

Federal Court



Cour fédérale

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DATE : July 27, 2018**TIME / HEURE : 11:54 AM**Total number of pages (including this page) / Nombre de pages
(incluant cette page) : 9**SUBJECT / OBJET : Order of the Court.**

Court File No. / N° du dossier de la Cour: T-38-18

Between / entre: DAWN THOMSON v. AFTERLIFE NETWORK INC. (O/A AFTERLIFE.CO)

Enclosed is a copy of the Order of : // Vous trouverez ci-joint une copie de l'ordonnance de :

Mr Justice Locke dated / daté(e) du : July 27, 2018.

COMMENTS / REMARQUES :

Pursuant to section 20 of the Official Languages Act all final decisions, orders and judgments, including any reasons given therefore, issued by the Court are issued in both official languages. In the event that such documents are issued in the first instance in only one of the official languages, a copy of the version in the other official language will be forwarded on request when it is available.

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Federal Court



Cour fédérale

Date: 20180727

Docket: T-38-18

Montréal, Quebec, July 27, 2018

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

DAWN THOMSON

Applicant

and

**AFTERLIFE NETWORK INC. (O/A
AFTERLIFE.CO)**

Respondent

ORDER

UPON motion for an order:

- a) if necessary, abridging the time for service, filing and hearing of the certification motion, pursuant to rule 8 of the *Federal Courts Rules*, SOR/98-106 [*Rules*];
- b) certifying this application as a class proceeding, pursuant to rule 334.16 of the *Rules* and on terms and conditions pursuant to rule 334.17 of the *Rules*;

- c) describing the "Class" as:

All natural persons and estates in Canada who have authored or received by assignment an obituary that has been reproduced, in whole or in substantial part, without permission on www.afterlife.co/ca; and all persons in Canada who have authored or received by assignment or the terms of the *Copyright Act* a photograph that was reproduced, in whole or in substantial part, without permission on www.afterlife.co/ca.

Excluded from the Class are all directors, shareholders, officers, and employees of the respondent.

- d) appointing Dawn Thomson as the Representative Applicant of the Class;
- e) stating that the nature of the claims asserted on behalf of the Class are for copyright infringement and infringement of moral rights pursuant to the *Copyright Act*, RSC 1985, c C-42 [*Copyright Act*];
- f) stating that the relief claimed by the Class is as follows:
- i. An interlocutory and permanent injunction, pursuant to s. 34 of the *Copyright Act*, restraining the respondent, its officers, directors and all others over whom it exercises control from infringing the copyright and moral rights of the applicant and the Class members;

- ii. A wide injunction, pursuant to s. 39.1 of the *Copyright Act*, restraining the respondent, its officers, directors and all others over whom it exercises control from infringing the copyright and moral rights in other copyrighted works owned by the applicant and members of the Class;
 - iii. Statutory damages pursuant to s. 38.1(1)(a) of the *Copyright Act*;
 - iv. Punitive damages;
 - v. Aggravated damages;
 - vi. Pre-judgment interest;
 - vii. Costs; and,
 - viii. Such further relief as this Honourable Court may deem mete and just.
-
- g) setting out the common questions of law or fact for the Class;
 - h) specifying the time and manner for Class Members to opt out of the class proceeding;
 - i) appointing Stewart McKelvey as counsel to the Class (Class Counsel);
 - j) approving the form and content of notice to the Class (Notice);
 - k) specifying the means that shall be used to publish the Notice; and,

- l) requiring the respondent to pay the cost of the Notice programme.

AND UPON reading the materials filed and hearing the submissions of counsel for the applicant;

AND UPON noting the respondent's indication that it would not make any representations on the present motion;

AND UPON being satisfied that this is an appropriate proceeding for certification as a class proceeding upon the terms posted;

THIS COURT ORDERS that:

1. This application is certified as a class proceeding against the respondent Afterlife Network Inc. (O/A Afterlife.co).
2. The Class in this proceeding is defined as follows:

All natural persons and estates in Canada who have authored or received by assignment an obituary that has been reproduced, in whole or in substantial part, without permission on www.afterlife.co/ca; and all natural persons and estates in Canada who have authored or received by assignment or the terms of the *Copyright Act* a photograph that was reproduced, in whole or in substantial part, without permission on www.afterlife.co/ca.

Excluded from the Class are all directors, shareholders, officers, and employees of the Respondent.

