

PUBLICATION OF A STUDENT PAPER UNDER PROFESSOR'S NAME

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The Ontario Court of Justice issued a judgment on August 20, 1997 in a copyright infringement case involving the alleged appropriation of a university student's term paper: *Paul Boudreau v. Jimming Lin and the University of Ottawa* (Ontario Court of Justice (Gen. Div.), file no. 80691/94, August 20, 1997, Métivier J.)

During the summer of 1991, Paul Boudreau was a part-time student in the University of Ottawa's MBA program while also employed by Nortel, where he managed the production of integrated circuits. As part of his course of studies, Mr. Boudreau took a class in Directed Reading from professor Lin, during which he wrote a paper applying a statistical analysis to determine why the cycle time for the custom manufacturing of integrated circuits is so variable, with a view to narrowing the range of times.

Mr. Boudreau's paper included data collected at his place of employment, and referred to other data from a related California firm. Professor Lin discussed the research with the student, made corrections and suggestions on the draft paper, which Mr. Boudreau polished and expanded. Some of the changes originated with professor Lin, others were Mr. Boudreau's own. The finalized paper was handed in; in August 1991, Mr. Boudreau received his mark and heard no further about the paper. However, in September 1992, he learnt that his paper, with minimal amendments, a different title and no mention of his name, had been included in a casebook sold to MBA students. He also found out later that this paper had been presented by professor Lin at a meeting held in another city, in September 1992. Professor Lin and a professor in Michigan were named as joint authors of the paper; apparently, professor Lin had discussed with his colleague the transitions in manufacturing methods up to the current high-tech era, and had therefore decided to mention his colleague as co-author. The changes made to the paper were mainly the following: removal of certain graphs and tables and replacement with textual explanations, integration of footnotes into the text, change in the title.

Mr. Boudreau sent a complaint letter to the University, which proceeded to investigate the matter in the context of its labor agreement, focussing on the omission of Mr. Boudreau's name as author of the paper. The University accepted the professor's explanation that the omission had been inadvertent, and cautioned him to be more careful in the future. Mr. Boudreau received copy of a letter from the University reporting on the result of this investigation. The student thereupon decided to take action for infringement of copyright and moral rights.

On the issue of authorship, after reviewing the evidence, the Court gave more weight to the plaintiff's version of events, finding *inter alia* that he had a better grasp of the paper's subject-matter than the professor, whose contributions consisted of general suggestions. These did not make him a co-author.

The defendants raised the issue of whether Mr. Boudreau was entitled to bring action in the first place, since (in Canada) ownership of a work created in the course of employment belongs to the employer. In 1996, Nortel had assigned its copyright in the paper to Mr. Boudreau. Nortel's representatives testified that it was a frequent practice to sign such retroactive assignments; in this case it had been done to clarify the issue and set out that it (Nortel) made no claim to rights in the work. However, the Court found that the work was not created in the course of employment, and gave no effect to the assignment.

The Court refused to apply the fair dealing for purposes of private study or research exception claimed by the defendants. To actively remove someone's name, substitute one's own and that of an associate, to change a title, cannot constitute fair dealing, said the Judge. The University, having copied the paper and sold it as part of a casebook for students, could not fall into the purview of the exception for "private study and research". The Court found that while the contents of the casebook were decided by the professor, the University was a passive participant in the infringement at the very least, and deemed to have knowledge of it:

The University is the organization which offers courses, which awards marks in these courses, and to which the student pays tuition for these courses. The University offered these casebooks in question for sale on its premises. It is clear that the University owes a duty to the student to oversee and regulate the acts done by Professor Lin in the course of his employment. (p. 16)

Justice Métivier also commented:

Plagiarism is a form of academic dishonesty which strikes at the heart of our educational system. It is not to be tolerated from the

students and the University has made this quite clear. It follows that it most certainly should not be tolerated from the professors, who should be sterling examples of intellectual rigour and honesty. (p. 17)

The Court found that the defendants had infringed the plaintiff's copyright, as well as his moral rights, *i.e.* the right to the integrity of the work and the right to be associated with the work as its author by name, and awarded Mr. Boudreau general damages in the amount of \$7,500.00.

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