Federal Court of Appeal | Cour d'appel fédérale

Date: 20101201

Docket: A-524-07

Citation: 2010 FCA 322

CORAM: **LÉTOURNEAU J.A.**
NADON J.A.
PELLETIER J.A.

BETWEEN:

CANADIAN RECORDING INDUSTRY ASSOCIATION

Applicant

and

SOCIETY OF COMPOSERS, AUTHORS AND MUSIC PUBLISHERS OF CANADA

Respondent

and

CMRRA-SODRAC INC.

Intervener

Heard at Montréal, Quebec, on May 3, 2010.

Judgment delivered at Ottawa, Ontario, on December 1, 2010.

REASONS FOR JUDGMENT BY: PELLETIER J.A.

CONCURRED IN BY: LÉTOURNEAU J.A.
NADON J.A.

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REASONS FOR JUDGMENT

PELLETIER J.A.

[1] This is the last of a series of challenges to the decision of the Copyright Board of Canada (the Board) dealing with the communication of music to the public over the internet. This application, alone among all such challenges, takes aim at the tariff certified by the Board as opposed to the legal basis upon which the Board claimed the right to impose such a tariff.

[2] The issue in the application is whether the Board erred in its treatment of the evidence before it. Specifically, it is alleged that the Board erred in applying the wrong standard of proof in relation to the determination of certain costs in the digital music business, that it erred in accepting inadmissible expert evidence, that it calculated the royalty rate on a faulty basis and finally, that it failed to provide adequate reasons for its decision.

[3] For the reasons which follow, I would dismiss the appeal with costs.

THE PARTIES

[4] The Canadian Recording Industry Association (CRIA) is a group whose members create, promote, market and distribute recorded music. Broadly speaking, CRIA promotes the objectives of, and represents the interests of, the Canadian recording industry. The Society of Composers, Authors and Music Publishers of Canada (SOCAN) is a collective society which administers the performance and communication rights of musical works. The intervener CMRRA-SODRAC Inc. is a collective society which administers reproduction rights in Canada.

THE DECISION UNDER REVIEW

[5] In *Shaw Cablesystems G.P. v. Society of Composers, Authors and Music Publishers of* Canada, 2010 FCA 220 (*Shaw Cablesystems*), this Court decided that the download of a music file from a website constituted a communication of the musical work to the public by telecommunication, within the meaning of para. 3(1)(*f*) of the *Copyright Act*, R.S.C. 1985, c. C-42 (the Act). Before this Court, CRIA did not challenge this proposition. CRIA limited its challenge to

the Board's decision with respect to the appropriate royalty rate under the Tariff which the Board certified as Tariff No 22.A, published in Part I of the *Canada Gazette* on November 24, 2007. Tariff 22.A deals with royalties payable with respect to permanent downloads, limited downloads and on-demand streaming.

[6] The Board's reasons justifying Tariff 22.A are dated October 18, 2007 and were described by the Board as *Reasons for the decision certifying SOCAN Tariff 22.A (Internet – Online Music Services) for the years 1996 to 2006.* For ease of reference, all of the parties referred to these reasons as the Tariff 22.A Decision and I shall do the same. I will limit my review of the decision to those aspects of it which are put into question by CRIA's application for judicial review.

[7] As is so often the case, the hearings before the Board were, in large part, a contest of experts. SOCAN's principal expert witness was Professor Liebowitz, an economist who has appeared before the Board a number of times. He provided an economic analysis and proposed methodologies to help determine the royalty rates for music sites. CRIA's expert was Professor Brander, who provided an economic analysis with respect to music sites, as well as an analysis of the characteristics and profitability of the digital market. In addition to its expert witnesses, CRIA also led evidence from four fact witnesses with particular knowledge of the digital music industry: Mr. Graham Henderson, President of CRIA; Ms. Christine Prudham, Vice President of BMG Music Canada Inc.; Mr. Mark Jones, Vice President, Finance and Technology of Universal Music Canada; and Mr. Eddy Cue, Global Vice President of Apple Inc., whose area of responsibility includes iTunes.

