

# ADHERENCE OF CANADA TO THE ROME REVISION OF THE BERNE CONVENTION

## SOME COMMENTS ON SECTION 71 OF THE CANADIAN *COPYRIGHT ACT*

by

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## CONVENTION OF ROME

### ADHERENCE TO THE ROME COPYRIGHT CONVENTION

71. The Governor in Council may take such action as may be necessary to secure the adherence of Canada to the revised Convention for the protection of artistic and literary works that was signed at Rome June 2, 1928 and that is set out in Schedule III.

## CONVENTION DE ROME

### ADHÉSION À LA CONVENTION DE ROME SUR LE DROIT D'AUTEUR

71. Le gouverneur en conseil peut prendre les mesures nécessaires pour assurer l'adhésion du Canada à la Convention révisée pour la protection des œuvres littéraires et artistiques, signée à Rome, le 2 juin 1928, et dont le texte constitue l'annexe III.

R.S.C. 1985, c. C-42, s. 71

## §1.0 Related Sections

Section 2(2.1) Definition of "Berne Convention Country"  
 Section 5 Works in which copyright may subsist  
 Section 26 Fees paid to Minister  
 Section 44.1 Definitions  
 Section 45 No importation where right or licence to reproduce in Canada granted

## **§2.0 Related Regulations**

None

## **§3.0 Prior Legislation**

### **§3.1 Corresponding Section in Prior Legislation**

- (1) Section 12 from 1931.06.11 to 1953.09.14
- (2) Section 53 from 1953.09.15 to 1971.07.14
- (3) Section 51 from 1971.07.15 to 1988.12.11
- (4) Section 71 from 1988.12.12 to present

## **§3.2 Legislative History**

### **§3.2.1 List of Statutes**

- (1) S.C. 1931, c. 8, s. 12; C.I.F. 1931.06.11
- (2) R.S.C. 1952, c. 55, s. 47; C.I.F. 1953.09.15
- (3) R.S.C. 1970, c. C-30, s. 47; C.I.F. 1971.07.15
- (4) R.S.C. 1985, c. C-42, s. 65; C.I.F. 1988.12.12

### **§3.2.2 Text of Statutes**

- (1) S.C. 1931, c. 8, s. 12:

## CONVENTION OF ROME

ADHERENCE TO THE ROME  
COPYRIGHT CONVENTION

12. The Governor in Council may take such action as may be necessary to secure the adherence of Canada to the revised Convention for the protection of artistic and literary works which was signed at Rome the 2nd day of June, 1928, and which is set out in Schedule A to this Act.

(2) R.S.C. 1952, c. 55, s. 47:

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COPYRIGHT CONVENTION

53. The Governor in Council may take such action as may be necessary to secure the adherence of Canada to the revised Convention for the protection of artistic and literary works which was signed at Rome the 2nd day of June, 1928, and which is set out in the Third Schedule.

(3) R.S.C. 1970, c. C-30, s. 47:

## CONVENTION DE ROME

ADHÉSION À LA CONVENTION DE  
ROME SUR LE DROIT D'AUTEUR

12. Le gouverneur en conseil peut prendre les mesures nécessaires pour assurer l'adhésion du Canada à la Convention révisée pour la protection des œuvres littéraires et artistiques, signée à Rome, le 2 juin 1928, et dont le texte constitue l'annexe A de la présente loi.

## CONVENTION DE ROME

ADHÉSION À LA CONVENTION DE  
ROME SUR LE DROIT D'AUTEUR

53. Le gouverneur en conseil peut prendre les mesures nécessaires pour assurer l'adhésion du Canada à la Convention révisée pour la protection des œuvres littéraires et artistiques, signée à Rome, le 2 juin 1928, et dont le texte constitue la troisième annexe.

## CONVENTION OF ROME

## ADHERENCE TO ROME COPYRIGHT CONVENTION

51. The Governor in Council may take such action as may be necessary to secure the adherence of Canada to the revised Convention for the protection of artistic and literary works which was signed at Rome the 2nd day of June 1928 and which is set out in Schedule III.

## CONVENTION DE ROME

## ADHÉSION À LA CONVENTION DE ROME SUR LE DROIT D'AUTEUR

51. Le gouverneur en conseil peut prendre les mesures nécessaires pour assurer l'adhésion du Canada à la Convention révisée pour la protection des œuvres littéraires et artistiques signée à Rome, le 2 juin 1928, et dont le texte constitue l'annexe III.

**§3.3 Transitional**

None

**§3.4 Proposed Legislation**

None

**§4.0 Purpose**

This section gives authority to the Governor in Council to cause Canada to adhere to the Berne Convention (1886), as revised in Rome (1928).

**§5.0 Commentary****§5.1 History**

Save for grammatical changes, this section remains unchanged since its introduction in the *Copyright Act*.

By Order in Council P.C. 1395 dated July 27, 1923 (published at (1924), 57 Canada Gazette, Part II, p. 4174) the Governor in Council expressed the intent of Canada to adhere to the Berne Convention as revised in Berlin (1908) and its Additional Protocol of Berne (1914): see text at §10.1, *infra*. This adherence was indeed contemplated by section 49 (thereafter R.S.C. 1985,

c. C-42, s. 65; repealed by S.C. 1993, c. 44, s. 69) of the *Copyright Act, 1921*, which then read as follows:

CONVENTION OF BERNE

ADHERENCE TO THE BERNE  
CONVENTION

49. The Governor in Council may take such action as may be necessary to secure the adherence of Canada to the revised Convention of Berne, signed the thirteenth day of November, 1908, and the Additional Protocol thereto signed Berne the twentieth day of March, 1914, set out in the Second Schedule to this Act.

CONVENTION DE BERNE

ADHÉSION À LA CONVENTION  
RÉVISÉE DE BERNE

49. Le gouverneur en conseil peut prendre les mesures nécessaires pour assurer l'adhésion du Canada à la Convention révisée de Berne, signée le treizième jour de novembre 1908, et au Protocole additionnel signé à Berne le vingtième jour de mars 1914, énoncés à la seconde Annexe de la présente loi.

However, as a Dominion of His Majesty, Canada could not, at that time, directly signify its adhesion to this international convention. Therefore, quite ironically, the adhesion of Canada as a full contributory member rather than as a part of the British Empire was first done through a note dated April 28, 1928 of the British Legation to the Swiss Government: see *Union internationale - Canada* (1928), 41 *Le Droit d'Auteur* 57.

Thereafter, by Order in Council P.C. 1390 dated June 12, 1931, the Governor in Council expressed the intent of Canada to adhere to the Berne Convention as revised in Rome (1928). This Order-in-Council, which was not published in the *Canada Gazette*, is reproduced hereinbelow:

"The Committee of the Privy Council have had before them a report, dated 12th June, 1931, from the Right Honourable the Secretary of State for External Affairs, submitting, in concurrence with the Secretary of State, as follows:

1. The International Convention of Berne for the Protection of Literary and Artistic Works, revised at Rome, the 2nd June, 1928, was signed on that date by the Honourable Philippe Roy, on behalf of Canada;

2. Section 12 of the Act, entitled "An Act to Amend the Copyright Act", 11th June, 1931, provides that "the Governor in Council may take such action as may be necessary to secure the

adherence of Canada to the revised Convention for the protection of artistic and literary works which was signed at Rome the 2nd day of June, 1928, and which is set out in Schedule A to this Act";

3. Article 28 of the said Convention provides that "the present Convention shall be ratified and the ratifications deposited at Rome not later than the 1st July, 1931";

4. It is deemed most advisable now to have the said Convention ratified in respect of Canada.

The Minister, therefore, in concurrence with the Secretary of State, recommends that his Majesty the King may humbly be moved to ratify the said Convention in respect of Canada.

