this error. You  
know, and Mr. David so I have enough time to  
answer but - and you, you know, I need (ph).  
15 When I suddenly get their material, more than  
1,000 pages, more than 1,000 pages, you know, it  
is difficult for me. I prefer Word document  
[indiscernible] they gave me numbered (ph), I  
cannot dictionary, you know, difficult for me. I  
20 read that article, very difficult. And then I  
provide exactly according to the contract. Why  
you say that, they have no evidence? They just  
say. And [indiscernible] profile, I did  
[indiscernible], but let's just say that. How  
can I do? And where is - and the most important  
25 thing I would like to, the evidence they provide,  
of course (ph), they use a, and a working email  
as wanted (ph). Your Honour (ph) can - so I, I  
think your judge should see they are evidences,  
yeah. They are just, and document is no problem.  
30 That's the no good, it, it's so good, it's good,  
but the evidences, and they say I was given  
enough notices. No, never. Please show me the

5 notices. No one asked me that. They have just  
only two notices in the middle of the year before  
terminating a contract in August. But, you know,  
just because, you know, I think, okay, maybe  
library deal me later, I said nothing about that.  
10 They feel, oh, and so nice, soft fruit (ph), but  
that's abuse of power. And the judge never - I,  
I think you had notice that termination, but you  
never mentioned that, but that's the point  
because library only have, only allowed to have  
one Chinese vendor because we do the, you know,  
catalogue with this, this - and that, so it, it's  
hard for them to have two different presses (ph)  
and because we do them and data and then put on  
15 the website, so they terminated that contract in  
August and then they gave that one to LSC who  
worked there for 40 years. It's hard to see they  
have no corruption (ph) because more than double  
price. And then they say I charge higher.  
20 What's, what's the fact I charge higher? They  
ask me to do more things, you know. It's just  
so that, that the job, oh, this is the price I  
charge, but they didn't tell, they asked me to do  
more things. I have evidence. That's more than  
25 because they say that's the government (ph), the  
library and, oh, it's a government (ph), you  
know, and the contract cannot change. I  
understand. As a vendor, I would like to, I do  
anything they ask me to do. That's true. Even,  
30 and after the termination, they just return the  
material, reason, and reasonably, and force me to  
draw (ph) the contract myself. And, you know,

and lower the price. Even, you know, my price is the lowest, so I, it's still lower. So you charge higher according (ph) to the contract. But because that's a, you know, the City's contract. And just now, I heard, and Mr. David say at the last meeting, what happened in the last meeting? And the, the last meeting and on January 20, that's very important. In the, in the latter half of the year, before that year, they forced me to do, they just forced me that I, because at that time I had a big contract with a big company, millions of, you know, like they invest in, in my company to develop Canadian libraries (ph) business. So I accept everything. Okay, no problem. Library, I think, just didn't believe that. And then what happened, they - and I asked them to - oh, in the first year, you will say that deliver it late, but, you know, we need a three-month or four months for the, for the process because from that other, other and then shipment, and then we, we did processing, and this, so you are to elaborate. And they say I deliver, oh, not according to the, to the time. But I get the contract in June, you know. So they don't mention that. Okay, I, I don't care but, you know, but I did. Before the end of year, I did the first year but they still say you are late. I don't know why. And then, you know, and I was told, and I, from August, I asked for, okay, give me the profile because I need the profile, the, the guideline for ordering and they say, oh, okay, we'll be ready, it'll be ready.



And then too into the new year still not come.  
And then they told me, okay, you can come on, on  
20, you know, on 20, and the job (ph) said, oh,  
on 20, told me to, to, to discuss my errors. No,  
no. Well, I have - you know, and I have evidence  
and then they, you know, I don't know, and then  
they, they changed greatly and then, oh, you, you  
must order books (ph) from Hong Kong, no Taiwan.  
I don't know why. The same, you know, simply buy  
the same name but from Taiwan is cheaper, but  
must be Hong Kong. And then everything and  
weighing me the, a - you know, [indiscernible],  
that's a, and a fact of the price. I just try to  
negotiate for it, because we have the lowest  
price. They know I am at a loss to provide  
surveys (ph) already. I already told them. So  
they otherwise know you, you, you loss it, you  
just publish (ph) but I, my business bright. No  
other better (ph) vendor, Chinese vendor for  
libraries for Chinese materials, no one can  
compare with me. I - you know, and I know I see  
not in the same level with me and I have plenty  
of evidences and then, you know - and, and then,  
and they say, oh, and we can change - someone, a  
new one from (ph) that, but I don't know who, who  
she is come to the meeting suddenly. Now they  
are working and the, the staff, I - we worked  
before, and they say, oh, and we can change the,  
you know, conditions but the price cannot be  
changed. Okay, so for the first time I say, oh,  
you must comes out a lawyer. You know, we are  
immigrants. We are, and we do everything

[indiscernible] at least since we got the - you know, we never and offence laborious (ph) stuff. That's the fact. And then I don't know, I don't know the - okay, so and then, before the hearing, I gets [sic], I got to know they terminated the contract because of my offensive behaviour, not because of my error that time they told. And it depends on - and this is on my error or, or that offensive, and I never offended (ph). That's only a rare (ph) normal talking discussion and, and then they provide, you know, provide evidence and I never seen that evidence before. I - no, no time when, who wrote - and when wrote it. That's a, from the, the, the people you, by where you taught (ph). I have a original meeting and minutes and by the same person but, you know, two, two evidence say different things. You cannot find that's a real, a real one, I, I mean the, the handcrafts (ph), the, hand draft one, that's the original, the original. Told exactly what happened in that, they tell all (ph) and change conditions and no money change and then, you know, and at least I, I agreed also, you know. That's the fact, but they, they change, they - oh, they, they - and new evidence without a - well, how, how then? That reminds me, and I, I check, oh, they say I asked them, you say you, you, and you talk to me on numerous occasions, occasions, nots (ph) a meeting though, and not occasions, and then, and tell me when, and then they leaves (ph) all emails, all emails. But I, that email, not talk much (ph) about my business,

5 about my, my errors. They say, oh, and you, and  
they, they have sold the, the - oh, you know, oh,  
you, oh, you from China, you bust (ph) the DVD in  
the wrong code. But the fact is that they are  
profile is okay, and I am afraid I made a  
mistake. I ask them if it's okay, they say okay,  
we'll have you know (ph). They say many Chinese,  
they have, oh, you know, [indiscernible] machine,  
that machine can play everything. I also, I -  
10 otherwise okay, or maybe we should write  
something on the cover. I gave suggestion. They  
say, no, you - we don't need that. That's the  
fact. And then they say it was my fault. That's  
fair? I feel very heightened (ph) today. I can,  
15 you know. I think my English limited. I, I, I  
didn't expect I can stand here without - oh, I  
didn't prepare. I, I can say so much. I think,  
in this way, I can speed...

THE COURT: I agree.

20 MR. CAO: ...the, the whole day because, you  
know, they created it, 20, more than 20 errors,  
none of them exist.

THE COURT: Well, you're - let me stop you just  
to say...

25 MR. BOOGHOSIAN: Oh, it's....

THE COURT: ...I am unable to follow you very  
well.

MR. CAO: Okay.

30 THE COURT: And we don't have all day, of course,  
but we do have some time and I am able...

MR. CAO: I see.

THE COURT: ...to connect your talking with your

factum, so it is helpful and...

MR. CAO: Okay.

THE COURT: ...thank you for taking me...

MR. CAO: Okay.

THE COURT: ...through it so far.

MR. CAO: I just, I, I want to, please, judge, notice one thing. At the moment, my economic situation, I used to be a, you know, at the middle class...

THE COURT: Right.

MR. CAO: ...and now everything lost. And my, my son doing extra work to help me. I just cannot stare (ph) at it. It's very painful (ph) for me and I am in (ph) high pressure. I have no money to buy medicine. I didn't tell my family.

That's the fact. So I just ask opportunity to speak, you know. I have a lot of to say, and, and - but, you know, I still I understand the City because of the, you know, the system and after I failed in, in the appeal, I say, oh, if you find me a job, I won't any - you know.

That's my basic request, you know. Sorry.

THE COURT: No, that's...

MR. CAO: Thank you.

THE COURT: ...very helpful, thank you. Thank you. And Mr. Cao, I know it's difficult to

organize your thinking and to speak and, as I said, it was very helpful for me to hear what the most important points are in your own words, and the most important point I heard is that you want your day in court and your opportunity to make all of these arguments with all the evidence and

I understand that position, and I understand why it's so important to you.

MR. CAO: Mm-hmm.

THE COURT: So thank you very much for taking me through that. And I think, Mr. Booghoshian, I....

MR. CAO: Excuse me.

THE COURT: Yes.

MR. CAO: One thing very important, and the other, the, the, the - sorry, and Her Justice Christin [sic]...

THE COURT: Right.

MR. CAO: ...they may be (ph) stating, and they mentioned, oh, they found a library (ph) report, find out, oh, that, that's significant support (ph), you know, why they terminate the contracts, something like that, but that - and the defendants withdraw important, they just temper that material.

THE COURT: Okay.

MR. CAO: And also the contract, they temper (ph) the contract, I also found out, they sold (ph) it. And also many, not evidence, they show them as (ph) pretend (ph), because, like that their strategy is of many issues. And the many issues are [indiscernible] time and summary judgment motion you cannot even, I think, they, they not only try to confuse me, they try to confuse judge. And then they said to me that and we have a cause (ph) - that's all.

THE COURT: Okay.

MR. CAO: I - that's, I know that, you know, but I, I cannots [sic] leave them out, you know, yeah

(ph) .

THE COURT: No, no, I think I you've made....

MR. CAO: Okay.

THE COURT: You've made that position clear.

MR. CAO: And also I have a - yesterday, I got a material, supplement, supplementary material.

THE COURT: Yes.

MR. CAO: Yesterday I got that, and I just - okay, and my, and returned (ph) as mine, sorry.

THE COURT: Do you want me to have a look at that and...

MR. CAO: Okay, if...

THE COURT: ...provide it to Mister...

MR. CAO: ...I, I - well, I, I am not....

THE COURT: ...Mr. Booghoshian?

MR. CAO: Because they, they tell, he tells a lie in the, in that, you know, thick one. So I gave my answer here.

THE COURT: Okay. Well, here, here is what I think I'll do. I, I won't, I won't rely on it until I hear Mr. Booghoshian tell me what he thinks of it in his...

MR. CAO: Okay.

THE COURT: ...submission.

MR. CAO: Okay.

THE COURT: I...

MR. CAO: Okay.

THE COURT: ...will, if - depending on what I hear from here, I will receive it from you...

MR. CAO: Okay.

THE COURT: ...because....

MR. CAO: I just have two sentences, oh, finish

it, and they just claim two things. One, they say I have enough time to...

THE COURT: Yes.

MR. CAO: ...read [indiscernible], and because no one told - that's important, no one told the, the justice that's, that's a, a material temper (ph), no one. She can find that, only they have the material, they....

THE COURT: Okay. So can you show that piece of paper to...

MR. CAO: Yes, yes.

THE COURT: ...Mr. David...

MR. CAO: Yes.

THE COURT: ...just so that he can see...

MR. CAO: And they say...

THE COURT: ...what you are referring to?

MR. CAO: ...they, they try to - and I asked the cross-examine, because I know, they, they can (ph) lie, they just stew (ph) on the way, fly (ph) all the way to - and then only leave one day, the last day. You can't do that. But suddenly, I, I don't know how to do. I cannot order room (ph), no. So they say, they just gave an email but that's force. I have several emails about that. So that's my responding material.

THE COURT: Thank you.

MR. CAO: Okay, so you, you have it. (ph)

THE COURT: So let me just hear from Mr.

Booghosian, Mr. David for a moment, just on this question on the last piece of paper.

MR. BOOGHOSIAN: I don't have a problem with you receiving this document, Your Honour.

THE COURT: It would be helpful to, to have a reference point and given some of the language challenges. So if...

MR. BOOGHOSIAN: Yes.

THE COURT: ...you don't oppose, I will have, receive a copy. Mr. Cao, do you have a copy to the court? You can bring it to...

MR. CAO: Yes, yeah.

THE COURT: ...Madam Registrar. She will pass it to me. You can come around.

MR. CAO: Thank you.

THE COURT: So I'm not sure, Mr. Booghossian, that new points in issue were raised. I've been taking notes and much of what's there is also in the factum and you addressed in one way or another in your submissions, but I do want to give you an opportunity reply, if you would like.

...PROCEEDINGS RECORDED BUT NOT TRANSCRIBED

THE COURT: And, and now, Mister...

MR. CAO: Okay.

THE COURT: ...Cao, I want to make sure...

MR. CAO: And I...

THE COURT: ...a last word from you.

MR. CAO: ...I appreciate, Your Honour, that - and that you, it goes through the, the materials and after the hearing. I, you know, I think I have made an, oh, my exact, and in the hearing, because of my language and, you know, some day (ph) not well organized and maybe, and but in my material I think is, is, is good, but except the language, yeah.

THE COURT: No, I, I think that...



MR. CAO: Yeah, and...

THE COURT: ...the written material is very...

MR. CAO: ...and I, I, I...

THE COURT: ...easy to follow.

MR. CAO: ...feel a little pity that today we  
never go into a issue. That's I suggest from  
beginning, take only one issue, and I do my which  
(ph) issue...

THE COURT: Mm-hmm.

THE COURT: ...and let me argue about that. I am  
sure your evidence false because I have no  
evidence, no, I, I provide the best service and  
tolerate anything. That's the fact. So it's  
unfair. But, you know, since you're - I think I,  
when you say, it, it - you need go over that,  
that again, because...

THE COURT: Yes.

MR. CAO: ...after today, I really am, and  
appreciate that.

THE COURT: I do appreciate that...

MR. CAO: And...

THE COURT: ...point.

MR. CAO: ...for the costs, I, I didn't prepare  
because I have no time, you know. But I did ask  
a cost. I, for four years I have no income. For  
four years, that's - oh, yeah, only recently I, I  
do Uber, that's (ph) some, but that's less than  
1,000 a month.

THE COURT: So...

MR. CAO: Thank....

THE COURT: ...what I can say, Mr. Cao, is that  
if you are successful...

MR. CAO: Mm-hmm.

THE COURT: ...part of the judgment will say that you are entitled to costs...

MR. CAO: Mm-hmm.

THE COURT: ...and I will invite you to send in the material in writing...

MR. CAO: Yeah, yeah, yeah.

THE COURT: ...at that time.

MR. CAO: Of course, I, I gave....

THE COURT: In other words you are not....

MR. CAO: Okay.

THE COURT: This isn't the last chance you'll have if you're successful.

MR. CAO: Mm-hmm.

THE COURT: Of course, if you are not...

MR. CAO: Okay.

THE COURT: ...successful, then I may have to ask you for any comments on what Mr. David has put in...

MR. CAO: Sure.

THE COURT: ...but I will put that in the written decision, so it will be clear...

MR. CAO: Okay.

THE COURT: ...and you will see it then, one way...

MR. CAO: Okay.

THE COURT: ...or the other.

MR. CAO: Okay. And also, even now, I said to judge and I want to make peace with the government (ph) because I know their situation.

THE COURT: Mm-hmm.

MR. CAO: As long as let me go on living, that's

my attitude, you know.

THE COURT: Well, I....

MR. CAO: People in my age, I know, that's a -  
you know, but it's a....

THE COURT: No, and I can tell you that counsel -  
I have no doubt Mr. David and his associate will  
report back to the client...

MR. CAO: Mm-hmm.

THE COURT: ...on what happened here today and  
that isn't something we can do in the motion room  
but I know he's been taking notes and he's been  
paying attention to everything you said, just as  
you paid attention.

MR. CAO: Okay.

THE COURT: So thank you very much to court staff  
and to, to everyone for the helpful submissions  
today and for all the material. The only thing  
left to do is to wish everyone a restful break  
over the winter holidays, if you are lucky enough  
to have some, and stay warm today and have a very  
good luncheon upcoming. Thank you very much.

CLERK REGISTRAR: All rise.

...END OF EXCERPT AS REQUESTED

**FORM 2**  
**CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))**  
***Evidence Act***

I, David Lobbestael, certify that this document is a true and accurate transcript of the recording of QIANGLI CAO v. CITY OF MARKHAM et al in the Superior Court of Justice held at 393 University Avenue, TORONTO, Ontario, taken from Recording No. 4899\_805\_20191219\_091845\_\_10\_SOSSINL, which has been certified in Form 1.



\_\_\_\_\_  
Date

\_\_\_\_\_  
(Signature of Authorized Person)

David Lobbestael

ACT #1910050206

1-855-443-2748

dlobbestaeltranscripts@vptranscription.com

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

***Between:***

***Qiangli Cao***

Plaintiff

*and*

***City of Markham    and  
Markham Public Library***

Defendants

**STATEMENT OF CLAIM**

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

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

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

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

Date ..... Issued  
by .....

Local registrar  
Address of  
court office .....  
.....

To Defendant : City of Markham  
Anthony Roman Centre  
101 Town Centre Boulevard  
Markham, Ontario L3R 9W3

Defendant : Markham Public Library  
Markham Public Library  
6031 Highway 7  
Markham, ON L3P 3A7

### STATEMENT OF CLAIM

1. The plaintiff, Qiangli Cao, claims against Markham Public Library ("MPL") and City of Markham (City) for their *defamation with racial discrimination, and dereliction of duty*:
  - a. in amount of \$ 955,000 for the following:

- i. the lost in my business;
  - ii. my personal huge debts;
  - iii. the end of my career with bad reputation;
  - iv. the coming bankruptcy to my business and myself.
  - v. mental shocks and health harms to my wife and myself;
  - vi. my future living.
- b. prejudgment interest pursuant to s.28 of the courts of Justice Act; and
  - c. its costs of the action of substantial indemnity basis.
2. I didn't get to know defendants' defamation of both slander and libel to me and my corporation till April 2017. They were a call library to City's senior buyer Mr. Casale, and a report library to City council. I was branded a man who had "offensive behaviour" to library staff in the call. My corporation was accused of having "numerous breaches" in the report. Those slander and libel brought me, my family and my corporation huge damages. I was stuck in despair.

## Background

- 3. I immigrated to Canada in 2008. I set up a sole company upon I settled down in Toronto in the same year. I am not rich. So for the following years, while I worked in a college, I developed my own business at the same time. My business was to provide Chinese books for Canadian companies and libraries. I turned my business into a corporation in the end of 2013.
- 4. On June 20, 2014, my corporation won the bid, "Markham Public Library Material and Processing Services (multi-lingual Chinese material)" with a total of \$ 1,990,634.97 on a 5 years term, proposed by City of Markham for its library MPL. The service, known as the "whole service" for library, included acquisition, cataloguing and processing. The materials were in form of books, DVDs and CDs.
- 5. Because this business mode was promising, and it was a long term contract, I dropped all other business to develop this one only, and also quitted my job in the college. I further expanded my office space from 200 square feet to 1000 square feet on five years bases. From the time I took this library service, 98% of our revenue came from this contract.
- 6. In August, MPL signed another contract with me beside the contract with City. We then have two contracts, one is with City and another with Library. The cost, because of the requirement changes in library's contract, was much beyond my budget with City's contract. Library only allowed us charge

a little higher than the prices in the contract with City for the remedy. As a result, we had big loss for those new requirements. We regarded the contract as our lives, for a good relationship with library, we never complained the price.

7. We showed our powerful strength in this service upon taking over the contract. The pre-phase coordination process with library staff were fast and smooth, based on our skills in the service and superiority of Chinese background.
8. Though City didn't gave the contract to us till the middle of the year, CPCL successfully fulfilled the whole year's budget in the first year. There was a fact that, because our price was less than half of the previous vendor know as LSC, doubled number of materials were provided each year since we took over the contract.
9. We were very proud of our low prices, achievements, and the superiority. However, Library was not happy. One of the main reasons City gave the contract to us because of our low prices, however, MPL did not care about the prices much. Their budget was given by government. City allocates its budget to library according to vendors' quoted prices. Library preferred the vendor LSC that had worked with them for 40 years. LSC charged a more than double price for the same service.
10. On August 17, 2015, City suddenly terminated one of the contracts with us for the New Opening of Southeast Branch. The termination notice declared that the contract could be terminated with cause or without cause based on City's Terms. By terminating this single contract and giving the contract to LSC, Library got an extra \$350,000 budget increase for the New Opening of that Branch.
11. However, because of the technical reasons, Library could not have two vendors that provided Chinese materials at the same time. Library had two choices, one was to return \$350,000 budget back to government and another was to terminate our contract.
12. On September 15, 2015, I was persuaded to drop the contract in a meeting with library. I refused. Failing in the persuasion, library immediately asked us to charge exactly according to the contract with City, to stop the prices that have been performed for more that a year. To save the contract, I accepted but suggested we do from 2016. Library agreed and made an agreement with me.
13. In the following service, library began to return products unreasonably. The return activities were with some issues of racial discrimination due to library staff's shortage of Chinese culture. Again, to save the contract, I accepted any returns without any conditions.



14. Though struggling in the issues of the returns and price reduction, we provided a perfect service in the latter part of 2015 the same. From January 2016, library began to pay us according to the agreement in September 2016.
15. By then, library had no more excuses to terminate the contract. Library's defamation of slander and libel took place from that time. All those libels and slanders were done behind my back with bad faith. As I said above, I got to know them in April 2017 in the litigation.

#### **Library's slander to Senior Buyer of the contract in the City**

16. On January 20, I was called to a meeting. I was very glad because I was told that material profile for 2016 would be released in the meeting. I found Ms. Polly Chen was there. She did not work with us, so I did not know what she was doing in the library.
17. Unexpectedly, in the meeting I was told that library had new requirements for materials. Library changed the proportion of simplified and traditional characters materials from "50% : 50%" to "30% : 70%", and also changed the number of items for each title. Further, Ms. Gilchrist asked me to order traditional books in Hong Kong not in Taiwan. These changes increased our cost greatly.
18. I gave my response to those changes in the meeting. It was no problem I did any changes by the new requirements, but I suggested library go on keeping the prices in the last two years as the remedy for the new changes. Ms. Polly replied that the price had no change by City's contract, and if plaintiff didn't accept the new requirements, library had right to terminate the contract. Under such circumstances, I had to advise her to consult a lawyer before terminating the contract. I believed that was the first time I said something with complains since I provided the service. I am sure that there were no heated arguments or quarrels in the meeting. That can be witnessed by the original meeting minutes by library.
19. In the following of the meeting, I tried to explain that the changes effected the price, but I was interrupted several times. Three library staff left the meeting with the excuses that they had another meeting. Only Ms. Gilchrist remained for the rest of the meeting. She went on their arbitrary theory that they could change anything in the requirements for the products but the prices could not be changed. In the end of the meeting, again I agreed to accept library's decision as usual.
20. I was really startled to learn that I was accused to be offensive to library staff in this meeting. From both Ms. Gilchrist and Mr. Pogue' affidavits submitted in April 2017, I got to know that Ms. Polly Chan was scared in the meeting by Mr. Cao's "offensive behaviour". According to their affidavits,

Mr. Cao's "offensive behaviour" in the meeting was the "breaking point" to terminate the contract. I asked Mr. Tony Casale, Senior Buyer of contract in the City, how he knew the issue. He admitted that library had called him to tell the offensive behaviour.

21. This was totally a slander to my personality. I have never offended anyone with bad behaviour for my whole life. In fact, I had a friendly manner from the beginning to the end in performing the contract with library staff. This can be approved by library's records of vendor score.
22. Now all the facts show that library planted this "offensive behaviour" on me to defame me for the purpose of terminating our contract. Library reported the issue orally to the crucial figure, the senior buyer Mr. Casale who was responsible for the contract. Shortly after, he together with Mr. Pogue (director of Library's administration) drafted the termination recommendation report to City Council.

### **Library's libel through its recommendation report to City Council**

23. Mr. Casale informed me that library would submit a recommendation report to City in his termination notice in January 2016. The recommendation process was a black box operation and all were done behind my back. In April 4, more than two months after library terminated the contract, library submitted its report to City Council.
24. I asked to have this recommendation report in the lawsuit,. Defendants offered the one which had been altered in many places. There were 6 pages of the report, but there were only 4.5 pages left. I read it several times and found the cheating. It was after my protest that defendants' lawyer gave me the original one.
25. I was startled again. Library totally distorted many facts in the report. Library hid our good service, contributions, and cooperation in the performance of the contract, but reported "6 issues as our errors" to City instead. Those issues were all lies and none of them existed. I listed the 6 issues and give the truth one by one in the following.
26. *Issue 1, Rate / Expenditure Strategy Plan.*
  - a. *Library complained in the report that CPCL was slow to achieve fulfillment rate through both 2014 and 2015.*
  - b. Plaintiff was not awarded the contract till June 24, 2014, and next library arranged a training in the period from July to August. In library's schedule, plaintiff could not start orders until September 5 after passing library's test. Library knew that at least 3-4 months were required from ordering to delivery to library for a shipment. Library directed us that the first products of

shipment would reach Toronto in early November and the second shipment in early December. Before delivering products to library, plaintiff also need to do cataloguing and processing. Under such condition, it was impossible to meet library budget in the first year of 2014.

- c. Library hold a meeting in November to discuss the problem, asking us do a favour to spend the year's budget within the year. Cooperatively, in the following days, plaintiff's five staff worked like a dog, without taking holidays of Christmas days and new year's days.
- d. Plaintiff provided 11,107 items in the last three months in 2014. The three months' number of the Chinese products delivered by plaintiff exceeded library's total number of Chinese products provided by previous vendor, LSC in the last two years. We successfully met library's goal by the end of the year. This was our contribution. It was ungrateful treachery by complaining there were slow deliveries in 2014.
- e. In the end of 2014, there was a sudden booming of Chinese materials in library. When library staff came back from holidays in 2015, they found file of materials waiting to be processed to branches. That was a big job for library staff. They asked us to slower deliveries for some time. Taking the opportunity of staff's process, and there were enough Chinese materials for customers in the first few months in the new year, we scheduled to do a summary and a training after the first few months service. Our plan was consented by library staff. Our summary and training were carried out from February to March.
- f. We delivered nothing in the first two months, delivered a small shipment in March, and began to deliver weekly from April 23. Every week during those months, I went to meet library staff to report the delivery situation. Library never hurried up the deliveries during this period. In the end of March, Mr. Cao wrote to Ms. Gilchrist (library's technical manager) to confirm the delivery situation. Ms. She wrote back, saying that the schedule was very good.
- g. We delivered the materials regularly each week from the end of April in 2015 and fulfilled the delivery target smoothly by the end of 2015. The claim of slow deliveries was the biggest gigantic libel of the all. I have solid evidences to confirm the facts.

27. *Issue 2, Arbitrary substitutions of DVD's in non-Chinese languages.*

- a. *Library alleged that plaintiff were trying to provide foreign DVDs.*
- b. Plaintiff never provided foreign DVDs, but provided foreign DVDs "with Chinese subtitles". Library got rid of the attributive phrase "with Chinese subtitles" to confuse the facts. This is only a language game that confuses people.

- c. Because foreign DVDs with Chinese subtitles are not available on line watching, those kinds of films were welcome by Chinese immigrants,
- d. From the phrase “arbitrary substitutions”, it seemed that plaintiff forced library to accept the products. This was ridiculous. Library could return any materials by the contract. How could plaintiff force library to accept the materials they don’t want? There were no reasons on earth that plaintiff threw its money freely.
- e. Further, before delivering each shipment of materials, plaintiff offered the records of the products with detailed information. And also, library paid plaintiff at the end of a month after deliveries. Library could refuse to pay if they found the materials out of requirements.
- f. Importantly, plaintiff had accepted any returns without conditions. Plaintiff never ordered the same kinds as library returned the second time.

28. *Issue 3, Traditional vs. Simplified Materials*

- a. *Library complained that plaintiff was difficult in providing a sufficient quantity of traditional prints. It is very deceptive that Library even offered the year’s average of the statistics of the proportion.*
- b. We had offered exactly 50/50 split between traditional and simplified on the average of the year according to the contract. Where did the unbalanced statistics come from? I found the secret soon. Library used the half year’s statistics as the whole year’s. Library submitted its recommendation report on April 4, 2016 to City, but they used the statistic in the period from January to July in 2015. This is no doubt that Library purposely gave this conclusion by mixing the time periods. This is a dirty trick.

29. *Issue 4, Material Distribution* .

- a. *Library claimed that plaintiff failed in distributing materials between library branches according to the contract.*
- b. Distributing materials by the directions in the contract was too easy for a vendor. We never missed the target. We did exactly according to the contract or did exactly according to library’s special instructions.
- c. The fact was that library changed the proportion of the distribution for each branch from 2015. But library failed in letting plaintiff know the change. Library didn’t tell plaintiff the change till September 2015. But library advised plaintiff to deliver each shipment according to their instructions from September. In the rest of the year, plaintiff distributed materials according to

library instructions instead of consulting the contract. This was the fact all library staff knew. Distribution error was a shameful lie. If there were errors in the allocation of the materials, that was library's error and had nothing to do with plaintiff.

### 30. *Issue 5, Pricing*

- a. *Library complained in the report that plaintiff began to charge higher from 2015.*
- b. library paid plaintiff in the same level from beginning in 2014 to the end of 2015. Mr. Pogue, director of library's ministration had confirmed this fact in his affidavit. Mr. Pogue should clarify why library and he said differently.
- c. In fact, the case of price is not weather plaintiff charged higher or not, but it is a case that defendants changed the requirements for the materials but didn't pay for the changes. Plaintiff had big loss for those changes. The case is defendants have to take the responsibilities for the unfair payment. There is a fact that plaintiff had saved about \$ 350,000 each year for taxpayers in the service by taking over the contract from LSC from 2013. .
- d. Library didn't care about money at all from the fact that library had given the contract back to LSC with a more than doubled price than that of plaintiff's. This is big over payment. It is taxpayers that pay the bill!

### 31. *Cataloguing / processing*

- a. *We find that, under this title in the report, there is only one sentence to support - "library staff identified numerous cataloguing and processing errors".*
- b. The rest content in the paragraph was irrelevant to the topic. The paragraph doesn't read smoothly and grammatically.
- c. This is because it was too hard for library to say something bad to plaintiff's records. Plaintiff's records are the best records at Chinese in North America. Because our staff were all Canadian Chinese who speak bilingual language. Our bilingual records with introductions in Chinese characters and cover images were meaningful to Canadian Chinese. Go to library's website, type CPCL and search, you can see our records.
- d. LSC's records can be also found in the website. There is a good comparison there. LSC's records in the past were meaningless both to Chinese and English speaking people. After LSC took back the service, we found, though LSC follow our patterns, its records still have no images and not all the products have introductions. LSC's records are not in the same levels with plaintiff's at all. LSC is a western background company.

32. In a conclusion, all the issues in library's report were made up with the tricks of self- reasoning, replacement of concepts, language games, exaggeration, and misrepresentation.
33. Based on those errors in library's report, City terminated plaintiff's contract. City further listed CPCL as the disqualified vendor, and gave public notice that CPCL could not take any government bidding in City of Markham for two years. One of City's councillors announced to Mingbao, international Chinese media, that City terminated plaintiff's contract because of its unqualified service. Mingbao published the news both in its newspaper and on line accordingly. The whole world know the news. The bad reputation to myself and my business have put an end to my career.
34. From City's punishment to my business and declaration in the media, it can be approved that City terminated our contract with the cause of our "errors or breaches".

### **Litigation**

35. I had to make a litigation in May 2016, suing defendants "wrongly terminating the contract". Defendants took a summary judgement motion in June 2017 to dismiss my action.
36. For their summary judgement motion, defendants stressed that the contract termination was not "with cause". They had right to terminate the contract "without cause" according to the contract. Judge accepted their "without cause" submission, and said to me in the proceeding that "importantly, defendants had a without cause term".
37. The situation turned into a complicated one. It seems not so necessary to accuse library's breaches when I sued them wrongly terminating the contract. Defendants had the right to terminate the contract under any conditions. With the help of the "without cause" term, defendants freely made lies, imposing on us a poor performance in the service.
38. I failed in the litigation. I know I myself should be blamed for the failure. All due to my limited English and legal knowledge. With such complicated situation and in such a limited time, I was unable to give clear clarifications in my materials and in the court. Only in hindsight did I understood what happened for each round. My bad job help defendants successfully deceived court at many issues.
39. However, from the previous litigation, I got to know the point that I was framed by defamation actually. City had its right to terminate the contract with cause or without cause according to the contract. City had to terminate my contract based on library's recommendation. My damages were

all brought by library's slander and libel. Without those slander and libel, City would not terminate the contract.

### **My damages**

40. Defendants claimed in the previous litigation that we did not file the damages after the contract was terminated. That was half true. We didn't file all our damages but only some of the damages in that stage. I had no lawyers and busy with in learning the litigation rules and process and we had a limited time. I thought I had plenty of time later to summarize the damages. I didn't know that was important for the summary judgment motion. I didn't know a summary judgement motion could skip over the damages not providing temperately.
41. I am the CEO and the only share holder of the business. I had invested the corporation with my own savings, and with the money borrowed from my relatives and friends. I only got a small loan from Business Development Bank of Canada in May 2015 after 11 months I we got this contract, also with my personal guarantee. So all the damages to my business have naturally turned into my personal damages.
42. Library service was not a common sale contract, which requires big investment for its high skills and technology, especially in the first few years. Importantly, library made a new contract known as Service Agreement with CPCL in August after the contract with City. The confidential term in the Service Agreement increased my cost greatly. But City paid nothing for the changes. All input and expense can be traced from my financial statements of 2014, 2015 and 2016. I had a direct loss of \$ 449,000 up to now at least.
43. Defendants terminated the contract suddenly without a previous warning in January 2016. Because 98% of revenue of my business came from this contract, we had no any income from the termination time. Our damages came out constantly after the contract was terminated.
44. My office was rented under a 5 years lease based on the contract with City, and could not be given up earlier. Plaintiff were no longer able to pay the rent from June, 2017. As a result, plaintiff's office was sealed by the landlord in September, 2017. All the office equipments and stuff, including all the machines and all the materials ordered for library were all held in pledge. I had nothing left for the business from the time.
45. Plaintiff had loan from BDC based on the contract with City. Plaintiff no longer had ability to pay bank's loan monthly from November 2017. The bank allowed a period of adjournment for the

repaying. I only paid interest of loan each month from the time. BDC stopped the adjournment in May 2018, and claimed against me and my business in June 2018 in Ontario Superior Court. Right now I am on that litigation.