[8] CRIA's attack on the Board's decision is, for the most part, an attack upon its treatment of the evidence. This can be seen from the Statement of Issues at paragraph 59 of CRIA's Memorandum of Fact and Law:

a) What is the standard of review of the Board's decision?

b) Was the Board's decision certifying the Tariff for the communication right in permanent downloads, limited downloads and on-line streams reasonable, having regard to:
   i) the Board's finding that the appropriate proxy was the price paid to reproduce a musical work onto a CD;
   ii) the Board's failure to properly consider the combined impact of the reproduction and communication rights; and
   iii) the Board's methodology generally?

c) Did the Board err in law in its treatment of the evidence of record companies' profitability and costs and was its decision otherwise unreasonable as to:
   i) the Board's failure to properly consider the direct evidence of CRIA on the point;
   ii) the Board's requirement that the evidence of CRIA be detailed, reliable and precise, a legal standard that has no applicability and that constitutes a legal error; and
   iii) the Board's acceptance of Professor Liebowitz's calculations and estimates which were beyond his expertise, were speculative and were disproved by direct evidence ignored by the Board.

d) Are the Board's reasons adequate?

e) Should the royalty rate for the communication right be nominal?

[9] It is apparent from this Statement of Issues that CRIA's view is that the Board erred in accepting the evidence of SOCAN's witness, Professor Liebowitz, rather than the evidence of its expert, Mr. Brander, and its four fact witnesses. CRIA's major complaint is with respect to the process by which the Board arrived at its decision. To that extent, the decision itself is less important in this analysis than the process by which it was reached.

[10] Notwithstanding its Statement of Issues, CRIA's Memorandum deals with the issues, other than the standard of review, under three headings:

-The Copyright Board made a decision without evidentiary basis.

-Should the rate be nominal?

-The Copyright Board's reasons are wholly inadequate.

[11] I propose to deal with the issues in the same way they were developed in CRIA's Memorandum. I do not propose to set out the terms of the Board's decision since CRIA's attack is based on the process by which the decision was reached.

ANALYSIS

The standard of review

[12] Since the decision of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, this Court has confirmed that the standard of review of the Board's findings of fact is reasonableness: see *Alberta (Minister of Education) v. Canadian Copyright Licensing Agency (c.o.b. Access Copyright)*, 2010 FCA 198, [2010] F.C.J. No. 952 at para. 32. The same is true of questions of mixed fact and law. This is particularly true with respect to the Board's determination of appropriate royalty rates, a matter which involves its particular expertise: see *FWS Joint Sports Claimants Inc. v. Border Broadcasters Inc.*, 2001 FCA 336, [2001] F.C.J. No. 1657, at para. 11.

The Board made a decision without evidentiary foundation

[13] CRIA frames the issue, on the one hand, as the reasonableness of the Board's certification of the tariff given its failure to properly consider the combined impact of the reproduction and communications rights, its finding as to the appropriate proxy, and its methodology generally. These are all matters of the weight and effect to be given to the evidence, matters with which this Court would generally be reluctant to intervene due to the deference owed to the Board's assessment of the evidence before it.

[14] However, in the development of its argument on this issue, CRIA characterized the issue as one of law, as can be see at paragraph 74 of its Memorandum:

> Setting the Tariff required the Board to assess the evidence and submissions before it in a manner consistent with the rule of law and the common law relating to the law of evidence and standards of proof in exercising its statutory authority.

CRIA then develops its position as to the legal defects in the Board's treatment of the evidence.

[15] As a general proposition, it can be said that the issue of the extent to which a tribunal is bound by the rules of evidence is a subset of the broader question of procedural fairness. This point is clearly made in *Selmeci v. Canada*, 2002 FCA 293, [2002] F.C.J. No. 1086 (*Selmeci*) which is relied upon by CRIA. See also *Lavallee v. Alberta (Securities Commission)*, 2010 ABCA 48, [2010] A.J. No. 144 at para. 17, *Cambie Hotel (Nanaimo) Ltd. (c.o.b. Cambie Hotel) v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2006 BCCA 119, [2006] B.C.J. No. 501 (*Cambie Hotel*) at para. 40; Brown, J.M., Evans J.M., *Judicial Review of Administrative Action in Canada 2nd ed.* (Toronto: Canvasback Publishing, 2010) at para. 10:5110.

[16] When a challenge to a tribunal's decision is based upon an alleged failure to comply with the rules of evidence, without a concomitant allegation that the applicant has thereby been deprived of procedural fairness, the Court should proceed with caution lest the formal argument with respect to the rules of evidence displaces the substantive principle which is procedural fairness.