The Committee submit the foregoing for Your Excellency's approval."

On June 2, 1928 Canada signed the Rome Revision (1928) of the Berne Convention: see *Union internationale - Canada* (1928), 41 *Le Droit d'Auteur* 57. In view of Article 28 (1) thereof, this Revision was to be ratified by its signatories by July 1st, 1931.

To accede to this Revision Canada had to amend its *Copyright Act* to bring it into closer conformity with the Rome Revision (1928). This was done by the *Copyright Amendment Act, 1931* (S.C. 1931, c. 8). Further to the Order in Council P.C. 1390 dated June 12, 1931, Canada ratified the Rome Revision (1928) of the Berne Convention on June 22, 1931 to take effect as of August 1st, 1931: see *Union Internationale - Nouvelles diverses* (1931), 44 *Le Droit d'Auteur* 96 and *Canada Treaties Series* 1931, No. 3, 123 L.N.T.S. 233, 1932 G.B.T.S. 12.

The text of the Berne Convention, as revised in 1928 in Rome is appended as Schedule III to the *Copyright Act* but this text is not formally enacted into law.

Since Canada has already adhered to the Rome Revision (1928) of the Revised Berne Convention Section 71 appears obsolete and it may be questioned why this section has been carried forward in the 1985 Revision of the *Copyright Act*. Indeed, section 65 of the *Copyright Act* (R.S.C. 1985, c. C-42) which dealt with the adherence of Canada to the Revised (Berlin, 1908) Berne Convention and its Additional Protocol (Berne, 1914) was of a similar obsolescence and repealed as of January 1st 1994 by *An Act to Implement the North American Free Trade Agreement* (S.C. 1993, c. 44, s. 69).

## §5.2 Berne Convention

### §5.2.1 General

The *Berne Convention for the Protection of Literary and Artistic Works* ("La Convention de Berne pour La protection des œuvres littéraires et artistiques") was signed on September 9, 1886; supplemented in Paris on May 4, 1896; revised in Berlin on November 13, 1908; supplemented in Berne on March 20, 1914; revised in Rome on June 2, 1928; revised in Brussels on June 26, 1948; revised in Stockholm on July 4, 1967; revised in Paris on July 24, 1971; amended in Paris on October 2, 1979.

Subject to some qualifications, the Berne Convention provides basically that, without the performance of any formalities, authors who are nationals of any country of the Union shall enjoy for their works, whether published or not, in the other countries of the Union, the same rights as those countries are giving to their own natives.

### §5.2.2 Berne Convention and the British Empire

In order to allow Great Britain to adhere to the Berne Convention and to uniformize some aspects of Copyright Law through the British Empire, some modifications were necessary to the United Kingdom Copyright Acts that were applicable and prevailing over colonial legislation through the British Empire: see *Graves & Co. Ltd. v. Gorrie* (1903), (1903) A.C. 496 (J.C.P.C.-Canada).

Therefore, in the United Kingdom, on June 25, 1886, *An Act to amend the Law respecting International and Colonial Copyright* (49 & 50 Vict., c. 33; to be cited as the *International Copyright Act, 1886*) was passed with the following preamble:

"And whereas at an international conference held at Berne in the month of September one thousand eight hundred and eighty-five a draft of a convention was agreed to for giving to authors of literary and artistic works first published in one of the countries parties to the convention copyright in such works throughout the other countries;

And whereas, without the authority of Parliament, such convention cannot be carried into effect in Her Majesty's dominions and consequently Her Majesty cannot become a



party thereto, and it is expedient to enable Her Majesty to accede to the Convention (...)".

Section 9 of the *International Copyright Act, 1886*, specifically provided for its application to every British possession as if it were part of the United Kingdom. In view of the definition of "British possession" in section 11 of this Act, Canada, even if it were a self governing dominion, was covered by the application of the *International Copyright Act, 1886*.

On September 9, 1886, Great Britain signed the Berne Convention Article 19 (renumbered as Article 26 in the Berlin Revision (1908)) of which reads as follows:

Countries acceding to the present Convention shall also have the right to accede thereto at any time for their Colonies or foreign possessions.

Les pays accédant à la présente Convention ont aussi le droit d'y accéder en tout temps pour leurs colonies ou possessions étrangères.

They may do this either by a general declaration comprehending all their Colonies or possessions within the accession, or by specially naming those comprised therein, or by simply indicating those which are excluded.  
(Translation.)

Ils peuvent, à cet effet, soit faire une déclaration générale, par laquelle toutes leurs colonies ou possessions sont comprises dans l'accession, soit nommer expressément celles qui y ont comprises, soit se borner à indiquer celles qui en sont exclues.

As it appears from the procès-verbal of signature of September 9, 1886, Great Britain made the following declaration with reference to the inclusion of its Colonies or foreign possessions to the Berne Convention:

"The plenipotentiaries of Her Britannic Majesty state that the accession of Great Britain to the Convention for the protection of literary and artistic works comprises the United Kingdom of Great Britain and Ireland, and all the Colonies and foreign possessions of Her Britannic Majesty.

At the same time, they reserve to the Government of Her Britannic Majesty the power of announcing at any time the separate denunciation of the Convention by one or several of the following Colonies or possessions, in the manner provided for by article 20 of the Convention, namely:-India, the Dominion of Canada, Newfoundland, the Cape, Natal, New South Wales,

Victoria, Queensland, Tasmania, South Australia, Western Australia, and New Zealand."

On September 5, 1887, Great Britain ratified the Berne Convention: see *Note - Union Internationale Ratification* (1888), 2 *Le Droit d'Auteur* 7.

On November 28, 1887, by an Order in Council passed under the authority of the *International Copyright Acts, 1844 to 1886*, (and published in the London Gazette of December 2, 1887) Great Britain gave effect to its adherence to the Berne Convention. Section 1 of the aforesaid order in council read as follows:

"The Convention as set forth in the First Schedule to this Order shall, as from the commencement of this Order, have full effect throughout Her Majesty's dominions, and all persons are enjoined to observe the same."

This Order came into operation on December 6, 1887 (section 9) and was to be construed as if formed an integral part of the *International Copyright Act, 1886* (section 8): see *Durand et Cie v. La Patrie Publishing Co Ltd.* (1960), (1960) S.C.R. 649 (S.C.C.) Abbott J., at p. 655.

On May 4, 1896, Great Britain signed the Additional Act of Paris (1896), which modified the Berne Convention (1886). On September 9, 1896, Great Britain ratified the Additional Act of Paris (1896): see *Note - Union Internationale Ratification* (1897), 10 *Le Droit d'Auteur* 110.

On March 7, 1898, by an Order in Council passed under the authority of the *International Copyright Acts, 1844 to 1886*, Great Britain gave effect to its adherence to the Additional Act of Paris (1896). Section 1 of the aforesaid order in council read as follows:

"The Additional Act of the Berne Convention as set forth in the Schedule to this Order shall, as from the commencement of this Order, have full effect throughout Her Majesty's dominions, and all persons are enjoined to observe the same."

