

**SCOURT OF APPEAL FOR ONTARIO**

Between:

**Qiangli Cao**

Plaintiff and Appellant

- and -

**CITY OF MARKHAM and MARKHAM PUBLIC LIBRARY**

Defendants and Responding

**Factum of Appellant (Plaintiff)**

Qiang Li Cao

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**PART I – Nature of this Motion**

1. I sued the defendants, City of Markham (City) and Markham Public Library (MPL) for defamation.

His honorable justice Sossin J. granted the defendants’ motion and dismissed my action. I am appealing for his justice’s decision and the ruling of cost dated February 10, 2020.

**PART II – Overview**

2. City of Markham awarded the contracts of the service for Markham public library (MPL) to my business (CPCL) in a bidding event on June 20, 2014. We didn’t realize that our low price broke out the balance between the library’s demand and standard budget in the past years. This resulted library’s Chinese materials were overflowed, and the budget was decreased by City.
3. In August 2015, MPL suddenly terminated a one-off contract for an opening service, that would be performed in the completion of a new branch in the future, with the term of “termination without

cause”. After terminating this contract MPL gave this contract back to LSC whose price matched the budget in the past. By this way, MPL successfully took back the suspending budget of \$35,4755 temperately reserved in the financial department because of CPCL's low prices.

4. At the end of 2015, because the construction of the new branch was sped up, MPL was caught unprepared by a request from City to begin to prepare the materials for the new branch. MPL was unable to have two vendors that providing Chinese materials at the same time for technical reasons. So it had to terminate our other contracts serving for 6 branches on Jan. 27, 2016. MPL stopped accepting our materials from Feb. 26, 2016.
5. I appealed to the City council committee, to report that MPL had given our contracts back to LSC secretly. We also complained that the termination was in a wrong process.
6. To escape responsibility, the director of the library’s administration and the City’s contract buyer drafted a report to the City committee behind my back on March 23, 2016, to smear my business. City sent me a termination notice, legally as it said, on April 18, 2016.
7. Confirming all the contracts were terminated, we took a legal action on May 5, 2016, suing defendants for “wrongful termination”, asking for “specific performance of the contract”. I represented myself for the action. Defendants made a summary judgment motion to dismiss our action. Making use of my poor English and the lack of legal knowledge, defendants were free to play tricks, and lied from the beginning to the end with no constraints. As a result, her justice Krisjanason dismissed my action.
8. Unable to recover from the damages brought by the defendants, I took another action against the same defendants on behalf of myself on July 29, 2018. I sued the defendants for defamation. Defendants took another summary judgment motion. His justice Sossin J. dismissed my action.
9. The two actions lasted near 5 years. They were both dismissed by the defendants’ summary judgment motions. Fortunately, all defendants' tricks, lies and illegal conduct were exposed thoroughly after

my struggling in the two actions. Now, I am appealing for his justice Sossin J.'s decision.

### **Part III – Facts**

10. Chinese Publications for Canadian Libraries Ltd (CPCL) was a small independent business. I was the only owner of the corporation. After I helped MPL hold a Chinese book fair, I got to know there was a bid, "Markham Public Library (MPL) Material and Processing Services" proposed by City of Markham at the end of 2013. I decided to take part in this bid. For more than 40 years, library's only vendor, LSC, provided the service for all languages.
11. In order to have a competitive advantage, CPCL bid for the service of Chinese materials only. As a result, CPCL got a 99 score while LSC only got a 59 score. CPCL took away the service of the Chinese part from LSC successfully. On June 20, 2014, City of Markham signed the REQUEST FOR PROPOSAL (RFP, Chinese service only) with CPCL.

#### **Page 4, report to general committee, Exhibit 10**

12. The service was the acquisition, cataloging, and processing. The materials were in form of books, DVDs, and CDs. The contract included two parts, daily service for Chinese materials for each branch of the City on a 4 years term, and opening service for Chinese materials for a branch being in construction which was a one-off service at the time of opening.

#### **Request for proposal, 285-R-13(RFP) (2014-01-20), Exhibit 4**

13. However, MPL was not so happy with our success, especially not happy with our super low price. The City allocated the budget for MPL by vendor's price. So whether the price was high or low were the same for the library. LSC provided 6000 Chinese items each year in the past. With the budget given to LSC each year in the past, CPCL at least could provide 14000 items. We broke the balance between budget and requirements in the past many years. This made MPL awkward.

14. By requesting our prices before the bidding began, the library knew that our prices were lower more than doubled than that of LSC's. To ensure the total budget was not cut down, MPL set 12000 Chinese products as the target in the bidding price form. Because, once the regular budget was reduced, it was difficult to ask it back.

**Price summary (2014) Exhibit 3 (2)**

15. By the time CPCL got the contract, 2014 's budget had been allocated. Even if CPCL provided 12000 products for six branches, there was still a big amount of budget left. City allowed MPL to use the remaining budgets for other purpose. As for the approved budget for the opening service of the new branch, City kept it in financial departments temperately. City would not make the decision how to deal with it till the completion of the new branch. City also authorized that library could adjust the requirements within the scope of the approved budget according to the actual situation.

**A report to general committee (June 9, 2014), Exhibit 10.**

16. Because we were the same nation with the library's Chinese readers we provided an excellent service. We selected the right materials, taking into account of Canadian Chinese from Hong Kong, Taiwan and Mainland China. Because our cataloguers knew bilingual languages, we made bilingual Mark record. Chinese materials showed in library's website took on new looks, with images, book tiles and introductions in Chinese characters. I was especially proud that we had provided more than twice as many products as that of LSC at the same price. The pre-phase coordination process with library was fast and smooth. There was a very good relationship between two parties.

**Outlook of the records between CPCL and LSC, Exhibit 7**

17. I didn't realize the big hidden problem at that time that MPL in fact only needed 6000 Chinese products for all branches each year. Because we insisted on providing 12000 Chinese products in 2015, MPL had difficulty in holding them. Some branches began to complain that Chinese materials were

much overprovided and they had no more shelves to hold them.