46. Because I paid my vendors in other countries one year after they provided me materials for my business, I didn't pay most of the bills in 2015 after the contract termination in January 2016. Those vendors are waiting for the result of my litigation with defendants. I promise to repay their products if I win. They will sue me for their goods in Canada or in other countries anytime in the near future.
47. Now I became a man, who has no job, no income, with huge debts. My bank credits are near the limit and I am depending on borrowing for further survivals. I am considering the bankruptcy to my business and myself, but I even have no money to pay a trustee. Importantly, even I am bankrupted, I need to pay most of those debts the same.
48. More serious issues are coming from the end of 2017. After several years' torment on the lawsuit and financial pressure, my wife fell down with heart problems at last. She is being treated and was no longer unable to work. I myself began spiritual pains, constantly feeling guilty to my family, and feeling constant depression.
49. In the previous litigation, I gave my "offer to settle" three times. I would give up any compensation request for a specific performance of the contract. Defendants refused all those offers. After I failed in the litigation, I asked defendants to help to introduce me a job. If so, I would stop any confrontations now and later. I would pay off all my debts in the rest of my life by my salary. Defendants refused the same.
50. For all above, for a living of survival, I sue the defendants on behalf of myself. The plaintiff proposes this action be trialed in town of Milton in the regional Municipality of Halton.

**Date: July 19, 2018**

Qiang Li Cao  
117 Maberley Cres. Scarborough M1C 3Y1  
Tel: 647 887 8767  
Email: [cao@ccbooks.ca](mailto:cao@ccbooks.ca)  
Self - Representative



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

QIANGLI CAO

Plaintiff

and

CITY OF MARKHAM and MARKHAM PUBLIC LIBRARY

Defendants

**STATEMENT OF DEFENCE**

1. The Defendants admit the allegations contained in paragraphs 4 and 35 of the Statement of Claim.
2. The Defendants deny the allegations contained in paragraphs 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49 and 50 of the Statement of Claim.
3. The Defendants have no knowledge in respect of the allegations contained in paragraph 3 of the Statement of Claim.
4. The Defendants state that the Plaintiff's claim is statute-barred and in this regard, it pleads and relies upon ss. 4 and 5 of the *Limitations Act, 2002*, S.O. 2002, C. 24, Schd. B.
5. The Defendants state that the Plaintiff's claim is barred by the doctrines of issue estoppel and/or abuse of process. In particular, on a summary judgment motion by the same Defendants herein against the wholly owned company of the Plaintiff, Chinese Publications for Canadian

Libraries Limited (“CPCL”) in Ontario Court File No. CV-16-552199 at Toronto (“the Prior Proceeding”), The Honourable Justice Kristjanson made the following findings of fact:

- (a) CPCL consistently failed to meet or comply with the price requirements of the contract;
- (b) CPCL consistently failed to meet or comply with the delivery targets of the contract;
- (c) CPCL consistently failed to meet or comply with the collection profile requirements of the contract;
- (d) CPCL made excessive cataloguing errors;
- (e) CPCL’s failure to meet delivery targets by CPCL was significant;
- (f) CPCL’s pricing was non-compliant with the RFP;
- (g) CPCL charged the Library in excess of bid prices throughout the contract.

6. The Defendants beg leave to refer to the entirety of the Endorsement of The Honourable Justice Kristjanson on the summary judgment motion at trial.

7. CPCL appealed the Judgment of Justice Kristjanson dismissing the action. The appeal was heard by the Court of Appeal on April 27, 2018 and was dismissed the same day.

8. The Defendants submit that the Plaintiff, being the principal and sole shareholder of CPCL, is bound by the findings of fact made against his company in the Prior Proceeding.

9. The Defendants expressly deny that the Plaintiff has personally been defamed as all of the statements were made exclusively about CPCL's performance.

10. The Defendants deny that the elements of a cause of action for defamation exist or alternatively, state that they are entitled to rely on defences that provides a complete bar to the Plaintiff's claim. In particular:

- (a) The allegedly defamatory statements made in the report to City Council recommending termination of the CPCL contract with the Defendants is true, thereby giving rise to the defence of justification;
- (b) The allegedly defamatory statements were made on an occasion of qualified privilege in that the Library staff making the report had a legal, moral or other duty to report their experience with CPCL to City Council and City Council had a corresponding duty to receive such information;
- (c) The Plaintiff has not sustained any damages as a result of the allegedly defamatory statements made about CPCL.

11. The Defendants specifically deny that the Plaintiff has sustained the damages or losses alleged in the Statement of Claim and puts them to the strict proof thereof. In the alternative, the Defendants state that the damages claimed are excessive and too remote and that the Plaintiff has failed to adequately mitigate his losses.

12. The Defendants dispute that the Town of Milton in the Region of Halton is the proper place for trial and submits that given the domicile of the Plaintiff and Defendants (both in the City of

Markham in the Region of York), the appropriate venue for trial is in the Town of Newmarket, in the Region of York.

13. The Defendants ask that this action be dismissed, with costs.

September 7, 2018

**BOGHOSIAN + ALLEN LLP**  
Litigation Counsel  
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Toronto, Ontario  
M5H 2M5

**David G. Boghosian LSO# 28922P**  
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Lawyers for the Defendants

**TO: QIANGLI CAO**  
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M1C 3Y1

cao@ccbooks.ca  
Tel: 647-887-8767

Plaintiff

QIANG LI CAO  
Plaintiff

-and- CITY OF MARKHAM et al.  
Defendants

Court File No. CV-18-00007702-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**PROCEEDING COMMENCED AT**  
**MILTON**

**STATEMENT OF DEFENCE**

**BOGHOSIAN + ALLEN LLP**  
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Fax: 416-368-1010

Lawyers for the Defendants



Tab H

Court File No. CV-19-00618275-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Between:

Qiangli Cao

Plaintiff

and

City of Markham and Markham Public Library

Defendants

**FACTUM OF THE PLAINTIFF AND RESPONDING PARTY**

**Part One - Nature of the motion**

1. This is a summary judgment motion brought by defendants, on the basis of Mr. Boghosian's claim (defendants' lawyer,) that the reliefs had been sought in the previous action, seeking dismissing plaintiff's action. Plaintiff is against their motion, on the basis that none of the errors defendants summarized for CPCL were argued in the litigation. Moreover, there were new defamatory actions after that litigation. Plaintiff is seeking a normal trial.

**Part Two – Overview**

2. I am the self representative for my own litigation, as well as the former CEO of Chinese Publications for Canadian Libraries Ltd (CPCL) and representative of CPCL's litigation launched in May, 2016. Defendants' lawyer, Mr. Boghosian, is the same lawyer on behalf of defendants in CPCL's litigation. To see if Mr. Boghosian tells the truth in his current factum can help to see if he told truth in the past in CPCL's litigation, and to see if he is a lawyer who can be trusted.
3. Mr. Boghosian claims at paragraph 7 in his factum, **"City moved for summary judgment in the CPCL action on the basis that (a) CPCL breached the contract; and (b) that CPCL was**

**given more than adequate written notice pursuant the termination provision.”.** At paragraph 20 in his factum, he claims for some termination details, **“the General Terms and Conditions of the contract empowered to terminate the contract upon ten days written notice in the event of an Act of Default.”.**

4. **I read his factum several times and can not find the phrase "termination without cause", which strongly stressed in CPCL's litigation.** Let's trace back to his factum for CPCL litigation, at paragraph 76, he wrote, **“the City can therefore terminate the contract in two circumstances: (a)When the bidder has breaches the contract, notice has been given of the breach, and said breach has not been cured within 10 days; or (b)without cause, as long as the City gives 30 days written notice before terminating the contract.”.**
5. Under a subtitle, City Was also Entitled to Terminate the Contract Without Cause in his factum for CPCL's case, 3 paragraphs from 96 to 98 are all about “termination without cause”. To emphasis this “termination without cause” provision, Mr. Boghosian wrote, **“even if a judge finds CPCL was not in breach of the contract, terminating the contract without cause was still within the City's right.”.** Defendants clearly warned judge regardless judge's feeling. .
6. We can also find the advice from City's legal department in library's report to City. It said, **“legal department staff have recommended that the City terminate the contract on a “without cause” basis so that City is not held to the higher standard of proving “default”.** This confirmed that City terminated our contract based on “without cause” term. Please see details at Page 591, in library's report to City, Volume 2 of 2, in my Responding Motion Record (Defendant deleted this part from the library's report in their affidavit material. I will talk about it for a while.).
7. And more, her justice Krisjanson confirmed that the termination was on the basis of “termination without cause” by saying, **“ ... there was no bad faith in the without cause termination.”.**
8. Why is Mr. Boghosian trying to hide the provision of “termination without cause” defendants so strongly pursued in CPCL's litigation. This requires Mr. Boghosian clarifies.
9. According to either “Service Agreement” or “General terms and Conditions”, two contracts we argued between parties, if CPCL had one breach, defendants could easily and lawfully terminate its contract. But why did they try so hard to stress the provision of “termination without cause”, regardless being considered arbitrarily? That is against common sense.

10. More hard to understand, defendants would rather make two fantastic lies to fight for the provision of “termination without cause”, taking risk of being considered cheating. One is General terms and Conditions is the contract, and the other is Service Agreement is the contract made only for C3. Any one would laugh if he knows what is C3. Now, this story of C3 contract has become a laughingstock by thousands of people who are concerned on the case, including library’s own employees who know better what is C3.
11. I am not appealing CPCL’s litigation here. So I am not interested in terminating that contract whether legally or not at this moment. I would tell those contract stories later in other occasion if requested. I only want to tell here how much the “termination without cause” was laid stress on by defendants in CPCL’s litigation.
12. When City has the power of terminating the contract “without cause”, it means that City can terminate CPCL’s contract under whatever conditions. Let us say more clearly that, if CPCL did something wrong, City can terminate its contract, if CPCL did something right, City could terminate its contract the same. Now everyone should understand why Mr. Boghosian claim, **“even if a judge finds CPCL was not in breach of the contract, terminating the contract without cause was still within the City’s right.”**
13. Mr. Boghosian claims at paragraph 3 in his factum, **“plaintiff already raised all the matters in the previous action before this honorable court, Justice.”**. I didn’t raise all the matters I swear. Even defendants was unable to raise all the matters in that action. Some matters didn’t appear even in that action, how did defendants raise them. Defendants maybe themselves already raised most of the matters in CPCL’s action, but not argued for sure. Judging by number of errors defendants summarized for us, less than one tenth was argued in the hearing.
14. The only opportunity for me to argue in the hearing was price issue. But I was stopped in the middle on this topic by her justice Kristjanson. She said, **“... more importantly, there is a without cause termination provision in the contract.”**. I didn’t complete my argument.
15. All evidences show that her justice Kristjanson gave her decision basically on the term of “termination without cause”. Since her justice Kristjanson accepted General terms and conditions with the “termination without cause” provision as the contract, she dismissed our action in her right. That was no problem. She didn’t need to raise all the matters at all. She announced the end of the hearing only within one hour. Defendants submitted about 1000 pages and I had to respond about 800 pages materials. Who can deal with so many issues in such a short time? She was



even unable to go over one tenth of the matters in the hearing, and it is far from to prove so many “errors” with “high standard”.

16. Defendants argued that the judge could give the decision according to written materials. I agree with this point of view to some extent. But I have reasons to say that her Justice Kristjanson had troubles in understanding me from her judgment. I wonder if I was understood. To tell the truth, now I can not understand many places in my materials by myself.
17. There was a fact that, all their defamatory actions were done in the black box operation, and defendants didn't cooperate to provide documents of evidences we asked for. As a result, most of those defamatory actions were not discovered until near the very end of the action. So we had no time to argue them both in written materials and in the hearing.
18. Importantly, on some key evidences, defendants provided some false or tampered evidences. Because of my limited English I could not point them out both in writing and in the hearing. I didn't realize them till after the motion was over.
19. I take the most serious one as example. Library's report to City is the most important evidence among all in that lawsuit. The defendants didn't give this report to us until the last moment before the hearing. I found that the report was tampered with. Under my request, they gave me the original one. I found two pages and a half disappeared in the tampered one. Defendants explained nothing about it. I could not see the tricks behind it at that moment. The issue was laid aside before the hearing.
20. However, I found later that her justice Kristjanson confirmed defendants' affidavits based on this tampered report. She wrote in her judgment, **“the April 4, 2016 recommendation report to council significant issues supported by the affidavit evidence, including the delivery targets, traditional vs simplified; pricing, and cataloguing and process errors.”**.
21. Her justice Kristjanson wrote further to stress the important of this report, **“the report had significant support, which demonstrates there was no bad faith in the without cause termination.”** The fact was that the evidence of “bad faith” was already deleted from this document in their materials. Please see details at page 502 , the judgment by justice Kristjanson, in my responding motion record.
22. The bad faith was that library's budget was raised \$354,755.00 by replacing CPCL with LSC in the contract termination for the opening of Southeast branch in August, and library is discussing

with council committee the rising of the budget by replacing CPCL with LSC for the other 6 branches in this report. Her justice Kristjanson didn't know those issues.

23. I believe, her justice Kristjanson was innocent on this matter. I believe she knew nothing about the tampering. She had to read so many materials before the hearing. It was too difficult to find the tampering. I feel sorry that I should point this big issue out for her reference in the hearing.
24. Anyhow, the fact is that the "significant support" to the judgment her justice Kristjanson called is a tampered document. I don't think a judgment could be made based on a piece of false testimony.
25. Your honorable Justice can compare the tampered one with the original one in our two parties' motion materials. At Page 302-306, Volume 1 of 4, Motion Record the Moving Parties the City of Markham and Markham Public Library; At Page 577 and 587-592, Volume 2 of 2, Responding Motion Records, plaintiff Qiangli Cao)
26. This tampered report was only one of the cheatings defendants did in CPCL's case. I am not appealing CPCL's case by this submission. I understand the judgment for the CPCL's case was based on the term of termination "without cause". But I think, defendants ought to explain those cheatings in some other relevant occasions. I suppose that some one has to take the legal responsibility for those cheating on the evidences.
27. Now I am just seeking for a normal trial for my individual litigation. From the tampered report issue we see the point that even some "matters already raised", they were not argued in CPCL's action.
28. Some of defendants' slanders and libels in my present litigation, though happened in the past, but they were not discovered at all in CPCL's litigation and they were discovered after the litigation. And moreover, some defendants' defamatory actions happened after the CPCL's litigation. So, it is impossible that all the matters were already raised, let alone were argued in the previous action.
29. And besides, I can't see the point, if defendants made defamatory stories in the litigation, and now we found the confirmed evidences, why can't we sue for them? That encourages liars to make lies in court next time. As long as they covered lies in court, they were safe forever.
30. More evidences show that it is unnecessary or impossible that those errors defendants accused were proved with high standard in the CPCL's action. I give the following facts to support.

31. CPCL's case was actually a case that plaintiff responded defendants' summary judgment motion dismissing its action. CPCL was turned into a defendant instead.
32. The subject of CPCL's litigation was "wrongful terminating Contract", not defamation. Our remedy was specific performance, not compensation for damages. Because our goal was to make peace to continue the contract, we actually explained the errors defendants claimed with ingratiation, selecting the words carefully so as not to offend our clients. I didn't complain the issues unless we had solid evidences. I knew well that dishonest arguments would result in stopping working with library completely. A tenderer would never give its job to a dissatisfied bidder. This was the situation for CPCL's action.
33. We claimed no damages if we could go on the contract in our first edition statement. Only when time went on, our damage became bigger and bigger, we took motions to update our damage claim in our statement. But, we submitted "offer to settle" constantly, declaring that we would give up any damage request as long as we were given a chance to go on with the contract. Before I made the appeal to court of appeal, I sent the message that if defendants could help find me a job, I would give up any legal actions. My point for those two paragraphs is that we passively explain the "errors" instead of suing defendants.
34. Summary judgment motion should be a clear case. However, defendants did hard to make it complicated. They submitted about 1000 pages of materials for their motion and made a counterclaim at the same time. This resulted that none of the issues were argued completely.
35. Defendants made tricks and found all excuses to prevent from doing the cross examination. At last, cross examination was not done before the hearing.
36. Because of my limited English, the hearing was an one-side-show and I never got a chance to argue any certain issue. Judge misunderstood in some most important issues in the hearing because of language barrier. The court transcripts proves that firmly. Please see Court Transcripts at Page 431, Volume 2 of 2, in my Responding Motion Record.
37. For sure, her justice Kristjanson didn't know how big of my damage before she made the decision. I even told her 28% of our income came from this contract (I learnt from court transcripts. It was just a slip of tongue.).
38. Mr. Boghosian strongly emphasizes at paragraph 12 in this factum that, "**plaintiff's action cannot succeed. It must be dismissed with costs.**". His reasoning is that (at paragraph 11) "if

**the plaintiff were to succeed in the litigation, this court would have to come to a decision opposite to that of Justice Kristjanson in the prior action.”.**

39. I was shocked by his so excited and frank words. It is obvious that Mr. Boghosian puts pressure on court, taking her honorable Justice Kristjanson as a hostage. It is more like that he gives an order, or wants to make a deal with your honorable court. This is similar to what he did in CPCL’s case. He told judge that defendants could terminate the contract even judge found plaintiff had no errors. Mr. Boghosian tends to interpose judge’s judgment.
40. My point of view is quite different from his. If I am in the right in my litigation, why not I must lose? How do you think, when I am in the right, my action has to be dismissed? Mr. Boghosian puts a decision above Justice.
41. All above prove that Mr. Boghosian didn’t tell the basic facts in CPCL’s action. How can he be trusted? Defendants’ summary judgment motion wasn’t based on the facts Mr. Boghosian’s submission . Defendants have to attend a normal trial.

### **Part three – Facts**

#### **Contract**

42. In June, 2013, I got to know that City would launch a bid, as Request For Proposal, 285-R-13, Markham Public Libraries Materials and Processing Service in the end of 2013 (RFP) . So our corporation had the chance to tender for the bid. In the bid, I provided our background factually and City did background check. Because we went for Chinese materials only, our superiority in skills and prices was obvious, and there was only one Chinese background company of the bidders, City singed the proposal (RFP), with us. Attached and marked as Exhibit 3 and 4 are copies of Price summary / Evaluation sheet /Mandatory Evaluation / Reply to the request / Request for proposal, 285-R-13 (RFP), Volume 1 of 2, in my responding motion record
43. City awarded us its Purchase Orders on June 20, 2014. It included the service of 6 branches on a 5-year terms, and a coming opening service for Southeast branch, with a value of \$1,990,634.97. The service included acquisition, cataloguing and processing., and the materials were in form of books, DVDs and CDs. Attached and marked as Exhibit 5 is a copy of Purchase Orders, Volume 1 of 2, in my responding motion record

44. On August 5, 2014, MPL signed “Service Agreement” with CPCL. By then, “Purchase Orders”, “RFP” and “Service Agreement” made up the contract. Attached and marked as Exhibit 6 is a copy of “Service Agreement”, Volume 1 of 2, in my responding motion record
45. Upon taking over the service from previous vendor LSC, we showed our powerful strength in providing Chinese materials. Because we were the same nation with the library’s Chinese readers and knew what they needed, we selected the right materials. The selections took into account of immigrants from Hong Kong, Taiwan and Mainland China, and 95% of the materials were issued within two years. Because our cataloguers knew bilingual languages, our Mark data were bilingual. Materials showed in library’s website took on new looks with images, book tiles and introductions in Chinese characters. They looked much more different than before. The previous records appeared on the website were “pinyin”, which were something like phonetic symbols for English. It is only the visual representation of speech sounds. Attached and marked as Exhibit 7 are the copies of the outlook of the records between CPCL and LSC, Volume 1 of 2, in my responding motion record
46. From July, 2015, we began to provide reader’s personalized service. As long as library passed over the titles requested by individual readers, no matter whether the materials were traditional or simplified characters, one or several copies, we made orders for them without conditions. We can order any items library required as long as the items were issued in the world.
47. In August, 2016, after our contract had terminated more than half a year, we did some researches on the materials we provided on the basis of the data on library’s website. We found our materials still were checked out well, in good performance. Attached and marked as Exhibit 8 and 9 are the copies of some statistics on our products, Volume 1 of 2, in my responding motion record.
48. At the moment, there was a hidden trouble under the smooth and harmonious atmosphere. The super low prices we were proud of were not good to the library. Because our prices were much lower than that of the previous vendor, the balance between budget and the number of Chinese materials in the the past was broken. LSC provided about 6000 Chinese items for each year in the past, and now with about the same price we provided more than 12000 items. Library felt awkward for its expensive vendor they relied on for about 40 years. Importantly, MPL required just 6000 Chinese items. It was difficult for library to hold on so many Chinese items we provided.

49. Base on our low prices, at the beginning of 2015, City reduced library's budget for Chinese materials greatly. Budget for Chinese materials was reduced a second time on June 14, 2015. Even the budget had reduced twice in 2015, we still provided twice as many materials as that of LSC in a year in the past. The number of 12000 Chinese items was much beyond library's actual requirements. Some branches began to complain that they didn't have enough spaces for Chinese materials.
50. Under such circumstances, library decided to replace CPCL with LSC. LSC's prices were just the double prices of CPCL's. This could solve the problem that library's budget was not be cut any longer on the basis that they required 6000 Chinese items. Attached and marked as Exhibit 11 is a copy of the revised purchase order in 2015, Volume 1 of 2, in my responding motion record.

### CPCL' action

51. Mr. B claimed in his factum (paragraph 15) that, “**almost immediately, CPCL breached the contract.**”. That was a lie. All evidences showed that, about one year from June, 2014 to June, 2015, the pre-phase coordination with library staff processed smoothly and fast. There were no conflicts or disputes between MPL and CPCL. We had a very good relationship. All these could be proved by the friendly working emails between library staff and our staff. The June of 2015 was the watershed. All problems started from that time. Defendants can not give any evidence to tell about the word they used “immediately”.
52. On August 17, without any warning, library suddenly terminated the coming opening contract for Southeast branch. They gave the reasons in the termination notice library experienced very poor fulfillment rates. Notice stressed that City reserves the right to terminate the contract “without cause”. As I told above, Chinese materials were a big surplus since we provided the service. To say “poor fulfillment” didn't make any sense. Attached and marked as Exhibit 19 is a copy of Notice of Termination in August, Volume 1 of 2, in my responding motion record.
53. This termination of the contract in August played a key role in the whole case. Library got an additional budget of \$ 354,755.00 from government by giving this contract to LSC, based on the explanation that LSC was expensive. However, for technical reasons, after this termination, library had no choice but give all Chinese materials contracts to LSC.
54. Defendants' lawyers never mentioned this termination in their materials. Two affiants from library didn't provide any information on it either. Only Mr. Casale (senior construction buyer in

City of Markham) skated over it in his affidavit. To understand CPCL's case, your justice should know the termination of opening contract for Southeast branch in August 2015. See the details on this termination at paragraphs 19 to 44 in my affidavit, Volume 1 of 2, in my responding motion record.

55. After one month of the termination in August, library called me to a meeting on September 21, 2015. Mr. Casale and Mr. Pogue came to the meeting. For the first time Mr. Pogue asked me about our cost for library's service. I told him the truth that we were running at a loss at present. And then, Mr. Pogue and Mr. Casale in turns nicely advised me to drop the contract. They said that they were afraid that CPCL was too small to meet library's higher requirements in the future.
56. By then, I had dropped other business, and invested all my funds in this library service. 98% of our revenue came from this contract. Importantly, we did the service well. I believed it was hard to find a second vendor that could provide a better service than us in Canada. We would soon copy the service to other Canadian libraries. We had a bright future.
57. Besides, because we signed the contract with City of Markham, some cultural big companies in China, Taiwan and Hong Kong would join us. They would invest on our corporation to develop library's business in Canada, including library electrical books, library website videos and so on. Some co-operation projects were under discussion.
58. We were discussing a cooperation with a strong publishing house in China. Later, in November 2015, we signed an agreement of cooperation. This publishing house started to raise funds for the cooperation. They planned to invest an amount of RMB60,000,000.00 within 3 years for the projects we agreed to (This cooperation had to come to an end as our contract by City was terminated). How did I drop the contract under such situation? Of course, I declined their kind advice.
59. From then on, library began to find all difficulties to force us to drop the contract. These were bullying sad stories. I had huge damages in this period. Please see details on how they cornered us to drop the contract at paragraphs 19 to 4 in my affidavit, Volume 1 of 2, in my responding motion record.
60. Anyway, in the second half of 2015, we accepted prices reduction and materials returns without conditions and arguments. After a year's service, we gained much experience and were good at all aspects in library service. We were confident that we would touch library's heart with our



obedience at price and returns, and with our excellent service. Library tried to find our errors under a magnifier but they failed. They didn't have any chance to give us an error warning though they needed it so badly. In the end of the year, we reached Mr. Pogue's requirements in his letter on September 25 2015, and of course, we accomplished the budget as scheduled.

Attached and marked as **Exhibit 37** a copy of our delivery report 2014 and 2015, Volume 1 of 2, in my responding motion record.

61. To draw the lesson from the two delivery warning notices in June and July 2018, I asked MPL to provide me the materials guide 2016 from October 2015. We needed to prepare materials for 2016 several months ahead. However, it seemed that MPL didn't mind the delivery time any more. They found all the excuses to stall for time. When the new year came, they still did not provide us the material guide. As things stand, it must be late for deliveries this year.
62. Library always told me they would soon give me the new guide during this period. They confirmed several big changes, including that books were requested two copies for each title in the end of October 2015. Telling us the changes indicated a sign that we could go on the service in 2016. I felt very happy. Then I began to ask our vendor in Taiwan to take in the books we selected for 2016 based on one title two copies policy after the meeting on October 29, 2015. Attached and marked as **Exhibit 38** a copy of meeting minutes for the one title two copies policy for 2016, Volume 1 of 2, in my responding motion record.
63. In January 2016, the new material guide was still on the way. Even if the guide came by this time, it would still be too late. If the new materials were transported by sea, the earliest time we were able to send the processed materials to library was at lease in April. Then the tragedy of deliver delay as they claimed in August in 2015 would repeat.
64. Though library should be blamed for the delay, I decided to deliver a big shipment in 2016 by air regardless of the cost. We had a big lesson last year. I confirmed the order in Taiwan on January 13, and a big shipment of books arrived in Toronto on January 16, 2016. Attached and marked as **Exhibit 39** are copies of documents for the air transportation; Attached and marked as **Exhibit 40** is a copy of book list we order by air in January 2016, Volume 1 of 2, in my responding motion record.
65. I didn't expect that, again as the termination in August in 2015, on January 27, 2016, Mr. Casale sent me a notice suddenly. In the notice he wrote: Staff are preparing a Report to Council recommending that the contract be terminated (which Staff anticipates will be endorsed by



Council). He announced that all services provided by CPCL under the Contract should cease immediately. Attached and marked as Exhibit 41 is the copy of the notice from Mr. Casale, Volume 1 of 2, in my responding motion record..

66. On January 29, Ms. Gilchrist sent me an email as the following: “MPL will accept delivery of any items purchased on our behalf that meet our profiles and that are already processed up until Tuesday, February 2, at 4:00 pm.”. We had only 3 days left for the final delivery after we got the notice. In the same email, she asked us to return all unused processing supplies library provided. Attached and marked as Exhibit 42 is the copy of Ms. Email to me on delivery limitation, Volume 2 of 2, in my responding motion record..
67. Under such circumstances, I asked to meet Mr. Casale. He arranged a meeting on Feb.2. When I came there, to my surprise, I found Mr. Pogue and Ms. Gilchrist from library were also there. Mr. Casale turned this private meeting to a meeting of 4 people without telling me beforehand. In the meeting, Mr. Casale confirmed that our contract was terminated. I found this was a meeting to confirm the last delivery time. Mr. Casale extended the final delivery date from Ms. Gilchrist’s February 2 to February 26, as doing me a favor. Attached and marked as Exhibit 43 is are copies of emails between me and Mr. Casale on the termination confirmation, Volume 2 of 2, in my responding motion record.
68. The materials in our last delivery on February 25 were not the materials by air of the new year. They were the products we prepared in the end of 2015 for the first 2 months in 2016. The products we bought for the new year all put into our storage. Library declared many times that they didn’t accept products without cataloguing. We didn’t have time to make records for the new arrival materials in such a short time. On the other hand, after our contract was terminated, I asked our cataloguers to have a holiday to save my budget. Moreover, as I clarified, we did the records at a big loss actually. So we had to put those new materials aside for the moment.
69. Defendants’ lawyers said in their factum that, “given that CPCL has stated the bid prices were too low to make a profit, CPCL likely would have been able to make a better profit by selling the leftover materials to someone else at a better price.”. That was the same as Ms. Gilchrist said to me in the email before. They were ignorant to say so. They should know the fact that books are not popular products at present. We were not a busy company that had many clients that could share those products. No one would accept so many books ordered for MPL. Importantly, no libraries in Canada would do business with us any more after MPL terminated our contract.

70. I didn't believe that the contract was terminated in such a simple way. Importantly, I did nothing wrong and I would have huge damages. So I made an appeal to City committee. My appeal was arranged on April 4. In those waiting days, CPCL had nothing to do, but I had to pay the 5 employees, and pay the rent, and pay everything a cooperation had to do. I suffered each day for the big damages. Attached and marked as Exhibit 49 is a copy of damage while waiting the City's decision, Volume 2 of 2, in my responding motion record.
71. However, the meeting on April 4 didn't bring any changes. I was allowed to make a 5- minute speech. Then I was asked a few questions. This lasted about ten minutes. Because of the limited time and my poor English, I could not make the issues clear in the meeting. Then I was asked to leave from the meeting. I left the meeting a written material. I was not sure whether those councilors could have my materials. Attached and marked as Exhibit 50 are copies of my five minute's speech and my written material, Volume 2 of 2, in my responding motion record.
72. The second day on April 5, I got to know that the City council approved library's termination suggestion. On April 18, Mr. Casale on behalf of the City sent me another notice of termination.
73. That was all. A contract obtained through a half year's bid process with a big investment was terminated by the reasons of "fabricated errors" or "without causes" by one side. We got no remedy. I couldn't find a better way but make a lawsuit in superior court on May 5, 2016.
74. Mr. Boghosian claims in his both factums that they terminated the contract on the basis of "adequate written notices". He explained the adequate as that they gave a notice in January and then gave another notice in April. If defendants argued it was only a notice in January, they should not stop accepting our materials. From that notice in January we had no income. We suffered each day. And then they said the effective notice was given in April. What was the use of the notice in April? This is obviously a breach of contract. Their behaviors of confusing right and wrong go beyond people's imagination. I wonder if they are professional lawyers?

### **Defendants Summary judgment motion**

75. Our lawsuit was based on a good will. The nature of the case was wrongful termination. We claimed for "specific performance, or, in the alternative, the damage of \$280,000". We would accept all the damages ourselves if defendants would make a settlement. By that time I still honestly believed the two sides only had some misunderstanding because of the different cultural

backgrounds. Attached and marked as Exhibit 53 is a copy of my statement of claim, Volume 2 of 2, in my responding motion record.

76. However, defendants never accepted our frequent offers to settle. Contradictions between the two sides are escalating. Defendants tried every possible means to stall time for a year, and then offered us \$ 25,000.00 on the condition that we withdrew the action. They threatened me that they would make a summary judgment motion otherwise. I knew nothing about the summary judgment motion at that time.
77. Because it was defendants' motion, I had to follow their steps. I felt that CPCL became the defendant. The time were scheduled as the follows. Hearing of the motion was on June 20, 2017; Moving party's motion record was due on April 21; Responding party's motion record was due on May 15; Moving party's factum was due on June 6, 2017; Responding party's factum was due on June 13.
78. When I got hold of defendants' motion record, I got a big shock. They said it was a summary judgment but how they made such a clear case so complicated. Their materials were nearly 1000 pages.
79. I had never had the experience in a lawsuit before, and my legal knowledge was limited. And more limited was my English. Defendants had much more time to prepare their materials. They had a team. In the process of the litigation, I followed defendants' lawyers' steps helplessly. When I found what happened it was too late.
80. According to the time schedule, I had to submit my responding motion materials within 25 days from the time I received the moving party's materials, and submit my responding factum within 7 days from the time I received the moving party's factum. To finish my factum, I didn't go to sleep for several days.
81. The fact was that I could not complete so many materials defendants offered in such a limited time, and I could only read part of the materials in a way of extensive reading. I only had a sketchy knowledge to their materials. That was much like my taking an English examination. I suppose I could get 40 points at most for their materials at that time.
82. Defendants had 3 witnesses, Mr. Pogue, Ms. Gilchrist and Mr. Casale. Mr. Pogue declared that Ms. Gilchrist had a more direct deal with CPCL than he did, and he just began to have a direct

deal with CPCL from September 2015. As for Mr. Casale, he knew nothing about our service. He learnt everything from the other two.

83. Later, I had a thorough look on Ms. Gilchrist's affidavit and I was shocked. She created CPCL an error for each project in the service. Some chronological orders were inverted, and some relevant backgrounds were hidden. Some issues were used out of context, and some library's own mistakes were shifted to CPCL. The most irritating thing was that she even turned our achievements and contributions into errors. In short, none of the errors she summarized were true in her affidavit. I would say it again here, none of the errors she summarized were true in her affidavit.
84. To reply each Ms. Gilchrist's claim required a good understanding and a lot of time. However, it was really hard for me to reach such a high standard at that time because of my limited English. To review the whole case, I found it was only those Ms. Gilchrist defamatory stories that affected Mr. Pogue, Mr. Casale, Council committee, and judge. So, it is necessary to make a study on her affidavit. I added some notes on her affidavit for a better understanding. Attached and marked as Exhibit 54 is a copy of Ms. Gilchrist affidavit with my notes, Volume 2 of 2, in my responding motion record.
85. After I received their affidavits, I asked to do an oral examination at once. But defendants lawyers stood in the way. Because they didn't cooperate and I knew little about it, there was little time left before the hearing. As a result, all the evidence provided by the defendants were without an oral examination. Attached and marked as Exhibit 55 are copies of emails between me and defendants' lawyers on oral examination, Volume 2 of 2, in my responding record.
86. In order to prove the existence of the term of "termination without cause", defendants submitted "General Terms and Condition" of City of Markham. "General Terms and Condition" was a temporary document used only in bidding period. That was an out of date document. It was replaced by Service Agreement later.
87. Defendants didn't mention the Service Agreement in their original statement of defense. Under my request, they revised their legal materials. Their lawyers said they didn't know there was such a contract before. See more details at paragraphs 121-127 in the Service Agreement and General terms and conditions in my affidavit, Exhibit E, Volume 2 of 2, in my responding motion record; And at paragraphs 112-125 in Factum for Appeal Attached and marked as Exhibit 66, Volume 2 of 2, in my responding motion record.

