

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160817

Docket: A-166-16

Ottawa, Ontario, August 17, 2016

Present: WEBB J.A.

BETWEEN:

**CMRRA/SODRAC INC., CONNECT MUSIC LICENSING SERVICE INC., and
SOCIÉTÉ DE GESTION COLLECTIVE DES DROITS DES PRODUCTEURS DE
PHONOGRAMMES ET DE VIDEOGRAMMES DU QUÉBEC**

Applicants

and

CANADIAN ASSOCIATION OF BROADCASTERS and ARTISTI

Respondents

ORDER

WHEREAS the Applicants, CMRRA-SODRAC Inc. (“CSI”), Connect Music Licensing Service Inc. (“Connect”), and Société de gestion collective des droits de producteurs de phonogrammes et de vidéogrammes du Québec (“SOPROQ”) (collectively, the “Collectives”) brought a motion for an Order staying parts of the Statement of Royalties to be collected by the Applicants in respect of commercial radio stations for periods from 2012 to 2013 and to 2017, certified by the Copyright Board on April 23, 2016 (the “New Tariffs”);

AND WHEREAS the Respondent, the Canadian Association of Broadcasters, on behalf of its commercial radio station members, participated as a party in the Copyright Board proceedings leading to the certification of the New Tariffs;

AND WHEREAS the Respondent, the Canadian Association of Broadcasters, has consented to the granting of the following Order and the solicitor for the Applicants has confirmed that the Respondent, Artisti, does not oppose this motion;

NOW THEREFORE THIS COURT ORDERS that:

1. The following provisions of the New Tariffs be and are hereby stayed until the final determination of the within application for judicial review and the application for judicial review commenced by the Respondent as Court File No. A-159-16 (collectively, the “Applications”):
 - a. Section 5(1), but only as to the application of “discount factor X” to the calculation of royalties payable to the Applicants, such that a low-use station shall pay to CSI, on its gross income for the reference month, 0.103% on the first \$625,000 gross income in a year, 0.198% on the next \$625,000 gross income in a year, and 0.332% on the rest;
 - b. Section 5(2)(b), but only as to the application of “discount factor Y” to the calculation of royalties payable to the Applicants, such that a low-use station shall pay to Connect/SOPROQ, on its gross income for the reference month, 0.103% on the first \$625,000 gross income in a year, 0.196% on the next \$625,000 gross income in a year, and 0.329% on the rest;

- c. Section 5(3), but only as to the application of “discount factors X and Y” to the calculation of royalties payable to the Applicants;
 - d. Section 6(1)(b), but only as to the application of “discount factor X” and “discount factor Y” to the calculation of royalties payable to the Applicants, such that a station shall pay, on its gross income for the reference month,
 - i. to CSI, 0.233% on the first \$625,000 gross income in a year, 0.457% on the next \$625,000 gross income in a year, and 0.948% on the rest; and
 - ii. to Connect/SOPROQ, 0.230% on the first \$625,000 gross income in a year, 0.452% on the next \$625,000 gross income in a year, and 0.940% on the rest;
 - e. Section 6(2), but only as to the application of “discount factors X and Y” to the calculation of royalties payable to the Applicants; and
 - f. Section 8(2), but only as to the application of “discount factors X and Y” to the calculation of royalties payable to the Applicants.
2. Notwithstanding section 18 of the New Tariffs, any refund payable by any of the Applicants to any commercial radio station to which the New Tariffs apply (each, a “Station” and collectively “Stations”) pursuant to the New Tariffs (a “Refund”) shall be payable only at the times and on the conditions set out below:
- a. Stations must request Refunds from each Collective in writing, setting out the amounts claimed and the basis for the calculation of those amounts (“Refund Requests”);

- b. a Station that provides a Refund Request by August 31, 2016 shall be paid its Refund on or before October 31, 2016;
 - c. a Station that provides a Refund Request between September 1 and October 31, 2016 shall be paid its Refund on or before November 30, 2016;
 - d. a Station that provides a Refund Request on or after November 1, 2016 shall be paid its Refund on or before the last day of the month following the month in which the Refund Request is received by the Collective; and
 - e. a Station that does not make a Refund Request shall be entitled to be paid a Refund only after and in accordance with a determination of both of the Applications that is not subject to further appeal or review (together a “Final Determination”).
3. Section 14 of the New Tariffs shall continue to apply to Refunds. However, for the purpose of calculating any interest payable on any Refund, whether paid before or after a Final Determination:
- a. all Refunds shall be deemed to be due and payable on October 31, 2016, regardless of when they are actually payable in accordance with this Order; and
 - b. the rate of interest for the period October 31 to December 31, 2016 shall be deemed to be 1.5% per annum, calculated daily, without compounding.
4. The partial stay provided for in this Order is without prejudice to:

- a. The right of any Station to make any claims for royalty reductions and refunds that are hereby stayed, as of the times such claims originally arose, after and in accordance with a Final Determination;
 - b. The obligation of any Station to repay to the Collectives any portion of any Refund that the station may have received in accordance with paragraph 2 above, if required to do so in accordance with a Final Determination; and
 - c. The claims advanced by any party in their respective Applications.
5. This Order shall also be filed in Court file number A-159-16.
 6. If the parties should discontinue the Applications, such discontinuance shall be a final determination of the Applications.
 7. No costs are payable to any party in relation to this motion.

"Wyman W. Webb"

J.A.