18. In August 2015, one year after we provided the service, MPL suddenly terminated the one-off contract for the opening service for the new branch with the reason in their termination notice that City had the right to terminate the contract “without cause”. Because this branch was still being in construction, this termination for the future didn’t affect the ongoing services to six branches. I believed that MPL would give it back when the branch was ready to open. So I didn’t care about it much.

**Notice of termination in August, Exhibit 19**

19. I didn't expect that, in order to take back the over-part budget of \$ 354,755 reserved in the financial department, MPL gave this contract back to LSC whose bidding price just matched with the library’s budget in the past years. MPL did all these behind my back. I didn’t know the issue from a piece of confidential minutes I happened to get hold of until the CPCL’s action was over.

**Confidential minutes between City and library (2016-04-05), Exhibit 72**

20. Near the end of the year, MPL was caught unprepared by City's message that the new branch would open in 2016. Library was asked to prepare items for the new branch from the time. For technical and financial reasons, library was unable to have two vendors of Chinese materials working for them at the same time. This made MPL have to make a decision on whether to keep LSC or CPCL as its Chinese vendor. The library could not wait the completion of the 4 years’ term contract. The trouble was that, if keeping CPCL as the Chinese vendor, MPL had to return that \$354,755 back.
21. As immigrants, we took job opportunities as our lives. From the time we bid for the service, we did whatever library asked us to do to strengthen the relationship, ignoring any damages by their unreasonable demands. MPL asked us to charge cataloguing by titles not by items, we did. MPL asked us to add cover image in the record without payment, we did. MPL asked us to deliver the whole year’s products in the last 3 months in the first year. We did. MPL terminated the contract of opening

service for the new branch “without cause”. We accepted without complain. Believing in we had no choice but accepted anything as before, MPL chose to terminate the contracts for the service for the six branches with the term “without cause” again.

22. Exactly as MPL did in terminating the contract for the new opening in August 2015, I suddenly received a termination notice on January 27, 2016 without any previous reminder. The next day library’s technical manager Ms. Gilchrist wrote to inform me that library only accepted our products within 3 days. As a result, a big shipment of materials I ordered for the first few months of 2016 for the library were held in my hand. Ms. Gilchrist advised me to sell those products to other libraries. Later, these products, with all the stuff in my office, including all the machines and furniture, were detained by the landlord when I was unable to pay the rent.

**Notice of termination(2016-01-27),Exhibit 41**

**Ms. Gilchrist’ email on final delivery date), Exhibit 42**

**A list of products by air delivery (2016-01-14), Exhibit 40**

**Notice of distress from office landlord (2017-08-30), Exhibit 67**

23. Lost all contracts, I could not be so obedient to library as before. I had invested all my life’s savings in performing this library’s service. I really could not bear the huge damage. I appealed to City council committee immediately this time, and reported to City that MPL had given those contracts back to LSC. I hoped City would return the contracts to us. It was the City that awarded the contracts to us. I didn’t know that Mr. Casale (City's contract buyer) together with Mr. Pogue (director of library's administration) made up a report behind me to the council committee to shirk their responsibility. The report was full of lies. They lied that CPCL had dozens of errors in the service so they terminated its contracts. I will talk about this report for a while.

**My Speech in council committee and my written materials (2016-04-04),Exhibit 50**

24. The situation was that MPL and City's contract buyer had done everything without letting the council committee know in advance, including terminating the contract on August 27, 2015, giving back that contract to LSC, taking back the over-part budget reserved in financial department, and terminating all the contracts for 6 branches on January 27, 2016. By the time council committee had no choice but to approve MPL's recommendation of termination. City's approval made the case irreversible and a lawsuit was inevitable.

25. To provide MPL's service required a big investment. I had put all my savings and also had a loan from the bank. I was cornered to a cliff, so I had to make litigation. The subject for the action was "wrongful termination". Because I needed those contracts badly, my remedy was "performance of the contract". Damage request was only an alternative in my statement. They offered me \$ 25000 for a settlement. I refused. I just wanted to comply with the contract in the remaining two and a half years. From the beginning to the end of the lawsuit, I wrote to the defendants at least 8 times to express that as long as City returned the contract, I would not ask for any compensation.

**Corporation' statement of claim (2016-05-05), Exhibit 53**

26. The hearing took place on June 20, 2017. Defendants' lawyer must be very clear that they could not win the case if they argued we had breaches, so they withdrew their counterclaim soon after the hearing began. Instead, they argued that even if the judge found CPCL had no breaches, they still had the right to terminate the contracts "without cause". Because of my poor English, I didn't know what the defendants' lawyer said to the judge in the hearing. I only got to know from court transcripts later that judge misunderstood me in all key issues. When the judge announced the end of the hearing, I still believed that their unreasonable summary judgment motion must be dismissed.

27. The materials of both sides were added up to more than 2000 pages, but the hearing lasted only one hour. I had never believed that the court would ignore my huge damage. I received the judgment a few



days later. Her justice Krisjanason dismissed our action with a cost of \$50,000 payable to defendants.

I appealed at once. Unfortunately, our appeal was dismissed based on the “termination without cause”.

28. After our action was dismissed, the defendants' lies, cheating, and tricks were all floated to the surface.

All the breaches defendants against CPCL and me were false charges. Defendants even submitted false evidence. In order to give taxpayers an account for paying a double price to change vendors without bidding, defendants continued to smear CPCL on many occasions after the action was dismissed, even in media. All defendants' behaviors of slander and libel brought my corporation, which was made up of 5 employees, to close down. And all my business' damages passed on to me. The damages were so huge that I could never recover from that in my remaining life.

