

A COMPILATION OF THE DECISIONS RENDERED IN CANADA WITH RESPECT TO COPYRIGHT IN 2005

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1. *1395047 Ontario Inc. (c.o.b. FPTV - Festival Portuguese Television) v New Atlantico Café and Restaurante Inc.* [2005] FCJ 1663, 2005 FC 1358, 2005 CarswellNat 3172, <http://www.canlii.org/ca/cas/fct/2005/2005fc1358.html> and <http://decisions.fct-cf.gc.ca/fct/2005/2005fc1358.shtml> (FC; 2005-10-04)
2. *3464920 Canada Inc v Strother* (2002), [2002] BCJ 1982, [2002] BCC TBEed SE043, 2002 BCSC 1179, 2002 CarswellBC 2026, 26 BLR (3d) 235, 2002 DTC 7327, [2003] 1 CTC 87, <http://www.canlii.org/bc/cas/bcsc/2002/2002bcsc1179.html>, <http://www.courts.gov.bc.ca/jdb-txt/SC/02/11/2002BCSC1179.htm> (BCSC; 2002-09-29); *vard* (2005) 38 BCLR (4th) 159, 2005 BCCA 35, (2005), [2005] 3 CTC 168, 2005 CarswellBC 83, 2005 DTC 5059, 1 BLR (4th) 302, 28 CCLT (3d) 159, [2005] 5 WWR 108, 208 BCAC 39, 344 WAC 39, <http://www.canlii.org/bc/cas/bcca/2005/2005bcca35.html>, <http://www.courts.gov.bc.ca/jdb-txt/ca/05/00/2005bcca0035.htm> (BCCA-Strother; 2005-01-21), as supplemented <http://www.courts.gov.bc.ca/jdb-txt/ca/05/03/2005bcca0384.htm>, 2005 BCCA 384 (BCCA-Strother; 2005-07-25); 2005 BCCA 385, 2005 CarswellBC 1789, [2005] 5 CTC 107, 8 BLR (4th) 4, 256 DLR (4th) 319, [2005] BCWLD 5949, [2005] BCWLD 5950, [2005] BCWLD 5944, 44 BCLR (4th) 275, <http://www.canlii.org/bc/cas/bcca/2005/2005bcca385.html>, <http://www.courts.gov.bc.ca/Jdb-txt/CA/05/03/2005BCCA0385.htm> (BCCA-Davis; 2005-07-25)
3. *Alastair Gale Inc. for the reproduction of architectural and structural plans designed by J. Morris Woolfson, architect, for the property located at 218 Maclaren Street in Ottawa [Re Non-exclusive licence issued to]* File 2005-UO/TI-01, <http://www.cb-cda.gc.ca/unlocatable/147-e.pdf> (CopBd; 2005-01-26)
4. *Athéna Éditions Inc. v Cruz Herrera* [2005] CarswellQue 5541, AZ-50325978, JE 2005-1801, [2005] JQ 9968, REJB 2005-93286, 2005 IJCan 26739, <http://www.canlii.org/qc/jug/qccq/2005/2005qccq60874.html> (QueCt-CivDiv; 2005-07-27)

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5. *Bazinet (Lise), Ottawa, Ontario, for the reproduction of architectural plans created by Trend Setter Development Limited for the property located at 24 Mary Drive in Ottawa [Re Non-exclusive licence delivered to]* File No. 2005 UO/TI 37; also, <http://www.cb-cda.gc.ca/unlocatable/167-e.pdf> (Cop Bd; 2005-09-26)
6. *Béton projeté Mah Inc. v Larivière** 2005 IJCan 23033, 2005 CarswellQue 6026, REJB 2005-92135, <http://www.canlii.org/qc/jug/qccs/2005/2005qccs58706.html> (Que SupCt; 2005-06-10); motion for leave to appeal refused 2005 CarswellQue 9968 (Que CA; 2005-08-11)
7. *BMG Canada Inc v John Doe* [2004] CarswellNat 835, 2004 FC 488, [2004] 3 FCR 241, 32 CPR (4th) 64, 239 DLR (4th) 726, [2004] FTR TBE. AP010, 250 FTR 267, <http://reports.fja.gc.ca/fc/src/shtml/2004/pub/v3/2004fc34396.shtml>, in French at REJB 2004-60025, [2004] CarswellNat 2774, 2004 CF 488, 2004 FC 488, <http://decisions.fct-cf.gc.ca/fct/2004/2004fc488.shtml> and <http://decisions.fct-cf.gc.ca/cf/2004/2004cf488.shtml> and <http://recueil.cmf.gc.ca/cf/src/shtml/2004/pub/v3/2004cf34396.shtml> (FC; 2004-03-31); revd [2005] CarswellNat 1300, [2005] FCJ 9858, 2005 FCA 193, 39 CPR (4th) 97, 252 DLR (4th) 342, 334 NR 268, <http://decisions.fca-caf.gc.ca/fca/2005/2005fca193.shtml> (FCA; 2005-05-19)
8. *Board of Governors Archives at Exhibition Place for the reproduction and public performance of the films: Railyard and Gimme a Break [Re Non-exclusive licence issued to]* File 2005-UO/TI-26, <http://www.cb-cda.gc.ca/unlocatable/164-e.pdf> (CopBd; 2005-09-01)
9. *Bonnette v Entreprise Dominion Blue Line Inc.* (2003), JE 2003-584, SOQUIJ AZ-50158890 [2003] CarswellQue 49, [2003] JQ 102, REJB 2003-36898, 2003 IJCan 40842, <http://www.canlii.org/qc/jug/qccs/2003/2003qccs10185.html> (QueSupCt; 2003-01-22); affd [2005] CarswellQue 945, [2005] JQ 2903, SOQUIJ AZ-50306441, JE 2005-817, 2005 CarswellQue 945, [2005] JQ 2903, REJB 2005-88514, 2005 QCCA 342 <http://www.canlii.org/qc/jug/qcca/2005/2005qcca342.html>, in English translation 41 CPR (4th) 331 (QueCA; 2005-04-05); motion for leave to appeal to the Supreme Court of Canada dismissed [2005] SCCA 288, 2005 CarswellQue 10016, 2005 CarswellQue 10017 (2005-11-17)
10. *Breakthrough Films & Television Inc for the off-camera narration of eight extracts from the book Action with Seaforths written by Charles Monroe Johnson. [Re Non-exclusive licence issued to]* File 2004-UO/TI-03, <http://www.cb-cda.gc.ca/unlocatable/156-e.pdf> (CopBd; 2005-05-10)
11. *British Columbia Institute of Technology, for the digitization of two segments from the film entitled "Learning to Build Wings Over Canada: Brisbane Aviation Co. Ltd. [Re Application by the]* File No. 2005 UO/TI 36; 2005 CarswellNat 4078, <http://www.cb-cda.gc.ca/unlocatable/other/6-b.pdf>, in French at 2005 CarswellNat 4079 (Copyright Board; 2005-11-17)
12. *British-Columbia (Ministry of Environment), Re,* 2005 CanLII 28522, <http://www.canlii.org/bc/cas/bcipc/2005/2005bcipc10032.html>, <http://www.oipc.bc.ca/orders/OrderF05-05.pdf> (BC Information and Privacy Commissioner; 2005-08-11)

13. *Canada Allied Diesel Company Ltd. v RTI Turbo inc.* [2005] JQ 15919, 2005 IJCan 39802, <http://www.canlii.org/qc/jug/qccs/2005/2005qccs61510.html> (QueSupCt; 2005-10-25)
14. *Canadian Centre for Architecture for the reproduction of photographs [Re Application by The]* 2004-UO/TI-32, 2005 CarswellNat 484, [2005] CBD 6, <http://www.cb-cda.gc.ca/unlocatable/other/3-b.pdf>, in French at 2005 CarswellNat 485 (CopBd; 2005-01-17)
15. *Canadian Copyright Licensing Agency ("Access Copyright") v U-Compute* [2005] FCJ 2030, 2005 FC 1644, 2005 CarswellNat 4154, <http://decisions.fct-cf.gc.ca/fct/2005/2005fc1644.shtml> (FC; 2005-12-07)
16. *Canadian Private Copying Collective (CPCC) v Computer Warehouse Outlet Inc.* 2005 FC 770, 2005 CarswellNat 1507, 41 CPR (4th) 481, <http://www.canlii.org/ca/cas/fct/2005/2005fc770.html>, <http://decisions.fct-cf.gc.ca/fct/2005/2005fc770.shtml> (FC; 2005-05-31)
17. *Canadian Private Copying Collective v Amico Imaging Services Inc* [2004] CarswellNat 846. 2004 FC 469, 249 FTR 312, <http://www.canlii.org/ca/cas/fct/2004/2004fc469.html> and <http://decisions.fct-cf.gc.ca/fct/2004/2004fc469.shtml>, in French <http://www.canlii.org/ca/jug/cfpi/2004/2004cf469.html> and <http://decisions.fct-cf.gc.ca/cf/2004/2004cf469.shtml>, [2004] CarswellNat 3832 (FC; 2004-03-26); 42 CPR (4th) 426, 2005 CarswellNat 2721, 2005 FC 1228, <http://www.canlii.org/ca/cas/fct/2005/2005fc1228.html> and <http://decisions.fct-cf.gc.ca/fct/2005/2005fc1228.shtml> (FC; 2005-09-07)
18. *Canadian Private Copying Collective v Fuzion Technology Corp.*, 2005 FC 1557, [2005] FCJ 1915, 2005 CarswellNat 3804, <http://www.canlii.org/ca/cas/fct/2005/2005fc1557.html> and <http://decisions.fct-cf.gc.ca/fct/2005/2005fc1557.shtml> (FC; 2005-11-17).
19. *Canadian Private Copying Collective v Canadian Storage Media Alliance* [2005] 2 FCR 654, 247 DLR (4th) 193, 329 NR 101, 2004 CarswellNat 4681, 36 CPR (4th) 289, 2004 FCA 424 [2004] CarswellNat 4681, <http://reports.fja.gc.ca/fc/2005/pub/v2/2005fc35956.html>, <http://decisions.fca-caf.gc.ca/fca/2004/2004fca424.shtml>, <http://www.canlii.org/ca/cas/fca/2004/2004fca424.html>, in French at 2004 CarswellNat 5345, <http://reports.fja.gc.ca/cf/2005/pub/v2/2005cf35956.html>, <http://decisions.fca-caf.gc.ca/caf/2004/2004caf424.shtml>, <http://www.canlii.org/ca/jug/caf/2004/2004caf424.html> (FCA; 2004-12-14); ASI Computer Technologies Inc.'s motion to intervene dismissed as premature (SCC; 2005-04-22); CPCC's motion for leave to appeal to the Supreme Court of Canada dismissed [2005] SCCA 70 (SCC; 2005-07-28); CPRetail Council's motion for leave to appeal to the Supreme Court of Canada dismissed [2005] SCCA 74, 2005 CarswellNat 2075 and 2005 CarswellNat 2077, in French at 2005 CarswellNat 2076 and 2005 CarswellNat 2078 (SCC; 2005-07-28)
20. *Canadian Private Copying Collective v First Choice Recording Media Inc.* 38 CPR (4th) 65, [2005] 2 FCR 654, [2005] CarswellNat 366, [2005] FCJ 241, 2005 FC 187, <http://www.canlii.org/ca/cas/fct/2005/2005fc187.html> and <http://decisions.fct-cf.gc.ca/fct/2005/2005fc187.shtml>, <http://reports.fja.gc.ca/fc/2005/pub/v2/2005fc35956.html>, in French at 2005 CarswellNat 1460 (FC; 2005-02-07)

21. *CBRA Statement of Royalties, Media Monitoring, 2000-2005 (Re) au lieu de Media Monitoring 2000-2005, Re* [2005] CarswellNat 744, 39 CPR (4th) 152, [2005] CBD 4, <http://www.cb-cda.gc.ca/decisions/mm29032005-b.pdf>, in French at [2005] CarswellNat 745, [2005] CBD 4, (CopBd; 2005-03-29)
22. *Chayer v Corporation Sun Media* 2005 IJCan 33882, SOQUIJ AZ-50334052, JE 2005-1828, [2005] JQ 17554, 2005 CarswellQue 9351, <http://www.canlii.org/qc/jug/qccaq/2005/2005qccaq64172.html> (QueCt-CivDiv Small Claims; 2005-08-30)
23. *Coleman (Professor Daniel) for the reproduction of a poster created by Francis Robert Halliday entitled "National Progress" [Re Non-exclusive licence issued to]* File 2005-UO/TI-21, <http://www.cb-cda.gc.ca/unlocatable/162-e.pdf> (CopBd; 2005-08-04)
24. *Columbia Pictures Industries Inc. v Gaudreault* 2005 CarswellNat 654, 2005 FC 338, <http://www.canlii.org/ca/cas/fct/2005/2005fc338.html>, <http://decisions.fct-cf.gc.ca/fct/2005/2005fc338.shtml>; in French at 2005 CarswellNat 1826, <http://decisions.fct-cf.gc.ca/cf/2005/2005cf338.shtml>, <http://www.canlii.org/ca/jug/cfpi/2005/2005cf338.html>; (FC; 2005-03-09)
25. *Commission des lésions professionnelles v Godbout* 2004 IJCan 54463, 2004 CarswellQue 11968, REJB 2004-94083, <http://www.canlii.org/qc/jug/qccs/2004/2004qccs20633.html> (QueSupCt; 2004-12-06); [2005] JQ 1321, SOQUIJ AZ-50290378, JE 2005-417, 2005 CarswellQue 411, REJB 2005-82979, <http://www.canlii.org/qc/jug/qccs/2005/2005qccs17985.html> (QueSupCt; 2005-01-21); [2005] JQ 9220, 2005 IJCan 24713, 2005 CarswellQue 7473, REJB 2005-92748, <http://www.canlii.org/qc/jug/qccs/2005/2005qccs59105.html> (QueSupCt; 2005-07-12); [2005] JQ 16178, 2005 CarswellQue 10586, 2005 IJCan 40858, <http://www.canlii.org/qc/jug/qccs/2005/2005qccs61628.html> (QueSupCt-Contempt; 2005-11-04)
26. *Conexsys Systems Inc. v Aime Star Marketing Inc.* [2003] JE 2003-1848, [2003] JQ 11296, [2003] CarswellNat 2003, REJB 2003-46933, 2003 IJCan 33339, also, <http://www.canlii.org/qc/jug/qccs/2003/2003qccs14163.html> (QueSupCt; 2003-09-02); affd 2005 BE 296, 2005 QCCA 131, SOQUIJ AZ-50296959, [2005] JQ 658 (QueCA; 2005-01-11).
27. *Controlex Corporation for the reproduction of architectural plans commissioned by Macdonald Developments in 1990 for the property located at 4025 Innes Road in Ottawa [Re Non-exclusive licence issued to]* File 2005-UO/TI-03, <http://www.cb-cda.gc.ca/unlocatable/149-e.pdf> (CopBd; 2005-02-03)
28. *Courier Complete Inc. v Fraidakis* [2005] CarswellOnt 1100, [2005] OJ 1106, 40 CPR (4th) 50, 2005 CanLII 13998, <http://www.canlii.org/on/cas/onsc/2005/2005onsc13564.html> (OntSupCt; 2005-03-24), additional reasons [2005] OJ 1682, 2005 CarswellOnt 1627, [2005] OJ 1682 (OntSupCt; 2005-04-28)
29. *CRESA Partners for the reproduction of electrical and mechanical plans created by Hrudko Bustos Engineering of Calgary for the property located at 2905, 12th Street N.E. in Calgary [Re Non-exclusive licence issued to]* File 2005-UO/TI-02, <http://www.cb-cda.gc.ca/unlocatable/148-e.pdf> (CopBd; 2005-02-03)

30. *Cummings v Global Television Network Quebec, Ltd. Partnership* SOQUIJ AZ-50315115, JE 2005-1088, [2005] QJ 6707, 2005 CarswellQue 2806, REJB 2005-90758, <http://www.canlii.org/qc/cas/qccs/2005/2005qccs20496.html> (QueSupCt; 2005-05-24); motion to dismiss appeal 500-09-015770-050 granted (QueCA; 2005-06-30)
31. *Dawn's Place Ltd. v Canada** [2005] TCJ 556, 2005 TCC 721, 2005 CarswellNat 3661, 2005 TCC 721, [2005] GSTC 177, <http://www.canlii.org/ca/cas/tcc/2005/2005tcc721.html> and <http://decision.tcc-cci.gc.ca/en/2005/html/2005tcc721.html> (Tax Court of Canada; 2005-11-10)
32. *DIRECTV, Inc. v Zed Marketing Inc* [2005] OJ 1045, [2005] CarswellOnt 1033, <http://www.canlii.org/on/cas/onsc/2005/2005onsc13285.html> (OntSupCt-CommList-AntonPiller; 2005-02-21); [2005] OJ 3009, 2005 CarswellOnt 3121 (OntSupCt-CommList-Motion to Strike; 2005-07-15)
33. *Duff v Québec (Procureur Général)*, 2003 CarswellQue 2408, REJB 2003-46715, JE 2003-1923, 2003 IJCan 20247, <http://www.canlii.org/qc/jug/qccs/2003/2003qccs14045.html> (QueSupCt; 2003-08-21); aff'd 2005 QCCA 661, SOQUIJ AZ-50322050, JE 2005-1349, [2005] JQ 8855, 2005 CarswellQue 4691, REJB 2005-92309, <http://www.canlii.org/qc/jug/qcca/2005/2005qcca661.html> (QueCA; 2005-07-04)
34. *Educational Rights 2003-2006, Re* [2005] CarswellNat 488; <http://www.cb-cda.gc.ca/decisions/e14012005-b.pdf> in French at [2005] CarswellNat 489 (CopBd; 2005-01-14)
35. *Enerflow Industries Inc. for the reproduction of architectural plans designed by APX Engineering Service Ltd. for the property located at 8625 68th Street S.E. in Calgary [Re Non-exclusive licence issued to]* File 2005-UO/TI-31, <http://www.cb-cda.gc.ca/unlocatable/161-e.pdf> (CopBd; 2005-07-28)
36. *Entral Group International Inc. v 1438762 Ontario Inc.* [2005] OJ 2140, 40 CPR (4th) 410, 2005 CanLII 18316, 2005 CarswellOnt 2141, <http://www.canlii.org/on/cas/onsc/2005/2005onsc13769.html>, (OntSupCt; 2005-05-20)
37. *Eurosport Event Management Ltd.v 650621 B.C. Ltd (Malone's Bar Grill)*, 2005 FC 1359, [2005] FCJ 1664, 2005 CarswellNat 3174, <http://www.canlii.org/ca/cas/fct/2005/2005fc1359.html> and <http://decisions.fct-cf.gc.ca/fct/2005/2005fc1359.shtml> (FC; 2005-10-04)
38. *Gagné (Lucie) for the reproduction of the work entitled The Diary of the 13th Battery Canadian Field Artillery 1914-1919 in a book [Re Non-exclusive licence issued to]* File 2004-UO/TI-39, <http://www.cb-cda.gc.ca/unlocatable/160-e.pdf> (CopBd; 2005-07-19)
39. *Gravlin v Canadian Imperial Bank of Commerce* 2005 CarswellBC 1443, [2005] BCWLD 4951, [2005] BCWLD 4923, 2005 BCJ 1334, 2005 BCSC 839, <http://www.canlii.org/bc/cas/bcsc/2005/2005bcsc839.html>, <http://www.courts.gov.bc.ca/jdb-txt/sc/05/08/2005bcsc0839err1.htm> (BC SC; 2005-06-14); as supplemented [2005] BCJ 1521, 2005 BCSC 1006, <http://www.courts.gov.bc.ca/jdb-txt/sc/05/10/2005bcsc1006.htm> (BCSC; 2005-07-06)
40. *Groupe Aldo Inc. v Groupe Yellow Inc.*, 2005 IJCan 24880, 2005 CarswellQue 7499, REJB 2005-92799, <http://www.canlii.org/qc/jug/qccs/2005/2005qccs59136.html> (Que SupCt; 2005-07-12)

41. *Groupe Archambault inc. v CMRRA/SODRAC inc.*, 2005 CAF 330, [2005] ACF 1718, 2005 CarswellNat 3262, <http://www.canlii.org/ca/jug/caf/2005/2005caf330.html> and <http://decisions.fca-caf.gc.ca/caf/2005/2005caf330.shtml> (FCA; 2005-10-14)
42. *Guccio Gucci S.P.A. v Levi* 42 CPR (4th) 423, 2005 FC 1186, 2005 CarswellNat 2691, <http://www.canlii.org/ca/cas/fct/2005/2005fc1186.html>, <http://decisions.fct-cf.gc.ca/fct/2005/2005fc1186.shtml> (FC; 2005-08-30)
43. *Guilde des musiciens du Québec v Québec (Commission de reconnaissance des associations d'artistes et des associations de producteurs)*, 2005 CarswellQue 3324, [2005] JQ 6997, 2005 IJCan 19211, <http://www.canlii.org/qc/jug/qccs/2005/2005qccs58083.html> (Que SupCt; 2005-05-31)
44. *Harris Scientific Products Ltd. v Araujo*, 2005 CarswellAlta 1242, 2005 ABQB 603, [2005] AWLD 3572, [2005] AWLD 3574, [2005] AWLD. 3568, [2005] AWLD 3594, 33 CCLT (3d) 228, <http://www.canlii.org/ab/cas/abqb/2005/2005abqb603.html>, <http://www.albertacourts.ab.ca/jdb/2003-/qb/civil/2005/2005abqb0603.pdf> (AltaQB; 2005-08-05)
45. *Houriham for the reproduction of architectural plans for the property located at 522 Mariposa Crescent (Rockcliffe), in Ottawa* <http://www.cb-cda.gc.ca/unlocatable/143-e.pdf>, 2004 UO/TI 31 [Re Non-exclusive licence delivered to] (CopBd; 2005-10-26)
46. *Icotop inc. v Ferrand* SOQUIJ AZ-50328610, JE 2005-1736, [2005] RJQ 2376, 2005 IJCan 28462, [2005] JQ 10659, 2005 CarswellQue 5849, REJB 2005-93633, <http://www.canlii.org/qc/jug/qccs/2005/2005qccs59672.html> (QueSupCt; 2005-08-12)
47. *Index Téléphonique de notre localité N.L. Ltée v Le guide de Cowansville Inc.* 2005 CarswellQue 10911 (QueSupCt; 2005-11-16)
48. *Interim tariff of levies to be collected by CPCC in 2006 on the sale of blank audio recording media in Canada* 2005 CarswellNat 4267, <http://www.cb-cda.gc.ca/decisions/c21122005-b.pdf>, in French at 2005 CarswellNat 4268 (Copyright Board; 2005-12-21)
49. *Knith (Darrell), Calgary, Alberta, for the reproduction of the book entitled "History of the Thirty-First Battalion v.E.F." produced by H.C. Singer and A.A. Peebles* [Re Non-exclusive licence delivered to] File No. 2005 UO/TI 41; also, <http://www.cb-cda.gc.ca/unlocatable/171-e.pdf> (Copyright Board; 2005-12-08)
50. *Kraft Canada Inc. v Euro Excellence Inc.* [2004] CarswellNat 1371; 2004 FC 652, 33 CPR (4th) 246, 252 FTR 50, <http://www.canlii.org/ca/cas/fct/2004/2004fc652.html> and <http://decisions.fct-cf.gc.ca/fct/2004/2004fc652.shtml>, in French at <http://www.canlii.org/ca/jug/cfpi/2004/2004cf652.html> and <http://decisions.fct-cf.gc.ca/cf/2004/2004cf652.shtml> (FC; 2004-05-03); [2004] CarswellNat 1793, 2004 FC 832, 33 CPR (4th) 242, <http://www.canlii.org/ca/cas/fct/2004/2004fc832.html> and <http://decisions.fct-cf.gc.ca/fct/2004/2004fc832.shtml>, in French <http://www.canlii.org/ca/jug/cfpi/2004/2004cf832.html> and <http://decisions.fct-cf.gc.ca/cf/2004/2004cf832.shtml> (FC - Reconsideration; 2004-06-09); vard. 2005 CAF 427, [2005] ACF 2082, 2005 CarswellOnt 7672, <http://www.canlii.org/ca/jug/caf/2005/2005caf427.html> and <http://decisions.fca-caf.gc.ca/caf/2005/2005caf427.shtml> (FCA; 2005-12-19)

51. *L.S. Entertainment Group Inc. v Formosa Video (Canada)* [2005] FCJ 1643, 2005 FC 1347, 2005 CarswellNat 3157, <http://www.canlii.org/ca/cas/fct/2005/2005fc1347.html> and <http://decisions.fct-cf.gc.ca/fct/2005/2005fc1347.shtml> (FC; 2005-09-30)
52. *Langdon (Robin) for the mechanical reproduction of five musical works (composers and publishers unknown) [Re Non-exclusive licence issued to]* File 2005-UO/TI-12, <http://www.cb-cda.gc.ca/unlocatable/151-e.pdf> (CopBd; 2005-03-21)
53. *McGraw-Hill Ryerson for the reproduction of Rita Schindler's letter published in the Toronto Star on December 30, 1990 [Re Non-exclusive licence issued to]* File 2005-UO/TI-17, <http://www.cb-cda.gc.ca/unlocatable/159-e.pdf> (CopBd; 2005-07-19)
54. *Michel Rhéaume & Associés Ltée v 9071-8131 Québec Inc. (Pro-Vie Assurances)* 2005 IJCan 24443, SOQUIJ AZ-50322827, JE 2005-1572, [2005] JQ 9114, <http://www.canlii.org/qc/jug/qccs/2005/2005qccs59015.html> (Que SupCt; 2005-07-08)
55. *Michel Rhéaume & Associés Ltée v 9071-8131 Québec Inc.*, [2003] JQ 5484, 2003 IJCan 17591, <http://www.canlii.org/qc/jug/qccs/2003/2003qccs12315.html> (QueSupCt; 2003-05-12) affd. 2005 QCCA 99, SOQUIJ AZ-50296124, 2005 BE-295, [2005] JQ 1036 (Que CA; 2005-01-11)
56. *Michel Rhéaume & Associés Ltée v 9071-8131 Québec Inc.*, [2003] JQ 6862, 2003 IJCan 48440, <http://www.canlii.org/qc/jug/qccs/2003/2003qccs12829.html> (Que SupCt; 2003-06-06) revd in part sub nomine *Beaulne & Rhéaume Assurances Itée v Dubé* [2005] JQ 1037 (Que CA; 2005-01-11), SOQUIJ AZ-50296125, 2005 QCCA100, BE 2005 BE-339
57. *Microsoft Corp. v 9038-3746 Quebec Inc.* 42 CPR (4th) 417, 2005 FC 1144, 2005 CarswellNat 2426, <http://www.canlii.org/ca/cas/fct/2005/2005fc1144.html>, <http://decisions.fct-cf.gc.ca/fct/2005/2005fc1144.shtml>, (FC; 2005-08-23).
58. *Mount Royal College Bookstore for the reproduction of two articles written by Robert Severns [Re Non-exclusive licence issued to]* File 2005-UO/TI-36, <http://www.cb-cda.gc.ca/unlocatable/153-e.pdf> (CopBd; 2005-04-25)
59. *National Film Board of Canada for the reproduction and incorporation of eleven transparencies of Emily Carr's works produced by photographer Michael Neill in 1980 [Re Non-exclusive licence issued to]* File 2005-UO/TI-29, <http://www.cb-cda.gc.ca/unlocatable/166-f.pdf> (CopBd; 2005-09-02)
60. *National Film Board of Canada, Ville Saint-Laurent, Quebec, to use part of a musical work written by Georgy Sviridov [Re Application by the]* [2005] CBD 9, File 2005 UO/TI-34, 2005 CarswellNat 2992, <http://www.cb-cda.gc.ca/unlocatable/other/5-b.pdf>, in French at 2005 CarswellNat 2993 (CopBd; 2005-09-13)
61. *Nautical Data International, Inc. In Re the Bankruptcy and Insolvency Act*, 2005 CarswellNfld 180, 2005 NLTD 110, 11 CBR (5th) 144 (Nfld & Labr. S.C.-; 2005-06-24); 2005 NLTD 137, <http://www.canlii.org/nl/cas/nlsctd/2005/2005nlsctd137.html> (Nfld & Labr. S.C.- To Lift Stay; 2005-08-12); 2005 CarswellNfld 228, 2005 NLTD 141, 13 CBR (5th) 223, <http://www.canlii.org/nl/cas/nlsctd/2005/2005nlsctd141.html> (Nfld & Labr. S.C.- 2005-08-19)
62. *Near-Miss Productions Inc., Montreal, Quebec, for the reproduction and incorporation of nine photographs in a documentary film [Re Non-exclusive licence delivered to]* File

- No 2005UO/TI22; also, <http://www.cb-cda.gc.ca/unlocatable/170-f.pdf> (Copyright Board; 2005-11-21)
63. *Netbored Inc. v Avery Holdings Inc.* [2005] CarswellNat 981, [2005] FCJ 620, 2005 FC 490, <http://www.canlii.org/ca/cas/fct/2005/2005fc490.html> and <http://decisions.fct-cf.gc.ca/fct/2005/2005fc490.shtml>, in French 2005 CarswellNat 3142, <http://decisions.fct-cf.gc.ca/cf/2005/2005cf490.shtml>, <http://www.canlii.org/ca/jug/cfpi/2005/2005cf490.html>, (FC; 2005-04-12); 42 CPR (4th) 321, 2005 FC 933, [2005] FCJ 1168, 2005 CarswellNat 1876, <http://decisions.fct-cf.gc.ca/fct/2005/2005fc933.shtml>, in French at 2005 CarswellNat 3727, <http://decisions.fct-cf.gc.ca/cf/2005/2005cf933.shtml> (FC; 2005-06-30); 2005 FC 1405, [2005] FCJ 1723, 2005 CarswellNat 3289, <http://www.canlii.org/ca/cas/fct/2005/2005fc1405.html> (FC; 2005-10-14)
 64. *Office of the Lieutenant Governor of Québec for the reproduction of a photograph [Re Application by The]* File 2004-UO/TI-37, 2005 CarswellNat 1849, <http://www.cb-cda.gc.ca/unlocatable/other/4-b.pdf>, in French at 2005 CarswellNat 1850 (CopBd; 2005-03-03)
 65. *Oppenheim (David) for the reproduction and incorporation of a film clip from "A New World in the Yukon" produced in 1970 by Jerry Fairbanks Productions, Hollywood, CA in association with Canawest Film Productions Ltd. of Vancouver, B.C., A Production of Anvil Mining Corporation Ltd. [Re Non-exclusive licence issued to]* File 2005-UO/TI-10, <http://www.cb-cda.gc.ca/unlocatable/122-e.pdf> (CopBd; 2005-04-12)
 66. *Parker v Key Porter Books Ltd.* 40 CPR (4th) 80, 2005 CarswellOnt 2098, [2005] OJ 2093, 2005 CanLII 18294, <http://www.canlii.org/on/cas/onsc/2005/2005onsc13750.html> (OntSupCt; 2005-05-26).
 67. *Pearson Education Canada for the reproduction of the article entitled Getting Off Welfare (author unknown) [Re Non-exclusive licence issued to]* File 2005-UO/TI-05, <http://www.cb-cda.gc.ca/unlocatable/155-e.pdf> (CopBd; 2005-05-04)
 68. *Positive Attitude Safety Systems Inc. v Albian Sands Energy Inc.* [2004] FCJ 1253, 258 FTR 30, [2004] CarswellNat 2299, 2004 FC 1022, 33 CPR (4th) 460 <http://www.canlii.org/ca/cas/fct/2004/2004fc1022.html> and <http://decisions.fct-cf.gc.ca/fct/2004/2004fc1022.shtml> (FC; 2004-07-23); revd 2005 CarswellNat 3575, [2005] FCJ 1731, 2005 FCA 332, <http://www.canlii.org/ca/cas/fca/2005/2005fca332.html> and <http://decisions.fca-caf.gc.ca/fca/2005/2005fca332.shtml> (FCA; 2005-10-17)
 69. *Production & Studio MiDo inc., Métabetchouan-Lac-à-la-Croix, Quebec, for the mechanical reproduction of the song "Le père Noël c't'un québécois" written by Pierre Laurendeau and Roger Magnan, published by "Pop Success" and "Reliable Music" [Re Non-exclusive licence delivered to]* File No. 2005UO/TI 39; also, <http://www.cb-cda.gc.ca/unlocatable/169-f.pdf> (Copyright Board; 2005-10-17)
 70. *Productions Ltd. of Vancouver, B.C., A Production of Anvil Mining Corporation Ltd. [Re Non-exclusive licence issued to]* File 2005-UO/TI-10, <http://www.cb-cda.gc.ca/unlocatable/122-e.pdf> (CopBd; 2005-04-12)
 71. *Prudhomme v Shaddock*, 2005 BCPC 256, [2005] BCJ 1604, 2005 CarswellBC 1601, [2005] BCWLD 4500, [2005] BCWLD. 4507, [2005] BCWLD 4639, <http://www.canlii.org/bc/cas/bcpc/2005/2005bcpc256.html>,

- http://www.provincialcourt.bc.ca/judgments/pc/2005/02/p05_0256.htm (BC ProvCt; 2005-06-16)
72. *Public Performance of Musical Works 2003-2007 and Public Performance of Sound Recordings 2003-2007 [Re]* [2005] CBD 5, 2005 CarswellNat 3359, <http://www.cb-cda.gc.ca/decisions/m14102005-b.pdf> (CopBd; 2005-10-14)
 73. *Public Performance of Musical Works, 2003-2006, Re* [2005] CarswellNat 541, [2005] CBD 3; in French at [2005] CarswellNat 542, [2005] CBD 3, <http://www.cb-cda.gc.ca/decisions/m25022005-b.pdf>, in French at 2005 CarswellNat 3360 (CopBd; 2005-02-25)
 74. *Public Performance of Sound Recordings 2003-2005, Re;* [2005] CarswellNat 486, [2005] CBD 2 and [2005] CBD 2; in French [2005] CarswellNat 487, [2005] CBD 1, <http://www.cb-cda.gc.ca/decisions/m14012005-b.pdf> (CB; 2005-01-14)
 75. *R. v Wong* 2005 CarswellOnt 6434 (Ont SupCt J; 2005-08-15)
 76. *R v Thériault** [2004] CarswellQue 3201, (sub nomine *R v D'Argy*) [2004] JQ 11142, 2004 IJCan 45941, 2004 CarswellQue 3201, [2005] RJQ 857, REJB 2004-72244, JE 2005-475, SOQUIJ AZ-50277166, <http://www.canlii.org/qc/jug/qccq/2004/2004qccq49479.html> (QueCt; 2004-10-28); revd (sub nomine *R v D'Argy*) SOQUIJ AZ-50304828, JE 2005-1008, [2005] R.J.Q. 1520, [2005] JQ 2499, 2005 CarswellQue 931, REJB 2005-87515, 2005 IJCan 8977, <http://www.canlii.org/qc/jug/qccs/2005/2005qccs19052.html> (QueSupCt; 2005-03-31); motion for leave to appeal on the constitutional issue granted 2005 CarswellQue 3570 REJB 2005-91519, JE 2005-1178, SOQUIJ AZ-50318085, 2005 QCCA 604 (QueCA; 2005-04-20)
 77. *R. v Ménard** 2005 IJCan 24780, SOQUIJ AZ-50323098, JE 2005-1478, 2005 CarswellQue 6348, REJB 2005-92816, <http://www.canlii.org/qc/jug/qccq/2005/2005qccq60324.html> (Que Ct-Crim Div; 2005-06-29); motions for leave to appeal denied as to the question of facts SOQUIJ AZ-50336748, 2005 CarswellQue 9581, 2005 QCCA 914 and SOQUIJ AZ-50336814, 2005 CarswellQue 9577, 2005 QCCA 2005
 78. *R. v Benchmuel* [2005] OJ 1008 (OntCt; 2005-01-18)
 79. *R. v Ferguson ((2004))*, 2004 CarswellOnt 847, 1 MVR (5th) 299 (Ont. vJ.); revd. 2005 CarswellOnt 3733 (OntSupCtJ; 2005-08-12)
 80. *R. v Katebian* [2005] OJ 1009 (OntCt; 2005-01-27)
 81. *Renaud c Groupe Ville-Marie Littérature Inc* 2002 IJCan 27783, <http://www.canlii.org/qc/jug/qccs/2002/2002qccs11752.html>, [2002] JQ 961, (Que SupCt; 2002-04-30); affd. sub nomine *Horic v Renaud*, 2005 QCCA 508, SOQUIJ AZ-50313961, JE 2005-1045, [2005] JQ 6390, 2005 CarswellQue 2708, REJB 2005-90482, <http://www.canlii.org/qc/jug/qcca/2005/2005qcca508.html> (Que CA; 2005-05-12)
 82. *Reproduction of Musical Works 2004-2008 [Re SODRAC Tariff 5 (Video-copies)]* 2005 CarswellNat 1794, in French at 2005 CarswellNat 1795, <http://www.cb-cda.gc.ca/decisions/i24062005-b.pdf> (CopBd; 2005-06-24)
 83. *Richard Lindseth Architecture for the reproduction of architectural plans designed by J. Sertic Homes (J. Mossman, engineer and J. Pasalic, draftsperson) for the property*

