COURT HANDS TEACHER'S COPYRIGHT SPAT OVER TO ARBITRATION

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PRECIS : The Queen's Bench of Saskatchewan has concluded that it does not have the appropriate jurisdiction to determine an infringement case brought by a maths teacher against his employer. Justice GN Allbright held that the Trade Union Act limits the plaintiff to pursuing his grievance through the arbitration process provided for in his collective agreement.

In *Wiebe v Saskatchewan Institute of Applied Science and Technology* (2007 SKQB 60) the Queen's Bench of Saskatchewan has concluded that it did not have the appropriate jurisdiction to determine the copyright infringement matters raised in Wolfgang Wiebe's statement of claim, and accordingly ordered a stay of proceedings on the Court of Queen's Bench file. Justice GN Allbright held that Section 25 of the *Trade Union Act* limits Wiebe to pursuing his grievance through the arbitration process provided for in his collective agreement.

Wiebe was employed by the Saskatchewan Institute of Applied Science and Technology (SIAST) as a mathematics instructor at the Palliser Campus. During the course of his employment he created course learning materials (the maths materials) on his own initiative and in his own time outside the SIAST workplace.

Wiebe agreed to an arrangement with John Landgraf, the programme head of mathematics at Palliser, to allow the maths materials to be printed for use by other instructors and to be circulated to students on the condition that he continued to hold all intellectual property and copyrights to them. However, shortly after this the SIASTreproduced Wiebe's copyrighted maths materials without his consent, and started selling them without any share of profits going to him. Wiebe claimed injunctive relief and damages (including loss of profit and punitive and exemplary damages) from the SIAST as a result of the breach of his copyrighted work.

The SIAST sought to strike Wiebe's statement of claim, arguing that the court had no jurisdiction since the matters were limited to an arbitration process pursuant to Section 25 of the Trade Union Act. In addition, the SIAST argued that there was no

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cause of action against it, since the maths materials were 'work products' pursuant to Section13 of the Copyright Act, and the copyright was therefore vested in the SIAST, Wiebe'semployer. As a member of the SIAST's faculty, Wiebe was a member of the Saskatchewan Government Employees Union and therefore the SIAST Current Collective Agreement, effective for 2003 to 2006, applied to his employment.

The judge was of the opinion that Wiebe's statement of claim was not scandalous, frivolous or vexatious, or otherwise an abuse of process, since the alleged causes of action were recognized at law and the statement of claim had set forth a factual backdrop providing a foundation for the application of the causes of action.

As for the copyright of the maths materials, the judge concluded that although Wiebe was in the SIAST's employment at the relevant time, the work was not made in the course of his employment. Therefore, the criteria set forth in Section 13(3) of the Copyright Act had not been established and the employer could not have been considered as the first owner of the copyright. He explained that the writing of the materials was irrelevant to Wiebe's employment and the purpose of his employment was not to act as an author. For this reason, the judge decided that the governing portion of the act was Section 13(1) rather than Section 13(3), where the author, in this case Wiebe, is the first owner of the copyright material. As a result there were no issues regarding Section 13(4) relating to an assignment or lack of written assignment from the SIAST.

Finally, the judge adopted the rationale previously rendered in *Listol v Weyerhaeuser Saskatchewan Ltd* and directed the entry of a stay of proceedings on Wiebe's claim, based on his conclusion that the court was without jurisdiction to determine the matters at issue. The judge reasoned that Article 26 of the SIAST Current Bargaining Agreement delineates circumstances surrounding "SIAST ownership" and therefore applies to disputes as to the ownership over learning course materials created by one of the employees. The judge also relied on Section 25 of the Trade Union Act, which mandates that all differences between parties to a collective bargaining agreement are to be settled by arbitration after exhausting any grievance procedure, found in an applicable collective bargaining agreement.

Based on this interpretation, the judge found that, for resolution purposes, the matters in this case were limited to the arbitration process articulated in the SIAST collective bargaining agreement.

The outcome of this copyright ownership dispute remains to be seen; it is now at the mercy of the arbitrator.

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