



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued
Délivré par voie électronique : 16-Aug-2021
Toronto

KPMG LLP

Plaintiff

- and -

THE CANADIAN BROADCASTING CORPORATION, HARVEY CASHORE,
FRÉDÉRIC ZALAC, PAUL ÉMILE D'ENTREMONT, MARK KELLEY,
SANNAH CHOI AND LYNETTE FORTUNE

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. 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 Plaintiffs' lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiffs, 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.

IF YOU PAY THE PLAINTIFFS' CLAIM, and \$2,000.00 for costs, within the time for serving and filing your Statement of Defence you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiffs' claim and \$400 for costs and have the costs assessed by the Court.

- 2 -

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: August 16, 2021 Issued by _____
Local Registrar

Address of 330 University Avenue, 8th
court office: Floor Toronto, ON M5G 1R7

TO: The Canadian Broadcasting Corporation
250 Front Street West
Toronto, ON, M5V 3G5

AND TO: Harvey Cashore
CBC – Radio Canada
250 Front Street West
Toronto, ON, M5V 3G5

AND TO: Frédéric Zalac
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AND TO: Paul Émile d'Entremont
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AND TO: Sannah Choi
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Toronto, ON, M5V 3G5

AND TO: Lynette Fortune
CBC – Radio Canada
250 Front Street West
Toronto, ON, M5V 3G5

CLAIM

1. The plaintiff KPMG LLP (“**KPMG Canada**”) claims:
 - (a) damages for defamation as against the defendants, on a joint and several basis, in an amount to be determined at trial;
 - (b) an order that the defendants publish an apology in a form to be determined and issue a retraction of all portions of the Broadcasts and the Articles (as defined below) that allege any connection between KPMG Canada and the Sword Companies and/or the Cinar fraud (as also defined below);
 - (c) pre-judgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (d) post-judgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (e) costs of this proceeding on a substantial indemnity basis; and
 - (f) such further and other relief as this Honourable Court deems just.

Overview

2. This claim arises from a series of broadcasts aired and articles published by the defendant The Canadian Broadcasting Corporation (the “**CBC**”) and its reporters between February and May 2021.

3. In these broadcasts and articles, the CBC repeatedly alleged that KPMG Canada: (i) helped set up certain offshore companies in the Isle of Man (the “**IOM**”) that were involved in one of the largest frauds in Canadian history, and (ii) consistently lied about its lack of involvement with those IOM companies. The clear and unmistakable implication was that KPMG Canada played a role in a notorious criminal undertaking, which it then sought to cover up.

4. These allegations are not only entirely false, but it was completely irresponsible for the defendants to have ever reported them in the first place. Prior to making the allegations, the defendants had been provided with extensive and detailed evidence making clear that KPMG Canada played absolutely no role in setting up the companies in question. This included being provided with information about KPMG Canada’s comprehensive process of internal due diligence and thorough consideration of the publicly-available corporate documents of the companies in question, as well as an independent review by a retired justice of the Supreme Court of Canada.

5. The defendants nevertheless decided to make the allegations, based almost entirely on a single, hurriedly-drafted email from an administrative level employee of a third-party service provider in the IOM, whom the defendants have never spoken to, and who wrote the email some 15 years after the companies in question were formed.

6. The CBC’s allegations that KPMG Canada was involved in, and covered-up, criminal activity are among the most serious that can be made. It is particularly damaging to KPMG Canada, a trusted national accounting organization that has, and relies on, an established reputation for integrity and judgment. Given the seriousness of the allegations and the inherent unreliability of the source on which they were based, it was the height of journalistic irresponsibility for the defendants to make them. The fact that the defendants continue to repeat these allegations without

any further evidence to substantiate them only serves to exacerbate the reputational damage to KPMG Canada.

7. KPMG Canada is entirely supportive of the right of media organizations to vigorously investigate and report on matters of public interest. Indeed, KPMG Canada has been the subject of critical reporting by certain of the defendants in the past, and it has not initiated any legal proceeding. However, in this particular instance, the false, irresponsible and highly-damaging reporting has gone too far.

KPMG Canada

8. KPMG Canada is an Ontario limited liability partnership operating in Canada as a public accounting and professional services firm. It provides auditing, tax and advisory services to individuals, corporations, not-for-profit companies and government organizations. KPMG Canada employs nearly 8000 people at over 40 offices located across Canada, including one located in Toronto, Ontario.

9. KPMG Canada is a member firm of a global organization of independent firms affiliated with KPMG International Limited, a private English company limited by guarantee.