29. For all those reasons, I made a lawsuit on behalf of myself against the City of Markham and MPL on July 29, 2018. I sued the defendants for “defamation”. Defendants offered \$15000 for a settlement this time. I refused of course. Then they brought another summary judgment motion to dismiss my action, claiming in their factum that I was relitigating the same action, and calling to his justice Sossin J. that the court could not make a different decision. My action must be dismissed with cost.

30. They tried all their best to stall for time. The hearing was held on December 19, 2019 finally. Each of our two parties was given a one-hour opportunity for a statement. There were no arguments. The hearing lasted two hours. His justice didn't give the decision in the hearing. He said he would read our materials again carefully after the hearing. I received the judgment on February 20, 2020. To my surprise, his justice Sossin J. wrote in his decision that all the issues were already solved by her justice Krisjanason in CPCL's action. His justice ignored completely the defendants' termination without cause, and said that CPCL's case was based on “breaches” instead. My action was dismissed with a cost of \$10000 payable. Now, I am appealing to his justice Sossin J.'s judgment.

31. My case is not complicated but two cases are involved in each other. It lasted more than 4 years. If

necessary, your justice can read the following affidavit and factum for the details of my action.

***Affidavit of Oiang Li Cao (2018-09-12), Appeal book and compendium, Tab I***

***Factum of plaintiff (2018-09-12), Appeal book and compendium, Tab H***

#### **Part IV – Issues and Arguments**

##### **Seven key questions**

*On what basis, did defendants terminate the contracts in CPCL's action?*

*Did the prior decision deal with the same issues in my personal action?*

*Were those “so-called breaches” processed in CPCL's action?*

*Did I perform my right of argument in this hearing?*

*Do my damages deserve a trial?*

*Can a judgment be made based on tampered evidence?*

*Can a judgment be made when a litigant with poor English had no translator?*

##### **Eight key issues**

*Termination of a future one-off contract in August 2015*

*The confusing two contracts*

*Ms. Gilchrist's affidavit*

*Two invoices*

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

*The issue of “defensive manner”*

*The hearing on June 20, 2017*

*Councillor's comments in media*

##### **Seven key questions**

**On what basis, did defendants terminate the contracts in CPCL's action?**

32. The first sentence his justice Sossin J. states in his judgment is that “ this case involves the question of when a claim may be dismissed because it has already been litigated”. It can see that when selecting the word “because” here, his justice had taken it for granted that those issues had already been litigated. To have such a conclusion in mind before reviewing all the materials, prejudice is inevitable. My point of view is, this motion involves the question of if an action for defamation may be dismissed, by a judgment for a contract action dismissed in a summary judgment motion based on the “termination without cause”.

**Para. 1, his justice Sossin J. 's judgment, Appeal book and compendium, Tab D.**

33. His Justice Sossin J. basically erred in turning a blind eye to the fact that the defendants' lawyer covered up their key argument in CPCL's action. Defendants' lawyer didn't argue the “termination without cause” anymore that they emphasized in CPCL's action in this motion.

**Factum of defendants on Dec. 19, 2019, Appeal book and compendium, Tab J**

**Factum of defendants on June 20, 2017, Exhibit 56**

34. Incomprehensibly, his justice Sossin J. knows well about my views. “Termination without cause” can be found here and there in the legal materials of the two sides in CPCL's action. I emphasized this argument both in my factum and my statement in the hearing. His justice made a clear sign with an expression to understand the “termination without cause” when I emphasized it in the hearing.

**Para. 4, 5 and 6 in my factum, Appeal book and compendium, Tab H**

**Transcripts Excerpt, Appeal book and compendium, Tab E**

35. His justice Sossin J. should at least give a response. However, the phrase “termination without cause” appears only once indifferently, in a way of careless repeating my words in his judgment. Besides that, you can not find it anywhere. There are no comments or remarks on it. My crucial view

of this argument was neglected completely. I really feel surprised and puzzled that his justice Sossin J. could use a policy of neglect.

**Para. 37, his justice Sossin J. 's judgment, Appeal book and compendium Tab D**

36. What's even more unreasonable is that his justice Sossin J. gives the conclusion that CPCL's case was based on breach of contract. This conclusion was different from the defendants' termination notice, different from Mr. Pogue and Mr. Casale's suggestion to the City council committee, different from her justice Krisjanason's judgment, and also different from the judgment of the court of appeal. It is his justice Sossin J. himself who created this conclusion.

**Para. 4, his justice Sossin J. 's judgment, Appeal book, and compendium Tab D**

37. I copy the legal basis in the defendants' termination notice (April 18, 2016) here: "Pursuant to Part III, Section 17.3 of the City's General Terms and Conditions, NOTICE is hereby given that the City of Markham intends to terminate the Contract thirty (30) days from the date of this letter.". Part III, Section 17.3 is the term of termination without cause.

**Notice of termination in April 2016, Exhibit 51.**

38. I copy Mr. Pogue and Mr. Casale's suggestion in their report to the council committee: "legal Department has recommended that the City terminate the contract on a 'without cause' basis (by providing CPCL's with 30 days written notice so that the City is not held to the higher standard of proving default".

**Page 5, Mr. Pogue and Mr. Casale's report to City, Exhibit 75 (2)**

39. I also copy Defendants' lawyer's argument in his factum that "even if a judge finds that CPCL was not in breach of contract, or was not given the notice required to make the breaches 'Acts of Default' pursuant to the "with cause" termination clause, terminating the Contract without cause was still within the City's rights. In that case, the only question is whether adequate (30 days) notice given.

**Para. 98, defendants factum in April 2017, Exhibit 56**

40. Her justice Krisjanason gives two legal bases for the termination of the contract in her judgment in CPCL's action. I copy them here: “(a) Termination of the Contract is governed by s.17 of the General Terms and Conditions. The city may terminate with cause, on 10 days notice, if an act of default (defined as the failure to comply with terms and conditions not remedied within 10 days of written notice of failure). (Section 17.2). (b) The city may terminate the contract (s.17.3) without cause, in its sole discretion, on 30 days written notice.”.