- located at 41 Woodhaven View S.W. in Calgary [Re Non-exclusive licence issued to] File 2005-UO/TI-23, <http://www.cb-cda.gc.ca/unlocatable/158-e.pdf> (CopBd; 2005-07-18)
84. *Russell v Nyack*, 2005 CarswellAlta 1220, [2005] AWLD 3464, [2005] AWLD 3402, [2005] AWLD 3465, [2005] AWLD 3434, 2005 ABPC 227, <http://www.canlii.org/ab/cas/abpc/2005/2005abpc227.html>, <http://www.albertacourts.ab.ca/jdb/2003-/pc/civil/2005/2005abpc0227.pdf> (Alta ProvCt; 2005-06-29)
85. *San Francisco Gifts Ltd (Re)* [2005] AJ 131, 2005 AQBD 91, 2005 CarswellAlta 174, <http://www.canlii.org/ab/cas/abqb/2005/2005abqb91.html>, <http://www.albertacourts.ab.ca/jdb/2003-/qb/civil/2005/2005abqb0091.pdf> (AltaQB; 2005-02-09)
86. *Santerre v La Reine** 2005 CarswellNat 2892, 2005 DTC 1324, [2005] ACI 435, 2005 CCI 606, <http://www.canlii.org/ca/jug/cci/2005/2005cci606.html>, <http://www.canlii.org/ca/jug/cci/2005/2005cci606.html> (CCI; 2005-09-20)
87. *Sazby & Pokorny Architects for the reproduction of mechanical and electrical plans designed by Larry W.T. Tang, Continental Design Inc. in 1981 for the property located at 800 Macleod Trail S.E. in Calgary [Re Non-exclusive licence issued to] File 2005-UO/TI-30*, <http://www.cb-cda.gc.ca/unlocatable/165-e.pdf> (CopBd; 2005-09-01)
88. *Société du droit de reproduction des auteurs, compositeurs et éditeurs au Canada Inc. v Amalgame-Cargo créativité stratégique Inc.*, SOQUIJ AZ-50328380, JE 2005-1646, 2005 CarswellQue 5844, REJB 2005-93578, 2005 IJCan 28333 <http://www.canlii.org/qc/jug/qccs/2005/2005qccs59629.html> (Que SupCt; 2005-07-28)
89. *Society of Composers, Authors & Music Publishers of Canada v Maple Leaf Sports & Entertainment Ltd.* 2005 CarswellNat 1409 (FC-Prot.; 2005-03-14); affd. 40 CPR (4th) 28, [2005] CarswellNat 1368, 2005 FC 640, <http://decisions.fct-cf.gc.ca/fct/2005/2005fc640.shtml>, <http://www.canlii.org/ca/cas/fct/2005/2005fc640.html> (FC; 2005-05-06)
90. *Society of Composers, Authors and Music Publishers of Canada v Kicks Roadhouse Inc. (c.o.b. How-Dee's)* [2005] CarswellNat 1100, [2005] FCJ 646, 2005 FC 528, 39 CPR (4th) 238, <http://www.canlii.org/ca/cas/fct/2005/2005fc528.html> and <http://decisions.fct-cf.gc.ca/fct/2005/2005fc528.shtml>, in French at 2005 CarswellNat 3327, <http://www.canlii.org/ca/jug/cfpi/2005/2005cf528.html>, <http://decisions.fct-cf.gc.ca/cf/2005/2005cf528.shtml> (FC; 2005-04-19); 2005 FC 1345, <http://www.canlii.org/ca/cas/fct/2005/2005fc1346.html> and <http://decisions.fct-cf.gc.ca/fct/2005/2005fc1346.shtml> (FC-Reconsideration; 2005-09-30); appeal A-227-05
91. *Southern Alberta Institute of Technology (SAIT) Polytechnic for the reproduction of five sets of images and diagrams for which the source is unknown [Re Non-exclusive licence issued to] File 2005-UO/TI-27*, <http://www.cb-cda.gc.ca/unlocatable/163-e.pdf> (CopBd; 2005-08-19)
92. *Spiros Pizza & Spaghetti House Ltd. v Riviera Pizza Inc.* 39 CPR (4th) 527, [2005] CarswellAlta 337, [2005] AJ 278, 2005 ABQB 80, [2005] AWLD 1967, [2005] AWLD 1955, [2005] AWLD 1956, [2005] AWLD 1892, <http://www.canlii.org/ab/cas/abqb/2005/2005abqb80.html>, <http://www.albertacourts.ab.ca/jdb/2003-/qb/civil/2005/2005abqb0080.cor1.pdf>

- (AltaQB; 2005-03-15).; affd. 2005 CarswellAlta 1394, 2005 ABCA 305, [2005] AWLD 3494, [2005] AWLD 3570, [2005] AWLD 3571, [2005] AWLD 3587, <http://www.albertacourts.ab.ca/jdb/2003-/ca/civil/2005/2005abca0305.pdf>, <http://www.canlii.org/ab/cas/abca/2005/2005abca305.html> (AltaCA 2005-09-16) supplemental reasons at 2005 CarswellAlta 1799, 2005 ABCA 418, <http://www.albertacourts.ab.ca/jdb/2003-/ca/civil/2005/2005abca0418.pdf>, <http://www.canlii.org/ab/cas/abca/2005/2005abca418.html> (AltaCA-Costs; 2005-12-06)
93. *Standard Life Assurance Company of Canada/Standard Life Realty Advisors for the reproduction of mechanical and electrical plans created by B. Siebrand, P.Eng. in 1987 for the property located at 5335 Canotek Road in Ottawa [Re Non-exclusive licence issued to]* File 2005-UO/TI-18, <http://www.cb-cda.gc.ca/unlocatable/154-e.pdf> (CopBd; 2005-05-04)
94. *St-Cyr Morin (Lyse) for the reproduction of architectural plans created by Christine Gieyftor for the property located at 26 Concourse Gate in Ottawa [Re Non-exclusive licence issued to]* File 2005-UO/TI-25, <http://www.cb-cda.gc.ca/unlocatable/157-e.pdf> (CopBd; 2005-06-30)
95. *Steinhart v Moledina* [2005] CarswellOnt 550, [2005] OJ 525, 37 CPR (4th) 443, <http://www.canlii.org/on/cas/onsc/2005/2005onsc10268.html> (OntSupCt; 2005-02-11)
96. *Syndicat des employées et employés de l'UQAM, Section locale 1294 v Université du Québec à Montréal (UQAM)** 2005 IIJCan 30712, <http://www.canlii.org/qc/jug/qcdag/2005/2005qcdag10126.html> (Que Arbitration; 2005-09-01)
97. *Telewizja Polsat S.A. v Radiopol Inc.* 42 CPR (4th) 202, 2005 FC 1179, 2005 CarswellNat 2414, <http://www.canlii.org/ca/cas/fct/2005/2005fc1179.html>, <http://decisions.fct-cf.gc.ca/fct/2005/2005fc1179.shtml> (FC; 2005-08-29)
98. *Teneycke v Sawatzky** 2005 CarswellSask 446, 2005 SKQB 266, <http://www.canlii.org/sk/cas/skqb/2005/2005skqb266.html>, http://www.lawsociety.sk.ca/dbtw-wpd/exec/dbtwpub.dll?AC=GET_RECORD&XC=/dbtw-wpd/exec/dbtwpub.dll&BU=http%3A%2F%2Fwww.lawsociety.sk.ca%2Fnewlook%2FLibrary%2Ffulltextnew.htm&TN=fulltext&SN=AUTO17329&SE=508&RN=1&MR=20&RF=fullNew3P&DF=fullLongNew2P&RL=0&DL=0&NP=3&ID=&MF=WPENGMMSG.INI&MQ=&TI=0 (Sask. QB; 2005-06-08)
99. *TM Minard Trucking Ltd. v Richard* [2005] CarswellSask 149, [2005] SJ 151, 2005 SKQB 113, <http://www.canlii.org/sk/cas/skqb/2005/2005skqb113.html>, http://www.lawsociety.sk.ca/dbtw-wpd/exec/dbtwpub.dll?AC=GET_RECORD&XC=/dbtw-wpd/exec/dbtwpub.dll&BU=http%3A%2F%2Fwww.lawsociety.sk.ca%2Fnewlook%2FLibrary%2Ffulltextnew.htm&TN=fulltext&SN=AUTO17744&SE=509&RN=0&MR=20&RF=fullNew3P&DF=fullLongNew2P&RL=0&DL=0&NP=3&ID=&MF=WPENGMMSG.INI&MQ=&TI=0 (SasQB; 2005-03-02)
100. *Towne Cinema Theatres (1975) Ltd. v Society of Composers, Artists and Music Publishers of Canada* 38 CPR (4th) 391, [2005] CarswellAlta 341, [2005] AJ 282, 2005 AQBD 186, 2005 CarswellAlta 569, [2005] AWLD 1765, [2005] AWLD 1772, [2005] AWLD 1759, [2005] AWLD 1860, [2005] AWLD 1859,

- <http://www.canlii.org/ab/cas/abqb/2005/2005abqb186.html>,
<http://www.albertacourts.ab.ca/jdb/2003-/qb/civil/2005/2005abqb0186.pdf> (AltaQB; 2005-03-18); additional reasons at 2005 CarswellAlta 569, [2005] AWLD 1759, [2005] AWLD 1765, [2005] AWLD 1772, [2005] AWLD 1859, [2005] AWLD 1860, 2005 ABQB 315, <http://www.canlii.org/ab/cas/abqb/2005/2005abqb315.html>,
<http://www.albertacourts.ab.ca/jdb/2003-/qb/civil/2005/2005abqb0315.pdf> (AltaQB-costs; 2005-04-24)
101. *Trigenex inc. for the reproduction of architectural plans designed by Angelo A. Kolenc in 1977 for the property located at 33 Banner Road in Ottawa [Re Non-exclusive licence issued to]* File 2005-UO/TI-04, <http://www.cb-cda.gc.ca/unlocatable/150-f.pdf> (CopBd; 2005-02-09)
102. *Université de Montréal v Zompa** Unreported (2000-04-07) decision of the Review Committee Comité on Students Disciplinary Decisions of the University of Montreal; motion for judicial review granted [2002] JQ 5277, [2003] R.J.Q. 509, 2002 IJCan 41594, <http://www.canlii.org/qc/jug/qccs/2002/2002qccs16248.html> (CSQ; 2002-12-03); revd [2005] JQ 1010, 2005 QCCA 250 (IJCan) <http://www.canlii.org/qc/jug/qcca/2005/2005qcca250.html> (QueCA; 2005-02-16), SOQUIJ AZ-50298006, JE 2005-536, [2005] RJQ 704; motion for leave to appeal dismissed [2005] SCCA 183 (SCC; 2005-10-06)
103. *University of Toronto Press, Toronto, Ontario, for the reproduction of a work created by Francis Robert Halliday entitled "National Progress" [Re Non-exclusive licence delivered to]* File No. 2005 UO/TI 40; also, <http://www.cb-cda.gc.ca/unlocatable/168-e.pdf> (CopBd; 2005-10-04)
104. *Vaillancourt v Lagacé*, JE 2005-1793, 2005 IJCan 29333, 2005 CarswellQue 9129, AZ-50329444, http://www.canlii.org/qc/jug/qccs/2005/2005qccs59773.html#_ftnref6 (Que SupCt; 2005-08-18)



1395047 *Ontario Inc. (c.o.b. FPTV - Festival Portuguese Television) v New Atlantico Café and Restaurante Inc.* [2005] FCJ 1663, 2005 FC 1358, 2005 CarswellNat 3172, <http://www.canlii.org/ca/cas/fct/2005/2005fc1358.html> and <http://decisions.fct-cf.gc.ca/fct/2005/2005fc1358.shtml> (FC; 2005-10-04) Hughes J.

[9] The Plaintiffs, in their motion for default judgment seek relief in respect of two claims to rights (1) copyrights and (2) broadcast rights. There is no registration of copyright evident. Section 34.1(a) of the *Copyright Act*, R.S.C. 1985, v c-30, provides that in an action such as this, unless the contrary is proved, copyright is presumed to subsist in the work or works at issue. That is the case here, copyright subsists in something. However, proof as to ownership is lacking, there is no evidence as to ownership of copyright before this court. Section 34.1(2) of the Act provides for certain presumptions as to ownership where names appears in association with the work. No evidence as to what name, if anything, appears on the work as broadcast has been placed in the Record.

[11] What we have here is a contract between the Plaintiff and a party whose rights are unproven, purporting to grant "rights" to the Plaintiffs. There

is no proof as to what "rights" if any this grantor had. The chain of title put in evidence before this Court does not go back far enough for a grantee (the Plaintiffs) to have rights, the grantor must have them in the first place and the power to give them to the Plaintiffs. There is no evidence of that here.

3464920 *Canada Inc v Strother* (2002), [2002] BCJ 1982, [2002] BCC TBEed SE043, 2002 BCSC 1179, 2002 *CarswellBC* 2026, 26 BLR (3d) 235, 2002 DTC 7327, [2003] 1 CTC 87, <http://www.canlii.org/bc/cas/bcsc/2002/2002bcsc1179.html>, <http://www.courts.gov.bc.ca/jdb-txt/SC/02/11/2002BCSC1179.htm> (BCSC; 2002-09-29); *vard* (2005) 38 BCLR (4th) 159, 2005 BCCA 35, (2005), [2005] 3 CTC 168, 2005 *CarswellBC* 83, 2005 DTC 5059, 1 BLR (4th) 302, 28 CCLT (3d) 159, [2005] 5 WWR 108, 208 BCAC 39, 344 WAC 39, <http://www.canlii.org/bc/cas/bcca/2005/2005bcca35.html>, <http://www.courts.gov.bc.ca/jdb-txt/ca/05/00/2005bcca0035.htm> (BCCA-Strother; 2005-01-21), as supplemented <http://www.courts.gov.bc.ca/jdb-txt/ca/05/03/2005bcca0384.htm>, 2005 BCCA 384 (BCCA-Strother; 2005-07-25); 2005 BCCA 385, 2005 *CarswellBC* 1789, [2005] 5 CTC 107, 8 BLR (4th) 4, 256 DLR (4th) 319, [2005] BCWLD 5949, [2005] BCWLD 5950, [2005] BCWLD 5944, 44 BCLR (4th) 275, <http://www.canlii.org/bc/cas/bcca/2005/2005bcca385.html>, <http://www.courts.gov.bc.ca/Jdb-txt/CA/05/03/2005BCCA0385.htm> (BCCA-Davis; 2005-07-25) (BCCA-Strother; 2005-07-25)

Plaintiff corporation carried on business in tax-assisted production services financing ("TAPSF") for film industry -- Corporation retained defendant solicitor S to act as inter alia tax shelter advisor -- Written retainer agreements were executed by corporation and S for consecutive one-year terms in 1996 and 1997 -- In 1998, Minister for National Revenue introduced amendments to Income Tax Act to end TAPSF tax shelters -- Corporation made inquiries of S as to possibility of continuing to carry on TAPSF business, and S advised corporation that no remedies were available and that tax sheltered financing was at an end -- Corporation then ceased to carry on business of TAPSF provision -- After expiry of written retainer agreements but while S and defendant law firm were still engaged in performance of legal work for corporation, S and former employee of corporation sought advance tax ruling on potential exception to Act amendments which would permit resumption of form of TAPSF -- At no time prior to receipt of ruling did S advise corporation of his relationship with former employee or of application for advance tax ruling -- Advance tax ruling was favourable and, by prior agreement, S obtained shares in company which proceeded to exploit Act exception and generate substantial revenues -- Corporation was unable to organize in time to exploit Act exception -- Corporation brought action for damages, accounting and disgorgement of profits for breach of S's fiduciary duty and duty of confidentiality -- Action was dismissed and corporation appealed -- Appeal allowed -- Solicitor's fiduciary duty to client is not restricted to precise terms of any contractual retainer -- Duty includes inter alia ongoing obligation to disclose any conflict of interest and to obtain client's consent prior to taking any actions in potential conflict -- In present case, S's ongoing obligations to corporation included to disclose personal conflict, attempt to receive advance tax ruling, which would admit of exceptions to Act "closure" of TAPSF shelter provisions -- Obligations were particularly clear having regard to corporation's request for advice as to its ability to continue carrying on TAPSF business -- Defendant S breached fiduciary duty to corporation qua client and was liable to account for and disgorge profits obtained as consequence of breach -- Company was ordered to comply with all such accounting and disgorgement.

Barristers and solicitors --- Relationship with client -- Duty of confidentiality

Plaintiff corporation carried on business in tax-assisted production services financing ("TAPSF") for film industry -- Corporation retained defendant solicitor S to act as inter alia tax shelter advisor -- Written retainer agreements were executed by corporation and S for consecutive one-year terms in 1996 and 1997 -- In 1998, Minister for National Revenue introduced amendments to Income Tax Act to end TAPSF tax shelters -- Corporation made inquiries of S as to possibility of continuing to carry on TAPSF business, and S advised corporation that no remedies were available and that tax sheltered financing was at an end -- Corporation then ceased to carry on business of TAPSF provision -- After expiry of written retainer agreements, but while S and defendant law firm were still engaged in performance of legal work for corporation, S and former employee of corporation sought advance tax ruling on potential exception to Act amendments which would permit resumption of form of TAPSF -- At no time prior to receipt of ruling did S advise corporation of his relationship with former employee or of application for advance tax ruling -- Advance tax ruling was favourable and, by prior agreement, S obtained shares in company which proceeded to exploit Act exception and generate substantial revenues -- Corporation was unable to organize in time to exploit Act exception -- Corporation brought action for damages, accounting and disgorgement of profits for breach of S's fiduciary duty and duty of confidentiality -- Action was dismissed and corporation appealed -- Appeal allowed -- Solicitor's fiduciary duty to client is not restricted to precise terms of any contractual retainer -- Duty includes inter alia ongoing obligation to disclose any conflict of interest and to obtain client's consent prior to taking any actions in potential conflict -- In present case, S's ongoing obligations to corporation included to disclose personal conflict, attempt to receive advance tax ruling, which would admit of exceptions to Act "closure" of TAPSF shelter provisions -- Obligations were particularly clear having regard to corporation's request for advice as to its ability to continue carrying on TAPSF business -- Defendant S breached fiduciary duty to corporation qua client and was liable to account for and disgorge profits obtained as consequence of breach -- Company was ordered to comply with all such accounting and disgorgement.

Barristers and solicitors --- Relationship with client -- Accounting and refunding by solicitor – General

Plaintiff corporation carried on business in tax-assisted production services financing ("TAPSF") for film industry -- Corporation retained defendant solicitor S to act as, inter alia, tax shelter advisor -- Written retainer agreements were executed by corporation and S for consecutive one-year terms in 1996 and 1997 -- In 1998, Minister for National Revenue introduced amendments to Income Tax Act to end TAPSF tax shelters -- Corporation made inquiries of S as to possibility of continuing to carry on TAPSF business, and S advised corporation that no remedies were available and that tax sheltered financing was at an end -- Corporation then ceased to carry on business of TAPSF provision -- After expiry of written retainer agreements, but while S and defendant law firm were still engaged in performance of legal work for corporation, S and former employee of corporation sought advance tax ruling on potential exception to Act amendments which would permit

resumption of form of TAPSF -- At no time prior to receipt of ruling did S advise corporation of his relationship with former employee or of application for advance tax ruling -- Advance tax ruling was favourable and, by prior agreement, S obtained shares in company which proceeded to exploit Act exception and generate substantial revenues -- Corporation was unable to organize in time to exploit Act exception -- Corporation brought action for damages, accounting and disgorgement of profits for breach of S's fiduciary duty and duty of confidentiality -- Action was dismissed and corporation appealed -- Appeal allowed -- Solicitor's fiduciary duty to client is not restricted to precise terms of any contractual retainer -- Duty includes inter alia ongoing obligation to disclose any conflict of interest and to obtain client's consent prior to taking any actions in potential conflict -- In present case, S's ongoing obligations to corporation included to disclose personal conflict, attempt to receive advance tax ruling, which would admit of exceptions to Act "closure" of TAPSF shelter provisions -- Obligations were particularly clear having regard to corporation's request for advice as to its ability to continue carrying on TAPSF business -- Defendant S breached fiduciary duty to corporation qua client and was liable to account for and disgorge profits obtained as consequence of breach -- Company was ordered to comply with all such accounting and disgorgement.

Employment law --- Elements of employment relationship -- Duties of parties -
- Duties of employee to employer -- Use of confidential information

Plaintiff corporation carried on business in tax-assisted production services financing ("TAPSF") for film industry -- Plaintiff employed defendant D as chief operating officer and later as chief financial officer -- Defendant D held no equity in corporation, did not serve as director and performed administrative tasks -- Corporation intended to have D sign non-competition agreement, but D did not sign agreement -- In 1998, Minister for National Revenue introduced amendments to Income Tax Act to end TAPSF tax shelters -- Corporation received advice from defendant solicitor S, and was advised that no remedies were available and that TAPSF business was at an end -- Corporation terminated D's employment with notice, and D served out notice period -- Subsequent to termination, D conceived process whereby Act anti-TAPSF amendments could possibly be circumvented -- Defendant D then approached S with process and ultimately brought advance tax ruling application together with S, who unknown to D was acting in conflict of interest toward corporation -- Advance tax ruling was favourable and D formed various businesses which exploited ruling, thereby earning revenue -- Corporation was unable to organize in time to exploit Act exception process -- Corporation brought action for damages, accounting and disgorgement of profits for breach of S's fiduciary duty and duty of confidentiality -- Action was dismissed and corporation appealed -- Appeal dismissed as against D -- Duty of fidelity owed to corporation by D was commensurate with scope of D's employment, not with D's titles -- Duties of D to corporation included duty not to exploit emerging business opportunity available to corporation for D's personal benefit -- "Process" created by D was D's own intellectual property conceived through D's own efforts and was not conceived by any exploitation of confidential information obtained from corporation -- No emerging business opportunity was available to corporation, inter alia as D was in fact terminated due to Act amendments closing TAPSF shelter status -
- Likewise D was not liable for S's breach of fiduciary duty, as D was

subjectively unaware of any such breach and was not legal expert or otherwise qualified to render opinion on S's status -- Appeal was allowed in part on other grounds.

Employment law --- Elements of employment relationship -- Duties of parties -
- Duties of employee to employer -- Fiduciary duties

Plaintiff corporation carried on business in tax-assisted production services financing ("TAPSF") for film industry -- Plaintiff employed defendant D as chief operating officer and later as chief financial officer -- Defendant D held no equity in corporation, did not serve as director and performed administrative tasks -- Corporation intended to have D sign non-competition agreement, but D did not sign agreement -- In 1998, Minister for National Revenue introduced amendments to Income Tax Act to end TAPSF tax shelters -- Corporation received advice from defendant solicitor S, and was advised that no remedies were available and that TAPSF business was at an end -- Corporation terminated D's employment with notice, and D served out notice period -- Subsequent to termination, D conceived process whereby Act anti-TAPSF amendments could possibly be circumvented -- Defendant D then approached S with process and ultimately brought advance tax ruling application together with S, who unknown to D was acting in conflict of interest toward corporation -- Advance tax ruling was favourable and D formed various businesses which exploited ruling, thereby earning revenue -- Corporation was unable to organize in time to exploit Act exception process -- Corporation brought action for damages, accounting and disgorgement of profits for breach of S's fiduciary duty and duty of confidentiality -- Action was dismissed and corporation appealed -- Appeal dismissed as against D -- Duty of fidelity owed to corporation by D was commensurate with scope of D's employment, not with D's titles -- Duties of D to corporation included duty not to exploit emerging business opportunity available to corporation for D's personal benefit -- "Process" created by D was D's own intellectual property conceived through D's own efforts and was not conceived by any exploitation of confidential information obtained from corporation -- No emerging business opportunity was available to corporation, inter alia as D was in fact terminated due to Act amendments closing TAPSF shelter status -
- Likewise D was not liable for S's breach of fiduciary duty, as D was subjectively unaware of any such breach and was not legal expert or otherwise qualified to render opinion on S's status -- Appeal was allowed in part on other grounds.

(BCCA-Davis; 2005-07-25)

Plaintiff corporation carried on business in tax-assisted production services financing ("TAPSF") for film industry -- Corporation retained defendant solicitor S to act as inter alia tax shelter advisor -- Written retainer agreements were executed by corporation and S for consecutive one-year terms in 1996 and 1997 -- In 1998, Minister for National Revenue introduced amendments to Income Tax Act to end TAPSF tax shelters -- Corporation made inquiries of S as to possibility of continuing to carry on TAPSF business, and S advised corporation that no remedies were available and that tax sheltered financing was at an end -- Corporation then ceased to carry on business of TAPSF provision -- After expiry of written retainer agreements, but while S and defendant law firm were still engaged in performance of legal work for corporation, S and former employee of corporation sought advance tax

ruling on potential exception to Act amendments which would permit resumption of form of TAPSF -- Managing partner of law firm instructed S to avoid acting in conflict of interest in relation to corporation -- At no time prior to receipt of ruling did S advise corporation of his relationship with former employee or of application for advance tax ruling -- Advance tax ruling was favourable and, by prior agreement, S obtained shares in company which proceeded to exploit Act exception and generate substantial revenues -- Corporation was unable to organize in time to exploit Act exception -- Corporation brought action against, inter alia, law firm for damages, accounting and disgorgement of profits for breach of S's fiduciary duty and duty of confidentiality -- Action as against law firm was dismissed and corporation appealed -- Appeal allowed in part -- Law firm and its partners were not joint tortfeasors with respect to S's breaches of fiduciary duty, as firm and partnership were not subjectively aware of, reckless as to or wilfully blind to S's actions and as managing partner on behalf of firm and partners cautioned S against breaches -- Likewise, firm and partners were not vicariously liable, as S's tortious actions were outside of ordinary business conduct of firm and as firm received no profits from breach -- Law firm and partners were required to refund any fees paid by corporation to firm after S committed first breach of fiduciary duty, and to disgorge any profits earned by way of fees or related funds from any person or organization profiting from S's conduct.

Business associations --- Powers, rights and liabilities -- Rights and liabilities of partners -- Liability of partners -- Liability to third parties

Plaintiff corporation carried on business in tax-assisted production services financing ("TAPSF") for film industry -- Corporation retained defendant solicitor S to act as inter alia tax shelter advisor -- Written retainer agreements were executed by corporation and S for consecutive one-year terms in 1996 and 1997 -- In 1998, Minister for National Revenue introduced amendments to Income Tax Act to end TAPSF tax shelters -- Corporation made inquiries of S as to possibility of continuing to carry on TAPSF business, and S advised corporation that no remedies were available and that tax sheltered financing was at an end -- Corporation then ceased to carry on business of TAPSF provision -- After expiry of written retainer agreements, but while S and defendant law firm were still engaged in performance of legal work for corporation, S and former employee of corporation sought advance tax ruling on potential exception to Act amendments which would permit resumption of form of TAPSF -- Managing partner of law firm instructed S to avoid acting in conflict of interest in relation to corporation -- At no time prior to receipt of ruling did S advise corporation of his relationship with former employee or of application for advance tax ruling -- Advance tax ruling was favourable and, by prior agreement, S obtained shares in company which proceeded to exploit Act exception and generate substantial revenues -- Corporation was unable to organize in time to exploit Act exception -- Corporation brought action against, inter alia, law firm for damages, accounting and disgorgement of profits for breach of S's fiduciary duty and duty of confidentiality -- Action as against law firm was dismissed and corporation appealed -- Appeal allowed in part -- Law firm and its partners were not joint tortfeasors with respect to S's breaches of fiduciary duty, as firm and partnership were not subjectively aware of, reckless as to or wilfully blind to S's actions and as managing partner on behalf of firm and partners

cautioned S against breaches -- Likewise, firm and partners were not vicariously liable, as S's tortious actions were outside of ordinary business conduct of firm and as firm received no profits from breach -- Law firm and partners were required to refund any fees paid by corporation to firm after S committed first breach of fiduciary duty, and to disgorge any profits earned by way of fees or related funds from any person or organization profiting from S's conduct.

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Continuation of appeal 2005 BCCA 35, regarding liability of "Davis", the law firm of which lawyer 'S' was a partner. Here, the plaintiff sought "disgorgement" from Davis of all profits received by S from his participation in the 'Sentinel Hill' business, as well as all profits received by Davis (in the form of legal fees) from Sentinel Hill, and return of all legal fees paid by the plaintiff to Davis.

Held: Claims must be analyzed in terms of direct and vicarious liability. Claim for "disgorgement" of S's profits from Sentinel Hill dismissed on both branches. Davis was not shown to have participated in the breach of duty which resulted from S's taking a personal interest in Sentinel Hill; nor to have been aware of, wilfully blind to, or reckless towards this breach. *Barnes v Addy* (1874) L.R. 9 Ch. App. 244 and *Canson Enterprises v Boughton & Co.* (1995) 11 B.C.L.R. (3d) 262 (BCCA) applied. Davis found not to be vicariously liable, since S's action in taking interest did not occur in ordinary course of business, and Davis could not "disgorge" what it had not received.

With respect to the plaintiff's claim that Davis disgorge "profits" it had received from Sentinel Hill, it was unnecessary to consider the direct liability branch, since vicarious liability was made out. These profits were earned in firm's course of business, and regardless of firm's state of knowledge, firm was liable for its partner's breach of duty in purporting to act for both the plaintiff and Sentinel Hill.

Davis was also ordered to repay to the plaintiff the fees it had paid from and after January 1, 1998, the approximate date when conflict arose.

Discussion of claims regarding Davis's use of precedents supplied by the plaintiff and others created for use by the plaintiff.

Alastair Gale Inc. for the reproduction of architectural and structural plans designed by J. Morris Woolfson, architect, for the property located at 218 Maclaren Street in Ottawa [Re Non-exclusive licence issued to] File 2005-UO/TI-01, <http://www.cb-cda.gc.ca/unlocatable/147-e.pdf> (CopBd; 2005-01-26)

<i>Alastair Gale Inc (Re)</i> 2005 UO-TI-01	for the reproduction of architectural and structural plans designed by J. Morris Woolfson, architect, for the property located at 218 Maclaren Street in Ottawa	2005-01-26 2005-03-31	Renovation purposes	\$25	None
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Athéna Éditions Inc. v Cruz Herrera [2005] CarswellQue 5541, AZ-50325978, JE 2005-1801, [2005] JQ 9968, REJB 2005-93286, 2005 IJCan 26739, <http://www.canlii.org/qc/jug/qccq/2005/2005qccq60874.html> (QueCt-CivDiv; 2005-07-27) Dortelius J.

Résumé

Action en résiliation de contrat et en dommages-intérêts. Accueillie en partie.

En 2003, la défenderesse a été la récipiendaire du prix Athéna, qui consiste en la publication d'un livre tiré de son mémoire de maîtrise. La demanderesse devait supporter les coûts du travail éditorial, de mise en pages et de maquette de la couverture de l'ouvrage. Le 20 juillet, la défenderesse a remis les documents manquants. Dès lors, la mise sous presse était prévue pour la première semaine d'août et le lancement du livre devait avoir lieu le 22 septembre suivant. Par la suite, la défenderesse a modifié le texte en corrigeant des notes de bas de page et en ajoutant une

liste d'acronymes. La demanderesse a effectué les modifications qu'il était encore possible d'ajouter compte tenu de l'étape où le manuscrit était rendu. La défenderesse a finalement appris le titre du livre en réponse à son courriel à ce sujet le 10 septembre. Insatisfaite du titre choisi par la demanderesse, elle l'a mise en demeure de suspendre l'impression du livre. Le lendemain, la demanderesse a reçu les livres de l'imprimeur. Le 29 septembre, elle a mis la défenderesse en demeure de résilier le contrat, lui réclamant aussi des dommages-intérêts pour les pertes subies. Selon la défenderesse, il avait été convenu qu'elle participerait au choix du titre. Elle prétend que celui imposé par la demanderesse porte atteinte à son honneur et à sa réputation.

Décision

Le contrat d'édition est un contrat innommé. Au moment où la défenderesse a mis la demanderesse en demeure de suspendre l'impression, elle n'était pas en mesure de déterminer que le livre contenait des erreurs importantes. Dès le 30 juillet, la demanderesse s'était acquittée de son obligation de lui transmettre les épreuves finales. Elle a effectué les corrections acceptables avant la mise sous presse. Elle n'était pas obligée d'ajouter les modifications effectuées après cette date. Rien n'indique que le refus d'ajouter ces modifications ait eu pour effet de dénaturer le texte du mémoire. Le choix de la demanderesse n'était ni abusif ni contraire aux normes applicables en matière d'édition. Par ailleurs, le contrat n'indique pas que la défenderesse s'était réservé le droit de choisir le titre du livre ni que la demanderesse pouvait le faire unilatéralement. Selon les experts, l'éditeur impose rarement un titre à l'auteur. Or, la demanderesse a choisi le titre de façon unilatérale et n'en a avisé la défenderesse que par la suite. En imposant un titre à l'auteure, elle n'a pas agi conformément aux usages. Même si le titre n'enlève rien à l'oeuvre, cela ne suffit pas à l'exonérer de sa responsabilité envers la défenderesse. Ayant omis d'exécuter une partie de son obligation contractuelle, elle a engagé sa responsabilité envers cette dernière. Étant donné que le lien de confiance est rompu entre les parties, il y a lieu de résilier le contrat. Faute de preuve d'une faute de la part de la défenderesse, la demanderesse n'a pas droit à l'indemnité pour dommages moraux qu'elle réclame. Les dommages-intérêts doivent être limités à ceux qui étaient prévisibles au moment de la signature du contrat. En l'espèce, le but de la publication étant la remise d'un prix et non le profit de la vente, le dommage est nul. Toutefois, les frais d'entreposage et de pilonnage doivent être supportés en parts égales entre les parties.

91 Considérant que le contrat d'édition liant les parties est un contrat *intuitu personae* et que l'exécution forcée n'est pas applicable, pour un tel contrat.

[95] Le Tribunal juge non fondée la réclamation d'Athéna pour des dommages moraux, car d'une part le contrat ne donne pas ouverture à l'octroi de tels dommages, d'autre part, il n'y a pas de preuve que Madame Cruz Herrera ait commis une faute contractuelle ou extracontractuelle pouvant engager sa responsabilité pour des dommages moraux.

[96] Le Tribunal juge bien fondée la prétention de la défenderesse voulant que les dommages doivent se limiter aux revenus d'exploitation du livre.

[97] L'analyse du contrat et de la preuve amène le Tribunal à conclure que les dommages et intérêts prévisibles lors de la signature du contrat consiste en la perte de revenu pour Athéna, sur l'exploitation du livre.

[98] Le Tribunal retient du témoignage de Madame Laprise qu'Athéna ne s'attendait pas à faire un profit sur les 500 exemplaires du livre. Le but de la publication du livre était de remettre un prix et non pas de tirer un profit. Dans un tel contexte, les dommages prévisibles sont nuls.

Bazinet (Lise), Ottawa, Ontario, for the reproduction of architectural plans created by Trend Setter Development Limited for the property located at 24 Mary Drive in Ottawa [Re Non-exclusive licence delivered to] File No. 2005 UO/TI 37; also, <http://www.cb-cda.gc.ca/unlocatable/167-e.pdf> (CopBd; 2005-09-26)

Bazinet (Re) 2005-UO/TI-37	for the reproduction of architectural plans created by Trend Setter Development Limited for the property located at 24 Mary Drive in Ottawa	2005-09-26 2005-12-31	Construction	\$25	None
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*Béton projeté Mah Inc. v Larivière** 2005 IJCan 23033, 2005 CarswellQue 6026, REJB 2005-92135, <http://www.canlii.org/qc/jug/qccs/2005/2005qccs58706.html> (Que SupCt; 2005-06-10); motion for leave to appeal refused 2005 CarswellQue 9968 (Que CA; 2005-08-11)

[2] Le Commissaire Larivière a alors décidé que les travaux ayant fait l'objet de la réclamation 30-109084 sont, au sens de la Loi sur les relations de travail, la formation professionnelle et la gestion de la main-d'oeuvre dans l'industrie de la construction (L.R.Q., v R-20), ci-après identifiée comme la Loi R-20, des travaux de construction d'un bâtiment qui y sont assujettis.

[3] Les travaux en question consistaient dans la confection de faux arbres, de faux rochers et d'une fausse ruine indonésienne; ces travaux ont été exécutés dans la serre exotique au Jardin zoologique de Québec

[36] Ces commissaires, dans les décisions en question, se sont toujours référés à la notion « d'usage auquel il le destine » pour déterminer ce qu'on doit entendre par « bâtiment ».

[37] Il n'y a rien d'absurde et d'insensé à décider qu'un bâtiment n'est pas simplement une coquille vide mais qu'il doit comprendre aussi ce qui est érigé à l'intérieur « pour les fins de l'usage auquel il est destiné ».

[38] Il importe de souligner que le Commissaire LARIVIÈRE écrit dans sa décision que les travaux d'érection du bâtiment, entre autres, l'érection des passerelles et l'aménagement intérieur de la serre, étaient en cours lors de la réalisation des travaux sur lesquels il a eu à se prononcer. Ceux-ci, en l'occurrence des travaux relatifs aux faux arbres, aux faux rochers et à la fausse ruine indonésienne ont été exécutés sur les lieux du chantier de construction afin que le bâtiment puisse servir à l'usage auquel il était destiné, en l'occurrence une serre exotique.

Board of Governors Archives at Exhibition Place for the reproduction and public performance of the films: Railyard and Gimme a Break [Re Non-exclusive licence issued to] File 2005-UO/TI-26, <http://www.cb-cda.gc.ca/unlocatable/164-e.pdf> (CopBd; 2005-09-01)

Board of Governors Archives at Exhibition Place (Re) 2005-UO/TI-26	for the reproduction and public performance of the films: Railyard and Gimme a Break	2005-09-01 2005-09-07	Commercial/ documentary	\$1	None
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BMG Canada Inc v John Doe [2004] CarswellNat 835, 2004 FC 488, [2004] 3 FCR 241, 32 CPR (4th) 64, 239 DLR (4th) 726, [2004] FTR TBE. AP010, 250 FTR 267, <http://reports.fja.gc.ca/fc/src/shtml/2004/pub/v3/2004fc34396.shtml>, in French at REJB 2004-60025, [2004] CarswellNat 2774, 2004 CF 488, 2004 FC 488, <http://decisions.fct-cf.gc.ca/fct/2004/2004fc488.shtml> and <http://decisions.fct-cf.gc.ca/cf/2004/2004cf488.shtml> and <http://recueil.cmf.gc.ca/cf/src/shtml/2004/pub/v3/2004cf34396.shtml> (FC; 2004-03-31); revd [2005] CarswellNat 1300, [2005] FCJ 9858, 2005 FCA 193, 39 **CPR** (4th) 97, 252 DLR (4th) 342, 334 NR 268, <http://decisions.fca-caf.gc.ca/fca/2005/2005fca193.shtml> (FCA; 2005-05-19) Sexton J.

The plaintiffs were the largest music providers claiming to collectively own more than 80 per cent of the sound recordings sold to the public in Canada. The plaintiffs claimed that 29 Internet users downloaded more than 1000 songs by means of a peer-to-peer file sharing program, and that these users infringed the plaintiffs' copyright by providing access to their files thereby reproducing or distributing the songs to other Internet users. The users used 29 distinct IP addresses to carry out their infringing activities. The plaintiffs had commenced an action for copyright infringement against the 29 users, but being unaware of their identities apart from their Internet pseudonyms, named the users as defendants in a John Doe action.

The plaintiffs had moved, under Rules 233 and 238 of the Federal Court Rules, 1998, SOR/98-106, for an order requiring the respondent Internet Service Providers who administered the 29 IP addresses to disclose the identities of the defendants. The motion was supported by an affidavit of the president of the company retained by the plaintiffs to investigate the file sharing of the plaintiffs' songs.