The defendants

10. The defendant the CBC, operating as CBC/Radio-Canada, is Canada's national broadcaster, with a mandate established by the *Broadcasting Act*, S.C. 1991, c. 11. Its headquarters are located in Ottawa, Ontario, and it maintains offices and a studio complex in Toronto, Ontario.

11. The CBC publishes and broadcasts news stories in a number of media, in both official languages. It operates an English-language news website at CBC.ca, and also broadcasts television networks airing in both English and French.

12. The defendants Harvey Cashore (“**Cashore**”), Frédéric Zalac (“**Zalac**”), Paul Émile d’Entremont (“**d’Entremont**”), Mark Kelley (“**Kelley**”), Sannah Choi (“**Choi**”) and Lynette Fortune (“**Fortune**”) are reporters employed by the CBC.

The Offshore Company Structure

13. Certain basic information about a former KPMG Canada product known as the Offshore Company Structure (the “**OCS**”) is necessary as background to the issues in this proceeding. Beginning in 1999, KPMG Canada developed the OCS, which was intended as a tax-effective method for high-net-worth Canadian-resident individuals to achieve estate planning, asset protection and/or philanthropic objectives.

14. To implement the OCS, a company (the “**Offshore Company**”) would be incorporated in the IOM. Each Offshore Company would be structured in accordance with Manx law so as to have: (i) two “**Shareholder Members**”, almost always third-party corporate service providers (“**CSPs**”) based in the IOM, and (ii) one Non-Shareholder Member (“**NSM**”), expected to be a trusted friend or advisor of the client (or a non-resident corporation controlled by that person). There would typically be three directors of the Offshore Company, with one nominee of each Shareholder Member and one nominee of the NSM. The CSPs incorporated the Offshore Companies and sold their corporate services to the Offshore Companies at arms-length.

15. The OCS was developed in anticipation of proposed changes to the way in which non-resident trusts were taxed in Canada. The Offshore Companies were intended to function in a manner comparable to non-resident trusts, but because they were corporations, the proposed legislative changes would not affect them.

16. Under the OCS, the client would make an unconditional, irrevocable and absolute gift to the Offshore Company.

17. The Articles of Association of the Offshore Companies provided that the directors could, in their sole discretion, make gifts out of the Offshore Company to “**Eligible Persons**”. Eligible Persons were decided upon by the Shareholder Members and the NSM, and identified in a members agreement.

18. The ability to make a distribution to an Eligible Person was the key feature of the Offshore Companies set up pursuant to the OCS. Without it, the Offshore Company could not function in a manner comparable to a trust, which was the whole point of the structure.

19. KPMG Canada decided to stop offering the OCS in or around 2003. With the exception of a single implementation in 2007, all OCS implementations by KPMG Canada (a total of 16) occurred prior to 2004.

The Cinar fraud and the Sword Companies

20. Readily accessible public information, including court documents, demonstrate that one of the largest incidents of fraud in Canadian history was taking place during the early 2000s. Popularly known as the “Cinar” fraud, it involved the misappropriation of assets from Cinar

Corporation, a Canadian public company that produced popular children's entertainment. The Cinar fraud, which was connected to a broader scandal involving Quebec-based investment companies Norshield and Mount Real, ultimately resulted in the criminal convictions of several people.

21. None of these people were in any way associated with KPMG Canada.

22. KPMG Canada was not the auditor of Cinar or Mount Real, nor did it provide professional services to them of any kind. KPMG Canada was the auditor of one of the Norshield investment funds, but not of any of the funds involved in the Cinar fraud.

23. Four IOM companies – named Shashqua, Katar, Sceax and Spatha (collectively, the “**Sword Companies**”) – were incorporated at the end of 2001. The CBC alleged in its reporting that the Sword Companies were used as a depository for investors' funds stolen in the Cinar fraud.

24. KPMG Canada had and has no knowledge about the involvement of the Sword Companies in the Cinar fraud, other than what has been publicly reported. The issue in this proceeding is that the defendants falsely reported that KPMG Canada helped to establish the Sword Companies, and therefore facilitated the Cinar fraud, as described in detail below.

OCS-related reviews

25. Years after KPMG Canada had stopped offering the OCS, the Canada Revenue Agency (“**CRA**”) began audits and reassessments of several taxpayers who had made gifts to or received distributions from Offshore Companies.

26. On February 12, 2013, the Minister of National Revenue directed KPMG Canada to produce to the CRA information and documents relating to its unnamed clients who had participated in the OCS (the “**Unnamed Persons Requirement**”). KPMG Canada ultimately provided the information sought by the CRA.

