

Federal Court of Appeal



Cour d'appel fédérale

Date: 20251106

Docket: A-3-24

Citation: 2025 FCA 201

**CORAM: WEBB J.A.
BIRINGER J.A.
PAMEL J.A.**

BETWEEN:

RE:SOUND

Applicant

and

**PANDORA MEDIA, LLC, SIRIUSXM CANADA INC.,
STINGRAY GROUP INC. and CANADIAN ASSOCIATION OF
BROADCASTERS**

Respondents

Heard at Toronto, Ontario, on October 30, 2025.

Judgment delivered at Ottawa, Ontario, on November 6, 2025.

REASONS FOR JUDGMENT BY:

PAMEL J.A.

CONCURRED IN BY:

**WEBB J.A.
BIRINGER J.A.**

Federal Court of Appeal



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REASONS FOR JUDGMENT

PAMEL J.A.

[1] The applicant, Re:Sound, seeks judicial review of a decision of the Copyright Board of Canada (Board) approving Re:Sound Tariff 8 – Non-Interactive and Semi-Interactive Streaming (2013-2018) (Tariff). In the decision, as part of its adjustments, the Board excluded free trials of up to 31 days per year and concluded that the repertoire-use adjustment should be 73.7%.

[2] The respondents Stingray Group Inc. and Canadian Association of Broadcasters did not take part in the hearing before us, nor did they file written submissions.

[3] Before the Board, Re:Sound raised a number of arguments why free trials should not be excluded from the Tariff. One argument that it did not raise, which it now seeks to raise for the first time before this Court, is that the exclusion of free trials was inconsistent with the entitlement to “equitable remuneration” as provided in section 19 of the *Copyright Act*, R.S.C., 1985, c. C-42.

[4] A court should generally not permit an applicant to raise a new argument on judicial review, as such behaviour, *inter alia*, denies the Board the opportunity to address it (*Alberta (Information and Privacy Commissioner) v. Alberta Teachers’ Association*, 2011 SCC 61 (*Alberta IP*) at paras. 22 and 23; *Sigma Risk Management Inc. v. Canada (Attorney General)*, 2022 FCA 88 at para. 6; *Khodykin v. Canada (Attorney General)*, 2024 FCA 96 at para. 6; *Manneh v. Unifor*, 2022 FCA 107 at para. 9). However, Re:Sound is not asking that this Court determine the issue, but rather that the Court set aside the decision of the Board insofar as it pertains to the exclusion of free trials and remit the matter to the Board to address it. In essence, what Re:Sound is seeking is an opportunity for a second hearing before the Board as a result of its failure to raise at the first hearing all the issues it ought to have raised; I see no reason to exercise our discretion to do so (*Alberta IP* at para 55).

[5] Re:Sound also challenges the reasonableness of the Board’s decision on the basis of not having sufficiently engaged with its other arguments that free trials should not be excluded from

the Tariff. It also argues that the Board unreasonably lowered the repertoire-use adjustment to 73.7%, ignoring evidence of the parties; the repertoire-use adjustment requested by Re:Sound was 77%. On these issues, I have not been convinced by Re:Sound of any reviewable error on the part of the Board. The Board engaged with the evidence before it and arguments raised by the parties, and provided a decision on these issues that was transparent, intelligible and justified. Submissions by parties do not constitute evidence.

[6] As this Court has repeatedly affirmed, the Board is given “considerable leeway” in deciding the quantum of equitable remuneration. The decision is complex and multifaceted and, accordingly, is relatively unconstrained (*CMRRA-SODRAC Inc. v. Apple Canada Inc.*, 2020 FCA 101 at para. 7; *Re:Sound v. Canadian Association of Broadcasters*, 2017 FCA 138 at paras. 50-51; *Bell Canada v. Copyright Collective of Canada*, 2021 FCA 148 at para. 33).

[7] As such, I see no reviewable error on the part of the Board in respect of the decision before us. I would therefore dismiss the application with costs in favour of Pandora Media, LLC and SiriusXM Canada Inc.

"Peter Pamel"

J.A.

"I agree.
Webb J.A."

"I agree.
Biringer J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-3-24

STYLE OF CAUSE: RE:SOUND v. PANDORA
MEDIA, LLC, SIRIUSXM
CANADA INC.,
STINGRAYGROUP INC. AND
CANADIAN ASSOCIATION OF
BROADCASTERS

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 30, 2025

REASONS FOR JUDGMENT BY: PAMEL J.A.

CONCURRED IN BY: WEBB J.A.
BIRINGER J.A.

DATED: NOVEMBER 6, 2025

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SiriusXM Canada Inc.

FOR THE RESPONDENT
Stingray Group Inc. and Canadian
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