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<p>ROBIC CANADIAN COPYRIGHT ACT ANNOTATED Release No. 2, March 2024</p>

This publication is a comprehensive reference work that provides guidance through annotation of the Act along with interpretation of case law and authorities. Special attention is given to software issues, the Copyright Board, and the interface between industrial designs, designs protected by copyrights and those not protected because of their functionality.

This release features updates to sections 41.22. Prohibition—Rights Management Information, 41.23. Protection of Separate Rights, and 41.24. Concurrent Jurisdiction of Federal Court. This release also features the addition of a new Appendix B:10. A Compilation of Copyright Cases Decided in 2023. These new cases have also been added to the appropriate sections throughout the product.

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Highlights

- **Remedies—Civil Remedies—General Provisions—Concurrent Jurisdiction of the Federal Court—Commentary—History**—s. 20 of the *Federal Courts Act*, R.S.C. 1985, c. F-7 was amended by the *Canada-European Union Comprehensive Economic and Trade Agreement Implementation Act*, S.C. 2017, c. 6 in two key ways. First, a reference was added to certificates of supplementary protection, and second, the spelling of “trade-mark” was changed to “trademark”.
- **Remedies—Limitation or Prescription Period—Limitation or Prescription Period for Civil Remedies—Canada—Limitation Cases**—The plaintiff was the sole creator and holder of copyright in the work “Poppy Dalmatian Puppy”. The plaintiff initially supplied and licensed Poppy Puppy to the defendant, which purchased approximately 150,000 units from the plaintiff. The plaintiff alleged that the defendant eventually switched to an alternative supplier, and induced the supplier to create Poppy Puppy toys, infringing the plaintiff’s copyright. The plaintiff brought a claim for both copyright infringement and moral rights infringement against the defendant. The defendant argued that the claims were statute barred as they were commenced outside the limitation period of three years provided in s. 43.1 of the *Copyright Act*. With respect to the copyright infringement, the court found the plaintiff was outside the limitation period. The infringement was easily discoverable several years prior to the claim through reasonable diligence. However, the moral rights claim was not statute barred. “In the case of ongoing conduct, where some of the conduct occurred before the limitation period and some within, a plaintiff is not precluded from pursuing claims against conduct that occurred within the limitation period”. The action was ultimately dismissed for other reasons. *French v. Royal Canadian Legion*, 2023 CarswellNat 1741.
- **Remedies—Civil Remedies—Infringement of Copyright and Moral Rights—Copyright—Case Law**—An individual defendant, the CEO of the defendant company, was found to have incurred personal liability for copyright infringement by “personally taking the actions that constitute copyright infringement”. The defendant company had been rebroadcasting television channels owned by the plaintiffs to various hotel clients without approval. Since the CEO had been found to have been the person who directly controlled the defendant company’s operations and was “responsible for the day-to-day management of their network”, he was held jointly liable for

the damages to the plaintiffs. *Vidéotron Ltée v. Konek Technologies Inc.*, 2023 CarswellNat 1678.

ProView Developments

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