88. I was the only person who replied all the materials to defendants, including motion record and factum. I needed to explain so many “errors”, made a study on the theory of “termination without cause” that I had never heard of before. And I also needed to reply defendants’ counterclaim. I felt great pressure and fell into a mess.
89. Under such circumstances, the documents I submitted for the summary judgment motion were untargeted, confusing and full of language problems too. Reviewing those materials now, I can not understand what I talked about in many places myself. I admit that the main reason for judge dismissing our action was that I submitted very poor materials.
90. Because I could not submit qualified materials to the court, all my hopes rested on the hearing. I trusted judge who I thought could make things clear. I fondly thought it was not difficult to see if we had errors or not in the service. However, I didn’t expect what happened in the hearing. The hearing became defendants one side show stage. I could not express myself at all and was misunderstood in most of the issues because of my poor English. See what happened in the hearing at paragraphs 128 to 172 in my affidavit, Volume 2 of 2, in my responding motion record.
91. Judge didn’t pronounce the judgment in the hearing, and told us that she would give the judgment very soon. At that time I still thought that judge wanted to make a careful study on our materials after the hearing. We only argued about the price and nothing else. I believed in judge, and there should not be a too bad result.
92. However, the result was the opposite. My action was dismissed and I was judged to pay defendants \$50000 for the cost of litigation. Attached and marked as Exhibit 62 is a copy of judge’s judgment for summary judgment motion, Volume 2 of 2, in my responding motion record.
93. I applied an appeal immediately. I confirm I was unfairly treated. I didn’t know what really happened in the hearing till I had the transcripts of the proceeding. Reviewing the transcripts, I confirm my human right was deprived. This court transcripts is a good material to see the situation for a litigant with limited English in court. Attached and marked as Exhibit 63 is a copy of my factum for my appeal, Volume 2 of 2, in my responding motion record.
94. Defendants were scared that I appealed the case. They had presented too many lies in the case. They claimed that they had right to ask us to deposit the cost of \$ 50000 before we appealed. To stop our appeal, they took a motion of security for their cost. I lost all my savings and fell into debts. I didn’t have even one thousand for the deposit at the time.

95. I always feel grateful for her honorable justice van Rensburg who was the judge held defendants' cost security motion. She knows our new immigrants. Finding my English was limited, she suspended the hearing for a moment. She found me a court interpreter urgently and then went on the hearing. The hearing was not one side show any longer like the situation in summary judgment motion. I could know what was going on in the hearing and I could argue about the issues with the help of the interpreter.
96. There was a sharp contrast between the two motions on the length of time. The cost security motion was not important as the summary judgment motion for sure. However, this motion lasted more than 4 hours. The hearing of summary judgment motion was only one hour. In the end, their cost security motion was dismissed. We got the opportunity to appeal. Thanks for her honorable justice van Rensburg! Attached and marked as Exhibit 64 is a copy of judge's judgment for defendants' cost security motion, Volume 2 of 2, in my responding motion record.
97. Appeal was not a retrial. Two sides were given some time for their statements. No arguments were allowed in the hearing. The hearing lasted one hour. To tell the truth I don't fully understand the judgment. It was very short. Judges wrote in their judgment, "we do not accept the submission that the respondents made the matter unnecessarily complicated and thereby incurred unnecessary costs". See more details on my appeal at paragraphs 178 – 182 in my affidavit, Exhibit E, Volume 2 of 2, in my responding motion record.

### **My individual litigation**

98. The corporation lawsuit was terminated, but the follow-up issues came out constantly. The facts of slander and libel covered up by defendants appeared one by one. My individual damages by defendants' defamation grew bigger and bigger. I had to make a lawsuit on behalf of myself.
99. We sued defendants for defamation. We sued them for the issues that happened during that litigation as well as after that litigation. Those defamatory actions before our lawsuit were all done behind my back. I didn't know them until the end of 2017 before the hearing.
100. CPCL's goal for its lawsuit was to make a settlement and continue to perform the contract. If a settlement was made, CPCL could stop asking for damages. Because we would go on to work for library if there was a settlement, we could not fall out with library. If the settlement was made, we would ignore and excuse what they did before.

101. We sued defendants for the wrongly termination of the contract. As long as defendants were able to prove that they had the right to terminate our contract without cause, they had no problems. Just as judge said in the hearing, importantly, they had right to terminate the contract without cause. By emphasizing termination without cause, City is not held the higher standard of proving “default”.
102. Different from CPCL’s action, this is my individual action. I am suing the defendants for their defamatory actions, claiming for remedy of my huge personal damages caused by defendants’ defamation. Defendants have to proving that they didn’t have the defamatory actions.
103. It was unnecessary for me to tell whether that termination of contract was lawful or not. I am not interested in the termination itself any more. Even if it is lawful for the termination, I am still prosecuting for defendants’ responsibility of slander and libel they did to me. Defendants could argue that they were entitled to terminate CPCL’s contract without cause, but they were not entitled to badmouth me as individual. In a word, the corporation’s action and my personal action are absolutely different cases.

### **Harm and damages**

104. I am the only owner of CPCL. All the damages of CPCL were naturally transferred to my individual damages. In order to develop this contract I stopped other businesses. 98% of our income came from this contract by the end of 2015. This can be proved by our corporation’s financial statements. We had no more businesses and no income after we delivered the final shipment to library on February 25, 2016. Attached and marked as Exhibit 66 are copies of my corporation’s financial report 2014, 2015 and 2016, Volume 2 of 2, in my responding motion record..
105. In the following months waiting for the final decision from the City, I had to maintain the operation of the corporation, paying staff’s salaries and bank’s loan, etc. Though I tried my best to mitigate the cost, the damages still came along inevitably. I had to lay off all corporation’s employees gradually within one year in 2016. There were altogether 6 people who worked full time for the corporation including me. Our staff were the best team for the library’s Chinese service. Letting them go meant the corporation was broken up. See the evidence for the damages while waiting City’s termination notice at Exhibit 49, Volume 2 of 2, in my responding motion record..



106. For this contract, I changed my working space into a bigger one. The rent contract was on a 5- year lease. The rent immediately became a burden after the contract was terminated. But I could not terminate the lease. I tried to find a lessee that could take over my contract, but failed. By June 2017, I was no longer able to pay the rent. According to the contract, the landlord suddenly impounded all the corporation's stuff, including all products ordered for library, office equipment and furniture. The total value of my office stuff was at least \$ 150,000.00. Because all those stuff were still in the landlord's hands, I can not give the exact amount till I have them back after I pay the rent and overdue fine. From the time on our office was closed, the corporation lost not only its staff but also its fortune. My business came to an end completely. Attached and marked as Exhibit 67 are copies of distress documents from landlords, Volume 2 of 2, in my responding motion record.
107. After the contract was terminated, all corporation reputations were gone. We lost all our old clients, including Vancouver , Toronto and Vancouver public library. Some potential clients that we had established contact with left us as well. My library business dream totally came to an end.
108. In June 2018, I was no longer able to pay bank's loan for this contract monthly, and bank of BDC made a lawsuit against me. Because I myself guaranteed the loan, I was judged personally to pay the loan . See attached and marked as Exhibit 68, a copy of Court judgment for BDC' loan, Volume 2 of 2, in my responding motion record.
109. Because I am the only shareholder or owner of CPCL, I took the money in my personal bank account as the funds for my business. So, besides the bank of BDC, I also owed a big debt to other several banks. By March 2019, I had to ask a licensed trustee to help my finance problems. I now pay back my debts to those banks step by step according to my real ability. In anyway, I lost all my credits in the banks. Attached and marked as Exhibit 69 a copy of my performance of paying debts arranged by my trustee. Volume 2 of 2, in my responding motion record.
110. The debt to banks was only a part of my debts. I own more debts to my vendors in China and Taiwan, and to my friends and relatives. By now I am owing to my vendors about \$ 85400 and owing to my friends and relatives \$76600. Attached and marked as Exhibit 70 are copies of unpaid invoices and IOU from my vendors and my friend, Volume 2 of 2, in my responding motion record.
111. I have been engaged in Chinese cultural business for the most part of my life. It was too late to change my profession for my age. What is worse is that I lost all my reputation and credits,



which is very difficult for me to find a job. At the moment, I have no job and cannot keep a basic living.

112. I have been often waking up from nightmares and reluctant to recall what happened in the past. I don't know when I can pay off my huge debts, and feel very guilty for my family. Due to the lasting lawsuit, I begin to have both physical and mental problems.
113. In short, the unbearable damages and harms defendants brought to me are the basic reasons I sued them. Who can tell a way to get rid of my present situation?

### **Defamation by City councilor**

114. After CPCL's action was dismissed, on December 11, 2017, City councilor Ms. Amanda Yeung Collucci, issued a statement on behalf of government in a Chinese media Mingbao. She stated, "City terminated library's contract for Chinese service with the book company providing library's service. The reasons were the unqualified service and delayed delivery.". She did not mention the termination without cause defendants argued about in court.
115. She also stated, the contract was replaced by the second lowest price bidder. But, she didn't tell that City would pay twice as much a price for the same service to the new vendor. Later, I learnt from library's report that City's legal's department suggest City should declare to the public that "the second lowest price" company take over CPCL. Attached and marked as **Exhibit 71** a copy of news in Mingbao, Volume 2 of 2, in my responding motion record.
116. The Mingbao press is the biggest Chinese media in Canada. Immediately, it searched my personal information and gave follow-up reports. "Mr. Cao" became famous in all Chinese communities in Canada. Besides, Mingbao is an international media. My case and my name soon spread to all over the Chinese world. Attached and marked as **Exhibit 69** are copies of news issued in Mingbao press, Volume 2 of 2, in my responding motion record..
117. Councilor Yang didn't get involved in our case. I did believe she knew what really happened. But so confirmed as she stated, it showed that she believed the contract was terminated because of our "errors". This is what I worried about most. All the people around me would think the same.
118. As a Councilor, Ms. Yang's statement on behalf of City of Markham with government credibility. Her statement confirmed to all the people who know me that we had errors in the

service. My reputation is tarnished completely. With the case spreading so widely, my damages were irreversible. Only this can decide our “errors” are required to be proved in a higher standard legally.

### **Slander of Offensive behaviors**

119. If I didn’t make a lawsuit, I will never know this issue. Defendants terminated our contract actually by “my bad behavior” at the meeting on January 20, 2016. I learnt this from both Ms. Gilchrist’s and Mr. Pogue’s affidavits.
120. About this period of time, library was very anxious. If they gave us the new year’s selecting profile, they could never terminate our contract. But, they had to terminate our contract, because they had returned the opening contract of Southeast branch to LSC, and obtained more than \$354,755.00 for the substitution. But they could not find any excuse to terminate our contracts. We had no errors. In the second part of the year, library lowered the prices and returned materials unreasonably. and we were tolerate and did anything library asked us to do. In order to save the contract we tolerated and accepted anything.
121. I don’t know what was the right process to terminate a contract. By my experience that Mr. Casale, City’s contract buyer terminated the opening contract of Southeast by his own decision, Mr. Casale had the power to terminate the contract. He sent a letter to me and terminated that contract by himself. That was the fact.
122. I questioned Mr. Casale how he got to know my offensive behaviors. He told me library told him by telephone. After 7 days of the meeting, Mr. Casale sent me the termination letter. Termination agreed with time. I came to see why library told Mr. Casale the “offensive behavior”. They asked Mr. Casale to terminate the contract right now by this excuse and they had no more time. Mr. Pogue and Mr. Casale didn’t wrote the “offensive behaviors” in their report to City later. See the details on this slander at paragraphs 211- 224 in my this affidavit, **Exhibit E**, Volume 2 of 2, in my responding motion record.

### **Mr. Pogue and Mr. Casale’s report to City**

123. In library termination notice on January 27, 2016, I was told that library would soon provide a report to City to suggest the termination of our contract. But I knew nothing about what the report was about. I didn’t get the report through legal channels until the hearing approached.

124. Defendants suddenly offered more than 1000 pages materials near the hearing, I could not read them all. So I just looked through them and found an issue that page 5 was missing from the report. I made a further study of the report and found that most of the contents on the first page were blocked out. There were also contents to be blocked out on page 2 and 4. The erasing work was done carefully. It was not easy to find the correcting mark without a careful study. I questioned defendants' lawyers. At my request, they had to give me the original report. And I got to know the document of the report is seven pages and a half, defendants deleted two pages and a half. Attached and marked as Exhibit 75 is a copy of original report. See the revised report at page 302 in defendants' motion record, Volume 2 of 2, in my responding motion record.
125. In fact, when defendants gave me the original copy, I could not see why they blocked out those contents at that time due to my limited English and also the limited time. After our lawsuit was terminated, I could have time to compare the original one with the revised one. I found that those contents blocked out were all the key issues in the report.
126. As I stated, I didn't have enough time to read this report before the hearing and only read it very roughly. Then I put the report in the exhibits for the future use. In my long 30 pages factum, I had only one paragraph for this crucial document. I said nothing more. At that time I thought I could make everything clear in court anyway. Because I myself experienced each issue library claimed in the report. I didn't expect what happened later in the hearing.
127. In the hearing, I told judge that library's report was full of lies, only one sentence. It was a pity that judge stopped me from this topic. However, later I found that judge took this report as the most evidence that showed we had errors in the service. She wrote in her judgment: "the report had significant support which demonstrates there was no bad faith in the without cause termination." I found that our "errors" approved by judge were all from this report.
128. This made me carry out a close study on this report. I was shocked by the false statement in this report. I found all defendants' defamatory stories came from this report basically. Library listed 6 issues to CPCL, including all the items in library service. Most important of all, library hid the fact that they had to terminate the contract because they had got \$354,755.00. They also hid the facts how they discussed terminating the contract. See details on this report from paragraph 225 to 255 in my affidavit, Exhibit E, Volume 2 of 2, in my responding motion record.

### **Defamation in their motion**

129. In defendants' summary judgment motion, in order to stop my action, they lied and smeared me unlimitedly, based on their advantage of my limited English and my poor legal knowledge. Defendants could argue about the termination without cause, but could not make those defamatory stories. Those defamatory stories ruin me the whole life. See details at paragraphs 256 – 258 in my affidavit, Exhibit E, Volume 2 of 2, in my responding motion record.
130. I got huge damages from those "errors" which were confirmed by law. And the bad name will go with me forever. From this point of view, those "errors" have to be proved in high standard.

### **Part four — Issues and the Law**

#### **Motivation for the defamation**

131. We had no conflicts with defendants and had a good relationship before June, 2015. Library didn't think about the termination of our contract till June ,2015. Their original motivation was to make a stop for further budge reduction for Chinese materials.
132. The best way to solve the problem was to give the contract back to the previous vendor LSC that charged a doubled price higher. The best time to terminate our contract was at the end of the year. However, they got to know the new branch of Southeast would open around the end of the year. And library couldn't wait. If we began to prepare for the new opening service, they could not terminate our contract at least within the four contract years. So library created two delivery warnings and easily terminated the contract for the new opening for Southeast branch. See details at paragraphs at 34-44 in my affidavit, Exhibit E, Volume 1 of 2, in my responding record.
133. The contract of Southeast branch was terminated in August, 2015. After this termination, library faced such a situation that they whether returned this contract to us in the future or terminated all our contracts with City. That was because MPL could not have two vendors of Chinese materials providing the same service at the same time. If there were two vendors of Chinese materials at the same time, library could not deal with the difficult issues, for example, the same products were ordered twice, different records and different prices, etc.

134. The easiest way was to corner us to drop the contract by ourselves. After library terminated that contract in August, they advised me to drop the contract myself. I declined. That was why library lowered our prices and returned materials unreasonably after August.
135. Library didn't expect that, in the second half of 2015, we accepted all library unreasonable requests, no matter what they were. Library couldn't find a way out. By the end of 2015, library had obtained the additional budget of \$354,755.00 for the substitution of the contract for Southeast branch. Getting this budget, library felt great pressure. Attached and marked as Exhibit 72 is a copy of confidential meeting minutes between library and City. See details at paragraphs 45-80 in my affidavit, Exhibit E, Volume 1 of 2, in my responding record.
136. At this time, I asked for new year's ordering profile. Library felt pressure. On January 20, 2016, library made the last attempt to force me to drop the contract by a big scale requirements change for products without changing the cost. However, they failed again. I accepted their changing conditions and accepted the prices as well. Under such intense pressure, library created that a story that I had "offensive behaviors" to library staff. By demonizing my image, library got Mr. Casale, who had the power to terminate a contract, to terminate our contract first. On January, 27, Mr. Casale sent me the notice of termination. Mr. Casale was brought into the case.
137. In February, 2016, I appealed to City of Markham for the unfair termination. Under such circumstances, Mr. Pogue and Mr. Casale had no way back. They had terminated the contract of opening service of Southeast branch in August, 2015 and also the contracts for other 6 branches in January, 2016, without prior approval from City council committee. They need to give a reasonable explanation. They two had the same goal.
138. Many false and defamatory stories were created in this period. Those stories all were included in a suggesting report by Mr. Pogue and Mr. Casale. They submitted this report to City on March 27, 2016. The report was full of defamatory stories except one true fact that library had obtained the additional budget for the Southeast branch new opening by replacing CPCL with LSC. Our "errors" and \$354,755.00 issues were put on the council committee's table. That was an internal operation and I didn't know what they wrote in the reported to City. See details on this report at paragraphs 225 – 255 in my affidavit, Exhibit E, Volume 1 of 2, in my responding record.

139. On April 5, 2016, council committee voted to approve the report by Mr. Pogue and Mr. Casale. From then on, the termination of the contract became irreversible. From then on, MPL could do nothing but lie to the end, insisting that we had errors in the service. We launched the lawsuit on May 5, 2016. City was brought in. City and library became defendants. They were in the same boat finally. The two defendants went further and further on the road of defamation.

### **Corruption and Malfeasance**

140. **Dark-box operation.** Why did Mr. Pogue and Mr. Casale dare to submit the report suggesting the termination of CPCL's contract before confirming those errors in the report? The reason was simple. They knew that this report was operated behind my back and we wouldn't know what they created in the report. If we hadn't appealed to law, we would never have the chance to read this report. Government agencies' dark-box operations are the inevitable result of defamation.
141. **Abuse of power.** Mr. Pogue and Mr. Casale reported to the City Council ( suggesting the termination of the CPCL contract) on April 4, 2016. But the opening contract of the new Southeast library was terminated eight months ago. Besides, the contract of six branch libraries was also terminated three and a half months ago.
142. The returning contract to the previous vendor was also a first operation, and then a follow-up procedure. Moreover, the library had received an additional budget of \$354,755.00 for the new Southeast Library before the City Council approved the substitution of CPCL. All that needed to be done were done beforehand. What left for the councilors to do was just to raise their hands, which was a mere formality. The City government let it go, choosing to go with it.
143. **Listening to only one side.** When I learned that the City Council was scheduled to review the report provided by Mr. Pogue and Mr. Casale on April 4, 2016, I applied for a five-minute opportunity to speak at this meeting exercising my right and I also submitted more than 40 pages of explanatory material in which I explained some of the key issues. But I was not allowed to sit in and listen to Mr. Pogue and Mr. Casale' introduction of the report to the City council.
144. The next day, I got the news that the board of directors of the City council approved their proposal. From then on, there was no possibility of compromise between the two sides, and confrontation could only be escalated. Before the City Council approved their proposal, they did not verify it to me or asked me for any opinions. They just listened to one side of the story. City

council committee didn't care for what was really happened. So when Mr. Pogue and Mr. Casale advised City could use termination "without cause" to terminate contract. They accepted. City government should be responsible for the negligence in rash and blind decisions

145. **Arbitrary clause.** City know well that they have had new edition of General Terms and Conditions. Service Agreement and the new edition of General Terms and Condition have exactly the same provision for the termination term. In order to dismiss our action, they insisted the old, replaced General Terms and Conditions as the contract. Because they could not explain the Service Agreement, they said that contract was made only for C3. There is no doubt that City's arguing the existence of this old term is encouraging their staff to be dishonest. Importantly, this term is an absolutely an arbitrary term.

146. **Unprincipled shield of the faults of "one's child".** There were lots of loopholes in the library's report. The City government couldn't be unaware that replacing us with LSC would cost twice as much. After we took legal action, various facts emerged. However, instead of correcting the mistakes in time, the City government pretended not to know. They tried hard to help their subsidiary to make up for legal loopholes instead.

147. **The power to squander taxes.** If the defendant was an enterprise or an individual, and they terminate the contract for their convenience, I wouldn't say anything. They had the right to allocate their own hard earnings. But the defendant's expenses were from taxes. No individuals paid a penny for the case. I spoke to councilors, telling them that replacing us with LSC would require taxpayers to pay additional hundreds of thousands more each year. But there was no response to my remarks. Take the view of the whole case, the real problem is that City has uncontrolled power to squander taxpayers' money.

148. LSC has been serving Markham Library for more than 40 years. The total amount of overpayment made by the defendant in the past and in the future is an astonishing figure. I have the reason to suspect that the defendant has a dirty secret in replacing the supplier. It is hard to believe that there is no corruption in such a large amount of unprincipled expenditure.

### **Discriminatory environment.**

149. Library had two vendors, CPCL and LSC. The library's experience, such as price, delivery, data and processing, were all from those two suppliers. Defendants know well enough that, as for the service of supplying Chinese books to the library, the two suppliers were not at the same



level. It's ridiculous to replace a company that has a strong Chinese background with a company that doesn't understand Chinese. However, the library turned a blind eye to the flaws of LSC's Chinese service. Whether it was in the past or it is now, the two companies are marked with two different labels and they publicly carried out double standards. Attached and marked as Exhibit 84 is a copy of report to general committee to prove that LSC had serviced MPL more than 40 year, Volume 2 of 2, in my responding record.

150. Please see the following facts. Library complained we charged too much. They returned the contract to LSC that charged them more than twice as much; From January, 2016, CPCL has been asked to change the invoice pattern. All invoices show only three prices without a unit price. However, library didn't ask LSC to make a change; The DVDs released for more than two years and supplied by CPCL were returned. But the DVDs supplied by LSC and issued for more than two years were never returned; Each of our records has a cover, a title in Chinese and a Chinese introduction. LSC's records in the past could not be read both in English and in Chinese. After getting back our contract, LSC tried to imitate us, but the record still has no cover and not every product has a Chinese introduction; CPCL was not allowed to upload data directly. The data of each delivery order had to be strictly checked by the library software. But LSC was exempt from inspection despite many mistakes; Library complained the CPCL had difficulty providing enough DVDs. But the DVDs offered by LSC was three times less whether in the past or at present; Library asked CPCL to provide personalized subscription services for readers, but they didn't ask LSC to do so; Library asked CPCL to deliver Chinese products once a week, but LSC didn't deliver Chinese products every week. Attached and marked as Exhibit 85 is a copy of LSC DVDs' list in 2013, Volume 2 of 2, in my responding record.

151. I beg your justice to notice this case related with immigrants. This is actually a bullying case. As an immigrant, I had more pressure and had more difficulties in finding a job. I worked harder than people imagine. I set up the corporation and I did the contribution to Canada the same as the old Canadian. I even created several working opportunities. Now I am just asking to have a chance to speak in court.

### **My poor English**

152. Take a look of the whole case, language barrier is involved in each issue. Language barrier is the biggest headache issue for new immigrants. If there were no language issue, defendants would not dare to create so many lies in the lawsuit. In a sense, it is the language that beat me in



CPCL's case.

153. During the lawsuit, when I questioned something important, their lawyers pretended not to understand and replied something else to confuse the situation.
154. While defendants argued the termination without cause, they created so many issues at the same time. This was clearly to bring me difficulty. They knew I could not read them in a limited short time.
155. Judge misunderstood me in many places in the hearing. This can be confirmed by court transcripts.
156. Defendants submitted so many authority of cases. I didn't read them. But I run over those documents by finding key words in ten minutes. I find none of them are the case related with language problems. So those documents have little value of reference on our case.

#### **Lawyer's unethical professional conduct.**

157. I can understand that defendants' lawyers work for them. But as lawyers, they have to keep the bottom line. They can not help defendants making lies.
158. The typical example of the lie is the issue of library's report to City. My English was so poor but I could find the report was tampered just from a quick look. Though defendants used another attorney to sign the document of the library's report, I don't believe Mr. Boghosian himself could not realize the report was tampered. Defendants' three litigants all mentioned this report in their affidavits, but Mr. Boghosian said nothing about it. That he didn't mention this most important evidence in the case is only to show that he avoided talking about it.
159. Then, and why did Mr. Boghosian fear nothing to submit such a tampered document. Is it accidental for him or a method frequently used by him. The lawyers in their LLP are claimed the leaders in the defence of public authorities. If his client was not a government, did he do so? Whether he knew the tampering or not, the tampering brought government a shame.
160. Together considering so many lies defendants made, Mr. Boghosian was suspected to fool judge first and then take hostage of the court, taking the advantage of government authority. I beg your justice to attach importance to the case. Court can not be controlled.

#### **Conditions defendants' summary judgment motion based**

161. Normally when one sues defendant for defamation, the defamatory actions have to be proved with high standard. And importantly, in my case, all evidences show that I have huge damages. So all defendants' defamatory actions I accused have to be proved in more than high standard.

162. All the issues raised in CPCL's case can not be believed to be proved in high standard on the following facts? Plaintiff didn't sue defendants defamation. Judge was advised that, even if he or she found plaintiff had no errors, defendants still had the right to terminate the contract. It was a summary judgment motion. Defendants provided more than 1000 pages materials for their motion while plaintiff provided more than 800 pages. Plaintiff provided a very poor material that is difficult to understand. Judge was told that 28 % of CPCL's income came from this contract (please refer it to court transcripts). Defendant is government that usually represents justice. The provision of termination without cause was confirmed. The hearing lasted one hour.

### **Seeking a permission for a quick test**

163. Mr. Boghosian claims I am in abuse of an action. I know an abuse of a action is a waste of judicial resources. Mr. Boghosian claims, "City moved for summary judgment in the CPCL action on two basis. One is the "breach of contract", and the other is the "adequate written notices". In order to save your honorable justice's precious time, I am suggesting a quick test.

164. I beg your honorable justice to test one or two "breaches of contract" in this hearing. Let us argue only one or two among so many errors in hearing. This will not take a long time, but it is very direct and real. Since none of the errors defendants accused us exist, I don't mind which of those one or two are selected.

165. Maybe another test is more easier based on Mr. Boghosian's claim. I beg your honorable justice give me 10 minutes to give a speech on his "adequate written notice" in the hearing. Let me tell why I say their "adequate written notice" is a beach of contract.

166. I am not appealing CPCL's case. I am only suing defendants for defamation. It is absolutely useless to explore or dig up the complicated processes for CPCL's action long time ago.

### **The last reasons to dismiss Defendants' motion**

167. This is not the hearing that decides whether there is defamation or not. This is the hearing that only decides whether I am given an opportunity to speak in court. Defendants can not rely on

winning the lawsuit by not letting the opposite speak. Defendants can make a counterclaim like they did in CPCL's case. This is equal.

168. There is no any danger that defendants will be unfair treated, or wrongly judged in a normal trial, if they had no defamatory actions. Defendants are very safe if they are innocent.

169. I have been waiting for this opportunity to speak in court for 4 years. I beg your honorable justice not to let me wait for more time. I cannot find a job and fell into great debts because of their defamation. At present, I can not afford basic things in my life at present, such as my car's insurance, medicine for my high pressure etc. It is very hard to go on a living next. Taking into account of humanitarianism, I should be given an opportunity to speak before law.

#### **Part five — Relief Sought**

170. The responding party, plaintiff, respectfully requests that defendants' summary judgment motion be dismissed, and that judgment be granted for plaintiff's action to proceed to a regular trial.

171. The responding party, plaintiff, respectfully asks for cost for this action.

All of which is respectfully submitted this 12th day of September, 2019



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Qiang Li Cao  
Email: [cao@ccbooks.ca](mailto:cao@ccbooks.ca)  
Self Representative

Tab I

Court File No. CV-19-00618275-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Between:

Qiangli Cao

Plaintiff

and

City of Markham                      and  
Markham Public Library

Defendants

**AFFIDAVIT OF QIANG LI CAO**

I, Qiang Li Cao, of the city of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the self representative for my own case, as well as the former CEO of Chinese Publications for Canadian Libraries Ltd (CPCL) and representative of CPCL's litigation started in May, 2016. I have personal knowledge of the matters herein referred to and I believe all the information and facts I stated in this affidavit to be true.

**Overview**

2. I made a lawsuit against City of Markham (City) and Markham Pubic library (MPL) on July 29, 2018, suing them guilty of defamation. My corporation, Chinese Publications for Canadian Libraries Ltd. (CPCL) , sued the same defendants in May, 2016. Their lawyers protested that I was abusing the action.
3. They offered me \$15,000 on condition that I had to drop the lawsuit. They said that they were sure they could terminate our action by another summary judgment motion. I refused them. Defendants submitted their statement of defense on September 7, 2018.
4. I received defendants' motion notice for summary judgment on November 26, 2018, and received the motion record on July 5, 2019. Defendants prepared their motion record in a very simple way, just copied the materials they used before again, and didn't respond to any allegations of defamation in my statement of claim. This is clear that they are trying to mix up the corporation

action with my personal action, so as to escape from legal responsibility. I believe defendants are abusing the action.

5. The two actions are indeed run deep to each other, but they are totally different from each other in subjects, natures and contents. Now let me elaborate them in two parts separately.

### **Part one. The story of CPCL's Action**

#### **The super low prices buried the root of the trouble (June, 2014 – June, 2015)**

6. I solemnly declare that I give the introduction of previous CPCL's case here, not to appeal for CPCL's action. The introduction is the essential background of my present individual case.
7. I immigrated to Canada in 2008. I registered a cultural company upon settling in Toronto. My corporation was an independent Canadian one, also acted as a branch office of Beijing Publishing and Publications Group. Several years later, my corporation became the Chinese books vendor of Chapter Indigo and some libraries. We also organized some cultural activities between Canada and China each year. When I realized library business was very promising, I changed my corporation's name into "Chinese Publications for Canadian Libraries Ltd.".

**Attached and marked as *Exhibit 1* is a copy of Corporation profile report.**

8. In June, 2013, we helped MPL to hold a big event of Chinese book fair. By helping this event, I got to know that City would launch a bid, as Request For Proposal, 285-R-13, Markham Public Libraries Materials and Processing Service in the end of 2013 (RFP) . So our corporation had the chance to tender for the bid.

**Attached and marked as *Exhibit 2* are some copies of Mayor's letter / Cooperation Agreement / Entrust Acting Agreement**

9. In the bid, I provided our background factually and City did background check strictly. Because we went for Chinese materials only, our superiority in skills and prices was obvious. City signed RFP with us.

**Attached and marked as *Exhibit 3 and 4* are copies of Price summary / Evaluation sheet /Mandatory Evaluation / Reply to the request / Request for proposal, 285-R-13 (RFP)**

10. City awarded us its Purchase Orders on June 20, 2014. It included the service of 6 branches on a 5-year terms, and a coming opening service for Southeast branch, with a value of \$1,990,634.97. The service included acquisition, cataloguing and processing., and the materials were in form of books, DVDs and CDs.

**Attached and marked as Exhibit 5 is a copy of Purchase Orders.**

11. On August 5, 2014, MPL signed “Service Agreement” with CPCL. By then, “Purchase Orders”, “RFP” and “Service Agreement” made up the contract.

**Attached and marked as Exhibit 6 is a copy of “Service Agreement”.**

12. Upon taking over the service from previous vendor LSC, we showed our powerful strength in providing Chinese materials. Because we were the same nation with the library’s Chinese readers and knew what they needed, we selected the right materials. The selections took into account of immigrants from Hong Kong, Taiwan and Mainland China, and 95% of the materials were issued within two years. Because our cataloguers knew bilingual languages, our Mark data were bilingual. Materials showed in library’s website took on new looks with images, book tiles and introductions in Chinese characters. They looked much more different than before. The previous records appeared on the website were “pinyin”, which were something like phonetic symbols for English. It is only the visual representation of speech sounds.

**Attached and marked as Exhibit 7 are the copies of the outlook of the records between CPCL and LSC.**

13. From July, 2015, we began to provide reader’s personalized service under library’s request. As long as library passed over the titles requested by individual readers, no matter whether the materials were traditional or simplified characters, one or several copies, we made orders for them without conditions.

14. In August, 2016 (after our contract had terminated more than half a year), we did some researches on the materials we provided on the basis of the data on library’s website. We found our materials still in good performance after our service were terminated.

**Attached and marked as Exhibit 8 and 9 are the copies of some statistics on our products.**

15. About one year from June, 2014 to June, 2015, the pre-phase coordination with library staff processed smoothly and fast. There were no conflicts or disputes between MPL and CPCL. We had a very good relationship. All these could be seen from the friendly working emails between library staff and our staff. The June of 2015 was the watershed. All problems started from that time. Remembering this date can help to understand the whole case. Defendants can not provide any evidence that showed we had disputes before this watershed.
16. Because the budget of 2014 had been fixed, there was a surplus for the year. City allowed MPL to use the surplus for other purposes in the library. That was very good for library. However, City would adjust library's budget according to vendor's prices next year.

**Attached and marked as Exhibit 10 is a copy of the report to General Committee in 2014.**

17. At the moment, there was a hidden trouble under the smooth and harmonious atmosphere. The super low prices we were proud of were not so good to the library. Because our prices were much lower than that of the previous vendor, the balance between budget and the number of materials was broken. LSC provided about 6000 Chinese items for each year in the past, and now with about the same price we provided more than doubled products. In fact, MPL only required about 6000 Chinese items.
18. At the beginning of 2015, City reduced library's budget for Chinese materials greatly. Budget for Chinese materials was reduced a second time on June 14, 2015. Even though the budget was reduced twice in the year, we still provided twice as many materials as that of LSC. This was beyond library's actual requirements. So some branches began to complain that they didn't have enough space for Chinese materials.