This Order came into operation on March 7, 1898 (section 8) and was to be construed as if it formed an integral part of the *International Copyright Act, 1886* (section 7).

On November 13, 1908, Great Britain signed the Berlin Revision (1908) of the Berne Convention. However, in order to comply with the Berlin Revision (1908) of the Berne Convention, Great Britain had to modify its copyright legislation and consequently passed *An Act to amend and consolidate the Law relating to Copyright* (1 & 2 Geo. V, c. 46; to be cited as the *Copyright Act, 1911*) which came into force on July 1st, 1912.

On June 14, 1912, Great Britain ratified the Berlin Revision (1908) of the Berne Convention; this ratification, however was only to be effective as of July 1st, 1912. Noteworthy, since the United Kingdom *Copyright Act, 1911* was not applicable de plano to His Majesty's self-governing dominions (as Canada) the ratification of the Berlin Revision (1908) of the Berne Convention did not include all "His Majesty's dominions" (see subsections 25(1) and 35(1) of the United Kingdom *Copyright Act, 1911* ). In fact, Canada was specifically excluded from the Great Britain declaration of ratification of the Berlin Revision (1908) of the Berne Convention: see *Grande-Bretagne - Adhésion* (1912), 25 *Le Droit d'Auteur* 90.

Furthermore, on July 1st, 1912, pursuant to section 36 of the United Kingdom *Copyright Act, 1911*, the International Copyright Acts of 1844, 1852, 1875 and 1886 as well as the orders in council adopted thereunder were repealed. However, subsection 26(2) of the United Kingdom *Copyright Act, 1911* provided that "in any self-governing dominion to which this Act does not extend, the enactments repealed by this Act shall, so far as they are operative in that dominion, continue in force until repealed by the legislature of that dominion." In Canada, this repeal occurs by way of section 47 (now s. 63) of the *Copyright Act, 1921*, which came into force on January 1st, 1924.

On March 20, 1914, Great Britain signed the Berne Additional Protocol (1914) to the Berne Convention, which signature was excluding Canada.

### **§5.2.3 Berne Convention and Canada**

The adhesion of Canada to the Berne Convention as a full member of its own (rather than as a British dominion) was problematic in view of the serious disharmony between the Canadian requirements of registration for copyright protection and the liberal principle entrenched in Article 4 of the Berne Convention under which the enjoyment and the exercise of the rights of the authors shall not be subject to the performance of any formality. For Canada to accede to the Berne Convention, it was therefore necessary to modify its copyright legislation and, hence, the *Copyright Act, 1921* (S.C. 1921, c. 24) was adopted.

As expressed by FOX (Harold George), *The Law of Industrial and Intellectual Property: 1923-1947* (1948), 26 *Canadian Bar Review* 226, at p. 242: "Under the present law (i.e. *Copyright Act, 1921* ) copyright is automatic. It requires no registration or other formal act and confers a right in an unpublished as well as in a published work. Canada's adherence to the Berne Convention thus became possible. This adherence was signified by Order in Council P.C. 1395 of July 27, 1923 (published at (1924), 57 *Canada Gazette*, Part II, p. 4174) and related despatch of diplomatic notes (published at (1924), 57 *Canada*

Gazette 3200 and 3401). On April 10th, 1928, it reiterated its adherence as a full contributing member of the Union, having theretofore enjoyed status as part of the British Empire." See also *Zamacois v. Douville* (1943), (1945) R.L. 155 (Ex.C.C.) Angers J., at p. 166. The Berne Convention (1886), as modified by the Paris Additional Act (1896), the Berlin Protocol (1908) and the Berne Revision (1914) was appended as Schedule II to the *Copyright Act*, which schedule, however, was repealed on January 1st, 1994 with the coming into force of section 74 of *An Act to Implement the North American Free Trade Agreement* (S.C. 1993, c. 44).

On June 2, 1928 Canada signed the Rome Revision (1928) of the Berne Convention: see *Union internationale - Canada* (1928), 41 *Le Droit d'Auteur* 57. To accede to this Revision Canada had, again, to amend its *Copyright Act*. This was done by the *Copyright Amendment Act, 1931*. Further to the Order in Council P.C. 1390 dated June 12, 1931 Canada ratified the Rome Revision (1928) of the Berne Convention on June 27, 1931, to take effect as of August 1st, 1931: see *Union Internationale - Nouvelles diverses* (1931), 44 *Le Droit d'Auteur* 96 and *Canada Treaties Series* 1931, No. 3; see section 71. The Rome Revision (1928) of the Berne Convention is appended as Schedule III to the *Copyright Act*.

Canada has not adhered to the Brussels Revision (1948) of the Berne Convention.

Canada has adhered on July 7, 1970 to the Stockholm Revision (1967) of the Berne Convention but only with respect to the administrative part thereof, namely Articles 22 to 38: see *Union Internationale - Nouvelles diverses* (1970), 83 *Le Droit d'Auteur* 88.

Canada has not adhered to the Paris Revision (1971) nor to the Paris Revision (1979) of the Berne Convention. However, Article 1701.2 (b) of the *North American Free Trade Agreement* request the adherence of Canada to the Paris Revision (1971) of the Berne Convention.

## **§5.3 Construction**

### **§5.3.1 "May take such action"**

Despite the usual canons of interpretation whereby the word "shall" is deemed to be imperative while the word "may" is rather deemed to be facultative, the parliamentary history of section 65 indicates that the word "may" means "shall" so that the Governor in Council had an obligation to secure the adherence of Canada to the Revised Convention of Berne: *Debates Senate*, 1921 (1921.05.31), at p. 692. However, since Canada has

adhered to the Revised Convention of Berne, such a debate nowadays would appear academical.

### **§5.3.2 Governor in Council**

As provided for by section 13 of the *Constitution Act, 1982* provisions in Acts of the Parliament referring to the Governor General in Council shall be construed as referring to the Governor General acting by and with the Advice and consent of, and in conjunction with the Queen's Privy Council for Canada: see section 35 of the *Interpretation Act* (R.S.C. 1985, c. I-21).

## **§5.4 Effect of Treaty**

### **§5.4.1 Implementation of Treaties**

"A treaty may be implemented by legislation in one of three ways: first, Parliament may translate the treaty into a number of statutes or amendments to existing statutes; second, it may enact a general law which uses the key terms of the treaty and is clearly designed to implement the treaty; finally, it may directly enact the treaty, with an appropriate preamble, into English (Canadian) law": MACDONALD (Ronald St. John), *International Treaty Law and the Domestic Law of Canada* (1975), 2 *Dalhousie Law Journal* 307, at p. 311.

As a general proposition, it may be stated that "In the absence of a legislative act, the making of a treaty does not change the domestic law in Canada": *Mastini v. Bell Telephone Co. of Canada*\* (1971), 18 D.L.R. 215 (Ex.C.C.) Jackett J., at p. 217. Therefore, treaties to which Canada is a party, as the Berne Convention, are not self executing in Canada as they are not incorporated into domestic law, they are not enforceable before Canadian Courts, and the Courts will not recognize a cause of action founded directly on an alleged treaty violation: see ÉTUDES GÉNÉRALES, *La nouvelle loi canadienne du 4 juin 1921 sur le droit d'auteur* (1921), 34 *Le Droit d'Auteur* 73, at p. 76; JACOMY-MILLETTE (Anne-Marie), *Treaty Law in Canada* (Ottawa, Ottawa University, 1975), at ch. 3.