**Page 3, the judgment for summary judgment motion (2017-06-20), Exhibit 62.**

41. Though her justice Krisjanason J. didn't say directly on (a) or (b) she made her decision-based. But since defendants gave no warning notice of an act of default, 10 or 30 days in advance, to CPCL before terminating the contract, and didn't mention the remedy within 10 days of written notice of failure, there was no choice that her justice Krisjanason J. relied on legal bases (b).
42. We can also confirm what legal basis her justice Krisjanason J. based on from her statement in the hearing in court transcripts. When I argued about the price issue, her justice stopped me and said that “importantly they have without cause term.”. Her justice also wrote in her judgment that “there is no bad faith in the “without cause termination”

**Page 37, Transcripts of proceeding, Exhibit 57.**

**Page 6, the judgment for summary judgment motion (2017-06-20), Exhibit 62.**

43. Their honorable judges in the court of appeal also confirmed that CPCL's case was based on the term of “termination without cause”. I copy their decision here: “the trial judge found that the operative terms of the contract allowed the respondents the agreement “without cause” on 30 days notice.”.

**Para. 2, judgment for appeal, Exhibit 65.**

44. It is clear that his Justice Sossin J. himself created such a favorable conclusion for defendants that

defendants were unable to get themselves. This conclusion helps defendants successfully clean up from the challenged and disgraced legal basis of “termination without cause” used in CPCL’s action.

45. Now, I have reasons to believe that his Justice Sossin J.’s neglect the “termination without cause”, and conclusion of “breach based case” on purpose. By doing so, his Justice Sossin J. makes his judgment dismissing my action logical and easy. The breaches-based case naturally makes it connect to a situation that I am attempting to re-litigate CPCL action.

**Did the prior decision deal with the same issues in my personal action?**

46. CPCL sued defendants for “wrongful termination”, and the remedy was specific performance. We declared from beginning to end during the action that we would give up the claim for the damages if the contract was given back. Our goal was only that we were able to provide the service for the library within the 4 years according to the contract.

**Statement of Claim on May 5, 2016, Exhibit 53**

47. Now I sue defendants for defamation. My remedy is compensation for the damages defendants brought me only. “Wrongly terminating the contract” and “defamation” are not the same issues. The subjects and remedies of the two actions are absolutely different. The legal basis for the CPCL’s decision is whether the termination of the contract lawful or not. And defendants argued that they could terminate the contract “without cause”. The present litigation deals with the issues if those slanders and libels exist.

**Statement of Claim July 19, 2018, Appeal Book and Compendium, Exhibit F**

**Were those “so-called breaches” processed in CPCL’s action?**

48. His justice Sossin J. disregarded all my arguments on those breaches in my materials. He gave no comments even for one breach. His conclusion is only that all the issues were solved by her justice Krisjanason J. This is incomprehensible. To see if those breaches exist in person is much easier than to

see if her justice Krisjanason J. had solved those breaches in an action in which defendants stressed “termination without cause”.

**Para.38, his justice Sossin J. ‘s judgement, Appeal Book and Compendium Tab D.**

49. In my materials, I gave facts with evidence that none of those breaches exist. Some of them chronological orders were inverted, and some backgrounds were hidden. Some issues were used out of context, and some library's own errors were shifted to CPCL, and even some of our contributions were turned into errors. Surely, there was not any possibility for defendants to dismiss our action if they didn't create the “termination without cause”. I made a form and listed all the breaches defendants claimed.

**Para 257, Affidavit of Qiang Li Cao, Appeal Book and Compendium, Tab.I**

50. I can understand her justice Krisjanason's decision to dismiss CPCL's action to some extent. Defendants lied and I didn't make it clear to judge. I was the one who should take the responsibility. When believing that the existence of “termination without cause”, her justice had reasons to dismiss CPCL's action with the subject of “wrongly termination of a contract”.
51. I can not understand on what basis his justice said that all the issues of breaches were solved. The court transcripts of CPCL's action show clearly that none of those breaches defendants claimed was investigated in the hearing. There was no cross-examination before the hearing. And defendants withdrew the only price issue they argued in the hearing immediately after the hearing began. He justice Sossin J. didn't verify one breach himself. Why did his justice give such a conclusion?
52. There were many weird and unreasonable issues his justice Sossin J. must have noticed. A summary judgment motion was a quick and short trial. However, the defendants provided a mismatched huge material of more than one thousand pages. It was suspected to be a trick of “paper stack”. Once her justice confirmed the “termination without cause”, all those breaches defendants created were

unnecessary and useless. As defendants' lawyer argued in the hearing that "even if a judge found CPCL had no errors, City still had the right to terminate CPCL's contracts "without cause". This "paper stack" was only to make me and the judge difficulties for nothing else.

53. According to whatever contracts to be contentious defendants could terminate our contract lawfully and peacefully if we had even one breach. There was no reason that defendants took the risk to tell a ridiculous lie that Service Agreement made only for C3. This has become a laughing stock in the Chinese community. I will tell this story of Service Agreement separately in a while.
54. Further, his justice must have noticed that the hearing for CPCL's action is just a summary judgment motion that lasted one hour, and there were numerous misunderstandings between the judge and me. I didn't follow her justice and the defendants' lawyer's dialogues. Was it possible those tens of issues in both sides' materials of more than 2000 pages were processed within such a short time, especially, under the circumstances that one side was an immigrant with very poor English and poor legal knowledge, and without a bilingual translator?
55. Basically, whether those breaches were processed or not can be seen in the court transcript. Why didn't his justice find the answer there? I will tell the story of the hearing in a while.

