

ONTARIO Superior Court of Justice Court File No. 99-CV-163652
ONTARIO COURT (GENERAL DIVISION)

BETWEEN:
AMENDED THIS 1 Dec 2000 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT À
 RÈGLE/LA RÈGLE 26.02 (a)
 THE ORDER OF _____
L'ORDONNANCE DU _____
DATED / FAIT LE _____

ALANNAH MYLES

Plaintiff

- and -

REGISTRAR
SUPERIOR COURT OF JUSTICE

GREFFIER
COUR SUP

**SOUTHAM INC., THE NATIONAL POST COMPANY,
FINBARR O'REILLY, DONALD BABICK and
KENNETH WHYTE**

Defendants

AMENDED STATEMENT OF DEFENCE

1. The Defendants admit the allegations contained in paragraphs 3-6 of the Amended Statement of Claim.
2. The Defendants deny the allegations contained in paragraphs 1 and 7-14 of the Amended Statement of Claim.
3. The Defendants have no knowledge with respect to paragraph 2 of the Amended Statement of Claim.
4. The Defendants deny that Southam Inc. is a proper party to the within action.
5. The Defendants deny that they have received a proper notice of intention to sue as required pursuant to Subsection 5(1) of the *Libel and Slander Act*, R.S.O. 1990, c.L-12, and put the Plaintiff to the strict proof thereof.
6. The Defendants admit that the words referred to at paragraph 7 of the Amended Statement of Claim (hereinafter the "words complained of") were published by them in

the National Post on December 22, 1998, but the Defendants state that the words complained of do not constitute the entire article published and the Defendants state further that they intend to rely on the article in its entirety at the trial of this matter. A copy of the said article published in the National Post on December 22, 1998, is attached hereto as Schedule "A" (hereinafter referred to as the "article complained of").

7. With respect to paragraph 14 of the Amended Statement of Claim, the Defendants expressly deny that they acted with malice toward the Plaintiff and state that the article complained of was published by them in good faith.

8. The Defendants state that the words complained of at paragraph 7 of the Amended Statement of Claim taken in their full context and in their plain and ordinary meaning, or by way of legal innuendo, do not mean and could not be understood to have the meanings alleged at paragraphs 8A or 8B of the Amended Statement of Claim, or any meaning that is defamatory of the Plaintiff.

8A. The Defendants state that the particulars set out at paragraph 8C of the Amended Statement of Claim do not in any way support the meanings alleged by way of legal innuendo at paragraph 8B of the Amended Statement of Claim.

9. In the alternative, the Defendants state that the words complained of at paragraph 7 of the Amended Statement of Claim were published by them with the express or implied consent of the Plaintiff and that prior to the publication of the article complained of the Plaintiff met with the author of the article complained of for the express purpose of being interviewed so that the Plaintiff could provide information and statements to be included in an article to be published in the National Post and that the information and statements contained in the words complained of at paragraph 7 of the Amended Statement of Claim were in fact provided by the Plaintiff to the Defendants

during the said interview knowing, or in circumstances where it would be reasonable to expect, that those words would be contained in an article concerning the Plaintiff.

10. In the further alternative, with respect to the publication of the following words:

"The singer says she would top the charts again - if only everyone else wasn't so misguided."

"Yet Myles points the finger at everyone save herself when it comes time to laying the blame for her stalled career."

