

LEGAL DEVELOPMENTS

CASE LAW

CANADA

Court of Québec

*Copyright —Fair dealing—Infomercial*

**On 30 August 2005 the Court of Québec rendered a judgment in a case regarding the question whether the publication of a photography in an infomercial constituted fair dealing according to the *Copyright Act*. The court ruled in favor of the author and sentenced the defending corporation to pay compensation for having published the photography without his authorization.**

Decision from the Court of Québec, Marc Gagnon, J.C.Q. - 30 August 2005 (*Excerpts from the decision from the Court of Québec*)

[Roger-Luc Chayer c. Corporation Sun Media](#), 125-32-001527-058, 2005

The facts revealed to the court clearly and unequivocally demonstrate that a copyright-protected photography taken by the plaintiff was used by some medias under the control of the defendant. Representative for the defendant argues before this court that the two newspapers that have reproduced the photography in question have done so under the fair dealing exception according to the Act.

The Act provides that the private use of a work for purposes of study or research, or even to criticize a work or to summarize it, or even turn it into news and make it public, all constitute « fair dealings », acts that are allowed without authorization.

The defendant contends that the reports found in his two weekly publications accompanied by the plaintiff's photography were news of general interest, and that therefore the defendant could publish them without prior consent.

It is probably true that the event mentioned in the report could in itself constitute news worthy of public interest. But what causes a problem and also violates the law is truly the fact of having accompanied the news report with a photography protected by copyright.

The summary of the event in question takes on the features of an infomercial. In this court's humble opinion, the fact of inviting readers of a newspaper to go on a certain day, at a certain time, in a well-identified bar to be offered drinks by a celebrity passing by, constitutes an infomercial and not a report.

The defendant also argues that by indicating the photographer's name, it fulfilled its duties according to the law. Yet in the case at hand, this has not been done, since the precise origin of the photography is not revealed. In short, the only mention of the photographer's name does not meet the requirements, nor does it respect the spirit or the letter of the *Copyright Act*.

In brief, what is most overwhelming in this whole story is that the defendant, under a false pretext, allowed itself to take a photography from the files of a more modest enterprise. What is more despicable in this whole story is to see this same defendant shield itself behind the Act to try to redeem itself or to get a bargain.

For all these reasons, the Court sentences the defendant to pay to the plaintiff the amount of \$2,200.00 with legal fees in the amount of \$116.00 plus interests at the legal rate starting from the date of the summons and the additional indemnities provided by the law.