The motions judge had dismissed plaintiffs' motion. The motions judge had held that: (1) Rule 233 was not applicable; (2) the supporting affidavit was deficient because it was based on information that the affiant obtained from his company's employees and the affiant gave no reasons for his belief; (3) there was no clear evidence of a relationship between the IP addresses and the pseudonyms; (4) Rule 238 was applicable and the test for discovery under the rule was the same as that for granting an equitable bill of discovery; (5) the test for granting an equitable bill of discovery included that the applicant establish a prima facie case against the unknown alleged wrongdoer; and (6) the plaintiffs had failed to establish a prima facie case of infringement of copyright. The plaintiffs appealed.

Held, the appeal should be dismissed without prejudice to the plaintiffs' right to commence a further application for disclosure of the identity of the 29 defendants.

Standard of Review

The standard of review of the correct test for granting equitable bills of discovery was correctness. The standard of review of the motions judge's findings of fact was a palpable and overriding error.

Rule 233

Rule 233 provides for the grant of an order for the production of any document in the possession of a person who is not a party to the action. Since no documents in readable format existed but would have had to have been created, Rule 233 had no application.

Affidavit Evidence

Rule 81 provides that affidavits are to be confined to facts within the personal knowledge of the deponent except on interlocutory motions in which a statement as to the deponent's belief, with the grounds therefor, may be included. The plaintiff's affidavit contained hearsay on crucial facts with no grounds provided for accepting the hearsay evidence. For this reason alone the appeal was dismissed. However, it was necessary to address the comments of the motions judge as to the procedure to obtain the identity of the 29 defendants, the test to be applied in compelling the disclosure of the identities and copyright infringement.

Rule 238

Rule 238 permits the granting of an order to examine for discovery any person not a party to the action who might have information on an issue in the action. Rule 238 was broad enough to permit discovery in cases such as that commenced by the plaintiffs. The court has jurisdiction to limit the discovery to the submission of written questions and the furnishing of written answers and to limit the scope of the discovery to revealing the identity of the persons complained of.

The criteria for granting an equitable bill of discovery are applicable to a proceeding brought under Rule 238 for the disclosure of the identity of a person complained of. The plaintiff must show a bona fide claim and not a prima facie case. The plaintiffs could have established a bona fide claim by showing that they intended to bring an action for copyright infringement based on the information sought and that there was no other improper purpose for seeking the information. In addition, the plaintiff must show that the information sought could not have been obtained from another source and consideration must be given to the costs incurred by the respondent in assembling the information. Finally, the public interest in favour of disclosure must outweigh the legitimate privacy concerns of the person sought to be identified. Privacy rights are significant and must be protected. Privacy rights must, however, yield to public concerns for the protection of intellectual property rights where infringement threatens to erode them. Caution must be exercised in ordering disclosure of identities to ensure that privacy rights are invaded in the most minimal way. If a disclosure order is granted, directions should be given as to the type of information disclosed and the manner in which it can be used.

Copyright Infringement

The motions judge should not have made conclusions on copyright infringement at the very preliminary stages of the action. Such conclusions required consideration of evidence as well as the applicable law. If the action proceeded further, it would be on the basis that no findings on the issue of infringement had been made.

Bonnette v Entreprise Dominion Blue Line Inc. (2003), JE 2003-584, SOQUIJ AZ-50158890 [2003] CarswellQue 49, [2003] JQ 102, REJB 2003-36898, 2003 IJCan 40842, <http://www.canlii.org/qc/jug/qccs/2003/2003qccs10185.html> (QueSupCt; 2003-01-22); affd [2005] CarswellQue 945, [2005] JQ 2903, SOQUIJ AZ-50306441, JE 2005-817, 2005 CarswellQue 945, [2005] JQ 2903, REJB 2005-88514, 2005 QCCA 342 <http://www.canlii.org/qc/jug/qcca/2005/2005qcca342.html>, in English translation 41 CPR (4th) 331 (QueCA; 2005-04-05); motion for leave to appeal to the Supreme Court of Canada dismissed [2005] SCCA 288, 2005 CarswellQue 10016, 2005 CarswellQue 10017 (2005-11-17)

The corporate plaintiff printed and sold accounting products such as payroll books and payroll statements. The individual plaintiff was a shareholder and president of the corporate plaintiff. The defendants were a creator of payroll books and statements, the vendor of such books and statements, a corporate director and shareholder and employees of the creator. The defendant printed and distributed accounting products, including the plaintiffs' products. The two businesses negotiated unsuccessfully for the defendants to buy the corporate plaintiff's business and the copyrights on the accounting materials, but negotiations broke off. The defendants then began selling their own line of payroll books and payroll statements.

The plaintiffs sued for copyright infringement and unfair competition, and the defendants countersued for defamation and unfair competition. The trial judge characterized the payroll books and payroll statements as compilations, and concluded that the plaintiffs' accounting materials were not protected by copyright because they were not original works under the Copyright Act, R.S.C. 1985, v C-42. The trial judge also concluded that there was no unfair competition. The trial judge dismissed the defendants' counterclaim.

Held, the appeal should be dismissed with costs.

The payroll books and payroll statements are subject matter that is covered under the Copyright Act. However, the works were not original. Originality requires that the work not be copied and that the author exercise skill and judgment.

The payroll book's content was generally required by law and the order of that information was imposed by practical considerations. The table format could not be copyrighted because it was a method of working. Although some portions were the result of the author's exercise of skill and judgment and satisfied the criterion of originality, those parts were not substantial, in either qualitative or quantitative terms. The payroll books overall were not original works protected by copyright.

The content of the payroll statements likewise contained essentially the information required by law. The layout of the information was the result of

the author's selection and experience and required a sufficient degree of judgment and skill. The individual plaintiff was the copyright owner for the payroll statements. The plaintiffs had certificates of copyright registration for the payroll statements. The presumption of ownership in s. 53(2) of the Copyright Act applied and was not rebutted.

The defendants did not infringe the copyright in the payroll statements. Even if the defendants consulted the plaintiffs' statements, the defendants did not create copies or disguised imitations of the plaintiffs' statements. The defendants exercised skill and judgment in creating their own and there was no similarity between them except for elements that were not protected.

The trial judge correctly ruled that there was no unfair competition by the defendants. The defendants acted in good faith in the negotiations for the purchase of the corporate plaintiff's business and in competing with the corporate plaintiff.

The action was dismissed with respect to the payroll books, for different reasons than the trial judge; the plaintiffs had no right to damages with respect to the payroll statements; and the trial judge's conclusions on unfair competition are confirmed. The appeal was therefore dismissed.

Résumé

Appel d'un jugement de la Cour supérieure ayant rejeté une demande d'injonction permanente et en dommages-intérêts pour violation de droits d'auteur. Rejeté.

L'appelante, une entreprise qui imprime et vend des produits comptables, et son président ont intenté une action contre les intimés, une entreprise d'impression et de distribution de produits de comptabilité, son unique administrateur et certains employés, soutenant qu'ils avaient violé les droits d'auteur sur leurs livres et relevés de paye et qu'ils s'étaient livrés à une concurrence déloyale. Le juge de première instance a conclu que les livres et relevés de paye étaient des oeuvres littéraires mais que, n'étant pas des oeuvres originales, ils ne pouvaient faire l'objet de droits d'auteur. Il a déclaré que la présentation des livres de paye suivait une méthode dictée par les lois, règlements et pratiques comptables. Son analyse n'a pas fait état des relevés de paye au motif qu'ils n'avaient pas été mis en preuve. Il a également conclu à l'absence de concurrence déloyale de la part des intimés.

Décision

La Cour estime que les appelants n'étaient pas titulaires de droits d'auteur sur les livres de paye, mais pour des motifs différents de ceux énoncés par le juge de première instance. Premièrement, il y a lieu de rejeter la prétention voulant que les livres et relevés de paye ne soient pas susceptibles de faire l'objet de droits d'auteur parce qu'ils ne constituent que des méthodes de travail. Même s'ils prévoient une méthode de travail, certains aspects ne peuvent être considérés comme un élément d'une méthode ou une méthode en soi. Toutefois, cette question est théorique puisqu'une idée ne peut faire l'objet d'un droit d'auteur; seule son expression le peut. Deuxièmement, la qualification des livres et relevés de paye de

compilations n'est pas certaine. Bien que les appelants aient dû procéder à l'arrangement de certaines données, leur intervention était limitée puisque celles réellement compilées ne seront ajoutées qu'ultérieurement par l'utilisateur. De plus, les livres et relevés de paye ne sont considérés comme des oeuvres littéraires que s'ils respectent les exigences qu'énonce la *Loi sur le droit d'auteur*. D'une part, l'oeuvre doit être originale pour bénéficier de la protection du droit d'auteur, et il appartient à la personne qui prétend détenir un droit de démontrer qu'elle est originale. L'article 53 (2) de la loi prévoit une présomption de ce droit lors de la mise en preuve d'un certificat d'enregistrement. Selon l'article 34.1 (1), il y a alors renversement du fardeau de preuve et, en l'espèce, c'est la défenderesse qui doit démontrer que les livres et relevés n'étaient pas protégés par un droit d'auteur. Aux termes de l'arrêt de la Cour suprême du Canada *CCH Canadienne Ltée v Barreau du Haut-Canada*, (C.S. Can., 2004-03-04), 2004 CSC 13, SOQUIJ AZ-50223890, JE 2004-602, [2004] 1 R.C.S. 339, pour qu'une oeuvre soit originale, elle doit avoir nécessité l'exercice du talent et du jugement de ses auteurs. En l'instance, les livres de paye ne sont pas originaux. L'employeur a l'obligation légale de colliger dans un seul registre certaines données sur les gains et déductions des employés. Ainsi, la portion principale des livres est constituée de tableaux reflétant ces données obligatoires. Celles-ci n'ont donc pas été sélectionnées grâce au jugement et au talent de leur auteur, qui n'avait aucun choix à faire quant à leur ordre d'inscription puisqu'il n'existe qu'une seule façon de procéder. De plus, la disposition des informations sous forme de tableaux constitue une méthode de travail et n'est pas protégée. Quant à la portion des livres contenant des renseignements nominatifs sur les employés, elle est également commandée par les exigences de la réglementation. L'inscription de renseignements non requis a nécessité un exercice de jugement, mais cet apport a été négligeable, car il ne porte que sur des détails. Or, l'article 3 (1) prévoit un droit d'auteur qui vise la totalité ou une partie importante d'une oeuvre. Il en va de même de la page des livres de paye indiquant divers totaux et l'état des remises aux gouvernements, qui n'a pas nécessité un exercice suffisant du talent et du jugement pour conclure à son originalité.

Quant aux relevés de paye, le juge de première instance ne les a pas considérés, ayant conclu qu'ils n'avaient pas été produits. Or, il a omis de tenir compte de la présomption prévue à l'article 34.1 (1). Ces relevés ayant été enregistrés, ils devenaient protégés par les droits d'auteur. Les appelants n'avaient d'autre obligation que de les déposer, car il appartenait aux intimés de mettre en preuve les éléments permettant de renverser la présomption, ce qu'ils n'ont pas fait. Ainsi, ce sont les intimés qui devaient subir les conséquences de l'insuffisance de la preuve et non les appelants. De plus, le contenu des relevés de paye étant déterminé par la *Loi sur les normes du travail* et aucun ajout significatif n'ayant été fait, il n'y a eu aucun exercice du jugement et du talent. Par contre, l'aspect général des relevés permet de conclure à cet exercice, et la présomption selon laquelle les relevés sont originaux subsiste. Quant à l'identification du titulaire du droit d'auteur sur les relevés de paye, le premier juge n'y a pas procédé. Or, la présomption établie à l'article 53 (2) de la *Loi sur le droit d'auteur*, selon laquelle la personne inscrite est titulaire du droit d'auteur, n'a pas été repoussée. La prétention voulant qu'une erreur quant à une date de publication rende le certificat invalide est mal fondée puisqu'il est impossible de faire déclarer un certificat invalide dans l'exercice d'une procédure pour

violation devant la Cour supérieure. Finalement, il n'y a eu aucune violation du droit d'auteur en ce qui concerne les relevés de paye. Bien que les intimés aient consulté les relevés de paye des appelants, ils ne les ont pas copiés; ils les ont entièrement repensés. La conclusion du premier juge selon laquelle les intimés ne s'étaient pas livrés à une concurrence déloyale ne comporte aucune erreur justifiant l'intervention de la Cour. En effet, les renseignements obtenus par les intimés lors de négociations portant sur l'achat de l'entreprise appelante n'ont pas été utilisés pour les concurrencer.

Breakthrough Films & Television Inc for the off-camera narration of eight extracts from the book Action with Seaforths written by Charles Monroe Johnson. [Re Non-exclusive licence issued to] File 2004-UO/TI-03, <http://www.cb-cda.gc.ca/unlocatable/156-e.pdf> (CopBd; 2005-05-10)

<i>Breakthrough Films & Television Inc (Re) 2004-UO/TI-33</i>	for the off-camera narration of eight extracts from the book Action with Seaforths written by Charles Monroe Johnson	2005-05-10 2009-12-31	Commercial/ documentary	\$150	Access Copyrig ht
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*British Columbia Institute of Technology, for the digitization of two segments from the film entitled "Learning to Build Wings Over Canada: Brisbane Aviation Co. Ltd. [Re Application by the] File No. 2005 UO/TI 36; 2005 **CarswellNat** 4078, <http://www.cb-cda.gc.ca/unlocatable/other/6-b.pdf>, in French at 2005 CarswellNat 4079 (Copyright Board; 2005-11-17)*

<i>British Columbia Institute of Technology (Re Application by the) 2005-UO/TI-36</i>	for the digitization of two segments from the film entitled "Learning to Build Wings Over Canada: Brisbane Aviation Co. Ltd."	2005-11-17 REFUSED			
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Applicant wished to reproduce, in digital library of aviation training programs in British Columbia between 1935 and 1985, excerpts from silent black and white film entitled "Learning to Build Wings Over Canada: Brisbane Aviation Co. Ltd" -- Date of creation of film was unknown but was believed to be circa 1941 -- Film did not contain credits and no one knew who had made film -- Applicant was unable to confirm if work had been published -- Applicant attempted to locate copyright owner by searching records, various search engines and archives, and by requesting information from professional associations, from newspapers and from employees and instructors of applicant's campus -- Applicant also contacted National Film Board of Canada -- Applicant applied to obtain licence pursuant to s. 77 of Copyright Act -- Application dismissed -- Section 77(1) allows Copyright Board to issue licence to use work whose rights holder could not be located at certain conditions -- One condition is that work be published and another that copyright subsist -- Film was anonymous work -- Section 6.1 of Act provides that copyright in anonymous work subsists until earlier of fifty years following end of year during which work was first published or seventy-five years following end of year during which work was made -- If film was not published, board could not issue licence even though copyright in film

would subsist until December 31, 2016 -- If film was published, copyright in film no longer subsisted -- Board could not issue licence requested because it did not have power to do so

British-Columbia (Ministry of Environment), Re, 2005 CanLII 28522, <http://www.canlii.org/bc/cas/bcipc/2005/2005bcipc10032.html>, <http://www.oipc.bc.ca/orders/OrderF05-05.pdf> (BC Information and Privacy Commissioner; 2005-08-11) Loukidelis IPC-BC

Summary: The applicant environmental organization requested access to information in electronic format and the Ministry provided paper records instead. After the notice of inquiry was issued, but before inquiry submissions, the Ministry released the records in the requested electronic format. The matter is moot and no other factors warrant holding an inquiry in this case.

[32] As another passing observation, I would hope that—whatever the limits of their statutory obligations might be under s. 6 [of the *Freedom of Information and Protection of Privacy Act*,]—public bodies will wherever possible provide access applicants such as Raincoast with electronic records where requested, as the Ministry ultimately did here. The Act's explicit accountability goals are well served by such a service-oriented approach to access to information requests. [Fn 12: Nor do I see, in this regard, countervailing concerns arising from electronic disclosure. Concerns about copyright, certainly, are addressed by the *Copyright Act* whether the medium of the record is paper or electronic—any copyright in a disclosed record survives disclosure under access to information. For one thing, s. 32.1(1) of the *Copyright Act* (Canada) provides that “it is not an infringement of copyright for any person” to disclose a record under a provincial access to information statute. Section 32.1(2) confirms that anyone to whom a record is disclosed cannot do anything that only the copyright owner can do.]

Canada Allied Diesel Company Ltd. v RTI Turbo inc. [2005] JQ 15919, 2005 IJCan 39802, <http://www.canlii.org/qc/jug/qccs/2005/2005qccs61510.html> (QueSupCt; 2005-10-25) Langlois J.

[40] En vertu de ces dispositions [2, 3 and 13 of the *Copyright Act*], CAD est titulaire du droit d'auteur sur les photographies. Ce droit comporte le droit exclusif de les produire, reproduire et communiquer par télécommunication ou d'autoriser un tiers à le faire.

[41] La publication des photographies sur le site [Internet] constitue un acte de cette nature posé sans l'assentiment de CAD.

[42] De plus, la Loi édicte de façon plus spécifique que la mise en circulation d'un exemplaire d'une œuvre dans un but commercial constitue une violation du droit d'auteur.

[48] La contravention à la Loi, telle que le tribunal en conclut en l'espèce, résulte de la mise en circulation d'œuvres appartenant à CAD en l'absence d'autorisation et de la connaissance ou de l'aveuglement volontaire de Toyin et Wallace quant à cet état de fait. Cela dépasse la simple faute civile

et constitue une contravention à la loi qui donne droit à CAD à des dommages exemplaires, l'objectif visé par l'attribution de tels dommages étant principalement de décourager une conduite reprochable en vertu de la loi et de prévenir toute récidive.

Canadian Centre for Architecture for the reproduction of photographs [Re Application by The] 2004-UO/TI-32, 2005 CarswellNat 484, [2005] CBD 6, <http://www.cb-cda.gc.ca/unlocatable/other/3-b.pdf>, in French at 2005 CarswellNat 485 (CopBd; 2005-01-17)

Canadian Centre for Architecture (Re) 2004-UO/TI-32	for the reproduction of photographs	2005-01-17 REFUSED			
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[2] The applicant wishes to reproduce and display, in the context of an exhibition entitled *Les années 60: Montréal voit grand*, three photographs taken in 1955, 1957 and 1967 and which are at the Public Archives of Canada. Subsection 77(1) of the Act provides that the Board can licence the use of works protected by copyright whose rights holder cannot be located only if the work has been published. The Board sometimes relies on indicia that would not meet the civil burden of proof to conclude that a work probably has been published. In this instance, however, there is a complete absence of evidence: neither the National Archives of Canada nor the applicant are able to provide any hint whatsoever of publication.

Canadian Copyright Licensing Agency ("Access Copyright") v U-Compute [2005] FCJ 2030, 2005 FC 1644, 2005 CarswellNat 4154, <http://decisions.fct-cf.gc.ca/fct/2005/2005fc1644.shtml> (FC; 2005-12-07)

[1] The Canadian Copyright Licencing Agency ("Access Copyright" or the "plaintiff") seeks a six-month imprisonment of Riaz A. Lari (the "defendant") in contempt proceedings brought in this Court pursuant to Rules 466 to 472 of the *Federal Courts Rules, 1998*, (the "Rules").

[2]The nub of the plaintiff's allegations against the defendant is that Mr. Lari is guilty of contempt because he has disobeyed several orders of this Court contrary to paragraph 466(b) of the Rules.

[85] Applying the relevant factors to the crafting of an appropriate penalty, I find that all factors weigh heavily against Mr. Lari and I say this in the context of my finding of his lack of credibility. The contempt offence was a serious one. I accept the evidence given on behalf of Access Copyright that Mr. Lari was, in September of 2004, at a time when demand was at one of its two highest peaks during the university year, intimately involved in an illegal high volume operation of making and selling illegally copied textbooks. The purpose behind Access Copyright is not simply a private purpose but a public one. (See *Canada (Canadian Private Copying Collective) v Canadian Storage Media Alliance*, a decision of the Federal Court of Appeal cited 2004 FCA 424.

[86] General deterrence is an important factor. Mr. Lari told us he knew of similar illegal photocopy shops not only around Concordia University but around l'Université de Montréal.

[87] The Court has no real evidence as to the profits made from the illegal operation. Mr. Lari did not record his sales of copied textbooks nor did he bring financial statements about his operation. In testimony before me, he intimated he made profits but those profits disappeared because he had to pay his own legal fees, those of Access Copyright in previous proceedings and certain initial installments on damages which he agreed to pay in respect of the consent judgment issued by Mr. Justice Harrington.

[88] Mr. Lari's past conduct speaks for itself: two previous contempt findings by this Court against him and the gearing up of the illegal operation immediately after he had consented to judgment in July of 2004.

[89] I doubt the sincerity of his apology and I have no evidence of substantial good faith.

[90] Weighing all of the relevant factors points to a substantial penalty, namely, incarceration which is what Access Copyright seeks and what Access Copyright told Mr. Lari it would be seeking should he further breach this Court's orders.

[91] I find attractive, with one modification, the alternative suggestion which counsel for Access Copyright put forward and which counsel for Mr. Lari endorsed: the imposition of a prison sentence but its immediate suspension subject to Mr. Lari meeting specific conditions which, if any were breached, on motion to the Court, could lead to his immediate incarceration.

[92] On balance, in the Order I am making hereunder, the financial conditions imposed, the condition of community service, the number of hours which I have increased from the amount suggested by counsel, and his obligation to respect the permanent injunctions in place, provide Mr. Lari an opportunity to make reparation and to contribute to society.

Order [...] As an appropriate penalty, this Court orders:

(1) *RIAZ A. LARI* is hereby sentenced to a six-month term of imprisonment at Montée St-François Institution, 600 Montée St-François, Laval, Quebec, H7C 1S5;

(2) *RIAZ A. LARI* is hereby ordered to pay the costs of these contempt proceedings to the plaintiff on a reasonable solicitor-client scale to be taxed forthwith by a taxing officer inclusive of disbursements and GST; such costs shall be paid by Mr. Lari thirty (30) days after taxation.

(3) The imposition of the prison sentence in paragraph (1) is hereby suspended on the following terms:

(a) *RIAZ A. LARI* shall at all times comply with the terms of the permanent injunctions contained in paragraphs (1) and (2) of Justice Harrington's July 19, 2004 judgment;

(b) *RIAZ A. LARI* shall, within thirteen (13) months of the date of this Order perform four hundred (400) hours of community service at a hostel operated by the Salvation Army in Montreal or its suburbs by performing such volunteer work as may be directed by the Director of such hostel (Director). The Director shall inform the Court and counsel for the plaintiff in writing when such arrangement has been put into place. The performance of the community service shall be verified by the Director forwarding a certificate of performance with the Court and with counsel for the plaintiff no later than January 31, 2007.

(4) In the event the plaintiff wishes to prove that Mr. Lari has not complied with one or more of the terms set out in this Order, the plaintiff shall be at liberty to seek a warrant of committal from any Federal Court judge, on an *ex parte* basis or otherwise, as directed by such Judge, and *RIAZ A. LARI* shall, upon the Court finding a breach of one or more of such terms be committed to jail for six months.

Canadian Private Copying Collective (CPCC) v Computer Warehouse Outlet Inc. 2005 FC 770, 2005 **CarswellNat** 1507, 41 CPR (4th) 481, <http://www.canlii.org/ca/cas/fct/2005/2005fc770.html>, <http://decisions.fct-cf.gc.ca/fct/2005/2005fc770.shtml> (FC; 2005-05-31) Martineau J

Application by the Canadian Private Copying Collective for an order to require the respondent Computer Warehouse Outlet to pay levies owed under the private copying tariffs certified under the Copyright Act. The Act created a private copying scheme to ensure that copyright holders were paid for private copies that were made of musical works, performances and sound recordings they created. The Collective was the body that collected and distributed private copying levies payable by the manufacturers and importers of blank audio recording media to eligible authors, performers and makers of sound recordings. Outlet was alleged to have imported and sold blank audio recording media without reporting its activities to the Collective. It was informed by the Collective of its obligation to file reports of its sales and pay levies to it based on those reports. The reports indicated that Outlet owed \$79,884 in levies. An audit indicated that the total amount owed was \$87,769, which included interest on the unpaid amount.

HELD: Application allowed. Outlet was ordered to pay unpaid levies of \$83,664 and outstanding interest of \$4,105. It was also required to comply with the reporting and payment requirements of the Act as long as it remained a manufacturer or importer. Outlet was an importer and seller of blank audio recording media in Canada. It was required file reports and to pay levies. It failed to do so. The levy was based on the fact that Outlet imported and disposed of 398,400 recordable CDs during the relevant period. The applicable tariff indicated that the levy rate was 21 cents for each recordable CD imported and sold or disposed of in Canada. Outlet also had to pay interest pursuant to the tariff. Collective was entitled to a court order to compel Outlet to comply with its statutory obligations. It further had to pay costs at the high end of the tariff because Outlet was clearly liable to make these payments. Furthermore, Outlet unnecessarily lengthened the duration of the proceedings and forced Collective to expend considerable efforts and disbursements to recover the small amount of levies and interest that were outstanding.

Canadian Private Copying Collective v Amico Imaging Services Inc [2004] CarswellNat 846, 2004 FC 469, 249 FTR 312, <http://www.canlii.org/ca/cas/fct/2004/2004fc469.html> and <http://decisions.fct-cf.gc.ca/fct/2004/2004fc469.shtml>, in French <http://www.canlii.org/ca/jug/cfpi/2004/2004cf469.html> and <http://decisions.fct-cf.gc.ca/cf/2004/2004cf469.shtml>, [2004] CarswellNat 3832 (FC; 2004-03-26); 42 **CPR** (4th) 426, 2005 CarswellNat 2721, 2005 FC 1228, <http://www.canlii.org/ca/cas/fct/2005/2005fc1228.html> and <http://decisions.fct-cf.gc.ca/fct/2005/2005fc1228.shtml> (FC; 2005-09-07) Hugessen J.

In an action at a late stage for the recovery of private copying levies imposed under the provisions of the Copyright Act, R.S.C. 1985, v C-42, the plaintiff brought a motion contemporaneous with the bankruptcy of defendant A to add the principal directors and officers and the former director of sales of A as necessary parties pursuant to Rule 104 of the Federal Courts Rules, 1998, SOR/98-106. The proposed amendments to the statement of claim alleged that the principal directors and officers actively participated in and approved an illegal scheme devised by the former director of sales by which the importation of computer discs was to be effected through defendant C to avoid the payment of the levy.

As a preliminary matter, the former director of sales was not served with the motion. In the result, the motion as against him was dismissed with leave to the plaintiff to serve and reapply.

Held, the motion should be dismissed.

Amendments should be allowed unless they would result in a prejudice to the opposing party that cannot be compensated by an award of costs. However, amendments to add parties should not be allowed if it appears that the claim against the proposed new party is spurious.

The motion failed on both counts. The plaintiff relied upon affidavit evidence produced at an earlier stage in the proceeding in support of its motion, and therefore did not expose the deponents of the affidavits to cross-examination. Of more consequence was the fact that the evidence did not show actual knowledge and participation by the principal directors and officers in the illegal scheme. In addition, because much of the evidence in the file went in at a time when the proposed new defendants were not parties, it would have been difficult at trial to separate out what would and what would not have been admissible as evidence against them. Furthermore, the case against the directors and officers involved different issues of law and fact from the case against their company.

In the result, it was not appropriate at a late stage to join the principal directors and officers as parties, but the plaintiff was at liberty to bring a separate action against the proposed defendants.

Canadian Private Copying Collective v Fuzion Technology Corp., 2005 FC 1557, [2005] FCJ 1915, 2005 CarswellNat 3804, <http://www.canlii.org/ca/cas/fct/2005/2005fc1557.html> and <http://decisions.fct-cf.gc.ca/fct/2005/2005fc1557.shtml> (FC; 2005-11-17) Hughes J.

[5] is appropriate to consider that part of this motion requesting conversion of this proceeding from an application to an action, first. Prior to the coming

into force of section 34(4) of the *Copyright Act supra* as of October 1, 1999, proceedings to do with infringement of copyright and recovery of tariff monies had to be conducted by way of an action, whether in the Federal Court or another Court such as a superior court of a province. Section 34(4) gives, now, an option to a person wishing to commence such proceedings, in whatever court is appropriate, by way of action or application. An application allows the party instituting the proceeding to put in its evidence at the beginning by way of affidavit and requires the Respondent to do likewise. Neither party can examine the other for discovery. In theory at least, a trial can be arrived at more quickly and directly than in an action.

[6] The downside of an application is that the party instituting the proceeding must be ready with its evidence at the outset. It cannot depend upon getting further evidence from the other party by way of discovery. The other party may adduce no evidence as very little evidence if it chooses. The initiating party essentially must depend on its evidence alone when it comes to trial.

[22] There may be a suggestion that there is an inherent power in the Court to control its own process, thus to convert an application to an action where, as Rule 3 says, it may be "just, most expeditious and least expensive". If there is, there is no merit in saying that an action is more expeditious or less expensive than an application. Is it "just"? Here the Applicant had a choice, application or action, it chose application. No statute or rule compelled that choice, there is no suggestion that the Applicant was coerced or deceived into making that choice. It seems now that the applicant regrets that choice because it may not have put in its case as fully as it might or now sees more opportunity to gain further evidence in an action. The only evidence before this Court that might be compelling in that regard is paragraph 4 of the Geldbloom affidavit which says "*CPCCC wishes to convert the present application into an action in order to adduce new evidence...*". This is not sufficiently compelling to justify a conversion of the Applicant's own choice in proceeding by way of application, to an action.

[13] In summary, section 18.4(2) of the *Federal Court Act* is not applicable to proceedings commenced under section 34(4) of the *Copyright Act*; Rule 107 of the *Federal Courts Rules* is not applicable. Even if there were inherent jurisdiction, which is by no means certain, no compelling reason for conversion where the choice was made initially by the party now seeking conversion, has been shown. That part of the motion is dismissed.

Canadian Private Copying Collective v First Choice Recording Media Inc. 38 **CPR** (4th) 65, [2005] 2 FCR 654, [2005] CarswellNat 366, [2005] FCJ 241, 2005 FC 187, <http://www.canlii.org/ca/cas/fct/2005/2005fc187.html> and <http://decisions.fct-cf.gc.ca/fct/2005/2005fc187.shtml>, <http://reports.fja.gc.ca/fc/2005/pub/v2/2005fc35956.html>, in French at 2005 CarswellNat 1460 (FC; 2005-02-07) Hargrave ASP

The plaintiff collective had commenced an action against one corporate defendant ("First Choice") for the collection of levies due pursuant to s. 82 of the Copyright Act, R.S.C. 1985, v C-42, on blank compact discs it had imported. The plaintiff brought a motion to add as defendants two other corporations ("M3" and "AM/ FM Marketing") and the individual ("Cheung") who was the president, director and shareholder of First Choice and M3. The

plaintiff alleged in its proposed amended statement of claim, among other things, that: Cheung had deliberately certified reports of First Choice's activities that were inaccurate; he failed to disclose documents for audit as required pursuant to the applicable tariff; and, that Cheung, by wilful and deliberate conduct in the operation of First Choice and M3, together with AM/FM, had contrived a scheme for the express purpose of avoiding payment of the import levy and frustrating the ability of the plaintiff to collect that levy. The plaintiff and the responding parties that appeared on the motion filed affidavit evidence which included evidence on the merits.

Held, the plaintiff's motion should be granted.

A proposed defendant should not be added as a party unless it is necessary that they be bound by the outcome and that they are essential, as parties, to effectually and completely resolve the action. On a motion to add a party the court should not decide on the adequacy or the credibility of the evidence which eventually might be before the trial judge. As long as the addition of the proposed defendant does not appear completely spurious, they should be added. The evidence filed on the motion was examined, not in an effort to try the case, but to test the sincerity and genuineness of the proposed amendments.

In the circumstances of this case, the concept of the corporate veil and its piercing should be considered in order to test the proposed amendments for spuriousness.

The proposed amendments were corroborated by the affidavit evidence. The addition of the proposed defendant was not completely spurious, was completely arguable and was not doomed to failure.

CBRA Statement of Royalties, Media Monitoring, 2000-2005 (Re) au lieu de Media Monitoring 2000-2005, Re [2005] CarswellNat 744, 39 **CPR** (4th) 152, [2005] CBD 4, <http://www.cb-cda.gc.ca/decisions/mm29032005-b.pdf>, in French at [2005] CarswellNat 745, [2005] CBD 4, (CopBd; 2005-03-29)

In 1999 the Copyright Board published the collective society's statement of proposed royalties pursuant to s. 70.13 of the Copyright Act, R.S.C. 1985, v C-42. The statement related to the use of private broadcasters' programs and signals by commercial media monitors. In 2000 the board published the society's statement of proposed royalties targeting the use of the same repertoire by non-commercial media monitors. The former statement as supplemented covered 2000 to 2005 and the latter statement as supplemented covered 2001 to 2005.

Numerous media monitors, associations, governments and others either opposed the statements of proposed royalties or were granted leave to intervene.

Broadcasters hold certain copyright in their programs under s. 3 of the Copyright Act and in their communication signals under s. 21 of the Act. The collective society was the exclusive agent of the vast majority of private broadcasters in the media monitoring market. Commercial media monitors systematically monitored sources of information and provided clients with

information from these sources that might interest them. The information provided by commercial media monitors to their clients included providing excerpts from radio and television programs. In order to provide this information the monitors reproduced programs and fixed communication signals, activities for which they required copyright licences.

Over time the collective society signed licence agreements with numerous commercial and non-commercial monitors. The agreements with the commercial monitors represented 95 percent of the market in Canada. As a result, only the collective society participated in the hearing before the board. The proposed statements of royalties as published were based on certain assumptions as to how media monitors operated. Many of those assumptions proved to be incorrect. The terms of the licences granted by the media monitors differed significantly from the published statements and from the statements that the collective society requested at the hearing be certified.

Held, a tariff should be certified in accordance with the terms and conditions fixed by the board.

Commercial Media Monitoring Tariff

The collective society was governed by ss. 70.1 to 70.6 of the Copyright Act. These sections gave the society the option of negotiating individual licences or seeking certification of a tariff applicable to all users other than those who had signed licence agreements.

The ultra petita principle applies to prohibit a decision maker from granting more than what was asked unless the claim is amended. The principle applies to proceedings in which the parties control the issues, process, evidence, arguments and potential outcomes. As the board has the power to certify tariffs, some of the measure of control over the proceedings that would otherwise have been exercised by rightsholders and users had been transferred to the board. To apply ultra petita and prohibit the board from certifying the statement of royalties requested at the hearing would have defeated that transfer of control. The board was therefore not prohibited from certifying the statement of royalties proposed at the hearing.

Comments of certain of the objectors and interveners that the proposed tariff rate was too high was not supported by the evidence or argument. The record showed that media monitors representing the lion's share of the market had been able to pay that rate. The proposed tariff rate was therefore fair in the circumstances.

Certified tariffs should avoid imposing restrictions on users authorized by the Copyright Act. The tariff as certified therefore avoided imposing restrictions upon the use of notes which were probably independent works created by the media monitors.

A tariff was therefore certified which reflected the terms of the licences granted by the collective society in all but a few respects.

Non-Commercial Media Monitoring Tariff

Some institutions outsourced their media monitoring while others did not. The non-commercial tariff targeted federal and provincial government

departments, agencies, Crown corporations, Parliament and legislative assemblies, and federal and provincial political parties and organizations.

A non-commercial tariff was certified mirroring the commercial tariff as much as closely possible. The main differences concerned the rate base, the purpose of the monitoring and the adaption of terms and conditions to the particular circumstances of non-commercial monitors.

Chayer v Corporation Sun Media 2005 IJCan 33882, SOQUIJ AZ-50334052, **JE** 2005-1828, [2005] JQ 17554, 2005 CarswellQue 9351, <http://www.canlii.org/qc/jug/qccq/2005/2005qccq64172.html> (QueCt-CivDiv Small Claims; 2005-08-30)

Résumé

Requête en dommages-intérêts pour violation du droit d'auteur. Accueillie en partie (2 200 \$).

Une photographie appartenant au requérant a été utilisée sans autorisation préalable dans deux journaux de l'intimée. Le requérant réclame 5 225 \$ à titre de dommages-intérêts, soutenant que la photo était protégée par un droit d'auteur. L'intimée oppose l'«utilisation équitable» d'une oeuvre protégée au sens de l'article 29 de la *Loi sur le droit d'auteur* et allègue que la réclamation est exagérée.

Décision

La photo utilisée par l'intimée est protégée par un droit d'auteur. L'article 29 de la loi prévoit une exception à l'interdiction d'utiliser une oeuvre protégée, soit à des fins d'étude, de recherche ou de compte rendu, ou même pour rendre une nouvelle publique lorsque l'«utilisation est équitable». Toutefois, bien que l'événement rapporté par l'intimée constitue une nouvelle d'intérêt public, il en va autrement de la photo qui l'accompagne. Les articles invitent les lecteurs à se rendre un certain jour et à une heure précise dans un bar afin de se voir offrir des consommations par une vedette de passage. Ces articles constituent des publiereportages et non des reportages. Le guide de déontologie de la Fédération professionnelle des journalistes du Québec prévoit en effet que l'information doit être séparée de la publicité et que les publiereportages ne sont pas signés. En l'instance, les articles sont signés par deux journalistes différents. L'exception à la loi revendiquée par l'intimée n'est pas fondée, car l'utilisation à des fins commerciales d'une photo qui ne lui appartient pas ne constitue pas une «utilisation équitable» au sens de la loi. De plus, sa défense voulant que, le nom du photographe étant inscrit, elle ait rempli ses obligations est rejetée. Les articles 29.1 et 29.2 de la loi exigent que la source de l'oeuvre soit révélée — exigence réitérée par le guide de déontologie —, ce qui n'a pas été fait en l'instance. Quant au quantum, le fait que le requérant soit rédacteur d'une revue diffusée dans un autre district et véhicule des valeurs opposées à celles préconisées dans le publiereportage n'est pas retenu, cet élément étant hypothétique et non appuyé par la preuve. Les indemnités suivantes sont accordées: 600 \$ à titre d'honoraires pour la création et la publication de la photo, 1 000 \$ pour une utilisation non autorisée et 600 \$ pour les débours.

Coleman (Professor Daniel) for the reproduction of a poster created by Francis Robert Halliday entitled "National Progress" [Re Non-exclusive licence issued to] File 2005-UO/TI-21, <http://www.cb-cda.gc.ca/unlocatable/162-e.pdf> (CopBd; 2005-08-04)

Coleman (Re) 2005-UO/TI-21	for the reproduction of a poster created by Francis Robert Halliday entitled "National Progress" In no more than 1000 copies	2005-09-04 2006-12-31	Commercial	\$84	CARCC
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Columbia Pictures Industries Inc. v Gaudreault 2005 CarswellNat 654, 2005 FC 338, <http://www.canlii.org/ca/cas/fct/2005/2005fc338.html>, <http://decisions.fct-cf.gc.ca/fct/2005/2005fc338.shtml>; in French at 2005 CarswellNat 1826, <http://decisions.fct-cf.gc.ca/cf/2005/2005cf338.shtml>, <http://www.canlii.org/ca/jug/cfpi/2005/2005cf338.html>; (FC; 2005-03-09) Hugessen J.