"And while Myles seems to be flailing in the exhaust fumes of a burnt-out career..."

the Defendants state that that insofar as the words set out above consist of statements of fact, they are true in substance and in fact and insofar as they consist of expressions of opinion, they are fair comment made in good faith and without malice on a matter of public interest, namely the wide spread public release of a collection of recordings by the Plaintiff and the past, present and future career of the Juno and Grammy award winning Canadian music recording artist, based upon true facts which were presented in the article complained of and other facts that were well known to the readership of the National Post and without limiting the generality of the foregoing the Defendants rely on the following facts:

- (a) as was clearly set out in the article complained of, the Plaintiff's first album, released in 1989, sold approximately 9,000,000 albums;
- (b) as was clearly set out in the article complained of, the Plaintiff won a Grammy award and three Juno awards in relation to her

first album;

- (c) as was clearly set out in the article complained of, each album released by the Plaintiff subsequent to her first album failed to generate the equivalent sales to that of her first album;
- (d) as was clearly set out in the article complained of, the Plaintiff did not win a Grammy award or a Juno award in connection with any of her albums that were released subsequent to her first album;
- (e) as was clearly set out in the article complained of, the Plaintiff's album entitled *A rival*, released subsequent to that of her first album, received negative reviews;
- (f) as was clearly set out in the article complained of, the Plaintiff made statements during an interview with the author of the article complained of to the effect that her second album had been dismissed because it had not sold millions of copies;
- (g) as was clearly set out in the article complained of, the Plaintiff made statements during an interview with the author of the article complained of to the effect that her last album released prior to December 1998 had not been fully successful;
- (h) as was clearly set out in the article complained of, the Plaintiff made statements during an interview with the author of the article complained of to the effect that she had experienced

only one extraordinarily successful record and that she had a lack of "greatest hits" or other successful records;

- (i) as was clearly set out in the article complained of, the Plaintiff made statements during an interview with the author of the article complained of to the effect that her career had been adversely effected because her record company had incorrectly marketed her music thereby causing confusion in the market place;
- (j) as was clearly set out in the article complained of, the Plaintiff made statements during an interview with the author of the article complained of to the effect that her career had been adversely effected because her record company had made wrong decisions regarding her career because they had been anxious for the Plaintiff to win another Grammy award;
- (k) as was clearly set out in the article complained of, the Plaintiff made statements during an interview with the author of the article complained of to the effect that she had done her best work on her last album but the success of that album was adversely effected because of the conduct of her record company; and
- (l) as was clearly set out in the article complained of, during an interview with the author of the article complained of in which the subject of the Plaintiff's career was discussed, the Plaintiff attributed any lack of success in her career to the conduct of

her record company and other various factors but did not indicate that she was in any way responsible for the fact that she had failed to maintain the same level of success in her career as she had enjoyed in relation to her first album.

11. In the further alternative, if the words set out at paragraph 10 above are found to be defamatory and if the said words are found to have meanings other than the meanings alleged at paragraphs 8A or 8B of the Amended Statement of Claim then the Defendants state that the words complained of and set out above at paragraph 10 when taken in their natural and ordinary meaning or by way of legal innuendo are a true statement of fact.

12. In the further alternative, with respect to the publication of the following words:

"A 1993 tour in support of *Rockinghorse* was cancelled and it was revealed that the stress-related ailments included a hiatus hernia, gallstones, a kidney infection and an eating disorder. There were also rumours of a cocaine habit."

the Defendants state that it published in relation thereto a full and fair retraction on January 7, 1999. The Defendants plead that the said retraction constituted a full and fair retraction pursuant to s. 5(2) of the *Libel and Slander Act*, R.S.O. 1990, c. L-12. Attached hereto as Schedule "B" is a copy of the said retraction which the Defendants intend to rely upon at the trial of this matter.

12A. Further, or in the alternative, if the words set out above at paragraph 12 are defamatory, which is not admitted but is expressly denied, then the Defendants state that the said words complained of when taken in their full context and in their plain and ordinary meaning or by way of legal innuendo, did not mean and could not be

understood to have the meanings alleged at paragraphs 8A or 8B of the Amended Statement of Claim, but instead the words set out above at paragraph 12 had the following defamatory meaning:

"in the past there had been unsubstantiated talk that the Plaintiff had on a number of occasions consumed cocaine."