**Attached and marked as Exhibit 11 is a copy of the revised purchase order in 2015.**

**The contract for Southeast branch was terminated(June, 2015 – August, 2015 )**

19. On June 17, 2015, Ms. Gilchrist, (Manager of Technical Services) suddenly gave us a warning of late delivery by email, requesting us to deliver half of the whole year's products before the end of July. This made me startled. It was too late to deliver so big a quantity according to her requested time, unless the air transportation was used. But the cost would be raised greatly by air delivery.

**Attached and marked as Exhibit 12 is a copy of Ms. Gilchrist's email,(warning in June)**

20. This weird warning made us confused. Since we took over the service, there was a sudden booming for Chinese materials. Customers had enough materials to borrow. There were no point of a delivery warning. Importantly, library knew very well that it was they that made the delivery schedule to be extended for the first two years.
21. City didn't signed "RFP" with CPCL until mid- June. Besides, we were not allowed to start the service at once. Library arranged a serial trainings for us. Only when we passed the exam on September 5 could we begin to provide the service. We began to prepare materials from September.

**Attached and marked as Exhibit 13 is a copy of Mr. Su's email (Training arrangement)**

22. Under library's request, our head office, Beijing Publication and distribution Group sent their team leaders of the selecting and the cataloguing teams to library to attend library's training. They also passed library's exam as our staff in Toronto did. These trainings lasted about 2 months. MPL knew the relationship between CPCL and our Beijing head office. MPL could contact and visit our Beijing head office without letting me know.

**Attached and marked as Exhibit 14 is a copy of a trainee from Beijing.**

23. Chinese service for library was an international business. It required at least 3 or 4 months for the whole process in selecting and purchasing materials abroad, transportation, cataloguing and processing materials. Library knew this essential time very well. They had estimated a schedule for us, that we could start to place orders by September 5 and receive materials in early November. Then we had only one month for cataloguing and processing before the end of year.
24. Our price was twice as low as that of the previous vendor and we would provide twice as many materials for a year. Besides, this was the first year we provided the whole service for a library, and we had no Canadian experience. All these indicated that it was impossible to meet the budget in 2014. I had thought library would allow several months delay for the first year.
25. On November 28, Mr. Pogue (director of administration in MPL) called me to a meeting to discuss the budget in 2014. He hoped CPCL could help library complete the budget in 2014. Library expected that we provided all the invoices before the end of year, and the last delivery to library was before January 9. I expressed that we would do our best to cooperate with library's work.



**Attached and marked as Exhibit 15 is a copy of Ms. Gilchrist's email on delivery schedule for 2014..**

26. To fulfill the task, we ordered materials both by sea and by air. All our staff gave up their holidays, including Christmas days and New years days. We met the target exactly by library's schedule.
27. Because the whole year's deliveries were concentrated in the end of the year, and also the number was twice as many as that of last year. Our actual supply in the last two months of 2014 was the previous vendor LSC's total supply in the past two years. Customers would have enough materials to borrow in the first few months of the new year for sure.
28. Under such circumstances for the first year, we didn't have enough material inventory for the flowing regular service, that was to say we had to provide less materials for the first few months in 2015. On the other hand, this was an good opportunity for two things we had to do. First, we had planned to do a summary after a few months service, establish a standard flow line for cataloguing, processing and delivering. Second, we had planned to give our staff a training. We signed a contract with EOS in America. We used their system for cataloguing. According to our agreement, EOS would give our staff a training on their system. They would do by a way of combination of network and face to face training in the period of February and March in 2015.

**Attached and marked as Exhibit 16 are copies of training agreement between EOS and CPCL.**

29. I reported our plan to Ms. Gilchrist when I met her. I also promised we were sure to complete the budget by the end of year. She appreciated what we were going to do and had no objection to my plan. We delivered nothing in January and February, and delivered a small shipment in March. We began to deliver normally each week from April 23. I want to tell that CPCL did training for the service in this period nothing else. In the end of March, I wrote to Ms. Gilchrist to confirm the delivery situation for her convenience to report to library director. I gave again the reason of the delay and promised to complete the budget by the end of 2015. She replied that our schedule was very good.

**Attached and marked as Exhibit 17 is a copy of emails between Me and Ms. Gilchrist on delivery schedule.**

30. As a new vendor, I went to the library each week from January to June to discuss the services with library staff. I reported the delivery situation in each meeting with Ms. Gilchrist. She didn't complain anything. That was why this sudden delivery warning in June made me confused. She should let me know it in advance if library had to do so. By then, I I couldn't meet library's demand except that I ordered materials by air delivery. That would be very expensive.
31. I had invited all the library staff working with us to visit our office. It was scheduled on July 14. I thought we could understand each other after I explained the situation. In the meeting in our office, I explained the difference between the delivery by sea and by air. I promised that there was no problem for the following deliveries in the year. It seemed that no one cared about the time issue on delivery. I thought we came to an understanding. In any case, I knew library had enough new Chinese materials we delivered for customers in the first few months. So I didn't take measures to order materials by air.
32. I didn't expect that Ms. Gilchrist sent me another warning message on July 16, 2015. There was no change for the half materials requirement by the end of July. By then, time was running out even if I ordered materials by air.

**Attached and marked as *Exhibit 18* is a copy of Ms. Gilchrist's email, (warning in July)**

33. There was a term in the "Service Agreement" that "if either party fails to materially perform its obligations, this agreement may be terminated by either of the parties. The non-breaching party shall give the breaching party written notice of its failure to perform. The breaching party shall have 30 days to cure the breach. If the breach is not cured within 30 days, the non-breaching party may terminate this agreement. Ms. Gilchrist's two warning emails just met the termination term in the Service Agreement. *See details at Exhibit 6*
34. On August 17, I suddenly received a termination notice. The contract for the Southeast branch opening service was terminated. The reasons in the notice were that library experienced very poor fulfillment rates. Notice also stressed that City reserves the right to terminate the contract "without cause".

**Attached and marked as *Exhibit 19* is a copy of Notice of Termination in August**

35. I was puzzled at that time. The two notices were for the deliveries of regular 6 branches but used to terminate the opening service for Southeast branch which was still under construction. Why

did library terminate this contract in such a hurry? As this termination didn't affect our regular service for the six branches, I didn't argue about it. I even thought that library might use the termination to motivate us. They might give it back to us later.

36. All evidence showed that it was library's impromptu decision to give us two warning notices. After a long time, from Mr. Casale's affidavit I got to know something about it. At that time, library got to know that Southeast branch was going to open around the new year's day. The fact later was that library's budget for the new opening increased a great deal because we were replaced by LSC. These made sense. If library didn't terminate the contract of Southeast branch with us in August hurriedly, they would have little time to get the increased budget before the opening.
37. I didn't expect that this two delivery notices in June and July became the confirmed evidence later for our delivery error. Library used it constantly to defame us in many occasions. Of course, they didn't tell the background for the two notices.
38. I didn't realize it until the end of 2017 before the hearing for the judgment motion. Defendants' lawyers didn't tell this big issue in their legal materials that library terminated a contract in August. Two affiants from MPL didn't provide any information on it either. Only Mr. Casale (senior construction buyer in City of Markham) skated over it without any details.
39. Later, I found the secret why defendants' lawyers shifted the two warning notices for the termination of Southeast branch opening contract in August 2015 to the termination of our whole contract in 2016.
40. It didn't make sense without written warnings if defendants said we had errors in the service. There were no more warnings except those two, so defendants had to borrow these two to meet legal conditions in the case. However, those two were old and used. The time and contents didn't fit the termination in 2016 at all.
41. It is well worth considering the following 3 issues. First, MPL and Mr. Casale terminated this contract in August, 2015, but they didn't ask the approval from council committee until April, 2016. There was a delay more than half a year. Is it lawful?
42. Secondly, library had got the additional budget of \$ 354,755.00 from the termination before the end of the year without council's approval. Is it so easy?

43. Thirdly, it was a fact that it was impossible to have two vendors providing Chinese materials for library at the same time. That is to say, when library decided to terminate this contract in August, they knew they would have to select one from the two as a Chinese materials vendor.
44. All in all, the contract termination in August played a key role in the whole case. Defendants are obligated to give a response to the issues related to that termination.

**Reducing prices and returning materials(August -- September, 2015)**

45. After one month of the termination in August, library called me to a meeting on September 21, 2015. Mr. Casale and Mr. Pogue came to the meeting. For the first time Mr. Pogue asked me about our cost for library's service. I told him the truth that we were running at a loss at present. And then, Mr. Pogue and Mr. Casale in turns advised me to drop the contract. They said that they were afraid that CPCL was too small to meet library's higher requirements in the future.
46. By then, I had dropped other business, and invested all my funds in this library service. 98% of our revenue came from this contract. Importantly, we did the service well. I believed it was hard to find a second vendor that could provide a better service than us. We would soon copy the service to other Canadian libraries. We had a bright future.
47. Besides, because we signed the contract with City of Markham, some cultural big companies in China, Taiwan and Hong Kong would join us. They would invest on our corporation to develop library's business in Canada, including library electrical books, library website videos and so on. Some co-operation projects were under discussion. How could I drop the contract under such situation?
48. At that moment, we were discussing a cooperation with a strong publishing house in China. In fact, in November, 2015, we signed an agreement of cooperation. This publishing house started to raise funds for the cooperation. They planned to invest an amount of 60,000,000.00 RMB within 3 years for the projects we agreed to (This cooperation had to come to an end as our contract with City was terminated).

**Attached and marked as *Exhibit 20* is a copy of part of an agreement between CPCL and Jiangxi university Publishing House.**

49. I declined their advice at the meeting. Then, Mr. Pogue wrote a letter to me. He said that MPL didn't agree with the present prices. The prices level was CPCL's own decision. He asked to

adjust the prices to exactly the prices on the bid form. He also complained 3 issues in the email. One was poor delivery rate from January to July, one was wrong allocation, and one was the balance of simplified and traditional character materials. I didn't have a chance to clarify those issues at that time. *See my arguments on the allocation at paragraphs 247-248, and the balance of two characters at paragraphs 239 - 245.*

**Attached and marked as Exhibit 21 is a copy of Mr. Pogue email to ask to lower the prices.**

50. This was a long story about the price. From the first invoice, library paid us 20% higher than the prices on the bid form. It had been a year. It stipulated in the term of Price Changes in RFP (page 33) that the bidder shall provide full information on its procedures for handling pricing changes. The bidder must define the options that exist for the library to be informed when prices have increased 20% or more. There were several back and forth exchanges between CPCL and library for the first invoice. The price level and format was confirmed by then. We had provided the same price level invoices for a year, and there were no complains from library. Library agreed with the price though we didn't write down an agreement on paper.
51. There were two major reasons for the 20% higher part. It should blame library. First, it was the design error in bid form. According to the form, the payment for the cataloguing should be paid by copies not by titles. The empty form clearly shows the to complete the form by cost of item. You even can not complete the bid form if MARC record cost was charged by titles. It was also reasonable to charge by copies, because each copy had a different address code. We needed to give each copy a different address code.

**Attached and marked as Exhibit 22 is a copy of the incorrect bid form.**

52. Discussing the first invoice, library said that charges for Mark data should be made by unique titles rather than copies. They hoped we could follow the way they did before. Anyhow, to cooperate with library, I accepted this requirement without any arguments. I provided 6 copies for one title. That was to say, because of the design error in the bid form, library paid CPCL 5 times less at making records.

**Attached and marked as Exhibit 23 are copies of emails between me and Ms. Gilchrist on the views of titles or copies.**

53. Secondly, it was “Service Agreement” that changed the method of making records. When signing the RFP in June 2014, two sides agreed to use the “converted records” originally created by cataloguers in Beijing to reduce the cost. The list of cataloguers I offered in RFP were clearly indicated that we would create records in Beijing. Library had tested the samples of “converted records” from Beijing on its system before and after signing the RFP. These sample records were approved by library. MPL knew we would use the records made in Beijing. Our bid price at the bid form in RFP was based on using the “converted records”.
54. When signing the Service Agreement with library in August, 2014, I realized the problem of the confidential clause (Term 7) in it. This was contradictory to the method of cataloguing in FRP. I knew that I was the one that would take the legal responsibility if the problems of the confidentiality arose. *See Exhibit 6 for Service Agreement.*
55. Beside the confidential issue, MPL asked us to do some extra work on the records. One of the big jobs was to inset cover images to the records. This task was neither included in a standard record nor requested by library before. Of course, the collect fees for the records in the bid form was exclusive of cover images. I agreed to do it. But library should know we did it without pay. I agreed with that only to do library a favor, to enforce the friendship between CPCL and MPL. In fact, I always felt gratitude to library that accepted us as their vendor.

*Attached and marked as Exhibit 24 is a copy of email from Mr. Su about cover images*

56. Library imputed the rising cost of making the records to the errors in our records. This was not true. It is necessary to clarify it. There indeed appeared some errors for the converted records. They were mainly created in the conversion process between languages. Cataloguers in Beijing said that they could easily solve this problem after we provided them with enough number of those “inverted errors”. As for the issue defendants claimed that Beijing cataloguers could not catalogue for some political books published in Hong Kong and Taiwan, that was not a big deal either. Because that kind of books occupied only a very small part. We could do it in Canada or Taiwan easily.
57. I didn’t say it was the confidential term in the Service Agreement that was the reason we set up the cataloguing team in Canada before. Just because I didn’t want to hurt our head office (BPDG). In fact, BPDG had been planning to develop the converted bilingual records to the whole world based on making records for MPL. They set up a team specially for this project. Now it clearly

stated in the Service Agreement: “the parties to this agreement that the relationship between the parties is that of an independent contractor, and that neither party is , nor considered to be an agent or representative,...CPCL shall not disclose MPL confidential information to any third party”. This meant that CPCL had to have the final edition of Mark data in hand. I felt very embarrassed under such circumstances.

58. I didn't want BPDG to consider library as a client that went back and forth, changing the condition in RFP requirements without a limit. Importantly, CPCL got free technical supports from BPDG as its branch. I wondered if BPDG would go on the support when they knew the converted record project would be suspended.
59. In defendants factum, they accused that our errors in the records were 77 times more than library's other vendors. That was a big lie. I suppose their lawyer didn't know what was cataloguing and what was processing. They are completely two different jobs. How could they have the same number of errors? This was a big joke. And also it was unfair library compared records in Chinese with records in English. They were different things.
60. I would also like to tell how library tested our data. We sent our completed record data to library staff over network. If there were errors in our records, library staff could check them out at once when they uploaded them onto their system. They returned our data back and asked us to find the errors and correct them by ourselves. It took library staff a few minutes to test each shipment. The other vendors was no one else but LSC. Defendants didn't tell that they allowed LSC to upload their data by themselves. Their systems were connected. In fact, LSC had no errors at all by this way. As long as the records could be loaded onto the system, library considered them no errors.
61. We had no testing software at the moment, so we had to test the errors by human eyes. This was much more complicated than LSC. And more, We had 6 copies for each title, so one error meant at least 6 errors. Sometimes we got dozens of errors record for a blank space problem. In fact, MPL's strict operating method was one of the reasons that we hired cataloguers in Canada. I was never opposed to library's testing method for our records. I considered it as a good training to us.
62. Those cataloguers we hired in Canada were all the best ones with rich experience. Very soon we could easily meet library's strict requirements in cataloguing. In the second half of 2015, our records had few errors before testing by library. Even in library's vendor score 2016, library

confessed that our records had come up to their expectations. Mr. Casale wrote to me before I appealed to City, to confess that our cataloguing errors were dismissed after I argued in the meeting on Feb. 2, 2016. *See Exhibit 77 of library vendor score. See Exhibit 47 of Mr. Casale's email.*

**Attached and marked as Exhibit 25 are copies of our statistic Errors list in cataloguing in the second part of 2015**

63. Let's go back to the price issue. In any case, the basic reason to set up the cataloguing team in Canada was the new term of confidentiality in Service Agreement. All other problems were minor ones and could be solved sooner or later. Because of doing records in Canada, CPCL paid a big unexpected cost, but defendants lost nothing.
64. We purchased some related software . We hired one senior cataloguer, one junior cataloguer and several on-call senior cataloguers. We also paid EOS 6000-8000 US dollars each year for their online system fee. Those unexpected cost for Mark records each year added up to more than \$ 120,000.00
65. In Canada, the price to make a record for minority language was about \$ 15 /each, and more expensive for DVD and CD. How much did defendants pay us? Take the payment in 2015 for example. We provided 3800 titles of materials, and we got \$ 1.1 /each title for books, and 1.5 /each title for DVDs or CDs. All we were paid for Mark records was less than \$ 5000 a year. Our cost in cataloguing is completely out of proportion to our receipts. *See the prices in the bid form at Exhibit 3.*
66. So we set the price by the upper limit, 20% higher than the price in the bid form from the first invoice. Library had no objections for the price. It was clear that this 20% was the compensation for the errors in the bid form and new requirements in the Service Agreement. The 20% was about \$60000 a year. This amount was far from enough for the unexpected cost we really paid in making the records.
67. The two sides had no disputes on prices from the first invoice in 2014 to mid- September in 2015 when Mr. Pogue asked to reduce the price. Library paid us one month after we provided the invoices. Library could refuse to pay if we charged higher than they expected. Saying that we set the higher prices by ourselves was neither believable nor logical. Mr. Pogue said in library's report to City that we began to charge higher from 2015. That was a lie. The prices had been at



the same level from beginning to the end. Later, Mr. Pogue admitted that library paid us at the same level for the two years in his affidavit for the summary judgment motion,

68. By the time Mr. Pogue asked to lower our price, he had known that we catalogued for the library at a big loss. He had also known that even though they paid us an additional \$60,000 a year for the 20% higher than the prices in the bid form, LSC's price was still twice as much as ours. His action was neither for justice nor saving money for taxpayers. There was no better an explanation than saying that he tried to force us to drop the contract.
69. I had no choice under Mr. Pogue's pressure. I knew library could terminate the contract without cause as they did for Southeast branch a month ago. In any case, as long as we could keep the contract, we would have a chance for a bright future. Because we were the best Chinese material library vendor in Canada. I considered the issue for two days painfully and at last I accepted Mr. Pogue's price request. I agreed that library could pay us exactly according to the prices in the bid form. In fact, I never refused to do things library asked us to do as a library vendor in the past. At last, Mr. Pogue and Me came to an agreement that library would pay us according to bid form from January 1 2016.

*Attached and marked as **Exhibit 26** are copies of emails between Me and Mr. Pogue on the agreement of the prices.*

70. Mr. Pogue's agreement with the prices approved that library had the authority to adjust the price to the 20% limitation. In any case, MPL paid us in the same price level from the beginning of 2014 to the end of 2015. MPL confirmed this price level in September, 2015. However, in the litigation later, defendants made a counterclaim. They claimed against us for a damage in the amount of \$ 121,728.96 for the years 2014 and 2015. They stated that they overpaid us \$50,723.44 in 2014, \$70,959.63 in 2015 and \$45.89 in 2016. The amount defendants claimed for was just this "over-paid" 20%. I attached the average prices library paid us in the past two year and defendants' counterclaim.

*Attached and marked as **Exhibit 27** are copies of the summary of the prices library paid us in 2014 and 2015, and the defendants' statement of defense and counterclaim.*

71. Library suddenly began to return materials at almost the same time with lowering the prices. Selecting materials was part of our service, and it was our greatest advantage. Both the manager of CPCL and me were editors working for publishing houses in China. We knew books and AV

products well. Importantly, we were Chinese and we selected materials for Chinese. The library staff working with us didn't know Chinese. After we took over the service from LSC in August 2014, we found the material profile library offered was very old. I didn't think LSC could perform it according to this profile in the past years. Some requirements were very absurd and not actionable at all.

72. One of which must be revised at once. The profile required we provide 50 percent simplified and 50 percent traditional DVDs according to sound tracks. However, now only a very small number of films and TV series in Cantonese were published in a year. It was under our suggestion, library revised the this requirement. Library agreed that the profile would be based on the written languages instead of sound tracks. Ms. Gilchrist said in the meeting for this revision that library would improve material profile each year according to CPCL's following service and market changes. In fact, there were many more requirements needed to be revised and improved. Because library's profile for materials was not realistic, library didn't do it so strictly as long as those materials were welcomed by customers.

**Attached and marked as Exhibit 28 is the copy of library's meeting minutes on changing the material profile.**

73. In library's material profile, there were publishing time limitations for products. Publishing time for DVDs was generally limited within two years. Library required a big number for DVDs. However, because DVDs were produced less and less as the network developed. Library's requirement for DVDs was not so unprocurable. Even if all the DVD products published within two years were ordered, they could not meet the number library requested. LSC had provided some DVDs over two years limitation in the past. We also provided a very small number to meet library's requirements. Library accepted those products without problems.

**Attached and marked as Exhibit 29 is a copy of LSC's list (DVDs published over 2 years)**

74. It was not a big issue if library didn't accept those materials. I would not order them if library told us earlier. However, on August 5, 2015, almost at the same time the Southeast branch's contract was terminated, library suddenly returned all those DVDs issued over two years we delivered in the last shipment. Library returned them without any warnings in advance. That was the first time to return so big a quantity. In Ms. Gilchrist's affidavit, she used this email here and

there, intending to make people think that library had warned us many times. In fact, she warned the issue and returned the materials at the same time. *See Exhibit 54 of Ms. Gilchrist's affidavit.*

*Attached and marked as Exhibit 30 is a copy of Ms. Gilchrist's email to me (Sudden returns)*

75. We selected those DVDs carefully and they fitted Chinese customers very well although they were published two years ago. Before we delivered them to library, we had provided our records. So those materials appeared on library's website the same time as we delivered them to library. Many customers held them on the website at once. It was obvious that this return was library's sudden decision. However, library withdrew them from the website, regardless of reader's feelings.

*Attached and marked as Exhibit 31 is a copy of a screen capture showing customer hold the DVDs in invoice 200239*

76. I knew library was making things difficult for us. Again, in order to keep the contract, I accepted all the returns without any conditions and any complaints as we did in price reduction. To show our sincerity, we offered to compensate for the materials processed on those products. Library had no damages for the returns at all. In fact, in the overall quantity of our DVDs products, this part occupied only a small part. The statistic can be obtained from library's website.

*Attached and marked as Exhibit 32 is a copy of summary of DVD publishing date for our materials*

77. More incredible things happened in the following. Not long after this return, some time in September, Mr. Pogue changed the DVDs' time requirements, extending the time limitation from 2 years to 6 years. Because the products returned in August were now qualified. However, when I sent them to library at the end of the year, library returned them again. Ms. Gilchrist gave the reason in her email: "while the profile was adjusted back 6 years after meeting with you in September, this was not a retroactive decision but for selections going forward."
78. We also provided a small number of foreign movies and TV series with Chinese subtitles. These kinds of materials borrowed well and library never complained before. Near the end of the year, we had almost ordered all the Chinese DVDs in the world published within two years. Then we ordered some Korean TV series with Chinese subtitles to meet the number in the profile. Because this time we ordered more titles than before, I reported the coming delivery to Ms. Gilchrist

before sending them to library. However, Ms. Gilchrist checked library's profile this time. She said that another vendor was providing Korean products. Though we had catalogued and processed these products, we didn't deliver them to library willingly, so as to win Ms. Gilchrist's favor. We stopped delivering those materials without complaints. Emails attached between Me and Ms. Gilchrist on can help understand the situation.

**Attached and marked as Exhibit 33 and 34 are copies of foreign movies with Chinese subtitles list (2014-2016) and emails between Me and Ms. Gilchrist on Korean DVDs**

79. If library returned materials because of the production year or languages, I could understand. But it was a blind action when library returned the products by the contents. Ms. Gilchrist and her team working with us didn't speak Chinese. Near the end of the year, library returned two kinds of DVDs with contents issue. I believe there was political discrimination phenomenon whether they realized it or not.
80. I delivered 7 titles, 29 pieces of CDs of popular songs in Taiwanese (Hokkien). Library returned them. I also ordered some TV sets from Taiwan in Taiwanese with Chinese subtitles. Library retained them too. I asked Ms. Gilchrist why they were returned, she said that she asked her colleague to listen to them and her colleague didn't understand the language. So she returned. As usual, I accepted the returns without complaints. In those days I knew library was finding excuses to terminate our contracts, so I did everything library asked to do without conditions.
81. Several days after this return, I got the termination notice (January 27). Then, I had no scruples any more. I complained about it for the first time. In my email to Ms. Gilchrist I told her, "Taiwanese was part of Chinese language, popular in Fujian province and Taiwan, just like Cantonese popular in Guangdong Province and Hong Kong. Songs in Taiwanese were very popular in mainland, Hong Kong and Taiwan.". I got no reply from her.

**Attached and marked as Exhibit 35 a copy of my email to Ms. Gilchrist on products in Taiwanese.**

82. Later library in their report to City council created us an "error" based on selecting DVDs. The error's name was "Arbitrary substitution of DVDs" in non-Chinese languages". Defendants lawyer also used Arbitrary substitution of DVDs to beat us. I don't know what they meant. I never provided non- Chinese languages products. At least the products had Chinese subtitles. Importantly, I never refused any returns and never complained about the returns. We never

ordered a second time for the same kind of returned materials. Why was the word “Arbitrary” used?

83. Because all those returned or rejected DVDs and CDs were processed, I had to throw them away later on. Even for those unprocessed materials we ordered for MPL, we could not return them. We ordered all those products not in Canada. The original seller in other countries didn't accept the returns. In Mr. Gilchrist's affidavit, she complained that the returned materials added up to more than \$15,535.65.
84. In fact, our damage for the return were several times more than the amount she calculated. Her amount didn't include hundreds of products we had ordered and processed for MPL that stored in our office. In any case, library didn't have any damages for the returns, but I bore all the losses. If MPL gave warnings in advance, we would not have so big losses. Ms. Gilchrist's complaint of the amount of \$15,535.65 should be something I claimed against defendants. In Ms. Gilchrist's affidavit she disordered the time. She tried to fool judge that library warned us the issue many times before the returns. *See Exhibit 54 of Ms. Gilchrist's affidavit for details.*
85. In order to force us to drop the contract, library took the methods of reducing prices and returning materials at the same time. To save the contract, I submitted to the unjust treatment. However, this gave library an illusion that I was a soft fruit. They went further and further. Their ill behaviors and cruelty had reached to an astounding proportion in the end. I believe that reducing the price with returning materials was an case of bullying.
86. Anyway, in the second half of 2015, we accepted prices reduction and materials returns without conditions and arguments. After a year's service, we gained much experience and were good at all aspects in library service. We were confident that we would touch library's heart with our obedience at price and returns, and with our excellent service. Library tried to find our errors under a magnifier but they failed. They didn't have any chance to give us an error warning though they needed it so badly. At the end of the year, we reached Mr. Pogue's requirements in his letter on September 25, 2015, and we accomplished the budget as scheduled.

**Attached and marked as Exhibit 36 and 37 are copies of our delivery report 2014 and 2015**

87. To draw the lesson from the contract termination for Southeast branch because of the two delivery warning notices, I asked MPL to provide me the materials guide 2016 from October

2015. We needed to prepare materials for 2016 several months ahead. However, it seemed that MPL didn't mind the delivery time any more. They found all the excuses to stall for time. When new year came, they still did not give us the material profile 2016. As things stand, it must be late for deliveries this year as it was in the last year.

88. Library always told me they would soon give me the new profile during this period. They confirmed several big changes, including that books were requested two copies for each title in the end of October 2015. Telling us the changes indicated a sign that we could go on the service in 2016. I felt very happy. Then I began to ask our vendor in Taiwan to take in the books we selected for 2016 based on one title two copies policy after the meeting on October 29, 2015.

**Attached and marked as *Exhibit 38* a copy of meeting minutes on one title two copies policy for 2016.**

**We turned to law because of the contract termination. (January, 2016 – May, 2016)**

89. In January 2016, the new material profile was still on the way. Even if the profile came by this time, it would still be too late. If the new materials was transported by sea, the earliest time we were able to send the processed materials to library was at lease in April. Then the tragedy of deliver delay in 2015 would repeat.
90. Though library should be blamed for the delay, I decided to deliver a big shipment in 2016 by air regardless of the cost. We had a big lesson last year. I confirmed the order in Taiwan on January 13, and a big shipment of books arrived in Toronto on January 16, 2016.

**Attached and marked as *Exhibit 39 and 40* are copies of documents for the air transportation and a list of books we ordered by air in January 2016.**

91. I didn't expect that a big conspiracy was waiting for me. I was called to a meeting by library on January 20. In defendant's factum, they said library asked me to this meeting to discuss price issue as well as cataloguing and selection issue. This is a bald falsehood. I was told that library would give me the new material guide 2016 in this meeting. At this meeting library declared that they changed more requirements besides the changes they told me last October. Our cost was raised greatly as a result. Library just lowered our price from January 1, 2016, and we had no more room for the this big change. So I tried to negotiate the price with library staff.

92. I would never believe it if this didn't happen. I don't know who told Mr. Casale that I had defensive manners at the meeting. I didn't get to know this defamatory story until I got defendants' motion records almost two years later. This defamatory matter is one of the reasons for my action today. I will give details in the second part of my affidavit.
93. Then, on January 27, 2016, Mr. Casale sent me a formal notice. In the notice he wrote: Staff are preparing a Report to Council recommending that the contract be terminated (which Staff anticipates will be endorsed by Council). He announced that all services provided by CPCL under the Contract should cease immediately.

**Attached and marked as Exhibit 41 is the copy of Notice of Termination in January in 2016**

94. On January 29, Ms. Gilchrist sent me an email as the following: "MPL will accept delivery of any items purchased on our behalf that meet our profiles and that are already processed up until Tuesday, February 2, at 4:00 pm.". We had only 3 days left for the final delivery. In the same email, she asked us to return all unused processing supplies library provided.

**Attached and marked as Exhibit 42 is the copy of Ms. Gilchrist 's email (3 days' limitation)**

95. Under such circumstances, I asked to meet Mr. Casale. He arranged a meeting on Feb.2. When I came there, to my surprise, I found Mr. Pogue and Ms. Gilchrist from library were also there. Mr. Casale turned this private meeting to a meeting of 4 people without telling me beforehand. In the meeting, Mr. Casale confirmed that our contract was terminated. I found this was useless for me, and it was a meeting to confirm the last delivery time, as doing me a favor. Mr. Casale extended the final delivery date from Ms. Gilchrist's February 2 to February 26.

**Attached and marked as Exhibit 43 is a copy of My email to Mr. Casale on the view of the meeting on Feb. 2, 2016**

96. The materials in our last delivery on February 25 were not the materials by air of the new year. They were the products we prepared in the end of 2015 for the first 2 months in 2016. Library declared many times that they didn't accept products without cataloguing. We didn't have time to make records for the new arrival materials in such a short time. On the other hand, after our contract was terminated, I asked our cataloguers to have a holiday to save our budget. As I clarified above, we did the records at a big loss actually. So we had to put those new materials aside for the moment.



97. Defendants' lawyers said in their factum that, "given that CPCL has stated the bid prices were too low to make a profit, CPCL likely would have been able to make a better profit by selling the leftover materials to someone else at a better price.". That was the same as Ms. Gilchrist said to me in the email before. They are ignorant to say so. They should know the fact that books are not popular products at present. We were not a busy company that had many clients that could share those products. No one would accept so many books ordered for MPL. Importantly, I think no libraries in Canada would do business with us any more after MPL terminated our contract.
98. After the termination of the contract in January 2016, I wrote to chief director Ms. Catherine on Feb. 2 to report the situation. I got no answer. I also asked to meet Mr. Pogue several times for all the relevant issues of the termination. I was declined each time. Later, he took the meeting on Feb. 22 at the meeting he gave me the chance for the clarification. The fact was that I got no chance to challenge library staff face to face for the reasons before library decided to terminate our contract.

**Attached and marked as Exhibit 44, 45 and 46 are copies of my email to library's director, and emails between Me and Mr. Pogue for meeting**

99. After the termination of the contract, I questioned Mr. Casale what were the errors library accused us. He didn't reply until February 8. He agreed that "the issues with material processing and cataloguing have diminished." . But he said CPCL still had 3 issues. They were "difficulty in providing a sufficient quantity of traditional vs simplified print products; Failure in distributing materials between branches; Arbitrary substitutions of DVD's in non-Chinese languages.".He didn't mention price as an issue.

**Attached and marked as Exhibit 47 is a copy of Mr. Casale's email to me on three issues.**

100. I was astonished at those errors. They were all lies. I wrote back the next day to tell that the 3 issues didn't exist at all. But there was no reply.

**Attached and marked as Exhibit 48 is a copy of my email to Mr. Casale on three issues.**

101. I didn't believe that the contract was terminated in such a simple way, so I made an appeal to City committee. My appeal was arranged on April 4. In those waiting days, CPCL had nothing to do, but I had to pay the 5 employees, and pay the rent, and pay everything a cooperation had to. I suffered each day for the big damages.



**Attached and marked as Exhibit 49 is a copy of our damages while waiting the City's decision**

102. However, the meeting on April 4 didn't bring any changes. I was allowed to make a 5-minute speech. Then I was asked a few questions. This lasted about ten minutes. Because of the limited time and my poor English, I could not make the issues clear in the meeting. Then I was asked to leave from the meeting. I left the meeting a written material on the table there. I was not sure whether the councilors in the meeting could have my materials.

**Attached and marked as Exhibit 50 are copies of my five minute's speech and my written material to council committee**

103. The second day on April 5, I got to know that the City council approved library's termination suggestion. On April 18, Mr. Casale on behalf of the City sent me a notice of termination.

**Attached and marked as Exhibit 51 is a copy of Notice of termination in April**

104. On April 22, Mr. Casale suddenly invited me to a conference call about issues including costs incurred for materials already ordered. I was very happy and agreed at once. However, soon I realized that what we were going to discuss was very complicated, regarding products, marking records and many relevant issues on hundred thousands of dollars. How could I make so many issues clear by telephone with my poor English?