[2] They say that the defendant has sold and distributed "black boxes" or decoders which are used for the purpose of decoding encrypted television signals in breach of their copyright.

[3] They sue the defendant for breaches of the *Copyright Act*, R.S.C., 1985, v C-42, and the *Radiocommunication Act*, R.S.C., 1985, v R-2 and they now move for summary judgment on that action.

[4] Apart from affidavit evidence of a wholly general nature of the alleged illegal activities by the defendant which, in my view, is not sufficiently specific to allow me to give judgment in favour of the plaintiffs on a motion such as this, the plaintiffs rely, as subsection 18(3) of the *Radiocommunication Act* allows them to do, on a plea of guilty entered by the defendant to two charges under sections 9 and 10 of that Act. [...]

[5] The defendant's affidavit evidence alleges and asserts that his guilty plea was entered solely for the purpose of avoiding the costs and inconvenience of a trial. He was fined \$5,000.00 as a result of that plea.

[6] The plaintiffs invite me to give little credit to that allegation and in other circumstances I might be inclined to do so, but the plaintiffs, unfortunately for them, have failed to cross-examine the defendant on his affidavit as they had the opportunity to do and as the Rules permit. In my view, one cannot simply discredit sworn evidence out of hand where one has neglected to cross-examine the deponent of that evidence.

[7] In those circumstances, while I do not necessarily find that the defendant's affidavit evidence is true or credible, neither can I discredit it entirely. I find it to be "evidence to the contrary" within the meaning of subsection 18(3) and since the evidence of the guilty plea is, as I have already said, in my view, the only evidence of sufficient specificity to justify the Court in finding that the defendant has in fact committed the acts with which the plaintiffs charge him, I am obliged to dismiss the motion for summary judgment. I shall do so, however, without costs.

Commission des lésions professionnelles v Godbout 2004 IIJCan 54463, 2004 CarswellQue 11968, REJB 2004-94083, <http://www.canlii.org/qc/jug/qccs/2004/2004qccs20633.html> (QueSupCt; 2004-12-06); [2005] JQ 1321, SOQUIJ AZ-50290378, **JE** 2005-417, 2005 CarswellQue 411, REJB 2005-82979, <http://www.canlii.org/qc/jug/qccs/2005/2005qccs17985.html> (QueSupCt; 2005-01-21) Champagne J.; [2005] JQ 9220, 2005 IIJCan 24713, 2005 CarswellQue 7473, REJB 2005-92748, <http://www.canlii.org/qc/jug/qccs/2005/2005qccs59105.html> (QueSupCt; 2005-07-12) Tardif J.; [2005] JQ 16178, 2005 CarswellQue 10586, 2005 IIJCan 40858, <http://www.canlii.org/qc/jug/qccs/2005/2005qccs61628.html> (QueSupCt-Contempt; 2005-11-04) Fréchette J.

Résumé (QueSupCt; 2005-01-21);

Requête en injonction interlocutoire. Accueillie en partie.

Le défendeur Godbout a dénoncé, sur le site Web «csst-queca.com», les déboires qu'auraient entraînés pour lui des décisions rendues par la demanderesse, la Commission des lésions professionnelles. Le nom de domaine qu'il utilise a été enregistré au nom d'un tiers domicilié en Floride, mais il en exerce le contrôle depuis son domicile, au Québec. La requête en injonction interlocutoire présentée par la demanderesse demande qu'il cesse de diffuser des propos diffamants et d'utiliser ses marques de commerce ainsi que celles du gouvernement du Québec, protégées par la *Loi sur le droit d'auteur* et la *Loi sur les marques de commerce*. Elle demande aussi que le défendeur Morin, propriétaire et utilisateur du nom de domaine «clp-queca.com», cesse de reproduire ses marques de commerce ainsi que celles du gouvernement du Québec et d'utiliser tout nom comportant le sigle «CLP» et les mots «Commission des lésions professionnelles», qui induisent les internautes en erreur.

Décision

La demanderesse n'a pas démontré qu'elle pouvait agir au nom du gouvernement du Québec pour forcer les défendeurs à cesser d'utiliser ses marques de commerce. Toutefois, elle est bien fondée à exiger que la présentation graphique des pages d'accueil des sites soit modifiée, car elle crée de la confusion chez les utilisateurs du réseau Internet. Par contre, elle ne peut obtenir que Godbout cesse de diffuser des propos diffamants à son endroit, car une telle ordonnance est générale et impossible à faire respecter. Ce dernier ayant éliminé de son site plusieurs propos jugés inacceptables, la demanderesse n'a pas de droit apparent pour obtenir la fermeture de son site et l'empêcher de recommencer. La liberté d'expression permet à Godbout de critiquer, même sévèrement, la demanderesse. Si cette dernière s'estime lésée, elle pourra exercer un recours en responsabilité civile. Il n'y a pas lieu non plus d'interdire l'utilisation du sigle «CLP», car il n'est pas *prima facie* exclusif à la demanderesse. Par surcroît, le tribunal ne peut interdire d'avance aux défendeurs l'utilisation de ces termes, car une injonction est le moyen de corriger une situation urgente, mais rarement d'en prévenir une qui est hypothétique.

[36] Le Tribunal accorde toutefois à titre interlocutoire une ordonnance interdisant aux DÉFENDEURS l'utilisation de la composition graphique de la page d'accueil du site de LA vL.P. à l'adresse <http://www.clp-gouv.qc.ca>.

(Que SupCt; 2005-07-12)

[6] Il est évident que la v.L.P. est propriétaire du droit d'auteur sur son site Internet et plus particulièrement sur la page d'accueil. Nul ne peut donc enfreindre son droit d'auteur.

(QueSupCt-Contempt; 2005-11-04)

[24] Il est évident et manifeste que la conclusion pertinente de l'injonction rendue par monsieur le juge Tardif visait à interdire pour l'avenir la reproduction de textes de la nature de ceux que l'on retrouvait alors à la pièce R-4. Or, non seulement le défendeur a sciemment et volontairement transgressé cette ordonnance mais il a reproduit des textes dont la nature est davantage outrageante et libelleuse que les pièces originales R-4.

[25] Le défendeur, a tenté de jouer d'astuce en plaidant qu'il s'était conformé à l'ordonnance d'injonction en retirant le site acilr-cdril.com dont l'injonction fait état et par lequel se réalisaient ses productions . Comme déjà indiqué il s'agit là d'une astuce qui est « trop grosse » et qui déborde largement le simple et logique sens commun des choses. En effet, ce n'est pas le site, quel qu'il soit, qui enfreint la loi sur le droit d'auteur mais bien le contenu des documents qui en émanent.

Conexsys Systems Inc. v Aime Star Marketing Inc. [2003] JE 2003-1848, [2003] JQ 11296, [2003] CarswellNat 2003, REJB 2003-46933, 2003 IJCan 33339, also, <http://www.canlii.org/qc/jug/qccs/2003/2003qccs14163.html> (QueSupCt; 2003-09-02); affd 2005 **BE** 296, 2005 QCCA 131, SOQUIJ AZ-50296959, [2005] JQ 658 (QueCA; 2005-01-11).

Résumé

Appel d'un jugement de la Cour supérieure ayant accueilli en partie une action en injonction permanente et en réclamation de dommages-intérêts. Rejeté.

Décision

Les appelants n'ont pas démontré d'erreur manifeste et déterminante de la première juge sur la question de la violation du droit d'auteur. Seulement une partie de la preuve sur ce point ayant été reproduite au dossier, le rôle de la Cour d'appel était limité. Quant à la question de concurrence déloyale, il n'y a pas lieu d'intervenir, car la preuve est accablante. La décision de la première juge était également bien fondée en ce qui concerne les redevances dues à l'intimée. Devant des versions contradictoire, elle a bien motivé son choix. Elle a même demandé une évaluation des sommes dues par un expert-comptable indépendant. De plus, la réclamation de redevances n'était pas prescrite puisque les appelants avaient frauduleusement caché et falsifié les données qui auraient permis à l'intimée d'établir sa réclamation. Il n'y a pas lieu de modifier les conclusions de la première juge quant à l'absence de renonciation de l'intimée et au choix d'une version plutôt qu'une autre relativement au contrat verbal.

Controlex Corporation for the reproduction of architectural plans commissioned by Macdonald Developments in 1990 for the property located at 4025 Innes Road in Ottawa [Re Non-exclusive licence issued to] File 2005-UO/TI-03, <http://www.cb-cda.gc.ca/unlocatable/149-e.pdf> (CopBd; 2005-02-03)

Controlex Corporation (Re) 2005 UO-TI-03	for the property located at 4025 Innes Road in Ottawa	2005-02-03 2005-03-31	Operational exercises	\$25	None
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Courier Complete Inc. v Fraidakis [2005] CarswellOnt 1100, [2005] OJ 1106, 40 **CPR** (4th) 50, 2005 CanLII 13998, <http://www.canlii.org/on/cas/onsc/2005/2005onsc13564.html> (OntSupCt; 2005-03-24), additional reasons [2005] OJ 1682, 2005 CarswellOnt 1627, [2005] OJ 1682 (OntSupCt; 2005-04-28) Pitt J.

The defendant, wrote a dynamic library link (DLL) program while he was the employee of the plaintiff. A DLL is a library of executable functions or data which other programs or applications can access by linking to the DLL. The DLL at issue was an independent compilation of source code functions that transferred and received data regarding the status of shipments by courier shippers. The DLL functions could be accessed by mailroom or courier shipment tracking software.

The defendant was able to integrate the plaintiff's software with the major couriers' systems. This was a goal that the plaintiff's president had tried to do but had been unable to achieve. The defendant was aware of the president's interest in such a project. The defendant used his connection with the plaintiff to obtain confidential information, contacts, and codes that would not otherwise have been accessible to him except in his capacity as employee. The defendant on other occasions had used the plaintiff's resources to do work for another company without the plaintiff's permission.

The only copy of the program was on the defendant's home computer and it was never stored on the plaintiff's computer. The defendant asserted his ownership in the program immediately before it was to be demonstrated and demanded a substantial bonus which the plaintiff refused to pay. The defendant subsequently demonstrated the software and told senior management his position was wrong, but he later reneged and missed work. The plaintiff fired the defendant.

Before the motion was heard, the defendant obtained a certificate of registration of copyright to the DLL. To preserve the status quo, the defendant was ordered to deliver all copies of the DLL software, including the source code, to his solicitor and to refrain from distributing it. In cross-examination, the defendant refused to give an undertaking to provide supporting documentation for the application for the certificate.

The plaintiffs sought an order that the DLL should be returned to the plaintiff pursuant to s. 38 of the Copyright Act, R.S.C. 1985, v C-42, or, in the alternative, an interim order prohibiting the defendant from using the DLL and requiring the defendant to preserve the DLL and related materials until further order of the court or agreement of the parties. The plaintiff further sought a declaration that the employer owned the copyright in the DLL software and an interlocutory injunction prohibiting the defendant from soliciting the plaintiff's customers.

Held, the motion should be allowed in part.

Section 38 of the Copyright Act provides that the owner of copyright may recover possession of infringing copies of the copyrighted work.

Under s. 13 of the Copyright Act, where a work is authored by an employee in the course of employment, the employer shall be the first owner of the copyright of the work unless there is an agreement to the contrary.

The defendant argued that an employee owns the copyright to a work if the employee does not write the work in the course of his employment.

The motions judge concluded that the plaintiff raised a strong prima facie case. In weighing the balance of convenience for the injunction, the balance favoured the plaintiff. Although the defendant would likely suffer irreparable harm if the injunction was granted, the defendant could find other suitable employment until the resolution of the matter while the plaintiff would be deprived of the fruits of an asset to which he appeared to have a prima facie statutory right.

The defendant was prohibited from using the DLL and any related information until further order of the court and the defendant was required to preserve the DLL and related materials.

CRESA Partners for the reproduction of electrical and mechanical plans created by Hrudko Bustos Engineering of Calgary for the property located at 2905, 12th Street N.E. in Calgary [Re Non-exclusive licence issued to] File 2005-UO/TI-02, <http://www.cb-cda.gc.ca/unlocatable/148-e.pdf> (CopBd; 2005-02-03)

CRESA Partners (Re) 2005 UO/TI-02	for the reproduction of electrical and mechanical plans created by Hrudko Bustos Engineering of Calgary for the property located at 2905, 12th Street N.E. in Calgary	2005-02-03 2005-03-31	Renovation purposes	\$25	None
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Cummings v Global Television Network Quebec, Ltd. Partnership SOQUIJ AZ-50315115, **JE** 2005-1088, [2005] QJ 6707, 2005 CarswellQue 2806, REJB 2005-90758, <http://www.canlii.org/qc/cas/qccs/2005/2005qccs20496.html> (QueSupCt; 2005-05-24); motion to dismiss appeal 500-09-015770-050 granted (QueCA; 2005-06-30)

Résumé

Requête en rejet d'action. Accueillie.

En avril 1997, le demandeur a fait parvenir au président de Global Television Network Quebec, Limited Partnership (Global) un projet d'émission de télévision intitulé *Dreams Come True (Dreams)*, qu'il préparait depuis 1992. Au printemps 2001, Global a produit et diffusé deux séries télévisées intitulées *Popstars* et *Popstars Boys Meet Girls*. Le demandeur a intenté une action en dommages-intérêts de 1 250 000 \$, invoquant la violation de ses droits d'auteur et réclamant que les défendeurs cessent de produire la série *Popstars*. À la suite de l'interrogatoire au préalable du demandeur, les

défendeurs ont présenté une requête pour rejet d'action fondée sur l'article 75.1 du Code de procédure civile au motif que son action était frivole et sans fondement.

Décision

Ainsi que l'a souligné l'arrêt *Ramco Développements inc. v FW Woolworth Co.* (C.A., 1998-10-09), SOQUIJ AZ-98011783, JE 98-2098, il faut faire preuve de prudence quand on se prononce sur une requête pour rejet d'action. Cette procédure est exceptionnelle, car elle permet le rejet du recours sans que toute la preuve soit disponible. En l'instance, le tribunal n'a en main que les procédures judiciaires, un guide expliquant le projet du demandeur, deux cassettes de la série *Popstars* et l'interrogatoire du demandeur. Le guide du demandeur ne constitue pas une oeuvre originale bénéficiant de la protection du droit d'auteur. Il s'agit plutôt d'un projet (*pre-concept*) ne contenant pas suffisamment de détails et ne proposant pas d'élément unique. Le tribunal ne peut y voir l'utilisation des habiletés, du jugement ou d'un travail original de la part du demandeur. Bien plus, il y a davantage de différences que de ressemblances entre le projet *Dreams* et les émissions *Popstars*. *Dreams* s'adresse à des musiciens, chanteurs, compositeurs, danseurs et paroliers sans égard à l'âge, à la langue ou à l'origine ethnique. *Popstars* fait appel à des participants masculins dans la jeune vingtaine et exclut les musiciens, compositeurs et paroliers. *Dreams* insiste sur l'absence de gagnants et de perdants, alors que *Popstars* privilégie l'aspect compétitif. *Dreams* veut encourager les artistes, alors que *Popstars* est un «reality-show» valorisant ce qui se passe en coulisses et mettant l'accent sur les actions et réactions quotidiennes des participants qui vivent dans la même maison. En l'absence d'indication raisonnable qu'une preuve additionnelle substantielle pourrait être apportée, on doit conclure que l'action du demandeur n'est pas fondée et n'a pas de chance de succès.

*Dawn's Place Ltd. v Canada** [2005] TCJ 556, 2005 TCC 721, 2005 **CarswellNat** 3661, 2005 TCC 721, [2005] GSTC 177, <http://www.canlii.org/ca/cas/tcc/2005/2005tcc721.html> and <http://decision.tcc-cci.gc.ca/en/2005/html/2005tcc721.html> (Tax Court of Canada; 2005-11-10) Little J.

Corporation resident in Canada operated adult content website -- Corporation produced digital images, graphics and text and assembled them into various web pages comprising website -- Corporation received fees of \$344,963.34 in 2001 from individuals subscribing as members to access website -- Corporation established terms and conditions governing members' subscriptions -- Terms and conditions provided in part that members would be granted limited licence to access website -- Corporation's evidence suggested that approximately 90 per cent of persons subscribing to corporation's website were non-residents of Canada - - Minister assessed corporation for 2001 on basis that revenue of \$344,963.34 from membership subscriptions was consideration for supply of intangible personal property in Canada that was taxable under s. 165 of Act -- Corporation appealed -- Appeal allowed -- Supplies of membership fees were zero-rated as supply of right, licence or privilege to use copyright -- Contents of website were intellectual property governed by Sched. VI, Part V, s. 10 of Act -- Original or digitally enhanced photographs, drawings or logos that were part of website fell within scope of artistic work -- Information contained in website was intellectual property that was subject of copyright

owned by corporation -- Officials of Canada Revenue Agency (CRA) should review corporation's records to determine number of subscribers who were residents of Canada and how many were non-residents of Canada -- Officials of CRA should further review corporation's records to determine if any subscribers were GST registrants -- Persons who paid membership fees to corporation paid fees for limited use of corporation's copyright -- Corporation came within meaning of relevant provision of Act and therefore supply by corporation of intellectual property to non-residents of Canada was zero-rated -- Corporation was not required to collect GST on fees paid by subscribers as determined by CRA who were not residents of Canada nor registrants for GST purposes -- Excise Tax Act, R.S.C. 1985, v E-15, s. VI-V-10.

[3] The Appellant produced digital images, graphics and text and assembled them into various web pages. The various web pages are hereinafter referred to as the "Website".

[4] The Appellant maintains that it employed sufficient skill and effort in producing the original images, graphics and text so as to be able to claim copyright to the Website.

[15] Section 123 of the [Excise Tax] Act defines a zero-rated supply to be a supply included in Schedule VI.

[16] Section 10 of Part V of Schedule VI of the Act reads:

A supply of an invention, patent, trade secret, trade-mark, trade-name, copyright, industrial design or other intellectual property or any right, licence, or privilege to use any such property, where the recipient is a non-resident person who is not registered under Subdivision d of Division V of Part IX of the Act at the time the supply is made.

[34] From an analysis of the evidence I have concluded that the information contained in the Appellant's Website is intellectual property and is the subject of copyright that is owned by the Appellant. I am therefore satisfied that the Appellant has satisfied the First test contained in Section 10.

DIRECTV, Inc. v Zed Marketing Inc [2005] OJ 1045, [2005] CarswellOnt 1033, <http://www.canlii.org/on/cas/onsc/2005/2005onsc13285.html> (OntSupCt-CommList-AntonPiller; 2005-02-21) Farley J; [2005] OJ 3009, 2005 CarswellOnt 3121, (OntSupCt-CommList-Motion to Strike; 2005-07-15) Cameron J.

(OntSupCt-CommList-AntonPiller; 2005-02-21)

[1] This is a request for an Anton Piller order against the various defendants. I have reviewed the motion record of the plaintiff and it provides in this ex parte application a compelling case of an extremely strong prima facie case of piracy and conspiracy to commit piracy against the plaintiff's commercial interests. See *Bell ExpressVu Limited Partnership v Pomeroy*, [2002] O.J. No. 4064 and specifically the problem of piracy explored fully by Nordheimer J. in his decisions in *Bell ExpressVu Limited Partnership v Tedmonds & Co. Inc.*, [1999] O.J. No. 3679 and *DIRECTV v Paul Toth et al.*, unreported March 26, 2002, Court File No. 02-CV-226455.

[2] From the material it is clear that the defendants have engaged in actions contrary to the Radiocommunication Act to offer for sale or sell any equipment

or device which is intended to be used for the purpose of decoding an encrypted subscription programming signal without authorization. We have the sales and the websites in that regard. Then there is the issue of fraudulent misrepresentation to the plaintiff that the access cards were being activated for use with additional televisions in the same household as an existing plaintiff account, thereby entitling the defendants to pay a lesser charge when in fact the devices were to be used for different households. Lastly the plaintiff has made out its claims for civil conspiracy, conversion, unlawful interference with economic relations and unjust enrichment against the defendants. The record discloses that the defendants have the devices on hand for sale.

Duff v Québec (Procureur Général), 2003 CarswellQue 2408, REJB 2003-46715, JE 2003-1923, 2003 IJCan 20247, <http://www.canlii.org/qc/jug/qccs/2003/2003qccs14045.html> (QueSupCt; 2003-08-21); aff'd 2005 QCCA 661, SOQUIJ AZ-50322050, **JE** 2005-1349, [2005] JQ 8855, 2005 CarswellQue 4691, REJB 2005-92309, <http://www.canlii.org/qc/jug/qcca/2005/2005qcca661.html> (QueCA; 2005-07-04) Brossard J.

Résumé

Appel d'un jugement de la Cour supérieure ayant rejeté une action en dommages-intérêts pour contrefaçon du droit d'auteur. Rejeté.

En 1984 et 1985, l'appelant a publié dans une revue spécialisée deux articles sur la rénovation, la revitalisation et la restauration d'immeubles anciens et leur intégration dans le milieu existant. En 1986, il a déposé une thèse de maîtrise portant sur le même thème. Parallèlement, la Commission des biens culturels a confié à l'intimé le mandat de rédiger un document de travail sur le problème de la restauration et de l'intégration de nouvelles constructions à des bâtiments anciens. L'ouvrage a été terminé au printemps 1987 et publié en avril 1993. L'appelant a alors demandé à l'intimé d'ajouter sa thèse dans la bibliographie ou d'interrompre la vente du livre. Après vérification des prétentions de l'appelant, l'intimé et le ministère de la Culture et des Communications, coïntimé, ont constaté que la thèse de l'appelant n'avait été remise à l'Université Laval, à des fins de consultation, que le 11 février 1988. Ils ont donc rejeté la demande de l'appelant et repris la distribution du livre. La Cour supérieure a rejeté l'action de l'appelant, qui demandait de déclarer que son droit d'auteur avait été violé, que soit détruit tout moyen de reproduction de l'oeuvre de l'intimé et que les intimés soient condamnés à lui verser des dommages-intérêts de 210 000 \$.

Décision

M. le juge Brossard: L'appelant doit démontrer une erreur manifeste du premier juge relativement aux deux prémisses factuelles importantes: ses deux articles constituaient une création originale et avaient été rendus publics avant que l'intimé n'ait rédigé son ouvrage; et les termes et illustrations de l'ouvrage de l'intimé présentaient suffisamment de similitudes avec le sien pour établir une présomption de plagiat. Les moyens d'appel visent principalement des faits reliés à l'appréciation par le premier juge de la preuve testimoniale et documentaire et de la crédibilité des témoins. Par ailleurs, l'appelant reproche au premier juge une erreur quant au fardeau de la preuve qu'il lui a imposé. Les conclusions de celui-ci sur les prémisses factuelles sont claires: d'une part, l'intimé, témoin crédible, n'a pris connaissance des articles de l'appelant qu'en 1993 et, d'autre part, son rapport définitif était terminé en janvier 1986, soit avant que l'appelant ait

déposé sa thèse. Quant au degré de preuve requis, l'appelant pourrait avoir partiellement raison. En effet, la jurisprudence reconnaît qu'une présomption de contrefaçon peut résulter d'une preuve circonstancielle fondée sur un nombre substantiel de similitudes. Toutefois, bien que les termes conceptuels et la terminologie résultant d'une création originale soient protégés par le droit d'auteur, les concepts et les idées relevant des règles de l'art ne le sont pas. Lorsqu'un auteur s'inspire de sources communes relatives à un domaine particulier, l'étendue du champ de protection du droit d'auteur est moindre. En l'instance, les termes qui se retrouvent dans les deux ouvrages sont également utilisés dans beaucoup d'écrits relevant du même domaine et ne peuvent être qualifiés de création originale. Par conséquent, la conclusion quant à l'existence d'une présomption n'est pas aussi évidente que le soutient l'appelant. Bien plus, ce débat est théorique dans la mesure où ce dernier n'a pas démontré d'erreur manifeste du premier juge dans ses conclusions de fait sur les prémisses factuelles obligatoires donnant ouverture à l'appel.

14 Dans ce contexte, on peut présumer que l'intimé n'était pas astreint nécessairement à la même rigueur de recherche et de forme, de références ou de bibliographies, que celles qui peuvent être opposées à celui qui prépare une thèse à des fins de maîtrise ou à des fins de doctorat. Cette différence entre les deux ouvrages, cependant, ne saurait en aucune façon influencer ou diminuer l'intégrité de la protection que la loi confère aux droits d'auteur ni justifier de quelque façon que ce soit la contrefaçon par l'un de l'ouvrage de l'autre et encore moins le plagiat pur et simple.

40 Avec égards pour l'opinion contraire, je crois que l'appelant pourrait avoir partiellement raison sur cet aspect: la jurisprudence, en effet, reconnaît que, en l'absence de preuve directe ou contraire, la preuve circonstancielle résultant d'un nombre substantiel de similitudes, sinon même d'expressions, formules et termes identiques ou d'erreurs communes aux deux textes, peut effectivement créer une présomption de contrefaçon (*Cadieux v Bauchemin*(1900) B.R. 255, confirmé par (1901) 31 R.C.S. 370]). La présomption renverse alors le fardeau qui incombera au défendeur d'établir qu'il n'a pas contrefait l'oeuvre du demandeur et que son ouvrage constitue une création indépendante (*Motel Six Inc. v No Six Motel Ltd* [1982] 1 v.F. 638 Cour fédérale, première instance, juge Addy.]).

43 En premier lieu, en effet, les volumineux et méticuleux relevés déposés au dossier par l'appelant démontrent dans sa propre analyse une confusion constante entre ce qui constitue, d'une part, une identité de concepts et d'idées et, d'autre part, une utilisation de termes conceptuels ou d'une terminologie résultant d'une création originale. Si ces derniers sont susceptibles d'être protégés par le droit d'auteur et que leur utilisation constitue, le cas échéant, un plagiat, il n'en est certes pas de même des concepts et idées relevant des règles de l'art (*Cuisenaire v Southwest Imports Ltd* [1969] R.C.S. 208.]) *Preston v Twentieth Century Fox Canada Ltd* [1990] 33 v.P.R. (ddd p. 242 confirmé par 1993 164 N.R. p.304 (Cour d'appel fédérale)).].

44 En second lieu, plus un auteur crée à partir de sources communes à un secteur, moins grande est l'étendue du champs de production qui lui est réservé par la loi (*Kilvington Bros Ltd v Goldberg* [1957] 16 Fox Patent Cases p.

164.]) Ainsi, lorsque les parties utilisent une méthodologie identique, il est fort probable que les résultats obtenus seront très semblables et le tribunal sera porté à refuser de conclure à la violation de droit d'auteur (*Visual Conception Visuel (Vicovi) inc. v Bell Sygma inc.* [1997 R.J.Q. 1948 (CS).]) Or, c'est précisément ce qui, dans l'avis des experts qui ont témoigné en défense, s'est produit en l'instance. Ces experts, en effet, tout en exprimant beaucoup de réserves sur l'originalité de certains des exemples invoqués par l'appelant, telle l'expression « une vague idée de mimétisme », soulignent que la majorité des termes et expressions, que l'on retrouve dans les deux ouvrages, se retrouvent déjà dans beaucoup d'écrits concernant le domaine et ne sauraient être qualifiés de création de l'appelant.

Educational Rights 2003-2006, Re [2005] CarswellNat 488; <http://www.cb-cda.gc.ca/decisions/e14012005-b.pdf> in French at [2005] CarswellNat 489 (CopBd; 2005-01-14)

[1] Pursuant to subsection 71(1) of the *Copyright Act*, the Educational Rights Collective of Canada (ERCC) filed on March 27, 2002, its statement of proposed royalties to be collected from educational institutions in Canada, for the reproduction and performance of works or other subject-matters communicated to the public by telecommunication for the years 2003 to 2006. The statement was published in the *Canada Gazette* on May 11, 2002.

[5] Taking note of the agreement, the Board certifies for the period 2003-2006, a tariff identical (except for the title) to the interim tariff, and thus identical in substance to the previous certified tariff.

Enerflow Industries Inc. for the reproduction of architectural plans designed by APX Engineering Service Ltd. for the property located at 8625 68th Street S.E. in Calgary [Re Non-exclusive licence issued to] File 2005-UO/TI-31, <http://www.cb-cda.gc.ca/unlocatable/161-e.pdf> (CopBd; 2005-07-28)

<i>Enerflow Industries Inc (Re) 2005-UO/TI-31</i>	for the reproduction of architectural plans designed by APX Engineering Service Ltd. for the property located at 8625 68th Street S.E. in Calgary	2005-07-28 2005-12-31	Renovation	\$25	None
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Entral Group International Inc. v 1438762 Ontario Inc. [2005] OJ 2140, 40 **CPR** (4th) 410, 2005 CanLII 18316, 2005 CarswellOnt 2141, <http://www.canlii.org/on/cas/onsc/2005/2005onsc13769.html>, (OntSupCt; 2005-05-20) Master Hawkins

The plaintiff TCW was the exclusive licensee for Canada and the United States of the owners of copyright in karaoke versions of music videos. The plaintiff Entral held an exclusive sub-licence from TCW in such videos for Canada. In an action for infringement of copyright in the music videos the defendants moved for stay of the action on grounds that the plaintiffs had not joined the copyright owners as parties to the action and for an order

requiring the plaintiffs to furnish translations into English of some of the Cantonese song titles listed in a schedule to the statement of claim.

Held, the motion for a stay should be granted, and if the stay were lifted, the translations of the song titles should be furnished.

Section 36(1) of the Copyright Act, R.S.C. 1985, v C-42, gives a person holding a written licence from the copyright owner the right to bring an action for copyright infringement. Section 36(2) of the Act provides that the copyright owner must, however, be made a party to the action, unless one of the exceptions under s. 36(2) applies. The plaintiffs claimed that the exception under s. 36(2)(c) applied as it was not in the public interest to join the copyright owners, companies based in Hong Kong, because of the increase in expense in the litigation and the resultant delay.

The defendants claimed that if the copyright owners were not added as parties the defendants could be exposed to further litigation for alleged copyright infringement brought by one or more of the owners who would not be barred by issue estoppel. It was only speculative at the early stage of the action as to whether judicial discretion to apply issue estoppel would be exercised in any future litigation brought by the copyright owners. As the evidence failed to show that the added expense and delay would work a hardship upon the plaintiffs, the stay was granted but was not to operate to prevent the plaintiffs bringing a motion to amend the statement of claim to add the copyright owners as parties.

Section 125(2)(b) of the Courts of Justice Act, R.S.O. 1990, v v43, provides that documents filed in court in a language other than English, with the exception of documents in the French language, must be accompanied by a translation into the English certified by a affidavit of the translator. The difficulty in translating song titles and the cost of the translation was not sufficient to disregard non-compliance with s. 125(2)(b). On condition that the stay were to be lifted, the plaintiffs were ordered to amend the schedule so that all the song titles were in the English language or to add a translation certified by affidavit of the translator.

Eurosport Event Management Ltd.v 650621 B.C. Ltd (Malone's Bar Grill), 2005 FC 1359, [2005] FCJ 1664, 2005 CarswellNat 3174, <http://www.canlii.org/ca/cas/fct/2005/2005fc1359.html> and <http://decisions.fct-cf.gc.ca/fct/2005/2005fc1359.shtml> (FC; 2005-10-04) Hughes J.

[1] The Plaintiff brings this matter for default judgment against certain of the Defendants in this action who have failed to file a Defence or otherwise participate in the action.

[3] In the Federal Court, pleadings that are not defended, or if defended, not traversed are *not* taken to be true. A plaintiff seeking default judgment is required to prove the essential elements of its claim which it says entitles it to the relief claimed. Thus, on a motion for default judgment, a plaintiff must prove that it owns or, in an appropriate case, is licensed in respect of, a right that has been taken or infringed upon by a defendant.

[7] The Plaintiff, in its motion for default judgment seek relief in respect of two claims to rights (1) copyrights and (2) broadcast rights. There is no registration

of copyright evident. Section 34.1(a) of the *Copyright Act*, R.S.C. 1985, v c-30, provides that in an action such as this, unless the contrary is proved, copyright is presumed to subsist in the work or works at issue. That is the case here, copyright subsists. However, proof as to ownership is lacking, there is no evidence as to ownership of copyright before this court. Section 34.1(2) of the Act provides for certain presumptions as to ownership where names appears in association with the work. No evidence as to what, if anything, appears on the work as broadcast.

[8] As to the *Radiocommunications Act*, R.S.C. 1985, v R-2, section 18(1)(b) gives a right of action to a "lawful distributor" of a signal which is defined in section 2 to be "a person who has the lawful right in Canada to transmit it and authorize its decoding"

[9] What we have here is a contract between the Plaintiff and a party whose rights are unproven, purporting to grant "rights" to the Plaintiff. There is no proof as to what "rights" if any this grantor had. The chain of title put in evidence before this Court does not go back far enough for a grantee (the Plaintiff) to have rights, the grantor must have them in the first place and the power to give them. There is no evidence of that here.

Gagné (Lucie) for the reproduction of the work entitled The Diary of the 13th Battery Canadian Field Artillery 1914-1919 in a book [Re Non-exclusive licence issued to] File 2004-UO/TI-39, <http://www.cb-cda.gc.ca/unlocatable/160-e.pdf> (CopBd; 2005-07-19)

<i>Gagné (Re) 2004-UO/TI-39</i>	for the reproduction of the work entitled The Diary of the 13th Battery Canadian Field Artillery 1914-1919 in a book in no more than 1000 copies	2005-07-19 2007-12-31	Commercial	\$225	Access Copyrig ht
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Gravlin v Canadian Imperial Bank of Commerce 2005 CarswellBC 1443, [2005] BCWLD 4951, [2005] BCWLD 4923, 2005 **BCJ** 1334, 2005 BCSC 839, <http://www.canlii.org/bc/cas/bcsc/2005/2005bcsc839.html>, <http://www.courts.gov.bc.ca/jdb-txt/sc/05/08/2005bcsc0839err1.htm> (BC SC; 2005-06-14) Garson J.; as supplemented [2005] BCJ 1521, 2005 BCSC 1006, <http://www.courts.gov.bc.ca/jdb-txt/sc/05/10/2005bcsc1006.htm> (BCSC; 2005-07-06) Garson J.

Application by CIBC and the other defendants for a stay of Gravlin and the other plaintiffs' claims until they appointed a member in good standing of the Law Society of British Columbia to represent them. Dempsey, who was not licensed to practice law, currently appeared as Gravlin and the other plaintiffs' agent in their proposed class actions. The proposed class actions were premised on the assertion that CIBC and the other defendants' banking practises, particularly their debt collection proceedings, were unlawful and fraudulent. Gravlin and the other plaintiffs submitted that Dempsey was the only person willing and able to advance their case. Dempsey had been declared a vexatious litigant in other proceedings. He had commenced a similar action in his own name. He did not consider himself bound by the rule of law.

HELD: Application allowed in part. The pleadings were prolix, repetitive and unintelligible. Dempsey was not capable of drawing proper pleadings. He had demonstrated only a tenuous grasp of the principles of contract. To grant Dempsey the privilege of acting as counsel when he asserted that he would not adhere to statutory rules, laws or common law, was to invite chaos into the court and risked bringing the administration of justice into disrepute. It was not proper or necessary for Dempsey to act as agent for Gravlin and the other plaintiffs. The actions were stayed pending the hearing of CIBC and the other defendants' application to strike the statements of claim.

Groupe Aldo Inc. v Groupe Yellow Inc., 2005 IJCan 24880, 2005 CarswellQue 7499, REJB 2005-92799, <http://www.canlii.org/qc/jug/qccs/2005/2005qccs59136.html> (Que SupCt; 2005-07-12) Lacoursière J.

[22] Ayant entendu les parties, le juge Crépeau ordonne à Aldo de produire la cession de droits d'auteur alléguée. Selon le procès-verbal d'audience, il ne requiert pas copie de la prétendue cession avant de prononcer son jugement. Il en découle que le jugement Crépeau vise ni plus ni moins que le dépôt de ce qu'Aldo allègue être une cession de droits d'auteur.

[23] De plus, Aldo allègue la pièce P-7, comme cession de droits d'auteur, dès la requête introductive d'instance originale du 24 décembre 2004, au soutien du paragraphe 12.

[24] Yellow pouvait dès lors constater qu'il ne s'agissait pas d'une cession de droits d'auteur et requérir, par moyens préliminaires ou interrogatoire, communication du *Confirmatory assignment of copyright*. L'entente sur le déroulement de l'instance signée le 4 février 2005 prévoyait d'ailleurs ces moyens et interrogatoire. Yellow a choisi de ne pas s'en prévaloir.

[25] Yellow aurait pu découvrir cette preuve avant le jugement Crépeau.

[26] Enfin, la question de la nature ou de la validité de la prétendue cession relève davantage du juge du fond et le jugement Crépeau ne prive pas Yellow de son droit de faire valoir ses arguments à ce sujet en temps utile.

Groupe Archambault inc. v CMRRA/SODRAC inc., 2005 CAF 330, [2005] ACF 1718, 2005 **CarswellNat** 3262, <http://www.canlii.org/ca/jug/caf/2005/2005caf330.html> and <http://decisions.fca-caf.gc.ca/caf/2005/2005caf330.shtml> FCA; 2005-10-14) Pelletier J.
Subject: Intellectual Property; Public; Civil Practice and Procedure

Intellectual property --- Copyright -- Copyright Board -- Tariff hearings

Collective which represented authors of musical works submitted proposed tariff to Copyright Board -- Proposed tariff required on line music services to remit royalties to collective for distribution to its members -- Applicant on line music service was opponent of tariff -- Rules permitted parties to proceed by means of interrogatories -- Answers to interrogatories were forwarded to their authors without being distributed to other parties or filed with Board -- These parties exchanged interrogatories, some questions were opposed and compromises reached but some questions were submitted to Board for

ruling as parties could not agree -- Applicant submitted that questions were not relevant to issue before Board -- Board ordered that bulk of questions be answered by applicant and held that confidentiality of information was not viable reason to refuse to produce information given that Board could make confidentiality orders -- Applicant brought application for judicial review of decision -- Applicant alleged order constituted unreasonable seizure contrary to s. 8 of Canadian Charter of Rights and Freedoms -- Applicant brought application for stay of proceedings pending decision on application for judicial review -- Application dismissed -- No exceptional circumstances existed so as to justify intervention of court and delay matter before Copyright Board -- Relevance of questions posed in interrogatories is one of most banal questions raised in course of civil proceedings -- Trier of fact, whether administrative board or court, had power to determine relevance of questions posed in interrogatories -- Question was one of procedure and was not transformed into constitutional question despite allegations as to breach of s. 8 of Charter.

