



## COPYRIGHT

### ROYALTIES

*Related subjects: Practice; Federal Court Jurisdiction*

Motion by defendants to strike plaintiff's statement of claim or, alternatively, to stay underlying action in favour of proceedings in Superior Court of Quebec — Plaintiff's claim arising from dispute over royalties payable for defendant Québecor Média Inc.'s (Québecor) use of works in plaintiff's repertoire in 2018 — Québecor deducted from its royalty payment amounts it claims it overpaid from 2014 to 2018 — Plaintiff disagreeing there was overpayment, that Québecor had any right to unilaterally set off any such overpayment against amounts owing in 2018 — Québecor's jurisdictional argument based on its assertion that although *Copyright Act*, R.S.C., 1985, c. C-42 forming background to matter, disputed issues pertaining to interpretation of 2018 agreement between parties (Agreement) — Québecor characterizing matter as being essentially claim in breach of contract — Whether plaintiff's statement of claim should be struck for want of jurisdiction — If not, whether action should be stayed in favour of litigation in Superior Court of Quebec — Not plain and obvious that Court not having jurisdiction over plaintiff's claim — To strike claim for lack of jurisdiction, must be "plain and obvious" that Federal Court lacking jurisdiction (*Windsor (City) v. Canadian Transit Co.*, 2016 SCC 54, [2016] 2 S.C.R. 617) — Focus on plaintiff's cause of action, basis for it, their right to seek remedy sought — Once essential nature or character of claim identified, assessment of whether Federal Court having jurisdiction over that claim following three-part analysis established in *ITO-Int'l Terminal Operators v. Miida Electronics*, [1986] 1 S.C.R. 752 (*ITO*) — Agreement referring to tariffs previously approved by Copyright Board in respect of three tariffs in particular — Plaintiff's claim, both as drafted and in its essence, seeking to recover money payable as royalties for use of copyright works — Asserting right to collect such royalties on behalf of copyright owners as collective society under *Copyright Act* — Not plain and obvious that essential character of plaintiff's claim one of provincial contract law, rather than enforcement of copyright, copyright tariffs — Contrary to Québecor's argument, not plain and obvious that essential character of plaintiff's claim changing from one of copyright enforcement to one of contract simply because Québecor admitted that plaintiff entitled to enforce copyright, copyright tariffs, but asserted that it has defences to plaintiff's claim arising from an agreement — These defences not turning plaintiff's claim into request for declaration regarding interpretation of contract — Existence of contractual issues alone not changing essential nature of case — Even on Québecor's characterization of claim as being action in breach of contract, it remained at least arguable Court having jurisdiction over it — Question whether *Copyright Act*, s. 41.24 granting jurisdiction to Court over case that is in essence claim by collective society for enforcement of contract pertaining to copyright royalties — Grant of jurisdiction in s. 41.24 not plainly and obviously limited to claims of copyright infringement, to exclusion of contractual claims, at least as it relates to collective societies — Therefore not plain and obvious there was no statutory grant of jurisdiction to Court over plaintiff's claim, regardless of how its essential nature characterized — Not plain and obvious that second branch of *ITO* test not met — Not plain and obvious that matter was one of contract, set-off rather than of copyright — Québecor not satisfying Court that it was in interests of justice to stay this proceeding in favour of proceedings in Superior Court of Quebec — Whether mere "uncertainty" as to Court's jurisdiction ought to be

material factor for consideration on stay request of this nature — Even if appropriate to consider residual uncertainty flowing from Québecor’s unsuccessful motion to strike, this not significant factor favouring stay — Risk of wasted judicial, litigant resources not significant consideration — Motion dismissed.

SOCIETY OF COMPOSERS, AUTHORS AND MUSIC PUBLISHERS OF CANADA V. VIDÉOTRON LTÉE  
(T-1380-22, 2023 FC 1385, McHaffie J., reasons for order dated October 18, 2023, 38 pp.)