105. After a serious consideration, I decided not to accept a teleconference. I sent an email to Mr. Casale, saying I was unable to accept the conference call with apology and expressing a hope to have a face to face meeting. I got no reply and no one talked about the leftover products, and relevant costs any more from then on.

**Attached and marked as Exhibit 52 is a copy of my email to Mr. Casale**

106. That was all. A contract obtained through a half year's bid process with a big investment was terminated by the reasons of "fabricated errors" or "without causes" by one side. We got no remedy. I couldn't find a better way but make a lawsuit in superior court on May 5, 2016.

### **Defendants' Summary judgment motion (May 5, 2016 – June 20, 2017)**

107. Our lawsuit was based on a good will. The nature of the case was wrongful termination. We claimed for "specific performance, or, **in the alternative**, the damage of \$280,000". We would

accept all the damages ourselves if defendants would make a settlement. By that time I still honestly believed the two sides only had some misunderstanding because of the different cultural backgrounds.

**Attached and marked as *Exhibit 53* is a copy of Corporation's Statement of Claim**

108. However, defendants never accepted our frequent offers to settle. Contradictions between the two sides were escalating. Defendants tried every possible means to stall time for a year, and then offered us \$ 25,000.00 on the condition that we withdrew the action. They threatened me that they would make a summary judgment motion otherwise. I knew nothing about the summary judgment motion at that time.
109. Because it was defendants' motion, I had to follow their steps. I felt that CPCL became the defendant. The time was scheduled as the follows. Hearing of the motion was on June 20, 2017; Moving party's motion record was due on April 21; Responding party's motion record was due on May 15; Moving party's factum was due on June 6, 2017; Responding party's factum was due on June 13.
110. When I got hold of defendants' motion record, I got a huge shock. They said it was a summary judgment but how they made such a clear case so complicated. Their materials were nearly 1000 pages.
111. I had never had the experience in a lawsuit before, and my legal knowledge was limited. And more limited was my English. Defendants had much more time to prepare their materials. They had a team. In the process of the litigation, I followed defendants' lawyers' steps helplessly. When I found what happened it was too late.
112. According to the time schedule, I had to submit my responding motion materials within 25 days from the time I received the moving party's materials, and submit my responding factum within 7 days from the time I received the moving party's factum. To finish my factum, I didn't go to sleep for several days.
113. The fact was that I could not complete so many materials defendants offered in such a limited time, and I could only read part of the materials in a way of extensive reading. I only had a sketchy knowledge to their materials. That was much like my taking an English examination. I suppose I could get 40 points at most for their materials at that time.

114. Defendants had 3 witnesses, Mr. Pogue, Ms. Gilchrist and Mr. Casale. Mr. Pogue declared that Ms. Gilchrist had a more direct deal with CPCL than he did, and he just began to have a direct deal with CPCL from September, 2015. As for Mr. Casale, he knew nothing about our service. He learnt everything from the other two.
115. I didn't know till long afterwards that Mr. Pogue and Mr. Casale reported to council committee. They said, "legal department staff have recommended that the City terminate the contract on a "without cause" basis (by providing CPCL with thirty days written notice) so that the City is not held to the higher standard of proving "default". The termination notice would nevertheless be a reference example of CPCL's poor performance to support City so that City had a reasonable business rational for exercising its right to terminate the contract."
116. They further reported to council committee: "in case of CPCL, the City would have an excellent defense to any such challenge on the basis of the documented poor performance assembled by staff.". It was clear that Ms. Gilchrist was the chosen staff who mainly assembled our "poor performance" for defendants.
117. Later, I had a thorough look on Ms. Gilchrist's affidavit and I was shocked. She created CPCL an error for each project in the service. Some chronological orders were inverted, and some relevant backgrounds were hidden. Some issues were used out of context, and some library's own mistakes were shifted to CPCL. The most irritating thing was that she even turned our achievements and contributions into errors. In short, none of the errors she summarized were true in her affidavit. I would say it again here, none of the errors she summarized were true in her affidavit.
118. To reply each Ms. Gilchrist's claim required a good understanding and a lot of time. However, it was really hard for me to reach such a high standard at that time because of my limited English. To review the whole case, I found it was only those Ms. Gilchrist defamatory stories that affected Mr. Pogue, Mr. Casale, Council committee, and judge. So, it is necessary to make a study on her affidavit. I added some notes on her affidavit for a better understanding.

**Attached and marked as Exhibit 54 is a copy of Ms. Gilchrist affidavit with my notes.**

119. After I received their affidavits, I asked to do an oral examination at once. But defendants lawyers stood in the way. Because they didn't cooperate and I knew little about it, there was little

time left before the hearing. As a result, all the evidence provided by the defendants was without an oral examination.

*Attached and marked as Exhibit 55 are copies of Ms. Magdalena's emails (on cross examine)*

120. Defendants' lawyers first claimed our "acts of default" taken from their witnesses' affidavits extensively in their factum. Since we had so many errors, it was very easy to terminate our contract according to Service Agreement. However, they emphasized: "the City can terminate the contract without cause, as long as the City gives thirty days' written notice before terminating the contract." They further said, "even if a judge finds CPCL was not in breach of the Contract, terminating the contract without cause was still within the City's rights."

*Attached and marked as Exhibit 56 is a copy of defendant's factum in their summary judgment motion*

121. In order to prove the existence of the term of termination without cause, defendants submitted "General Terms and Condition" of City of Markham. "General Terms and Condition" was a temporary document used only in bidding period. That was an out of date document. It was replaced by Service Agreement later.
122. Defendants didn't mention the Service Agreement in their original statement of defense. Under my request, they revised their legal materials. Their lawyers said they didn't know there was such a contract before. However, they said in their factum: "in any event, the Service Agreement provides for termination of that Agreement with cause or for convenience (without cause)."
123. After a long time, I came to understand why defendants tried so hard to deny the Service Agreement. Except that they wanted to use the without cause term in the General Terms and Conditions, they had other purposes. First, if terminating our contract with the provision "with cause" in Service Agreement, defendants should give us an error warning ahead of time. Only if we didn't cure the warning errors could defendants terminate the contract. There were no error warnings before 30 days of the termination. So defendants could not terminate our contract without an error warning.
124. Secondly, if terminating our contract with the provision "for convenience" in Service Agreement, defendants should compensate for the termination without cause.

125. Thirdly, many conditions in the RFP were modified in the Service Agreement. Changing the conditions in the contract one side was a breach of contract. Defendants enlarged our cost, and they needed to compensate for our damages.
126. I was the only person who replied all the materials to defendants, including motion record and factum. I needed to explain so many “errors”, study the theory of termination without cause that I had never heard of before and reply defendants’ counterclaim. I felt great pressure and fell into a mess.
127. Under such circumstances, the documents I submitted for the summary judgment motion were untargeted, confusing and full of language problems too. Now I review those materials, I can not understand what I talked about in many places myself. I admit that the main reason for judge dismissing our action was that I submitted very poor materials.

**At the hearing I lost human rights (10:50 am – 11:50am, on June 20, 2017)**

128. Because I could not submit qualified materials to the court, all my hopes rested on the hearing. I trusted judge who I thought could make things clear. The case was not complicated. I fondly thought it was not difficult to see if we had errors or not in the service. I knew that my spoken English was worse than my written English. So I invited a friend of mine to be my interpreter. My friend was not a professional interpreter and had no experience in translating. I declared the interpreter issue at the first page in my responding motion record with bold letter. I wrote, “ plaintiff will have an interpreter with the representative at the hearing.”.
129. The hearing took place on June 20, 2017. Mr. Boghosian acted as the defendants’ lawyer in the proceeding. It seemed that judge didn’t notice my friend standing next to me. After greeting to each other, judge started her opening speech directly. She spoke fast and I could not follow at all. I didn’t interrupt judge with courtesy and awe. Later, I found I didn’t follow the hearing from Page 1 to page 4 in the transcript of the proceeding except several “good mornings”. After she finished, I reported that I needed an interpreter. (*page 5 Court’s transcripts*)

**Attached and marked as *Exhibit 57* is a copy of the transcript of proceeding**

130. Then Judge said to my friend, “you can move closer. You can sit right beside him and you can talk to Mr. Cao as we go along.”. We had thought the translation could be done sentence by

sentence or at least paragraph by paragraph. But there were no stops in the following communication and speeches. We got to know that judge only allowed my friend to do simultaneous interpreting, which was beyond her ability and my friend just whispered to me. I didn't know what to do at a moment.

131. It was my first time in life to come to such a hearing. I dared not contradict judge. On second thought, anyway I knew what the defendants lawyer wanted to say, so perhaps I could deal with myself. Importantly, I believed that judge would adjust the situation to make the argument fair as the hearing went along. I did not expect what happened in the following.
132. I was totally in a mess from the beginning to the end within the one hour hearing because of language barrier. My friend only did some Chinese to English translation. There was no English to Chinese translation throughout the hearing. As a result, I could not understand judge, Mr. Boghosian and didn't follow their communication as well. I could only understand part of the conversations between judge and me, and their lawyer and me. I got to know what happened only from court transcripts later. The following arguments were the points of views after I studied the court transcripts. .
133. I regretted not reporting to judge I didn't follow the proceeding. I should argue that I could not follow the hearing. If I had understood the judge and defendants' lawyer in the hearing, the judgment must be a different one. If there was any responsibility for judge, she should adjourn the hearing when finding the confused and illogical dialogues here and there in the proceeding. She should realize that I need not only the translation from Chinese to English, but also English to Chinese.
134. I found out later, in Judge's opening speech, she had concluded the key issues in the case. If I argued by those key issues, things would turn simple. However, I didn't follow her. I failed to catch that good opportunity.

135. Judge first gave her views on the motivation of the termination. She said, “I think what drives this case is the important of the Municipal RFP and bidding process, which is an essential element in municipal governments that ensures fairness and equity among bidders.”.
136. I don’t agree with the view. All evidence showed that library’s motivation was to increase its budget at Chinese materials. ***See my arguments on this issue at the paragraphs 203-210 of this affidavit.***
137. She continued, “My concern is that City and library documented their concerns with respect to quality and contractual compliance regarding the plaintiff,..... the failure to meet or comply with the price requirement of the contract, delivery targets, and the collection profile requirements,..... I have reviewed the June 17 ,2015,Ms. Gilchrist’ s warning that they are going to review the contract.”.
138. If I followed what she said, I would know that price requirement, delivery targets, and the collection profile requirements were something I must argue in the hearing. Especially I would clarify the issue of the two delivery warnings. ***See my arguments at the paragraph 19 - 40 above.***
139. Then judge raised some doubts at the price issue, and she asked Mr. Boghosian to make note on her questions,“invoices were paid by the library, even though inflated the price, and indeed, on some of those times, items were returned, poor quality, etc. But up until January, 2016, it doesn’t appear that library refused to pay because of excess pricing,... but in September, 2015, the library and CPCL agreed that they would accept that pricing until the end of 2015, ... so with respect to your counterclaim, it seems to me that there’s a condonation ....”.
140. If I followed what judge said, I would tell that price was never an issue in this case. I would give all the facts related to the prices. That was not their condonation. That should be my condonation. ***See my arguments at the paragraph 45-70 / 148-152 of this affidavit.***

141. Mr. Boghosian withdrew their counterclaim at once after he heard judge's comments on the price in the hearing. I was very disappointed at their cancellation of the counterclaim. I thought their counterclaim would give a chance to argue on prices in details.
142. After withdrawing the counterclaim, Mr. Boghosian began his speech, "the termination notice went out to the plaintiff by letter delivered on April 18, 2016. The effective termination date of the contract was May 17, 2016. The plaintiff has not indicated any damages that are properly recoverable on the contract subsequent, prior to the effective termination date..." The judge confirmed, "do you mean that the plaintiff was paid amounts owing under the contract up until the effective termination date." Their lawyer replied, "yes." In the beginning of his speech, he made a big lie on behalf of the defendants in front of me. But I didn't realize. I made no reply. I supposed judge thought I had no objections.
143. When Mr. Boghosian mentioned the "first notice", the judge seemed a little surprised, and asked, "what date do you mean ... there're many notices?". Defendants explained the termination notice on January 27, 2016 as a notice of recommending termination.
144. The judge's question was just to the point. The notice on January 27 was not a notice recommending termination at all. Defendants had stipulated the final delivery date after 30 days from this notice. This was not a warning of recommendation, but a notice of termination. ***See my arguments at paragraphs 93 – 95 of this affidavit.***
145. Next, Mr. Boghosian argued about the prices. In order to prove that I understood to be paid by titles not by copies, Mr. Boghosian showed judge an email at page 535 in their motion record. Judge read the email, " Yes, I have read the charges for Mark records should be made on the basis of unique titles rather than copies in bid document." After reading it, Judge said, "so there seems to be an acknowledgement that he understood... at the time of bidding." I didn't follow their conversation, so of course I had no arguments on the issue. In fact, the next sentence is my point, " But is doesn't reflect on the price form I was asked to complete. Then I said that library should pay records by copies not by titles according to the bid form. If judge read the whole



email, she would think differently. *See my arguments for details on titles or copies at paragraph 52 of this affidavit. See my complete email at **Exhibit 23***

146. Mr. Boghosian said that price issue went on through our service from beginning to end. He gave two examples to support that. One was Mr. Pogue's letter on September 25, 2015, the other was the notes of the meeting on February 20, 2016.

147. I do believe that Mr. Boghosian only had those two examples and there was no more no matter how hard their lawyers tried to explore. Defendants did not think of the price as an issue when terminating the contract on August 17, 2015 and the whole contract termination on January 27, 2016. After the meeting on February 2, 2016, Mr. Casale gave me three issues, but the price issue were not included. We offered a very low price and the price was never a problem. Those two examples were actually the events defendants forced us to drop the contract. *See details on those two examples at paragraphs 45-49 and 211-224.*

148. Mr. Boghosian continued to claim, "City was no longer going to tolerate after January 1, 2016, (CPCL) charging more than the bid prices.". Charging more than the bid prices in the new year was supported by the two invoices in Ms. Gilchrist affidavit. Judge wrote later in her judgment, "in 2016, CPCL remitted invoices not in accordance with contract pricing."

149. Those two invoices were the evidence I should use to sue defendants. We had adjusted the prices according to the agreement with Mr. Pogue, charging by the prices in bid form from the first day in 2016. As everybody knows, some products were expensive and some were cheap. We made out our invoices of the materials based on annual average price all the time in the past. The average prices were calculated at the end of the year.

150. The products in those two invoices happened to be very expensive products of DVD series. Many of them contained several discs. To reach the annual average price, we charged at a very low rate. In fact, we bought those products at much higher prices than the prices we charged in those two invoices. We already had a big loss with the prices we offered in the invoices! When Ms. Gilchrist asked the issue, I wrote back to tell that those two invoices were okay. I said in my

email, “you may have noticed before that the prices in our invoices are different to each other. No problem, we will meet the consented prices on the average in the end.”. We also told her the prices for those products in the two websites that library ever advised us to purchased DVD materials from. Ms. Gilchrist knew well that we delivered those products at a loss.

*Attached and marked as Exhibit 58 and 59 are copies of emails between me and Ms. Gilchrist on the 2 invoices, and the products market prices for the 2 invoices*

151. However, she asked us to change the invoices into a fixed pattern. According to Ms. Gilchrist’s request, only three fixed prices appeared in the invoices, one for books, one for DVDs and one for CDs, disregarding the value of the materials. We had no choice but to follow Ms. Gilchrist’s request. We never quarreled on the fixed invoice format for saving the contract, though it was neither fair nor normal in financial affairs. I believe it is a breach of contract to change the invoice format by one side after two years’ business activities.

*Attached and marked as Exhibit 60 a copy of our new pattern invoice*

152. Judge totally stood on their side at price issue in the end. She stated in her judgment later that “I am satisfied on the affidavits and evidence filed on this motion that CPCL consistently failed to meet ... the price requirements ...”.
153. Mr. Boghosian said that we should not be given additional fee for making Mark record. He stressed that making Mark records was very easy. He continued, “he (Mr. Cao) has agreed that this (C3) was a minor additional requirement in the overall scheme of the Mark record.”. Judge suggested at once, “Can we just go right now to the service agreement.”. Everyone would wonder if such small and free of charge work required a solo agreement. *Court transcripts (page 13,14)*
154. Judge went on with the topic, “because I thought the C3 contract said you don’t get any more money ... isn’t that in service agreement?”. Mr. Boghosian didn’t reply this question directly. He began to talk free charge for C3 stipulated in RFP instead. I never complained about the free charge for C3. I knew we did C3 free. There were no conflicts between CPCL and MPL on free charge of C3. Judge listened carefully to his long argument. A lot of time was wasted by his useless argument.

155. For a long time, I didn't understand why judge say in her opening speech in the hearing, " it (service agreement) doesn't even allow for any payment." . I came to some light from her written judgment recently. She wrote, " if it (service agreement) were the entire agreement there would have been no right for CPCL to receive any payment after Aug. 5, 2014, since the Service Agreement specifically refers only to C3 services." . I never denied RFP. RFP was the contract forever. We were arguing which of the two, Service Agreement or General Term and Conditions was the part of effective relevant contract under RFP. But judge first confirmed Service Agreement was made only for C3. This was not a logical way to decide which of the two was the effective contract.
156. I made a close study of the defendants' materials and suddenly found something might give the answer. Judge considered RFP and General Terms and Conditions as one document. For the document RFP, the one in defendants' exhibit was different from mine. My RFP was only 36 pages but defendants' was a thick book. I found they put the General Terms and Conditions at the back of RFP. By doing this, the two different documents looked like an original completed document. *See my RFP at **Exhibit 4** and defendants' at page 55 in their motion record.*
157. It stipulates at Term 18 in Service Agreement, "this agreement constitutes the entire agreement between the parties with respect to the subject matter herein and supersedes all previous written or oral communications, understandings and agreements". Service Agreement and Conditions were the same level documents under the RFP. They played the same role. There shouldn't stand two agreements with the same provisions. It was clear that Service Agreement constituted General Terms and Conditions. When the Service Agreement says the "entire agreement" it means the document with the same provisions, not including RFP. Only Service Agreement and General Terms and Conditions had the same provisions.
158. Judge wrote in her judgment, " it was clear that the Service Agreement is not the entire contract on all issues, since schedule A specifically refers to the C3 services " . I found judge believed what defendants said in their factum, " Section 1 states that the subject matter of the services agreement are the C3 services described in Schedule A." . However, the fact is that section 1 in service does not tell the subject matter is C3. It tells the subject matter described in Schedule A only. Let's read the schedule A. It says like this, "CPCL will provide to MPL the services detailed in RFP 285-R-13, including without limitation, the following C3 service".

There is no doubt that Service Agreement was signed for the service described in RFP. I provided library only one service, not two services.

159. I also found that City's General Terms and Conditions was often revised by City. After I sued the defendants, I searched the General Terms and Conditions online and found the new edition 2016. I found the two termination terms in the General Terms and Conditions 2016 were exactly the same with the terms in the Service Agreement. The present document defendants provided was the old edition 2010.

**Attached and marked as Exhibit 61 is a copy of A digest of General terms and conditions 2016 version**

160. There are more details on the termination "for convenience" term in the General Terms and Conditions 2016 than in Service Agreement. It stipulates, "Upon prior written notice to the consultant, the City shall have the right to terminate this consultant for convenience deemed in the best interests of the City to do so. Upon such termination, the City shall pay to the consultant all amounts owing for the work performed by he Consultant up to the effective date of termination."
161. Service Agreement allows for the money actually. Term 2 in Service Agreement stipulated, "payment shall be made by MPL within thirty (30) days after receipt of an approved invoice."
162. As Mr. Boghosian said, C3 requirement was only a minor change in the block of product's clarification in a record. Public library's products are general products, there is no need for a detailed clarification. "C3" requires only a general clarification. For example, when the product is a film, we classify it as film generally. We don't need to give what kind of film it is. It is a fact that cataloguing by C3 requirements is much easier than cataloguing by standard requirements. Cataloguers who are able to create standard records have no problems to fulfill C3 requirement. It was a big joke to say that C3 requires a contract.
163. Does Service Agreement address none of the major terms? The answer is negative. There are 20 terms that a standard contract possesses in the Service Agreement. They clearly show the two parties' rights and obligations as a contract. Those major terms have nothing to do with C3. Service Agreement includes all the major terms City's general terms possesses. On the contrary, City's general terms doesn't possess the specific terms for library. The two document, RFP and Service Agreement include all the issues between parties for the contract.

164. When it was my turn for the arguments, my brain was a blank. I asked if I could just read my factum. Judge declined my request. So I had to start my speech without notes in hand. Even Mr. Boghosian had paper in hand, but I had nothing. This was much beyond my ability due to both my poor English and lack of court experience. I couldn't say a word at a moment. *Court transcripts, (page 21)*
165. I had a very difficult communication with judge. Finally, judge understood my point about unexpected cost that caused by the changing conditions in Service Agreement. But she said, "I have sympathy for your argument ... you separately agree to the Service Agreement... you regardless of the fact you had to change cataloguing from Beijing to Canada, you were bound by the price that you agreed to." *Court transcripts, (page 33-34)*
166. I wanted to say more about price, but judge stopped me. She said, "I don't know how far this gets you, because there were, and you have acknowledged delivery target errors ... you have acknowledged the simplified versus traditional errors... but more importantly, there is a without cause termination provision." Judge passed the information very clearly that, in any case, defendants had right to terminate the contract without cause. It was no use at all to argue about those errors.
167. I didn't understand what Judge said to me because of the sudden change of a topic. I gave several "okays". These okays didn't mean I understood. They were meaningless. That was only my natural reflection when I began to listen to people with respect. Trial judge might think I confirmed I admitted the errors. The fact was that I never admitted any "errors" anywhere and anytime. *Court transcripts, (page 37-38)*
168. Judge continued, "I don't see evidence of damages between January 27, 2016 and April 2016, you are telling me that ...". I didn't follow judge either, and again gave series of "Okays". Judge might think I confirmed CPCL had no damages and didn't file the damages. *Court transcripts, (page 44)*
169. In fact, I wrote to defendants and their lawyers to tell my damages many times, and I had filed the damages as well. There was evidence defendants knew well enough. The books I ordered for the new year. I have filed the books list and relevant documents. I admitted that I didn't have time to have a good summary on my damages before the hearing, but I did file many.

I wrote in my affidavit for the damages, “due to the complexity and shortage of hands, Plaintiff still calculating the damages, and will amend the damages and provide them soon.”. ***See some details at paragraphs 87- 90.***

170. From paragraph 127 of this affidavit, I began to talk about what happened in the hearing. It seemed that the hearing lasted a long time. But actually, this was a very short hearing and it lasted only one hour. I understood little in the hearing and only after I read the transcripts of the proceeding did I know what had happened in the hearing. All my arguments now were an afterthought. In the hearing, I only got a very limited time to make an argument on price.
171. The hearing was scheduled a full day. I didn’t have the knowledge that the hearing could be ended in one hour. I had thought I could clear my mind after a rest of adjustment during lunch break. Maybe I could ask to have an interpreter. When judge suddenly announced the closing, I was still in a state of nightmare.
172. According to the Charter of Human Rights and Freedoms Canada, everyone has the right to understand the case against them in court. The majority of the proceeding was beyond my knowledge. This was no difference from a default judgment. I believe that my human right was deprived in the hearing. ***Section 14 of the Canadian Charter of Rights and Freedoms***

### **My appeal (July, 2017 - April 27, 2018)**

173. Judge didn’t pronounce the judgment in the hearing, and told us that she would give the judgment very soon. At that time I still thought that judge wanted to make a careful study on our materials after the hearing. We only argued about the price and nothing else. I believed in judge, and there should not be a too bad result.
174. However, the result was the opposite. My action was dismissed and I was judged to pay their lawyers \$50000 for the cost of litigation.

***Attached and marked as Exhibit 62 is a copy of judge’s judgment fot summary judgment motion.***

175. I didn’t know what really happened in the hearing till I had the transcripts of the proceeding. Reviewing the transcripts, I felt I was fooled and unfairly treated. I applied an appeal immediately.

**Attached and marked as Exhibit 63 is a copy of my factum for my appeal. .**

176. Defendants claimed that they had right to ask us to deposit the cost of \$ 50000 before we appealed. To stop our appeal, they took a motion of security for their cost. But, I lost all my savings and fell into debts. I didn't have even one thousand for the deposit at the time.

177. Thanks for the judge in charge of defendants' cost security motion. Finding my English was limited, she stopped the hearing for a moment. She found me a court interpreter urgently at the stop. The hearing was not in favor of one side like the situation in summary judgment motion. I could know what was going on in the hearing and I could argue about the issues with the help of the interpreter. There was a sharp contrast between the two motions on the length of time. The cost security motion was not so important as the summary judgment motion. However, this motion lasted more than 4 hours. The hearing of summary judgment motion was only one hour. In the end, their cost security motion was dismissed. We got the opportunity to appeal.

**Attached and marked as Exhibit 64 is a copy of judge's judgment for defendants' cost security motion.**

178. Appeal was not a retrial. Two sides were given some time for their statements. No arguments were allowed in the hearing. Judges gave their judgment mainly by the materials. The hearing lasted one hour. Judges wrote in their judgment, "we do not accept the submission that the respondents made the matter unnecessarily complicated and thereby incurred unnecessary costs".

179. However, the court upheld the original judgment of dismissing our action. The judges found that operative terms of the contract allowed the respondents to terminate the agreement without cause on 30 days' notice. They wrote in the judgment, " She (judge in charge of summary judgment motion) found that the respondents exercised that right in good faith. Her factual finding were warranted on the record. We can not interfere on appeal."

**Attached and marked as Exhibit 65 is a copy of judge's judgment for our appeal**

180. The Appeal Court only felt some uncertain about the time for the termination notice. But the judges wrote in the judgment, "however, whether the notice took effect in March, April or mid-May, there was no evidence that the respondents did not make whatever payments it was obliged to make during the notice period."

181. Now I begin to see the crucial points for the failure in my action. I sued defendants wrongly terminated the contract. But I failed in proving the evidence that defendants could not terminate the contract without cause. As the defendants' lawyer said that even the judge found CPCL had no errors, defendants could still terminate the contract on the basis of 30 days' notice.

182. Defendants insisted on submitting the cost after the hearing. I was informed to pay them \$10000 for the cost. Because the corporation was out of action now. I can not pay for that at the moment. I will pay that later sometime when I have the ability.

### **Part Two. The backgrounds for my individual litigation**

#### **The two actions are different in time periods, nature and contents**

183. Our corporation lawsuit was terminated, but the follow-up issues came out constantly. The facts of slander and libel covered up by defendants appeared one by one. My individual damages by defendants' defamation grew bigger and bigger. I had to make a lawsuit on behalf of myself on July 29, 2018.

184. We sued defendants for defamation, but defendants complained we abused the litigation. There was no reason for defendants to so. The behaviors of their defamation were not only done before the corporation's lawsuit, but also during and after the actions. Defendants might suspect that we abused the litigation for the matters that happened before the litigation. But there were no reasons at all for defendants to complain we sued them for the issues that happened during that litigation as well as after that litigation.

185. Even those defamatory actions before our lawsuit were all done behind my back. I didn't know them until the end of 2017 before the hearing. However, I had no time to change the nature of our action by then. If I had known those defamatory actions before CPCL started the litigation, perhaps we would sue them for defamations instead of wrongly terminating a contract.

186. CPCL's goal for its lawsuit was to make a settlement and continue to perform the contract. If a settlement was made, CPCL could stop further losses. Importantly, we would go on to work for library if there was a settlement. So we could not fall out with library. If the settlement was made, we would ignore and excuse what they did before. For those reasons, I didn't change the nature of the litigation in the middle of our action.



187. We sued defendants for the wrongly termination of the contract. As long as defendants were able to prove that they had the right to terminate our contract without cause, they had no problems. Just as judge said in the hearing, importantly, they had right to terminate the contract without cause. By emphasizing termination without cause, City is not held the higher standard of proving “default”.
188. Now, this is my individual action. I am suing the defendants for their defamatory actions, claiming for remedy of my huge personal damages caused by them . Defendants hold a higher standard of proving our “default”, or proving they didn’t have the defamatory actions. It was unnecessary for me to tell whether that termination of contract was lawful or not. I am not interested in the termination itself any more. Even if it is lawful for the termination, I am still prosecuting for defendants’ responsibility of slander and libel they did to me. Defendants could argue that they were entitled to terminate CPCL’s contract without cause, but they were not entitled to badmouth me as individual. In a word, the corporation’s action and my personal action are absolutely different cases.

**Their defamatory stories brought me insupportable harm and damages.**

189. I am the only owner of CPCL. All the damages of CPCL were naturally transferred to my individual damages. In order to develop this contract I stopped other businesses. 98% of our income came from this contract by the end of 2015. This can be proved by our corporation’s financial statements. We had no more businesses and no income after we delivered the final shipment to library on February 25, 2016.

**Attached and marked as *Exhibit 66* are copies of my corporation’s financial report 2014, 2015 and 2016.**

190. In the following months waiting for the final decision from the City, I had to maintain the operation of the corporation, paying staff’s salaries and bank’s loan, etc. Though I tried my best to mitigate the cost, the damages still came along inevitably. I had to lay off all corporation’s employees gradually within one year in 2016. There were altogether 6 people who worked full time for the corporation including me. Our staff were the best team for the library’s Chinese service. Letting them go meant the corporation was broken up. *See the evidence for the damages while waiting City’s termination notice at Exhibit 49.*

191. For this contract, I changed my working space into a bigger one. The rent contract was on a 5- year lease. The rent immediately became a burden after the contract was terminated. But I could not terminate the lease. I tried to find a lessee that could take over my contract, but failed. By June 2017, I was no longer able to pay the rent. According to the contract, the landlord suddenly impounded all the corporation's stuff, including all products ordered for library, office equipment and furniture. The total value of my office stuff was at least \$ 150,000.00. Because all those stuff were still in the landlord's hands, I can not give the exact amount till I have them back after I pay the rent and overdue fine. From the time on our office was closed, the corporation lost not only its staff but also its fortune. My business came to an end completely.

**Attached and marked as Exhibit 67 are copies of distress documents from landlords.**

192. After the contract was terminated, all corporation reputations were gone. We lost all our old clients, including Vancouver , Toronto and Vancouver public library. Some potential clients that we had established contact with left us as well. My library business dream totally came to an end.

193. In June, 2018, I was no longer able to pay bank's loan for this contract monthly, and bank of BDC made a lawsuit against me. Because I myself guaranteed the loan, I was judged personally to pay the loan .

**Attached and marked as Exhibit 68 a copy of Court judgment for BDC issue**

194. Because I am the only shareholder or owner of CPCL, I took the money in my personal bank account as the funds for my business. So, besides the bank of BDC, I also owed a big debt to several other banks. By March, 2019, I had to ask a licensed trustee to help my finance problems. I now pay back my debts to those banks step by step according to my real ability. I lost all my credits in the banks.

**Attached and marked as Exhibit 69 a copy of Consumer proposal**

195. The debt to banks is only a part of my debts. I owe more debts to my vendors in China and Taiwan, and to my friends and relatives. By now I still owe to my vendors about \$ 70,000 and owe to my friends and relatives \$76,600.

**Attached and marked as Exhibit 70 are copies of unpaid invoices and IOU**

196. I have been engaged in Chinese cultural business for most part of my life. It was too late to change my profession for my age. What is worse is that I lost all my reputation and credits, which is very difficult for me to find a job. At the moment, I have no job and cannot keep a basic living.
197. I have been often waking up from nightmares and reluctant to recall what happened in the past. I don't know when I can pay off my huge debts, and feel very guilty for my family. Due to the lasting lawsuit, I begin to have both physical and mental problems.
198. In short, the unbearable damages and harms defendants brought to me are the basic reasons I sued them. Who can tell me a way to get rid of my present situation?

### **Defamation on me by City councilor in media**

199. After CPCL's action was dismissed, on December 11, 2017, City councilor Ms. Amanda Yeung Collucci, issued a statement on behalf of government in a Chinese media Mingbao. She stated, "City terminated library's contract for Chinese service with the book company providing library's service. The reasons were the unqualified service and delayed delivery.". She did not mention the termination without cause defendants argued about all the time leally in court. She also stated, the contract was replaced by the second lowest price bidder. She didn't tell that City would pay twice as much a price for the same service to the new vendor.

### **Attached and marked as *Exhibit 71* is a copy of City councilor's statement in media**

200. The Mingbao press is the biggest Chinese media in Canada. Immediately, it searched my personal information and gave follow-up reports. "Mr. Cao" became famous in all Chinese communities in Canada. Besides, Mingbao is an international media. My case and my name soon spread to all over the Chinese world.
201. Councilor Yang didn't get involved in our case. I did believe she didn't know what really happened. But so confident as she stated, it showed that she believed the contract was terminated because of our "errors". This is what I'm worried about most. All the people around me would think the same.

202. As a Councilor, Ms. Yang's statement on behalf of City of Markham with government credibility. Her statement 100 % confirmed to all the people who know me that we had errors in the service. My reputation is tarnished. With the case spreading so widely, my damages were irreversible. There is no doubt that our "errors" are required to be proved in a higher standard legally.

### **Defendants' motivation for their defamatory stories**

203. There were some differences in defendants' motivation in different periods. The original motivation was that library wanted to raise their budget for the new opening service for the new branch. Once library created its first defamatory stories, they could not stop. They had to tell new defamatory stories to explain the previous ones. When we made the lawsuit, City was brought in. Two defendants told new defamatory stories so as to flee away from legal responsibilities. After our action was dismissed, defendants told defamatory stories in order to hide the facts of their corruption.

204. We had no conflicts with defendants and had a good relationship before June, 2015. From June ,2015 library began to think about the termination of our contract. Their purpose was to make a stop for further budge reduction for Chinese materials. The best way to solve the problem was to give the contract back to the previous vendor LSC that charged a doubled price. The best time to terminate our contract was at the end of the year. However, they got to know the new branch would open around the end of the year. And library couldn't wait. If we began to prepare for the new opening service, they could not terminate our contract at least within the four contract years. So library created two delivery warnings and easily terminated the contract for the new opening service of Southeast branch. *See details at paragraphs at 34-44 of this affidavit.*

205. The contract of Southeast branch was terminated in August, 2015. After this termination, library faced such a situation that they whether returned this contract to us in the future or terminated all our contracts with City. That was because MPL could not have two vendors of Chinese materials providing the same service at the same time.