13. In the further alternative, with respect to the publication of the following words:

"A 1993 tour in support of Rockinghorse was cancelled and it was revealed that the stress-related ailments included a hiatus hernia, gallstones, a kidney infection and an eating disorder."

the Defendants state that the words are a true statement of fact except as otherwise set out in the statement published in the National Post on January 7, 1999, a copy of which is attached hereto as Schedule "B".

13A. In the further alternative, with respect to the publication of the following words when taken on their own or in the context of the words referred to in paragraph 13 -

"There were also rumours of a cocaine habit."

- (a) if the Court finds that these words bear the meaning as alleged by the Plaintiff at paragraphs 8A or 8B of the Amended Statement of Claim, the Defendants do not state that the words are true;
- (b) if the Court finds that these words bear the meaning as alleged by the Defendants at paragraph 12A of the Amended Statement of Defence, the Defendants state that the words are a true statement of fact, except as otherwise set out in the statement published in the National Post on January 7, 1999, a copy of which is attached hereto as Schedule "B";

(c) if the Court finds that these words in their natural or ordinary meaning or by legal innuendo bear any other meaning, the Defendants state that the words are a true statement of fact, except as otherwise set out in the statement published in the National Post on January 7, 1999, a copy of which is attached hereto as Schedule "B".

14. In the further alternative, with respect to the publication of the following words:

"She can still be as overbearing as ever and her ego still transcends even the tremendous power of her sultry voice..."

the Defendants state that insofar as the words complained of consist of statements of fact, they are true in substance and in fact and insofar as they consist of expressions of opinion, they are fair comment made in good faith and without malice on a matter of public interest, namely the wide spread public release of a collection of recordings by the Plaintiff and the past, present and future career of the Juno and Grammy award winning Canadian music recording artist, based upon true facts which were presented in the article complained of and other facts that were well known to the readership of the National Post and without limiting the generality of the foregoing the Defendants rely on the following facts:

(a) as was clearly set out in the article complained of, the Plaintiff made statements during an interview with the author of the article complained of to the effect that she had recently become a better person and that her character had been strengthened;

(b) as was clearly set out in the article complained of, the Plaintiff made statements during an interview with the author of the

article complained of to the effect that she would prove wrong those who had judged her negatively, and that she would make her critics look like fools;

(c) as was clearly set out in the article complained of, the Plaintiff made statements during an interview with the author of the article complained of to the effect that, among other things, her artistic talent provided her with egotistical fulfilment;

(d) as was clearly set out in the article complained of, during an interview with the author of the article complained of and in previous public interviews, the Plaintiff had presented herself as an opinionated person and would present her views and comments in a forceful and overbearing manner;

(e) in performances and other public appearances featuring the Plaintiff, she had presented herself in an overbearing manner; and

(f) as was clearly set out in the article complained of, the Plaintiff during an interview with the author of the article complained of attributed any lack of success in her career to the conduct of her record company and other various factors but did not indicate that she was in any way responsible for the fact that she had failed to maintain the same level of success in her career as she had enjoyed in relation to her first album.

15. In the further alternative, if the words set out at paragraph 14 above are found to

be defamatory and if the said words are found to have meanings other than the meanings alleged at paragraphs 8A or 8B of the Amended Statement of Claim then the Defendants state that the words complained of and set out above at paragraph 14 when taken in their natural and ordinary meaning or by way of legal innuendo are a true statement of fact.

16. In the further alternative, with respect to the publication of the following words:

"Ultimately, it's apparent that Myles has no concrete goals apart from finding a husband and having a baby."

the Defendants state that insofar as the words complained of consist of statements of fact, they are true in substance and in fact and insofar as they consist of expressions of opinion, they are fair comment made in good faith and without malice on a matter of public interest, namely the wide spread public release of a collection of recordings by the Plaintiff and the past, present and future career of the Juno and Grammy award winning Canadian music recording artist, based upon true facts which were presented in the article complained of and other facts that were well known to the readership of the National Post and without limiting the generality of the foregoing the Defendants rely on the following facts:

- (a) as was clearly set out in the article complained of, when asked about her specific career plans during an interview with the author of the article complained of, the Plaintiff made statements to the effect that she wanted to find a husband and have a child;
- (b) as was clearly set out in the article complained of, when asked about her specific career plans during an interview with the

author of the article complained of, the Plaintiff discussed the possibility that she would like to publish poetry written by her but she did not provide any details as to what form such a publication might take or when such a publication might be published;

(c) as was clearly set out in the article complained of, when asked about her specific career plans during an interview with the author of the article complained of, the Plaintiff expressed her intention to record and release an album of lullabies but she did not provide details of when such an album would be released or when production of such an album would begin;

(d) as was clearly set out in the article complained of, when asked about her specific career plans during an interview with the author of the article complained of, the Plaintiff expressed her intention to record and release a sexy, philosophical and profound album but she did not provide details of when such an album would be released or when production of such an album would begin;

(e) as was clearly set out in the article complained of, when asked about her specific career plans during an interview with the author of the article complained of, the Plaintiff expressed her desire to produce an autobiography about her life. The Plaintiff had on previous occasions over the years indicated that she intended to produce such an autobiography but at no time did she explain when such an autobiography would be released or

when production of such an autobiography would begin;

(f) as was clearly set out in the article complained of, when asked about her specific career plans during an interview with the author of the article complained of, the Plaintiff expressed her intention to pursue an acting career but she did not provide details of any performances that she would be appearing in or any performances that she would try to appear in the future; and

(g) as was clearly set out in the article complained of, when asked about her specific career plans during an interview with the author of the article complained of, the Plaintiff expressed her intention to help young females in the music industry but she did not provide details of how or when she intended to do so.

17. In the further alternative, if the words set out at paragraph 16 above are found to be defamatory and if the said words are found to have meanings other than the meanings alleged at paragraphs 8A or 8B of the Amended Statement of Claim then the Defendants state that the words complained of and set out above at paragraph 16 when taken in their natural and ordinary meaning or by way of legal innuendo are a true statement of fact.

18. The Defendants state that the words complained of were published as an incident of the freedom of expression guaranteed by Sections 1 and 2 of the *Charter of Rights and Freedoms*. To the extent that the defamation laws enforced in the Province of Ontario limit the right of the Defendants to publish the words complained of, such

laws are inconsistent with the constitution of Canada and are of no force or effect pursuant to subsection 52(1) of the *Charter of Rights and Freedoms*.

19. The Defendants deny that the Plaintiff has been injured or has suffered any of the losses as alleged in paragraphs 1 and 12, and of the Amended Statement of Claim, or any loss or damage, and puts the Plaintiff to the strict proof thereof.

20. In the alternative, if the Plaintiff has suffered any damage, which is not admitted but is expressly denied, the Defendants plead that the damages claimed are excessive, exaggerated, remote, unrecognised at law, unmitigated by the Plaintiff, and unconnected with any alleged act or omission on its part, and puts the Plaintiff to the strict proof thereof.

21. Further, or in the alternative, if the Plaintiff has suffered any damage, which is not admitted but is expressly denied, and if the court should find that the publication by the National Post of the statement attached hereto as Schedule "B" is not a full and fair retraction pursuant to s.5(2) of the Libel and Slander Act, supra., then the Defendants plead that the damages were entirely mitigated by the publication by the Defendants of the statement attached hereto as Schedule "B".

22. The Defendants rely on the provisions of the *Libel and Slander Act*, R.S.O. 1990, c. L-12, and without restricting the generality of the foregoing, with particular reference to Section 5(1), 5(2), 22, 23, 24 thereof.

23. The Defendants submit that the action should be dismissed against them with costs on a solicitor client basis given the entirely unfounded claim by the Plaintiff for punitive, exemplary and aggravated damages.

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March 25, 1999

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