



# GUARDIAN LAW GROUP LLP

BARRISTERS AND SOLICITORS

JONATHAN DENIS, QC\*  
DONNA L. GEE, RN, BN, JD\*  
KEVIN METZ, B. COMM., JD\*  
JAY C.P. DAMEN, JD\*  
MATHEW FARRELL, LLB

GEORGE Y. HUANG JD\*  
CHRIS ERICKSON, LLB  
GABRIEL VRHOVAC, JD\*\*  
KYLE SHEWCHUK, JD\*\*  
AMBER BISHOP, JD\*\*

CLINT DOCKEN, QC\*

OF COUNSEL  
VIRGINIA MAY, QC, RET'D

\* Denotes Professional Corporation

\*\* Denotes Student-at-law

**Lawyer: Jonathan Denis, Q.C.**  
Email: [jdenis@guardian.law](mailto:jdenis@guardian.law)  
Direct: (403) 457-7778

**Legal Assistant: Kate Love**  
Email: [kate@guardian.law](mailto:kate@guardian.law)  
Phone: (403) 457-7778

October 23, 2020

Via E-mail: [lawdepartment@cbc.ca](mailto:lawdepartment@cbc.ca)

Canadian Broadcasting Corporation  
Law Department  
250 Front Street West  
Toronto, ON M5V 3G5

Dear Sir/Madame:

**Re: Our client: Wildrose Media Corp. o/a Western Standard**

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Please be advised that we act as counsel for Wildrose Media Corp., which operates under the name and style of "Western Standard" and "Western Standard Online" and operates the website [www.westernstandardonline.com](http://www.westernstandardonline.com) and the twitter account @WSOnlineNews (the "Western Standard"). Kindly direct any and all further communication to that of the writer.

As you are aware, our client operates an online news magazine. We are in receipt of your correspondence dated October 22, 2020, which purports to assert an infringement of copyright and/or trademark on the part of our client. Our client disclaims and denies any such infraction.

Relating to the alleged copyright infringement (which our client profusely denies), the concept of "fair dealing" is a well-recognized principle. "Fair dealing" is an exception to the *Copyright Act* R.S.C. 1985 c. C-42 that permits the use of a copyright owned by another party "for the purpose of research, private study, education, or satire" (see s. 29 of the said Act). We also refer you to the Supreme Court of Canada's decision in *CCH Canadian Ltd. v. Law Society of Upper Canada* [2004] 1 SCR 339, which states that "those who deal fairly with a work for purpose of research, private study, criticism, review, or news reporting do not infringe copyright."

Relating to your assertion of trademark infringement (which our client also disclaims), we refer you to s. 19 of the *Trademarks Act*, R.S.C. 1985, c T-13, which states as follows:

**19** Subject to sections 21, 32 and 67, the registration of a trademark in respect of any goods or services, unless shown to be invalid, gives to the owner of the trademark the exclusive right to the use throughout Canada of the trademark in respect of those goods or services.

For further clarity, we refer you to the University of Ottawa Professor Teresa Scassa, who writes as follows:

While no such nominative fair use doctrine expressly exists in Canadian law, it is clear that such activity would not violate §19 (of the Trade-marks Act). If the plaintiff's mark is used to correctly identify wares for sale from the defendant's site, such use is not as a trademark - in other words, the mark is not being used so as to distinguish the wares of the defendant from those of others. As a matter of principle, it cannot be trademark infringement to make an accurate reference to wares or services.

(See *Canadian Trademark Law*, Toronto, LexisNexis, 2010, at page 419.)

Precisely nowhere in our client's twitter post does our client purport to sell or identify any wares for sale. Our client simply offers its opinion as to its view of the news offered by the Canadian Broadcasting Corporation. This clearly falls within the aforesaid exceptions, specifically and including without limitation exceptions for satire, criticism, and news reporting.

Canada is a robust democracy where opinions across the political spectrum may be debated but are not prohibited. In *Committee for the Commonwealth of Canada v. Canada* [1991] 1 SCR 139, our Supreme Court endorsed this principle, stating as follows:

Free debate has often been perceived as the optimal means to discover "truth" – through the marketplace of ideas" win which truth will ultimately prevail.

Having regard to the foregoing, our client will not accede to what is clearly an attempt at censorship of an opposing view.

Sincerely,

**GUARDIAN LAW GROUP LLP**



**JONATHAN DENIS, Q.C.**