206. If there were two vendors of Chinese materials at the same time, library could not deal with the difficult issues, for example, the same products were ordered twice, different records or different prices, etc.

207. Of course, the easiest way was to corner us to drop the contract ourselves. But we declined library's advice in September. That was why library lowered our prices and returned materials unreasonably after September. Library didn't expect that, in the second half of 2015, we accepted all library unreasonable requests, no matter what they were. Library couldn't find a way out. By the end of 2015, library had obtained the additional budget of \$354,755.00 for the substitution of the contract for Southeast branch. Getting this budget, library felt great pressure. *See details at paragraphs 45-80 of this affidavit.*

Attached and marked as **Exhibit 72** is a copy of confidential meeting minutes between library and City

208. On January 20, 2016, library made the last attempt to force me to drop the contract by a big scale change for products requirements without considering the cost. However, they failed again. I accepted their changing conditions and accepted the prices as well. Under such intense pressure, library created defamatory story that I had offensive behaviors to library staff. At last, library got Mr. Casale to agree to terminate our contract by demonizing my image. On January, 27, Mr. Casale sent me the notice of termination. *See details at paragraphs 211- 224 of this affidavit.*

209. In February, 2016, I appealed to City of Markham for the unfair termination. Under such circumstances, Mr. Pogue and Mr. Casale had no way back. They had terminated our contracts in August, 2015 and in January, 2016 without prior approval from City. They had to give a reasonable explanation. As a result, many false and defamatory stories were created in this period. Those stories were included in a suggesting report by Mr. Pogue and Mr. Casale. They submitted this report to City on March 27, 2016. The report was full of defamatory stories except one true fact that library had obtained the \$354,755 additional budget for the Southeast branch new opening by replacing CPCL with LSC. *See details on this report at paragraphs 225 – 255 of this affidavit.*

210. On April 5, 2016, council committee approved the report by Mr. Pogue and Mr. Casale. From then on, the termination of the contract became irreversible. From then on, MPL could do nothing but lie to the end, insisting that we had errors in the service. We launched the lawsuit on May 5, 2016. City and library became defendants. They were in the same boat finally. The two defendants went further and further on the road of defamation.

### **Slander of Offensive behaviors**

211. The meeting of January 20, 2016 was a very important date. In Ms. Gilchrist affidavit, she said, “when the issue of the two 2015 invoices being moved to the 2016 budget came up, he (Mr. Cao) became very angry and began yelling at the Library staff members. He was so abusive towards us that Ms. Chan and Ms. Bailie had left the room before the end of the meeting. I remained until the end of the meeting but felt apprehensive about Mr. Cao’s volatile behavior.”.
212. What on earth happened in the meeting? This is very important to understand the case. Let’s review the situation of the meeting. Defendants lawyer said in their factum that I was called to the meeting on January 20 to discuss my issues. This was a lie. On that day, I was called to a meeting for new profile. I was very excited because the material profile for 2016 would be released in the meeting. I had asked for the new profile from last October. I found Ms. Polly Chen was there. She did not work with us normally, so I did not know what she was doing in the library. Four library staff and me attended the meeting.
213. In the meeting, Ms. Gilchrist announced the new profile 2016. Library changed the requirements for materials in 2016 greatly. They changed the proportion of simplified and traditional characters materials from “50% : 50%” to “30% : 70%”, and also changed the copy number for each title. Further, Ms. Gilchrist asked me to order traditional books in Hong Kong instead of in Taiwan. These changes increased our cost greatly. The cost for traditional materials was almost twice as much as the simplified materials. That copies for each title were reduced more than half, which meant that our cost for Mark record doubled.
214. I gave my response to those changes in the meeting at once. As a vendor, of course I could handle any changes according to the new requirements. However, library just lowered the price

from January 1 of the new year. I suggested library go on keeping the prices for the last two years as the remedy for the new changes. Ms. Polly replied that this a contract CPCL made with City, the price could not be changed, and if CPCL didn't accept those new requirements, library had right to terminate the contract. I thought that was totally unjustifiable. Under such circumstances, I had to advise her to consult a lawyer before terminating the contract. I believed that was the first time I talked back to library staff since I provided the service. However, I am sure that there were no heated arguments or quarrels.

215. It was a normal discussion and negotiation in the meeting. Library gave unfair changes first, and then I had to give some advice for their consideration. Library threatened me that if I didn't agree, they had right to terminate the contract first, and then I advised them that they should consult a lawyer. The communications between us were rational all the time. All those can be witnessed by the original meeting minutes by Ms. Gilchrist herself.

216. Three library staff left the meeting not for anger as Ms. Gilchrist said, they left the meeting saying that they had another meeting. Ms. Gilchrist remained for the rest of the meeting. She went on with library's arbitrary theory that they could ask requirements for the products, but the prices could not be changed. It was City that signed the price with us that I should know there were changes in the service. At the end of the meeting, again as usual, I agreed to accept library's decision. In all the past experiences it never happened that we refused to accept library's decision.

217. I really didn't expect that I was accused to be offensive to library staff in this meeting. From both Ms. Gilchrist and Mr. Pogue's affidavits submitted in April, 2017, I got to know that Ms. Polly Chan was scared in the meeting by Mr. Cao's "offensive behavior". If I didn't sue library. I would never know the issue.

218. As Ms. Gilchrist said in her affidavit, "my understanding is that after discussing Mr. Cao's behavior at the meeting, they decided that it was time to terminate the Contract. The meeting was a pivotal point in the Library's decision to terminate the Contract." What she said agreed with the time. Our contract was terminated on January 27, 2016, a week after the meeting.

219. It was just before the court hearing that I learned my “offensive behaviors” should result in terminating the contract. I asked Mr. Casale how he got to know the issue. He said that library told him the issue by a call after the meeting.

220. “Offensive behavior” was a complete slander of my personality. I have never offended anyone with bad behaviors in my life. As a businessman, I always stick to the principle that customers are God, and always agree with whatever library asked me to do. There was a very friendly relationship between library staff and me for a year before library started the war. This even can be approved by library’s vendor score 2016. *See vendor score card at Exhibit 77.*

221. Hearing this, I immediately contacted the defendants’ lawyers, asking to have a cross exam with Ms. Chan. Their lawyer refused to do so with the excuse that, “we are not agreeable to producing Polly Chan as a witness for examination because she is extremely frightened of you and, in any event, is not an important witness as she was not a decision-maker with respect to the Contract.”. Because their lawyer played the time, this cross exam was not done before the hearing.

222. On second thought, I thought Ms. Chan must be very nervous. Library might exaggerate what she said. She was used by library for library’s purpose. I really didn’t like to stump her on the issue. Moreover, our aim was to go on with the performance of the contract. We might work together with library staff in the near future. So I stopped arguing about the issue. I said nothing about it in our responding factum of the summary judgment.

223. Ms. Gilchrist provided a meeting minutes as the evidence in her affidavit. However, this was the first time I read it. There was no date when Ms. Gilchrist wrote it. Importantly, this minutes in print was completely different from her original minutes in handwriting I obtained. There were not any signs of my offensive manners in her handwriting minutes. I suspect she made this print evidence only for the litigation later.

*Attached and marked as **Exhibit 73** and 74 are copies of Ms. Gilchrist’s handwriting and print meeting minutes.*

224. For those reasons, this direct cause of terminating our contract was completely ignored in my corporation lawsuit. I might let it go in the past because we had a chance to continue to provide service for library. But now I am suing defendants’ defamation. This slander issue was



the key to the termination of our contract, which brought me huge damages. Of course, it must be probed to the bottom. It must be proved by high standards.

**Mr. Pogue and Mr. Casale's report to City**

225. In library termination notice on January 27, 2016, I was told that library would soon provide a report to City to suggest the termination of our contract. But I knew nothing about what the report was about. I didn't get the report through legal channels until the hearing approached.

226. Defendants suddenly offered more than 1000 pages materials near the hearing, I could not read them all. So I just looked through them and found an issue that page 5 was missing from the report. I made a further study of the report and found that most of the contents on the first page were blocked out. There were also contents to be blocked out on page 2 and 4. The erasing work was done carefully. It was not easy to find the correcting mark without a careful study. I questioned defendants' lawyers. At my request, they had to give me the original report. *See the revised report at page 302 in defendants' motion record.*

*Attached and marked as **Exhibit 75** is a copy of Library's report to general committee (original edition)*

227. In fact, when defendants gave me the original copy, I could not see why they blocked out those contents at that time due to my limited English and also the limited time. After our lawsuit was terminated, I could have time to compare the original one with the revised one. I found that those contents blocked out were all the key issues in the report.

228. As I stated, I didn't have enough time to read this report before the hearing and only read it very roughly. Then I put the report in the exhibits for the future use. In my long 30 pages factum, I had only one sentence for this crucial document. It was that, "library's report was full of lies.". I said nothing more. At that time I thought I could make everything clear in court anyway. Because I myself experienced each issue library claimed in the report. I didn't expect what happened later in the hearing.

229. In the hearing, I told judge that library's report was full of lies. It was a pity that judge stopped me from this topic. However, later I found that judge took this report as the key evidence that showed we had errors in the service. She wrote in her judgment: " the report had significant

support which demonstrates there was no bad faith in the without cause termination.”. I found that our “errors” approved by judge were all copied from this report.

230. This made me carry out a close study on this report. I was shocked by the false statement in this report. I found all defendants’ defamatory stories came from this report basically. Library listed 6 issues to CPCL, including all the items in library service. Library even shifted their staff’s errors into ours. There was no supporting evidence in the report. Later, they gave some supporting evidence in their legal materials in the litigation. The six issues are as follows.
231. **Issue 1, Fulfillment Rate / Expenditure Strategy Plan.** Under this heading, library complained that CPCL was slow to achieve fulfillment rate through both 2014 and 2015. I talked a lot about this issue above. It is not necessary to say more. *Please see details at paragraphs 19 – 26 / 25 – 36 / 85-86.*
232. **Issue 2, Arbitrary substitutions of DVD’s in non-Chinese languages.** Library alleged that plaintiff was trying to provide foreign DVDs. We never provided foreign DVDs, but provided foreign DVDs “with Chinese subtitles”. Library deleted the attributive phrase “with Chinese subtitles” to confuse the facts.
233. Among our total supplies, we provided those kinds of materials in a very small quantity. We used to provide those kinds of products and they were borrowed well. Library never refused to accept them before. But we provided only a small number of this kinds of materials. *See Exhibit 33 for the quantity of this kind of material we provided.*
234. From the phrase “arbitrary substitutions”. Library could return any materials by the contract. They did so actually. How could we force them to accept the materials they didn’t want? There were no reasons on earth that I threw our money.
235. Ms. Gilchrist said in her affidavit that library had other vendors that ordered non-Chinese products. She referred to LSC. But LSC never provided foreign products with Chinese subtitles.
236. We placed each order after a careful confirmation that library did not have the same title, including English edition. There was no risk of a repeated order. Before delivering each shipment of materials, we submitted the records of the products with detailed information in advance.

237. Also, library paid us a month after each delivery. Library could refuse to pay if they found the materials didn't meet their requirements.
238. Anyway, we accepted any returns without conditions. For example, MPL returned some children's toy books at the end of 2014, from then on we never ordered that kind again. From all those above, the arbitrary substitutions were impossible.
239. **Issue 3, Traditional vs. Simplified Materials.** Library complained that we had difficulties in providing a sufficient quantity of traditional prints. I know more than half of the Chinese immigrants in City of Markham came from Hong Kong. They read traditional characters. I can feel what was library's intentions to make such a story. They deliberately blackened CPCL and me by using the controversy between simplified and traditional Chinese characters.
240. We had provided two kinds of materials exactly according to the agreement in both 2014 and 2015. I can not find reasons why they said so. It can get the balance data for the two kinds easily in library's website. It was a frame-up.

*Attached and marked as **Exhibit 76** are copies of a balance research in library's website and performance report 2014 & 2015.*

241. Then I understood. I found library attached a statistical record. That was a delivery record from January to July in 2015. The unbalanced statistical record were based on this out of date document. Later I found this statistical record was taken from library's vendor score card. It showed that this vendor score card was also made in 2016.

*Attached and marked as **Exhibit 77** is a copy of library's vonder score card 2016.*

242. According to the RFP, the average ratio was based on one year. This was also a very basic common sense. Why didn't library use the whole year's statistics, but used a data for a period of time instead? Library submitted this report in April, 2016. It took only a few minutes to get the average balance between the two kinds by using library's system on website.
243. There were many facts showing we had no such a difficulty at all. From July, 2015, we began to provide personalized services at library's request. It was a service that we provided materials according to individual customers' requirements. No matter whether they wanted

simplified or traditional materials, so long as library gave us the name and publishing information of the materials, we could provide the materials within 3 months. We did very well before the termination of the contract. Our ability to do this individual service showed that we had no such difficulties in providing traditional materials.

244. Besides, at the meeting of January 20, 2016, library asked to change the traditional proportion from 50% to 70%. I said no problem at once. I also said that it was not a problem even if library asked us to offer all traditional materials. I couldn't understand why defendants created such a low-level story that a Chinese vendor had difficulties in providing traditional materials. It is just like to say that a Canadian has difficulty in providing materials produced in America.

245. In all respects, it is unreasonable for the defendant to say that we have such a problem. The only reason was that I was an immigrant from Mainland China. Therefore, I have the reason to suspect that there is a political bias in this issue. Defendants are asked to respond to my complaint.

246. **Issue 4, Material Distribution.** Library claimed that from 2015 we failed in distributing materials among library branches according to library's guide. Distributing materials by library's directions was a very easy job for a vendor. This lie was too naive to believe.

247. In September, 2015, Mr. Pogue suddenly told me that there was something wrong with the breakdown for the 6 branches. When I was told that library had changed the products proportion for branches in 2015, I was surprised. I knew nothing about the change. Later, Ms. Gilchrist said in her affidavit that they sent me the 2015 collection profile on February 19, 2015. But I never received such a profile. It was Ms. Gilchrist who offered us the breakdown 2015 at the beginning of the 2015. So we did the distribution according to that breakdown from the beginning of the year.

*Attached and marked as **Exhibit 78** are copies of my email for breakdown 2015 and library's original breakdown 2015*

248. In fact, though the breakdown problem was found in September, it was not a big issue no matter whose fault it was. The balance could be adjusted right in the following several months. However, it was library who said that they would guide each shipment from September. By

October, I found that according to library's guide, the allocation errors became worse. I reminded library of the issue. But Ms. Gilchrist told us not to worry and asked us to go on delivering according to their instructions. Obviously, library itself didn't follow the newly revised breakdown. Later I got to know that because we provided too many Chinese materials, some branches didn't have enough space for Chinese materials.

**Attached and marked as Exhibit 79 is a copy of library's breakdown 2014 and 2015.**

249. **Issue 5. Price.** The report says, "the prices invoiced by CPCL throughout much of 2015 were considerably higher than pricing submitted in the bid." Later Mr. Pogue admitted that they paid by one standard from beginning to the end. It is clear that Mr. Pogue and Mr. Casale intended to hide the facts from Council committee. *See my arguments on prices at paragraphs 50 – 70/ 145 – 151 of this affidavit.*
250. **Cataloguing / processing.** Under this heading in the report, we found that there was also only one sentence for this issue as, "library staff identified numerous cataloguing and processing errors". *See my arguments on the issue at paragraphs 12 / 59 - 62.*
251. An the end of those issues it says, "library staff held a series of meetings with the president of CPCL and communicated concerns." Later in the litigation, their lawyers said in their factum to support this report. I copied it here, "Library staff wrote to and met with Mr. Cao regarding these issues on numerous occasions." And then, they listed 7 emails and the meeting minute on January 20, 2016 as evidence. I read those emails and found they were our daily working emails, which had nothing to do with any issues or warnings. As for that meeting minutes on January 20, I have reason to suspect that it is false evidence Ms. Gilchrist created later. *See my arguments on the meeting on January 20, 2016 at paragraphs 211 – 224.*
- Attached and marked as Exhibit 80 are copies of Ms. Gilchrist's clarification on numerous occasions**
252. I wonder why this report doesn't mention the two important issues on the termination. One is the meeting on January 20, 2016, which is the turning point to terminate our contract as they say, and the other is the opening service termination for Southeast branch in August, 2015. It is clear that Mr. Pogue and Mr. Casale intended to hide them from the council.

253. This suggestion report to City in Mr. Pogue's affidavit for summary judgment motion is a revised one. I suppose Judge gave her judgment based on this revised report.
254. The contents deleted in the revised report are all key issues, which showed the motivations of replacing CPCL with LSC. It tells the details of obtaining additional budge of \$354,755 from the substitution. The report also told council they would negotiate prices with LSC for 2017 and 2018. Beside those price issues, the report gave some legal suggestions including taking the legal term of terminating contract without cause.
255. Council committee approved the termination by this report. Defendants' lawyers created our "errors" in their legal documents based on this report. Judge gave her judgment based on this report. I didn't know this report until council approved it. And I didn't argue about this report in the hearing of the summary judgment motion. There was no cross exam on this report either before the hearing.

#### **Defendants' defamatory stories in their summary judgment motion**

256. In their summary judgment motion, what I couldn't tolerate was that they lied and smeared me unlimitedly based on their taking advantage of my limited English and my poor legal knowledge. Defendants could argue about the termination without cause, but could not make defamatory stories. They should know that those defamatory stories would ruin me.
257. Here is a list of defendants' lies, libels or slanders, false submissions in their summary judgment motion.

<b>a. Defendants' defamatory stories and false submissions . b. My arguments.</b>	
1	<p>a. <i>"Constant failure to comply with delivery target . "</i> (Quoted from their lawyer's factum)</p> <p>b. This is a lie. <i>See my arguments at paragraphs 19 – 37; 85.</i></p>
2	<p>a. <i>"CPCL's cataloguing and processing errors rate was 77.7 times that of the library's other material vendor. "</i> (Quoted from their lawyer's factum)</p> <p>b. This is a lie. <i>See my arguments at paragraphs 59-62.</i></p>
3	<p>a. <i>CPCL had a wrong distribution proportion of the products for each branch in 2015.</i> (Quoted from their lawyer's factum)</p>

	b. This is a Lie. <b><i>See my arguments at paragraphs 246 – 248.</i></b>
4	<p>a. <i>Providing DVD in languages other than Chinese</i> (without Chinese tracks) (Quoted from their lawyer's factum)</p> <p>b. This is a lie. <b><i>See my arguments at paragraphs 232 – 238.</i></b></p>
5	<p>a. <i>Providing substantially more print materials in simplified script than traditional scripts, when the collection profiles called for an even 50/50 split.</i> (Quoted from their lawyer's factum)</p> <p>b. This is a lie. <b><i>See my arguments at paragraphs 239 - 245.</i></b></p>
6	<p>a. <i>Providing materials with moveable, fuzzy, sparkly, pop up, or other delicate interactive components of the Do not Purchase” list on the Collection profile.</i> (Quoted from their lawyer's factum)</p> <p>b. CPCL only delivered some toy books for children in one shipment in the first year (2014) in the service. We withdrew them at once when library told us the issue. We never delivered such kind of books a second time from then on. We never provided materials with moveable, fuzzy, sparkly, pop up, or other delicate interactive components of the Do not Purchase” list on the Collection profile anytime. MPL are asked to provide evidence for the issue.</p>
7	<p>a. <i>Providing DVDs older than the maximum age set out in the Collection Profile.</i> (Quoted from their lawyer's factum)</p> <p>b. It is a lie. <b><i>See my arguments at paragraphs 73 – 77.</i></b></p>
8	<p>a. <i>Providing incomplete book and DVD sets.</i> (Quoted from their lawyer's factum)</p> <p>b. It was true. However, this was not a mistake. Defendants should know what series books are. There are dozens of books written for some favorite titles. Each volume has a complete story. In most cases, when we ordered the first few volumes, the second half of the book wasn't published. Of course, we planned to place an order after they were released to keep the book going. If library didn't like the book with many volumes, they could tell us. We would stop right away. That was not a problem.</p>
9	a. <i>Library staff wrote to and met with Mr. Cao regarding these issues on numerous occasions,</i>

	<p><i>including ( a-h occasions ) (Quoted from their lawyer's factum)</i></p> <p>b. This a lie. <b><i>See my arguments at paragraph 251.</i></b></p>
10	<p>a. <i>Mr. Cao has admitted to charging prices higher than bid prices on numerous occasions.</i> (Quoted from their lawyer's factum)</p> <p>b. It was a lie. I agree that we charged the price higher than the bid price. That was a fact. However, I never say I charged higher. <b><i>See my arguments on price issue at paragraphs 49 – 69; 145 – 147.</i></b></p>
11	<p>a. <i>The first two invoices CPCL sent the library in January 2016 both charged prices much higher than the bid prices.</i> (Quoted from their lawyer's factum)</p> <p>b. It was a lie. See my arguments on the two invoices at paragraphs 148 – 152.</p>
12	<p>a. <i>The plaintiff does not claim that the defendants have not paid for materials delivered to the library before the termination date.</i></p> <p>b. It was a lie. I claimed my damages both before and after the termination date, and both to defendants and court. I don't know why defendants said so. <b><i>See my arguments on paragraphs 93 - 97; 104 – 105; 168 – 169; 189 – 198.</i></b></p>
13	<p>a. <i>Mr. Cao asked library to continue to accept CPCL's higher prices.</i> (Quoted from their lawyer's factum)</p> <p>b. MPL didn't provide the background of my email. Because Ms. Gilchrist talked to another library staff on the price issue in front of me that library would change the price policy. They would pay their vendors according to the actual market prices. I interposed that was the most reasonable thing library should do. However, Ms. Gilchrist replied to me that our corporation was different. Library had only two vendors and I thought that was not fair. So, after that meeting I wrote this email hoping library kept the prices in 2015. <b><u>Attached and marked as <i>Exhibit 81</i> are emails between Me and Ms. Gilchrist on price.</u></b></p>
14	<p>a. <i>Library staff met with Mr. Cao on January 20, 2016 to discuss this issue (price)as well as cataloguing and selection issues.</i> (Quoted from their lawyer's factum)</p> <p>b. It was a lie. I was called to the meeting to discuss profile 2016. <b><i>See Exhibit 72 about the meeting.</i></b></p>



15	<p>a. <i>After the library staff told him that would not be possible, he became very angry and began yelling at the library staff present.</i> (Quoted from their lawyer's factum)</p> <p>b. It was a lie. <i>See my arguments at paragraphs 208, 211 – 224.</i></p>
16	<p>a. <i>Service Agreement relates only to the library's C3.</i> (Quoted from their lawyer's factum)</p> <p>b. It was a lie. <i>See my arguments at paragraphs 120 – 125; 153 – 165.</i></p>
17	<p>a. <i>CPCL is seeking a permanent injunction, specific performance of the Contract, <b>and</b> damages in the mount of \$ 405,000.00.</i> (Quoted from their lawyer's factum)</p> <p>b. Defendants' lawyer changed the word "<b>and</b>" into "<b>plus</b>" in their cost submission. This is different from our statement. Our original statement of claim on May 5, 2016 seeks for, " a. specific performance of the contract; or, b. <b>in the alternative</b>, damages in the amount of \$ 280,000. Our amended statement of claim on May 5. 2016 seeks for, a. specific performance of the contract (adjustment of improper terms), with compensation of \$ 115,000; or, b. <b>in the alternative</b>, damages in the amount of \$ 405,000. We provided 8 offers to settle legally or by emails. Defendants refused them all. After the corporation's action was dismissed, I wrote defendants to tell that if they could offer me a job, I would stop further actions. There was no response. <i>See our original statement at Exhibit 53, and our amended statement at about page 30 in the volume 1of 4 in defendants' motion record.</i></p>
18	<p>a. <i>Misrepresentation. CPCL only had a few staff in Canada.</i> (Quoted from Ms. Gilchrist affidavit)</p> <p>b. This is a lie. I never said anywhere CPCL had many staff in Canada. In my reply to City's request, I told honestly about the number of our staff in Canada. I told in RFP we had no Canadian experience for library service, and we had experience in library service in China. <i>See details at <b>Exhibit 3</b> (Reply to the request).</i></p>
19	<p>a. <i>Misrepresentation. CPCL merely acts as an independent distributor in Canada for BPDG.</i> (Quoted from Ms. Gilchrist affidavit)</p> <p>b. All our statements in the RFP are true. Defendants did the statement checking for our submission in RFP. <i>See my arguments at paragraphs 7 – 9. See details at <b>Exhibit 4</b> in this</i></p>

	<i>affidavit.</i>												
20	<p>a. <i>Misrepresentation. CPCL had never provided this service to any Canadian library in the past.</i> (Quoted from Ms. Gilchrist affidavit)</p> <p>b. I never said I have Canadian experience. I told I have experience in China. Defendants knew about it. .</p>												
21	<p>a. <i>A major issue at that time was CPCL’s election of materials for children and young adults.</i> (Quoted from Ms. Gilchrist affidavit)</p> <p>b. It was a lie. We are Chinese immigrants ourselves and we know Children’s books in Chinese should not be borrowed better than those in English. The following is our budget breakdown on children’s materials in 2014 and 2015.</p> <table><tr><td>Year</td><td>Suggested budget</td><td>Delivered</td><td>Balance</td></tr><tr><td>2014</td><td>\$ 67,848.28</td><td>\$ 71,47051</td><td>+3,622.23</td></tr><tr><td>2015(revised)</td><td>\$ 90,068.71</td><td>\$ 54,021.16</td><td>-36,047.55</td></tr></table> <p>We purchased children’s materials according to library’s suggested breakdown in 2014. We didn’t think children would borrow the books well. So we didn’t order children’s books from January to July at all. We spent less than library’s breakdown in the budget. It was not until a meeting in July that library became aware of the issue on children’ materials. Actually, it was we that helped library solve this problem. The fact was that Library shifted their own problems onto us.</p> <p><b><u>Attached and marked as Exhibit 82 is a copy of children’s materials in library’s breakdown.</u></b></p>	Year	Suggested budget	Delivered	Balance	2014	\$ 67,848.28	\$ 71,47051	+3,622.23	2015(revised)	\$ 90,068.71	\$ 54,021.16	-36,047.55
Year	Suggested budget	Delivered	Balance										
2014	\$ 67,848.28	\$ 71,47051	+3,622.23										
2015(revised)	\$ 90,068.71	\$ 54,021.16	-36,047.55										
22	<p>a. <i>In the end of the year (2015), the split had improved to 5% - 45%.</i> (Quoted from Ms. Gilchrist affidavit)</p> <p>b. It was a lie. <b><i>See the details at Exhibit 76.</i></b></p>												
23	<p>c. <i>In November 2015, Mr Cao asked us to accept Korean and Japanese DVDs with Chinese subtitles.</i> (Quoted from Ms. Gilchrist affidavit)</p> <p>a. It was a lie. <b><i>See my arguments at paragraph 78 in this affidavit.</i></b></p>												
24	<p>a. <i>Library received many complains from its user on a variety of, including but not limited to incomplete book or DVDs incompatible with Canadian players.</i> (Quoted from Ms. Gilchrist</p>												

	<p>affidavit)</p> <p>This was a lie. In the purchasing guideline in MPL's profile for DVDs, it says, " please ensure that DVDs play in Canadian DVD players (region code 1, 0, or All; NTSC, Although not preferred, Pal, region 3 are acceptable where necessary. I was not sure about it and I wrote to Ms. Gilchrist for the issue. She confirmed Pal, region 3 were no problem. <i>See library's profile at page 412 in defendants' motion record.</i></p> <p><u><i>Attached and marked as Exhibit 83 are copies of emails between Me and Ms. Gilchrist on DVD region code</i></u></p>
25	<p>a. <i>On August 5, 2015, the average price of DVDs supplied by CPCL to that point was \$48.00. (Quoted from Ms. Gilchrist affidavit)</i></p> <p>b. <i>It is a weird claim. See my arguments on the price at paragraphs 50 – 55; 63 – 70; 146 – 151.</i></p>
26	<p>a. <i>On August 17, 2015, Mr. Cao wrote me a letter in which he (Mr. Cao) admitted that his average DVD price was 49.69 (Quoted from Ms. Gilchrist affidavit)</i></p> <p>b. <i>It seems that Ms. Gilchrist doesn't know what the average price mean. When I said on the average price in my email, I referred to the average price for the specific 16 titles. This is either Ms. Gilchrist didn't know what an average price mean, or she intended to confuse the facts. See the email Ms. Gilchrist referred to at page 508 in defendants' motion record; See our every prices at Exhibit 27 in this affidavit.</i></p>

258. There was a complete story for each of all those lies, slanders and libels above. I know defendants made the false and defamatory stories only to win their case. However, those lies, slanders and libels have brought me much greater damages and harm than that of the termination of our contract. They are not the damages and harm for a moment but for the whole life. That was why I will never ignore it. I can forgive defendants' termination without cause, but I will never accept false accusation made by the defendant against me.

### **Corruption and Malfeasance**

259. **Dark-box operation.** Why did Mr. Pogue and Mr. Casale dare to submit the report suggesting the termination of CPCL's contract before confirming those errors in the report? The

reason was simple. They knew that this report was operated behind my back and we wouldn't know what they said. If we hadn't appealed to law, we would never have seen the report. Government agencies' dark-box operations are the inevitable result of defamation.

260. **Abuse of power.** Mr. Pogue and Mr. Casale reported to the City Council ( suggesting the termination of the CPCL contract) on April 4, 2016. But the opening contract of the new Southeast library was terminated eight months ago. Besides, the contract of six branch libraries was also terminated three and a half months ago.

261. In addition, the return of the contract to the previous vendor was also a first operation, and then a follow-up procedure. Moreover, the library had received an additional budget of \$354,755.00 for the new Southeast Library before the City Council approved the replacement of CPCL. All that needs to be done is done beforehand. What was left for the councilors to do was just to raise their hands, which was a mere formality. The City government let it go, choosing to go with it.

262. **Listening to only one side.** When I learned that the City Council was scheduled to review the reports provided by Mr. Pogue and Mr. Casale on April 4, 2016, I applied for a five-minute opportunity to speak at this meeting exercising my right and I also submitted more than 40 pages of explanatory material in which I explained some of the key issues. But I was not allowed to sit in and listen to the reports from Mr. Pogue and Mr. Casale to the City council.

263. The next day, I got the news that the board of directors of the City council approved their proposal. From then on, there was no possibility of compromise between the two sides, and confrontation can only be escalated. Before the City Council approved their proposal, they did not verify it to me or asked me for any opinions. They just listened to one side of the story. City government should be responsible for negligence in rash and blind decisions

264. **Arbitrary clause.** I have never heard that a contract can be terminated without cause. Even if the termination of a contract "without cause" can be considered lawful, it is unfair to terminate a contract that has generated such a huge investment. Terminating the contract without appropriate compensation was really unacceptable.

265. It was with this unfair clause and the dark-box operation that Mr. Pogue and Mr. Casale had no bottom lines in their work.
266. **Arbitrariness.** In our contacts with the defendants, we encountered many arbitrary and absurd decisions made by individuals. For example, library and Mr. Casale suddenly announced the termination of the contract, and at the same time Ms. Gilchrist declared that MPL stopped receiving our products within 3 days regardless of the existence of the contract.
267. Another example, in August, 2015, the library suddenly returned the DVDs that were produced for more than two years. After that, the library immediately found that the products produced within two years didn't match the market. In September, they changed the rules to no more than six years. However, when we handed over the products returned in August to the library again, they refused to accept them, saying that was not a retroactive decision.
268. **Unprincipled shield of the faults of "one's child".** There were lots of loopholes in the library's report. The city government couldn't be unaware that replacing us with LSC would cost twice as much. After we took legal action, various facts emerged. However, instead of correcting the mistakes in time, the city government pretended not to know, making the best of the mistakes. They were trying to help their subsidiary to make up for legal loopholes. This was playing favoritism.
269. **The power to squander taxes.** If the defendant was an enterprise or an individual, and they terminate the contract for their convenience, I wouldn't say anything. They had the right to allocate their hard earnings. But the defendant's expenses were from taxes. No individuals paid a penny for the case. I spoke to councilors, telling them that replacing us with LSC would require taxpayers to pay additional hundreds of thousands more each year. But there was no response to my remarks.
270. LSC has been serving Markham Library for more than 40 years. The total amount of overpayment made by the defendant in the past and in the future is an astonishing figure.
271. In the process of the lawsuit, I made many requests for compromises through legal procedures. Every time I gave them the message that as long as the contract could be continued

and I would waive any claim for compensation, but the defendant refused. The defendant was desperate to terminate our contract at all costs, showing no willingness to compromises. Eventually, the Court of Appeal denied that the plaintiff in the first trial had to pay the lawyer's fee. This means that the cost of the lawsuit was also paid by taxpayers. Without the taxpayers' money, would the defendant be so self-willed?

272. I also have the reason to suspect that the defendants have a dirty secret in the case. It is hard to believe that defendants had to change their vendor with a loss of paying a double price for some "errors". It is unbelievable that there is no corruption in such a large amount of unprincipled expenditure.

273. **Discriminatory business environment.** Library had two vendors, CPCL and LSC. LSC had served MPL for more than 40 years. The library's experience, such as price, delivery, data and processing, were all from those two suppliers. As for the service of supplying Chinese books to the library, the two suppliers were not at the same level. It's ridiculous to replace a company that has a strong Chinese background with a company that doesn't understand Chinese. However, the library turned a blind eye to the flaws of LSC's Chinese service. Whether it was in the past or it is now, the two companies are marked with two different labels and they publicly carried out double standards.

*Attached and marked as **Exhibit 84** is a copy of the report to general committee in 2016*

274. Library complained we charged too much, but they returned the contract to LSC that charged them more than twice as much; Since January, 2016, CPCL has been asked to change the invoice pattern. All invoices show only three prices without a unit price. However, library didn't ask LSC to make a change; The DVDs released for more than two years and supplied by CPCL were returned. But the DVDs supplied by LSC and issued for more than two years were never returned; Each of our records has a cover, a title in Chinese and a Chinese introduction. LSC's records in the past could not be read both in English and in Chinese. After getting back our contract, LSC tried to imitate us, but the record still has no cover and not every product has a Chinese introduction; CPCL was not allowed to upload data directly. The data of each delivery

order had to be strictly checked by the library software. But LSC was exempt from inspection despite many mistakes; Library complained the CPCL had difficulty providing enough DVDs. But the DVDs offered by LSC was three times less whether in the past or at present; Library asked CPCL to provide personalized subscription services for readers, but they didn't ask LSC to do so; Library asked CPCL to deliver Chinese products once a week, but LSC didn't deliver Chinese products every week.