**Did I perform my right of argument in this hearing?**

56. His Justice Sossin J. says in his judgment that "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.

**Para.36, his justice Sossin J. 's judgement, Appeal Book and Compendium Tab D**

57. I don't know whether his justice meant the oral argument in the hearing or the written argument in my materials that I didn't establish those statements were false. But I established enough statements on defendants' stories of defamation in my affidavit and factum. Besides I detailed each story, I begged



his justice to to give me ten minutes to argue two or three breaches in the hearing only. I offered that defendants could select whatever the breaches for this argument in the hearing. It was his justice who said that he would read my materials carefully after the proceeding. I felt grateful to hear that with many thanks at that moment. Because my writing is much better than my spoken English.

58. Further, since so important as this threshold, his justice should ask me about it directly in the hearing. What was the use of the hearing? Let us see what happened in the hearing. The hearing was scheduled for a full day. We had plenty of time to talk about the issues his justice concerted. However, the hearing lasted less than two hours, during which their lawyer's statement occupied one hour. I reported to his justice that I didn't follow their lawyer's statement. I meant we need more time to make things clear. His justice asked me to give a shorter statement instead. I had to cut half of my statement prepared on a piece of paper. My statement occupied only 35 minutes.

**Para. 163, Factum of plaintiff, Appeal Book and Compendium, Tab H.**

59. His Justice states in his decision that her justice Kristjanson J. found that defendants offered opportunities for the defaults to be remedied. His Justice Sossin J. didn't tell what were the "defaults" and what was the "remedy". I know nothing about them at all. By this way to make a judgment, without questions and answers on me, I could be branded anything. Without my arguments, I was nothing but a slaughtered lamb.

**para. 26, his justice Sossin J. 's judgement, Tab D**

**Do my damages deserve a trial?**

60. His justice Sossin J. writes that "Cao meets the test for a privy. I don't have any objection to it. However, his justice Sossin J. and I meant differently on the privy. His justice wanted to meet the requirement for his judgment. When I argue that CPCL and I are the same party, my point is that I am the only owner of CPCL. All the damages of CPCL were naturally transferred to my individual

damages. CPCL's damages are my individual damages.

**Para. 21 in his justice Sossin J., Appeal Books and Compendium, Tab D**

**Para.104 in my factum, Appeal Books and Compendium,Tab H**

61. Defendants offered nothing when they terminated our contracts. Yes. They offered \$25,000.00, but it was after I sued them two years later. They offered that amount with a request that CPCL must stop the litigation. The so-called remedy was to stop our action, not for the damages of the wrongful termination. I refused it. Importantly, their offering was far not enough for my damages brought by the termination. I have summarized my damages in my affidavit. I recommend your justice to see my damage there.

**Para. 189-198, affidavit of Qiangli Cao, Appeal Book and Compendium, Tab I.**

62. My damages are real and huge. I have been suffering each day from those huge damages. Those huge damages are enough to push a vulnerable person to end his life ( Please be advised that I am giving a general fact, and don't consider it as life-threatening.). I believe that the core of civil law is concerned with 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. It is against humanity. Those unbearable damages and harms defendants brought to me are the basic reasons I sued them. My damages deserve a trial.

**Can a judgment be made based on tampered evidence?**

63. After CPCL's litigation, I realized that the comments on our "breaches" in her justice Krisjanason's decision were all copied from Mr. Pogue and Mr. Casale's report to City. And next, surprisingly I found that Mr. Pogue and Mr. Casale's report to City was tempered! To my knowledge of the law, providing any false evidence is a big violation of the law. However, his Justice Sossin J. gives comments in his judgment that "Mr. Cao didn't state how the allegation of tampering relates to any

specific claim in defamation.” Again, his justice did not ask me this his concern in the hearing.

**Para. 44, his Justice’s judgment, Appeal Book and Compendium, Tab D.**

64. I told clearly in my factum that defendants concealed at least 3 facts from the judge by tampering with this report. Library terminated the opening contract of the Southeast branch early in August 2015 and gave the contract back to LSC. The library had asked back \$354,775.50 over-part budget from the financial department for the new opening of the new branch by shifting that opening contract from CPCL to LSC before the end of 2016. Library suggests to City that they base on “the termination without cause” to terminate CPCL’s contract if challenged by law.

**Mr. Pogue and Mr. Casale’s report, Exhibit 75 (1) (2).**

**Factum of plaintiff on Dec.19 2019, Appeal Book and Compendium, Tab H**

65. Those hidden facts show clearly defendants’ motivation in terminating CPCL’s contract. I believe that if her Justice Krisjanason J. got to know those 3 hidden facts when she made her decision, she would not grant the defendants’ summary judgment motion. I regret I didn’t find those secrets myself in CPCL’s case. I didn’t get to know these secrets until far after the litigation was over. Their tempered document worked successfully.

66. I also found the contract defendants submitted was a patchwork. Defendants put RFP and City’s general Terms two different functions of the documents together stiffly. They made an index to link the two different documents as if it was one complete document. I understand finally many of her justice Krisjanason J.’s comments in her judgment I was confused before. This masterpiece is not concluded in my appeal materials because I didn’t use it in the summary judgment motion. It could be found in their materials.

67. The two basic pieces of evidence either were deleted important issues or pieced together according to the requirements. That was abnormal. There must be reasons behind it. If a lawyer tampered with

evidence, but a judge turned a blind eye, that is legal deficiency and judicial corruption, isn't it?

**Can a judgment be made when a litigant with poor English had no translator?**

68. I was unable to follow the judge and the defendants' lawyer for most of the time in the hearing without a translator. I reported this issue to his justice Sossin J. at the beginning of the hearing. I also reported my language problem in my factum to his justice. I copy them here: "Take a look at the whole case, language barrier is involved in each issue.

69. The language barrier is the biggest headache issue for new immigrants. In my case, if there were no language problem, the defendants would not dare to create so many lies. For many issues, during the lawsuit, when I questioned something important, their lawyers pretended not to understand and replied something different to confuse the situation." I can give many examples if necessary. Further, the reason defendants dared to create so many "breaches" was that they knew I could not understand them within a limited short time."