"Canada's constitutional law, derived in this respect from the United Kingdom, does not recognize a treaty as part of the internal (or "municipal") law of Canada. Accordingly, a treaty which requires a change in the internal law of Canada can only be implemented by the enactment of a statute which makes the required change in the law": HOGG (Peter W.), *Constitutional Law of Canada*, 3rd ed. (Toronto, Carswell, 1992), at p. 285.



into law. "A schedule or appendix is part of the statute, but whether it forms part of the text of the law depends upon the terms of the Act": see DRIEDGER (Elmer A.), *The Construction of Statutes* (Toronto, Butterworths, 1983), at p. 142; see also CÔTÉ (Pierre-André), *The Interpretation of Legislation in Canada* (Cowansville, Blais, 1992), at pp. 64-66.

They are no specific provision in the *Copyright Act*, or elsewhere, providing that the terms of the appended Convention were to be taken as if they formed an integral part of the *Copyright Act*, as it was the case, for instance in the United Kingdom *International Copyright Act*, 1886. An illustration of such an incorporation by reference of an international treaty reference is given by the implementation in Canada of the Vienna Convention on the international sale of goods. For instance, section 1 of *An Act respecting the United Nations Convention on Contracts for the International Sale of Goods* (S.Q. 1991, c. 68) reads as follows:

The United Nations Convention on Contracts for the International Sale of Goods, reproduced as a schedule to this Act, has force of law in Québec (...)

while sections 4 and 6 of the *International Sale of Goods Contracts Convention Act* (S.C. 1991, c.13) read as follows:

"4. (...) the Convention (as set out in the Schedule) is declared to have the force of law in Canada (...)"

"6. In the event of any inconsistency between the the provisions of this Act or the Convention and the provisions of any other law, the provisions of this Act or the Convention prevail to the extent of the inconsistency."

Futhermore, contrary to Schedule I ("existing rights") which is included by reference in the text of section 60 ("subsistence of substituted rights") of the *Copyright Act*, there is no such reference to Schedule III in the *Copyright Act*. However, reference is notably made to the Convention in various sections of the *Copyright Act*, as in subsections

- 2(2.1) ("Berne Convention Country")
- 5(1) ("conditions for obtaining copyright"),
- 5(2) ("Minister may extend copyright to other countries"),
- 26(4) ("application of provisions regarding licences"),
- 45(3) ("exceptions" to some importation prohibitions), and
- 45(5) ("application of provisions regarding importation").

In these subsections, the Convention merely identifies by reference the countries whose citizens will enjoy in Canada copyright protection, according

to the text of the Canadian *Copyright Act*. Such a reference, however, does not have the effect of integrating the text of the Convention as part of the substantive law of copyright in Canada: see *Louvigny Montigny v. Cousineau* (1950), (1950) S.C.R. 297 (S.C.C.) Taschereau J., at p. 310; for a view to the contrary, see *Gribble v. Manitoba Free Press Company, Limited* (1931), (1931) 3 W.W.R. 570 (M.C.A.) Prendergast J. at p. 571 and Trueman J., at p. 586 (an action described in the judgement as a friendly action or test case).

## §5.6 Interpretation

Reference to the Convention to interpret ambiguous provisions in the Canadian *Copyright Act* is permissible: see *Composers, Authors and Publishers' Association of Canada Limited v. CTV Television Network Limited* (1968), (1968) S.C.R. 676 (S.C.C.) Pigeon J., at p. 681, in which case it should be remembered that the English text of the Convention in Schedule II constitutes an unofficial version of the Convention, which was adopted in French. However, if the Canadian provision is not ambiguous, there is no need to interpret it and, a fortiori, to resort to the Convention to interpret it: see *Bishop v. Stevens* (1990), (1990) 2 S.C.R. 467 (S.C.C.). See also *American Farm Bureau Federation v. Canadian Import Tribunal* (1990), (1990) 2 S.C.R. 1324 (S.C.C.) Gonthier J., at p. 1372 and *Schavernoch v. Foreign Claims Commission* (1982), (1982) 1 S.C.R. 1092 (S.C.C.) Estey J, at pp. 1098 and 1101.

Noteworthy, in the course of the Senate Debates surrounding the adoption of the *Copyright Act, 1921*, it was proposed to amend section 65 (then section 49) by adding the following words thereto:

"and on such adherence being secured nothing in this Act shall be taken, interpreted or applied as being contrary to or in violation of the revised Berne Convention."

which amendment, however, was withdrawn: Senate Debates, 1921 (1921.05.31), at pp. 692 and 695.

The basic principles as to the use of treaties in interpreting statutes were summarized by MCDONALD (Bruce C.), *Using Treaties to Interpret Canadian Intellectual Property Statutes* (1976), 38 Patent and Trademark Institute of Canada Bulletin 615, at p. 624, as follows:

- "1. International conventions may not be resorted to as aids to statutory construction unless the statute is ambiguous.
2. Every statute should be interpreted so far as its language permits, so as not to be inconsistent with established principles of international law. The courts will avoid such an inconsistency



unless they are required to adopt it by a perfectly clear and explicit language admitting no doubt interpretation.

3. In interpreting an ambiguous treaty that in turn is being used to interpret a statute,

(a) It should not be presumed that the treaty will use the terms of art current in any particular country.

(b) Where an international agreement to which a large number of countries subscribe is implemented by a domestic statute, the statute will be construed with a view to attaining uniformity among the laws of jurisdictions in which the agreement is operative.

(c) The practice of governments or of the Canadian government, and how they have acted in light of the treaty, is a very important aspect of treaty interpretation.

(d) The intention of the persons or meeting who drafted the treaty is relevant."

## **§6.0 Case Law**

### **§6.1 Case Law - Canada**

#### **§6.1.1 International Issues**

- (1) *Attorney-General for Canada v. Ontario (Attorney-General for)*\* (1937), (1937) A.C. 326 (J.C.P.C.-Canada) Atkin J., at p. 347-348:  
 "Within the British Empire there is a well-established rule that the making of a treaty is an executive act, while the performance of its obligations, if they entail alteration of the existing domestic law, requires legislative action. Unlike some other countries, the stipulations of a treaty duly ratified do not within the Empire, by virtue of the Treaty alone, have force of law. (...) The question is not how is the obligation formed, that is the function of the executive; but how is the obligation to be performed, and that depends upon the authority of the competent Legislature or Legislatures."
- (2) *Francis v. R*\* (1956), (1956) S.C.R. 618 (S.C.C.) Rand J., at p. 626:

"Except as to diplomatic status and certain immunities and to belligerent rights, treaty provisions affecting matters within the scope of municipal law, that is, which purport to change existing law or restrict the future action of the legislature, including, under our constitution, the participation of the Crown, and in the absence of constitutional provision declaring the treaty itself to be the law of the state, as in the United States, must be supplemented by statutory action."

(3) *Mastini v. Bell Telephone Co. of Canada\**

(1971), 18 D.L.R. 215 (Ex.C.C.) Jackett J., at p. 217:

"While the Treaty (of Peace with Italy) was ratified after the House of Commons had, by resolution, expressed its approval of the Government's proposal that it be ratified, I have not been referred to any statute, nor Order in Council under the *War Measures Act*, R.S.C. 1952, c. 288, or any other thing having the force of law that purported, directly or indirectly, to give the effect of domestic law in Canada to the provisions of the Treaty or any of them. In the absence of some such legislative act, the making of a treaty does not change the domestic law of Canada."

