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ROBIC CANADIAN COPYRIGHT ACT ANNOTATED Release No. 2, February 2026
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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.

What's new in this Update

This release features updates to the following subsections within Section 2. List of Defined Terms: 2I1. Infringing; 2L1. Lecture; 2L2. Legal Representatives; 2L3. Library; Archive or Museum and 2L4. Literary Work.

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Highlights

Interpretation—Section 2. List of Defined Terms—2I1. Infringing—§ 2I1:5.0. Commentary—§ 5.7. The test to be applied—§ 5.7 has been added to this chapter in this release. The following is an excerpt from this section—

To ascertain infringement, there is a two-steps process to be undertaken: First all of the similarities are to be considered and second the court must determine whether those similarities represented a substantial portion of the author's skill and judgment: see *Pyrrha Design Inc. v. Plum and Posey Inc.*, 162 C.P.R. (4th) 406 (F.C.; 2019-01-30) Phelan J. at para.146 [affd 190 C.P.R. (4th) 307 (F.C.A.; 2022-01-13)]. To paraphrase *Phillip Morris Products SA v. Marlboro Canada Ltd.*, 90 C.P.R. (4th) 1 (F.C.; 2010-11-08) de Montigny J. at para. 315 [affd on copyright but revd on trademarks 103 C.P.R. (4th) 259 (F.C.A.; 2012-06-29); leave to appeal to the Supreme Court of Canada refused 2013 CarswellNat 659 (S.C.C.; 2013-03-21)]:

- First, there must be a sufficient similarity between the works in question such that the allegedly infringing work could be considered a copy or reproduction of the protected work
- Second, the plaintiff must prove that the defendant had access to the work protected by copyright

And the findings on those two issues are questions of fact.

Interpretation—Section 2. List of Defined Terms—2I1. Infringing—§ 2I1:6.0 Case Law—6.1 Canada—6.1.1 Copy—The following is an excerpt from this section—

Suite B Stratégie inc. v. Cabinet Gestion JPPL inc., 2025 QCCQ 79 (Que. Ct.—Small Claims; 2025-01-23) Couture J.

[48] Le Tribunal conclut aussi que la preuve prépondérante démontre que l'apparence et le design graphique du nouveau site internet constituent l'utilisation d'une partie importante du projet de site internet conçu par Suite B. Il y a donc violation du droit d'auteur de Suite B [Fn12 Cinar Corp. c. Robinson, 2013 CSC 73, voir notamment les par. 26 et 36.] <https://www.canlii.org/fr/qc/qccq/doc/2025/2025qccq79/2025qccq79.html?searchUrlHash=AAAAAQARImRyb2l0cyBkJ2F1dGV1ciIAAAAAAQ>.

New Skinny Mixes v. 9335-5147 Québec inc., 2025 CarswellQue 8473 (Que. Sup. Ct. Int. inj.; 2025-03-28) Ouellet J. [references to evidence omitted]

[35] A comparison of Skinny’s website in December 2023 with Defendants’ website at the same date shows that Defendants once again copied word for word some recipes taken from Skinny to use on their website. The most telling example is the *Mint Mojito* Recipe. Not only did the Defendants copy this recipe word for word, but they also forgot to remove the word “Skinny” from the recipe. In the Directions section of the recipe, one could read “Add white rum, ice and Skinny Mojito Mix”.

[36] Are the Defendants allowed to copy their competitors’ promotional materials in this fashion? This is at the very least a serious question to be tried.

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