

## ATTEMPT TO CLAIM COPYRIGHT PROTECTION FOR A TALENT SHOW PRODUCTION GUIDELINE GOES IN A POP

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In *Cummings v. Canwest Global Broadcasting Inc.* (2007 QCCA 338; 2007-03-08), the Quebec Court of Appeal has upheld a judgement rendered by the Superior Court of Quebec allowing a motion to dismiss in a copyright infringement case.

The Plaintiff, Karl Cummings, brought an action for copyright infringement under the *Copyright Act*, as well as for damages under the *Civil Code of Quebec*, claiming that Canwest Global Broadcasting Inc. had infringed his copyright in a concept for a television programme entitled *Dreams Come True* by producing two seasons of *Popstars*, another singing competition reality TV show.

Canwest, following an examination on discovery of Cummings, brought a motion to dismiss under article 75.1 of the *Quebec Code of Civil Procedure*, claiming the action was frivolous and clearly unfounded as the work for which copyright protection was sought could not be protected under Canadian copyright law as it lacked originality. Alternatively, they claimed the works were too different for infringement to have occurred.

Under the Canadian *Copyright Act*, for a work to be original, it must be more than a mere copy of another work but it does not require inventive originality in the sense of being novel or unique. The exercise of skill and judgement is what is needed.

The Superior Court, after agreeing that the motion to dismiss was an appropriate procedural avenue in a copyright infringement case, compared Cummings' four-pages guideline for *Dreams Come True*, which had previously been transmitted to the president of Global for consideration, to a videocassette of two episodes of *Popstars* submitted by the Plaintiff.

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The guideline for *Dreams Come True* described the concept of the television programme as being a “no-losers-no-winners contest where everybody competes and performs”. The contest was aimed at “all musicians, singers, composers, lyricists and dancers of all ages, regardless of language and ethnic origin”.

The Court agreed with the Defendants that the brief description of Cumming’s concept was fundamentally different from the *Popstars* series where the aim was the creation of a girls band for the first season, and the creation of a mixed-gender band for the second season. The programme was not a showcase for singing and dancing but rather consisted of a docu-drama or a « docu-soap » which put more emphasis on the actions and reactions of the people auditioning and training on actual performances. The element of competition was also more prominent in *Popstars*, with contestants being sent home every week.

Furthermore, the Court examined the guideline for the production of *Dreams Come True* to see if the work could be considered original under copyright law. It came to the conclusion “that barebones outline of a concept does not contain sufficient originality to warrant protection under copyright”. This was justified by the fact that the *Dreams Come True* outline was minimalistic and broad-brushed and that its concept was very similar to other talent shows that had already been broadcasted. The court also added that in this case, “it is rather the differences between the two concepts which are striking, and not the similarities”. The motion to dismiss was thus granted.

On appeal, the Quebec Court of Appeal confirmed copyright cases were well suited to a motion to dismiss under 75.1 of the *Quebec Code of Civil Procedure*, although these types of motions should be granted only when it is clear the action has no reasonable chance of success and after making sure no additional evidence could influence the case.

The Court also rejected the appellant’s argument whereby the motion to dismiss should have been rejected because some new evidence could have been brought before the Court at trial, stating that, even if Cummings could prove that the inspiration for the two seasons of *Popstars* came from the guidelines he created, those guidelines could still not be considered as a copyrightable work.

The Court reiterated that having an idea is not enough to obtain copyright protection under Canadian copyright law; the idea has to be embodied in a work. Clearly, a simple point-form general guideline, such as the production guideline for *Dreams Come True*, did not require sufficient exercise of care and judgement for the work to satisfy the originality requirement found in the *Copyright Act*. There was nothing in the document that could have helped someone produce the television programme or exploit the appellant’s idea without the help of the appellant himself.

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