(4) *Capital Cities Communications Inc. v. Canadian Radio-Television Commission\**

(1977), (1978) 2 S.C.R. 141 (S.C.C.) Laskin J., at p. 173:

"The second submission ask this Court to say that the provisions of the *Broadcasting Act* are ambiguous in so far as they relate to the powers of the (Canadian Radio-Television) Commission, and that as an aid to their construction resort should be had to the terms of the (Inter-American Radio Communication) Convention. I do not find any ambiguity that would require resort to the Convention, which is, in any event, nowhere mentioned in the *Broadcasting Act*; and certainly the Convention *per se* cannot prevail against the express stipulations of the Act: cf. *R. v. Chief Immigration Officer, Heathrow Airport* (1976) 3 All E.R. 843, at p. 850."

(5) *American Farm Bureau Federation v. Canadian Import Tribunal\**

(1990), (1990) 2 S.C.R. 1324 (S.C.C.) Gonthier J., at p. 1372:

The suggestion that recourse can be had to an underlying international agreement where a latent ambiguity can be asserted implies that there is no need to find a patent ambiguity

before consultation of the agreement is possible. As a latent ambiguity must arise out of matters external to the text to be interpreted, such international agreement may be used, as I have just suggested, at the preliminary stage of determining if an ambiguity exists.

### §6.1.2 Copyright Issues

(1) *Mary v. Hubert*

(1906), 29 C.S. 334 (Que.Sup.Ct. ) Fortin J., at p. 338:

"La première question qui se pose est de savoir si la Convention de Berne est en vigueur, ou a force de loi au pays.

Cette question nous paraît résolue dans l'affirmative par des textes et des principes à peine discutables.

Tout d'abord il est indiscutable qu'un traité international conclu par l'Angleterre doit s'appliquer à toutes les parties de l'empire, à moins que cette application ne soit restreinte par les termes mêmes du traité. On ne saurait mettre en doute, en effet, qu'un état souverain ait le droit de lier ainsi tous ses sujets.

On ne s'est pas contenté ici de l'application de ce principe général, mais le Gouvernement impérial a expressément décrété que cette convention de Berne, ainsi que la loi passée pour lui donner effet, s'appliqueraient à toutes les possessions britanniques et par conséquent au Canada."

(2) *Joubert v. Gêracimo*

(1917), 26 B.R. 97 (Que.C.A.) Carroll J., at pp. 107, 107-108 :

"Et quand même le traité de Berne aurait laissé à chaque pays signataire le soin de réprimer à son gré les atteintes portées aux droits des auteurs étrangers, la mise à effet de cette clause ne peut être déclarée impérative en face d'un statut faisant corps avec ce même traité de Berne tel que ratifié par l'Angleterre, et établissant des sanctions précises."(at p. 107.)

En résumé, voici comment j'envisage la situation: Dès que nous admettons la validité, au Canada, de la Convention de Berne, - et nous sommes d'accord sur ce point,- il me paraît logique d'en faire l'application intégrale, à ceux qui demandent cette application intégrale surtout lorsque juridiction spéciale est donnée aux tribunaux des colonies en matière de dommages

pour représentations illicites de pièces protégées,-damages to be recovered in any Court having jurisdiction in such cases in that part of the United Kingdom or of the British Dominions in which the offence shall be committed (3-4 Guillaume IV, ch. 15). Cette juridiction territoriale, créée par la loi de 1833 (i.e. *Dramatic Literary Property Act or Dramatic Copyright Act* ), n'a jamais été abolie en ce qui concerne le Canada, pas plus après l'Acte de la Confédération qu'avant; elle a même été implicitement confirmée par la loi britannique de 1886 (i.e. *International Copyright Act* ), et elle subsistera tant que le Parlement canadien, se prévalant des pouvoirs que lui confère la loi britannique de 1911, n'y aura pas mis fin." (at pp. 107-108)

(3) *Canadian Performing Right Society Limited v. Ford Hotel Co. of Montreal, Ltd.*

(1935), 73 C.S. 18 (Que.Sup.Ct.) Mackinnon J., at p. 22:

"The amending act 21-22 Geo. V, c. 8, was introduced after and as a result of the Rome Convention and it was strenuously argued that following these decisions and the agreement arrived at in Rome, this amending act did not intend to deal with the question of public reception of radio programmes. The Court is not concerned with the agreement arrived at in the Rome Convention but only with the legislation that was enacted in this country following that convention. The Court finds that this amendment of the Copyright Act invoked in the present case is not ambiguous and is not of such doubtful meaning as would require it to inquire as to the intention of the legislature when it enacted it and consequently that it must read the amendment according to its context."

(4) *Zamacoïs v. Douville*

(1943), (1944) Ex.C.R. 208 (Ex.C.C.) Angers J., at pp. 220-221:

"Le Canada a adhéré à la Convention de Berne, telle que révisée par la Convention de Berlin le 13 novembre 1908 et par le protocole additionnel de Berne le 20 mars 1914, au moyen d'un arrêté en conseil adopté le 27 juillet 1923 (C.P. 1395), publié dans la *Gazette du Canada* du 10 mai 1924. Le 10 avril 1928 il a, comme pays unioniste contractant, réitéré son adhésion à la Convention de Berne, révisée tel que susdit, comme en fait foi une lettre circulaire du Conseil fédéral suisse du 27 avril 1928, adressée aux membres d l'Union, dont une copie a été transmise au Secrétaire d'Etat pour les Affaires Extérieures du Canada par lettre du secrétaire d'Etat britannique pour les Colonies et les

Affaires des Dominions du 25 mai 1928. Jusqu'au 10 avril 1928, le Canada faisait partie de l'Union à titre de colonie britannique, aux termes de ladite lettre circulaire, ou de fragment de l'empire britannique, selon Lapradelle et Niboyet, Répertoire de Droit international (p. 745).

Le 2 juin 1928 le Canada a signé l'acte de Rome revisant de nouveau la Convention de Berne. Il a donné son adhésion à la Copnvention de Berne ainsi révisée au moyen d'un arrêté en Conseil (C.P. 1390) adopté le 12 juin 1931 conformément à l'article 12 de la Loi modificative du droit d'auteur, 1931 (21-22 Geo. V, chap. 8) sanctionné la veille. Ceci apparaît au bulletin no 3 du Recueil des Traités, 1931, publié en 1933 par l'imprimeur du Roi au Canada."