Administrative law --- Discretion of tribunal under review -- General principles

Collective which represented authors of musical works submitted proposed tariff to Copyright Board -- Proposed tariff required on line music services to remit royalties to collective for distribution to its members -- Applicant on line music service was opponent of tariff -- Rules permitted parties to proceed by means of interrogatories -- Answers to interrogatories were forwarded to their authors without being distributed to other parties or filed with Board -- These parties exchanged interrogatories, some questions were opposed and compromises reached but some questions were submitted to Board for ruling as parties could not agree -- Applicant submitted that questions were not relevant to issue before Board -- Board ordered that bulk of questions be answered by applicant and held that confidentiality of information was not viable reason to refuse to produce information given that Board could make confidentiality orders -- Applicant brought application for judicial review of decision -- Applicant alleged order constituted unreasonable seizure contrary to s. 8 of Canadian Charter of Rights and Freedoms -- Applicant brought application for stay of proceedings pending decision on application for judicial review -- Application dismissed -- No exceptional circumstances existed so as to justify intervention of court and delay matter before Copyright Board -- Relevance of questions posed in interrogatories is one of most banal questions raised in course of civil proceedings -- Trier of fact whether administrative board or court had power to determine relevance of questions posed in interrogatories -- Question was one of procedure and was not transformed into constitutional question despite allegations as to breach of s. 8 of Charter.

Guccio Gucci S.P.A. v Levi 42 **CPR** (4th) 423, 2005 FC 1186, 2005 CarswellNat 2691, <http://www.canlii.org/ca/cas/fct/2005/2005fc1186.html>, <http://decisions.fct-cf.gc.ca/fct/2005/2005fc1186.shtml> (FC; 2005-08-30) Hughes J.

In an action that began as a "John Doe" proceeding to enforce trade-mark and copyright rights in the word GUCCI, after the plaintiffs obtained an Anton Piller order and identified the defendant. The plaintiffs brought an unopposed motion for summary judgment. The Plaintiff relied on evidence demonstrating that the defendant was selling and offering for sale

counterfeit handbags and eyewear bearing the word GUCCI as a trade-mark. At the end of the hearing, the judge indicated that he would grant summary judgment in the plaintiff's favour, and requested that plaintiff's counsel prepare a draft order.

Held, the draft order should not be issued.

The draft order was very lengthy and went far beyond what could have been contemplated as a reasonable order. As a result, a different order issued together with reasons to explain how such an order should be made.

Where an order is made pursuant to summary judgment or on consent, a proper order must be guided at least by the following principles: a) the relief granted is limited to that which is within the jurisdiction of the Federal Court; b) the relief granted is limited to the rights pleaded and relief claimed in the statement of claim; c) the relief claimed is further limited to that claimed in the motion for summary judgment; and d) the relief granted is limited to that proven in a motion for summary judgment.

¶ 3 In this action a number of Canadian registered trade-marks, many of them including or being the word GUCCI were asserted as well as a number of copyrights which were registered in Canada but, because the registration system fails to disclose in any relevant manner what the subject matter of the copyright is, the copyright is essentially unidentified. Evidence was presented at the return of the summary judgment motion demonstrating that the Defendant was selling and offering for sale handbags and eyewear bearing the word GUCCI as a trade-mark. These goods were counterfeit. The Plaintiffs own one Canadian Registered Trade-Mark which comprises only the word GUCCI as a trade-mark for wares including handbags and eyewear; it is Registration No. TMA 202.555. The Plaintiffs also presented satisfactory evidence that the factual basis for the Counteraction, namely, that the Anton Piller Order was executed at the Defendant's residence, was untrue.

Guilde des musiciens du Québec v Québec (Commission de reconnaissance des associations d'artistes et des associations de producteurs), 2005 CarswellQue 3324, [2005] JQ 6997, 2005 IIJCan 19211, <http://www.canlii.org/qc/jug/qccs/2005/2005qccs58083.html> (Que SupCt; 2005-05-31) Larouche J.

[47] Les mis en cause affirment que la Commission a correctement déterminé, au paragraphe 47 de sa décision, que pour être considéré comme un producteur au sens de la *Loi sur le statut des artistes*, «il ne suffit pas qu'une personne ou une société retienne les services professionnels d'artistes, mais encore faut-il qu'elle le fasse en vue de produire ou de représenter en public une œuvre artistique dans un domaine.»

[48] Selon les mis en cause, la Commission aurait donc analysé le concept d'«œuvre artistique» tel que le requiert la définition de «producteur» au sens de l'article 2 de la *Loi sur le statut des artistes*.

[49] Les mis en cause nous réfèrent à la décision *Productions France Corbeil Inc. et Association des professionnels de la vidéo du Québec* [note 3: [1999]

R.J.D.T. 1754] dans laquelle la Commission a mentionné que la notion d'«œuvre artistique» n'est pas définie dans la *Loi sur le statut des artistes* et elle a déterminé que celle-ci devrait être interprétée selon le sens courant des mots :

«Conformément aux règles d'interprétation qu'elle s'est déjà données, la Commission estime qu'il faut prêter aux mots le sens qu'ils ont dans la langue courante, dans le contexte de la Loi. À cet égard, le Petit Robert traite du qualificatif «artistique» de la façon suivante :

«adj. (1808; de artiste.) ♦ 1^o Qui a rapport à l'artiste ou aux productions de l'art...»

La Commission a déjà été amenée à déterminer ce qu'il fallait entendre par les mots «art», «créateur» et «interprète» en précisant la portée de la définition du terme «artiste» au sens de la Loi. Pour mémoire, à l'issue de son analyse, elle se résumait ainsi :

«La Commission doit identifier quels sont les postes dont les titulaires font état d'un talent ou d'un savoir exceptionnel pour créer ou exprimer une forme de beauté, à partir d'éléments existants ou non, qui est inédite. Ce sont là les éléments principaux de la définition qui distinguent les artistes des artisans.»

Par analogie et à la lumière des faits, il revient à la Commission de déterminer, cette fois sous l'angle de la définition de «producteur» et donc de la production soumise à l'examen, si celle-ci participe de l'œuvre artistique en tant que manifestation d'une forme de beauté qui, à partir d'éléments existants ou non, est inédite.»

[50] Toujours relativement à la décision *Productions France Corbeil Inc.*, la Commission aurait conclu que le producteur ayant démontré qu'il ne produit ni ne fait la représentation en public d'une «œuvre artistique» au sens de la *Loi sur le statut des artistes* ne serait donc pas visé par cette dernière :

«Suivant l'exposé du témoin et sur la foi des pièces déposées, il ressort de manière prépondérante, que la production dans son ensemble concerne la couverture d'événements sportifs relatifs à la course automobile ou aux quilles, dont la caractéristique principale est de mettre en valeur, avec commentaires et entrevues le cas échéant, l'action principale, selon les exigences imposées par la transmission en direct ou ce qui en tient lieu. Assimilables au reportage et parfois même destinées au bulletin de nouvelles, les productions de la requérante ne font appel à aucune recherche artistique ou esthétique particulière.»

[51] Les références ci-dessus amènent les mis en cause à indiquer que pour définir en quoi consiste une «œuvre artistique», la Commission a utilisé le sens courant des mots et en est venue à la conclusion que *«la nature essentiellement technique de la représentation en public qui consiste à reproduire des sons dans le cadre étroit de l'animation du public amateur de hockey n'a pas pour finalité l'interprétation en public d'une œuvre musicale.»*

[52] Ce qui amène les mis en cause à signaler que cette conclusion de la Commission est clairement rationnelle et appuyée sur des éléments de preuve ne faisant abstraction à aucun fondement juridique et ne constituant donc pas un excès de compétence puisque rien dans la preuve ne permet de conclure que le travail effectué par Mme Bibaud a pour but de présenter une «œuvre artistique».

[53] Ce qui permet aux mis en cause d'alléguer qu'à sa face même, la décision de la Commission n'est pas manifestement déraisonnable puisqu'il n'y a aucune erreur de droit ou de fait permettant une révision judiciaire. On demande donc que soit rejetée avec dépens la requête en révision judiciaire de la demanderesse.

Analyse

[54] Ainsi qu'il a été mentionné dans ce jugement, la Commission de reconnaissance des associations d'artistes et des associations de producteurs est un tribunal hautement spécialisé jouissant d'une expertise particulière. Celui-ci est protégé par une clause privative dont les décisions sont finales et sans appel. Aucun recours extraordinaire ne pourrait être exercé contre elle sauf sur une question de compétence. Les articles 66 et 68 de la *Loi sur le statut des artistes* établissent clairement ces principes.

[55] Dans le cas sous étude, il est reconnu par les parties que la norme de contrôle applicable à l'encontre de la décision de la Commission est celle de l'erreur manifestement déraisonnable. Il s'agit d'une norme sévère, voire très stricte, à laquelle il n'est pas aisé de satisfaire.

[56] Après avoir analysé la preuve présentée devant elle, entendu les parties et évalué les dispositions législatives et réglementaires applicables, elle a décidé que les mis en cause n'étaient pas un producteur au sens de la *Loi sur le statut des artistes*.

[57] La décision, bien structurée, est amplement motivée et contient les bonnes références à la preuve telle qu'elle a été présentée devant les commissaires. En tenant compte de la norme de contrôle, de l'erreur manifestement déraisonnable, cette décision nous apparaît inattaquable. En conséquence, la requête en révision judiciaire de la partie demanderesse ne saurait réussir.

Harris Scientific Products Ltd. v Araujo, 2005 **CarswellAlta** 1242, 2005 ABQB 603, [2005] AWLD 3572, [2005] AWLD 3574, [2005] AWLD. 3568, [2005] AWLD 3594, 33 CCLT (3d) 228, <http://www.canlii.org/ab/cas/abqb/2005/2005abqb603.html>, <http://www.albertacourts.ab.ca/jdb/2003-qb/civil/2005/2005abqb0603.pdf> (AltaQB; 2005-08-05) Veit J.

Labour and employment law --- Employment law -- Elements of employment relationship -- Duties of employee to employer -- Fiduciary duties

H Ltd. was one-man company owned by S whose business was distribution to operators in oil field industry of downhole wireline, corrosion, and potential monitors and other equipment -- H Ltd. distributed two product lines developed and manufactured by two related UK companies -- Principal of UK companies was EA -- In 1997, plaintiff was hired by H Ltd. to provide administrative services and support to sales effort -- By fall 1999, plaintiff had decided to leave H Ltd. over dissatisfaction with S's allegedly underhanded business practices -- EA was dissatisfied with H Ltd.'s handling of product lines -- On January 31, 2000, plaintiff was fired by H Ltd., ostensibly for insubordination -- During February, EA sent letters to H Ltd. terminating distributorship arrangement -- EA set up Canadian company, PRP Canada Ltd., which would take over distribution of UK line of products in North

America -- Plaintiff was hired as PRP Canada Ltd.'s local employee -- Plaintiff brought action against H Ltd. for wrongful dismissal -- H Ltd. counterclaimed against plaintiff for breach of fiduciary duty in setting up employment with competitor while still in employ of H Ltd. -- Action dismissed -- Counterclaim dismissed -- Plaintiff was not key employee of H Ltd. -- Although plaintiff was valued employee of H Ltd., at time of his dismissal he did not have power to put H Ltd. at legal or practical risk -- Plaintiff was essentially office manager for H Ltd., looking after accounts payable, accounts receivable, bookkeeping, shipping and receiving and like matters -- Plaintiff was entitled to prepare himself for alternate employment with competitor of H Ltd. while he was employed at H Ltd. -- Only restrictions were that plaintiff could not disclose H Ltd. trade secrets to his new employer and he could not appropriate H Ltd. property, including intellectual property -- Plaintiff did not transgress those limitations.

Labour and employment law --- Employment law -- Termination and dismissal -- Termination of employment by employer -- What constituting just cause -- Misconduct – Insubordination

H Ltd. was one-man company owned by S whose business was distribution to operators in oil field industry of downhole wireline, corrosion, and potential monitors and other equipment -- H Ltd. distributed two product lines developed and manufactured by two related UK companies -- Principal of UK companies was EA -- In 1997, plaintiff was hired by H Ltd. to provide administrative services and support to sales effort -- By fall 1999, plaintiff had decided to leave H Ltd. over dissatisfaction with S's allegedly underhanded business practices -- EA was dissatisfied with H Ltd.'s handling of product lines -- On January 31, 2000, plaintiff was fired by H Ltd., ostensibly for insubordination -- During February, EA sent letters to H Ltd. terminating distributorship arrangement -- EA set up Canadian company, PRP Canada Ltd., which would take over distribution of UK line of products in North America -- Plaintiff was hired as PRP Canada Ltd.'s local employee -- Plaintiff brought action against H Ltd. for wrongful dismissal -- Action dismissed -- H Ltd. was entitled to terminate plaintiff's employment for gross insubordination -- There were four incidents of insubordination on which H Ltd. was entitled to rely, cumulatively, to terminate plaintiff's employment -- On December 13, 1999, day after plaintiff returned to work after his trip to England, plaintiff replied with harsh expletive when S requested that some task be undertaken -- Such language was not norm in H Ltd. workplace -- Second incident of insubordination was plaintiff's failure to complete work on soil probe by December 31, 1999, as previously requested by S and as formally required by latter in his reprimand letter of December 14 -- Third incident of insubordination took place when, in presence of H Ltd.'s important UK customers, plaintiff threw onto floor H Ltd. jacket offered to him by S -- Last act of insubordination occurred in meeting with UK customers, when plaintiff advised S in private that S would have to "come clean" to UK customers with respect to S's allegedly underhanded dealings with clients.

Injunctions --- Availability of injunctions -- Anton Piller orders – General

Breach of order -- H Ltd. was one-man company owned by S whose business was distribution to operators in oil field industry of downhole wireline, corrosion, and potential monitors and other equipment -- H Ltd. distributed

two product lines developed and manufactured by two related UK companies -- Principal of UK companies was EA -- In 1997, plaintiff was hired by H Ltd. to provide administrative services and support to sales effort -- By fall 1999, plaintiff had decided to leave H Ltd. over dissatisfaction with S's allegedly underhanded business practices -- EA was dissatisfied with H Ltd.'s handling of product lines -- On January 31, 2000, plaintiff was fired by H Ltd., ostensibly for insubordination -- During February, EA sent letters to H Ltd. terminating distributorship arrangement -- EA set up Canadian company, PRP Canada Ltd., which would take over distribution of UK line of products in North America -- Plaintiff was hired as PRP Canada Ltd.'s local employee -- H Ltd. obtained Anton Piller order against plaintiff's private residence -- Plaintiff claimed damages suffered as result of wrongful Anton Piller search and seizure -- Claim allowed -- S's sworn affidavit on which application for Anton Piller order was based included misrepresentation that was presumably crucial in judge's decision to grant order -- S knowingly misrepresented in affidavit that H Ltd. owned copyright on product -- H Ltd. deliberately failed to return all materials that had been seized and deliberately used those materials in clear and knowing contravention of order -- H Ltd. seized materials that were marked as having solicitor-client privilege -- H Ltd. seized audio cassette that clearly had nothing to do with proceedings and delivered that item to police for their "investigation" -- H Ltd. used two police officers rather than one that was authorized -- H Ltd. partially videotaped execution when no order for videotaping had been included by court -- H Ltd. failed to safeguard some of materials seized.

Torts --- Trespass -- Trespass to goods – General

Damages for unlawful execution of Anton Piller order -- Plaintiff was sole employee of PRP Canada Ltd. -- H Ltd. was former employer of plaintiff -- H Ltd. believed that plaintiff had breached fiduciary duties -- H Ltd. obtained Anton Piller order against plaintiff's private premises -- Plaintiff successfully claimed damages suffered as result of wrongful Anton Piller search and seizure -- Trespass and aggravated or exemplary damages are two most obvious heads of damages called into action wherever target's rights have been breached due to wrongful obtention or execution of Anton Piller order -- Where, as in case at bar, there has been seizure of items outside scope of order or more people executed order than order allowed, damages can be awarded in trespass -- In case at bar, there were defects in both obtention and execution of order -- Therefore, entry into plaintiff's residence was itself trespass as was removal of materials that were outside limits of search -- No actual loss need be proven by target in order to recover damages, although, where no damages have been caused, award of damages may be nominal -- Appropriate award to compensate plaintiff for "affront", largely non-pecuniary loss arising out of obtention and execution of Anton Piller order, was \$35,000 -- Plaintiff was awarded \$10,000 in exemplary or punitive damages as sanction against high-handed way in which court order was ignored by H Ltd. -- Plaintiff was entitled to indemnity of costs for proceedings from H Ltd.

<http://www.canlii.org/qc/jug/qccs/2005/2005qccs59672.html> (QueSupCt; 2005-08-12)
Larouche J.

Résumé

Action en jugement déclaratoire, en injonction permanente et en dommages-intérêts. Accueillie.

La demanderesse a produit un documentaire intitulé «Entre père et fils», qui a été diffusé sur les ondes de Télé-Québec en octobre 2002. Pour ce faire, elle avait retenu les services du défendeur Ferrand, à titre de chercheur, scénariste et réalisateur. Au mois de décembre suivant, Ferrand a permis au défendeur Dallaire d'imprimer, de publier et de vendre son livre *Papa, à quoi sers-tu?* Le livre a été mis en vente en janvier 2003. La demanderesse poursuit les défendeurs, soutenant que l'ouvrage est principalement constitué d'informations recueillies au cours de la recherche et que son texte est quasi identique au contenu du film. Elle prétend être la seule propriétaire des droits d'auteur et invoque une cession des droits et une licence exclusive contenues dans les contrats de services conclus avec Ferrand. Celui-ci ne conteste pas le recours, mais le défendeur Dallaire oppose que, les travaux de Ferrand ne constituant pas une oeuvre au sens de la *Loi sur le droit d'auteur*, il n'avait aucun consentement à obtenir de la demanderesse.

Décision

Dans sa défense, Dallaire, bien qu'en principe il plaide pour autrui, peut bénéficier des prétentions juridiques des parties. D'une part, les faits et documents n'ont pas été contestés et le litige relève d'interprétations juridiques, donc de questions de droit. D'autre part, les défendeurs sont solidaires et Dallaire a le droit de formuler des prétentions juridiques qui sont dans leur intérêt commun. Les contrats entre la demanderesse et Ferrand sont des contrats de services: recherche, écriture ou scénarisation et réalisation. Ils constituent la loi entre les parties. Ainsi, Ferrand ne peut faire fi de ses obligations contractuelles. Or, il a fait cession de ses droits en faveur de la demanderesse. Bien que ses travaux de chercheur ne constituent pas une oeuvre au sens de la *Loi sur le droit d'auteur*, ses droits ont été cédés de façon exclusive à la demanderesse et il ne pouvait s'en servir pour écrire son livre. La comparaison entre celui-ci et la transcription du documentaire démontre qu'il s'agit d'une contrefaçon. Dallaire ne s'est pas préoccupé de savoir si Ferrand possédait les droits avant d'éditer le livre, se fiant plutôt candidement à la déclaration de ce dernier. Bien plus, les défendeurs se sont servis du documentaire pour promouvoir la vente du livre au Québec et à l'étranger. Comme tous et chacun des contrats de recherche, de scénarisation et de réalisation contiennent des cessions de droits et des licences en faveur de la demanderesse, l'appropriation et la violation de ces droits par les défendeurs sont évidentes et les recours de celle-ci sont bien fondés. Par surcroît, la demanderesse devait dénoncer ces violations puisque, afin d'assurer des ententes de financement, elle avait garanti qu'elle détenait tous les droits nécessaires à la production. Les gestes des défendeurs rendent maintenant presque impossible toute récupération des investissements et des subventions. Il est également vraisemblable que la réputation de la demanderesse soit sérieusement entachée tant dans le milieu littéraire que dans celui du cinéma. Par conséquent, les indemnités suivantes lui sont accordées: 20 272 \$ à titre d'honoraires et débours engagés pour assurer la sauvegarde de ses droits, 10 000 \$ pour les inconvénients subis, 10 000 \$ pour atteinte à la réputation et 10 000 \$ à titre

de dommages exemplaires vu l'atteinte intentionnelle et illicite. Le tribunal rend une ordonnance en injonction permanente, déclare que la demanderesse est propriétaire de tous les droits d'auteur et lui réserve tous ses autres recours.

[116] L'auteur [Tamaro in his 6th Edition] traite également de la définition de contrefaçon prévue à l'article 2 de la Loi. On sait qu'en matière de droit d'auteur, le terme «contrefaçon» désigne généralement l'acte par lequel on porte atteinte aux droits d'auteur. Ainsi que l'indique l'auteur à la page 48, un contrefacteur, par imitation déguisée, peut tenter de laisser croire que son ouvrage présente les caractéristiques d'une nouvelle œuvre; mais en réalité, il ne fait que reprendre une partie substantielle de l'œuvre imitée en modifiant sa forme. Il va de soi, ajoute-t-il, que la simple imitation ou copie est forcément interdite.

[138] D'ailleurs, il suffit de lire le Livre et de le comparer au documentaire et à la transcription qui en a été faite pour réaliser que la transposition est évidente. Qu'on appelle ça copiage, transposition, contrefaçon ou plagiat, c'est du pareil au même, et même le défendeur Yvon Dallaire n'a pu faire autrement que de le constater et de l'affirmer lorsqu'il a été entendu à l'audience

[180] DÉCLARE conformément à l'article 38 de la *Loi sur le droit d'auteur*, L.R.C. (1985) c. C-42, la demanderesse propriétaire de tous originaux, épreuves, copies et exemplaires du livre intitulé «*Papa, à quoi sers-tu?*» et par conséquent, **AUTORISE** la demanderesse à détruire tous et chacun des originaux, épreuves, copies et exemplaires dudit livre;

Index Téléphonique de notre localité N.L. Ltée v Le guide de Cowansville Inc. 2005 CarswellQue 10911 (QueSupCt; 2005-11-16) Daigle J.

[1] Sur la requête de la DEMANDERESSE L'INDEX TÉLÉPHONIQUE DE NOTRE LOCALITÉ N.L. LTÉE du 28 septembre 2005 pour réouverture de l'enquête.

[9] La DEMANDERESSE n'a pas démontré que les faits qu'elle désire mettre en preuve sont de nature à apporter plus de lumière sur la question en litige qui est celle de savoir si la DÉFENDERESSE a violé ses droits d'auteur en publiant un bottin téléphonique en 2003: même si elle prouvait qu'elle a vendu le droit de produire son bottin de Granby-Bromont en 1996, ce n'est pas elle qui a publié les éditions 2001 et 2003 et n'en peut tirer un argument à l'encontre de la DÉFENDERESSE.

Interim tariff of levies to be collected by CPCC in 2006 on the sale of blank audio recording media in Canada 2005 CarswellNat 4267, <http://www.cb-cda.gc.ca/decisions/c21122005-b.pdf>, in French at 2005 CarswellNat 4268 (CopBd; 2005-12-21)

[2] On December 14, 2004, the Board issued an interim decision extending indefinitely the application of the *Private Copying Tariff, 2003-2004*. When that decision was issued, the Board only had before it a proposed tariff for 2005. CPCC has expressed its concern that someone might challenge the Board's power to issue an interim decision that would apply for a longer period of time than the effective period contemplated in the main application. For that reason, CPCC has asked, pursuant to section 66.51 of

the *Copyright Act*, that the Board issue for 2006 a further interim decision that would be identical in all but one respect. CPCC asks that any reference to non-removable memory permanently embedded in a digital audio recorder be deleted, since the Federal Court of Appeal ruled in December 2004 that such a device could not be subject to a levy: *Canadian Private Copying Collective v. Canadian Storage Media Alliance (C.A.)*, [2005] F.C.R. 654. No one has objected to CPCC's request.

[3] The Board grants CPCC's application and extends for 2006, on an interim basis, the application of the *Private Copying Tariff, 2003-2004*, except for the definition of "digital audio recorder", paragraph (a)(iv) of the definition of "blank audio recording medium" and paragraph 3(1)(d), which are deleted. This tariff (see text attached) will remain in force, unless modified, until the final tariff is certified for the period commencing January 1, 2005.

[4] This decision replaces the interim decision of December 14, 2004, to the extent that it would otherwise remain applicable.

Knith (Darrell), Calgary, Alberta, for the reproduction of the book entitled "History of the Thirty-First Battalion v E.F." produced by H.C. Singer and A.A. Peebles [Re Non-exclusive licence delivered to] File No. 2005 UO/TI 41; <http://www.cb-cda.gc.ca/unlocatable/171-e.pdf> (Copyright Board; 2005-12-08)

<i>Southern Alberta Institute of Technology (Re) 2005-UO/TI-27</i>	for the reproduction of five sets of images and diagrams for which the source is unknown, in no more than 100 copies of each set	2005-09-19 2006-12-31	Commercial/ Education	\$50	Access Copyrig ht
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Kraft Canada Inc. v Euro Excellence Inc. [2004] CarswellNat 1371; 2004 FC 652, 33 CPR (4th) 246, 252 FTR 50, <http://www.canlii.org/ca/cas/fct/2004/2004fc652.html> and <http://decisions.fct-cf.gc.ca/fct/2004/2004fc652.shtml>, in French at <http://www.canlii.org/ca/jug/cfpi/2004/2004cf652.html> and <http://decisions.fct-cf.gc.ca/cf/2004/2004cf652.shtml> (FC; 2004-05-03); [2004] CarswellNat 1793, 2004 FC 832, 33 CPR (4th) 242, <http://www.canlii.org/ca/cas/fct/2004/2004fc832.html> and <http://decisions.fct-cf.gc.ca/fct/2004/2004fc832.shtml>, in French <http://www.canlii.org/ca/jug/cfpi/2004/2004cf832.html> and <http://decisions.fct-cf.gc.ca/cf/2004/2004cf832.shtml> (FC - Reconsideration; 2004-06-09); vard. 2005 CAF 427, [2005] ACF 2082, 2005 CarswellOnt 7672, <http://www.canlii.org/ca/jug/caf/2005/2005caf427.html> and <http://decisions.fca-caf.gc.ca/caf/2005/2005caf427.shtml> (FCA; 2005-12-19) Desjardins J.

[22] Sur le plan constitutionnel, le premier juge fut d'avis qu'il fallait donner pleine force et plein effet au libellé de la Loi, qui relevait de la compétence fédérale, et que l'infraction prévue au paragraphe 27(2) de la Loi ne constituait pas un empiétement sur la compétence des provinces en matière de propriété et droits civils. Il rejeta de plus les allégations d'Euro Excellence relatives à l'atteinte à l'ordre public.

[43] Le paragraphe 27(2) traite de la violation du droit d'auteur à une étape ultérieure. Il peut arriver, en effet, qu'un défendeur soit réputé contrevenir à un droit d'auteur même s'il n'a pas produit ou reproduit lui-même l'oeuvre protégée.

[46] La dernière phrase du dernier paragraphe de cette définition [of subsection 27(2) indique clairement que les exemplaires d'une oeuvre protégée au Canada mise en circulation à l'extérieur du Canada peuvent être contrefaisants lorsqu'ils sont importés au Canada. La version française est moins claire puisqu'elle utilise le terme * reproduction + plutôt qu'importation, mais la référence à l'alinéa 27(2)e), qui ne traite que de l'importation, rend le même sens que la version anglaise du texte. La version française par ailleurs rend très claire l'idée que, hormis le cas visé par l'alinéa 27(2)e), il n'y a pas contrefaçon lorsque la reproduction est faite avec le consentement du titulaire du droit d'auteur dans le pays de production.

[49] L'ajout des mots « par la personne qui l'a produit » [see the 1997 amendments to the *Copyright Act*] constitue un changement significatif.

[50] Avant l'ajout dans le texte des mots «par la personne qui l'a produit» la jurisprudence canadienne les avait déjà inclus.

[55] Dans toutes ces causes [prior to 1997], pour établir la violation de son droit d'auteur à une étape ultérieure concernant un produit importé, les demandeurs ont prouvé qu'ils avaient le droit exclusif d'employer au Canada le droit d'auteur en question et que les exemplaires importés par les défendeurs n'avaient pas été produits par les demandeurs.

[58] Dans l'affaire CCH, précitée, paragraphe 81, la Cour suprême du Canada, citant avec approbation le juge Rothstein de notre Cour (2002 FCA 187 (CanLII), [2002] 4 F.C. 213, paragraphe 271), affirmait que trois éléments étaient en général requis pour prouver la violation à une étape ultérieure : (1) qu'il y ait d'abord une violation initiale du droit d'auteur; (2) que l'auteur de la violation à une étape ultérieure sache ou aurait dû savoir qu'il utilisait le produit d'une violation initiale du droit d'auteur; (3) et que cet auteur ait posé un des actes contenus dans l'énumération du paragraphe 27(2) de la Loi. La Cour suprême du Canada ajoutait, au paragraphe 82 : «Vu l'absence de violation initiale, il ne peut y avoir de violation à une étape ultérieure ».

[59] La preuve d'une violation initiale du droit d'auteur n'est cependant pas requise dans le cas de l'alinéa 27(2)e) de la Loi. Dans le cas d'un exemplaire importé dans les circonstances visées par l'alinéa 27(2)e), la Loi reconnaît en effet, au dernier paragraphe de la définition de «contrefaçon» ("infringing") à l'article 2 de la Loi, l'existence de la contrefaçon :

La présente définition exclut la reproduction B autre que celle visée par l'alinéa 27(2)e) ...	The definition includes a copy that is imported in the circumstances set out in paragraph 27(2)(e) ...
[Je souligne.]	[Emphasis is mine.]

[60] Ceci dit, de par les termes mêmes du paragraphe 27(2) de la Loi, dans le cas d'un produit importé dans les conditions visées à l'alinéa 27(2)e), il y a violation du droit d'auteur à une étape ultérieure dans l'accomplissement des actes énumérés aux alinéas 27(2) a) à c), quand la production ou la reproduction de l'oeuvre en question constituerait une violation si elle avait été produite au Canada par la personne qui l'a produite. Ainsi, les reproductions des oeuvres protégées faites hors du Canada, même par les titulaires des droits d'auteur KFB et KFS, ne peuvent être importées au Canada par Euro Excellence en vue de l'un ou l'autre des actes énumérés aux alinéas 27(2) a) à c), sans qu'il

y ait violation du droit d'auteur de KCI à une étape ultérieure, puisque KCI détient un droit exclusif de reproduction pour le Canada, même à l'égard de KFB et de KFS, et qu'Euro Excellence connaissait l'enregistrement pour le Canada des licences exclusives de KCI sur les deux oeuvres.

[70] KCI sollicite une ordonnance de la Cour défendant à Euro Excellence de posséder ou d'importer les produits en cause au Canada en vue de l'accomplissement de l'un ou l'autre des actes prévus aux alinéas 27(2)a) à c) de la Loi.

[71] Le premier juge ne fit pas écho à ces demandes qui étaient pourtant contenues dans la demande d'injonction (C.A., vol. I, p. 37, à la p. 39). Il rejeta une requête à cet effet présentée par KCI après le prononcé du jugement (*Kraft Canada Inc. c. Euro Excellence Inc.* 2004 FC 832 (CanLII), (2004), 33 C.P.R. (4th) 242, 2004 CF 832, para. 1 à 5). Il s'expliqua ainsi aux paragraphes 1 et 4 de ses motifs :

¶1 [...] Étant donné que le paragraphe 27(2) de la Loi sur le droit d'auteur stipule que la possession ou l'importation au Canada d'oeuvres protégées à ces fins constitue une violation du droit d'auteur, Kraft soutient que j'ai omis par inadvertance d'inclure possession et importation dans l'ordonnance. Ce n'est pas le cas. J'ai délibérément exclus les termes possession et importation dans l'ordonnance.

¶4 [...] Il n'est pas contraire à la Loi sur le droit d'auteur d'importer au Canada et de posséder des tablettes de chocolat Toblerone et Côte d'Or dans des emballages affichant les oeuvres protégées. Ce qui importe, c'est de déterminer dans quel but elles sont importées et possédées. Un voyageur qui apporte une tablette de chocolat Toblerone ou Côte d'Or au Canada, la consomme ici, et jette l'emballage n'est pas en violation de la loi. Je n'avais pas l'intention d'interdire à Euro Excellence d'importer et de posséder les tablettes de chocolat dans leur emballage original. Je n'ai certainement pas mentionné qu'il fallait corriger le problème de la contrefaçon des emballages en Europe. Pourvu qu'Euro Excellence fasse en sorte que les emballages ne constituent pas des contrefaçons, que ce soit au Canada ou ailleurs, avant de vendre, mettre en circulation, exposer ou offrir en vente le produit en question, elle ne se trouvera pas à violer le paragraphe 27(2) de la Loi sur le droit d'auteur.

[72] Lors de l'audition devant nous, KCI a concédé que l'ajout des interdictions contenues aux alinéas 27(2)d) et e) n'est pas nécessaire vu que le premier juge a prononcé l'injonction à l'égard de l'accomplissement des actes prévus aux alinéas 27(2)a), b) et c). Ainsi, puisqu'Euro Excellence ne peut ni vendre, ni mettre en circulation, ni offrir en vente les produits protégés, Euro Excellence ne peut non plus les posséder ou les importer en vue de les vendre, les mettre en circulation, ou les offrir en vente

L.S. Entertainment Group Inc. v Formosa Video (Canada) [2005] FCJ 1643, 2005 FC 1347, 2005 **CarswellNat** 3157, <http://www.canlii.org/ca/cas/fct/2005/2005fc1347.html> and <http://decisions.fct-cf.gc.ca/fct/2005/2005fc1347.shtml> (FC; 2005-09-30) Gibson J.

Plaintiffs alleged they were individually owners in Canada of copyright of 158 Asian-language films -- Plaintiffs alleged defendants rented, sold and distributed such films in violation of plaintiffs' copyright -- Plaintiffs brought

action for damages for breach of copyright, including exemplary damages and seizure of any relevant materials from defendant -- Case management judge ruled that written answers given by defendant at discovery were insufficient and ordered defendant re-attend at discovery -- Defendant failed to attend at discovery -- Defendant failed to attend at dispute resolution hearing, citing vague medical problems -- Defendant failed to pay costs order for missing resolution hearing -- Plaintiff brought motion for order striking defendant's statement of defence and entering default judgment -- Motion granted -- Court was willing to exercise discretion to strike statement of claim due to defendant's arrogant behaviour -- Defendant had no reasonable excuses for missing hearings -- Medical notes put forth by defendant as justifications for missing hearings were entirely inadequate -- Defendant had failed to demonstrate existence of serious question of law to be argued or facts that were unclear and substantially disputed.

Langdon (Robin) for the mechanical reproduction of five musical works (composers and publishers unknown) [Re Non-exclusive licence issued to] File 2005-UO/TI-12, <http://www.cb-cda.gc.ca/unlocatable/151-e.pdf> (CopBd; 2005-03-21)

Langdon(Re) 2005-UO-TI 12	for the mechanical reproduction of five musical works (composers and publishers unknown) in no more than 500 CD's	2005-03-21 2005-12-31	Commercial	\$212. 50	CMRRA
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McGraw-Hill Ryerson for the reproduction of Rita Schindler's letter published in the Toronto Star on December 30, 1990 [Re Non-exclusive licence issued to] File 2005-UO/TI-17, <http://www.cb-cda.gc.ca/unlocatable/159-e.pdf> (CopBd; 2005-07-19)

McGraw-Hill Ryerson Limited (Re) 2005-UO/TI-17	for the reproduction of Rita Schindler's letter published in the Toronto Star on December 30, 1990 in no more than 15000 copies	2005-07-19 2006-12-31	Commercial	\$200	Access Copyrig ht
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Michel Rhéaume & Associés Ltée v 9071-8131 Québec Inc. (Pro-Vie Assurances) 2005 IJCan 24443, SOQUIJ AZ-50322827, **JE** 2005-1572, [2005] JQ 9114, <http://www.canlii.org/qc/jug/qccs/2005/2005qccs59015.html> (Que SupCt; 2005-07-08) Matteau J.

Résumé

Requête en irrecevabilité d'une demande d'injonction pour violation du droit d'auteur. Rejetée.

La demanderesse est un courtier d'assurance de personnes qui offre des produits destinés aux groupes et associations d'entrepreneurs et de professionnels, telle l'Association provinciale des constructeurs d'habitation du Québec, dont les membres peuvent adhérer à d'autres associations comme l'Association de la construction du Québec (ACQ). La défenderesse

est également courtier en assurance de personnes et offre ses produits à des groupes et associations de l'industrie de la construction. En octobre 2001, elle a conclu avec l'ACQ un contrat pour la gestion d'un programme d'assurance collective pour les associations. Par cette entente, elle a directement concurrencé la demanderesse et, dans ce contexte, elle a produit et distribué un dépliant publicitaire aux membres de l'ACQ. En 2002, la demanderesse a réclamé une injonction permanente contre la défenderesse et son directeur commercial, qui avait été courtier chez elle, afin que la défenderesse cesse d'utiliser son dépliant publicitaire. En mai 2003, la Cour supérieure a rejeté sa demande au motif qu'il y avait absence de preuve de confusion, jugement confirmé par la Cour d'appel en janvier 2005. En février 2005, la demanderesse a intenté le présent recours visant à faire cesser la reproduction, la distribution et l'utilisation du dépliant au motif qu'il reproduisait un dépliant qu'elle avait conçu, réalisé, mis en page et fait imprimer, et qui constitue une oeuvre littéraire protégée par la *Loi sur le droit d'auteur*. Dans son recours, elle réclame également des dommages-intérêts moraux et une compensation équivalant aux profits réalisés par la défenderesse. Cette dernière oppose l'irrecevabilité de la demande et en requiert le rejet au motif de chose jugée.