**Para.152-154 factum of plaintiff on Dec.19 2019, Appeal Book and Compendium, Tab H**

70. However, his justice Sossin J. writes in his judgment that "any language barrier he may have did not impair his ability to present his arguments of the defendants." His justice Sossin J. was satisfied on the basis of Cao's own submission at the hearing." This is not logical. That should be the comments if his justice dismissed the summary judgment motion.

**Para. 50, his Sossin J.'s judgment, Appeal Book and Compendium, Exhibit D**

71. There were no arguments of exchanging views in the hearing. Each one gave his own speech. That is the fact. I prepared a speech and read it in the hearing. My speech was untargeted to Mr. Boghosian's statement who did before me. I don't think his justice Sossin J. should be satisfied with such a hearing without any on-court debate.

72. One thing I would take it as an example to show the importance of a translator for me. Before I

appealed to her Krisjanason J.'s decision, the defendants took a motion of cost security to stop my appeal. I didn't have even one thousand for the deposit at that time.

73. Finding my English was limited, her honorable justice Rensburg J. moved my hearing backward, and at the same time asked his team to find me a translator. The proceeding restarted after one hour's break. With a qualified translator, the proceeding was not only in favor of one side as the situation in the previous summary judgment motion. Knowing what was going on with the help of the interpreter, I could argue on the issues specifically.
74. There was also a sharp contrast between the two hearings on the length of time. The hearing of the summary judgment motion for CPCL's case lasted only one hour. The cost security hearing was not so important as the summary judgment motion for sure. However, the cost security hearing lasted more than 4 hours. In the end, the defendants' cost security motion was dismissed. We got the opportunity to appeal at last. I do believe that without that translator my appeal must be canceled. I will always feel grateful to her honorable justice Rensburg J.

**Judgment for defendants' cost security, Exhibit 64.**

75. Without an interpreter, it is also unfair to the judge. I do believe that if there was an interpreter, her justice Krisjanason J. would not be Cheated by defendants for so many issues, and also there was no misunderstanding between me and the judge. I do believe her justice Krisjanason J. would give an impeccable judgment with the help of an interpreter.
76. According to the Charter of human rights and Freedoms Canada, everyone has the right to understand the case against. I believe my human right was deprived off in both hearings. The judgment was made without a translator in the hearing is suspected against the basic doctrines in the Constitution.

**Section 14 – Right to an interpreter, the Canadian Charter of Rights and Freedoms**

**Eight key issues**

77. This is an appeal to his justice Sossin J.'s judgment, not an appeal to her justice Kristjanson J.'s judgment. However, since his justice made his judgment all based on her justice Kristjanson J.'s decision without his own investigation, especially on those "breaches" defendants claimed, I have to argue some key issues in CPCL's action. It is certain that any facts in the two lawsuits can help make a better understanding to the present appeal.

#### **Termination of the contract of the new opening for the new branch in August 2015**

78. Terminating the contract of the new opening of the new branch in August 2015 is the direct reason to terminate CPCL contract in 2016. Unfortunately, no one argued on this termination in August in the hearing. Her justice even didn't know this termination when she made her judgment.

79. To know the issue of termination in August is to know the basic reason for the whole case. The termination in August tells the defendants' motivation in terminating the contract. See more details in the attached Affidavit of Qiangli Cao.

**Para.204-207, Affidavit of Qiangli Cao, Appeal book and Compendium, Tab I**

#### **The confusing two contracts**

80. The contract should be RFP + an agreement. Which is the contract, RFP + City's General or Terms or RFP + Service Agreement? To find the answer is to understand the litigation. To find which is the contract is to see whether really there is the term of "termination without cause" in the contract.

81. It was the defendants' lawyer who misled her justice Kristjanson J. Defendants' lawyer argued on the contract in his factum that "Section 1 states that the subject matter of the Service Agreement is the C3 services described in Schedule A.". As a result of the misreading, her Kristjanson J. came to a conclusion in her judgment that "the Service Agreement is made only for C3". This is far from the fact. This leaves a laughing stock.

**Para. 78-79 defendants' factum, Exhibit 56**

82. Come to Schedule A, and it states clearly, “CPCL provides to MPL the service detailed in RFP, including C3 service.”. CPCL provided library only one service, all detailed in RFP. Whatever it is called, CPCL’s service, MPL’s service, RFP service, or C3 service, are the same thing.

**Page 4, Service Agreement, Exhibit 6**

83. What is C3? Being a public library, MPL wanted to make a change to simplify the standard in classifying a product in cataloging. For example, when a book about science was classified, the classification is set science only. There is no need to tell what kind of science should be in standard practice. That is C3. C3 is just such a simple thing. C3 relates only a small change in a single line in cataloging.

84. Because this new change in cataloging made the cataloging work much easier, MPL didn’t want to pay for the change. That was why they stressed in Service Agreement that “CPCL provides to MPL the service detailed in RFP, including C3 service.”.

85. In fact, her justice Krisjanason J. was confused by the existence of two contracts. It is a long story about City’s General Terms and Service Agreement. I don’t appeal her Krisjanason J.’s judgment here. Please read the attached Affidavit of Qiang Li Cao for details if necessary.

**Para.155-163, Affidavi of Oiangli Caot, Appeal Book and Compendium, Tab I**

86. After the contract was terminated, about in the middle of 2016, I found the updated edition of City’s general terms was put on the internet. I found the termination terms in this new edition document are exactly the same sentences as in Service Agreement. I understood that the termination terms in Service Agreement were copied from the new edition of City’s terms in 2016. I found that there is termination without cause in the new City’s General Terms and conditions, but City provides compensation for the loss brought by the termination.

87. I downloaded the document but only printed the page relating to the termination terms as my evidence.

It was a pity that the computer with which I downloaded the whole document was detained by the landlord of my office. I tried to download it again, but this new edition mysteriously disappeared from the internet. That is why I have only one page of City's General Terms 2016 in my Exhibit book.

