

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130228

Docket: A-63-13

Citation: 2013 FCA 61

Present: MAINVILLE J.A.

BETWEEN:

CANADIAN BROADCASTING CORPORATION/SOCIÉTÉ RADIO-CANADA

Applicant

and

**SOCIETY FOR REPRODUCTION RIGHTS OF AUTHORS,
COMPOSERS AND PUBLISHERS IN CANADA (SODRAC) INC.**

Respondent

Heard at Ottawa, Ontario, on February 27, 2013.

Order delivered at Ottawa, Ontario, on February 28, 2013.

REASONS FOR ORDER:

MAINVILLE J.A.

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REASONS FOR ORDER

MAINVILLE J.A.

[1] Canadian Broadcasting Corporation/Société Radio-Canada (CBC) has filed before this Court an application for judicial review challenging an interim decision of the Copyright Board (the Board) dated January 16, 2013, in File 70.2-2012-01 (the Interim Decision).

[2] This Interim Decision follows another decision of the Board dated November 2, 2012, rendered under section 70.2 of the *Copyright Act*, R.S.C. 1985, c. C-42, in which the Board fixed the royalties and related terms and conditions for a licence authorizing Radio-Canada to reproduce

works in SODRAC'S repertoire for the period from November 14, 2008, to March 31, 2012 (the CBC Licence).

[3] In its Interim Decision, citing sections 66.51 and 70.2 of the *Copyright Act*, the Board extended the CBC Licence on an interim basis (with a discount) from November 3, 2012, until the date of the Board's final decision in SODRAC's application to fix the terms and conditions of a new licence authorizing CBC to reproduce works from SODRAC's repertoire for the period from April 1, 2012, to March 31, 2016.

[4] CBC also brought a motion for a stay of the Interim Decision pending this Court's decision regarding the application for judicial review. It is also seeking an extension of the interim licence previously granted by the Board that authorized it to reproduce works in SODRAC's repertoire until November 2, 2012.

[5] CBC filed before this Court another application for judicial review in Docket A-516-12, challenging the above-cited decision of the Board dated November 2, 2012. Astral Media Inc. (Astral) brought a similar application in Docket A-527-12. CBC and Astral are also seeking a stay of the decision of November 2, 2012, and they have filed motions to this effect in Dockets A-516-12 and A-527-12.

[6] Because the issues in all three matters are similar, they were heard together in Ottawa on February 27, 2013. These reasons relate to CBC's motion brought in Docket A-63-13.

[7] The background to this motion and the applicable test are provided in the reasons issued concurrently with these reasons in Dockets A-516-12 and A-527-12.

[8] SODRAC submits correctly that an application for judicial review of an interlocutory decision is allowed only in exceptional circumstances. Accordingly, it argues that the motion for a stay should be dismissed because the underlying application for judicial review does not meet the exceptional circumstances requirement. SODRAC will have an opportunity to make submissions regarding exceptional circumstances before this Court, which will consider the merits of CBC's application for judicial review. For the purpose of a stay, CBC need only satisfy the test set out in *RJR-MacDonald Inc. v. Canada (A.G.)*, [1994] 1 S.C.R. 311.

[9] In any event, this case is closely connected with the matter involving the same parties in Docket A-516-12, in which I ordered an extension of CBC's prior interim licences. This constitutes exceptional circumstances for the purposes of the stay.

[10] While SODRAC argues that there is no serious issue in this matter, I am of the view that CBC's application for judicial review of the Interim Decision does involve a serious issue and therefore satisfies the low threshold of the first stage of the relevant test. CBC is challenging the Board's jurisdiction to fix the interim royalties and related terms and conditions for a licence under sections 66.51 and 70.2. of the *Copyright Act*, when one of the parties in question does not wish to benefit from such a licence. This is a serious issue.

[11] I am also satisfied, for the reasons provided in Dockets A-516-12 and A-527-12, that CBC has shown that it will suffer harm if the stay is not granted and that the balance of inconvenience weighs in its favour.

[12] Since an order was issued in Docket A-516-12 extending CBC's prior interim licences, the appropriate thing to do in the circumstances would be to order a stay of the Interim Decision.

[13] CBC has not asked for costs with respect to its motion; accordingly, there will be no order as to costs.

“Robert M. Mainville”

J.A.

Certified true translation
François Brunet, Revisor

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-63-13

APPEAL FROM A DECISION OF THE COPYRIGHT BOARD DATED JANUARY 16, 2013, FILE 70.2-2012-01.

STYLE OF CAUSE: *CBC v. SODRAC*

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: February 27, 2013

REASONS FOR JUDGMENT: MAINVILLE J.A.

DATED: February 28, 2013

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