27. In May and June 2016, the House of Commons Finance Committee (the “**Committee**”) held hearings on the topic of the “CRA’s efforts to combat tax avoidance and evasion”, which included a consideration of the OCS. KPMG Canada voluntarily agreed to testify at these hearings.

KPMG Canada and CBC’s initial correspondence regarding the OCS and Sword Companies

28. Beginning in 2016, the defendant Cashore, in his role as reporter for the CBC, began asking questions of KPMG Canada concerning the identity and total number of its OCS implementations. Pursuant to court order, KPMG Canada had already reported the number of OCS implementations and the number of taxpayers involved to the CRA and the Federal Court, in connection with litigation regarding the Unnamed Persons Requirement. It had also reported the number of OCS implementations and the number of taxpayers involved to the Committee when a representative of KPMG Canada appeared before it in May 2016.

29. On or about February 7, 2017, Cashore emailed KPMG Canada, alleging that the number of OCS implementations reported by KPMG Canada was false, and seeking KPMG Canada’s response.

30. In connection with his allegations regarding the number of OCS implementations, Cashore asked KPMG Canada questions that Cashore knew KPMG Canada could not answer, such as asking KPMG Canada to confirm that specific individuals implemented the OCS, and asking

questions about confidential client advice KPMG Canada allegedly provided to certain individuals. As Cashore knew, KPMG Canada's professional obligations prohibited it from answering these questions. KPMG Canada did however confirm that the number of implementations it had reported, determined through a comprehensive process of due diligence, was correct.

31. In his February 7, 2017 email, Cashore provided KPMG Canada with a list of a number of IOM companies that he alleged had been established by KPMG Canada as part of the OCS, but that had not been previously disclosed by KPMG Canada. Cashore's allegation relied principally on purported similarities between the Articles of Association of these companies and the template Articles of Association used for the Offshore Companies. The Sword Companies were included on Cashore's list, along with other IOM companies that were not part of the OCS and had no connection to KPMG Canada.

32. This was the first time Cashore alleged that KPMG Canada was connected to the Sword Companies by virtue of them being Offshore Companies. This allegation was very serious, because it was in effect an allegation that KPMG Canada was lying to the CRA, in breach of a court order, and to the Committee when it disclosed the number of implementations.

33. At this point, there was no allegation by Cashore that the Sword Companies were connected to the Cinar fraud.

34. Cashore advised KPMG Canada that he intended to publish the allegation that KPMG Canada had created the Sword Companies, along with the other companies on his list.

35. KPMG Canada was unable, due to its professional obligations, to provide the CBC with any confidential client information, which included whether KPMG Canada was connected to any

specific IOM corporation. Accordingly, in order to assist KPMG Canada to reasonably satisfy the CBC that Cashore's allegation of a connection between KPMG Canada and these companies was incorrect, KPMG Canada retained retired Supreme Court Justice the Honourable Ian Binnie ("**Mr. Binnie**") to independently review and verify the due diligence done by KPMG Canada to ascertain the number of implementations of the OCS.

36. Mr. Binnie concluded that KPMG Canada had, through the extensive due diligence already undertaken, appropriately identified all of the OCS implementations, which did not include the Sword Companies. Mr. Binnie conveyed his conclusions to the CBC by letter dated February 16, 2017.

37. As outlined by Mr. Binnie in his letter, KPMG Canada had conducted a comprehensive review of its files, time records and client databases, and found no connection between KPMG Canada and the Sword Companies. This due diligence process was not put into place in response to Cashore's inquiries, but had been initiated years earlier in response to the CRA's various inquiries regarding the OCS.

38. As described in Mr. Binnie's letter, major aspects of this due diligence process included the following:

- (a) KPMG Canada reviewed files maintained by the principal architects of the OCS, and interviewed them with counsel present;
- (b) KPMG Canada conducted a thorough review of other documents associated with the development of the OCS, including a review of the internal and external resources that were used in the development of the OCS and the specific implementations themselves;

- 12 -

- (c) KPMG Canada obtained and reviewed the paper and electronic files from the key partners and other KPMG Canada professionals who were involved in the implementations;
- (d) In addition to reviewing documents gathered through targeted searches, KPMG Canada collected additional potentially relevant documents from its databases using keyword searches. The larger database of documents was used to conduct a number of targeted searches using different sets of search terms, in an attempt to elicit every document that might relate to an OCS implementation;
- (e) Electronic time records going back prior to 1999 were subjected to keyword searches to corroborate what KPMG Canada had learned through other means, and uncover any other possible implementations;
- (f) Where it was unclear whether a particular file related to an OCS implementation, inquiries were made of numerous current and former KPMG Canada employees, both in person and in writing; and
- (g) KPMG Canada obtained and reviewed voluminous public documents from the IOM corporate registry for the companies identified by Cashore in his February 7, 2017 list (including the Sword Companies). KPMG Canada's review of these corporate records further confirmed KPMG Canada's conclusion, based on its internal due diligence, that the number of companies and implementations it had previously disclosed was complete and correct.