3. Dawn Thomson is appointed as the Representative Applicant.
4. Stewart McKelvey is appointed as Class Counsel.
5. The nature of the claims made, and relief requested, on behalf of the Class are:
 - i. An interlocutory and permanent Injunction, pursuant to s. 34 of the *Copyright Act*, restraining the respondent, its officers, directors and all others over whom it exercises control from infringing the copyright and moral rights of the applicant and the Class members;
 - ii. A wide injunction, pursuant to s. 39.1 of the *Copyright Act*, restraining the respondent, its officers, directors and all others over whom it exercises control from infringing the copyright and moral rights in other copyrighted works owned by the applicant and members of the Class;
 - iii. Statutory damages pursuant to s. 38.1(1)(a) of the *Copyright Act*;
 - iv. Punitive damages;
 - v. Aggravated damages;
 - vi. Pre-judgment interest;
 - vii. Costs; and
 - viii. Such further relief as this Honourable Court may deem mete and just.

6. The common questions of law or fact in this proceeding are certified as follows:
 - i. Did the respondent infringe the copyright and moral rights of the Class members when it reproduced the obituaries and/or photographs on the Domain (afterlife.co/ca) without permission?
 - ii. Are the Class members entitled to injunctive relief as against the respondent?
 - iii. Can monetary relief be measured on an aggregate, Class-wide basis and, if so, what is the amount of aggregate monetary relief?
 - iv. Should punitive and/or aggravated damages be awarded against the respondent and, if so, in what amount?
7. Class members may opt out of this Class Proceeding by completing and delivering the opt-out form attached as Schedule "A" to Class Counsel by no later than October 1, 2018.
8. Class Counsel will forthwith post a copy of this Order, and the opt-out form, on <http://www.stewartinckelvey.com/en/home/classaction/default.aspx>.
9. No costs are payable on this motion for certification in accordance with rule 334.39 of the *Rules*.

"George R. Locke"

Judge

SCHEDULE "A"**OPT-OUT FORM**

This is not a claim form. This form EXCLUDES you from participating in the Afterlife Class Proceeding. DO NOT fill out this form if you wish to participate in the Afterlife Class Proceeding.

A class proceeding was commenced in the Federal Court of Canada alleging that Afterlife Network Inc. (O/A Afterlife.co) infringed copyright and moral rights of Class Members when it reproduced obituaries and photographs on the domain www.afterlife.co/ca without permission ("the Afterlife Class Proceeding").

The Federal Court has certified the Afterlife Class Proceeding for the following Class:

All natural persons and estates in Canada who have authored or received by assignment an obituary that has been reproduced, in whole or in substantial part, without permission on www.afterlife.co/ca; and all natural persons and estates in Canada who have authored or received by assignment or the terms of the Copyright Act a photograph that was reproduced, in whole or in substantial part, without permission on www.afterlife.co/ca.

Excluded from the Class are directors, shareholders, officers and employees of the Respondent.

Any payments to Class Counsel from the proceeds of the Afterlife Class Proceeding must be approved by the Court. As presently advised, Class Counsel will request full recovery of out-of-pocket disbursements, plus up to 35% of the amount recovered. The amount that will actually be requested will depend, among other things, on the time spent, the result, the amount recovered, and amounts approved in similar cases.

If you want to opt out (in which case you cannot participate in the Afterlife Class Proceeding), this Opt Out Form must be completed, signed, sent and postmarked by regular mail or email, by no later than October 1, 2018, to the address listed at the end of this Opt Out Form. No further opportunity to opt out will be provided without a further order of the Court.

By completing this Opt-Out Form, you are choosing to irrevocably opt out of the Afterlife Class Proceeding.

By opting out, you are confirming that you do not wish to participate in the Afterlife Class Proceeding and you will be excluded from any settlement or any damages that may be awarded by the Court.

Once you opt out of the Afterlife Class Proceeding, you will receive no further communications regarding this proceeding from class counsel, but for a confirmation that your Opt-Out Form has been received.

For more information on the Afterlife Class Action, please visit <http://www.stewartmckelvey.com/en/home/classaction/afterlifeco.aspx> or contact Class Counsel.

Your Name: _____ (required)

Your Address: _____

_____ (required)

Your telephone number: (____) _____ (required)

Your email address: _____ (required)

DECLARATION

I declare that I wish to opt out of the Afterlife Class Proceeding.

I understand that by submitting this Opt-Out Form, I will be excluded from the Afterlife Class Proceeding and will not be bound by its outcome. As a result, I will be excluded from any settlement or any damages that may be awarded by the Court.

Signature

Date

Return your completed Opt-Out Form to:

Stewart McKelvey
Attn: Erin E. Best
Suite 1100, Cabot Place
100 New Gower St.
St. John's, NL A1C 5V3

raboyd@stewartmckelvey.com

PLEASE DO NOT CALL DAWN THOMSON OR THE FEDERAL COURT ABOUT THIS PROCEEDING. THEY WILL NOT BE ABLE TO ANSWER YOUR QUESTIONS.