Décision

Selon l'article 2848 du *Code civil du Québec* (C.C.Q), il y a chose jugée lorsqu'il y a identité de parties, d'objet et de cause. En l'instance, l'identité des parties est évidente, malgré le fait que la défenderesse était codéfenderesse dans la première procédure. Toutefois, il y a absence d'identité d'objet et de cause. L'identité d'objet a été définie par la Cour suprême du Canada dans *Roberge v Bolduc* (C.S. Can., 1991-02-28), SOQUIJ AZ-91111033, JE 91-412, [1991] R.R.A. 314 (rés.), [1991] R.D.I. 239, [1991] 1 R.C.S. 374, comme le bénéfice qu'une partie se propose d'obtenir en formulant sa demande et elle se détermine en examinant non seulement la forme de la demande, mais également sa substance. La première procédure demandait que la défenderesse cesse d'utiliser le dépliant publicitaire. Même si les deux recours tirent leur origine de l'utilisation du dépliant, celui exercé en l'instance est plus précis et vise des actes qui n'ont pas fait l'objet de débat. La demanderesse désire que la défenderesse cesse la reproduction, la distribution et l'usage du dépliant, qu'elle lui en remette les exemplaires et les matrices et qu'elle rende compte des profits. De plus, les dispositions de la *Loi sur le droit d'auteur* autorisent un auteur qui invoque la violation d'un droit à exercer différents recours, aucun de ceux-ci n'étant l'accessoire de l'autre et chacun pouvant exister de façon indépendante. La définition de l'identité de cause donnée dans *Rocois Construction Inc. v Québec Ready Mix Inc.* (C.S. Can., 1990-08-16), SOQUIJ AZ-90111069, JE 90-1199, [1990] 2 R.C.S. 440, a été reprise dans *Roberge*. Selon cet arrêt, un ensemble de faits ne constitue pas en soi une cause d'action; c'est plutôt la qualification juridique qu'on lui donne qui le transforme en fait créateur d'obligations. Ainsi, un même ensemble de faits peut se voir attribuer plusieurs qualifications, donnant ouverture à des causes distinctes. Dans la première procédure, la règle de droit applicable était celle prévue à l'article 1457 v.C.Q., alors qu'en l'espèce ce sont les dispositions de la *Loi sur le droit d'auteur* qui sont pertinentes pour déterminer si le dépliant de la demanderesse constitue une oeuvre littéraire protégée et s'il y a eu violation de son droit d'auteur.

[39] Soit dit avec égards, le Tribunal est d'avis que les dispositions pertinentes de la Loi autorise le titulaire d'un droit d'auteur qui en allègue la violation, d'exercer un ou plusieurs des différents recours qui y sont prévus. Aucun d'entre eux n'est l'accessoire de l'autre et chacun peut exister indépendamment de l'autre.

Michel Rhéaume & Associés Ltée v 9071-8131 Québec Inc., [2003] JQ 5484, 2003 IJCan 17591, <http://www.canlii.org/qc/jug/qccs/2003/2003qccs12315.html> (QueSupCt; 2003-05-12, Crôteau J.) affd. 2005 QCCA 99, SOQUIJ AZ-50296124, 2005 **BE**-295, [2005] JQ 1036 (Que CA; 2005-01-11)

Résumé

Appel d'un jugement de la Cour supérieure ayant accueilli une requête en injonction permanente visant à faire cesser la sollicitation de clientèle par un ex-employé. Rejeté.

Décision

En première instance, les appelantes alléguaient qu'un ex-employé avait utilisé des connaissances acquises dans l'exercice de son emploi pour préparer un dépliant publicitaire similaire au sien au profit de son nouvel employeur. Le premier juge a conclu que l'ex-employé avait violé une clause de non-concurrence mais a refusé de lui ordonner de cesser d'utiliser le dépliant. Dans leur pourvoi, les appelantes invoquent pour la première fois une violation de leur droit d'auteur. Or, même si le dépliant publicitaire devait être considéré comme une oeuvre protégée par le droit d'auteur, les appelantes auraient dû l'alléguer et en faire la preuve en première instance. Elles ne peuvent modifier en appel le fondement de leur recours initial.

Michel Rhéaume & Associés Ltée v 9071-8131 Québec Inc., [2003] JQ 6862, 2003 IJCan 48440, <http://www.canlii.org/qc/jug/qccs/2003/2003qccs12829.html> (Que SupCt; 2003-06-06 Marcelin J.) revd in part sub nomine *Beaulne & Rhéaume Assurances Ltée v Dubé* [2005] JQ 1037 (Que CA; 2005-01-11), SOQUIJ AZ-50296125, 2005 QCCA100, **BE** 2005 BE-339

Résumé

Appel d'un jugement de la Cour supérieure ayant rejeté une requête en injonction permanente. Accueilli en partie.

Décision

Les appelantes ont reproché aux intimés une concurrence déloyale et une violation des dispositions de la *Loi sur la distribution de produits et services financiers* et du *Code de déontologie de la Chambre de la sécurité financière*. Elles leur ont également reproché de faire croire aux assurés que Pro-Vie Assurances était insolvable et que les assureurs qu'elle représentait étaient réticents à honorer des réclamations. Le premier juge a conclu que le litige portait sur une guerre commerciale entre concurrents, qu'il y avait absence de preuve prépondérante d'une utilisation malicieuse de documents et que les recours disciplinaires étaient inefficaces. Or, la remise de certains documents à des assurés constitue un acte contraire aux articles 16, 30, 31 et 32 du *Code de déontologie de la Chambre de la sécurité financière* et de la concurrence déloyale. Par ailleurs, les autres recours possibles n'apportaient pas de remède efficace et la preuve démontre

l'existence d'un lien de droit avec L'Excellence, compagnie d'assurance-vie.

Microsoft Corp. v 9038-3746 Quebec Inc. 42 **CPR** (4th) 417, 2005 FC 1144, 2005 CarswellNat 2426, <http://www.canlii.org/ca/cas/fct/2005/2005fc1144.html>, <http://decisions.fct-cf.gc.ca/fct/2005/2005fc1144.shtml>, (FC; 2005-08-23) Kelen J.

The plaintiff had commenced an action for copyright and trade-mark infringement relating to software which the plaintiff asserted was counterfeit. Following the examinations for discovery of the defendants, the plaintiff brought a motion seeking to compel the defendants to, among other things, answer questions refused, to provide answers to undertakings given and to deliver affidavits of documents. The prothonotary granted the motion having found that: the plaintiff established in a meticulous fashion that the great majority of the refusals were excessive, unwarranted and unreasonable; the defendants had failed to deliver affidavits of documents and answer undertakings within the time provided by court order; and, the defendants acted in an obstructive fashion and added substantially to the length and expense of the proceedings. The prothonotary awarded costs of the motion to the plaintiff, fixed and payable forthwith in any event of the cause. The defendants' appealed certain aspects of the order, including the refusals ordered answered and the award of costs. The defendants' motion record on the appeal did not contain any details with respect to the basis for the appeal and did not contain any transcripts from the examinations for discovery. At the hearing of the appeal an agent appeared for defendants' counsel and requested an adjournment. The reason for the requested adjournment was that defendants' counsel had travelled unexpectedly to the Orient and had returned to Montreal, but was not able to attend in Toronto for the hearing of the appeal. No advance notice was given to the court of the request for an adjournment and plaintiff's counsel had only been notified by telephone the day before. The plaintiff opposed the adjournment.

Held, the appeal should be dismissed.

In view of the finding of the prothonotary that the defendants acted in an obstructive fashion and added substantially to the length and expense of the proceedings, it was unreasonable to grant the last minute request for an adjournment. In addition, the defendants did not demonstrate in their written representations that the motion had real merit.

On an appeal from a decision of a prothonotary the court should not intervene simply because it would have come to a different conclusion. If, however, the decision is clearly wrong or the questions are vital to the final issues of the case, then the court must consider the issues de novo. The issues raised on the appeal were not vital to the final issue of the case.

The test of relevancy determines the propriety of discovery questions. The test of relevancy is to be broadly interpreted. It is in the discretion of the prothonotary to decide whether a question falls within the broad definition of relevancy.

It is not proper for the defendants to make arguments not raised in their written representations. The defendants did not allege or demonstrate in their written representations that the questions in the 26 categories of refusals ordered answered were not relevant. However, the defendants were allowed to make their strongest arguments.

The prothonotary was not clearly wrong in his conclusion that the questions refused should be answered.

With respect to costs, the defendants did not demonstrate that the prothonotary was clearly wrong and therefore, there was no basis for the court to intervene.

Mount Royal College Bookstore for the reproduction of two articles written by Robert Severns [Re Non-exclusive licence issued to] File 2005-UO/TI-36, <http://www.cb-cda.gc.ca/unlocatable/153-e.pdf> (CopBd; 2005-04-25)

Mount Royal College Bookstore (Re) 2002-UO/TI-36	for the reproduction of two articles written by Robert Severns in no more than 37 copies	2005-04-25 2006-12-31	Commercial/formation	30¢/page [\$444]	Access Copyrig ht
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National Film Board of Canada for the reproduction and incorporation of eleven transparencies of Emily Carr's works produced by photographer Michael Neill in 1980 [Re Non-exclusive licence issued to] File 2005-UO/TI-29, <http://www.cb-cda.gc.ca/unlocatable/166-f.pdf> N(CopBd; 2005-09-02)

Office national du film du Canada (Re) 2005-UO/TI-29	for the reproduction and incorporation of eleven transparencies of Emily Carr's works produced by photographer Michael Neill in 1980	2005-09-02 2005-12-31	Commercial	\$2497	CARCC
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National Film Board of Canada, Ville Saint-Laurent, Quebec, to use part of a musical work written by Georgy Sviridov [Re Application by the] [2005] CBD 9, File 2005 UO/TI-34, 2005 CarswellNat 2992, <http://www.cb-cda.gc.ca/unlocatable/other/5-b.pdf>, in French at 2005 CarswellNat 2993 (CopBd; 2005-09-13)

Office national du film du Canada (Re) 2005-UO/TI-34	to use part of a musical work written by Georgy Sviridov	2005-09-13 REFUSED			
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[3] Sviridov having died in 1998, his works are protected by copyright in Canada. Pursuant to subsection 77(1) of the Act, the Board may issue a licence allowing the use in Canada of a work of Sviridov if the person who owns the copyright in the work cannot be located. In this instance, this is not the case. Admittedly, given that the copyright entitlement over the works of Sviridov is the object of litigation, it is not possible to determine precisely who owns the relevant rights. That being said, according to the record, all those who, rightly or wrongly, claim to own some rights in the works of Sviridov are known. Whatever the issue of the litigation, the owner of the rights in the relevant work may remain undetermined, but is not unlocatable.

Nautical Data International, Inc. In Re the Bankruptcy and Insolvency Act, 2005 **CarswellNfld** 180, 2005 NLTD 110, 11 CBR (5th) 144 (Nfld & Labr. S.C.-; 2005-06-24) Hall J; 2005 NLTD 137, <http://www.canlii.org/nl/cas/nlsctd/2005/2005nlsctd137.html> (Nfld & Labr. S.C.- To Lift Stay; 2005-08-12) Russel J.; 2005 **CarswellNfld** 228, 2005 NLTD 141, 13 CBR (5th) 223, <http://www.canlii.org/nl/cas/nlsctd/2005/2005nlsctd141.html> (Nfld & Labr. S.C.- 2005-08-19) Hall J.

Hall J. (1)

Bankruptcy and insolvency --- Effect of bankruptcy on other proceedings -- Miscellaneous issues

Bankrupt filed notice of intention to file proposal -- Company had contract with bankrupt and purported to terminate contract upon notice to file proposal -- Third party competitors sent lawyers to watch proceedings -- Bankrupt had brought copyright infringement proceedings against third parties -- Bankrupt successfully brought order to seal contents of contract between company and bankrupt to protect against improper use by third party competitors -- Third parties brought application to vacate order -- Application granted -- Contract was not protected from third parties' view -- Bankrupt's litigation with third parties could not prevent third parties from viewing relevant information related to such litigation -- Contract between bankrupt and company was relevant information that did not qualify as confidential -- Any damages sought in third parties' action brought into play need for evidence on financial position of bankrupt in order to demonstrate purported losses.

Hall J. (2)

Bankruptcy and insolvency --- Proposal -- Meeting of creditors to consider

Debtor held contract with government agency for licensed use of navigation data -- Government agency claimed that debtor was in breach and purported to terminate contract -- Government agency also claimed that debtor was indebted to it due to certain unpaid royalties -- Debtor also indebted to ACOA -- Debtor and ACOA agreed upon substantially reduced repayment amount -- Debtor announced intention to file proposal -- Order issued preventing termination of contract, and later order issued stating that notice of termination was ineffective -- Proposal called for repayment of ACOA debt over three year period -- ACOA claimed that debtor breached payment schedule, and that it was therefore entitled to substantially larger amount -- ACOA announced intention to vote against proposal -- Debtor claimed that ACOA and government agency were acting together to force bankruptcy and terminate contract -- Order given that creditors cast votes but that votes not be counted -- Meeting adjourned -- Trustee brought motion for directions regarding amount of debt which creditors were entitled to vote -- ACOA entitled to vote on unpaid debt of \$433,333.36, government agency entitled to vote \$64,758.50 -- ACOA had conceded to reduce its debt to \$500,000 and debtor had relied upon concession by incurring new debt required by ACOA Ltd. -- Fact that debtor acquired new debt and new security agreement did not constitute material breach of circumstances allowing for increased rate of interest -- Fact that no objection to amount of government agency's claim had been made before meeting adjourned was mere formality and was capable of correction --

Government agency's claim reduced by set-off of \$16,639.07, representing deferred royalty payment incorrectly recorded as sales.

Bankruptcy and insolvency --- Proposal -- Practice and procedure

Debtor held contract with government agency for licensed use of navigation data -- Government agency claimed that debtor was in breach and purported to terminate contract -- Government agency also claimed that debtor was indebted to it due to certain unpaid royalties -- Debtor was also indebted to ACOA -- Debtor and ACOA agreed upon substantially reduced repayment amount -- Debtor announced intention to file proposal -
 - Order issued preventing termination of contract, and later order issued stating that notice of termination was ineffective -- Proposal called for repayment of ACOA debt over three year period -- ACOA claimed that debtor breached payment schedule, and that it was therefore entitled to substantially larger amount -- ACOA announced intention to vote against proposal -- Debtor claimed that ACOA and government agency were acting together to force bankruptcy and terminate contract -- Order given that creditors cast votes but that votes not be counted -- Creditor CCL's vote not counted, as letter did not indicate whether creditor was in favour of proposal -- Day after votes taken, CCL communicated support for proposal -
 - Meeting adjourned -- Trustee brought motion for directions regarding amount of debt which creditors were entitled to vote and whether CCL entitled to vote -- CCL's vote to be taken -- CCL's vote counted in favour of proposal -- CCL intended to vote -- Meeting had been adjourned, rather than ended, indicating proceedings were not final.

Near-Miss Productions Inc., Montreal, Quebec, for the reproduction and incorporation of nine photographs in a documentary film [Re Non-exclusive licence delivered to] File No 2005UO/TI22; also, <http://www.cb-cda.gc.ca/unlocatable/170-f.pdf> (Copyright Board; 2005-11-21)

Near-Miss Productions Inc (Re) 2005-UO/TI-22	for the reproduction and incorporation of nine photographs in a documentary film for no more than 101 seconds out of 90 minute movie	2005-11-21 2015-12-31	Commercial	\$1215	SODART
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Netbored Inc. v Avery Holdings Inc. [2005] CarswellNat 981, [2005] **FCJ** 620, 2005 FC 490, <http://www.canlii.org/ca/cas/fct/2005/2005fc490.html> and <http://decisions.fct-cf.gc.ca/fct/2005/2005fc490.shtml>, in French 2005 CarswellNat 3142, <http://decisions.fct-cf.gc.ca/cf/2005/2005cf490.shtml>, <http://www.canlii.org/ca/jug/cfpi/2005/2005cf490.html>, (FC; 2005-04-12) Gibson J; 42 **CPR** (4th) 321, 2005 FC 933, [2005] FCJ 1168, 2005 CarswellNat 1876, <http://decisions.fct-cf.gc.ca/fct/2005/2005fc933.shtml>, in French at 2005 CarswellNat 3727, <http://decisions.fct-cf.gc.ca/cf/2005/2005cf933.shtml> (FC; 2005-06-30) Heneghan J.; 2005 FC 1405, [2005] **FCJ** 1723, 2005 CarswellNat 3289, <http://www.canlii.org/ca/cas/fct/2005/2005fc1405.html> (FC; 2005-10-14) Hughes J. (FC; 2005-04-12)

Motion by the plaintiff Netbored Inc. from a Prothonary's order striking out several paragraphs from the statement of claim. Netbored had

commenced an action for damages and injunctive relief for copyright infringement and other claims. The paragraphs struck from the statement of claim were paragraphs intending to set out the copyright infringement claim. The expressions "use of the plaintiff's confidential information and "the enforcement of the plaintiff's employment contracts" were also struck. These expressions had also been included in an Anton Pillar order that had been granted to Netbored. There were pending motions to strike out the order and a motion to review.

HELD: Motion allowed in part. The allegations in the impugned paragraphs relating to breach of contract and breach of fiduciary duty and similar claims were not advanced for the purpose of establishing copyright infringement. They were advanced for the purpose of obtaining relief in respect of those breaches themselves. As such, the Court had no jurisdiction to entertain them. The paragraph pleading the non-disclosure agreement should not have been struck. It related directly to the preceding paragraphs that were allowed to stand as supportive of the aggravated, exemplary and punitive damages claim. The expressions "enforcement of the employment contract" and "use of confidential information" were reinstated. The disposition of these expressions should be left to be dealt with by the judge hearing the motions to review and to strike.

(FC; 2005-06-30)

The plaintiff had commenced an action for copyright infringement, as well as other causes of action, and had sought and obtained an Anton Pillar order. The injunctive relief originally sought by the plaintiff in the statement of claim included an interim, interlocutory and permanent injunction restraining one of the personal defendants, S.E., from competing with the plaintiff and from using or disclosing confidential or proprietary information of the plaintiff. The defendants had brought a motion to strike out certain paragraphs of the statement of claim, including the request for the aforementioned injunctive relief. The motion was granted and the plaintiff had appealed. The appeal as it related to the injunctive relief was dismissed. The plaintiff then provided an amended statement of claim and amended the injunctive relief being sought so that it would restrain S.E. from competing with the plaintiff and from using or disclosing confidential or proprietary information of the plaintiff, in order to prevent him from further infringing the plaintiff's copyrights. The defendants then brought a motion challenging those amendments. The case management prothonotary found the allegations to be improper. The plaintiff appealed.

Held, the appeal should be dismissed.

In an appeal from an order of a prothonotary, the court should apply a de novo standard if the question raised is vital to the final disposition of the case or where the prothonotary was clearly wrong in having exercised discretion on the basis of an error in principle or upon a misapprehension of the facts. The de novo standard is to be applied to an appeal from a prothonotary which involved the question of amendments to the pleadings. The paragraphs in issue raised allegations of breach of contract and breach of fiduciary duty. The court's jurisdiction in respect of copyright did not encompass the claims in issue and the court did not have the jurisdiction to grant the injunctive relief in issue. There was no error by the prothonotary in effectively striking out the paragraphs in issue.

(FC; 2005-10-14).

Application for review of the execution of an Anton Piller order, to convert an interim injunction granted ex parte to an interim injunction, and for a show cause order requiring Sean Eren to answer contempt allegations with respect to the Anton Piller order. Netbored and Avery were in the business of selling televisions and audio equipment over the internet. Susan Eren and Cory Katz were principals of Avery and Sean Eren was Susan's brother. Sean Eren worked for Netbored as an independent contractor to build a website to attract customers to Netbored's products. Sean Eren signed a non-disclosure agreement assigning copyright in the website to Netbored. Copyright was not registered. Sean Eren subsequently became a Netbored employee, then resigned to work for his sister's company, Avery. Avery's website was substantially similar to Netbored's site. Netbored demanded changes to the Avery site. Avery moved its host server to Canada so Netbored could not use American legislation to force it to take content that infringed Netbored's copyright off its site. Netbored commenced an action against Avery, Sean and Susan Eren, and Katz for copyright infringement. The pleadings did not state the identity of the copyrighted work, nor did it state the nationality of the author and place of first publication. Avery subsequently went out of business. Netbored obtained an ex parte Anton Piller order, requiring Susan and Sean Eren and Katz to deliver up material concerning the infringement allegations, and an injunction restraining them from using Netbored's confidential information. Sean Eren was present when Netbored's representative came to his home to execute the Anton Piller order, but did not reveal himself. His fifteen-year-old daughter answered the door. Sean Eren did not disclose he had a computer which likely contained relevant files, and later claimed the computer crashed and all information was lost. Susan Eren delivered up her computer. It contained copies of materials used in Netbored's website and other information unique to Netbored.

HELD: The Anton Piller order was vacated. Damage resulting from any potential copyright infringement by Avery was not proven by Netbored. There were problems with Netbored's claim to copyright, in that the pleadings did not contain enough information and copyright had never been registered. Although there was a real possibility Sean Eren would destroy evidence, Netbored's case did not rest upon evidence he might destroy. Real harm was done to the dignity of the law by executing the Anton Piller order at the residence of Sean Eren, where his daughter had to deal with Netbored's representatives. The injunction was vacated. As Avery was out of business, it was unlikely to continue to use anything claimed as proprietary by Netbored. Any potential harm to Netbored could be compensated in damages. A show cause order was issued, requiring Sean Eren to answer allegations of contempt. His conduct in failing to turn over his computer, with full knowledge of the order requiring him to do so, was not appropriate. The fact the order was later vacated did not remove the contempt, but could be considered by the judge in the possible imposition of penalties and fines.

cda.gc.ca/unlocatable/other/4-b.pdf, in French at 2005 CarswellNat 1850 (CopBd; 2005-03-03)

Lieutenant Governor of Quebec (Re) 2004-UO-TI-37	for the reproduction of a photograph	2005-03-03 REFUSED			
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[3] Subsection 77(1) of the Act provides that the Board can licence the use of works protected by copyright whose rights holder cannot be located only if the work has been published. The Board has, from time to time, relied on indicia that would not meet the civil burden of proof in circumstances where there was at least some evidence allowing it to conclude that a work had been published and grant a license. In this case there is a complete absence of evidence that the photograph has been published and the Board cannot conclude in these circumstances that the work meets the publication requirement set out in section 77 of the Act.

Oppenheim (David) for the reproduction and incorporation of a film clip from "A New World in the Yukon" produced in 1970 by Jerry Fairbanks Productions, Hollywood, CA in association with Canawest Film Productions Ltd. of Vancouver, B.C., A Production of Anvil Mining Corporation Ltd. [Re Non-exclusive licence issued to] File 2005-UO/TI-10, <http://www.cb-cda.gc.ca/unlocatable/122-e.pdf> (CopBd; 2005-04-12)

Oppenheim (Re) 2005-UO/TI-10	for the reproduction and incorporation of a film clip from "A New World in the Yukon" produced in 1970 by Jerry Fairbanks Productions, Hollywood, CA in association with Canawest Film Productions Ltd. of Vancouver, B.C., A Production of Anvil Mining Corporation Ltd.	2005-04-12 2020-12-31	Commercial/ documentary	\$180	PACC
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Productions Ltd. of Vancouver, B.C., A Production of Anvil Mining Corporation Ltd. [Re Non-exclusive licence issued to] File 2005-UO/TI-10, <http://www.cb-cda.gc.ca/unlocatable/122-e.pdf> (CopBd; 2005-04-12)

Parker v Key Porter Books Ltd. 40 **CPR** (4th) 80, 2005 CarswellOnt 2098, [2005] OJ 2093, 2005 CanLII 18294, <http://www.canlii.org/on/cas/onsc/2005/2005onsc13750.html> (OntSupCt; 2005-05-26) MacMahon J.

The plaintiff Maracle, a first nations artist, created artistic works described as dreamcatchers. The defendant, a professional publisher, published photographs of 21 of the plaintiff artist's works without permission in a book. The photographs had a dominant role in the book, including one of the photographs being featured on the front cover of the book and each of the 21 photographs taking up a full or one-half page of the publication. The book also included two pages of detailed instructions on how to create the dreamcatchers. The publisher published 9,550 copies of the book. The plaintiff artist had been willing to have photographs of her works included in

a book as proposed by the publisher on the condition that the book was a children's book and that the plaintiff's business was given credit. The publisher did not comply with these conditions.

The plaintiffs commenced an action for copyright infringement against the publisher and retailers who sold copies of the book. The case proceeded as a simplified rules trial. The plaintiffs elected to seek compensatory damages. In an oral judgment, the trial judge concluded that the publisher had infringed the plaintiffs' copyright by publishing the photographs of the plaintiff artists work without permission. The trial judge further held that the plaintiffs' claim for breach of aboriginal rights and of moral rights was not proven on the balance of probabilities and dismissed those claims. The claim for secondary infringement was also dismissed.

The plaintiffs claimed damages of \$241,106.31 including profits from booksellers for secondary infringement, the publisher's profits and, reasonable royalty, loss of business, intangible losses, punitive damages and interest.

Held, the plaintiffs should be entitled to an award of damages for copyright infringement in the amount of \$40,000.

The plaintiffs were not entitled to damages from the defendant retailers because they failed to prove on a balance of probabilities that a secondary infringement of copyright occurred.

The publisher published the book as a trade book, which created goodwill for it. A fair and reasonable amount for the goodwill generated from this publication was \$5,000. Additionally, the plaintiff was entitled to \$5,000 for profits generated on the book, pursuant to s. 35(1) of the Copyright Act, R.S.C. 1985, v C-42.

The claim for reasonable royalties was dismissed because the only evidence on this point was second-hand hearsay which did not satisfy the balance of probabilities standard.

The plaintiffs' affidavit indicated that sales of the works started to decrease in 2000 when the publisher published its book, while the plaintiffs' sales overall increased. The plaintiffs' business lost over \$36,011.68 in the sales of the works between 2000 and 2002. The plaintiffs were therefore entitled to \$25,000 for the loss of business caused by the publishers copyright infringement.

The plaintiffs failed to prove that the publisher's incorrect portrayal of the dreamcatchers as Ojibway artistic works rather than their correct identification as Mohawk artistic works was a breach of moral rights.

The plaintiffs were entitled to be compensated in the amount of \$5,000 for the publisher's failure to give credit to their business and mistakenly giving credit to another company, because of the plaintiffs lost opportunity.

The plaintiffs were not entitled to punitive damages because the defendant's conduct was neither deliberate nor malicious.

Finally, the plaintiffs were entitled to pre- and post-judgment interest pursuant to the Courts of Justice Act, R.S.O. 1990, v v43.

The total award of damages for which the plaintiffs were entitled against the publisher was \$40,000. The plaintiff artist was not entitled to any further award of damages.

Pearson Education Canada for the reproduction of the article entitled Getting Off Welfare (author unknown) [Re Non-exclusive licence issued to] File 2005-UO/TI-05, <http://www.cb-cda.gc.ca/unlocatable/155-e.pdf> (CopBd; 2005-05-04)

Pearson Education Canada (Re) 2005-UO/TI-05	for the reproduction of the article entitled Getting Off Welfare (author unknown) in no more than 10800 copies	2005-05-04 2010-12-31	Commercial	\$150	Access Copyrig ht
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Positive Attitude Safety Systems Inc. v Albion Sands Energy Inc. [2004] FCJ 1253, 258 FTR 30, [2004] CarswellNat 2299, 2004 FC 1022, 33 CPR (4th) 460 <http://www.canlii.org/ca/cas/fct/2004/2004fc1022.html> and <http://decisions.fct-cf.gc.ca/fct/2004/2004fc1022.shtml> (FC; 2004-07-23); revd 2005 CarswellNat 3575, [2005] FCJ 1731, 2005 FCA 332, <http://www.canlii.org/ca/cas/fca/2005/2005fca332.html> and <http://decisions.fca-caf.gc.ca/fca/2005/2005fca332.shtml> (FCA; 2005-10-17) Pelletier J.

[47] The motion judge decided that a safety huddle was not a performance within the meaning of the *Copyright Act* and therefore the safety huddle could not constitute an infringement of the respondents' copyright. The motion judge's conclusion appears to have been based on his understanding that while the questions asked at a safety huddle may have been "scripted", the answers were not so that the huddle, taken as a whole, was something other than the work in which copyright subsists. The authorities to which we were directed in the respondents' Memorandum of Fact and Law deal with the public performance of unpublished lectures, which does not assist in the resolution of this issue.

Production & Studio MiDo inc., Métabetchouan-Lac-à-la-Croix, Quebec, for the mechanical reproduction of the song "Le père Noël c't'un québécois" written by Pierre Laurendeau and Roger Magnan, published by "Pop Success" and "Reliable Music" [Re Non-exclusive licence delivered to] File No. 2005UO/TI 39; also, <http://www.cb-cda.gc.ca/unlocatable/169-f.pdf> (Copyright Board; 2005-10-17)

Production & Studio MiDo inc. (Re) 2005-UO/TI-39	for the mechanical reproduction of the song "Le père Noël c't'un québécois" written by Pierre Laurendeau and Roger Magnan, published by "Pop Success" and "Reliable Music" for no more than 2000CDs	2005-10-17 2006-11-31	Commercial	\$50	SODRA C
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Prudhomme v Shaddock, 2005 BCPC 256, [2005] BCJ 1604, 2005 CarswellBC 1601, [2005] BCWLD 4500, [2005] BCWLD. 4507, [2005] BCWLD 4639,

<http://www.canlii.org/bc/cas/bcpc/2005/2005bcpc256.html>,
http://www.provincialcourt.bc.ca/judgments/pc/2005/02/p05_0256.htm (BC ProvCt; 2005-06-16) Hogan J.

[9] As to the computer I dismiss her claim. During her cross examination of the defendant, it became clear that Nina Prudhomme was aware that when she purchased the computer, it was operating with pirated software. The court will not provide relief where the claimant knowingly violated copyright laws. It is ironic that both the defendant and claimant, who both accuse the other of stealing each other's creative work, are more than willing to traffic in pirated software, where the designer will never receive a financial reward.

Public Performance of Musical Works 2003-2007 and Public Performance of Sound Recordings 2003-2007 [Re] [2005] CBD 5, 2005 CarswellNat 3359, <http://www.cb-cda.gc.ca/decisions/m14102005-b.pdf> (CopBd; 2005-10-14)

[85] The Board has stated in the past that "rights holders are entitled to receive additional benefits from new uses of the repertoire." [Board's decision of March 15, 2002 on the SOCAN-NRCC Pay Audio Services Tariff for the years 1997-2002, page 16 and Board's decision of March 28, 2003 on CMRRA/SODRAC Inc. (CSI) Commercial Radio Tariff for the years 2001-2004, page 25.] The same is true of increased uses. In the Board's view, radio's increased use of music has helped it to create significant efficiencies, a share of which should go to rights holders. 90 [...] Once again, the Board concludes that the communication of a musical work should trigger the same remuneration as the communication of a sound recording, subject to repertoire adjustments.

Public Performance of Musical Works, 2003-2006, Re [2005] CarswellNat 541, [2005] CBD 3; in French at [2005] CarswellNat 542, [2005] CBD 3, <http://www.cb-cda.gc.ca/decisions/m25022005-b.pdf>, in French at 2005 CarswellNat 3360 (CopBd; 2005-02-25)

[8] The tariff the Board certifies for the period 2003 to 2006 is in accordance with the agreement and thus identical to the one proposed for 2005 and 2006. The certified rates are as follows:

12.35 per cent and 5.85 per cent of affiliation payments for SOCAN and NRCC respectively, and

6.175 per cent and 2.925 per cent of affiliation payments for SOCAN and NRCC respectively, for small systems.

[9] The tariff includes the following changes compared to the one certified for 1997-2002:

1. The 1997-2002 certified tariff modified the wording of the *Definition of "Small Cable Transmission System" Regulations* (SOR/94-755) to take into account the *Exemption Order for Small Cable Undertakings* (Appendix 1, Public Notice CRTC 2001-121, December 7, 2001). As the Board explained in its decision of March 19, 2004 with respect to SOCAN's Tariffs 2.A and 17, this approach creates legal difficulties. The tariff the Board now certifies adopts the approach used for SOCAN's Tariff 17 (*Canada Gazette*, March 20, 2004, section

2); section 3 ensures that systems which may have lost their status as small cable transmission systems as a result of the CRTC exemption order will continue to pay the same amount of royalties as small cable transmission systems. This is the approach proposed by the collectives for 2005 and 2006.

2. A specific reference to NRCC's Tariff 3, which had not yet been proposed at the time of the last certification, has been added to subsection 4(2) which enumerates uses covered by other tariffs and thus not covered by this tariff.

3. Paragraph 10(2)(iii) of the tariff provides that a collective society wishing to share confidential information in connection with proceedings before the Board must first afford the undertaking that provided the information the opportunity to request that it be treated confidentially. Parties have agreed to the addition of this new condition. As this is consistent with its past practices, the Board agrees to include it in this tariff. The Board takes note however that this is a new wording of a paragraph included in many other tariffs. When appropriate, the Board will examine the possibility of modifying the other tariffs in order to ensure consistency.

4. The transitional provisions are no longer relevant and are deleted.

Public Performance of Sound Recordings 2003-2005, Re: [2005] CarswellNat 486, [2005] CBD 2 and [2005] CBD 2; in French [2005] CarswellNat 487, [2005] CBD 1, <http://www.cb-cda.gc.ca/decisions/m14012005-b.pdf> (CopBd; 2005-01-14)

[1] Pursuant to subsection 67.1(1) of the *Copyright Act* (the Act), the Neighbouring Rights Collective of Canada (NRCC) filed on April 2, 2002 [Fn 1 March 31, 2002 was a Sunday, and April 1, 2002, a holiday.], its statement of proposed royalties for the public performance or the communication to the public by telecommunication, in Canada, of published sound recordings embodying musical works and performer's performances of such works for the years 2003 to 2007. The statement was published in the *Canada Gazette* on May 11, 2002.

[4] The Board takes note of the agreement [between NRCC and CBC] and certifies for the period 2003- 2005 a tariff identical to the one certified for 1998-2002, except as follows:

1. The title of the 1998-2002 tariff referred to "published sound recordings embodying musical works and performer's performances of such works", whereas section 1 referred to "published sound recordings of musical works". The wording of section 1 is modified to be consistent with the title of the tariff.

2. Section 2 referred to the transitional royalty rates set out in the Act. Those rates are spent. Consequently, section 2 is deleted.

3. Section 7, which contains transitional provisions that are no longer relevant, is deleted.

*R v Thériault** [2004] CarswellQue 3201, (sub nomine *R v D'Argy*) [2004] JQ 11142, 2004 IJCan 45941, 2004 CarswellQue 3201, [2005] RJQ 857, REJB 2004-72244, JE 2005-475, SOQUIJ AZ-50277166, <http://www.canlii.org/qc/jug/qccq/2004/2004qccq49479.html> (QueCt; 2004-10-28); *revd* (sub nomine *R v D'Argy*) SOQUIJ AZ-50304828, JE 2005-1008, [2005] R.J.Q. 1520, [2005] JQ 2499, 2005 CarswellQue 931, REJB 2005-87515, 2005 IJCan 8977, <http://www.canlii.org/qc/jug/qccs/2005/2005qccs19052.html> (QueSupCt; 2005-03-31); motion for leave to appeal on the constitutional issue granted 2005 CarswellQue 3570 REJB 2005-91519, **JE** 2005-1178, SOQUIJ AZ-50318085, 2005 QCCA 604 (QueCA; 2005-04-20)

(QueSupCt; 2005-03-31)

Résumé

Appel d'une décision de la Cour du Québec ayant prononcé un acquittement relativement à des infractions à la *Loi sur la radiocommunication*. Accueilli.

Les intimés avaient installé un système qui leur permettait de décoder, pour leur usage personnel et sans autorisation préalable, les signaux émis par un distributeur américain, DirectTV, qui n'est pas un distributeur légitime au Canada. Ils ont été accusés d'avoir illégalement possédé et mis en vente un dispositif permettant de décoder des signaux de télévision payante transmis par satellite en violation des articles 9 et 10 (1) de la *Loi sur la radiocommunication*. La Cour du Québec a conclu qu'il avait été démontré hors de tout doute raisonnable que les intimés avaient violé la loi. Elle s'est ensuite penchée sur la question de savoir si les dispositions de la loi violaient la liberté d'expression des intimés. Elle a conclu que les activités des intimés relevaient du marché noir et que ceux-ci ne pouvaient invoquer la protection de la *Charte canadienne des droits et libertés* pour justifier l'appropriation illégale et la vente du bien d'autrui. Cependant, elle affirme qu'il en va autrement du «marché gris», où les auditeurs canadiens acquittent les droits requis mais font de fausses déclarations quant à leur lieu de résidence afin d'obtenir le signal d'abonnement. La première juge a conclu que ces fausses déclarations sont causées par la politique canadienne de prohibition totale de décoder ce signal, laquelle viole la liberté d'expression garantie par la charte canadienne. Ne jugeant pas cette atteinte raisonnable et justifiée dans une société libre et démocratique, elle a déclaré que les dispositions de la loi créant les infractions portaient atteinte à la liberté d'expression garantie par l'article 2 b) de la charte canadienne et étaient inopérantes. Les intimés ont été acquittés. Les questions en litige sont: 1) La première juge a-t-elle erré en se prononçant sur la constitutionnalité des dispositions attaquées en l'absence de contexte factuel? 2) A-t-elle commis une erreur manifeste et déterminante dans l'appréciation de la preuve en concluant que les déclarations frauduleuses des auditeurs canadiens qui ont recours au marché gris sont directement liées à la politique canadienne en matière de radiodiffusion?

Décision

La Cour du Québec a conclu que les éléments essentiels des infractions reprochées avaient été prouvés hors de tout doute raisonnable et son analyse aurait dû s'arrêter là. Ayant décidé que les intimés ne pouvaient invoquer la protection de la charte, la solution du litige ne commandait pas de trancher un débat constitutionnel et la première juge aurait dû faire preuve de retenue. En procédant à l'analyse de la validité constitutionnelle

des dispositions attaquées en rapport avec le marché gris alors qu'aucune preuve ne lui permettait de le faire, elle a erré en droit. Par ailleurs, elle a commis une erreur manifeste et déterminante dans l'appréciation de la preuve. Sa conclusion voulant que les fausses déclarations des auditeurs canadiens ayant recours au marché gris ne découlent pas d'une intention de tromper mais de la politique canadienne de radiodiffusion interdisant à toute personne n'étant pas un distributeur légitime de décoder les signaux d'abonnement par satellite n'est que spéculation, conjecture et hypothèse. La preuve d'une violation de la liberté d'expression ne permettait pas de conclure dans ce sens. Il a été établi que c'est uniquement parce qu'il a déclaré frauduleusement résider aux États-Unis que l'auditeur canadien a réussi à souscrire au service de DirectTV, sans quoi la demande d'abonnement n'aurait pas été accueillie. En concluant comme elle l'a fait, la première juge a écarté toute la preuve relative aux cessions de droits d'auteurs consentis à DirectTV et évacué toute la question du droit d'auteur. En plus de constituer une fraude contre DirectTV, le marché gris s'en prend aux distributeurs canadiens qui ont payé les titulaires des droits d'auteurs dans le but d'obtenir les droits de diffusion pour le territoire canadien. DirectTV ne souhaite pas que son signal d'abonnement soit accessible à des personnes autres que celles qu'elle accepte et elle lutte vigoureusement contre le marché gris. Elle a affirmé que, même si les articles 9 et 10 de la loi étaient déclarés inconstitutionnels, elle ne rendrait pas son signal disponible au Canada, faute d'avoir obtenu les droits d'auteur nécessaires. Le gouvernement canadien ne s'est jamais immiscé dans la réception directe des signaux étrangers par le consommateur en clair et gratuitement. Il n'a pas non plus réclaté l'encodage. Celui-ci résulte de la seule volonté des distributeurs de rendre leurs émissions accessibles aux seules personnes qu'ils autorisent. Par conséquent, l'appel est accueilli. Il y a lieu de prononcer un verdict de culpabilité et de renvoyer le dossier à la juge de la Cour du Québec afin qu'elle détermine la peine à imposer.

