

Re:Sound (appellant) v. Motion Picture Theatre Associations of Canada, Rogers Communications Inc., Shaw Communications Inc., Bell ExpressVu LLP, Cogeco Cable Inc., Eastlink, Quebecor Media, TELUS Communications Company, Canadian Association of Broadcasters and Canadian Broadcasting Corporation (respondents) and Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (intervenor)
(34210; 2012 SCC 38; 2012 CSC 38)

Indexed As: Re:Sound v. Motion Picture Theatre Associations of Canada et al.

Supreme Court of Canada
McLachlin, C.J.C., LeBel, Deschamps, Fish, Abella, Rothstein, Cromwell, Moldaver and
Karakatsanis, JJ.
July 12, 2012.

Summary:

The applicant filed two proposed tariffs for the performance in public and communication to the public by telecommunication of published sound recordings. The Copyright Board found that the applicant was not entitled to equitable remuneration pursuant to s. 19 of the Copyright Act when a published sound recording was part of the soundtrack that accompanied a motion picture that was performed in public or a television program that was communicated to the public by telecommunication. The applicant applied for judicial review.

The Federal Court of Appeal, in a decision reported at 415 N.R. 10, dismissed the application. The applicant appealed.

The Supreme Court of Canada dismissed the appeal.

Copyright - Topic 3436

Fees, charges or royalties - Determination of - Communication to the public by telecommunication (incl. cell phone ringtones) - Under s. 19 of the Copyright Act, the applicant was entitled to collect equitable remuneration on behalf of performers and makers of sound recordings when their recordings were performed in public or communicated to the public by telecommunication - The applicant filed two proposed tariffs for the performance in public and communication to the public by telecommunication of published sound recordings - The Copyright Board found that the applicant was not entitled to equitable remuneration pursuant to s. 19 when a published sound recording was part of the soundtrack that accompanied a motion picture that was performed in public or a television program that was communicated to the public by telecommunication - The Federal Court of Appeal affirmed the decision - The Supreme Court of Canada dismissed an appeal - The Board's and Federal Court of Appeal's decisions were correct - The Board made no error in finding that the word "soundtrack" included pre-existing sound recordings and that such recordings were accordingly excluded from the definition of "sound recording" when they accompanied a cinematographic work - This interpretation of the word "soundtrack" was consistent with the scheme of the Act, the intention of Parliament and Canada's international obligations.

Cases Noticed:

Rizzo & Rizzo Shoes Ltd. (Bankrupt), Re, [1998] 1 S.C.R. 27; 221 N.R. 241; 106 O.A.C. 1, reld to. [para. 32].

Phonographic Performance Co. of Australia Ltd. v. Federation of Australian Commercial Television Stations, [1998] HCA 39, 195 C.L.R. 158 (Aus. H.C.), dist. [para. 45].

Statutes Noticed:

Copyright Act, R.S.C. 1985, c. C-42, sect. 2 [para. 6]; sect. 19 [para. 30].

Authors and Works Noticed:

Driedger, E.A., Construction of Statutes (2nd Ed. 1983), p. 87 [para. 32].

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Mark Hayes and Debra L. Montgomery, for the respondent, the Canadian Association of Broadcasters;

Marek Nitoslowski and Joanie Lapalme, for the respondent, the Canadian Broadcasting Corporation;

Written submissions only by David Fewer and Jeremy de Beer, for the intervener.

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This appeal was heard on December 7, 2011, by McLachlin, C.J.C., LeBel, Deschamps, Fish, Abella, Rothstein, Cromwell, Moldaver and Karakatsanis, JJ., of the Supreme Court of Canada. The following judgment of the Supreme Court was delivered in both official languages by LeBel, J., on July 12, 2012.

Appeal dismissed.

Editor: Anick Ouellette-Levesque