[17] Turning now to CRIA's argument, it is noteworthy that there is no specific disposition in the Act, nor in any regulations promulgated under the authority of the Act, which exempts the Board from the application of the rules of evidence. CRIA's position is that even if there were such an exemption, it would not permit the Board to admit inadmissible evidence. In support of its position, it relies upon the decision of this Court in *Selmeci*, cited above, a case involving the Informal Procedure under the *Tax Court of Canada Act*, R.S.C. 1985, c. T-2. That Act contains the following disposition which applies to the conduct of appeals under the Informal Procedure:

> 18.15(4) Notwithstanding the provisions of the Act out of which an appeal arises, the Court, in hearing an appeal referred to in section 18, is not bound by any legal or technical rules of evidence in conducting a hearing for the purposes of that Act, and all appeals referred to in section 18 shall be dealt with by the Court as informally and expeditiously as the circumstances and considerations of fairness permit.

[18] The issue in *Selmeci* was whether the Tax Court Judge erred in rejecting documentary evidence tendered by the appellant on the ground that it was hearsay. In the end, the Court held that the Tax Court Judge had not expressly refused to admit the documents even though the appellant was persuaded that the documents would not be admitted if tendered. This Court found that the Tax Court Judge simply expressed reservations about the relevance and reliability of the documents without ever ruling on their admissibility. In the course of coming to this conclusion, the Court

quoted another decision of this Court, *Suchon v. Canada*, 2002 FCA 282, [2002] F.C.J No. 972 at paras. 31 and 32 which, in my view, properly describes the effect of subsection 18.15(4):

> Finally, contrary to the view expressed by the Tax Court Judge, subsection 18.15(4) of the *Tax Court of Canada Act* may require the Tax Court Judge in an informal proceeding to ignore the technical and legal rules of evidence, including the provisions of the *Canada Evidence Act*, R.S.C. 1985, c. C-5, if to do so would facilitate an expeditious and fair hearing of the merits of the appeal. Evidence tendered in an informal proceeding cannot be excluded simply because it would be inadmissible in an ordinary court proceeding
>
> That is not to say that a Tax Court Judge in an informal proceeding is obliged to accept all evidence that is tendered. There is no such requirement. However, it is an error for a Tax Court Judge in an informal proceeding to reject evidence on technical legal grounds without considering whether, despite the ordinary rules of evidence or the provisions of the *Canada Evidence Act*, the evidence is sufficiently reliable and probative to justify its admission. In considering that question, the Tax Court Judge should consider a number of factors, including the amount of money at stake in the case and the probable cost to the parties of obtaining more formal proof of the facts in issue.

[19] I am therefore of the view that CRIA is in error when it submits that even an express exemption from the formal rules of evidence does not allow a court to admit inadmissible evidence.

[20] In any event, the Board is not a court; it is an administrative tribunal. While many tribunals have specific exemptions from the obligation to comply with the rules of evidence, there is authority that even in the absence of such a provision, they are not bound, for example, to comply with the rule against hearsay evidence. The Alberta Court of Appeal put the matter as follows in *Alberta (Workers' Compensation Board) v. Appeals Commission*, 2005 ABCA 276, [2005] A.J. No. 1012, at paras. 63-64:

> This argument departs from established principles of administrative law. As a general rule, strict rules of evidence do not apply to administrative tribunals, unless expressly prescribed: *Toronto (City) v. CUPE, Local 79* (1982), 35 O.R. (2d) 545 at 556 (C.A.). See also *Principles of Administrative Law* at 289-90; Sara Blake, *Administrative Law in Canada*, 3rd ed., (Markham, Ont.: Butterworths, 2001) at 56-57; Robert W. MacAulay,