- (5) *Montigny v. Cousineau*  
(1950), (1950) S.C.R. 297 (S.C.C.) Taschereau J., at 310:  
"Il semblerait qu'en vertu de ce texte ( i.e., la Loi de 1921 concernant le droit d'auteur) la propriété littéraire des auteurs français est protégé au Canada non pas à cause des termes de la Convention de Berne, mais comme conséquence de cet article 4 (now section 5), qui est la loi domestique du pays. La Convention identifie les pays dont les sujets jouiront de la protection littéraire, mais c'est le texte de notre loi qui l'assure définitivement et en consacre l'existence."
- (6) *Durand et Cie v. La Patrie Publishing Co Ltd.*  
(1960), (1960) S.C.R. 649 (S.C.C.) Abbott J., at p. 655:  
"Prior to 1911 the right of foreigners to obtain copyright protection in the United Kingdom depended upon various Copyright Acts (including the Acts of 1833 and 1842 to which I have referred) and two International Copyright Acts, namely the *International Copyright Act, 1844*, 7-8 Vic. c. 12 and the *International Copyright Act, 1886*. Both these latter Acts provided for copyright protection to foreigners upon their complying with certain registration requirements, and were made applicable to all British Dominions. The *International Copyright Act, 1886*, was enacted following the International Conference held in Berne in 1885, and it empowered the Crown, by Order-in-Council, to adhere to the Convention agreed to at that Conference. Both France and Belgium were also adherents to the Convention. On November 28, 1887, an Order-in-Council was passed giving effect to the Berne Convention, which (translated into English)

appears as a Schedule to the Order. As a consequence, under the *International Copyright Act, 1886*, and the Order-in-Council of November 28, 1887, the Berne Convention itself and the subsequent Act of Paris, were made effective in Great Britain, became part of the municipal law, and, as such, have been interpreted by the Courts; *Hanfstaengl v. Empire Palace* (1894) 3 Ch. 109. The same result followed in the British Dominions (including Canada) to which the Act of 1886 and the Order-in-Council were made applicable."

- (7) *Composers, Authors and Publishers' Association of Canada Limited v. CTV Television Network Limited*  
(1968), (1968) S.C.R. 676 (S.C.C.) Pigeon J., at p. 681:

"In this connection, the following facts should be noted. Section 53 (now s. 71) of the Act refers to the Rome Convention which is set out in the Third Schedule. From this it appears that the Convention is in French only: the Schedule annexed to the English version is expressly stated as a translation. The history of the legislation shows that sub-para. (f) as well as s. 53 and the Third Schedule were all added to the act by the *Copyright Act Amendment Act, 1931*, 21-22 Geo. V, c. 8. This makes it obvious that sub-para (f) (of section 3) was inspired by para. 1 of Article 11bis of the Convention (...)"

## §6.2 Case Law - United Kingdom

### §6.2.1 International Issues

- (1) *Monte Ulia (Owners) v. Banco\**  
(1970), (1971) P. 137 (C.A.) Denning J., at p. 151:  
"It is now lawfully established that when an Act of Parliament is passed to give effect to an International convention, we can look at the Convention so as to help us to construe the Act: see *Salomon v. Commissioners of Customs and Excise* (1967) 2 Q.B. 116; *Post Office v. Estuary Radio Ltd.* (1968) 1 Q.B. 740, and this is so even though the Act of Parliament does not mention the Convention."
- (3) *The Jade\**  
(1976), (1976) 1 All E.R. 920 (H.L.) Diplock J., at p. 924:  
"As the Act was passed to enable Her Majesty's government to give effect to the obligations in international law which it would

assume in ratifying the convention to which it was a signatory, the rule of statutory construction laid down in *Salomon v. Commissioners of Customs and Excise* (1966) 3 All E.R. 871, (1967) 2 Q.B. 116 and *Post Office v. Estuary Radio Ltd.* (1967) 3 All E.R. 633, (1968) 1 Q.B. 740 is applicable. If there is any difference between the language of the statutory provision and that of the corresponding provision of the convention, the statutory language should be construed in the same sense as that of the convention if the words of the statute are reasonably capable of bearing that meaning." (Our underlinings.)

## §6.2.2 Copyright Issues

- (1) *Sarpy v. Holland* (1908), (1908) 2 Ch. 198 (C.A.) Cozens-Hardy J., at pp. 203-204:  
 "That Berne Convention had and could have no operation. It was not competent to the Crown under existing English legislation to make an Order in Council sanctioning it, or to come into the Convention. However, the Act of 1886 was passed, which recited the Berne Convention, and that it was desirable that effect should be given to it so as to bind English subjects, and not only to confer upon foreigners certain privileges in England, but to enable English subjects to secure, by coming into the Convention, certain rights and privileges abroad. That Act was followed by an Order in Council in 1886. I shall have to refer to both the Act and the Order more or less in detail; but the effect of this various Acts, Convention, and Orders in Council is that the Berne Convention has exactly the same effect as though it, together with the order in Council, had been in the form of an English statute." (Our underlinings.)
- (2) *Salomon v. Commissioners of Customs and Excise*\* (1966), (1967) 2 Q.B. 116 (C.A.) Diplock J., at p. 143:  
 "Where, by a treaty, Her Majesty's Government undertakes either to introduce domestic legislation to achieve a specified result in the United Kingdom or to secure a specified result which can only be achieved by legislation, the treaty, since in English law is not self-governing, remains irrelevant to any issues in the English courts until Her Majesty's Government has taken steps by way of legislation to fulfil its treaty obligations. Once the Government has legislated, which it may do in anticipation of the coming into effect of the treaty as it did in this case, the court must in the first instance construe the legislation, for that is what the court has to

apply. If the terms of the legislation are clear and unambiguous, they must be given effect to, whether or not they carry out Her Majesty's treaty obligations, for the sovereign power of the Queen in Parliament extends to breaking treaties (see *Ellerman Lines Ltd. v. Murray, White Star Line and U.S. Mail Steamers Oceanic Steam Navigation Co. Ltd v. Comerford* (1931) A.C. 126), and any remedy for such a breach of an international obligation lies in a forum other than Her Majesty's own courts. But if the terms of the legislation are not clear but are reasonably capable of more than one meaning, the treaty itself becomes relevant, for there is a prima facie presumption that Parliament does not intend to act in breach of international law, including therein specific treaty obligations; and if one of the meanings which can reasonably be ascribed to the legislation is consonant with the treaty obligations and another or others are not, the meaning which is consonant is to be preferred. Thus, in case of lack of clarity in the words used in the legislation, the terms of the treaty are relevant to enable the court to make its choice between the possible meanings of these words by applying this presumption."

- (3) *Warwick Film Productions Ltd. v. Eisinger* (1967), (1969) 1 Ch. 508 (Ch.D.) Plowman J., at pp. 521-523:

(Discussing subsection 20(4) of the United Kingdom *Copyright Act, 1956*, a provision similar to subsection 34(3) of the Canadian *Copyright Act*)

"In my judgment, however, it is not permissible to refer to the Brussels Convention for that purpose.

There does not appear to be any ambiguity in section 20(4) which would entitle me to depart from what I take to be the general rule, namely, that a convention, such as the Brussels Convention, cannot be referred to for the purpose of giving to a section a meaning other than its natural meaning. This principle is to be found in *Ellerman Lines Ltd. v. Murray* (1931) A.C. 126, H.L. (...)

It is true that in *Hogg v. Toye & Co. Ltd.* (1935) Ch. 497 Maugham L.J. did refer to Article 11 of the Berne Convention, 1886; but, having regard to the *Ellerman Lines* case (1931) A.C. 126 (to which he did not refer), I think that this must be either have been made per incuriam, as is suggested in Halsbury, 3rd ed., vol. 36, p.



411, or because he regarded section 6(3) of the Act of 1911 as ambiguous. Any such ambiguity as there may have been has, in my judgment, been removed by section 20(4) of the Act of 1956. I should perhaps add that in any case I am far from convinced that a reference to the Brussels Convention would lead to a different result."