**A page of City's General terms 2016 version, Exhibit 61**

#### **Ms. Gilchrist Affidavit**

88. His justice's Sossin J. says that "the affidavit by Ms. Verna Gilchrist detailed the failures of CPCL to meet its contractual obligations with Markham." I argued all the time that Ms. Gilchrist provided an affidavit full of lies. His justice Sossin J. should not ignore my allegation on Ms. Gilchrist's affidavit. See the following documents for details.

**Para.30, his justice's Sossin J.'s judgment, Tab D.**

**Para. 113-119, Affidavit of Oiangli Cao, Appeal Book and Compendium, Tab I.**

**Ms. Gilchrist's Affidavit, Exhibit 54**

#### **Two invoices**

89. Defendants argued that the principle error they based on to terminate CPCL's contract is the price issue. But ironically they gave the contract back to the previous vendor LSC that charged more than doubled the price. They claimed in the report to City after I appealed to the City that, "CPCL charged higher thorough out much of 2015". Library paid CPCL each shipment one month delay after CPCL provided the invoices. Could we charge higher in force? Further, the method to calculate the price was based on the year's average price according to the contract. How did they claim CPCL charged higher much of 2015?

**Page 4, Mr. Pogue and Mr. Casale's report to City, Appeal Book and Compendium, Exhibit 75.**

90. All the invoices were there. They clearly showed that we charged the library at the same price level from the first invoice in 2014 to the last invoice in 2016. Because they submitted the report behind my



back, I got no chance to explain that to City.

91. In order to approve that CPCL continued to charge higher in 2016 to meet the elements to terminate a contract for their motion, the defendants provided two invoices as evidence. Her honorable justice Kristjanson J. writes in her judgment that “in 2016, CPCL remitted invoices not in accordance with contract pricing.” I didn’t find the importance of the two invoices at that time and didn’t have a chance to argue about these two invoices issue among tens of “breaches” defendants created.

**Page 5, his justice Kristjanson J.’s judgment, Exhibit 62**

92. When I realized the two invoices issue, I was made mad by this big lie. Those two invoices were the evidence of MPL’s breach of contract, not mine. I have to say here that I’m really disappointed with her justice’s wrong identification that was far from the fact. See the facts in my affidavit.

**Para. 148-152, Affidavit of Qiangli Cao, Appeal Book and Compendium, Tab I**

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

93. I have claimed above that this report has tampered. Besides the problem of the tampering, this report could not be used as evidence that we had breached. Because this report was written several months after MPL terminated our contract. They terminated our contract first and then created the breaches. The supplementary evidence must have original evidence to support it.
94. Defendants gave me the notice of termination on January 27, 2016, I appealed the termination to City in the middle of February in 2016, and Mr. Pogue and Mr. Casale submitted this report to City council committee on April 4, 2016. I am not sure if her justice Kristjanson J. noticed the date of the termination and the date of this report.
95. Before writing this report, Mr. Pogue and Mr. Casale had terminated our contracts to six branches, had given those contracts back to LSC, and had asked back a higher budget because of LSC’s low price. They had done everything. See my allegation on this issue in my affidavit.

**Para. 225 to 255, Affidavit of Qiangli Cao, Appeal Book and Compendium, Exhibit I**

**Mr. Cao's defensive Manner**

96. Why did the defendants terminated our contracts. There were different opinions from the defendants.

I realized that after the litigation, the real reason to terminate our contract was neither the term “without cause”, nor “because of our breaches”. It was because of my “defensive manner”. This was not mentioned in CPCL's action.

97. I found it in Ms. Gilchrist's affidavit. She writes that “my understanding is that after discussing Mr. Cao's behavior at the meeting on January 20, 2016, 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.”. This reason for termination was confirmed by Mr. Pogue in his affidavit.

98. It was just before the court hearing that I learned this fantastic story of “offensive behaviors”. I asked City's contract buyer, Mr. Casale, how he got to know the issue. He said that library told him by a call, after the meeting of January 20, 2016.

99. Ms. Gilchrist provided a piece of print something like meeting minutes as the supporting evidence in her affidavit. But I found I never read it before. Unreasonably, the records in this print were completely different from Ms. Gilchrist's original records in handwriting. The same meeting had different meeting records. It was suspected that the print was created only for City's buyer, Mr. Casale who had the power to terminate our contract.

**Minutes for the meeting on January 20 in print, Exhibit 74.**

**Minutes for the meeting on January 20 in handwriting, Exhibit 73.**

100. I believe Mr. Casale who was in charge of the contracts in the City terminated CPCL's contract based on this issue of “defensive manner” MPL claimed. Because termination agreed with the time.

Mr. Casale sent me the termination notice on January 27, 2016, a week after that meeting (January 20,

2016). The slander of “defensive behavior” is one of the main issues I sued defendants. However, his justice Sossin J. says nothing about it in his judgment though I argued in my materials.

**Para. 208, 211-224, Affidavit of Oiangli Cao, Appeal Book and Compendium, [Tab I](#)**

#### **The hearing on June 20, 2017**

101. His justice Sossin J. writes that “there has yet to be a fair hearing on the merits of Cao’s allegations. That fair hearing already occurred before her justice kristjanson.”

**Para. 51, his Sossin J.’s judgment, [Tab D](#)**

102. Must a hearing be fair? Of course, most cases are but that is not always the case. Backing one step to say, that hearing might be fair to that contract case, but it may not be fair to the present defamation case. The court transcript is always there, and no one can change it. Read it and you will find whether the hearing is fair or unfair. In my point of view, the hearing for CPCL’s action is a true portrayal of an immigrant who was unfairly treated in court due to his poor English, and it is a typical case to see how a litigant with limited English makes desperate struggles in the court. I do believe this hearing will be recognized as a shame to the Canadian court soon or later. My arguments on the hearing can be found in my factum for my appeal. I strongly recommend your justices to read them.