39. Mr. Binnie also stated that his conclusions were reinforced by critical differences in the Articles of Association of the Offshore Companies and the additional IOM companies identified by Cashore. Further, the similarities in the respective Articles of Association identified by Cashore were readily explained by the fact that IOM-based CSPs had simply adapted common precedent documents to incorporate companies. Mr. Binnie was therefore satisfied with KPMG Canada's conclusion that the number of OCS implementations and companies previously reported by KPMG Canada was correct.

40. Following receipt of Mr. Binnie's letter, the CBC did not publish the false allegation that KPMG Canada had not been truthful regarding the number of OCS implementations.

Cashore's subsequent allegations with respect to the Sword Companies

41. However, nearly two years later, in June 2019, Cashore renewed his inquiries regarding the Sword Companies. For the first time, Cashore suggested a connection not just between the Sword Companies and KPMG Canada, but also between the Sword Companies and the Cinar fraud.

42. In an email dated June 20, 2019, KPMG Canada promptly and strongly rejected such a link, reminded Cashore of the conclusions in Mr. Binnie's report, and informed Cashore that "[t]hose companies are definitively not KPMG Canada OCS implementations. We had no role in setting them up, and we have no information about them other than what is publicly available."

43. Over a year later, in August 2020, Cashore contacted Mr. Binnie directly to make the same type of inquiries on the subject of the Sword Companies. In his response dated October 22, 2020, Mr. Binnie confirmed that the Sword Companies "were not incorporated OCS

implementations.” Mr. Binnie noted in particular the fact – as was conceded by Cashore – that publicly available corporate documents in the IOM demonstrated that, when incorporated, the Articles of Association of the Sword Companies did not make provisions for “Eligible Persons” – which was the *critical and defining feature* of the Offshore Companies incorporated pursuant to the OCS.

44. Distributions to Eligible Persons represented the very *raison d’être* of the OCS. Without such provisions, the entire purpose of the plan could never be achieved. As was explained by Mr. Binnie, “[t]his discretion to make distributions to Eligible Persons was a key feature to enable an OCS to approximate a non-resident trust notwithstanding that it was not a trust.” Mr. Binnie accordingly informed Cashore that:

Your own researches have confirmed that the Sword companies were incorporated without the concept of Eligible Persons or the ability of the companies to make discretionary distributions to Eligible Persons nor did they contemplate the distribution of the companies' assets to Eligible Persons on wind-up. In other words, as I see it, your research has verified that the Sword Companies were not incorporated OCS implementations.

45. Cashore raised additional alleged similarities between the Sword Companies and some of the Offshore Companies, again alleging similarities in their respective Articles of Association, and noting that both had been incorporated and serviced by the same CSPs. The alleged similarities asserted by Cashore were based on mistaken assumptions, or misunderstandings concerning Manx law and the function of the CSPs. As Mr. Binnie noted, the Articles of Association were public documents in the IOM, and therefore the similarities alleged by Cashore were explained by the fact that the CSPs had apparently used similar precedents to incorporate both the Sword Companies and the KPMG Canada Offshore Companies. Nor was it surprising that the CSPs had

incorporated similar corporate structures and provided their services to customers other than KPMG Canada; in fact, doing exactly that was their business, and there was nothing contractual or proprietary preventing them from doing so.

46. Despite being wholly confident in its own due diligence, but in recognition of the CBC's insistence that the Sword Companies were Offshore Companies, KPMG Canada had, since June 2019, requested the opportunity to review and provide its response to any particular documentation or piece of information that the CBC had that informed its belief that KPMG Canada was connected to the Sword Companies.

47. It was not until January 2021 that Cashore informed KPMG Canada that the CBC had obtained documentation from the 2016 Paradise Papers leak that it believed connected KPMG Canada to the Sword Companies.

48. On February 2, 2021, the CBC allowed counsel for KPMG Canada to review these documents, via Zoom call, with Cashore and Zalac present and asking questions throughout. The CBC did not permit KPMG Canada to keep copies or to take photographs of any of the documents.