### §6.3 Case Law - Australia

- (1) *Robinson v. Sands & McDougall Proprietary Limited* (1917), 23 C.L.R. 49 (H.C.Australia) Isaacs J., at pp. 53-54:

"The whole subject of copyright now depends of the Act of 1912, which came into force on 1st July of that year. The English Act of 1911, which is scheduled to the Australian Act, has been adopted with some modifications, which are immaterial to the present question. The matter is so circumstanced as to impel me to state my own reasons for rejecting the contention so forcibly presented on behalf of the appellants. The Act scheduled is part of the international arrangement constituted by the Berlin Convention of 1908, to which Great Britain was a party, and by which she undertook, by the second article to make provision for the protection of literary and artistic works as there defined. The English Act of 1911, was passed in fulfilment of this obligation, and its adoption by Australia is part of the Imperial scheme for effectuating the international arrangement. It is evident that, not only because of its inter-Imperial application but also by reason of its international significance, any interpretation of the new Act demands the closest consideration. The question raised by this appeal is crucial. The international origin of the enactment does not more than create an unusual importance: it affords considerable aid in understanding it. The Imperial Parliament necessarily had the terms of the Convention before it, was acquainted with the language of the document, and was carrying out the promise it contained." (Our underlining.)

### §7.0 List of Cases

#### §7.1 List of Cases - Canada

##### §7.1.1 International Issues

*Attorney-General for Canada v. Ontario (Attorney-General for)\**

(1936), (1936) S.C.R. 461 (S.C.C.); (1937), (1937) A.C. 326, (1937) 1 D.L.R. 673, (1937) 1 W.W.R. 299, (1937) W.N. 53 (J.C.P.C.-Canada)

*Francis v. R\**

(1953), (1954) Ex.C.R. 618; (1956), (1956) S.C.R. 618, (1956) 3 D.L.R. 641 (S.C.C.)

*Mastini v. Bell Telephone Co. of Canada\**

(1971), 18 D.L.R. 215 (Ex.C.C.)

*Capital Cities Communications Inc. v. Canadian Radio-Television Commission\**

(1975) 1 F.C. 18, 52 D.L.R. (3d) 415 (F.C.A.); (1977), (1978) 2 S.C.R. 141, 36 C.P.R. (2d) 1, 81 D.L.R. (3d) 609, 18 N.R. 181 (S.C.C.)

*Schavernoeh v. Foreign Claims Commission*

(1982), (1982) 1 F.C. 233 (F.C.A.); revd (1982), (1982) 1 S.C.R. 1092, 136 D.L.R. (3d) 447 (S.C.C.)

*American Farm Bureau Federation v. Canadian Import Tribunal*

(1987), 14 C.E.R. 1 (C.I.T.); affd (1989), (1989) 2 F.C. 517, 58 D.L.R. (4th) 642, 92 N.R. 264, 187 C.E.R. 268 (F.C.A.); affd (1990), (1990) 2 S.C.R. 1324, 74 D.L.R. (4th) 449 (S.C.C.)

## §7.1.2 Copyright Issues

*Graves & Co. Ltd. v. Gorrie*

(1900), 32 O.R. 266 (Ont.H.C.J.); (1900), 1 O.L.R. 309, 2 C.L.R. 186, 9 R.L.n.s. D-516 (Ont.Div.C.); (1901), 3 O.L.R. 697, 1 O.W.R. 259, 2 C.L.R. 192 (Ont.H.C.J.D.C.); (1902), 2 C.L.R. 201 (Ont.C.A.); (1903), (1903) A.C. 496, 13 C.R.A.C. 161, 89 L.T. 111, 19 T.L.R. 652, 2 C.L.R. 207, 2 B.J.P.C. 108, 52 W.R. 113, 172 L.J. 95, (1901-04) MacG.Cop.C. 60, 9 R.L.n.s. D-516, 9 R.L.n.s. 553 (J.C.P.C.-Canada)

*Mary v. Hubert*

(1906), 29 C.S. 334 (Que.Sup.Ct.); (1906), 15 B.R. 381, (1905-10) MacG. Cop. C. 236 (Que.C.A.)

*Joubert v. Geracimo*

(1916), 26 B.R. 97, 35 D.L.R. 683, (1917-18) MacG. Cop.C. 84 (Que.C.A.); (1916), 26 B.R. xxiii (S.C.C.)

*Gribble v. Manitoba Free Press Ltd.*

(1931), (1931) 3 D.L.R. 648, (1931) 2 W.W.R. 501(M.Q.B.); (1931), (1932) 1 D.L.R. 169, (1931) 3 W.W.R. 570, 40 Man.R. 42 (M.C.A.)

*Canadian Performing Right Society Limited v. Ford Hotel Co. of Montreal, Ltd.*

(1935), 73 C.S. 18, (1935) 2 D.L.R. 391 (Que.Sup.Ct.); withdrawal of appeal filed 1936.10.18 (Que.C.A.)

*Fiel v. Lemaire*

(1939), (1940) Ex.C.R. 21, (1939) 4 D.L.R. 56, (1938-39) MacG. Cop.C. 318 (Ex.C.C.)

*Zamacois v. Douville*

(1943), in translation (1944) Ex.C.R. 208, 2 C.P.R. 270, 3 Fox Pat.C. 44, (1943) 2 D.L.R. 257, in French text (1945) R.L. 155 (Ex.C.C.)

*Montigny v. Cousineau*

(1948), (1948) Ex.C.R. 330, 7 Fox Pat.C. 217 (Ex.C.C.); (1950), (1950) S.C.R. 297, 12 C.P.R. 45, 10 Fox Pat.C. 161 (S.C.C.)

*Durand & Cie v. La Patrie Publishing Co. Limited*

(1951), (1951) Ex.C.R. 260, 14 C.P.R. 129, 12 Fox Pat.C. 30 (Ex.C.C.-Default); (1951), (1952) Ex.C.R. 32, 15 C.P.R. 86, 12 Fox Pat. C. 59 (Ex.C.C.-Particulars); (1957), 28 C.P.R. 1, 17 Fox Pat. C. 79 (Ex.C.C.-Evidence); (1959), 32 C.P.R. 1, 19 Fox Pat. C. 93 (Ex.C.C.); (1960), (1960) S.C.R. 649, 34 C.P.R. 169, 20 Fox Pat. C.85, 24 D.L.R. (2d) 404, 39 R.I.D.A. 123 (S.C.C)

*Circle Film Enterprises Inc. v. Canadian Broadcasting Corporation*

(1957), (1956-60) Ex.C.R. 166, 28 C.P.R. 5, 17 Fox Pat. C. 15 (Ex.C.C.); (1959), (1959) S.C.R. 602, 31 C.P.R. 57, 19 Fox Pat. C. 39, 20 D.L.R. (2d) 211 (S.C.C.); (1960), 33 C.P.R. 183, 20 Fox Pat. C. 139 (Ex.C.C.-Reference)

*Composers, Authors and Publishers' Association of Canada Limited v. CTV Television Network Limited*

(1966), (1966) Ex.C.R. 872, 48 C.P.R. 246, 33 Fox Pat. C. 69, 57 D.L.R. (2d) 5 (Ex.C.C.); (1968), (1968) S.C.R. 676, 55 C.P.R. 132, 38 Fox Pat. C. 108, 68 D.L.R. (2d) 98 (S.C.C.)

*Ludlow Music Inc. v. Canint Music Corporation*

(1967), (1967) 2 Ex.C.R. 109, 51 C.P.R. 278, 35 Fox Pat.C. 114, 62 D.L.R. (2d) 200 (Ex.C.C.)