> Q.C. & James L.H. Sprague, *Practice and Procedure before Administrative Tribunals*, loose-leaf (Toronto: Carswell, 2004) at 17-2. While rules relating to the inadmissibility of evidence (such as the Mohan test) in a court of law are generally fixed and formal, an administrative tribunal is seldom, if ever, required to apply those strict rules: *Practice and Procedure before Administrative Tribunals* at 17-11. "Tribunals are entitled to act on any material which is logically probative, even though it is not evidence in a court of law": *T.A. Miller Ltd. v. Minister of Housing and Local Government*, [1968] 1 W.L.R. 992 at 995 (C.A.); *Trenchard v. Secretary of State for the Environment*, [1997] E.W.J. No. 1118 at para. 28 (C.A.). See also *Bortolotti v. Ontario (Ministry of Housing)* (1977), 15 O.R. (2d) 617 (C.A.).
>
> This general rule applies even in the absence of a specific legislative direction to that effect. While many statutes stipulate that a particular tribunal is not constrained by the rules of evidence applicable to courts of civil and criminal jurisdiction, "these various provisions do not however alter the common law; rather they reflect the common law position: in general, the normal rules of evidence do not apply to administrative tribunals and agencies": *Administrative Law*, supra, at 279-80.

[21] This principle has been a feature of Canadian jurisprudence for some time. In *Canadian National Railways Co. v. Bell Telephone Co. of Canada*, 1939 S.C.R. 308, at p. 317, 50 C.R.T.C. 10, (*Canadian National Railways*) a case dealing with the Board of Railway Commissioners, the Supreme Court described the powers of that Board in the following terms:

> The Board is not bound by the ordinary rules of evidence. In deciding upon questions of fact, it must inevitably draw upon its experience in respect of the matters in the vast number of cases which come before it as well as upon the experience of its technical advisers. Thus, the Board may be in a position in passing upon questions of fact in the course of dealing with, for example, an administrative matter, to act with a sure judgment on facts and circumstances which to a tribunal not possessing the Board's equipment and advantages might yield only a vague or ambiguous impression.

Cambie Hotel, cited above, at paras. 28-36, is to the same effect. In my view, even in the absence of a specific exemption, the Board was not bound by the rules of evidence.

[22] Even if the Board was not bound to follow the rules of evidence, it was nonetheless required to act on the basis of some evidence.

[23] In this case, CRIA attacks the Board's findings of fact on the basis that they constitute a legal error. See CRIA's Memorandum of Fact and Law at para. 90:

> Accordingly, the Board erred in law when it disregarded unchallenged, direct, relevant, admissible evidence in favour of assumptions from Professor Liebowitz.

[24] CRIA says that the Board erred in law in making its findings with respect to the profitability of record companies in the digital environment. The Board accepted, with some modification, the evidence of SOCAN's expert, Professor Liebowitz, on this issue. CRIA complains that Professor Liebowitz's evidence was based on certain factual assumptions which SOCAN failed to prove. On the other hand, CRIA's fact witnesses gave evidence on this issue which the Board rejected on the ground that it was not sufficiently "detailed, reliable and precise".

[25] In order to assess this argument, one must consider what the Board said about this issue. See Tariff 22.A Decision at paras. 152 and 153:

> Mr. Jones and Ms. Prudham provided information on the various expenses that are associated with delivering music online. These expenses include costs associated with putting the digital delivery system in place, with digitization of the back catalogues, the changing of formats and the development and support of online sales.
>
> However, as noted by Professor Liebowitz in his reply evidence, there are a number of problems with this information. First, many of these expenses must be amortized over a number of years. Second, some of the expenses also relate to and must be attributed to the sales of CDs, for example, the expense for digitization or fighting piracy. The result is that total yearly expenses specifically dedicated to digital downloads probably are significantly lower than the numbers initially reported by the witnesses. Neither of those witnesses, nor Professor Brander provided us with enough information to be useful. We are therefore

> unable to estimate in any reliable way the costs incurred by the record companies for Internet downloads.

[26] It is apparent from this passage that the Board did consider the evidence of Mr. Jones and Ms. Prudham. It is also apparent that the Board was persuaded by Professor Liebowitz's critique of that evidence with the result that it chose to accept the bulk of the Professor's assumptions which, on the view which it took of the evidence, had not been rebutted or disproven by CRIA's witnesses.

[27] It is equally clear from these paragraphs that CRIA enjoyed full rights of procedural fairness with respect to this evidence: it had notice of Professor Liebowitz's report; it was given the opportunity to cross-examine Professor Liebowitz; and it was also able to call evidence to contradict aspects of the Professor's evidence. To the extent that evidentiary questions are an aspect of procedural fairness, there is no basis in procedural fairness to challenge the manner in which the Board dealt with this evidence.