49. KPMG Canada learned that the documents relied upon by the CBC consisted primarily of two emails sent by Ms. Sandra Georgeson ("**Georgeson**") – a corporate services industry worker in the IOM – in 2014 and 2015. In particular, the 2015 email (the "**Email**") attached a spreadsheet in which Georgeson (erroneously) listed the Sword Companies amongst other Offshore Companies established by KPMG Canada as part of the OCS.

50. Cashore suggested that these emails "completely contradict" KPMG Canada's position that it had no connection to the Sword Companies. In a February 12, 2021 letter from its counsel

to the CBC, KPMG Canada strongly rejected this suggestion, and pointed out the obvious frailties and weaknesses in the Georgeson emails. Specifically, it was entirely wrong and unfair to suggest that the Email should be uncritically accepted, in the face of the voluminous evidence provided by KPMG Canada demonstrating that it had no involvement or connection with the Sword Companies, and further given that:

- (a) Georgeson never worked for KPMG Canada, nor was anyone from KPMG Canada included in the email chain;
- (b) Georgeson included her own caveat in the Email as to the quality of the information, noting that at the time the Offshore Companies were set up, she was only working on them in an administrative capacity;
- (c) the Email is dated 15 years after the events it purports to describe;
- (d) the Email was prepared simply in response to a request to compile a summary of the companies involved in the OCS, which despite the intervening years was provided by Georgeson in less than 24 hours, and thus clearly without any meaningful level of due diligence;
- (e) as explained above, the Sword Companies lacked the concept of an Eligible Person and thus could not be Offshore Companies incorporated pursuant to the OCS, yet the Email stated that they were;
- (f) as far as KPMG Canada is aware, the CBC has never spoken to Georgeson; and

- (g) the Email was internally inconsistent with the February 2014 Georgeson email that was obtained by the CBC from the same source. The 2014 email incorrectly stated that the sole purpose of a particular CSP was to serve as shareholder for Offshore Companies, which was explicitly contradicted by Georgeson in the Email.

51. As KPMG Canada repeatedly explained to the defendants, Georgeson's Email was a quick response to a question about events that had occurred 15 years earlier, in which she had been involved only in an administrative capacity. To the extent that she was expressing her *belief* that the Sword Companies were OCS companies connected to KPMG Canada, she was simply mistaken. KPMG Canada also took the additional step of confirming with the KPMG Isle of Man entity that it too had no association with the Sword Companies, and it provided that information to Cashore.

52. Despite this overwhelming evidence, the defendants irresponsibly and repeatedly alleged KPMG Canada's involvement with the Sword Companies and the Cinar fraud, as described below.

The February 2021 Broadcasts

53. In late February 2021, the CBC chose to broadcast segments titled "The Missing Millions" and "Les Millions Disparus" on *the fifth estate* and *Enquête*, respectively (the "**Broadcasts**"). Notwithstanding the clear and comprehensive evidence to the contrary that had been provided to the CBC by KPMG Canada, the Broadcasts publicly and expressly alleged for the first time a connection between KPMG Canada, the Sword Companies and the Cinar fraud.

54. Specifically, the CBC alleged that KPMG Canada had helped set up the Sword Companies, which had been used as a depository for misappropriated Cinar funds.

55. The Broadcasts posed the question “so who helped set up those Isle of Man shell companies [the Sword Companies]?”, before cutting to a still image of KPMG Canada’s logo and a description of the Committee’s inquiries into the OCS.

56. The Broadcasts then showed incomplete images of, and described, the Georgeson emails. They also broadcast excerpts from the CBC’s interview of a member of the National Assembly of Quebec, who alleged that KPMG Canada must have been involved in setting up the Sword Companies. The member stated that the Sword Companies were “linked” to KPMG Canada and that it could not have been a “coincidence”.

57. The member’s allegations were virtually identical to those that Cashore had been making since 2017, described above. The Broadcasts further suggested a connection between the hardships experienced by a victim of the Cinar fraud and KPMG Canada’s alleged actions.

58. The defendants purported to balance their defamatory allegations by airing very brief excerpts from correspondence sent to the CBC by KPMG Canada’s counsel on February 12, 2021, before the airing of the Broadcasts. However, KPMG Canada’s side of the story was not accurately represented. A reasonable viewer of the Broadcasts could be left only with the impression that KPMG Canada simply baldly denied any connection with the Sword Companies.

59. The extensive due diligence conducted by KPMG Canada and the independent report from Mr. Binnie that confirmed there was no such connection were not mentioned, nor was the fact that KPMG Canada had answered every question that it had been asked by the CBC reporters

on the issue over the prior four years (other than questions that Cashore asked about client-specific matters that he knew KPMG Canada was prohibited from answering).