*Bishop v. Stevens*

(1984), (1985) 1 F.C. 755, 4 C.P.R. (3d) 349 (F.C.T.D.); (1987), 18 C.P.R. (3d) 257, 16 C.I.P.R. 243, 80 N.R. 302 (F.C.A.); (1990), (1990) 2 S.C.R. 467, 31 C.P.R. (3d) 394, 72 D.L.R. (4th) 97, 89 N.R. 160, J.E. 90-1173 (S.C.C.)

*Bayliner Marine Corporation v. Doral Boats Ltd.*

(1985), (1986) 3 F.C. 346, 5 C.P.R. (3d) 289, 5 C.I.P.R. 268 (F.C.T.D.); (1986), (1986) 3 F.C. 421, 10 C.P.R. (3d) 289, 9 C.I.P.R. 311, 67 N.R. 139, 13 F.S.R. 497 (F.C.A.); (1986), (1986) 2 S.C.R. v, 14 C.P.R. (3d) 446 (S.C.C.)

*Thinkway Toys v. Vicki Collections*

(1989), (1990) 1 F.C. D-17, 28 C.P.R. (3d) 572, 27 C.I.P.R. 102 (F.C.T.D.)

*Milliken & Company v. Interface Flooring Systems (Canada) inc.*

(1993), 62 F.T.R. 318, (1993) 2 F.C. D-17 (F.C.T.D. Proth.-Pleadings); revd by a yet unreported judgment rendered 1993.10.07 by the Honorable Mr. Justice Strayer (F.C.T.D.-Pleadings)

## **§7.2 List of Cases - United Kingdom**

### **§7.2.1 International Issues**

*Salomon v. Commissioners of Customs and Excise\**

(1966), (1967) 2 Q.B. 116, (1966) 3 W.L.R. 1223, (1966) 3 All E.R. 871 (C.A.)

*Cheney v. Conn (Inspector of Taxes)\**

(1967), (1968) 1 W.L.R. 242 (Ch.D.)

*The Jade\**

(1974), (1974) 3 All E.R. 307, (1975) 1 W.L.R. 83 (Ch.D.); (1975), (1976) 1 All E.R. 441, (1976) 1 W.L.R. 339 (C.A.); (1976), (1976) 1 W.L.R. 430, (1976) 1 All E.R. 920 (H.L.)

*Smith Kline & French Laboratories v. R.D. Hardbottle (Mercantile) Ltd.\**

(1979), (1979) 5 F.S.R. 555, (1980) R.P.C. 363 (H.C.J.-Patents Court)

*Energy Conversion Devices Incorporated's Applications\**

(1981), (1983) R.P.C. 231 (Patent Offices); (1981), (1983) R.P.C. 231-237 (H.C.J.-Patents Court); (1981), (1982) 8 F.S.R. 544, (1983) R.P.C. 231-239 (C.A.); (1982), (1982) 8 F.S.R. 544-553, (1983) R.P.C. 231-245 (H.L.)

### **§7.2.2 Copyright Issues**

*Low v. Routledge*

(1865), 33 L.J.Ch. 717 (Ch.D.); (1868), L.R. 100, 37 L.J.Ch. 454, 18 L.T. 874, 16 W.R. 1081 (H.L.)

*Boosey v. Jefferys*

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## §9.0 Comparative Legislation

None

## §10.0 Varia

### §10.1 Order in Council P.C. 1923-1395, 1923.07.27

(1924), 57 *Canada Gazette*, Part II, p. 4174:

The Committee of the Privy Council have had before them a report, dated 14th July, 1923, from the Minister of Trade and Commerce, stating that Section 49 of the Copyright Act, 1921, provides that the Governor in Council may take such action as may be necessary to secure the adherence of Canada to the Revised Convention of Berne, signed the 13th day of November 1908, and the Additional Protocol thereto signed

at Berne the twentieth day of March, 1914, set out in the Second Schedule to this Act.

Article 1 of the said Protocol provides that, where any country outside the Union fails to protect in an adequate manner the works of authors who are subject to the jurisdiction of one of the contracting countries, nothing in the Convention of the 13th November, 1908, shall affect the right of such contracting states to restrict the protection given to the works of authors who are, at the date of the first publication thereof subjects or citizens of the said non-union country, and are not effectively domiciled in one of the countries of the Union.

Article 2 provides that, the right accorded by the present Protocol to contracting states belongs equally to any of their oversea possessions.

Article 4 provides that, the States which restrict the grant of copyright in accordance with the present Protocol shall give notice thereof to the Government of the Swiss Confederation by a written declaration specifying the countries in regard to which protection is restricted, and the restrictions to which rights of authors who are subject to the jurisdiction of these countries are subjected.

The Dominion of Canada restricts the grant of copyright in accordance with the said Protocol in regard to the United States of America, and the restrictions to which rights of authors who are subject to the jurisdiction of that country are subjected, are set forth in Sections 13, 14, 15, and 27 of the said Copyright Act, 1921.

Sub-section (2) of Section 25 of the Copyright Act, 1911, passed by the Parliament in the United Kingdom provides as follows:

If the Secretary of State certifies by notice published in the London Gazette that any self-governing dominion has passed legislation under which works, the authors whereof were at the date of the making of the works British subjects resident elsewhere than in the dominion or (not being British subjects) were resident in the parts of His Majesty's dominions to which this Act extends, enjoy within the dominion rights substantially identical with those conferred by this Act, then, whilst such legislation continues in force, the dominion shall, for the purposes of the rights conferred by this Act, be treated as if it were a dominion to which this

Act extends; and it shall be lawful for the Secretary of State to give such certificate as aforesaid, notwithstanding that the remedies for enforcing the rights, or the restrictions on the importation of copies of works, manufactured in a foreign country, under the law of the dominion, differ from those under this Act.

In the opinion of the Minister, under the provisions of the Copyright Act, 1921, as amended by the Copyright Amendment Act, 1923, authors who are British subjects, resident elsewhere than in the Dominion of Canada or not being British subjects, are resident within His Majesty's dominions, enjoy within the Dominion of Canada rights substantially identical with those conferred by the said Copyright Act 1911.

The Minister, therefore, recommends that authority be given for the submission to His Majesty's Government of a request that His Majesty be graciously pleased to take such action as may be necessary to declare the adherence of the Dominion of Canada to the Revised Convention of Berne, signed the thirteenth day of November, 1908, and the Additional Protocol thereto signed at Berne the twentieth day of March, 1914, subject to the restriction in regard to the United States of America as hereinbefore set forth.

The Committee, on the recommendation of the Minister of Trade and Commerce, advise that Your Excellency may be pleased to request His Majesty's Government to take such action as may be necessary for the publication in the London Gazette of the notice of the Secretary of State as provided by sub-section (2) of Section 25 of the said Copyright Act, 1911.

All which is respectfully submitted for approval.

**§10.2 *Senate Debates* (1921.05.31), at pp. 692-695:**

**§10.3 *Copyright Notice* (1924), 57 *Canada Gazette* (March 1, 1924) at p. 3200:**

**§10.4 *Copyright Notice* (1924), 57 *Canada Gazette* (March 15, 1924), at p. 3401**

§10.5 Debates House of Commons (1931.04.23), at pp. 899-900:

§10.6 Debates Senate (1931.06.11), at pp. 221-223:

**ROBIC** + LAW  
+ BUSINESS  
+ SCIENCE  
+ ART

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+ AFFAIRES  
+ SCIENCES  
+ ARTS