Attached and marked as **Exhibit 85** is a copy of LSC DVDs' list in 2013

275. I make this affidavit in response to defendants' summary judgment motion and dismiss their motion.

Affirmed before me at the City  
 of Toronto  
 in the Province of Ontario  
 on Sept 11/2019  
W. CAHILL  
REGISTRAR



QIANG LI CAO

Court File No. CV-19-618275-00

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**QIANGLI CAO**

Plaintiff

and

**CITY OF MARKHAM and MARKHAM PUBLIC LIBRARY**

Defendants

**FACTUM OF THE MOVING PARTIES THE CITY OF MARKHAM AND  
THE MARKHAM PUBLIC LIBRARY**

*(Summary Judgment Motion Returnable December 19, 2019)*

November 28, 2019

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Tel: 647-887-8767

Plaintiff



Tab J

Court File No. CV-19-618275-00

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**QIANGLI CAO**

**Plaintiff**

**and**

**CITY OF MARKHAM and MARKHAM PUBLIC LIBRARY**

**Defendants**

**FACTUM OF THE DEFENDANTS AND MOVING PARTIES**

**PART I - NATURE OF THE MOTION**

1. The Defendants, the City of Markham and the Markham Public Library, move for summary judgment dismissing the Plaintiff's action on the basis that he is estopped from obtaining the relief sought as all of his allegations have previously been litigated and determined by this Court, or alternatively, ought to have been joined with a prior proceeding.

**PART II - OVERVIEW STATEMENT**

2. There must be finality to litigation. Parties cannot present new versions of facts or legal theories in fresh claims arising from matters that have already been decided. As the House of Lords commented in *Hoystead v. Commissioner of Taxation*, if this were permitted, "litigation would have no end, except when legal ingenuity is exhausted."

3. The Plaintiff already raised all of the matters that he is now trying to re-litigate with this claim in a previous action before this Honourable Court. Justice Kristjanson dismissed that prior claim, a decision upheld by a unanimous Court of Appeal.
4. This action arises from the termination of a contract for the supply of Chinese language materials to the Markham Public Library ("the Library"). The Library contracted with Chinese Publications for Canadian Libraries Ltd. ("CPCL"), a corporation in respect of which the Plaintiff is the CEO, sole director and sole shareholder, for the supply of Chinese language materials. The contract was awarded to CPCL in June 2014 by the City of Markham after a competitive bidding process. The parties intended the contract to last from June 2014 to December 2018.
5. After the contract commenced, it soon became obvious that CPCL had grossly overstated its capacity to fulfill the contract and was billing the library far in excess of the prices set out in its accepted proposal. CPCL also provided a generally poor level of service and breached the terms of the contract in numerous respects. The Library could not serve its customers, the residents of Markham, with CPCL as a supplier. Acting in accordance with the express terms of the City's contract with CPCL, City Council terminated the contract for cause on April 5, 2016 and the termination took effect on May 17, 2016.
6. CPCL sued the City. It sought all manner of relief allegedly stemming from the termination of the contract, including an injunction, specific performance, and damages in the amount of \$405,000.00 (the "CPCL Action").
7. The City moved for summary judgement in the CPCL Action on the basis that
  - (a) CPCL breached the contract; and

- (b) that CPCL was given more than adequate written notice pursuant the termination provision.

8. Justice Kristjanson dismissed the CPCL action on the basis that CPCL had “consistently failed to meet or comply with the price requirements of the contract; delivery targets; and collection profile requirements.” Her Honour found that the Defendants properly terminated the contract for cause.

9. CPCL appealed. The Court of Appeal upheld Justice Kristjanson’s decision.

10. Mr. Cao now brings this action in his own name. Despite framing the causing of action in defamation and exchanging his corporation for himself as the Plaintiff, the core allegations raised by in this action are identical to those raised before—and dismissed by—Justice Kristjanson in the CPCL action.

11. In essence, the Plaintiff asserts in this action that the Defendants’ stated reasons for terminating the contract with CPCL were defamatory. The Plaintiff’s allegations are specifically repudiated by Justice Kristjanson ruling. Her Honour accepted the Defendant’s evidence that the termination was justified and specifically rejected the Plaintiff’s submissions that the City’s evidence of the breaches were false. True statements cannot be defamation. If the Plaintiff were to succeed in this litigation, this Court would have to come to a decision opposite to that of Justice Kristjanson in the prior action.

12. The Plaintiff’s action cannot succeed. It must be dismissed with costs.

### PART III - FACTS

#### CPCL's Contract with the Defendants

13. On or about January 23, 2014, CPCL submitted a bid in response to a Request for Proposal ("RFP") from the Corporation of the City of Markham (the "City"). The RFP was for the supply of Chinese language DVDs, CDs and print materials to the Markham Public Library (the "Library"). The bid was signed and submitted by CPCL's CEO, director and sole shareholder, Qiang Li Cao ("Mr. Cao") on behalf of CPCL.

**Affidavit of Larry Pogue sworn on July 3, 2019 ("Pogue Affidavit"), Moving Parties' Motion Record, Tab 4, paras. 6-8;**

**CPCL's Bid Submission, Moving Parties' Motion Record, Tab 4, Exhibit G, Sub Exhibit B.**

14. The RFP, the *General Terms and Conditions*, CPCL's bid submission and the resulting purchase order formed the contract between the City and CPCL (these documents are hereinafter collectively referred to as "the Contract").

**Affidavit of Tony Casale sworn on April 20, 2017 ("Casale Affidavit"), Moving Parties' Motion Record, Motion Record, Tab 4, Exhibit G, Tab 3.**

15. Almost immediately, CPCL breached the Contract. CPCL's main performance issues were as follows:

- (a) It made cataloguing errors;
- (b) It did not comply with delivery targets (the amount of materials that had to be delivered by certain deadlines throughout the year) set out in the RFP;
- (c) It did not comply with Collection Profiles (the types of materials the Library wanted for each branch's collection); and

- (d) It charged prices higher than those quoted in its bid.

Library staff repeatedly communicated with the Plaintiff regarding the defaults in the contract throughout 2015 and 2016, including on September 15, 2015 when Larry Pogue, Special Projects Assistant for the Library, met with the Plaintiff. The Plaintiff is the only person who the Defendants ever dealt with in connection with the awarding, administration and termination of the Contract.

**Pogue Affidavit, Parties' Moving Motion Record, Tab 4, paras. 10-11.**

16. Section 17.3 of Part III of the General Terms and Conditions gave the Defendants the right to terminate the contract without cause upon providing 30 days written notice to the Plaintiff, which was in fact provided to the Plaintiff prior to the termination.

**RFP, General Terms and Conditions, Part III, s. 17, Pogue Affidavit, Moving Parties' Motion Record, Tab 4, Exhibit 3, Sub-Exhibit A pp. 43-44.**

17. On January 27, 2016, the Library notified CPCL that it would seek Council approval to terminate the Contract. Pursuant to the City of Markham By-Law 2004-341, City Council was required to approve of the termination. Tony Casale, a Senior Construction Buyer in the Purchasing Division of the City, and Mr. Pogue prepared a report to the General Committee of City Council recommending the termination ("the Report"). Mr. Pogue presented the Report at the General Committee of City Council on April 4, 2016 and the General Committee voted to terminate the Contract on April 5, 2016.

**Pogue Affidavit, Moving Parties' Motion Record, Tab 4, paras. 13-14.**

**CPCL's Prior Action against the Markham Defendants**

18. On May 5, 2016, CPCL brought an action against the Defendants. CPCL alleged the City improperly terminated the Contract and sought specific performance, or alternatively, damages for loss and diminished commercial reputation.

**Pogue Affidavit, Moving Motion Record, Tab 4, paras. 13-14.**

19. CPCL alleged that the Library made "incorrect comments" that discredited CPCL, acted improperly, slandered the Plaintiff and improperly terminated the Contract, resulting in the sole director (Mr. Cao, the Plaintiff herein) suffering "huge personal debts and great mental shock."

**Pogue Affidavit, Moving Motion Record, Tab 4, paras. 21-22;**

**Statement of Claim, Pogue Affidavit, Moving Motion Record, Tab 4, Exhibit A;**

**Amended Statement of Claim Pogue Affidavit, Moving Motion Record, Tab 4, Exhibit B.**

20. The City defended the action on the basis that Section 17.2 of Part III of the General Terms and Conditions of the Contract empowered the Defendants to terminate the Contract upon ten days written notice in the event of an Act of Default. The City plead that CPCL had committed multiple such Acts including:

- (a) Failing to meet the delivery targets required by the Contract;
- (b) Charging higher prices than those stated in its Bid Submission, with no advance notice or explanation for the price increases;
- (c) Failing to adhere to the Library's Collection Profile, including by delivering significantly more materials in simplified script than traditional script, rather than the 50/50 proportion of materials in traditional versus simplified script as provided for in the Contract;

- (d) Providing materials in languages other than Chinese without informing the Defendants and for which the Defendants had no need;
- (e) committing an excessive number of cataloguing and processing errors, at an error rate 78 times higher than the Library's other materials vendors; and
- (f) failing to distribute the materials to each individual Library branch as required, which created significant extra work for Library staff.

**Statement of Defence, Pogue Affidavit, Moving Parties' Motion Record, Tab 4, Exhibit C;**

**Amended Statement of Defence Pogue Affidavit, Moving Parties' Motion Record, Tab 4, Exhibit D.**

21. On January 5, 2017, CPCL served an Amended Reply. CPCL pleaded that the Defendant's Statement of Defence was "purely a fictitious slander."

**Amended Reply, Pogue Affidavit, Moving Parties' Motion Record, Tab 4, Exhibit F.**

### **CPCL's Action is Dismissed**

22. The City brought a summary judgment motion seeking a dismissal of the CPCL Action. Justice Kristjanson granted summary judgment, with costs, by Reasons for Decision dated June 20, 2017. Justice Kristjanson found as facts, relevant to both issues of termination of the contract for cause and CPCL's allegation that the Defendants' termination of it was undertaken in bad faith, that CPCL:

- (a) consistently failed to comply with the price requirements of the contract;
- (b) missed delivery targets;
- (c) breached collection profile targets; and

- (d) made excessive cataloguing errors.

**Justice Kristjanson's Reasons for Decision, Pogue Affidavit, Moving Parties Motion Record, Tab 4, Exhibit M at page 2.**

23. Her Honour also found that the City properly communicated notice of these defaults to CPCL and that City gave CPCL multiple opportunities to remedy them. She found that there was no bad faith, improper purpose or arbitrariness in the City's decision to terminate. She found that there was no genuine issue requiring a trial.

**Justice Kristjanson's Reasons for Decision, Pogue Affidavit, Moving Parties Motion Record, Tab 4, Exhibit M at pages 6 and 11-12.**

24. Justice Kristjanson ordered CPCL to pay the Defendants' costs of the action and summary judgment motion fixed in the amount of \$50,000.00. This award remains outstanding.

**Issued and Entered Order of Justice Kristjanson, Pogue Affidavit, Moving Parties' Motion Record, Tab 4, Exhibit O;**

**Pogue Affidavit, Moving Parties' Motion Record, Tab 4, par. 42.**

25. CPCL appealed Justice Kristjanson's Order. On May 2, 2018, the Court of Appeal unanimously upheld Justice Kristjanson's decision.

**Court of Appeal Reasons for Decision, Pogue Affidavit, Moving Parties' Motion Record, Tab 4, Exhibit Q.**

### **Mr. Cao Brings This Action in His Own Name**

26. On July 19, 2018, a few months after the Court of Appeal's decision, the Plaintiff commenced this action against the Defendants.

**Statement of Claim, Moving Parties' Motion Record, Tab 2.**

27. The Plaintiff frames the current action in defamation. He alleges that the Contract was terminated because of "lies" told to City Council by Library staff in the Report. These allegations



are identical to the allegations raised by the Plaintiff in the CPCL Action. In the CPCL Action, the Plaintiff *also* alleged the Library staff provided City Council misinformation that caused counsel to improperly terminate the Contract and damage his reputation. Specifically, the Plaintiff alleged:

- (a) The Library made “incorrect comments” that discredited CPCL;
- (b) Library staff acted improperly that resulted in reputational harm to CPCL;
- (c) The performance issues alleged by the Library “were not real facts;”
- (d) The termination of the Contract resulted in CPCL’s sole director (the Plaintiff herein) suffering “huge personal debts with great mental shock;”
- (e) The delivery errors alleged by Staff were “slander;” and
- (f) The alleged failure of CPCL to adhere to the Library’s Collection Profile was “purely a fictitious slander.”

**Statement of Claim, Pogue Affidavit, Moving Parties’ Motion Record, Tab 4, Exhibit A pars. 10-11 and 13;**

**Amended Statement of Claim, Pogue Affidavit, Moving Parties’ Motion Record, Tab 4, Exhibit B pars. 12, 17, and 23;**

**Amended Reply Moving Parties’ Motion Record, Tab 4, Exhibit F pars. 28-29.**

28. All of the Plaintiff’s allegations in this action arise from the termination of the Contract. The defamation the Plaintiff complains of is contained in the Report and in affidavit evidence filed on the CPCL Action. The truth of the alleged defamatory statements was thoroughly addressed before Justice Kristjanson, who found that the statements the Plaintiff alleges are defamatory were true and that City Council terminated the contract in good faith. In order for this court to find that

the Report was “made up with tricks...exaggeration and misrepresentation,” this Court would have to directly contradict the factual findings of Justice Kristjanson.

#### **PART IV - ISSUES AND THE LAW**

29. The Defendants submit that the entirety of the Plaintiff’s claim is barred by the doctrine of issue and/or cause of action estoppel. In the alternative, even if this court finds the Plaintiff’s claim does not meet the test for issue estoppel, the action ought to be dismissed as an abuse of process

30. This action is well suited to summary judgment. This Court can determine whether the Plaintiff should be prevented from bringing this action based wholly on the documentary record. Summary judgment is the most proportional and fair procedure to adjudicate this claim.

*Hryniak v. Mauldin*, [2014] 1 S.C.R. No. 87, Defendants’ Book of Authorities, Tab 1 at paras. 4-5.

31. This Court must first determine whether issue estoppel applies to the Plaintiff’s action. The Supreme Court of Canada set out the following constituent elements of issue estoppel:

- (a) the same parties or their privies were involved in the subsequent as the prior decision;
- (b) the decision in the prior proceeding was made judicially and was final; and
- (c) the same issue was decided in the prior decision.

*Angle v Minister of National Revenue*, [1975] 2 SCR 248, Defendants’ Book of Authorities, Tab 7, p. 4.

32. If the above test for issue estoppel is met, the Court retains the residual discretion to refuse to apply estoppel to ensure that the orderly administration of justice does not come at the cost of “real injustice” in a particular case.

*Danyluk v. Ainsworth Technologies Inc.* [2001] 2 S.C.R. 460, Defendants' Book of Authorities, Tab 1 at para. 67.

33. This case meets the established test for issue estoppel. Furthermore, there is no risk of injustice in this case such that the court should decline to apply the estoppel.

34. In the alternative, the Plaintiff's case is barred by cause of action estoppel because all the facts and legal arguments relied on by the Plaintiff in this action were properly the subject of the CPCL Action

35. Lastly, if this court finds the Plaintiff's claim does not meet the test for issue or cause of action estoppel, the Defendants submit that the more flexible doctrine of abuse of process applies. The Plaintiff seeks to use new proceedings to attack the findings of Justice Kristjanson in the CPCL Action. If the court permits the Plaintiff proceed with this action, it would undermine the integrity of the adjudicative process.

*Toronto (City) v. Canadian Union of Public Employees (C.U.P.E.), Local 79*, [2003] 3 S.C.R. Defendants' Book of Authorities, Tab 2 at par. 51.

**The Plaintiff is Estopped from Bringing the This Action**

36. Based on the three-part test set out above in *Angle*, the Plaintiff is estopped from proceeding with this action.

**Mr. Cao Was Privy to the Prior Action**

37. Courts find separate persons to be privies, within the context of the doctrine of issue estoppel, when there is a sufficient degree of identification between the two persons to make it just to hold that a decision that was binding on one person should be binding on another person.

*EnerNorth Industries Inc. (Re)*, 2009 ONCA 536, Defendants' Book of Authorities, Tab 10 at para. 62.

38. It is difficult to fathom two legal persons more closely identified with each other than Mr. Cao and CPCL.

39. Mr. Cao is the *CEO, sole director and sole shareholder of CPCL*.

**Statement of Claim (CPCL Action), Moving Parties' Motion Record, Tab 4, Exhibit A, para. 2;**

**Statement of Claim (this action), Moving Parties' Motion Record, Tab 2, para. 41.**

40. These three facts alone ought to be dispositive. In *EnerNorth Industries Inc. (Re)*, Blair J.A. found that three officers of a company who were "clearly aligned with [in] interests" with the company were the privies of the corporation for the purposes of issue estoppel.

***EnerNorth Industries Inc. (Re)*, 2009 ONCA 536, Defendants' Book of Authorities, Tab 10 at para. 61.**

41. In this case, the Plaintiff and CPCL share identical interests. One could hardly find a greater degree of identification than between Mr. Cao and CPCL. As Perell J. found in *Martin v. Goldfarb*, the corporation and its sole director, shareholder and CEO "share the grievance that is at the heart of all the proceedings."

***Martin v. Goldfarb* [2006] O.J. No. 2768, Defendants' Book of Authorities, Tab 9 at para. 63.**

42. In this case, the identification is even stronger because of Mr. Cao's intimate personal involvement in the CPCL Action: Mr. Cao was CPCL's sole affiant in response to the Defendant's motion for summary judgement in the CPCL Action and appears to have authored all of CPCL's materials before Justice Kristjanson on the motion.

**Affidavit of Qiang Li Cao, Moving Motion Record, Tab 4, Exhibit J.**

43. Furthermore, Master Short granted Mr. Cao leave to represent CPCL, despite not being a lawyer and Mr. Cao attended and made oral submissions before Justice Kristjanson on the Defendant's motion for summary judgment.

**Order of Master Short, Pogue Affidavit, Moving Parties' Motion Record, Tab 4, Exhibit E;**

**Transcript of Proceedings before the Honourable Justice Kristjanson, Pogue Affidavit, Moving Parties' Motion Record, Tab 4, Exhibit L.**

44. In *Rasanen v. Rosemount Instruments Ltd.*, Abella J.A. (as she then was) concluded (and was joined by Morden A.C.J.O. on this point) that the Plaintiff, although he had not been a party to an earlier proceeding, was a privy. She relied on the Plaintiff:

- (a) having notice of every step of the process and hearing;
- (b) being present at the hearing;
- (c) giving evidence and hearing the evidence and argument of all parties;
- (d) submitting or reviewing all the relevant documentation filed.

***Rasanen v. Rosemount Instruments Limited* (1994), 17 O.R. (3d) 267 (C.A.), Defendants' Book of Authorities, Tab 6 at page 11.**

All of the circumstances relied on by Justice Abella in *Rasanen* are present in this case.

45. Based on *both* the clear identification between the Plaintiff and the corporation of which he is the sole shareholder, officer and director *and* the Plaintiff's active involvement in the proceedings before Justice Kristjanson, it is clear that the Plaintiff and CPCL must be considered privies for the purposes of issue estoppel.

**The prior proceeding was a judicial and final one**

46. Justice Kristjanson made a ruling that finally disposed of CPCL's claim on its merits. The Court of Appeal upheld her decision. There can be no issue that Justice Kristjanson's decision was judicial and final.

**The same issue was decided in the prior decision**

47. Different causes of action may have material facts in common. Issue estoppel prevents re-litigation of the material facts adjudicated in the previous action so long as the material facts were "fundamental to the decision arrived at" in the prior proceedings.

*Catalyst Capital Group Inc. v. VimpelCom Ltd.*, [2019] O.J. No. 2286, Defendants' Book of Authorities, Tab 4 at para 27.

48. In other words, for issue estoppel to apply, the core issues in the current proceeding must be "necessarily bound up" with the determination of the issues in the prior proceeding.

*Danyluk v. Ainsworth Technologies Inc.*, [2001] 2 S.C.R. 460, Defendants' Book of Authorities, Tab 1 at para. 54.

49. In this case, while the Plaintiff purports to bring an action based on a novel cause of action, all of the material facts he alleges have already been adjudicated. In her June 20, 2017 Reasons, Justice Kristjanson found that "almost immediately" the Library encountered issues with CPCL's quality and contractual compliance. To evade these findings, Mr. Cao frames the current action in "defamation with rational discrimination and dereliction of duty." He points to two sources of alleged defamation:

- (a) the affidavits sworn by Verna Gilchrist and Larry Pogue in support of the Defendants' motion in the CPCL action; and

(b) the Report recommending cancellation of the contract.

50. For the statements in any of these documents to be defamatory, they must be false. The Plaintiff challenged the veracity of both the affidavits and the Report before Justice Kristjanson. Critical to her decision on the motion relating to both just cause for the termination and the absence of bad faith on the part of the Defendant in terminating the contract, Her Honour found the impugned statements to be true. This Court cannot revisit these findings.

*Affidavits of Gilchrist and Pogue*

51. Verna Gilchrist is the Manager of Technical Services and C3 Support for the Markham Public Library. She swore an Affidavit in support of the Defendants' motion for summary judgment in the CPCL action. Her affidavit was over 100 paragraphs long and detailed the substantial and repeated failures of CPCL's to meet its contractual obligations. She also describes a January 20, 2016 meeting with Mr. Cao. At this meeting, Mr. Cao stated that he wanted to negotiate a new contract with the City with different prices. She deposed that he would not listen when staff explained that a renegotiation of the contract was not an option. He then became angry and abusive.

**Affidavit of Verna Gilchrist sworn April 20, 2017, ("Gilchrist Affidavit"), Moving Motion Record, Tab 4-4, par. 83.**

52. Mr. Pogue deposed that he was not present at the January 20, 2016 meeting, but that he believed Ms. Gilchrist's recollection of the meeting, corroborated by her contemporaneous meeting notes and the other staff present, was accurate.

**Pogue Affidavit, Moving Parties' Motion Record, Tab 4-G-5, paras. 29-34.**

53. CPCL, represented by Mr. Cao, did not cross-examine Ms. Gilchrist on her affidavit. Nevertheless, he did depose in his affidavit filed before Justice Kristjanson that "Mr. Cao was

startled to learn that Ms. [Chan] was scared in this meeting by 'Mr Cao's behavior' in affidavits of Mr. Pogue, Mr. Casale and Ms. Gilchrist on April 21, 2017. Mr. Cao has never had experience that makes people scared for the whole life. He was deeply hurt..."

**Pogue Affidavit, Moving Parties' Motion Record, Tab 4, Exhibit J at para. 53.**

54. Justice Kristjanson accepted the affidavit evidence of the library staff. She specifically noted Mr. Cao's submission that "all the evidence of the City's three affiants is false" but nevertheless found that "given that the evidence [of the Library Staff] is based on the contemporaneous documents and notes [and] is consistent with the contractual issues identified, there is no merit to [the Plaintiff's] submission."

**Justice Kristjanson's Reasons for Decision," Pogue Affidavit, Moving Motion Record, Tab 4-G**

55. Mr. Cao already asserted before this Court in the previous action, and particularly on the Summary Judgment motion in that proceeding, that Mr. Pogue and Mr. Gilchrist's affidavits were false. Justice Kristjanson rejected this submission. In general, the credibility and reliability of the library staff's evidence was "necessarily bound up" in Justice Kristjanson's decision because the City relied on their evidence in proving that it was entitled to cancel CPCL's contract for cause and that it did so in good faith. Justice Kristjanson explicitly accepted that "there was no bad faith, improper purpose or arbitrariness in the termination."

**Justice Kristjanson's Reasons for Decision, Pogue Affidavit, Moving Motion Record, Tab 4-G, p. 12.**

56. True statements are not actionable as being defamatory. A finding that the Affidavits sworn by Verna Gilchrist and Larry Pogue were defamatory, would directly contradict the explicit factual findings made by Justice Kristjanson that were at the core of her decision to dismiss the CPCL action.



*Mr. Pogue's report to the General Committee of City Council*

57. Mr. Cao states that the Defendants defamed him in the Report. In his Statement of Claim, Mr. Cao attacks the truth of the Report issue by issue, including delivery targets, collection profile, cataloging errors and price.

**Plaintiff's Statement of Claim, Moving Motion Record, Tab 2 at paras. 23-34.**

58. The Plaintiff exhaustively disputed the accuracy of the Report in the CPCL action. The parties canvassed the specific alleged inaccuracies in the Report on the summary judgment motion and Justice Kristjanson's found that the facts set out in the Report were substantiated and accurate. Her Honour specifically found that:

CPCL consistently failed to meet or comply with the prince requirements of the contract; delivery targets and collection profile requirements. The evidence also demonstrates that there were excessive cataloging errors.

**Justice Kristjanson's Reasons for Decision, Pogue Affidavit, Moving Motion Record, Tab 4-G, at pp. 1-2.**

59. This Court has already found the facts contained in the Report which was before Justice Kristjanson and addressed in both party's Factums on the prior summary judgment motion were true. They cannot be defamatory.

*Procedural Unfairness*

60. The Plaintiff resurrects his claim that Justice Kristjanson denied him and CPCL procedural fairness at the hearing of the summary judgment motion. This, too, is the subject of issue estoppel: The Court of Appeal specifically found:

The allegations of procedural unfairness are without merit. Mr. Cao was given a full opportunity to put the Appellant's position forward in writing and orally. The motion judge fully appreciated that position. Any difficulties Mr. Cao has with

English did not materially prejudice the Appellant or impair the appearance of procedural fairness.

No further attack on the hearing before Justice Kristjanson can be countenanced by this Court.

**Reasons for Decision of the Ontario Court of Appeal, Pogue Affidavit, Moving Parties Motion Record, Tab 4, Exhibit Q at para. 6.**

**The Court Should Not Exercise Its Discretion to Decline To Apply Issue Estoppel**

61. While the circumstances under which the Court will use its discretion to decline to apply issue estoppel are not fixed, unfairness in applying issue estoppel typically arises when:

- (a) the prior proceedings were unfair; or
- (b) even where the prior proceedings were conducted fairly, it may be unfair to use the results of that process to preclude the subsequent claim, for example, where there is a significant difference between the “purposes, processes or stakes” involved in the two proceedings.

*Penner v. Niagara (Regional Police Services Board)*, [2013] 2 SCR 125, Defendants’ Book of Authorities, Tab 3 at paras. 40-48.

62. Neither of these two circumstances are present here:

- (a) the Court of Appeal specifically found that the proceedings before Justice Kristjanson were fair; and
- (b) the purposes, processes or stakes involved in the two proceedings are identical.

63. Putting an end to the Plaintiff’s case will not cause injustice. In fact, the Plaintiff’s claim represents a stark example of precisely what the doctrine of issue estoppel exists to prohibit. For over a century, courts have stressed that they “will not...permit the same parties to open the same subject of litigation in respect of matters which might have been brought forward as part of the

subject in contest,” especially where “the [prior] decree concluded the whole matter, that [the present court] could not rehear that decree, and that it was final and conclusive, unless reversed by...the proper appellate tribunal. ” Accordingly, there is simply no argument that this court ought to apply its discretion to prevent the operation of issue estoppel.

*Schwartz v. Ontario*, [2013] O.J. No. 5328, Defendants’ Book of Authorities, Tab 8 at para. 42.

**The Plaintiff’s Action is Barred By Cause of Action Estoppel**

64. Like issue estoppel, cause of action estoppel prevents the re-litigation of claims that have already been decided. It requires parties to “bring forward their whole case” in a lawsuit and empowers the court to prevent parties from re-litigating matters by advancing a point in subsequent proceedings that properly belonged to the subject of the previous litigation. In this case, the subject of the previous litigation was the cancellation of the Contract. Every material fact and legal argument relied on by the Plaintiff in this action was properly the subject of the CPCL action.

*Catalyst Capital Group Inc. v. VimpelCom Ltd.*, [2019] O.J. No. 2286 Defendants’ Book of Authorities Tab 4 at par 49.

65. The Plaintiff’s legal theory that he was defamed was entirely the subject of the CPCL action because the truth of the impugned statements was at the core of CPCL’s action for breach of contract. At the very least, all of the facts and legal arguments raised by the Plaintiff in this action regarding the cancellation of the Contract *could have been argued* in the prior action if the Plaintiff had exercised reasonable diligence. Cause of action estoppel prevents the Plaintiff from re-litigating his claim for breach of contract under the guise of defamation.

*Catalyst Capital Group Inc. v. VimpelCom Ltd.*, [2019] O.J. No. 2286 Defendants’ Book of Authorities Tab 4 at par 50.

**The Plaintiff's Action is an Abuse of Process**

66. Judges have an inherent and residual discretion to prevent an abuse of the court's process. The concept of abuse of process was described at common law as proceedings "unfair to the point that they are contrary to the interest of justice." Abuse of process may be established where:

- (a) the proceedings are oppressive or vexatious; and,
- (b) violate the fundamental principles of justice underlying the community's sense of fair play and decency.

*Toronto (City) v. Canadian Union of Public Employees (C.U.P.E.), Local 79*, [2003] 3 S.C.R. 77, Defendants' Book of Authorities Tab 2 at para. 35.

67. The doctrine of abuse of process engages the inherent power of the court to prevent the misuse of its procedure in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute. It is a flexible doctrine unencumbered by the specific requirements of issue estoppel. One circumstance in which abuse of process has been applied is where the litigation before the court is found to be, in essence, an attempt to relitigate a claim that the court has already finally decided.

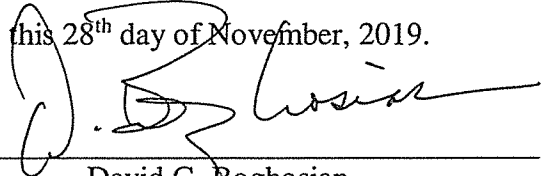
*Toronto (City) v. Canadian Union of Public Employees (C.U.P.E.), Local 79*, [2003] 3 S.C.R. 77, Defendants' Book of Authorities, Tab 2 at par. 37.

68. As discussed above, this court has already decided the gravamen of the Plaintiff's case: that CPCL breached its contract in multiple respects with the Defendants and that the Defendants were entitled to cancel it. Even if the strict requirements of issue estoppel are not met in this case, allowing this litigation to proceed would violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice.

**PART V - ORDER REQUESTED**

69. The Defendants request an order dismissing the Plaintiff's action with costs.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 28<sup>th</sup> day of November, 2019.

  
\_\_\_\_\_  
David G. Boghosian

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Court File No. CV-19-00618275-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

QIANGLI CAO

Plaintiff

and

CITY OF MARKHAM and MARKHAM PUBLIC LIBRARY

Defendants

**AFFIDAVIT OF LARRY POGUE**

I, **LARRY POGUE**, of the City of Markham, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the Special Projects Assistant for the Markham Public Library ("the Library") and as such have knowledge of the matters hereinafter deposed.
2. I have worked for the Library for 29 years. I started as a Branch Manager in 1990 and in 2002 was promoted to Director of Public Services. I was transferred to Director of Administration in 2007 and retired from that position in 2019.
3. As the previous Director of Administration, I was responsible for managing the Library's finances, properties, payroll, policies, employee relations and workplace health and safety. I also prepared reports and provide financial reporting to the Library's Board of Directors.
4. I have personal knowledge of all the facts stated in this affidavit, except where I have been informed of such facts, in which case I have stated the source of such information and hereby state that I believe all such facts to be true.

## **OVERVIEW**

### **The contract between the Plaintiff's company Chinese Publications for Canadian Libraries Ltd. and the City of Markham**

5. This action arises from the termination of a contract for the supply of Chinese language materials to the Library between the Corporation of the City of Markham ("the City"), including the Library, and Chinese Publications for Canadian Libraries Ltd. ("CPCL"), of which the Plaintiff Qiang Li Cao is the sole shareholder and director.

6. The contract was awarded to CPCL in June 2014 as a result of a bid it submitted in response to a Request for Proposal 285-R-13 for Markham Public Library Material and Processing Services issued by the City. I was part of the team of Library staff that designed the specifications of the RFP and assessed the bids received in response to the RFP.

7. Following the award, the Purchasing Department issued a purchase order to cover the whole contract term through December 2018.

8. The contract between the City and the Library and CPCL consisted of the purchase order; bid; RFP; the City's *General Terms and Conditions*; and any other written agreement between the parties (the "Contract").

### **CPCL's Performance Issues and Non-Compliance with the Contract**

9. Following the award of the Contract, CPCL had performance issues and did not abide by the terms of the Contract.

10. CPCL's main performance issues were as follows:

- (a) It made cataloguing errors;

- (b) It did not comply with delivery targets (the amount of materials that had to be delivered by certain deadlines throughout the year) set out in the RFP;
- (c) It did not comply with Collection Profiles (the types of materials the Library wanted for each branch's collection); and
- (d) It charged prices higher than those quoted in its bid.

11. These performance issues were reviewed with the Plaintiff through correspondence and meetings in 2015 and 2016, including on September 15, 2015 when I met with the Plaintiff. The Plaintiff is the only person who the Defendants ever dealt with in connection with the awarding, administration and termination of the Contract.

12. The Library also notified CPCL that it was in default of the Contract in 2015 and January 2016.

### **Termination of the Contract**

13. On January 27, 2016, CPCL was provided written notice that the Library would be seeking Council approval for termination of the Contract. Pursuant to the City of Markham By-Law 2004-341, City Council was required to approve of the termination.

14. Tony Casale, a Senior Construction Buyer in the Purchasing Division of the City, and I prepared a report to the General Committee of City Council that was executed on March 22 and 23, 2016 recommending the termination ("the Report").

15. I presented the Report to the General Committee on April 4, 2016.



16. The Plaintiff spoke to the matter before the General Committee and requested further opportunities to rectify CPCL's performance issues.

17. City Council approved the termination of the Contract on April 5, 2016.

18. On April 18, 2016, Casale sent CPCL a letter confirming that City Council had approved of the termination, and advising that the termination would take effect 30 days from the date of the letter.