60. In any event, given the facts of which the defendants were entirely aware, it was completely irresponsible for the defendants to make the allegations in the first place. This is particularly true given, among other things, the incredible seriousness of the allegations and the unreliability of its key source (*i.e.* the Email) balanced against the overwhelming evidence to the contrary presented by KPMG Canada to the CBC.

61. The Broadcasts remain posted and publicly available on CBC websites at <https://www.cbc.ca/fifth/episodes/2020-2021/the-missing-millions> and <https://ici.radio-canada.ca/tele/enquete/site/segments/reportage/344194/cinar-norshield-mount-real-investisseurs-argent-fraude-panama-papers>, as well as on YouTube.

62. On February 26, 2021, counsel for KPMG Canada served the CBC with notice advising that the allegations in the Broadcasts were false and defamatory, for the reasons previously and repeatedly provided (and as described above). KPMG Canada specifically reserved all rights to take action to prevent the interests of KPMG Canada from being further harmed.

The April 27th CBC article

63. On April 27, 2021 – approximately two months after the Broadcasts – the CBC published an article on CBC.ca titled “KPMG disputes leaked emails linking firm to offshore companies suspected in massive Ponzi scheme” (the “**First Article**”). The article is published at <https://www.cbc.ca/news/canada/kpmg-emails-denial-shell-companies-isle-of-man->

[1.5998374#:~:text=KPMG%20is%20disputing%20confidential%20emails,for%20years%20out%20of%20Montreal.](#)

64. The authors of the First Article were the defendants Cashore, Zalac, d'Entremont, Kelley, Choi and Fortune. KPMG Canada was not contacted by the defendants prior to the publication of the First Article.

65. The First Article repeated the allegations contained in the Broadcasts *i.e.* that KPMG Canada was connected to the Sword Companies allegedly used as part of the Cinar fraud and was concealing that fact.

66. The clear and unequivocal impression conveyed by the First Article was that KPMG Canada helped set up the Sword Companies as part of the OCS and was therefore involved in the Cinar fraud, and was lying about this involvement. This allegation was conveyed by the First Article read as a whole, and in particular by the following passages:

- (a) The heading “Confidential emails link KPMG to sword companies”, and an extensive discussion of the Email from Georgeson;
- (b) The heading “Sword companies similar to KPMG companies”, followed by a discussion of purported “numerous other similarities” between the Sword Companies and the Offshore Companies used in OCS implementations; and
- (c) Various allegations attributed to the member of the National Assembly of Quebec, including the following:

1. “[Georgeson] was involved for years as an administrator with the KPMG scheme and would have known first-hand that the sword companies were linked to the Canadian firm”;
2. “I don’t believe [Georgeson] made a mistake. She states that she was involved from the very beginning of this scheme”; and
3. “[The member] said that in her opinion it is "highly unlikely" that the sword companies were not connected in any way to KPMG. "You have to be blind to not see the connection," she said. "It has to be linked."”

67. It was not clear what motivated the CBC to republish the same false and defamatory allegations from the Broadcasts more than two months later, in the absence of any new material information, and notwithstanding KPMG Canada’s repeated and thorough refutations.

68. Similar to what they had done in the Broadcasts, the defendants purported to balance their defamatory allegations by publishing select excerpts from the February 12 and 26 letters sent to the CBC by KPMG Canada counsel before and after the airing of the Broadcasts. As was the case with the Broadcasts, KPMG Canada’s side of the story was not fairly and accurately reported, and based on what the defendants knew prior to publication (as described above), the allegations should never have been made.

69. On April 30, 2021, KPMG Canada sent a notice of libel to the defendants with respect to the allegations in the First Article.

The April 28th CBC Article

70. On April 28, 2021, CBC published another article on CBC.ca titled “Victims of Ponzi scheme call for reopening of probe into offshore money transfers” (the “**Second Article**”). The article is published at: <https://www.cbc.ca/news/victims-fraud-reopen-inquiry-finance-committee-1.5999494>.

71. The authors of the Second Article were once again the defendants Cashore, Zalac, d’Entremont, Kelley, Choi and Fortune. Once again, KPMG Canada was not contacted by any of the defendants prior to publication of the Second Article.

72. The Second Article reiterated the false and defamatory allegations from the Broadcasts and the First Article that KPMG Canada was connected to the Sword Companies and the Cinar fraud and was lying about that connection. The Second Article: (i) alleged that some of the monies in that fraud “may be connected to four shell companies in the Isle of Man” [*i.e.* the Sword Companies], and (ii) referenced the Broadcasts, which “revealed” the Georgeson emails that “link KPMG to four shell companies” believed “to be connected to the fraud.”