(QueCA; 2005-04-20)

Résumé

Requête pour autorisation d'interjeter appel d'un jugement de la Cour supérieure. Accueillie.

Décision

Le 27 mai 2002, la Cour a renvoyé le dossier en première instance, consciente que les requérants entendaient y invoquer un argument constitutionnel. Après que la Cour du Québec se fut prononcée de façon exhaustive, la Cour supérieure a estimé qu'il n'était pas nécessaire de statuer sur l'incompatibilité constitutionnelle des dispositions de la *Loi sur la radiocommunication* avec l'article 2 b) de la *Charte canadienne des droits et libertés*. Même si l'argument des requérants semble faible, le déroulement particulier de l'affaire fonde à accorder la permission d'interjeter appel, mais uniquement pour débattre de l'argument d'inconstitutionnalité.

*R. v Ménard** 2005 IJCan 24780, SOQUIJ AZ-50323098, **JE** 2005-1478, 2005 CarswellQue 6348, REJB 2005-92816, <http://www.canlii.org/qc/jug/qccaq/2005/2005qccq60324.html> (Que Ct-Crim Div; 2005-06-29) Roy J.; motions for leave to appeal denied as to the question of facts SOQUIJ AZ-50336748, 2005 CarswellQue 9581, 2005 QCCA 914 and SOQUIJ AZ-50336814, 2005 CarswellQue 9577, 2005 QCCA 2005

(Que Ct-Crim Div; 2005-06-29)

Résumé

Accusations sous quatre chefs de vol et de fraude en vertu du *Code criminel*. Arrêt conditionnel sous le premier chef. Déclaration de culpabilité sous le deuxième. Acquittement sous les deux derniers chefs. Accusation sous neuf chefs d'infractions à la *Loi sur la faillite et l'insolvabilité*. Déclaration de culpabilité sous les chefs nos 3, 4, 6, 7 et 8. Acquittement sous les chefs nos 1, 5 et 9. Arrêt conditionnel relativement au chef d'accusation no 2.

L'accusé Ménard est le seul administrateur de la compagnie Microvel Technologies inc. Cette dernière a fait une proposition concordataire, que ses créanciers ont acceptée et que le tribunal a homologuée en mai 1999. Malgré certains manquements dans l'exécution de la proposition, la compagnie a réussi à s'entendre avec ses créanciers afin de modifier la proposition. En avril 2000, Ménard a avisé le syndic que la compagnie avait reçu 317 772 \$ en crédits d'impôt et que l'argent avait été déposé en lieu sûr. À la fin de juin, la compagnie a fait cession de ses biens et a remis environ 30 000 \$ au syndic. À ce moment, son actif s'élevait à 276 000 \$ et son passif, à 640 452 \$. Le bilan ne contient aucune mention des crédits d'impôt reçus ni des banques avec lesquelles la compagnie faisait affaire. Une enquête du syndic a permis d'établir que la compagnie avait encaissé le chèque des crédits d'impôt et qu'un dénommé Aïssi avait agi à titre d'intermédiaire pour placer l'argent. Le syndic a tenté en vain de récupérer celui-ci. Par la suite, il a réclamé à une caisse populaire le remboursement des 16 425 \$ que Microvel lui avait versés avant sa faillite en remboursement d'un prêt hypothécaire que Ménard avait cautionné. Dans un dossier pénal, ce dernier a fait l'objet de quatre chefs d'accusation portant sur le vol et la fraude de sommes totalisant 400 000 \$. Dans le dossier de faillite, il fait l'objet de neuf chefs d'accusation pour des infractions commises, à titre d'administrateur, en vertu de la *Loi sur la faillite et l'insolvabilité*.

Décision

Dans un premier temps, il s'agit de déterminer si l'utilisation du chèque de 317 772 \$ constitue une infraction criminelle de vol ou de fraude. Ménard est un homme d'affaires expérimenté et il savait que l'argent devait être déposé au compte bancaire de la compagnie. Or, dès la réception du chèque, il a décidé de retirer cette somme du compte et d'en conserver la gestion. Il a utilisé des stratégies pour dissimuler ses intentions véritables et pour détourner des fonds qui devaient servir à payer les créanciers. Ses démarches en vue de la cession des biens de la compagnie ne visaient qu'à gagner du temps en attendant de recevoir tous les crédits d'impôt auxquels il pensait avoir droit. À titre de caution d'une dette de 100 000 \$, il avait un intérêt personnel dans chacune de ces manigances et ses décisions constituaient autant de moyens dolosifs afin d'éviter de payer. C'est donc délibérément et en toute connaissance de cause qu'il a, frauduleusement et sans apparence de droit, utilisé l'argent de la compagnie avec l'intention d'en priver cette dernière ainsi que les créanciers. Il est donc reconnu coupable de fraude sous le deuxième chef d'accusation. L'arrêt conditionnel des procédures est ordonné quant au premier chef portant sur le vol puisqu'il s'agit d'une infraction moindre commise dans les mêmes circonstances que la fraude. En ce qui a trait à son comportement pour obtenir un investissement de 100 000 \$ de la part d'un dénommé Bourkas, il n'existe pas de preuve de vol ni de fraude. Il

semble que ce dernier a bien compris la nature de son investissement et qu'il n'était pas intéressé à connaître les détails de la gestion de cette somme.

Les six premiers chefs d'accusation relatifs aux infractions à la *Loi sur la faillite et l'insolvabilité* constituent des infractions de nature administrative, pour lesquelles la preuve de l'intention coupable n'est pas requise. Il suffit de prouver l'accomplissement de l'acte. Les trois autres chefs d'accusation portant sur des infractions de nature criminelle en vertu de cette loi, chaque élément de l'infraction doit être prouvé hors de tout doute raisonnable. En outre, en vertu de l'article 204 de la loi, l'administrateur qui a ordonné ou autorisé l'infraction est considéré comme coauteur de celle-ci. Ménard a omis de remettre au syndic tous les biens qu'il avait en sa possession ou sous son contrôle, notamment les 75 000 \$ provenant d'actions vendues (premier chef d'accusation). Aucune preuve n'indique qu'il aurait reçu de l'argent d'investisseurs après la date de la faillite. De plus, le syndic à la proposition concordataire ne lui a jamais demandé de le tenir au courant des affaires de la compagnie. Il ne s'intéressait qu'aux crédits d'impôt et voulait s'assurer que ces sommes serviraient à payer les créanciers. Ménard pouvait donc raisonnablement croire que les entrées de fonds autres que les crédits d'impôt restaient sous son administration. Par conséquent, il est acquitté de cette infraction. D'autre part, il a manqué à son obligation de remettre au syndic deux prototypes de véhicule, deux chargeurs de piles et une génératrice qui sont les fruits du travail et des investissements effectués dans la compagnie. Même s'il n'avait cédé à celle-ci que l'usage de ses droits d'auteur, il devait, dès la faillite, révéler cette situation au syndic pour lui permettre d'apprécier la valeur de ce droit. Il devait aussi lui remettre une preuve de son droit de propriété ainsi que la liste des biens lui appartenant personnellement. Il n'a jamais rempli cet engagement. Il est donc reconnu coupable sous le troisième chef d'accusation. Toutefois, puisque rien n'indique qu'il a déplacé les biens dans le but de les cacher et de priver les créanciers, il est acquitté sous le chef no 9. Par ailleurs, il est reconnu coupable d'avoir omis de remettre au syndic tous les livres et registres se rattachant de quelque façon aux biens ou aux affaires de la compagnie (chef no 4). En effet, il n'a donné aucune explication raisonnable à ce sujet. D'autre part, il est acquitté sous l'accusation d'avoir omis de dresser un inventaire complet de l'actif de la compagnie (chef no 5) étant donné que le syndic a lui-même manqué à cette obligation. Il est déclaré coupable d'avoir omis d'aider le syndic à la réalisation des biens et au partage entre les créanciers (chef no 6). Il n'a pas collaboré à la liquidation de l'entreprise. De plus, il a délibérément favorisé l'un de ses créanciers en lui remettant un chèque de 16 425 \$ le 8 mai 2000 à même les crédits d'impôt reçus, privant ainsi la masse des créanciers de cette somme. Il est donc reconnu coupable sous le chef no 7. Il est également coupable d'avoir remis frauduleusement une somme de 8 000 \$ à Arnold Chevrolet pour l'automobile de sa conjointe (chef no 8). Il n'a pas donné d'explication suffisante sur cette utilisation personnelle de l'argent de la compagnie.

[338] L'accusé l'a clairement mentionné, le seul actif véritable de MICROVEL est la valeur des recherches effectuées avec les capitaux recueillis par l'émission d'actions ou d'options soutenant son développement.

[339] L'accusé ne peut être l'actionnaire majoritaire de l'entreprise et en même temps rester propriétaire et acquérir au fur et à mesure les droits d'auteur développés par l'entité commerciale.

[341] À partir toutefois du moment où l'entreprise fait cession de ses biens, il ne peut, tel qu'il l'a tenté, en négocier tous les aspects tel un bail et devient alors soumis à la Loi sur la faillite et l'insolvabilité qui l'oblige à déclarer et à remettre les biens de l'entreprise.

[342] Il a manqué à ses obligations à l'égard de la génératrice et de l'automobile prototype de style camion blanc incluant les 2 chargeurs à pile qui résultent du travail et des investissements effectués dans MICROVEL.

[343] Même s'il n'avait cédé que l'usage de ses droits d'auteur, il devait révéler cette situation au syndic pour lui permettre d'apprécier la valeur de ce droit.

R. v Benchmuel [2005] OJ 1008 (OntCt; 2005-01-18) Favret J.

Sentencing of the defendant Benchmuel and his company following their guilty pleas to several copyright offences. Benchmuel sold unauthorized clothing that he advertised as official garments. The parties offered a joint sentence of a \$1,000 fine per count and a conditional sentence of six months. Benchmuel sought 24 months to pay the fines because of his diminished financial capacity. He had no previous record.

HELD: Benchmuel was sentenced to six months, to be served in the community. He and the company were each fined \$1,000 on each offence. The joint submission was fit and appropriate. General and specific deterrence were important considerations. The fines were to be paid within one year.

R. v Ferguson ((2004)), 2004 CarswellOnt 847, 1 MVR (5th) 299 (Ont. v.J.); revd. 2005 CarswellOnt 3733 (OntSupCtJ; 2005-08-12) Durno J.

Criminal law --- Charter of Rights and Freedoms -- Right to be tried within reasonable time – General

On December 17, 2001, accused was charged with impaired operation and operating motor vehicle having consumed excess alcohol -- On March 2, 2004, over 26 months following arrest, after two "trial days" occupied with disclosure motions, two trial delay applications and evidence heard over seven days, trial judge found accused guilty on both counts -- Trial judge stayed charges because accused had not had trial within reasonable time, contrary to s. 11(b) of Canadian Charter of Rights and Freedoms -- Crown appealed -- Appeal allowed -- There were two principle reasons why trial took so long to complete: disclosure requests and applications; and underestimations of trial time -- In both areas, trial judge's findings were contrary to binding s. 11(b) jurisprudence -- As regards appearance on May 30, 2003, date second disclosure application was heard, trial judge misapprehended facts, proceeding on basis that trial evidence had started on that date and case had to be adjourned to another date for completion

-- Trial evidence did not start until September 15, 2003 -- Accordingly, on key time in trial judge's judgment, period between May 30 and September 15, 2003, trial judge misapprehended evidence -- As regards second significant factor, counsel's underestimation of time, trial judge made damning findings against accused's counsel, including that counsel appeared to have set out to create delay for later use -- These findings were inconsistent with person seeking to have trial within reasonable time -- In staying charges, trial judge relied heavily on inability of judges of Ontario court to continue cases until their completion on consecutive days, regardless of time estimates -- Trial judge erred in so holding -- Trial judge erred in applying hybrid offence disclosure guidelines to summary conviction offence -- Trial judge erred in apportioning time between arrest and setting first trial date, and between that date and start of trial -- All of that time was either neutral intake time, delay caused by accused, or part of inherent time requirements of case with two minor exceptions -- Actions of accused and his counsel were significant cause of delay in this case -- While there was some evidence of specific prejudice to accused caused by delay, it was not significant.

29 As regards the *Intoxilyzer* manual copyright issue, the trial judge found the onus was on the Crown to prove the existence of a copyright. The Crown had failed to do so. He agreed with the respondent that s. 7 of the *Charter* could not be trumped by any alleged copyright. When the manufacturer of the *Intoxilyzer* agreed to supply their instruments as "approved instruments" it should have expected that the accuracy and recommended procedures would be subject to scrutiny.

39 The Crown had advised defence counsel that they were not in possession of the operational manual. While the police were, it could not be provided because it was copyright protected. They offered to allow defence counsel to review a copy of the manual at the police station. However, no one was permitted to take copies. His Honour ordered the disclosure of the manual only.

R. v Katebian [2005] **OJ** 1009 (OntCt; 2005-01-27) Bradley J.

Sentencing of the accused Katebian and Missaghi for selling infringing copies of an artist's copyrighted work. The complainant owned the copyright for the label of a carbonated yogurt drink that he sold. The accused sold an inferior version of this drink under a fraudulent version of the complainant's label. A search of the accused's business found hundreds of counterfeit labels and \$70,000 worth of the yogurt beverage that had been imported from Iran. The complainant advised that his business had been eliminated by the activities of the accused. There was a joint submission for a \$10,000 fine for Katebian and an \$8,000 fine for Missaghi. Neither accused had criminal records.

HELD: The accused were sentenced pursuant to the terms of the joint submission. They each had six months to pay their fines but were required to pay the first half with 45 days. Mitigating factors were the early guilty pleas and the fact that the accused were first offenders.

R. v Wong 2005 **CarswellOnt** 6434 (Ont SupCt J; 2005-08-15) Trafford J.

Preliminary inquiry justice discharged accused charged with nine counts of passing off counterfeit items and 10 counts of fraud in related transactions -- Crown applied for prerogative relief on basis that justice failed to consider whole of evidence -- Application dismissed -- It is jurisdictional error for judge acting under s. 548(1)(b) of Criminal Code to fail to consider whole of evidence -- If after considering whole of evidence judge erroneously discharges defendant, error of law is not jurisdictional error -- Justice considered whole of evidence before discharging accused, with possible exception of inference that could be drawn of adverse effect on complainant firms' good will arising from sales of counterfeit products by accused -- He analysed all of evidence with correct understanding of import of term "detriment" including not only actual loss but also placing someone's pecuniary interest at risk -- Justice should have considered whether inference concerning adverse effect on their good will arising from accused's dishonest transactions was reasonably open to trier of fact in context of rest of evidence, but had jurisdiction to determine whether such inference was reasonable in this case -- It may have been error of law to proceed in this manner, but at most, this was error as to sufficiency of evidence -- As granting of relief sought by Crown was discretionary, it was declined.

[the issue is whether there was any evidence of detriment called at the preliminary hearing that the learned justice failed to consider in discharging the respondent.]

[3] The position of the Crown on this application is that Justice Robertson failed to consider the whole of the evidence including the evidence of: First, the failure of Mr. Wong to pay any of the complainant firms' appropriate royalties or commissions for their design or copyrights relating to the counterfeit products. There was no evidence that any of them required or would have required any such royalties or permission by Mr. Wong.

Second, the cost generally incurred by the complainant firms to combat counterfeiters generally, such as Mr. Wong, through investigation and civil litigation. There was no evidence of any costs incurred by any of the complainant firms in connection with Mr. Wong's dishonest sales of their counterfeit products.

Third, the adverse effect that the sale of counterfeit products has on the good will of the complainant firms arising from the uniqueness and rarity of their products. The learned justice held that this was not properly the subject of judicial notice.

In my view, Justice Robertson considered the whole of the evidence before discharging Mr. Wong with the possible exception of the inference that could be drawn of an adverse effect on the complainant firms' good will arising from Mr. Wong's sales of counterfeit products. He analysed all of the evidence with a correct understanding of the import of the term "detriment" including not only actual loss but also placing someone's pecuniary interest at risk. See *R. v Th  roux* (1993), 79 v.C.C. (3d) 449 (S.C.C.). Justice Robertson should have considered whether an inference concerning an adverse effect on their good will arising from Mr. Wong's dishonest transactions was reasonably open to the trier of fact in the context of the rest of the evidence. However, he had jurisdiction to determine whether such an

inference was a reasonable one in this case. It may have been an error of law to proceed in this manner, that is, as he did. This, at the most, was an error made as to sufficiency of evidence. However, if I am incorrect on that point and it is more aptly described as an error of a jurisdictional nature, in my view the inference, if drawn, would not add significantly to the case for the Crown because it does not relate to Mr. Wong's business itself. It is merely a generally applicable inference that has little or no specific regard for Mr. Wong's dishonest sales of counterfeit products for complainant firms of international reputations and, one may infer, financial prosperity.

Renaud c Groupe Ville-Marie Littérature Inc 2002 IIJCan 27783, <http://www.canlii.org/qc/jug/qccs/2002/2002qccs11752.html>, [2002] JQ 961, (Que SupCt; 2002-04-30); affd. sub nomine *Horic v Renaud*, 2005 QCCA 508, SOQUIJ AZ-50313961, **JE** 2005-1045, [2005] JQ 6390, 2005 CarswellQue 2708, REJB 2005-90482, <http://www.canlii.org/qc/jug/qcca/2005/2005qcca508.html> (Que CA; 2005-05-12)

PROPRIÉTÉ INTELLECTUELLE — droit d'auteur — oeuvres littéraire — manuscrit — publication d'une version remaniée — interprétation d'un contrat d'édition — effet entre les parties — dommages-intérêts.

CONTRAT — interprétation — effet pratique — contrat d'édition — clause d'arbitrage — renonciation.

CONTRAT — effets entre les parties — contrat d'édition — publication d'une version remaniée d'un manuscrit — étendue des obligations contractuelles — clause d'arbitrage — contravention — dommages-intérêts.

[

11] En particulier, il ne peut être question ici d'une atteinte au droit moral de l'auteur ou d'une contravention à la *Loi sur le droit d'auteur*, L.R.C. c. C-42, puisque le juge de première instance a conclu, et il s'agit d'un fait, que l'oeuvre publiée était bien celle que l'appelant incident avait lui-même remis à l'intimé incident;

Reproduction of Musical Works 2004-2008 [Re SODRAC Tariff 5 (Video-copies)] 2005 CarswellNat 1794, in French at 2005 CarswellNat 1795, <http://www.cb-cda.gc.ca/decisions/i24062005-b.pdf> (CopBd; 2005-06-24)

[14] The Board sought to understand how an author brings a commissioned work to the repertoire of SODRAC or its foreign sister societies. It appears that this happens automatically, pursuant to the terms on which the author assigns his future works to the collective society.

[15] The Board also sought to discover to what degree SODRAC holds the rights in works in the catalogue of publishers who are not SODRAC members. In the Board's view, once an author has assigned his future works exclusively to SODRAC, he is simply unable to assign anything to his publisher other than the right to ask SODRAC to pay him the royalties. Yet, SODRAC says it administers only the so-called composer's share as provided in the publishing contract when the publisher is not a SODRAC member. It seems that until quite recently, SODRAC was indeed collecting the publisher's share and then passing it on to the publisher. It seems as well that the articles of SODRAC 2003 Inc., which is to take the place of SODRAC, provide that an assignment is now made without prejudice to the publisher's right to control the use of the work once the publisher is not (or is no longer) a member of

the society. This could involve a major change in the legal relations between the collective society, the author and his publisher.

[28] SODRAC administers only the right of reproduction. Nevertheless, it maintains that it can control sales or rentals by relying on subsection 13(4) of the *Act*, which allows the use of copyright to be broken down in terms of market sector, for example. It also cites paragraph 70.1(a) and section 70.12 of the *Act*, which allow the use of a collective society's repertoire to be allocated according to "classes of uses". It notes, moreover, that the Board has previously decided that a license may impose conditions on what a user does with the copies it makes. It states, finally, that the provision corresponds to the usual customs of the trade.

[29] The terms and conditions of a license or tariff may provide that a copy made in accordance with its provisions may be used for certain purposes and not others. But that does not necessarily mean that SODRAC is in a position to authorize these uses. Rather, it means providing that the tariff authorizes only reproduction of musical works embodied in video-copies intended for sale or rental to consumers for their private use. The text of the certified tariff has been adjusted accordingly.

[33] On the other hand, one could doubt that the Board, in a tariff, can authorize the copies made before this tariff comes into force. In practice however, a user who has not obtained a license has an interest in being able to regularize its situation. In its proposed tariff wording, SODRAC shows its willingness to authorize reproductions made before but exploited after the coming into force of the tariff. There is therefore no need for the Board to analyze further the course of action proposed by SODRAC. Consequently, the tariff the Board certifies offers the option for distributors to avail themselves of the tariff for copies sold after its coming into force, regardless of when they were made.

[37] Section 8.2 of the proposed tariff requires that a distributor whose license has been terminated shall see to the immediate withdrawal from the market of all video-copies subject to the tariff. The Board wondered whether this provision might impose the withdrawal of copies that are no longer the property of the distributor or in regard to which royalties had already been paid.

[38] SODRAC argues that this provision is essential and is one of the provisions that CAFDE has already agreed to have added. Once again, the measure is common in the sound recording market. SODRAC does agree that it may not demand the return of copies that have been sold and for which it has received the applicable royalties.

[39] This reply is unsatisfactory. A possible explanation for the fact that the provision applies to relations between SODRAC and the recording companies is that the latter remain the owners of the records delivered to the retailer until they are sold to consumers. There is no indication that this is the case in the video-copy market.

[40] Furthermore, the Board fails to see how SODRAC could request the withdrawal of video-copies that have become the property of the retailer

or, *a fortiori*, the consumer, even if royalties have not been paid. This scenario is all the more likely in that the first payment of royalties on a new title may not occur until a year after it is put on the market. Absent any other justification, SODRAC will have to be content with the status of an unsecured creditor. However, SODRAC will be entitled to require the withdrawal of copies still owned by the distributor.

Richard Lindseth Architecture for the reproduction of architectural plans designed by J. Sertic Homes (J. Mossman, engineer and J. Pasalic, draftsperson) for the property located at 41 Woodhaven View S.W. in Calgary [Re Non-exclusive licence issued to] File 2005-UO/TI-23, <http://www.cb-cda.gc.ca/unlocatable/158-e.pdf> (CopBd; 2005-07-18)

<i>Richard Lindseth Architecture (Re) 2005-UO/TI-23</i>	for the reproduction of architectural plans designed by J. Sertic Homes (J. Mossman, engineer and J. Pasalic, draftsperson) for the property located at 41 Woodhaven View S.W. in Calgary	2005-07-18 2005-12-31	Renovation	\$25	None
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Russell v Nyack, 2005 **CarswellAlta** 1220, [2005] AWLD 3464, [2005] AWLD 3402, [2005] AWLD 3465, [2005] AWLD 3434, 2005 ABPC 227, 2005 **CarswellAlta** 1220, <http://www.canlii.org/ab/cas/abpc/2005/2005abpc227.html>, <http://www.albertacourts.ab.ca/jdb/2003-/pc/civil/2005/2005abpc0227.pdf> (Alta ProvCt; 2005-06-29) Mandamin J.

Intellectual property --- Copyright -- Material in which copyright may subsist -- Architectural, construction or building plans

Customers engaged custom home designer to design their residence -- After initial meeting between parties, designer provided letter which set out proposed terms of engagement, which customers agreed to and paid retainer -- Designer provided working drawings of home and customers provided feedback -- Customers became dissatisfied with designer, as he failed to make requested changes to drawings -- Customers did not advise designer of their dissatisfaction, but hired another design company to complete drawings and contracted with builder to construct home -- Customers did not pay last invoice of \$1,656.03, including G.S.T. -- Designer brought action against customers and builder for infringement of copyright - - Action dismissed -- House plans may be subject to copyright protection, pursuant to Copyright Act -- Designer specialized in custom design buildings and work was original -- Designer was independent contractor and not employee of customers, therefore customers did not own copyright -- Designer held copyright in design of customer's home -- Customers entitled to one-time use of design, therefore no infringement existed.

Contracts --- Construction and interpretation -- Implied terms -- Term -- Other terms

Customers engaged custom home designer to design their residence -- After initial meeting between parties, designer provided letter which set out proposed terms of engagement, which customers agreed to and paid

retainer -- Designer provided working drawings of home and customers provided feedback -- Customers became dissatisfied with designer, as he failed to make requested changes to drawings -- Customers did not advise designer of their dissatisfaction, but hired another design company to complete drawings and contracted with builder to construct home -- Customers did not pay last invoice of \$1,656.03, including G.S.T. -- Designer brought action against customers and builder for breach of contract -- Action allowed -- Written terms of contract did not describe process by which final design and working drawings were to be achieved, nor did terms specify completion stage of contract or how contract could be terminated -
 - Contract contemplated designer being engaged until working plans finished as payment schedule indicated final payment due on hand-over of working drawings -- Implied terms of contract included that while copyright remained with designer, customers were entitled to one-time use of design, that process of production of working drawings required that designer consult with customers, and that contract completed when final working drawings handed over to customers -- Customers were in breach of contract as they did not give designer opportunity to finalize working drawings.

Judges and courts --- Jurisdiction -- Small Claims or other inferior courts -- Provincial courts

No jurisdiction to hear defamation claim.

Damages --- Exemplary, punitive and aggravated damages -- Grounds for awarding exemplary, punitive and aggravated damages -- Breach of contract

Customers engaged custom home designer to design their residence -- After initial meeting between parties, designer provided letter which set out proposed terms of engagement, which customers agreed to and paid retainer -- Designer provided working drawings of home and customers provided feedback -- Customers became dissatisfied with designer, as he failed to make requested changes to drawings -- Customers did not advise designer of their dissatisfaction, but hired another design company to complete drawings and contracted with builder to construct home -- Customers did not pay last invoice of \$1,656.03, including G.S.T. -- Designer brought action against customers and builder for breach of contract, including claim for exemplary damages -- Action allowed; claim for exemplary damages dismissed -- Customers found to be in breach of contract as implied term of contract contemplated designer being engaged until working drawings handed over -- Quantum of damages awarded was for unpaid invoiced costs, less retainer and costs -- Claim for exemplary damages dismissed, as customers did not deny that designer had designed their home

San Francisco Gifts Ltd (Re) [2005] **AJ** 131, 2005 AQBD 91, 2005 CarswellAlta 174, <http://www.canlii.org/ab/cas/abqb/2005/2005abqb91.html>, <http://www.albertacourts.ab.ca/jdb/2003-/qb/civil/2005/2005abqb0091.pdf> (AltaQB; 2005-02-09) Topolniski J.

Application by the debtor corporation, San Francisco Gifts Ltd., for a fourth extension of the stay of proceedings originally granted when it obtained

protection under the Companies' Creditors Arrangement Act on January 7, 2000. A group of landlords, however, opposed the debtor's most recent request for an extension based on its earlier plea of guilty to various Copyright Act offences, including willful copyright infringement, and the sentencing judge's description of its conduct in so doing as fraudulent and reprehensible. The debtor's infringing activities included applying counterfeit safety standard labels to electrical products. At least one of the falsely labeled products had caused a fire. According to the landlords, this precluded any possibility that the debtor had met the statutory good faith prerequisite to an extension. They also contended that extending the stay under the circumstances would have brought the administration of justice into disrepute, despite the fact that the debtor had been fined \$150,000 for its infringing activities. Furthermore, it was working with due diligence and in good faith towards presenting a plan of arrangement to its creditors.

HELD: Application allowed. The term good faith contained in s. 11(6) of the Companies' Creditors Arrangement Act generally focused on the debtor's dealings with stakeholders, such as investors, creditors and employees, and while this did not mean that a corporate debtor's business practices could not be found to have been so offensive as to warrant refusal of a stay of extension on public policy grounds, this was not such a case. While the debtor's conduct was both illegal and offensive, it had already been condemned in the appropriate forum and punishment levied. Denying the stay extension application would have been an additional form of punishment. The court was also concerned about the debtor's other creditors, especially its unsecured creditors, who would have been denied their right to vote on the plan if the requested extension were denied. Those creditors would also have lost any hope of financial recovery. Given the debtor's continuing good faith efforts to present its plan of arrangement, therefore, and in light of the broad and liberal interpretation to be applied to remedial legislation such as the Act, extending the stay of proceedings was appropriate in this case.

*Santerre v Reine** 2005 **CarswellNat** 2892, 2005 DTC 1324, [2005] ACI 435, 2005 CCI 606, <http://www.canlii.org/ca/jug/cci/2005/2005cci606.html>, <http://www.canlii.org/ca/jug/cci/2005/2005cci606.html> (CCI; 2005-09-20) Dussault J.

Income tax --- Other income -- Research grants

Taxpayer was university professor -- Taxpayer contributed to books for internal university student use -- Taxpayer was not paid royalties for books -- Taxpayer brought employment grievances in respect of book royalty issues -- Taxpayer and university resolved grievances by way of \$10,000 supplement to taxpayer's university research grant -- Taxpayer declared research grant supplement and deducted research expenses from gross supplement -- Minister assessed taxpayer, disallowing deduction of research expenses from supplement in taxpayer's income -- Taxpayer appealed -- Appeal dismissed - - Clear nexus existed between taxpayer's contribution to books, employment grievances, and payment of supplement -- Supplement was paid to taxpayer as direct result of intellectual property dispute -- Accordingly, supplement was paid on account of royalties notwithstanding classification of supplement as research grant -- Current-account research expenses not

incurred directly in order to produce books founding grievances were accordingly not properly deducted from supplement.

Income tax --- Employment income -- Salary and wages – Commissions

Intellectual property royalties -- Taxpayer was university professor -- Taxpayer contributed to books for internal university student use -- Taxpayer was not paid royalties for books -- Taxpayer brought employment grievances in respect of book royalty issues -- Taxpayer and university resolved grievances by way of \$10,000 supplement to taxpayer's university research grant -- Taxpayer declared research grant supplement and deducted research expenses from gross supplement -- Minister assessed taxpayer, disallowing deduction of research expenses from supplement in taxpayer's income -- Taxpayer appealed -- Appeal dismissed -- Clear nexus existed between taxpayer's contribution to books, employment grievances and payment of supplement -- Supplement was paid to taxpayer as direct result of intellectual property dispute -- Accordingly, supplement was paid on account of royalties notwithstanding classification of supplement as research grant -- Current-account research expenses not incurred directly in order to produce books founding grievances were accordingly not properly deducted from supplement.

[24] Il me paraît évident qu'une somme unique reçue en règlement d'une réclamation pour des droits d'auteur à l'égard d'un ouvrage précis, en l'occurrence un guide pédagogique, ne constitue pas, à proprement parler, une subvention de recherche, malgré l'entente entre les parties selon laquelle la somme de 10 000 \$ devait être versée sous cette forme. L'appelant a donc reçu cette somme de 10 000 \$ en règlement final de sa réclamation de droits d'auteur concernant le guide pédagogique conçu plusieurs années auparavant et non comme une subvention de recherche.

Sazby & Pokorny Architects for the reproduction of mechanical and electrical plans designed by Larry W.T. Tang, Continental Design Inc. in 1981 for the property located at 800 Macleod Trail S.E. in Calgary [Re Non-exclusive licence issued to] File 2005-UO/TI-30, <http://www.cb-cda.gc.ca/unlocatable/165-e.pdf> (CopBd; 2005-09-01)

<i>Sazby & Pokorny Architects (Re) 2005-UO-TI-30</i>	Architects for the reproduction of mechanical and electrical plans designed by Larry W.T. Tang, Continental Design Inc. in 1981 for the property located at 800 Macleod Trail S.E. in Calgary	2005-09-01 2005-12-31	Renovation	\$25 per copy	None
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Société du droit de reproduction des auteurs, compositeurs et éditeurs au Canada Inc. v Amalgame-Cargo créativité stratégique Inc., SOQUIJ AZ-50328380, JE 2005-1646, 2005 CarswellQue 5844, REJB 2005-93578, 2005 IJCan 28333 <http://www.canlii.org/qc/jug/qccs/2005/2005qccs59629.html> (Que SupCt; 2005-07-28) Picard J.

Résumé

Action en dommages-intérêts pour violation du droit d'auteur. Accueillie (69 015 \$).

Le peintre Magritte, décédé en 1967, a légué tous ses biens, dont ses droits d'auteur, à sa veuve, Berger. Cette dernière, décédée en 1986, a légué ses droits de suite et de reproduction sur l'oeuvre de son époux à Herscovici. En juillet 1991, ce dernier a fait apport de ses droits et a confié à la Société des auteurs dans les arts graphiques et plastiques (ADAGP) le mandat d'assurer l'application et la gestion de ceux-ci pour tous les pays. En vertu de cet accord, l'ADAGP pouvait se faire remplacer sur certains territoires par d'autres sociétés afin d'assurer la bonne gestion des droits. En août 1998, elle a conféré par contrat à la Société du droit de reproduction des auteurs, compositeurs et éditeurs au Canada inc. (SODRAC) le mandat exclusif de la représenter au Canada. En octobre 2001, la SODRAC a pris connaissance d'une campagne de publicité de Placements Québec conçue par la défenderesse Amalgame-cargo Créativité stratégique inc. et utilisant une reproduction non autorisée d'une oeuvre de Magritte. Dès réception d'une mise en demeure de la SODRAC, Amalgame-cargo a cessé la diffusion de cette publicité. La SODRAC réclame à Amalgame-cargo et au procureur général du Québec des dommages-intérêts de 69 015 \$. Amalgame-cargo a pris fait et cause pour le procureur général. Elle invoque l'absence d'intérêt pour ester en justice de la SODRAC ainsi que le caractère exagéré des dommages-intérêts réclamés.

Décision

Conformément à l'article 13 de la *Loi sur le droit d'auteur*, le premier titulaire de l'oeuvre est Magritte. Son droit a été légué contractuellement à sa veuve, qui l'a légué à Herscovici. Dans les statuts en vertu desquels Herscovici l'a confié à l'ADAGP, Herscovici reconnaissait que l'ADAGP pouvait se faire remplacer par d'autres sociétés, qui devenaient alors titulaires de l'entière ou d'une partie des droits patrimoniaux sur l'oeuvre. Le rapport d'une avocate en droit français confirme que les droits patrimoniaux comprennent celui d'autoriser ou d'interdire la reproduction d'une oeuvre. Ainsi, l'ADAGP était titulaire du droit d'autoriser ou d'interdire la reproduction de l'oeuvre de Magritte. Le contrat transférant les droits à la SODRAC précise que cette dernière est habilitée à autoriser et à interdire les droits patrimoniaux sous réserve de l'accord préalable de l'ADAGP, qui a été obtenu en janvier 2002. De plus, l'article 13 de la loi prévoit que le titulaire du droit d'auteur peut concéder une licence mais que la cession n'est valable que si elle est écrite et signée par le titulaire du droit ou son agent autorisé. Son article 36 indique également que toute partie qui a acquis par cession ou concession un droit du titulaire du droit d'auteur peut exercer les recours prévus par la loi pour faire valoir les droits qu'il détient. La SODRAC a donc la qualité et l'intérêt pour exercer le recours en dommages-intérêts prévu à l'article 34 de la loi. Le barème d'évaluation des dommages proposé par la SODRAC, qui s'appuie sur le type de publicité, le tirage, le format et la durée et qui comprend une pénalité de 20 %, permet de bien quantifier ceux-ci. La prétention voulant que le barème doive être écarté parce qu'il n'a pas été homologué est rejetée. Le tribunal ne peut tenir compte du fait que la défenderesse n'a tiré qu'un profit de 3 600 \$, car cela serait inéquitable pour les usagers qui respectent les droits d'auteur et briserait l'équilibre entre les artistes et les utilisateurs. La réclamation pour honoraires extrajudiciaires est rejetée puisque les défendeurs ont collaboré dès la mise en demeure.

Society of Composers, Authors & Music Publishers of Canada v Maple Leaf Sports & Entertainment Ltd. 2005 CarswellNat 1409 (FC-Prot.; 2005-03-14); affd. 40 **CPR** (4th) 28, [2005] CarswellNat 1368, 2005 FC 640, <http://decisions.fct-cf.gc.ca/fct/2005/2005fc640.shtml>, <http://www.canlii.org/ca/cas/fct/2005/2005fc640.html> (FC; 2005-05-06) Pinard J.

The plaintiff collective society had commenced an action for unpaid tariff royalties owing in relation to music concerts that it alleged the defendant authorized at its concert venue. In its defence and counterclaim the defendant alleged that the tariff in question was unenforceable to the extent that it targeted the copyright right of authorization because the Copyright Board lacked jurisdiction to certify a tariff which targeted the authorization right.

The plaintiff had brought a motion to strike the counterclaim and extracts from the defence which claimed that the tariff was of no force or effect. The prothonotary had granted the motion. The defendant appealed the prothonotary's decision but only insofar as it related to striking extracts from the defence.

Held, the appeal should be dismissed.

The standard of review on the appeal was correctness.

As a result of the combined effect of ss. 18(1) and (3), 18.1(3) and (4) and 28(1), (2) and (3) of the Federal Courts Act, R.S.C. 1985, v F-7, the Federal Court of Appeal has jurisdiction to review the Copyright Board's jurisdiction to certify a tariff. Accordingly, the Federal Court had no jurisdiction to entertain a proceeding in respect of such a matter. In view of s. 26 of the Act, the matter was allocated specifically to the Federal Court of Appeal.