[28] Much of the force of CRIA's argument derives from its assertion that the Board accepted Professor Liebowitz's assumptions of fact for which no evidentiary foundation had been laid. This argument invokes, once again, the formal rules of evidence and the manner in which expert evidence is put before the trier of fact. If the Board is not bound by the rules of evidence, this argument loses much of its vigour. But the germ of the argument remains, that is, the evidence of fact witnesses having personal knowledge of a subject ought to be preferred to the assumptions of one who has no personal knowledge of the subject matter.

[29] The assumptions made by Professor Liebowitz were, in my view, more in the nature of conclusions drawn from known facts. For example, Professor Liebowitz noted that in the digital environment, there is no physical product such as a CD. He "assumed" as a result that there were no manufacturing costs. He could have equally said that he "concluded" that there were no manufacturing costs. The same is true of Professor Liebowitz's assumptions with respect to distribution, sales and overhead costs, all of which were a consequence of the absence of physical product to store and to transport. While Professor Leibowitz described these steps in his reasoning process as assumptions, they were in fact conclusions drawn from the fact that in the digital world there is no need to make or handle a physical product. The fact that Professor Liebowitz himself described these conclusions as assumptions is not conclusive of their nature. These conclusions were evidence which the Board was entitled to take into account in coming to its own conclusions as to the appropriate royalty.

[30] CRIA alleges that the Board's preference for Professor Liebowitz's evidence was the result of the application of a new and unknown standard of proof to the evidence given by CRIA's fact witnesses, namely that it must be sufficiently detailed, reliable and precise. The Board explained its reservations about the evidence of these witnesses at paragraph 154 of the Tariff 22.A Decision. A survey of the evidence discloses that there are subjects upon which CRIA's evidence was clear and precise; there are also subjects with respect to which that evidence is much less precise. It is not for this Court to reassess the evidence and to come to its own conclusion as to the weight to be given to the evidence of CRIA's fact witnesses relative to the evidence of Professor Liebowitz. The Board

did not apply a new standard of proof to the evidence of CRIA's witnesses; it simply explained why it preferred Professor Liebowitz's evidence to theirs.

[31] To sum up, the Board was not bound by the rules of evidence and did not err by failing to apply those rules to the evidence which was put before it. There was an evidentiary foundation for the conclusions which it drew so that it cannot be said that it erred in law in drawing its conclusions upon no evidence at all. In the result, CRIA's arguments on this issue fail.

Should the rate be nominal

[32] The substance of CRIA's argument on this point is that, having found that the appropriate proxy for the right to download a musical work is the price paid to reproduce a musical work on a CD, the Board erred in failing to recognize that the full value of the reproduction right was recognized in the tariff approved by the Board in its decision *Statement of Royalties to be collected by CMRRA/SODRAC INC. for the reproduction of Musical Works in Canada, by Online Music Services in 2005, 2006 and 2007*, dated March 16, 2007 (the CSI-Online decision): see CRIA's Memorandum of Fact and Law at para. 99.

[33] The Board's rationale for proceeding as it did was explicitly stated in its Tariff 22.A Decision at para. 147, "[t]he Board has stated on many occasions that the use of a new right of a new use of an existing right must be compensated for at its fair value."

[34] CRIA rejects this approach since, in its view, it overcompensates the rights holders.

[35] The flaw in CRIA's reasoning, it seems to me, is that it attributes to the choice of proxy a role which the Board did not give it. In the Board's reasoning, a proxy simply represents a model which can serve as the basis of the determination of an appropriate tariff with respect to a particular right. The fact that a particular proxy has been used for the determination of the compensation due for one right does not, in any way, pre-determine the value of any other right for which that proxy may also be an appropriate model. In accepting the price paid to produce a track on a CD as the proxy for the reproduction right in the download of a musical file, the Board never accepted that the tariff thus determined represented the value of the bundle of rights which are associated with that work. Each right is independently compensable: see *Bishop v. Stevens*, [1990] 2 S.C.R. 467, [1990] S.C.J. No. 78, at paras. 18 and 19. The Board did not err in establishing the value of the communication by telecommunication right independently of the reproduction right.

[36] This ground of review therefore fails.