73. With respect to KPMG Canada’s side of the story, the Second Article stated only that KPMG Canada “said the author of those emails is mistaken and any suggestion KPMG helped set up those companies is ‘false and defamatory’.”

74. On April 30, 2021, KPMG Canada sent a notice of libel to the defendants with respect to the allegations in the Second Article.

The May 19th CBC article

75. On May 19, 2021, CBC published yet another article on CBC.ca titled “MPs braced for battle with global accounting firm over naming wealthy Canadians behind offshore tax shelters” (the “**Third Article**”). The Third Article is published at <https://www.cbc.ca/news/politics/kpmg-isle-of-man-tax-dodge-shelter-1.6031057#:~:text=Politics%C2%B7Analysis-.MPs%20braced%20for%20battle%20with%20global%20accounting%20firm%20over%20naming,can%20dodge%20taxes%20back%20home>. The author of the Third Article was the defendant Cashore.

76. The Third Article reiterates the false and defamatory allegations in the Broadcasts, the First Article and the Second Article, conveying the clear and unequivocal impression that KPMG Canada helped set up the Sword Companies, and thus was involved in the Cinar fraud, but was covering that up. The allegation is conveyed by the Third Article taken as a whole, and in particular by the following passages:

- (a) References to: (i) the reporting in the Broadcasts on the Sword Companies and their alleged involvement in the “Cinar/Norshield/Mount Real affair”, (ii) the Georgeson emails that “say that KPMG helped to set up those companies for wealthy Canadian clients”, and (iii) “other documents from the Isle of Man’s public registry [that] show links between the so-called ‘Sword Companies’ and KPMG”;
- (b) The prominent heading “They are trying to cover it up”;

- (c) An allegation that an Offshore Company was established at the same time as three of the Sword Companies, offered as proof that KPMG Canada must also have set up the Sword Companies;
- (d) The statement that “KPMG did not respond specifically to the CBC’s questions about whether it made efforts to contact” certain specified individuals whose names were found in the IOM’s public registry “before determining that no one at the accounting firm had any involvement with the sword companies.” This made the clear allegation that KPMG Canada did not make sufficient or reasonable efforts to determine whether it was involved in setting up the Sword Companies, an allegation which was both irresponsible and demonstrably untrue; and
- (e) The facetious use of quotation marks over the word “independent” in the sentence “KPMG Canada and its lawyers frequently point to an ‘independent’ report the company commissioned from former Supreme Court judge Ian Binnie.” The use of quotation marks was obviously meant to connote that Mr. Binnie was somehow not independent of KPMG Canada and that his report is not credible on that basis, when that was clearly not the case.

77. For the same reasons discussed above with respect to the Broadcasts, the First Article and the Second Article, these allegations were false and defamatory. In addition, KPMG Canada’s side of the story was not fairly and accurately reported, as the Third Article once again merely briefly excerpted from KPMG Canada’s detailed responses, stating only that KPMG Canada advised it was confident that its prior diligence and review of its own records confirmed it had no involvement in the Sword Companies. Further and in any event, given the facts of which the

defendants were entirely aware prior to publication of the Third Article (as outlined above), the allegation should not have been made in the first place.

78. On June 1, 2021, KPMG Canada sent a notice of libel to the defendants with respect to the allegations in the Third Article.

Defamatory and Untrue Nature of the Broadcasts and the Articles

79. In the Broadcasts and the First, Second and Third Articles (together, the “**Articles**”), the CBC and the other defendants have repeatedly published irresponsible and defamatory allegations with respect to KPMG Canada, allegations that they knew or should have known to be false.

80. As outlined above, KPMG Canada has demonstrated, through a comprehensive and exhaustive due diligence process and careful study of the relevant corporate documents, that it has no connection to the Sword Companies. KPMG Canada has repeatedly explained to the defendants that any alleged “similarities” on which they purport to rely are not a proper basis to allege such a connection. The CBC nevertheless continues to repeat these irresponsible allegations, without any additional facts supporting or warranting such repetition.

81. Compounding the injury inflicted by the CBC’s irresponsible and defamatory reporting is that the Articles, reasonably construed, imply not only that KPMG Canada was involved with the establishment of the Sword Companies (which is false), is concealing that connection (which is false), and that the Sword Companies were used to hide Cinar money (which may or may not be the case, and which itself appears to be an allegation based on little more than innuendo), but that KPMG Canada established the Sword Companies in order to “help” conceal money that had been

stolen from investors. The Articles further imply that the Sword Companies were established by KPMG Canada, knowing that they would be used for an improper purpose. That implication is unfair, untrue and extremely damaging to KPMG Canada's reputation.

