

## THE RIGHT OF CONTRIBUTORS TO ROYALTIES

### UNE RÉVOLUTION TRANQUILLE NOT SO TRANQUILLE AFTER ALL

By

Nadia Perri\*

**LEGER ROBIC RICHARD**, Lawyers

**ROBIC**, Patent & Trademark Agents

Centre CDP Capital

1001 Square-Victoria - Bloc E – 8<sup>th</sup> Floor

Montreal, Quebec, Canada H2Z 2B7

Tel.: (514) 987 6242 - Fax: (514) 845 7874

info@robic.com – www.robic.ca

#### 1. FACTUAL BACKGROUND

Imavision inc. (hereinafter referred to as "Imavision") a company which distributes cassettes in Quebec and beyond, entered into an agreement on September 30<sup>th</sup>, 1998 with Les Filmes Gilles Carle inc. (hereinafter referred to as "F.G.C."), whereby the latter undertook to write the screenplay for a documentary entitled "Une révolution tranquille, une histoire populaire du Québec".

Imavision was ultimately forced to suspend production of the screenplay as a result of Mr. Carle's languished state of health. In an effort to respect the deadline given, and conscious of the fact that Mr. Carle's health had become an impediment to respecting such a deadline, Imavision sought the help of Mr. Cossette-Trudel. On March 23<sup>rd</sup> 2000, the two parties signed an agreement whereby the latter acceded to produce, direct and re-vamp the format of the screenplay in question.<sup>1</sup> The only proviso was that Mr. Cossette-Trudel not alter any momentous event already depicted in the documentary.

The agreement, which Imavision had previously entered into with F.G.C., was formally cancelled on September 26<sup>th</sup>, 2000 whereby the parties agreed that:

---

© LEGER ROBIC RICHARD/ ROBIC, 2005 .

\* Lawyer with the law firm LEGER ROBIC RICHARD, g.p. and of the patent and trade-mark agents firm ROBIC, g.p. Publication 328.009.

<sup>1</sup> An official agreement was signed October 9<sup>th</sup>, 2000 once Mr. Carle's contract was officially cancelled.

1. F.G.C. retain all amounts which had been remitted at the date of the cancellation;
2. F.G.C. acknowledge having received a monetary compensation from Imavision;
3. the name Gilles Carle be removed from the documentary's credits and not be used in any promotional endorsements;
4. the application form filed with the SCAM or any similar organization would indicate that Mr. Carle was one of the documentary's directors, entitling him to receive a percentage of the royalties associated with the series<sup>2</sup>.

The documentary was ultimately completed after months of onerous work and was sequentially subdivided into 4 episodes each consisting of 52 minutes and 50 seconds. It was soon after that Mr. Cossette-Trudel filed both a membership application and application form for what he regarded as "his work" with the Société civile des auteurs multimédia (hereinafter referred to as the "SCAM"). It was alleged in the latter form, that Mr. Cossette-Trudel had, with regards to the first three episodes, written forty percent (40%) of the script and directed sixty percent (60%) of the documentary. Insofar as the last episode was concerned, Mr. Cossette-Trudel specified that another individual had aided in its directing.

The SCAM is an international organization constituted under the laws of France responsible for managing the rights of all authors.<sup>3</sup> Authors seeking the services of the SCAM must obligatorily become a member. In order to do so, authors must fill out membership application forms as well as application forms for the work in which they avouch being the creator. It is furthermore imperative that authors conclude contracts with production companies prior to submitting their application forms to the SCAM. Under the regulations governing the SCAM and its members, the latter must disclose in the aforementioned forms whether multiple screen-writers and /or directors contributed to the work and the proportion in which the royalties must be partitioned. In addition, the SCAM's regulations stipulate that all disputes among contributors regarding such partition may be submitted to the Board of Directors for arbitration. Members are however not obligated to do so.

---

<sup>2</sup> Such a percentage was to be determined in relation to the contribution of the other directors and screenwriters in the final version of the documentary.

<sup>3</sup> The SCAM (The Civil Company of the Authors' Multi Media) represents more than 20,000 authors working in the television, radio, and cinematographic industries.

Once informed of the previously mentioned filings by Mr. Cossette-Trudel, Ms. Elisabeth Schlitter, the SCAM Delegate-General, forthwith advised Mr. Carle of Mr. Cossette-Trudel's pretensions. In response to the latter's assertions, the former sent SCAM a letter in which he asserted having written fifty percent (50%) of the screenplay for the televised series, consequently having right to fifty percent (50%) of the copyright royalties<sup>4</sup>.