Society of Composers, Authors and Music Publishers of Canada v Kicks Roadhouse Inc. (c.o.b. How-Dee's) [2005] CarswellNat 1100, [2005] FCJ 646, 2005 FC 528, 39 **CPR** (4th) 238, <http://www.canlii.org/ca/cas/fct/2005/2005fc528.html> and <http://decisions.fct-cf.gc.ca/fct/2005/2005fc528.shtml>, in French at 2005 CarswellNat 3327, <http://www.canlii.org/ca/jug/cfpi/2005/2005cf528.html>, <http://decisions.fct-cf.gc.ca/cf/2005/2005cf528.shtml> (FC; 2005-04-19); 2005 FC 1345, <http://www.canlii.org/ca/cas/fct/2005/2005fc1346.html> and <http://decisions.fct-cf.gc.ca/fct/2005/2005fc1346.shtml> (FC-Reconsideration; 2005-09-30); appeal A-227-05 O'Keefe J.

The plaintiff was a collective society entitled to collect royalties in its approved statement of royalties in respect of the public performance and the authorization of such performance of musical works. The plaintiff was also the proprietor of the cause of action for copyright infringement for the violation of such rights.

The corporate defendant carried on the business of a restaurant, bar or nightclub wherein, from 1997 to 2001, it presented performances of musical works by means of recorded music for dancing. The recorded music was played by disc jockeys hired by and paid by, or employed and paid by, the corporate defendant.

The individual defendant was the president and a director and officer of the corporate defendant. The individual defendant operated and managed or directed the operation and management of the corporate defendant. The individual defendant did not, however, play a role in the day-to-day management of the corporate defendant's business. Different managers were responsible for the day-to-day business.

The plaintiff commenced an action for copyright infringement claiming damages, an account of profits and an injunction. In the alternative, the plaintiff sought royalties for the performances pursuant to s. 68.2 of the Copyright Act, R.S.C. 1985, v C-42, as the plaintiff might elect. The plaintiff claimed that the individual defendant was liable for authorizing the performance of the recorded music, and as the directing mind of the corporate defendant, was liable for its infringing acts.

Held, judgment should be granted for the plaintiff.

The plaintiff's musical works were performed at the premises of the corporate defendant without the plaintiff's consent. The corporate defendant thereby infringed the plaintiff's copyright by playing the recorded music and authorizing the playing of the recorded music in public without a license to do so.

The corporate defendant was also liable for copyright infringement for permitting a place of entertainment to be used for the public performance of musical works for profit contrary to s. 27(5) of the Copyright Act. The individual defendant believed the plaintiff's fees were being dealt with by his general manager. The individual defendant had not therefore authorized the public performances contrary to ss. 3(1) and 27(1) of the Copyright Act. Furthermore, the corporate defendant carried on the business of making money as a dance club and bar. It was not set up to embark on a course of conduct that would cause infringement of the plaintiff's copyrights. The individual defendant was not therefore personally liable for the infringing conduct of the corporate defendant.

The plaintiff was entitled to a declaration of infringement by the corporate defendant. It was granted damages and an account of profits for copyright infringement, and an injunction. In the alternative, and as the plaintiff might elect, the plaintiff was entitled to the royalties under s. 68.2 of the Act in respect of the performances.

Southern Alberta Institute of Technology (SAIT) Polytechnic for the reproduction of five sets of images and diagrams for which the source is unknown [Re Non-exclusive licence issued to] File 2005-UO/TI-27, <http://www.cb-cda.gc.ca/unlocatable/163-e.pdf> (CopBd; 2005-08-19)

<i>Knight (Re)</i> 2005-UO/TI-41	for the reproduction of the book entitled "History of the Thirty-First Battalion C.E.F." produced by H.C. Singer and A.A. Peebles in no more than 1000 copies of the book	2005-12-08 2007-12-31	Commercial	\$650	Access Copyri ght
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Spiros Pizza & Spaghetti House Ltd. v Riviera Pizza Inc. 39 **CPR** (4th) 527, [2005] CarswellAlta 337, [2005] AJ 278, 2005 ABQB 80, [2005] AWLD 1967, [2005] AWLD 1955, [2005] AWLD 1956, [2005] AWLD 1892, <http://www.canlii.org/ab/cas/abqb/2005/2005abqb80.html>, <http://www.albertacourts.ab.ca/jdb/2003-/qb/civil/2005/2005abqb0080.cor1.pdf> (AltaQB; 2005-03-15) Power J.; affd. 2005 CarswellAlta 1394, 2005 ABCA 305, [2005] AWLD 3494, [2005] AWLD 3570, [2005] AWLD 3571, [2005] AWLD 3587, <http://www.albertacourts.ab.ca/jdb/2003-/ca/civil/2005/2005abca0305.pdf>, <http://www.canlii.org/ab/cas/abca/2005/2005abca305.html> (AltaCA 2005-09-16) supplemental reasons at 2005 CarswellAlta 1799, 2005 ABCA 418, <http://www.albertacourts.ab.ca/jdb/2003-/ca/civil/2005/2005abca0418.pdf>, <http://www.canlii.org/ab/cas/abca/2005/2005abca418.html> (AltaCA-Costs; 2005-12-06) (AltaQB; 2005-03-15)

The plaintiff, James Spiropoulos (Jimmy Spiros) incorporated the plaintiff company, Spiros Pizza & Spaghetti House Ltd., in 1970. In 1973, plaintiff company opened a restaurant under the trade name "Spiros Pizza" in Calgary. From the time of the restaurant's opening, the plaintiff company used the trade names "Spiros Pizza" and "Spiros" and a trade-mark, which was a design of the trade name "Spiros Pizza" over a maple leaf and eagle, to promote the name and reputation of the restaurant. "Spiros" was an abbreviation of the plaintiff's surname. The plaintiff had used the trade names "Spiros Pizza" and "Spiros" for his restaurant business in Calgary since the 1950s on exterior signs, in menus that were used in the restaurant and delivered to residents, and in advertisements.

In 1989, the defendants, Minas and Eva Papoutsakis, and the plaintiff company executed an offer to purchase the restaurant. The Offer to Purchase did not address the trade names. After the parties retained legal counsel, the offer to purchase was amended and additional agreements were executed, including a lease of the restaurant premises. Under the terms of the five-year term first lease, defendant 410461 Alberta Ltd. (later Riviera Pizza) was authorized to use the name "Spiros Pizza" only at the location of the leased premises, only as required for restaurant operations, and only during the term of the lease and any renewals of the lease. The lease contained an entire agreement clause. The defendants' son John was the manager and employee of Riviera and acted on a power of attorney granted to him by Minas and Eva Papoutsakis.

In 1991, the defendant Minas Papoutsakis incorporated a new company called "Uncle Spiros Pizza & Steak House Ltd" and opened a restaurant in another location in Calgary called "Uncle Spiros Pizza." The plaintiffs objected to the use of the name "Spiros Pizza," and advised defendants it was a trade name whose use was subject to the terms of the lease. The "Uncle Spiros Pizza" restaurant stopped operations less than a year later.

In 1994 and 1999 respectively, the parties entered into a second lease and third lease, both with similar terms as the first lease. The defendants Minas and Eva Papoutsakis were personal guarantors to the third lease.

In December 1998, the defendant Minas Papoutsakis retained legal counsel to trade-mark the name "Spiros" and the maple leaf and eagle art, which the plaintiff had created in 1973 and used since that time. The trade-mark application failed to disclose the lease restrictions against the defendant

tenant using the name "Spiros Pizza" at other restaurant locations and that the right to use the name "Spiros Pizza" would terminate at the lease end in 1999. Defendant Riviera Pizza's registration for the trade-mark was completed in January 2001. In April 2001, the mark was transferred to 919013 Alberta Ltd., of which the defendants' son John was the sole shareholder and director. In the same year, defendant John Papoutsakis used the trade name "Spiros Pizza" in the design of a Web page. Another company, the Spiros Group, owned by defendant John Papoutsakis registered the trade name "Spiros Take Out and Delivery" in 2003. In 2002 and 2003, the parties negotiated to sell the leased restaurant property and/or the trade name "Spiros Pizza," and/or to renew the third lease early, but no agreement was reached. In 2004, 919013 Alberta Ltd. filed an application under the Trade-marks Act, R.S.C. 1985, vT-13, to register the name "Spiros" and "Spiros with a pizza design" as trade-marks.

In January 2004, plaintiff James Spiropoulos saw an advertisement for a "Spiros" restaurant opening in Calgary. The advertisement stated the restaurant would have the "Same Great Pizza--Same Phone Number" as the leased restaurant. The plaintiffs' counsel wrote the defendant to complain about the use of the "Spiros" name for a new restaurant. The defendants advertised the new Spiros restaurant through three drops of 15,000 leaflets each in the surrounding area. In March 2004, the new restaurant named "Spiros" opened at a strip mall in a location close to the original restaurant. The defendant advertised that the Spiros restaurant had two Calgary locations. The defendant also set up a Web site, <<www.spirospizza.ca>>, to conduct a survey to help the defendant decide where to establish another Spiros restaurant.

Plaintiffs applied for an injunction to prevent the defendants from using the Spiros trade names, trade-marks, and telephone number. That order was granted in June 2004. The defendants changed the new restaurant's name to "Sophie's" in June 2004 and notified customers of the name change. In September 2004, the defendants circulated a news release to the public stating that Mr. Spiropoulos forced the Papoutsakis family to find a new location and left the latter "out on the street." In October 2004, the third lease on the original restaurant expired and the defendants vacated the premises. The defendants were granted an order in November 2004 directing the plaintiffs to advertise their restaurant as "Under New Management" and to remove a sign that it was "reopening soon."

The plaintiffs initiated an action to declare that the Spiros trade-mark, trade name and its variations were the exclusive property of the plaintiffs, that the defendants' registration and transfer of the trade-mark under the Trade-marks Act was invalid, that the defendants breached the terms of the lease, and to permanently enjoin the defendants from using the Spiros trade-marks, trade names, registered trade-mark, and the restaurant telephone number.

Held, the action should be allowed in part granting a declaration, a permanent injunction and damages.

Trade-mark rights can be acquired by use independently of registration under the Trade-marks Act and these rights can be protected through the common law action for passing off. A passing-off action requires the

existence of goodwill, the deception of the public due to a misrepresentation and actual or potential damage to the plaintiff.

There was goodwill in the trade names "Spiros" "Spiros Pizza" and "Spiros Pizza & Spaghetti House Ltd." Proof of goodwill was evidenced by the fact that the defendants tried to trade-mark the name and from the expert evidence of a restaurant critic that the restaurant had a substantial reputation in 1989 which was maintained through to 2004. The plaintiff James Spiropoulos had established common law trade-marks in his name "Spiros," "Spiros Pizza" and the maple leaf and eagle design.

There must be a likelihood of deception in the mind of a substantial number of ordinary purchasers purchasing with ordinary caution. The defendants adopted a name that was identical to that in which the plaintiffs established goodwill. Goodwill was established, misrepresentation was proved, and thus confusion was presumed. The defendants deprived the plaintiff of the right to control the reputation and goodwill associated with the name "Spiros Pizza" in Calgary which was sufficient damage to found the passing-off action.

The 1989 purchase agreement was a letter of intent that was replaced by and merged into the subsequent formal agreements, including the first lease. The language in the first lease with respect to the trade name was unambiguous and did not require reference to extrinsic evidence such as the purchase agreement. The lease applied strict conditions on where, how, and when the tenant could use the trade name and clearly stated the trade name was to be used for a period of time and not sold. The clause in the first lease, and the subsequent leases, was a valid written licence. The plaintiff landlord retained control and ownership over the trade name. The plaintiffs thus "used" the trade name according to s. 50 of the Trade-marks Act, through the licence, and can seek protection through the passing off action.

The defendant Riviera breached all the licences by transferring the trade-mark ("Spiros" with the maple leaf and eagle which the plaintiff designed) to a party that was not subject to the leases and without the contractual lease restrictions. Defendant Riviera also aided and abetted a third party in the misuse of the trade name "Spiros" and its conduct breached the conditions of use in the leases. The misuse was deliberate, deceptive and done without regard to the plaintiffs' rights.

The validity and expungement of the trade-mark is within the exclusive jurisdiction of the Federal Court.

The telephone numbers were sold to the defendants and the defendants were entitled to use them at their new restaurant location. The plaintiff Spiropoulos also had copyright and moral rights in the design of the maple leaf and eagle. Defendants infringed the copyright and moral rights in that logo design.

The plaintiffs were awarded damages against Minas and Eva Papoutsakis and Riviera Pizza Inc. in the amount of \$50,000 for breach of lease and aiding and abetting the passing off of the Spiros trade name. The plaintiffs

were awarded damages against defendants 919013 Alberta Ltd., Spiros Group Inc. and John Papoutsakis in the amount of \$50,000 for passing off the trade name "Spiros." The defendants were permanently enjoined from using any of the trade names and trade-marks "Spiros" and "Spiros Pizza" in any sign, advertisement, website, domain name, restaurant or other property. The defendants were enjoined from using the website www.spirospizza.ca, but the defendants' conduct did not justify imposing punitive damages for defamation.

The defendants issued a third party notice to George Kapoyannis, the real estate agent involved with the restaurant's listing and the offer to purchase. There was no evidence that Kapoyannis was negligent and he was acting at all material times as an agent for the plaintiffs. Further, the action was time barred because the limitations period expired five years before the third party notice was issued and therefore the action was dismissed with costs.

Standard Life Assurance Company of Canada/Standard Life Realty Advisors for the reproduction of mechanical and electrical plans created by B. Siebrand, P.Eng. in 1987 for the property located at 5335 Canotek Road in Ottawa [Re Non-exclusive licence issued to] File 2005-UO/TI-18, <http://www.cb-cda.gc.ca/unlocatable/154-e.pdf> (CopBd; 2005-05-04)

Standard Life Insurance Company of Canada (Re) 2005-UO/TI-18	for the reproduction of mechanical and electrical plans created by B. Siebrand, P.Eng. in 1987 for the property located at 5335 Canotek Road in Ottawa	2005-05-04 2005-08-31	Operation, maintenance and renovations	\$25	None
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St-Cyr Morin (Lyse) for the reproduction of architectural plans created by Christine Gieyfztor for the property located at 26 Concourse Gate in Ottawa [Re Non-exclusive licence issued to] File 2005-UO/TI-25, <http://www.cb-cda.gc.ca/unlocatable/157-e.pdf> (CopBd; 2005-06-30)

St-Cyr Morin (Re) 2005-UO/TI-25	for the reproduction of architectural plans created by Christine Gieyfztor for the property located at 26 Concourse Gate in Ottawa	2005-06-30 2005-12-31	Sale transaction	\$25	None
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Steinhart v Moledina [2005] CarswellOnt 550, [2005] OJ 525, 37 **CPR** (4th) 443, <http://www.canlii.org/on/cas/onsc/2005/2005onsc10268.html> (OntSupCt; 2005-02-11) Ground J.

The plaintiff claimed he was the photographer and owner of photographs that were posted on the Web site of the corporate defendant without permission. The plaintiff alleged that the individual defendant was an officer, director and shareholder of the corporate defendant and personally authorized the infringement of the copyright and moral rights of plaintiff's photographs by authorizing the reproduction, distribution, selling, and renting out of plaintiff's photographs.

The individual defendant brought a motion pursuant to rule 21.01(1)(b) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, that the statement of claim disclosed no reasonable cause of action against him in his personal capacity and pursuant to rule 25.11 that the statement of claim was scandalous, frivolous or vexatious or an abuse of process of the court.

Held, the motion to strike the cause of action against the individual defendant should be granted and otherwise the motion should be dismissed.

There was a reasonable cause of action for purposes of rule 25.11.

The test to strike a pleading under rule 21.01(1)(b) is whether it is plain, obvious and beyond doubt that the cause of action cannot succeed based on the jurisprudence and on the facts pleaded in the statement of claim. The plaintiff claimed that the individual defendant was personally liable as a director, officer and "directing mind" of the corporate defendant, based on either copyright law or common law principles, for wilfully authorizing the posting, selling and distribution of plaintiff's photographs on the internet.

According to case law, individuals who are officers and directors of corporations are not personally responsible merely because of their status as officers and directors for the copyright infringement allegedly committed by the corporation. A statement of claim must contain particulars stating specifically in what way the officer or director was indifferent to or deliberately reckless with respect to the copyright owner's rights or directed the manner in which the infringing activities were to be carried out by the corporation. The plaintiff failed to plead these specific acts, and the statement of claim did not state a reasonable cause of action against the individual defendant.

The individual defendant's motion pursuant to rule 21.01(1)(b) was granted and the cause of action against the individual defendant was struck from the statement of claim.

*Syndicat des employées et employés de l'UQAM, Section locale 1294 v Université du Québec à Montréal (UQAM)** 2005 IJCan 30712, <http://www.canlii.org/qc/jug/qcdag/2005/2005qcdag10126.html> (Que Arbitration; 2005-09-01) Sabourin arbitrator

[38] Compte tenu du récent arrêt *Parry Sound* [2003 CSC 42], j'estime avoir non seulement le pouvoir « d'interpréter et d'appliquer » ladite *Loi sur le droit d'auteur*, mais également « le pouvoir de mettre en application et de faire respecter les droits et obligations substantiels » qui sont prévus dans ladite législation fédérale [...]

[39] En toute déférence pour l'opinion contraire exprimée par la procureure patronale au dossier, le fait qu'il n'y ait pas de disposition sur le droit d'auteur dans la Convention collective en litige, de même que le fait qu'aucune référence à la Politique n° 36 n'y soit faite, ne change rien au fait que le 1^{er} grief demeure arbitral [EDITOR'S NOTE: the first grievance was for: Exposé du grief : Dans le journal « L'UQAM », numéro 8, daté le 12 janvier 2004, à la page 12 (pièce R-3), l'employeur a enfreint les règles de la

Politique sur la reconnaissance et la protection de la propriété intellectuelle (Politique 36) (pièce R-11) en cosignant un article qui ne lui appartenait pas.].

Telewizja Polsat S.A. v Radiopol Inc. 42 **CPR** (4th) 202, 2005 FC 1179, 2005 CarswellNat 2414, <http://www.canlii.org/ca/cas/fct/2005/2005fc1179.html>, <http://decisions.fct-cf.gc.ca/fct/2005/2005fc1179.shtml> (FC; 2005-08-29) Kelen J.

The plaintiff was the owner of certain television programming which it transmitted through its encrypted television signal via satellite. Without the authorization of the plaintiffs, the defendants operated a Web site through which they made the plaintiff's program episodes available to the public for a fee. The plaintiff's trade-mark appeared on the right hand corner of the screen while the episodes were playing. The plaintiffs commenced an action for contravention of the Radiocommunication Act, R.S.C. 1985, v R-2, copyright infringement and trade-mark infringement and brought a motion for an interlocutory injunction. As the plaintiffs had been unable to effect personal service on the defendants, the plaintiffs also sought an order for substituted service.

Held, the motion for substituted service and an interlocutory injunction should be granted.

Substituted service

The plaintiffs had arranged to have the Statement of Claim and motion materials delivered to the address shown in the defendants' corporate records. However, the premises had been vacated. It then sent the materials to a post office box in Alberta identified by the R.C.M.P. but the materials had not yet been picked up. They also sent copies to the defendants' two e-mail addresses. Traces showed that the e-mails had been delivered

Rule 147 of the Federal Courts Rules, 1998, SOR/98-106, permits the court to validate service if it is satisfied that the documents had come to the attention of the persons to be served. The court was satisfied that service had been effected by e-mail.

Interlocutory injunction

The plaintiffs had shown possible infringement under the Radiocommunication Act, the Copyright Act, R.S.C. 1985, v C-42, and the Trade-marks Act, R.S.C. 1985, v T-13. Accordingly, the plaintiffs had established that there was a serious issue to be tried. In fact, a strong prima facie case of infringement had been made out.

The defendants' activities were interfering with the plaintiffs' ability to enter into distribution agreements in Canada. In addition to losing potential customers, the plaintiffs were also losing credibility in the market place. As this loss of industry opportunity could not be quantified, the plaintiffs had established that they would suffer irreparable harm if the defendants were permitted to continue their activities.

The plaintiffs had established a strong prima facie case and demonstrated that they would suffer irreparable harm. Further, given the difficulties the plaintiffs had encountered in attempting to contact the defendants, there

were serious grounds to believe that the plaintiffs would have had difficulties collecting damages from the defendants if awarded at trial. The balance of convenience favoured the plaintiffs.

*Teneycke v Sawatzky** 2005 CarswellSask 446, 2005 SKQB 266, <http://www.canlii.org/sk/cas/skqb/2005/2005skqb266.html>, http://www.lawsociety.sk.ca/dbtw-wpd/exec/dbtwpub.dll?AC=GET_RECORD&XC=/dbtw-wpd/exec/dbtwpub.dll&BU=http%3A%2F%2Fwww.lawsociety.sk.ca%2Fnewlook%2FLibrary%2Ffulltextnew.htm&TN=fulltext&SN=AUTO17329&SE=508&RN=1&MR=20&RF=fullNew3P&DF=fullLongNew2P&RL=0&DL=0&NP=3&ID=&MF=WPENGMMSG.INI&MQ=&TI=0 (Sask. QB; 2005-06-08) Foley J.

[12] If every non-filing, every unpaid debt and each copyright infringement gave rise to applications for oppression relief and attempts to remove directors and change management, there would be continual unnecessary corporate turmoil. It must be demonstrated that the actions complained of are "unfairly prejudicial" to the minority. The evidence in this case falls far short of that standard.

TM Minard Trucking Ltd. v Richard [2005] CarswellSask 149, [2005] **SJ** 151, 2005 SKQB 113, <http://www.canlii.org/sk/cas/skqb/2005/2005skqb113.html>, http://www.lawsociety.sk.ca/dbtw-wpd/exec/dbtwpub.dll?AC=GET_RECORD&XC=/dbtw-wpd/exec/dbtwpub.dll&BU=http%3A%2F%2Fwww.lawsociety.sk.ca%2Fnewlook%2FLibrary%2Ffulltextnew.htm&TN=fulltext&SN=AUTO17744&SE=509&RN=0&MR=20&RF=fullNew3P&DF=fullLongNew2P&RL=0&DL=0&NP=3&ID=&MF=WPENGMMSG.INI&MQ=&TI=0 (SasQB; 2005-03-02) Matheson J.

Application by TM Minard Trucking for an order to continue an Anton Piller order. It also sought an interim order to prohibit the defendants Richard and Priel from talking to Minard's employees, lease operators or customers. The Anton Pillar order was obtained against the former defendant Triton Transport. Richard and Priel were former employees of Minard and worked as dispatchers. A dispatcher was a key employee in the trucking business as he contacted customers and prospective customers to quote trucking rates and to book and assign loans. The trucking industry was very competitive and the trucking rates of each firm were kept confidential from competitors. Richard and Priel did not sign non-competition agreements with Minard. They left Minard and commenced employment with Triton. Minard claimed that they took confidential information with them when they departed. The Anton Piller order allowed for entry into Triton's premises and the right to search and remove property that could be identified as belonging to Minard. Certain documents were removed but none were of significance to this action.

HELD: Application dismissed. Minard failed to establish an extremely strong prima facie case that would entitle it to the continuation of the Anton Piller order. No particulars were provided of any losses incurred by Minard as a result of the departure of Richard and Priel. There was no clear evidence that these defendants possessed incriminating documents. Regarding the request for the injunction, in the absence of non-competition agreements there was no law which prohibited former employees from competing with their former employer. Furthermore, it was not clear if the defendants were employees or independent contractors.

Towne Cinema Theatres (1975) Ltd. v Society of Composers, Artists and Music Publishers of Canada 38 **CPR** (4th) 391, [2005] **CarswellAlta** 341, [2005] AJ 282, 2005 AQBD 186, [2005] AWLD 1765, [2005] AWLD 1772, [2005] AWLD 1759, [2005] AWLD 1860, [2005] AWLD 1859, <http://www.canlii.org/ab/cas/abqb/2005/2005abqb186.html>, <http://www.albertacourts.ab.ca/jdb/2003-/qb/civil/2005/2005abqb0186.pdf> (AltaQB; 2005-03-18) Lee J.; additional reasons at 2005 **CarswellAlta** 569, [2005] AWLD 1759, [2005] AWLD 1765, [2005] AWLD 1772, [2005] AWLD 1859, [2005] AWLD 1860, 2005 ABQB 315, <http://www.canlii.org/ab/cas/abqb/2005/2005abqb315.html>, <http://www.albertacourts.ab.ca/jdb/2003-/qb/civil/2005/2005abqb0315.pdf> (AltaQB-costs; 2005-04-24)

(AltaQB; 2005-03-18)

The plaintiffs operated motion picture theatres. The defendant law firm represented the defendant society in Federal Court proceedings for copyright infringement brought against the plaintiffs. The individual defendant was the member of the law firm responsible for the society in those proceedings.

The plaintiffs caused the lawyers representing them in the Federal Court action to deliver to the individual defendant cheques representing the amounts calculated to be owing pursuant to royalty licensees for 1999 through 2003. The covering letters set out the specific purpose for which the cheques were provided. The individual defendant replied to the letters indicating that the defendant society was prepared to accept the cheques as payment towards damages in the Federal Court proceedings. The lawyers for the plaintiffs responded indicating that the cheques were furnished for the purposes set out in their letters for no other purposes. The society cashed the cheques and applied the amount on account of damages.

The plaintiffs commenced an action in the superior court of a province claiming that the letters from their lawyers and the cashing of their cheques constituted an agreement with respect to the royalty licenses for 1999 through 2003, and brought a motion for summary judgment.

Held, the plaintiffs' motion should be dismissed and the superior court action should be stayed.

Summary judgment cannot be granted if there is a genuine issue for trial. The onus of showing no genuine issue is on the third party bringing the motion.

The issue in the motion for summary judgment was directly related to, or identical to, the issue raised in the Federal Court action. As a result, the order for summary judgment was refused. Furthermore, summary judgment was not granted because there was no conclusive evidence of a meeting of the minds on the creation of a performing rights licence and the granting of summary judgment would interfere with the Federal Court litigation. The superior court action was therefore stayed.

Trigenex inc. for the reproduction of architectural plans designed by Angelo A. Kolenc in 1977 for the property located at 33 Banner Road in Ottawa [Re Non-exclusive licence issued to] File 2005-UO/TI-04, <http://www.cb-cda.gc.ca/unlocatable/150-f.pdf> (CopBd; 2005-02-09)

<i>Trigenex inc. (Re) 2005 UO-TI-04</i>	<i>for the reproduction of architectural plans designed by Angelo A. Kolenc in 1977 for the property located at 33 Banner Road in Ottawa</i>	<i>2005-02-09 2005-03-31</i>	<i>Consultation and analysis</i>	<i>\$25</i>	<i>None</i>
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Université de Montréal v Zompa Unreported (2000-04-07) decision of the Review Committee Comité on Students Disciplinary Decisions of the University of Montreal; motion for judicial review granted [2002] JQ 5277, [2003] R.J.Q. 509, 2002 IJCan 41594, <http://www.canlii.org/qc/jug/qccs/2002/2002qccs16248.html> (CSQ; 2002-12-03); revd [2005] JQ 1010, 2005 QCCA 250 (IJCan) <http://www.canlii.org/qc/jug/qcca/2005/2005qcca250.html> (QueCA; 2005-02-16), SOQUIJ AZ-50298006, JE 2005-536, [2005] RJQ 704; motion for leave to appeal dismissed [2005] **SCCA** 183 (SCC; 2005-10-06)*

Résumé

Appel d'un jugement de la Cour supérieure ayant cassé une décision du mis en cause, le Comité de révision des décisions disciplinaires concernant les étudiants de la Faculté des études supérieures de l'Université de Montréal. Accueilli.

Inscrite au programme de doctorat en sciences neurologiques de la Faculté des études supérieures de l'Université de Montréal (FES), l'intimée a publié des textes sans l'autorisation de son directeur de thèse et en indiquant faussement que ce dernier était coauteur. Le comité exécutif de la FES a conclu qu'elle avait commis une fraude au sens du *Règlement disciplinaire sur le plagiat ou la fraude concernant les étudiants* et lui a imposé une suspension de l'Université pendant un an et a exigé la reprise de sa thèse si elle décidait de poursuivre son programme. Saisi d'une demande de révision, le mis en cause a modifié à la hausse la sanction et a exclu l'intimée des programmes du département de physiologie, mais la Cour supérieure a conclu que le mis en cause avait manqué aux règles de l'équité procédurale en tenant compte de faits postérieurs à la décision du comité exécutif et elle a rétabli la sanction imposée par ce dernier, d'où le présent appel.

Décision

M. le juge Rochon: Le Comité de révision n'a pas manqué à son devoir d'agir équitablement. L'intimée connaissait très bien la preuve qu'entendait utiliser l'Université, elle a été avisée en temps opportun de son intention de réclamer une sanction plus lourde et elle a eu l'occasion de faire sa contre-preuve. La norme de contrôle applicable à une décision administrative s'établit à la suite d'une analyse pragmatique et fonctionnelle portant sur quatre facteurs (présence d'une clause privative, expertise du tribunal par rapport à celle du juge de révision, objet de la loi et nature de la question soumise). En l'espèce, l'article 27.13 h) des *Statuts de l'Université de Montréal* prévoit que la décision du Comité de révision est «finale et exécutoire». Cette clause «de finalité» milite en faveur d'une retenue judiciaire. Le Comité de révision, qui est un comité permanent formé d'universitaires et d'étudiants et qui est appelé à décider en dernier ressort des différends

disciplinaires pour toutes les facultés de l'Université, possède une expertise que n'a pas la Cour supérieure, ce qui suggère également une retenue judiciaire. La *Charte de l'Université de Montréal* et ses statuts reflètent l'importance accordée à la discipline universitaire, et le mécanisme d'examen et de sanction exclusivement interne témoigne de la volonté de l'assurer en dehors de toute ingérence externe. Les questions soumises en l'espèce portent sur le mode de fonctionnement du Comité de révision et sur sa compétence pour accroître la sanction imposée. Il s'agit d'une question mixte et, compte tenu des trois premiers facteurs, la norme de contrôle applicable est celle de l'erreur déraisonnable. L'article 27.13 des statuts suggère fortement un mécanisme de révision de type *de novo*. Il ne s'agit pas d'un droit d'appel, mais bien d'un droit de demander la révision. Règle générale, le droit administratif permet aux organismes chargés de rendre une décision *de novo* de ne pas se limiter aux seuls faits présentés à l'origine. Dans ce cas, le décideur peut prendre connaissance de faits postérieurs à la première décision dans la mesure où ils sont pertinents et liés à la décision originale. En l'espèce, le Comité de révision n'a pas utilisé la preuve de faits subséquents pour prouver l'infraction, mais uniquement pour déterminer la sanction appropriée. Cette preuve démontrait que l'intimée persistait dans sa conduite malhonnête et ne manifestait aucun remords. Le Comité de révision pouvait accroître la sanction puisque l'article 27.13 f) des statuts prévoit qu'il a la compétence pour «rendre la décision qui aurait dû être rendue». Sa décision n'était pas déraisonnable et paraît bien fondée.

[105] En l'espèce, le Comité de révision a motivé sa décision de revoir à la hausse la sanction imposée :

Outre les difficultés de mise en application de la décision du Comité exécutif de la FES (témoignage du professeur Castelluci) notes sténographiques du 28 janvier 2000, p. 70-71), le Comité de révision est d'avis que cette sanction, quoiqu'elle ne soit pas déraisonnable en soi, est inappropriée eu égard à l'ensemble des circonstances mises en preuve lors des audiences portant sur la révision de cette décision.

Les faits suivants sont autant d'éléments que le Comité a pris en considération pour décider de la sanction qui devrait être imposée :

le fait que madame Zompa a soumis pour publication à la revue *Brain Research* des articles portant sur le fruit de ses recherches effectuées sous la direction du professeur Dubuc sans en informer ce dernier et alors qu'il avait été convenu entre eux que les articles en préparation seraient soumis à la revue *Journal of Neuroscience*;

le fait que madame Zompa s'est représentée faussement auprès des éditeurs de la revue *Brain Research* comme ayant corédigé avec le professeur Dubuc les trois articles qu'elle leur a soumis pour publication;

le fait que madame Zompa a continué de participer à la médiation du professeur Drew alors qu'il est manifeste que le travail effectué par le professeur Dubuc sur les articles était inutile puisque les articles avaient déjà été soumis pour publication;

le fait que madame Zompa a déposé une thèse de doctorat dont la partie centrale est composée des articles litigieux qu'elle présente comme ayant été corédigés par le professeur Dubuc et elle-même;

le fait que madame Zompa continue de se présenter devant la communauté scientifique comme ayant corédigé avec le professeur Dubuc les deux articles publiés dans la revue *Brain Research*;

le fait qu'elle continue d'indiquer à son curriculum vitae le troisième article également soumis à la revue *Brain Research* (et qui ne sera jamais publié vu le non-consentement du professeur Dubuc);

le fait qu'elle laisse entendre dans des communications visant à obtenir des lettres de recommandations qu'elle est en attente de documents attestant l'obtention de son doctorat.

Le Comité conclut ce qui suit :

il serait inacceptable que madame Zompa puisse faire évaluer, aux fins de l'obtention d'un doctorat, un travail entaché de telles irrégularités qui tiennent de la fraude scientifique;

il serait impensable de demander à un ou des membres du Département de physiologie d'encadrer madame Zompa aux fins de la rédaction d'une thèse classique;

il serait déraisonnable que l'Université de Montréal demande à un scientifique de l'extérieur d'assumer une telle tâche.

Eu égard à l'ensemble de la preuve présentée, il est manifeste que la sanction la moins sévère qui puisse être imposée soit l'exclusion des programmes du Département de physiologie.

Cette sanction est la seule qui soit adéquate eu égard à la gravité des faits reprochés à la requérante et à l'absence de regrets pour les conséquences de son geste, qu'elle persiste à considérer comme le seul moyen dont elle disposait pour atteindre ses fins.

[106] Non seulement cette décision n'est pas déraisonnable, elle m'apparaît bien fondée particulièrement à la lumière des événements qui ont conduit à la plainte disciplinaire

(SCC; 2005-10-06)

Case Summary:

The applicant was found guilty of fraud under the respondent University's Règlement disciplinaire sur le plagiat ou la fraude concernant les étudiants and was suspended for a year. Before the Comité de révision des décisions disciplinaires concernant les étudiants, the applicant sought to introduce new evidence obtained during the revision process in order to justify her actions, but the University had the evidence withdrawn on the ground that it constituted hearsay. The University then introduced the evidence to show that the applicant was still acting inappropriately and asked that the sanction be increased. The Comité de révision confirmed the existence of

fraud and expelled the applicant from the department of physiology. An application for judicial review was granted by the Superior Court on the grounds that the Comité had exceeded its jurisdiction and violated rules of procedural justice, but the decision was overturned by the Court of Appeal.

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Vaillancourt v Lagacé, JE 2005-1793, 2005 IJCan 29333, 2005 CarswellQue 9129, AZ-50329444, http://www.canlii.org/qc/jug/qccs/2005/2005qccs59773.html#_ftnref6 (Que SupCt; 2005-08-18)

Résumé

Requête visant à obtenir une ordonnance de sauvegarde. Rejetée.

En 2003, les demandeurs Vaillancourt et Thibodeau ont fondé le Centre aviaire Johanne Vaillancourt, s.e.n.c. (CAJV), codemandeur, dans le but de diffuser de l'information sur les comportements, les soins et l'éducation des perroquets domestiques. En septembre 2004, un contrat intervenu entre Vaillancourt et la défenderesse Lagacé autorisait cette dernière à donner des cours de formation pour le CAJV. Vaillancourt, de plus en plus occupée, a décidé de diffuser l'information contenue dans ses cours sur son site Internet. En janvier 2005, une nouvelle entente a permis à Lagacé de se servir avec déférence et respect du nom de Vaillancourt ainsi que de son matériel didactique à des fins promotionnelles et professionnelles. Au mois de février suivant, les membres du CAJV ont été avisés que les cours seraient donnés par Lagacé par l'intermédiaire du Club d'étude de comportement aviaire (CECA). Ce dernier a créé son propre site Internet, dont le défendeur Roch serait l'administrateur. La défenderesse Choquette est la conjointe de Roch. Les relations entre Lagacé et Vaillancourt s'étant envenimées, cette dernière a unilatéralement résilié leur entente. En mai 2005, un blogue accessible au moyen d'un hyperlien dans le site de CECA a été ouvert sur Internet. Les demandeurs réclament qu'une ordonnance de sauvegarde soit rendue, soutenant que ce blogue contient des propos mensongers et diffamatoires à leur égard. Ils invoquent également une violation de leurs droits d'auteur.

Décision

L'ordonnance de sauvegarde que veulent obtenir les demandeurs vise l'interdiction de publier tout commentaire de nature diffamatoire à leur égard, un retrait immédiat de toutes les pages du blogue contenant de tels propos et une interdiction totale de commenter le litige. Pour que ce remède soit accordé, la jurisprudence exige la preuve d'une apparence de droit clair. Or, en l'instance, les conclusions telles qu'elles sont rédigées

entraînent des problèmes. Certaines impliquent que les défendeurs décident quel commentaire est diffamatoire. Ceux-ci prétendent qu'aucun propos diffamatoire n'est diffusé sur leur site. Cette question fait donc partie du débat au fond. Quant à l'interdiction de commenter le litige, il n'existe aucune preuve que les défendeurs aient un contrôle sur ce qui est publié dans le blogue ni qu'ils aient la capacité technique de supprimer certains commentaires. Il n'y a donc pas d'apparence de droit quant à cette question de la diffamation. Les demandeurs réclament également qu'il soit interdit à Lagacé de donner des cours aux membres de CAJV et d'utiliser les cours et le matériel de Vaillancourt. Ils doivent démontrer l'urgence d'intervenir afin d'éviter qu'un préjudice irréparable ne soit causé avant que le recours en injonction interlocutoire soit entendu. Or, rien dans les procédures n'indique que Lagacé s'apprête à les utiliser. L'information contenue dans les cours de Vaillancourt étant diffusée sur le site Internet du CAJV, elle est devenue publique. Par surcroît, l'entente entre Vaillancourt et Lagacé indique à première vue que cette dernière est autorisée à utiliser le matériel de Vaillancourt. Ainsi, la requête ne démontre ni apparence de droit ni urgence à cet égard. Invoquant une violation du droit d'auteur, les demandeurs réclament qu'il soit ordonné aux défendeurs de cesser d'utiliser les textes, les photographies et tout autre matériel de Vaillancourt, tant en leur nom que sous le couvert de pseudonymes. Toutefois, la requête ne permet pas de déterminer si les défendeurs utilisent ces pseudonymes ni quels textes et photographies sont protégés par le droit d'auteur. Cette incertitude fait échec à la démonstration d'une apparence de droit et d'une urgence.