82. The damning nature of the allegations is illustrated by the manner in which the Broadcasts and Articles have been construed by third parties, most notably by those members who, earlier this year, conducted a renewed Committee hearing at which a KPMG Canada representative voluntarily agreed to testify. This includes but is not limited to the following:

- (a) On April 27, 2021, the Committee brought a motion to “conduct a study to follow up on the CBC/Radio-Canada Enquête/Fifth Estate report [*i.e.* the Broadcasts]”;
- (b) At the Committee hearing on May 6, 2021, a member of Parliament from Quebec asked the following of the KPMG Canada representative: “You are telling us that KPMG is not even remotely connected to the missing money [from the Cinar fraud]. But the reports from CBC/Radio-Canada demonstrate that the sword companies were set up on the same day as the others, and that there is evidence that you set them up.” The member then directly quoted from the First Article and its description of the Georgeson Email;
- (c) That same day, a member of Parliament from British Columbia referred to the “bombshell revelations” from *the fifth estate* and *Enquête*;
- (d) On June 10, 2021, that same member of Parliament from British Columbia stated that: “The case around the Isle of Man scam and KPMG is something that the minister [of Finance] needs to come to committee to explain. I hope that happens

in very short order”, and subsequently asked the following of a CRA witness present at the hearing: “With regard to all of these people who have been defrauded of their retirement savings in these various scandals linked to KPMG, what is your message to those people who have lost their retirement savings?”;

- (e) On June 15, 2021, the member of Parliament from Quebec claimed that: “The companies with the sword names are related to this [the Cinar fraud]. The CBC/Radio Canada reports make a very compelling case that KPMG is connected to these companies, because KPMG had a shell company registered at the same time that these four companies were registered”;
- (f) That same day, a different member of Parliament from British Columbia informed a tax law professor present as a witness at the hearing that he was “particularly interested in your analysis of the KPMG situation and the tax havens that The Fifth Estate has tried to document for Canadians. Some folks have found themselves out of their life savings, and hardships have been created by the tax scheme that was entered into by many unscrupulous people with the help of KPMG, it appears”; and
- (g) On June 17, 2021, the member of Parliament from Quebec noted that “Four shell companies with sword names—Shashqua, Katar, Sceax and Spatha—registered in the Isle of Man, were allegedly used in the theft. Disturbing information appears to link these four corporations to KPMG, although KPMG claims otherwise.”

83. The CBC has shown no sign it will cease making these allegations, despite their lack of a legitimate foundation. Nor has the CBC been careful to clearly and accurately reflect KPMG

Canada's side of the story, which would inform viewers and readers of the CBC's numerous publications that there was no legitimate basis for the defendants' allegations.

84. The allegations contained in the Broadcasts and Articles were made with malice, in that they were not made in good faith, did not contain beliefs which could have been honestly held by the defendants based on the facts of which they were aware or should have been aware, and were made in reckless disregard of the truth and the principles of responsible journalism.

Relief claimed

85. As a result of the defendants' actions, KPMG Canada has suffered substantial damages to its reputation. As one of the "Big Four" accounting organizations, KPMG Canada's ability to serve its vast network of clients' interests in critical financial and assurance matters depends entirely on its hard-earned reputation for honesty, integrity and judgment. Allegations that KPMG Canada somehow played a role in one of the worst frauds in Canadian history and is lying about that involvement strike at the very core of KPMG Canada's business.

86. KPMG claims general damages to its reputation resulting from the baseless and repeated allegations by the defendants as described above. KPMG Canada further claims for any and all special damages it has suffered or will suffer as a result of the defendants' actions. The amount of damages that have been suffered by KPMG Canada will be particularized at trial.

87. KPMG Canada also seeks an order requiring the defendants to issue a public apology to KPMG Canada for making the defamatory allegations, and to retract the defamatory allegations contained in the Broadcasts and Articles, which are still publicly available. The seriousness of the

allegations and the irresponsible nature of the defendants' reporting warrant such an extraordinary remedy in the circumstances.

88. The defendants are jointly and severally responsible for the damages that have been and will be suffered by KPMG Canada.

89. KPMG Canada proposes that the trial of this action take place in Toronto.

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**THE CANADIAN BROADCASTING
CORPORATION ET AL**
Defendants

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

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