

## INFRINGEMENT OF COPYRIGHT IN THE PARODY OF A SITCOM

by  
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Once again, parody knocks at the door of exceptions to the infringement of copyright in Canada. In the May 22 1997 decision of the Superior Court of Quebec, in *Productions Avanti Ciné-Vidéo Inc. v. Favreau* (C.S.M. no. 500-05-020118-962, yet unreported), Mr. Justice Michel Côté considered whether the pornographic parody of a television sitcom constituted copyright infringement, and whether a parody defense could serve to exempt the alleged infringers.

The plaintiff Avanti, owner of all copyrights in a television series entitled "La Petite Vie", well-known by millions of viewers in the province of Quebec, instituted proceedings against Mr. Favreau and his companies, who had made and marketed an erotic movie video entitled "La Petite Vite". The defendant admitted that he had borrowed the ideas, and that he actually counted on the identification of his production with the plaintiff's original work. The plaintiff's copyright in "La Petite Vie" as a dramatic work was not put into question; furthermore, the work benefitted from the presumption of subsistence of copyright derived from registration under the *Copyright Act*.

The Court found that the similarities between "La Petite Vie" and "La Petite Vite" were many, particularly with regard to the characters, their clothing, general look and speech mannerisms, although there were differences in the sets and props. As well, the texts, words and objectives of the original screenplays had not been taken.

Further to these (and other) findings of fact, the Court quoted U.S. authorities on the parody defense, including the "conjure up standard" which necessarily involves borrowing from the original work. The Court also referred to the *Acuff-Rose Music* Supreme Court decision (*Campbell v. Acuff-Rose Music, Inc.*, 114 S.Ct. 1164 (1994)), and to the Canadian comments on this decision. *Inter alia*, author James Zegers has expressed views favorable to the recognition in Canada of the parody exception, under the fair dealing exception of section 27(2)(a) of the Act, which provides in part that copyright

is not infringed in the case of fair dealing with a work for purposes of criticism. Up to now, parody has not been considered a valid defense to copyright infringement in Canada; the test remains whether or not the defendant has reproduced the plaintiff's work, or a substantial part thereof.

In *Avanti*, the Court also considered the degree of protection afforded to characters under copyright law, concluding that while it is easy to protect a character consisting of an artistic work (e.g. Popeye), the question is more difficult when the character belongs to a literary work.

"The characters of *La Petite Vie*", wrote Mr. Justice Côté, "who are in and of themselves vehicles for caricaturing daily life, as their author sees it, do not show characteristics original enough to be protected by copyright, in the absence of dialogue and scenic play; it is their play, the words they say, the organization into scenes (scénarisation) of their actions which give them life, animate them and confer upon them their own personality. (...) One must not confuse the artistic works constituted by comic strip characters, and the characters of dramatic works, the latter having no life, in general, independent from the work itself" (page 18 of decision; our translation).

Consequently, while "La Petite Vie" was recognized as an original dramatic work protected by the Act, the movie "La Petite Vite" could not be considered as a reprehensible copy thereof. As a result, the parody defense did not need to be considered further.

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