It was Mr. Carle's allegations which prompted Mr. Cossette-Trudel to institute proceedings before the Superior Court of Québec whereby he requested that the Court declare him the sole author of the documentary in question and, as a consequence, the only person entitled to the copyright royalties associated with such a work.<sup>5</sup>

## 2. DECISION

The *onus probandi* was on Mr. Carle to prove to the satisfaction of the Court that he had indeed written fifty percent (50%) of the screen-play for the televised series in question thus enabling him with a right to receive royalties in the same proportion. Despite the fact that Mr. Carle failed to prove to the Court that he was deserving of fifty percent (50%) of the royalties, the Court nevertheless found that Mr. Carle had in fact contributed to the series and that such a contribution could not be ignored.

The Court consequently concluded that Mr. Cossette-Trudel had acquired a right to seventy-five percent (75%) of the rights associated with the broadcasting of the series "Une révolution tranquille, une histoire populaire du Québec" and therefore to seventy-five percent (75%) of the royalties associated with the series; whereas Mr. Carle had demonstrated contributing to the series in a manner which led him to amass twenty -five percent (25%) of said rights and royalties. The SCAM was consequently ordered by the

---

<sup>4</sup> While Mr. Carle did indeed send a letter to the SCAM in which he declared having written fifty percent (50%) of the televised series, it was established that Mr. Carle had never submitted an application form to the SCAM for the series.

<sup>5</sup> Section 453 of the Code of Civil Procedure R.S.Q. c. C-25 reads: Any person who has an interest in having determined, for the resolution of a genuine problem, either his or her status or any right, power or obligation the person may have under a contract, a will or any other written instrument, a statute, an order in council, or a by-law or resolution of a municipality, may, by way of a motion to institute proceedings ask for a declaratory judgement in that regard.

Court to release the royalties held in trust according to the aforementioned percentages.

### 3. COMMENTS

The Canadian *Copyright Act*<sup>6</sup>, provides that individuals who partake in the creation of the same work, coined a "work of joint authorship"<sup>7</sup> by the Act, do not possess individual and particular copyright. In other words, the contribution of one author is not regarded as distinct from the contribution of the other author(s). As such, there is no need to determine the proportion in which multiple authors contribute to a particular work. It however becomes imperative that an individual claiming joint authorship qualify as an "author".

While the term "author" is not defined by the Act<sup>8</sup>, one may turn to a decision rendered by the British Columbia Supreme Court<sup>9</sup> where Cohen J. attempted to define such a term. According to Cohen, authorship must be regarded as having two fundamental components: originality and expression. Originality, also not defined in the Act relates to the expression of thought. The Court furthermore concluded that in order for the claimant of joint authorship to be recognized by the Courts as a joint author of a work, said claimant must:

1. contribute original expression to the work, regardless of the source of the ideas being expressed;
2. demonstrate that it was the intention of each of the authors that their respective contributions be consolidated into a "unitary whole"<sup>10</sup>;and
3. establish that it was understood that all of the collaborators were to be regarded as joint authors.

---

<sup>6</sup> *Copyright Act* R.S.C. 1985 c.C-42. (hereinafter referred to as the "Act").

<sup>7</sup> Provided for at Section 2 of the Act.

<sup>8</sup> The term is not defined in the Act, as such we must turn to the Courts for examples of the way in which the term is interpreted.

<sup>9</sup> *Neudorf v. Nettwerk Productions Ltd.*, (1999) 3 C.P.R. (4<sup>th</sup>) 129.

<sup>10</sup> *Ibid.*

Cohen did however specify that "while a claimant need not contribute a major part of the work to be considered a joint author, 'someone who tinkered with and improved the work of another might not have done enough to show joint authorship'"<sup>11</sup>.

In light of such a definition, it is not mere conjecture that the documentary in question could not be regarded as a joint authorship, as one of the elements permitting it to be so is absent, namely, the understanding among the collaborators that they be perceived as joint authors of a work.

While the Act does not empower Courts with the right to determine the proportion in which multiple authors contribute to a work, in the present case Jean-Jacques Crêteau of the Quebec Superior Court was permitted to do so due to the rather special circumstances in which Mr. Cossette-Trudel and Mr. Carle were placed. Both the former and the latter were members of the SCAM, and as such, were governed by its regulations.

In fact, under such regulations, both Mr. Cosette-Trudel and Mr. Carle were obligated to disclose in their respective applications, the percentage in which all contributors had contributed to the documentary in question. The regulations additionally specify that all disputes arising from such apportionment may be resolved via arbitration. The disputing parties however, were under no obligation to do so.

Once the dispute arose, following the submission of the aforementioned applications, Mr. Cossette-Trudel opted to assert his alleged rights by way of a motion for declaratory judgement before the Quebec Superior Court rather than by arbitration. As a consequence, the Court was bound by the provisions set forth in the previously mentioned regulations. As such, the Quebec Superior Court was enabled with the right to determine both the manner in which Mr. Cossette-Trudel and Mr. Carle had contributed to the documentary and the percentage of the royalties each had a right to receive.



---

<sup>11</sup> *Ibid.*