**Court transcripts for my appeal, [Exhibit 57](#)**

**Para. 76-183, the factum of the appellant, [Exhibit 63](#)**

#### **City councillor’s comments in media**

103. When his justice Sossin J. wants to approve that CPCL and I belong to the same party, he writes that “Cao meets the test for a privy...”. But, when his justice wants to approve that CPCL and I are different parties in councilor’s issue, he says that “the article, City councilor’s remarks, references CPCL not Cao personally.”. And, his justice Sossin J. further writes that defendants are not reliable for the comments to media of a specific Councilor.

**Para. 40, 41, his justice Sossin J.'s judgment, Tab D**

104. I didn't know Ms. Yeung. There was no reason that she gave any comments on me in media. Ms. Yeung was the Budget Chief in City of Markham. It was clear that she published the news in media on behalf of City of Markham on purpose. She did her job but that hurt me.

105. Her message to media concluded two things. One, CPCL had breaches, and two, LSC was the second-lowest price bidder. I find that these two things are exactly the same things Mr. Pogue and Mr. Casale advised to the council committee in their report to City. See my arguments and more details in my factum and affidavit.

**Para 114-118, my factum, Appeal Book and Compendium, Tab H.**

**Para. 199-202, Affidavit of Qiang Li Cao, Tab I.**

106. ***Dear your honourable justice:*** Many of defendants' behaviors are abnormal and out of common sense in the litigation. To follow one of them, the truth of the whole case could be seen. I just give 3 examples below.

107. Defendants claimed that we had tens of breaches in the service in CPCL's action. According to whatever two contracts, if CPCL had one error, defendants had right to terminate its contract easily and lawfully. But why did defendants make efforts to argue that they could terminate the contract without cause instead?

108. Defendants claimed that we charged higher, and they even made a counterclaim for price. But why did they withdraw the counterclaim soon after the hearing began?

109. Defendants claimed to his justice Sossin J. that "the allegations of defamation were grave, especially when leveled against a public authority. Mr. Cao ought to have expected a robust defense.". Since defendants minded public authority so much, but why didn't they take an action to make a counterclaim for defamation? Especially they have known that I shared my statement of claim and

factum in a Chinese social network in Canada. They must have noticed that my post has been visited more than 7500 times.

<http://forum.yorkbbs.ca/news/4808805.aspx>

110. Further, they also know that I am building a website to fight for immigrants who are weak in a lawsuit, in which I am uploading my legal materials as the model.

[www.lawsuit-online.com](http://www.lawsuit-online.com)

111. ***Your honorable justice:*** I really don't understand why his Justice Sossin J. ignored the issue of "termination without cause" in his judgment. The issue of termination without cause is hard to be avoided based on my materials. This makes me wonder if his Justice's decision is partial to defendants, and if there is a conduct of officials shield one another in this case. It is like an issue of bureaucrats sticking up for one another. I am seeking a reasonable answer to this issue.

112. My appeal involves the corruption of more than several millions of dollars at least, and also issues of racial discrimination. This order of dismissing is suspected to help the local government cover-up a scandal of malfeasance.

113. My suspicion also comes from what defendants' lawyer states in his factum that "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.". Those words are not defence for defamation, but they are more like discussion, or a hint of advice among insiders,

**Para 11-12, Mr. Boghosian's factum, Appeal Book and Compendium, Tab J.**

114. Reviewing the whole case, I never had a chance to argue one certain "breach" from the start to the end. I failed in asking his justice to give me a chance of an argument. Now again, I ask your honorable justice to give me a chance to argue one error. Because none of the "errors" existed, I don't

mind which breach defendants recommend arguing.

115. It is said that the token of modern society of nomocracy civilization is that the vulnerable members are valued. There is no doubt, I, an immigrant with limited English, belong to a vulnerable group. I don't expect I can be so well valued. I just need a chance to argue one or two breaches defendants defamed me with defendants before a judge.
116. I have been trapped in this lawsuit for nearly 5 years. I never related any issues in the lawsuit with systemic racism in the first two years. I was confident in Canadian court as I learned and heard. After many weird issues happened, my confidence began to shake. For 5 years, I didn't get a chance to argue even one "breach" defendants smear me before a judge. This is not like the case I expected. I wonder if a non-immigrant Canadian is so difficult to obtain a trial as my case. I hope I am thinking too much. In any case, I much appreciate that Premier Trudeau gave a warning that some systemic racism existed still in Canada, and he condemned all forms of racism. I condemn it the same.
117. I come to Canada for its justice. It is true that the immigrants are weak at English and are weak at law issues. But we are not weak in wisdom. We are not weak at fighting for our human rights. I tried to find an authority case on immigrants similar to mine as the reference but failed. Canada is a country of diversity. I am appealing that it is time to take immigrants' actions seriously.
118. In any case, this is not a trial to make a decision on defamation. It only decides whether I can be given an opportunity to see if there were defamation or not. There is no any danger at all that defendants will be unfairly treated, or wrongly judged in a normal trial. However, if my action was dismissed I would suffer from my damages in the rest my life. Further, if there were no defamation involved, I would get into great troubles by law. Is it fair that a victim even can't get such a dangerous chance?

## **Part V – Order of Relief Sought**

119. The Appellant respectfully asks that the summary judgment and the cost awarded to defendants made by Honorable Justice Sossin J. be set aside, allowing my action to proceed to a regular trial.

120. I ask for cost for this appeal.

121. I request any further relief that this Court may allow.

All of which is respectfully submitted this fourth day of February, 2021.



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Qiang Li Cao

XXX

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### **CERTIFICATE**

Qiangli Cao, Self-Represented Litigant, certifies that:

The record and the original exhibits from the court from which the appeal is taken are not required.

The estimated time of my oral argument is one hour, not including reply.



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Qiang Li Cao



### **Schedule**

Schedule A containing a list of the authorities referred to, and

Schedule B containing a list of all relevant provisions of status, regulations and by-laws.

N/A

**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**

**Factum of Appellant (Plaintiff)**

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