### **PROCEDURAL HISTORY OF THE PRIOR ACTION BY CPCL**

#### **CPCL's claim in Prior Action**

19. On May 5, 2016, CPCL brought an action against the Markham Defendants. Attached and marked as **Exhibit "A"** is a copy of CPCL's Statement of Claim.

20. CPCL alleged the City improperly terminated the Contract and sought specific performance or alternatively, damages for, among other things, loss of revenue and investments for CPCL and damage to commercial reputation.

21. It also alleged in paragraphs 10-11 and 13 of the Statement of Claim:

- a. The Library made "incorrect comments" that discredited CPCL.
- b. Library staff acted improperly that resulted in loss and a bad reputation to CPCL.
- c. The City relied on incorrect information from the Library and subsequently improperly terminated the Contract. The Library alleged specific issues about CPCL, but, "these 'issues' were not real facts."

- d. The termination of the Contract resulted in the sole director [the Plaintiff in the current action] suffering “huge personal debts with great mental shock.”

22. CPCL amended its Statement of Claim on December 13, 2016. Attached and marked as **Exhibit “B”** is a copy of the Amended Statement of Claim, which included the following allegations at paragraphs 12, 17, and 23:

- a. The performance issues of CPCL that the Library identified were “not true”.
- b. Library staff gave an “incorrect assessment” of CPCL.
- c. The Library’s “irresponsible comments damaged [CPCL]’s reputation, and...likely resulted in the contract termination.”
- d. “...the defendants...emphasize that the plaintiff fails in delivery. This is slander. Plaintiff has no delivery errors...”

23. Attached and marked as **Exhibit “C”** is a copy of the Statement of Defence of the Markham Defendants, dated June 16, 2016. In paragraphs 4-9, 16, and 18, they pleaded the following:

- a. They denied the termination of the Contract was wrongful, unwarranted, without warning to CPCL, or otherwise improper in any way.
- b. They were entitled to terminate the Contract upon 10 days written notice in the event of an Act of Default (defined as the failure to comply with terms and conditions of the Contract that was not remedied within 10 days after written notice of such failure by the City).
- c. They were also entitled to terminate the Contract without cause upon providing 30 days written notice to CPCL.

d. CPCL regularly and continuously committed the following Acts of Default:

- i. Failing to meet the delivery targets required by the Contract;
- ii. Charging higher prices than those stated in its Bid Submission; and
- iii. Failing to adhere to the Library's Collection Profile, including by delivering significantly more materials in simplified script than traditional script, rather than the 50/50 proportion of materials in traditional versus simplified script as provided for in the Contract and providing materials in languages other than Chinese.
- iv. CPCL provided poor service by committing an excessive number of cataloguing and processing errors.
- v. CPCL continuously failed to remedy these Acts of Default and/or breaches upon being provided with written notice, and as such, the Markham Defendants were entitled to terminate the Contract in accordance with its terms.

e. They denied that CPCL's commercial reputation suffered, and further denied that CPCL's director [the Plaintiff in the current action] suffered personal debts, mental shock, or damage to his career as a result of the termination of the Contract.

24. After being served with the Amended Statement of Claim, the Markham Defendants amended their Statement of Defence on December 22, 2016 to include allegations that they complied with written notice requirements under the Contract in terminating it. Attached and marked as **Exhibit "D"** is a copy of the Amended Statement of Defence and Counterclaim.

25. In the prior proceeding, CPCL was represented throughout by the Plaintiff in this action. He is not a lawyer. Attached and marked as **Exhibit “E”** is a copy of the Order of Master Short dated August 23, 2016 granting CPCL’s motion for leave to be represented by Mr. Cao.

26. On or about January 5, 2017, CPCL served an Amended Reply. Attached hereto and marked as **Exhibit “F”** is a copy of the Amended Reply.

27. CPCL pleaded in paragraphs 28-29 of its Amended Reply:

- a. CPCL had no failures in deliveries.
- b. It did not fail to adhere to the Library’s Collection Profile. It was “purely a fictitious slander by saying that delivering significantly more material in simplified script than traditional script, rather than the 50/50 proportion of materials...”
- c. The cataloguing and processing errors were no longer problems.

**The Markham Defendants Summary Judgment motion to dismiss CPCL’s action**

28. On or about April 20, 2017, the Markham Defendants brought a motion for summary judgment seeking dismissal of the Plaintiff’s action.

29. The grounds for the summary judgment motion were as follows:

- a. Pursuant to the *General Terms and Conditions*, the City was entitled to terminate the Contract in the event that CPCL committed an Act of Default with 10 days’ written notice;
- b. CPCL committed several Acts of Default throughout the Contract, including:

- (a) Consistently and repeatedly failing to comply with the Library's Collection Profiles, as required by the Contract;
  - (b) Consistently and repeatedly failing to comply with the Contract's delivery targets;  
and
  - (c) Consistently and repeatedly charging prices higher than those set out in the bid;
- c. Library staff gave CPCL written notice of these Acts of Default on several occasions in 2015 and 2016;
  - d. CPCL failed to correct the Acts of Default; and
  - e. Pursuant to the *General Terms and Conditions*, the City was also entitled to terminate the Contract without cause with 30 days' written notice.
  - f. The City gave CPCL more than sufficient written notice to comply with the *General Terms and Conditions*;
  - g. On January 27, 2016, City staff gave CPCL written notice that they intended to recommend termination of the Contract to City Council;
  - h. City Council approved of the termination on April 5, 2016; and
  - i. City staff notified CPCL of City Council's approval of the termination of the Contract on April 18, 2016.

30. The Markham Defendants relied at the hearing upon the evidence of Casale, Verna Gilchrist, Manager of Technical Services and C3 Support for the Library, and me. Attached and

marked as **Exhibits “G”, “H”, and “I”** are copies of the Markham Defendants’ Motion Record (without attached pleadings), Supplementary Motion Record, and Factum, respectively.

31. Gilchrist stated at paragraphs 83 and 85 of her affidavit sworn on April 20, 2017:

83. I met with Mr. Cao on January 20, 2016. Anthea Bailie, Polly Chan, and Samantha Lau from the Library also attended the meeting. At this meeting, Mr. Cao stated that he wanted to negotiate a new contract with the City with different prices. He would not listen when we attempted to explain how Library budgeting and public procurement work (i.e. why a renegotiation of the contract was not an option). When the issue of the two 2015 invoices being moved to the 2016 budget came up, he became very angry and began yelling at the Library staff members. He was so abusive towards us that Ms. Chan and Ms. Bailie had left the room before the end of the meeting. (Ms. Lau had left the room before Mr. Cao’s eruption began.) I remained until the end of the meeting but felt apprehensive about Mr. Cao’s volatile behaviour. He seemed to be at a breaking point and I was not sure how much further his behaviour would escalate.

85. My understanding is that after discussing Mr. Cao’s behaviour at the meeting, they decided that it was time to terminate the Contract. The meeting was a pivotal point in the Library’s decision to terminate the Contract.

32. I stated at paragraphs 29 to 34 of my affidavit sworn on April 20, 2017:

29. I was not present at the January 20, 2016 meeting that Ms. Gilchrist and other Library staff had with Mr. Cao. However, I became aware of what had happened in the meeting after Ms. Gilchrist sent me her meeting notes (1-2 days later). I subsequently spoke to the other staff members who were at the meeting.

30. I was advised by Polly Chan, and verily believe to be true, that she left the meeting because she essentially panicked; she felt so scared that she could not breathe, and she did not feel safe in the room with Mr. Cao anymore.

31. Anthea Bailie was concerned enough about his behaviour that she told me she thought we should obtain a restraining order against Mr. Cao, preventing him from accessing our office building.

32. I can advise, and verily believe to be true, based on my discussions with Ms. Chan, Ms. Bailie, and Ms. Gilchrist, that the Library staff who dealt directly with Mr. Cao had a palpable fear of being required to work with him any further.

33. As Director of Administration, one of my responsibilities is to ensure that employees are provided with a safe and harassment-free workplace. The employees named above clearly did not feel safe in their encounter with Mr. Cao on January 20, 2016, and in fact had witnessed escalating behaviour from him. Having learned about this soon afterwards, I then believed that it was my responsibility to immediately take steps to mitigate against this situation.

34. In consultation with Michelle Sawh, the Library’s Manager of Service Delivery, I decided to recommend termination of the Contract to Catherine Biss, the Library’s CEO.

With Ms. Biss' blessing, I put the termination process in motion with the help of Mr. Casale.

33. CPCL delivered a Responding Motion Record, dated May 14, 2017, a copy of which is attached hereto without pleadings and exhibits and marked as **Exhibit "J"** to this my affidavit.

34. CPCL submitted, among other things, in its Responding Motion Record, "The city council based on fraud materials to terminate the plaintiff's contract. In the lawsuit process, defendants make stories in their documents..."

35. The Plaintiff provided the only evidence for CPCL by way of affidavit on the summary judgment motion. At paragraphs 24, 48, 53, 62, 73, 120-121, 135, and 181 of his affidavit, affirmed on May 16, 2017, he stated the following:

- a. On September 15, 2015, I gave him a vendor scorecard and many of the assessments in it were "not true".
- b. "Ms. Gilchrist held a meeting on January 20, 2016, and other 3 staff attended the meeting."
- c. "Mr. Cao was startled to learn that Ms. Polly [Chan] was scared in this meeting by 'Mr Cao's behavior' in affidavits of Mr. Pogue, Mr. Casale and Ms. Gilchrist on April 21, 2017. Mr. Cao has never had experience that makes people scared for the whole life. He was deeply hurt..."
- d. On April 4, 2016, the Plaintiff was given an opportunity to speak before the General Committee of City Council. In his speech, he pointed out the performance issues were untrue.

- e. The Library's Report to the General Committee of City Council recommending termination of the Contract was "full of untrue ... Defendants terminated the contract based on the fraud report.."
- f. The Markham Defendants were not entitled to terminate the contract on any price issue.
- g. "Defendants in all their documents claim that plaintiff failed in delivery. Plaintiff stresses that CPCL has no failures in deliveries .."
- h. In 2015, CPCL had few cataloguing and processing errors.
- i. "The termination made company to a standstill. From January 2015 after [the Library] stopped the business, plaintiff had no revenue....plaintiff still have big expenditure. Plaintiff have to pay bank loan each month, rent each month, and basic fees."
- j. Since the termination of the contract, the Plaintiff herein, as the only shareholder, suffered every day. He had "huge debts" and his health was affected.

36. In his Responding Factum of June 13, 2017, a copy of which is attached and marked as **Exhibit "K"**, the Plaintiff stated in paragraphs 11-12, 18, 26, 34, 63, 66, 69, 72, 76, 97, 106-108, 110-112, 131, 134, and page 18:

- a. "On January 27, 2016, City gave a termination notice to plaintiff...[The Library] submitted a recommendation to Council in March, 2016. Later, plaintiff...find that the recommendation report was full of lies."
- b. "Both defendants' breaches in the performance of the contract and termination of the contract brought plaintiff huge damages..."



- c. "...plaintiff provided a perfect service..."
- d. "Plaintiff stresses that CPCL had no failures in delivers [sic] from the beginning to the end at all."
- e. He "filtered and decided the [material] list according to library's profile..."
- f. "CPCL behaved well on the price matter..."
- g. "...plaintiff began to charge exactly according to the bid prices from 2016."
- h. CPCL's cataloguing and processing errors could "not be considered as a breach for the termination."
- i. "After September [2015],...CPCL had no issues on cataloguing and procession. [The Library] had agreed to pay according to bid form from 2016 and CPCL began to create invoices according to the agreement. Defendants had no...excuse for termination."
- j. The Markham Defendants' affiants made "untrue statements ... (including the issues in delivery, cataloguing and processing, collection, price, contract termination process and Mr. Cao's behavior, recommendation report to city)".
- k. "...whenever library pointed out issues plaintiff corrected at once."
- l. "Plaintiff claims that most of the basic facts Ms. Gilchrist provides are untrue or exaggerating."
- m. "...after the meeting in September 2015, the delivery issue was no longer existing. It can not be considered as a breach for the termination."

- n. "...defendants had already terminated part of contract in August as the result of cataloguing or delivery failure. Those 'old problems' can not be considered again as issues to terminate the whole contract in the end of year."
- o. "Mr. Cao was informed to a meeting on January 20, 2016, about the service in 2016...Mr. Cao found Ms. Polly Chan came to the meeting unusually..."
- p. "Beyond expectation, Mr. Cao got to know that, in all affidavits of Mr. Pogue, Ms. Casale and Ms. Gilchrist on April 21, 2017, Ms. Polly [Chan] was scared in this meeting by 'Mr. Cao's behavior. Mr. Cao has never had the experience to make people scared for the whole life..."
- q. "Between the sensitive time, form [sic] January 20 to February 2 in 2016, Mr. Pogue told Mr. Casale, who was the key person with the power to help terminate the contract, 'Mr. Cao's abusive behavior'. Mr. Pogue passed the information to Mr. Casale that MPL's staff would not feel safe working with Mr. Cao. This issue was not reported to council..."
- r. "The recommendation report created by Mr. Pogue and Mr. Casale to City was based on untrue facts by Ms. Gilchrist...The facts in this report are full of lies."
- s. "The worst is that plaintiff's reputation is ruined."

37. The Plaintiff made submissions at the hearing with the aid of an interpreter. Attached and marked as **Exhibit "L"** is a copy of the transcript of the proceedings before Justice Kristjanson prepared by Janice Black. At pages 26, 39-40, 42 of the transcript, the Plaintiff submitted:

- a. "Actually...the price is not the main reason for [the Markham Defendants] to...terminate a contract. It is the excuse...for their illegal termination."

- b. "I think my product is excellent, and they say it's no good, and they just reject it...The damage costs to me and then they created...issues to defame me...they listed a bunch of issues, our problems, everything's wrong. There were three witnesses on their side. The two witnesses...gave their evidence based on the evidence provided by...Ms. Verna Gilchrist. But all her, the evidence...she presented, is all false. It's all created out of nothing...they still need to...list all the errors on our side. They created everything, it's just all false."
- c. "The city approved the termination of the contract based on the false recommendation ...The recommendation report is all wrong, it's false...I raise this issue to them, I talked...this issue to them on April 4<sup>th</sup>, and the City approved termination recommendation on April the 5<sup>th</sup>...I think the City made decision to approve the...termination, based on the wrong recommendation report."

38. Justice Kristjanson stated that she understood the Plaintiff's arguments.

**Decision on Summary Judgment Motion in the Prior Proceedings**

39. Justice Kristjanson dismissed CPCL's action. Attached hereto and marked as **Exhibits "M" and "N"** are copies of Justice Kristjanson's Reasons for Decision dated June 20, 2017 and the dismissal order, issued and entered on December 28, 2017.

40. Justice Kristjanson made the following findings in her reasons for judgment:

- a. The RFP, the *General Terms and Conditions*, the bid submission of the Plaintiff's company, the resulting purchase order, and any other written agreement between CPCL and the Markham Defendants regarding the work formed the contract between them.

- b. Pursuant to terms of the Contract, the City could terminate it in two circumstances:
  - i. "...with cause, on ten days notice, if an act of default (defined as failure to comply with terms and conditions not remedied within 10 days of written notice of failure);  
or
  - ii. Without cause, in the City's sole discretion on 30 days written notice.
- c. On termination, the Contract provided no liability against the City but for goods/ services delivered/performed to date of the termination.
- d. She was satisfied on the evidence filed on the motion that CPCL "consistently failed to meet or comply with the price requirements of the contract; delivery targets; and collection profile requirements."
- e. "The evidence also demonstrates that there were excessive cataloguing errors."
- f. "The failure to meet delivery targets was significant..."
- g. "The Library also had significant issues with the collection profiles, and wrote to and met with Mr. Cao regarding problems on numerous occasions from January 15, 2015 through January 20, 2016."
- h. Pricing was non-compliant with the terms of the Contract. "CPCL charged the Library in excess of bid prices throughout the Contract, a fact which Mr. Cao acknowledged."
- i. After a meeting on January 20, 2016, the Library decided to terminate the Contract; notice of default was provided on September 21, 2015.
- j. CPCL was in default of the Contract, including on price, delivery targets, and collection profiles, and had been given both warning and notice.

- k. There was no merit in the Plaintiff's submission that the evidence of the Markham Defendants' affidavits was false, given that the evidence was based on contemporaneous documents and notes, and was consistent with the contractual issues identified.
  - l. "Mr. Cao submitted that the City based its decision on a 'wrong' recommendation. The April 4, 2016 recommendation report to Council identifies significant issues supported by the affidavit evidence, including the delivery targets...; traditional vs simplified; pricing (CPCL has invoiced in amounts higher than bid prices...), and cataloguing and processing errors. The report had significant support which demonstrated there was no bad faith in the without cause termination."
  - m. "...the City was entitled to terminate without cause, on 30 days notice, and it validly did so. The report to Council, and reasons set out therein, are supported by the evidence, and demonstrate that there were more than sufficient grounds to have terminated for cause, thus demonstrating that there was no bad faith, improper purpose, or arbitrariness in the termination. The Library/City gave CPCL many chances to perform according to the Contract...and were entitled to terminate as they did. Notice was in excess of contractual requirements, and sufficient."
  - n. CPCL was given notice of the Markham Defendants' intention to terminate the Contract on January 27, 2016, and City Council approved of the termination on April 5, 2016.
41. Justice Kristjanson ordered CPCL to pay the Markham Defendants' costs of the action and summary judgment motion fixed in the amount of \$50,000.00. Attached hereto and marked as **Exhibit "O"** is a copy of the order, issued and entered on December 28, 2017.

42. CPCL has not paid the costs ordered to be paid to the Markham Defendants to date.

### **Ontario Court of Appeal Upholds Justice Kristjanson's Decision**

43. CPCL appealed Justice Kristjanson's decision. In its factum of January 5, 2018, a copy of which is attached and marked as **Exhibit "P"**, the Plaintiff submitted at paragraphs 4, 6, 96, 127-128, 133, 140, 142, 152, and 181:

- a. "CPCL sued City of Markham and Markham Public Library for...improper contract termination."
- b. "...plaintiff provided a perfect service without any breaches...library gave false statements in its report to City...The termination brought plaintiff huge damage."
- c. Justice Kristjanson failed to find "the real fact facts on price issues", "defendants' bad faith in terminating the contract", and "defendants' improper procedure in terminating the contract".
- d. "...price...was not an issue for defendants..."
- e. "Plaintiff reported to judge that all plaintiff's breaches were invented, but judge would not listen."
- f. "...to show there are no bad faith in terminating the contract, defendants invented tens of factitious stories to show plaintiff's 'breaches' for their motion."
- g. Justice Kristjanson erred in finding '...the failure to meet delivery target was significant...' CPCL had no failures in deliveries from the beginning to the end at all."

- h. Justice Kristjanson erred in finding CPCL's non-compliance with the Library's Collection Profile. "The unbalanced of simplified versus traditional books is a big lie."
- i. Justice Kristjanson erred in finding excessive cataloguing errors by CPCL. "She fails to find that the story that plaintiff's cataloguing errors 78 times higher than other vendors is too exaggerated to believe."
- j. Justice Kristjanson erred in finding April 4, 2016 recommendation report to Council identified significant issues involving CPCL's performance of the Contract. "...Plaintiff stresses ... that library's recommendation was a false report."
- k. "Since Mr. Cao was the only shareholder of the corporation, the damage of the corporation is the damage of Mr. Cao himself actually."

44. The Ontario Court of Appeal upheld Justice Kristjanson's decision. Attached and marked as **Exhibits "Q" and "R"** are copies of the Court's reasons for decision, dated May 2, 2018 and costs endorsement of June 27, 2018 ordering CPCL to pay costs of the Markham Defendants in the amount of \$10,000.00 for the appeal, respectively.

45. In its reasons for decision, the Court stated at paragraph 6, "The allegations of procedural unfairness are without merit. Mr. Cao was given a full opportunity to put the appellant's position forward in writing and orally. The motion judge fully appreciated [CPCL's] position..."

46. CPCL has not paid the Markham Defendants' costs of the appeal to date as ordered.

**THE PLAINTIFF'S CURRENT ACTION**

47. On July 19, 2018, a few months after the Court of Appeal's decision, the Plaintiff commenced this action against the Markham Defendants.

48. In paragraphs 1-4, 22-34, 37, 39, and 41-43 of his Statement of Claim, the Plaintiff pleaded:

- a. "On June 20, 2014, my corporation won the bid, 'Markham Public Library Material and Processing Services (multi-lingual Chinese material)'...proposed by City of Markham for its library...The service...for library, included acquisition, cataloguing and processing. The materials were...books, DVDs and CDs."
- b. The Library defamed him for the purpose of terminating the Contract.
- c. The Library's report to City Council regarding performance issues of CPCL relating to delivery targets, price requirements of the Contract, collection profiles, and cataloguing errors and recommending termination of the Contract contained libel.
- d. All the issues in the Library's report were made up and CPCL was accused of numerous breaches. The Library had distorted facts in its report.
- e. The City terminated the Contract based on the Library's report.
- f. The Markham Defendants terminated the Contract suddenly without prior warning in January 2016.
- g. "...from the previous litigation, I got to know the point that I was framed by defamation actually. City had its right to terminate the contract with cause or without cause according to the contract. City had to terminate my contract based on library's recommendation. My



damages were all brought by library's slander and libel. Without those slander and libel, the City would not terminate the contract."

- h. His damages resulted from the termination of the Contract. "...all the damages to my business have naturally turned into my personal damages."

49. Attached and marked as **Exhibit "S"** are copies of an email from the Plaintiff to Mayor of the City Frank Scarpitti, dated March 1, 2019 that attached a letter dated February 26, 2019. In the letter, the Plaintiff wrote:

- a. "I started a lawsuit against City of Markham and Markham public library ...for their defamation and dereliction of duty.
- b. "...they told lies freely and provided false evidences in the litigation our corporation started in May of 2016."
- c. "There have been nearly 3 years of legal actions between me and the defendants across two actions." The two actions had "a thousand and one links" and were "tied to each other". He attached CPCL's appeal factum, a transcript of the summary judgment motion hearing, and a draft Statement of Claim related to the current action.
- d. "Though library tried hard to find errors to us under a magnifying-glass, they could not find any. They had no opportunity to send us an error notice for their urgent need for the termination of the whole contract. We provided a perfect service."
- e. "On Jan.27, 2016, contract responsible person sent me a notice, telling that library was going to advise City to terminate our contract... They emphasized that City had the right to terminate our contract without cause. 3 days later, contract responsible person and library

sent emails respectively to confirm ... My case was put forward in general committee meeting on April 4. I was given an opportunity to give a five minutes speech at the meeting. Contract responsible person and library submitted a report behind us back to this meeting also. Only the next day, April 5, their report was approved by council meeting...In the report, we were said to be an incorrigible vendor with numerous errors in the service. I would have sued defendants defamation instead of wrongly termination for my corporation if I had this report earlier.”

f. “Defendants’ materials are full of lies, and I only select ten of them as example in the following...

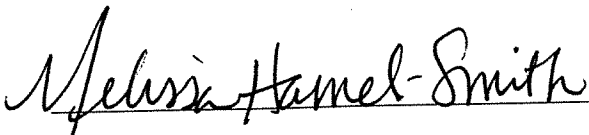
1. Entering 2016, CPCL still charged high.
2. CPCL’s deliveries were inconsistent and made without regard for the delivery schedule;
3. CPCL’s cataloguing and processing error rate was 77.7 times that of the library’s other materials vendor;
4. Providing DVDs in languages other than Chinese;
5. Providing substantially more print materials in simplified script than traditional script;
6. There were 3 written notices of CPCL’s defaults;
7. CPCL was given numerous warnings but continually failed to correct the defaults;
8. Service Agreement relates only to the C3;
9. Plaintiff admitted its errors in many issues;...”

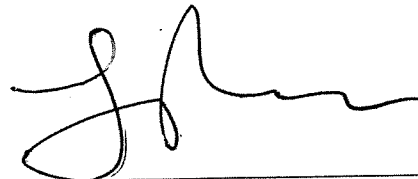
g. He is suing the Markham Defendants in the current action for damages resulting from the termination of the Contract, as evidenced by the following pleadings in the Statement of Claim in the within action:

- i. "Defendants created numerous false statements in the previous litigation. The judge was deceived. Our action was dismissed by defendants' lies..."
- ii "...the slander that library demonized me directly led to the termination decision..."
- iii. "I had known that library would submit a report to suggest City Council terminate our contract... When I found that the judge took this report as the only evidence for the errors defendants accused us. All the errors judge granted in her judgment were all original sentences or phrases from this report... I had never seen a report full of pure lies."

50. I make this Affidavit in support of the Markham Defendants' motion for summary judgment to dismiss the Plaintiff's current action.

**SWORN BEFORE ME** at the City of  
, in the Province of Ontario on **JULY 3**, 2019.

  
Commissioner for Taking Affidavits

  
**LARRY POGUE**

Tab L

Court File No. CV-19-618275-00

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

QIANGLI CAO

Plaintiff

and

CITY OF MARKHAM and MARKHAM PUBLIC LIBRARY

Defendants

**COSTS OUTLINE**

The defendants provide the following outline of the submissions to be made at the hearing in support of the costs the party will seek if successful:

Fees (as detailed below on partial indemnity basis not including HST)	\$	\$19,955.10
Estimated lawyer's fee for appearance	\$	\$1,254.00
Disbursements	\$	\$1,309.84
Total	\$	<u>\$22,518.94</u>

The following points are made in support of the costs sought with reference to the factors set out in subrule 57.01(1):

- the amount claimed and the amount recovered in the proceeding

The Plaintiff sought damages for "defamation with racial discrimination and dereliction of duty" in the amount of \$955,000.00.

- the complexity of the proceeding

The Defendants' argument, that the Plaintiff was estopped from bringing this claim, was simple; however, responding to the Plaintiff's claim required the Defendants to specifically address all of the Plaintiff's various alleged heads of damages and demonstrate that each was already decided by this Court in the Plaintiff's previous action.

- the importance of the issues

The allegations of "defamation with racial discrimination and dereliction of duty" were grave, especially when levelled against a public authority. Mr. Cao ought to have expected a robust defence.

-2-

- the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding

--

- whether any step in the proceeding was improper, vexatious or unnecessary or taken through negligence, mistake or excessive caution

The entire proceeding was unnecessary in that all of the Plaintiff's claims were previously adjudicated by this court.
--

- a party's denial of or refusal to admit anything that should have been admitted

--

- the experience of the party's lawyer

David Boghosian - Year of Call 1988 Matt Brown - Year of Call 2014
---

- the hours spent, the rates sought for costs and the rate actually charged by the party's lawyer

FEE ITEM	PERSONS	HOURS	PARTIAL INDEMNITY RATE (66%)	ACTUAL RATE*
Review of Statement of Claim; Drafting letters to client and Plaintiff re liability position; drafting offer to settle;	David G. Boghosian (1988)	7.40	\$313.50	\$475.00
	Samantha Wu (2012)	2.00	\$151.80	\$230.00
Drafting pleadings; correspondence with Plaintiff; correspondence with client; research re issue estoppel; motion to transfer venue;	David G. Boghosian (1988)	0.30	\$313.50	\$475.00
	Samantha Wu (2012)	17.60	\$151.80	\$230.00
Attendance at Civil Practice Court, preparation of	David G. Boghosian (1988)	1.80	\$313.50	\$475.00
	Samantha Wu (2012)	53.50	\$151.80	\$230.00

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FEE ITEM	PERSONS	HOURS	PARTIAL INDEMNITY RATE (66%)	ACTUAL RATE*
motion record for summary judgment motion, meeting with affiants and drafting affidavits; correspondence with Plaintiff re summary judgment motion	Carrie Elliot (Law Clerk)	17.40	\$105.60	\$160.00
Finalizing motion record re summary judgment; Reviewing and assessing Plaintiff's responding motion materials; drafting summary judgment factum; preparation for summary judgment motion	David G. Boghosian (1988)	5.30	\$313.50	\$475.00
	Mtat Brown (2012)	17.60	\$135.30	\$205.00

\* Specify the rate being charged to the client for each person identified in column 2. If there is a contingency fee arrangement, state the rate that would have been charged absent such arrangement.

- any other matter relevant to the question of costs

Mr. Cao chose act in person with full knowledge of his alleged limitations. The Defendants' lawyers have had to spend more time explaining the litigation process to the self-represented Plaintiff than would usually be required.

The Defendants offered to settle the action in the amount of \$15,000.00 on August 13, 2018. The Defendants' offer to settle expired on September 7, 2018.

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LAWYER'S CERTIFICATE

I CERTIFY that the hours claimed have been spent, that the rates shown are correct and that each disbursement has been incurred as claimed.

Date: December 19, 2019

\_\_\_\_\_  
David G. Boghosian

**BOGHOSIAN + ALLEN LLP**

Litigation Counsel

65 Queen Street West, Suite 1000

Toronto, Ontario

M5H 2M5

**David G. Boghosian LSO# 28922P**

Tel: 416-367-5558

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Lawyers for the Defendants

TO:

**QIANGLI CAO**

117 Maberley Crescent

Scarborough, Ontario

M1C 3Y1

cao@ccbooks.ca

Tel: 647-887-8767

Plaintiff

RCP-E 57B (July 1, 2007)

QIANGLI CAO  
Plaintiff

-and- CITY OF MARKHAM et al.  
Defendants

Court File No. CV-19-618275-00

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
MILTON AND TRANSFERRED TO TORONTO

**COSTS OUTLINE**

**BOGHOSIAN + ALLEN LLP**  
Litigation Counsel  
65 Queen Street West, Suite 1000  
Toronto, Ontario  
M5H 2M5

**David G. Boghosian LSO# 28922P**  
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Fax: 416-368-1010

Lawyers for the Defendants



Tab M

**Court File No. CV-19-00618275-0000**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Between:

**Qiangli Cao**

Plaintiff

- and -

**CITY OF MARKHAM and MARKHAM PUBLIC LIBRARY**

Defendants

**Costs Submissions of the Plaintiff**

(Responding to defendants' Cost Outline)

1. Plaintiff provides the following submission in support of the costs sought. Plaintiff is seeking a cost of \$ **32,840.00** for this motion if defendants' motion is dismissed.

**The amount claimed and the amount recovered in the proceeding**

2. Plaintiff sought damages for defamation in the amount of \$ 95.0000.00. Defendants offered \$ 15,000. for a settlement. Plaintiff's damages were huge by defendants' defamation, so plaintiff refused this offer. There are not any other remedies and recovers for plaintiff .

**The complexity of the proceeding**

3. The contract termination was caused by library's report to City. The report was a black box operation. It was full of lies and not examined.
4. Based on this report, City announced publicly that City terminated the contract because plaintiff's breaches. Due to those bad fames, plaintiff ' business was ruined and Mr. Cao himself fell into huge debts.
5. CPCL sued defendants wrongly terminated contract and sought for specific performance. But

defendants stressed legally that the contract was terminated without cause according to their terms. Library's lies and bad faiths were neglected under the "termination without cause".

6. Making the advantage or plaintiff's limited English and limited legal knowledge, defendants tampered several important evidences including this library's report to City to fool the court. None of breaches they claimed were true. All those made the case very confused and complicated.
7. Mr. Cao, himself, has spent all his days and nights before the hearing in preparing his materials but failed in telling defendants' lies and tampered tempered evidences. I didn't realize them till after the motion was over.
8. As a result, judge made her judgment based on defendants' lies and tampered documents.

#### **The importance of the issues**

9. Mr. Cao is the only shareholder of CPCL, who had developed his business with not only his whole life's saving, but also with big loans from bank and individuals. Mr. Cao will be in debts for all his life. He, who is already 62 years old, is difficult to find a job. He was desperate for the rest of his life.

#### **The conduct of any party that tended to shorten or lengthen unnecessarily the duration of the proceeding**

10. Early in August in 2016, the second day Mr. Cao got the leave from the court as the representative of CPCL, he advised defendants lawyers a compromise, but was refused.
11. In CPCL's case Mr. Cao gave "Offer to Settle" three times and also wrote to defendants for three times, declaring to drop the claim of damages for the specific performance, but they all were refused.
12. Mr. Cao felt extremely exhausted after his appeal was dismissed. He was seriously sick. But in any case, he had to go on a living and was responsible for his debts. Mr. Cao wrote to defendants to ask them help to recommend him a job. He promised to stop any kinds of conflicts in the future if City did this favor. But defendants refused.
13. Even now Mr. Cao calls for a settlement, but under a condition that he can come to a normal life.

#### **Plaintiff's Sought**

14. Plaintiff seeks for:

- a) Putting aside the defendants' cost claim.
- b) Costs payable in mount of \$ **32,840.00** plus HST.

Bill of the Costs of the Plaintiff

Name	Description	Payment
Qiangli Cao	January 2016 till now, full time in the case, \$40,000 a year.	\$ 160,000.00
Other fees	Consultation, copies, motion fee etc.	\$ 4200.00
Actual rate	\$ 40,000 X 4 (years)	\$ 164,200.00
Partial indemnity rate	\$ 164,200 X 20%	<b>\$ 32,840.00</b>

January 26, 2020

ALL OF WHICH IS RESPECTFULLY SUBMITTED



Qiang Li Cao

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Lawyers for the defendants

**Qiangli Cao**  
Plaintiff

- and -

**CITY OF MARKHAM** *et al.*  
Defendants

**Court File No. CV-19-00618275-0000**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**Costs Submissions of the Plaintiff**

**Qiangli Cao**

xxx

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Tab N

Court of Appeal File No.C68148

**COURT OF APPEAL  
FOR ONTARIO**

Between:

Qiangli Cao

Plaintiff and Appellant

- and -

CITY OF MARKHAM and MARKHAM PUBLIC LIBRARY

Defendants and Respondents

**Certificate of Completeness**

I, Qiangli Cao, certify that the Appeal Book and Compendium in this appeal is complete and legible.

February 4, 2021



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Qiang Li Cao

xxx

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Self-representative

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Lawyers for the defendants

**Qiangli Cao**  
Plaintiff and Appellant

- and -

**CITY OF MARKHAM** *et al.*  
Defendants and Respondents

Court of Appeal File No.C68148

**COURT OF APPEAL FOR  
ONTARIO**

**Appeal Book and Compendium**

Qiang Li Cao

XXX

XXX

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