The Copyright Board's reasons are wholly inadequate

[37] CRIA's arguments under this heading are largely a restatement of the arguments which it raised with respect to the Board's treatment of the evidence, CRIA's Memorandum of Fact and Law at paras. 107-108 and 111-112:

> It is a legal error for the Board to arrive at a decision expressly without reliance on sufficient evidence before them that could have rationally supported a decision. …
>
> In this case, the Board's reasons do not deal with the basis upon which Professor Liebowitz's approach was preferred to Professor Brander's. The participants were owed more than a series of conclusion. …
>
> …

> Instead of relying on the unchallenged evidence before it, however, the Board chose professor Liebowitz's 6% assumption, finding that:
>
> > First, we assume that only half of DSO costs are saved [in the online environment], which we find more realistic than Professor Liebowitz's estimate.
>
> This single sentence above is the entire discussion in the Board's decision regarding the valuation of the distribution costs. There is no explanation in the Board's decision regarding:
>
> > (a) why it chose Professor Liebowitz's distribution cost assumption, as opposed to any other percentage point; and
> > (b) nor is there any discussion, let alone persuasive reasoning, regarding why the Board wholly ignored unchallenged evidence that distribution costs only amounted to 0.85%

[38] I have already dealt with the issue of the sufficiency of the evidence as well as with the issue of the Board's preference for the evidence of Professor Liebowitz over that of CRIA's fact witnesses. It is not necessary to do so again under this heading.

[39] In its Memorandum, CRIA cites, in support of its contention that the Board's reasons are inadequate, the Board's finding with respect to the amount to be attributed to distribution, sales and overhead. In his report, Professor Liebowitz attributed certain savings to the recording industry based on the fact that in the digital environment, there was no physical product such as a CD to store, transport, and display. The Board agreed with Professor Liebowitz's approach but discounted his estimated savings by 50%, a large percentage of a small number. CRIA complains that this is the only reference in the Board's reasons to this element in the calculation leading to the setting of the tariff rate, which leaves CRIA with unanswered questions as to how the Board came to the conclusion it did.

[40] The functions which reasons are meant to fulfill in the administrative law context were recently surveyed by this Court in *Vancouver International Airport Authority v. Public Service Alliance of Canada*, 2010 FCA 158, [2010] F.C.J No. 809 at para. 16. On the other hand, Courts must be careful not to impose a standard of perfection upon tribunals: see *R. v. H.S.B.*, 2008 SCC 52, [2008] S.C.J. No. 53 at para. 2. The search for transparency and intelligibility must not become a pretext for an ever finer parsing of ever smaller components of a decision meant to be read and understood as a whole.

[41] In this case, the Board's treatment of distribution, sales and overhead costs occurred in the context of its discussion of its conclusions as to the profitability of the record industry in the digital environment. The Board preferred Professor Liebowitz's approach to that of CRIA's witnesses and it explained why. It also applied its own judgment to elements of Professor Liebowitz's analysis, as it did in the case of distribution, sales and overhead costs, based on its view of what was realistic, see Tariff 22.A Decision at para. 154. This is precisely the type of institutional expertise which the Supreme Court recognized long ago in *Canadian National Railways*, above. In my view, the Board's resort to its own expertise does not make the reasons inadequate. As the Supreme Court of Canada said at para. 2 of *R.v. H.S.B.*, cited above:

> The purposes of giving reasons are fulfilled where the reasons for judgment, read in context, establish a logical connection between the verdict and the basis for it - in other words, the reasons must explain why the judge made his or her decision. A detailed description of the judge's process in arriving at the verdict is unnecessary.

[42] As a result, I am of the view that this ground of judicial review fails as well.

CONCLUSION

[43] For the reasons set out above, I am of the view that CRIA's application for judicial review should be dismissed with costs. No costs are awarded for or against the intervener CMRRA-SODRAC Inc.

"J.D. Denis Pelletier"
J.A.

"I agree.
Gilles Létourneau J.A."

"I agree.
M. Nadon J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-524-07
STYLE OF CAUSE:	CANADIAN RECORDING INDUSTRY ASSOCIATION v. SOCIETY OF COMPOSERS, AUTHORS AND MUSIC PUBLISHERS OF CANADA and CMRRA-SODRAC INC. as intervener
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CONCURRED IN BY:	Létourneau J.A. Nadon J.A.
DATED:	December 1, 2010

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