



# Civil Resolution Tribunal

Date Issued: August 31, 2022

File: SC-2022-000692

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *1316633 B.C. Ltd. v. Windsor-Martin*, 2022 BCCRT 979

**BETWEEN:**

1316633 B.C. LTD.

**APPLICANT**

**AND:**

PAMELA WINDSOR-MARTIN (Doing Business As SACRED MOON  
GEMSTONES)

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This dispute is about alleged copyright infringement.
2. The applicant, 1316633 B.C. Ltd. (131), says the respondent, Pamela Windsor-Martin (dba Sacred Moon Gemstones), used original photos, product descriptions, and

graphic design from 131's website for Sacred Moon Gemstones' website, without 131's consent. 131 says this violates the federal *Copyright Act* (CA) and claims \$3,000 in damages.

3. Ms. Windsor-Martin denies copying any content from 131's website and says she created her own website content. Ms. Windsor-Martin also says 131 gave her permission to use its website as a template for Sacred Moon Gemstones, which 131 denies.
4. 131 is represented by its owner, Erin Amantea. Ms. Windsor-Martin represents herself.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
7. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate. Under section 11(1)(e) of the CRTA, the CRT can refuse to resolve a dispute if it decides, on satisfactory evidence, that the claim is outside the CRT's jurisdiction (legal authority).

## **ISSUES**

9. The issues in this dispute are:
  - a. Does the CRT have jurisdiction to consider 131's claims?
  - b. If so, did Ms. Windsor-Martin copy 131's original works without consent?
  - c. If so, is 131 entitled to \$3,000 in damages?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one the applicant, 131, must prove its claim on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submissions and weighed the evidence, but only refer to that which is relevant to explain my decision. I note Ms. Windsor-Martin did not provide any documentary evidence though she had the opportunity to do so.

### ***CRT's Jurisdiction***

11. Copyright is governed by the CA. Section 3 of the CA defines "copyright" as the sole right to produce or reproduce a work, or any substantial part of it, in any material form. Under section 13 of the CA, the work's author is the first owner of the copyright. Section 27 of the CA says that it is an infringement of copyright for any person to do anything only the owner of the copyright has the right to do, without the owner's consent.

12. Part 4 of the CA is entitled “Remedies”. The sub-title “Civil Remedies” includes sections 34 to 41.24. Section 34 entitles a copyright owner to all remedies that the law may provide for the infringement of a right.
13. Section 35(1) says that a copyright infringer is liable to pay the copyright owner any damages the owner suffered as a result of the infringement, plus the infringer’s profits from the infringement that were not taken into account in calculating the damages “as the court considers just”. I have considered whether section 35(1) of the CA allows an entity other than a court to award compensation for copyright infringement. This is because using the word “court” at the end of the section could mean that a court or tribunal can award damages as compensation for the copyright owner’s losses, but only a court can order the infringer to pay their profits earned through infringement to the copyright owner.
14. However, I find this would be inconsistent with section 41.24 of the CA. Section 41.24 grants concurrent jurisdiction to the Federal Court and “provincial courts” to hear and determine all proceedings for “civil remedies provided by this Act”. I find the “civil remedies” referred to in section 41.24 are all those remedies discussed under the Part 4 sub-heading “Civil Remedies”, which includes sections 34 and 35. So, I find section 35 must be read to mean that only a federal or provincial court can award civil remedy damages for copyright infringement.
15. Section 44 of the CA defines “court” to mean the Federal Court or the superior court of a province, for the purposes of section 44.02 to 44.4 of the CA. As those sections are about importing and exporting copies, I find that definition of “court” does not apply here.
16. The CA does not otherwise define court, or provincial court. Neither does the federal *Interpretation Act*, or the BC *Interpretation Act*.
17. Our courts say the words used in an Act are to be read in their entire context, given their plain and ordinary meaning, and be interpreted in harmony with the scheme and object of the Act and the intention of Parliament (see *Re Rizzo & Rizzo Shoes Ltd.*

(*Re*), 1998 CanLII 837 9SCC), as cited recently in *The Association for The Protection of Fur-Bearing Animals v Gunvaldsen*, 2022 BCSC 1367 at paragraph 70).

18. With these principles in mind, I find “provincial court” in section 41.24 of the CA likely means a court of the province, such as the BC Court of Appeal, BC Supreme Court, or BC Provincial Court. So, on a plain reading of the term “provincial court”, I find it does not include the CRT, as the CRT is a tribunal and not a court. So, I find the CRT has no jurisdiction under the CA to award a civil remedy, which includes an order to pay compensation for damages.
19. There is no common law cause of action for copyright infringement, as copyright is purely a statutory right in Canada (see *BCAA et al. v. Office and Professional Employees’ Int. Union et al.*, 2001 BCSC 156). So, I find there is also no authority for the CRT to award a remedy for copyright infringement outside of the CA.
20. I agree with 131 that the BCPC has jurisdiction over copyright infringement claims. However, I find the BCPC is a provincial court and so section 41.24 of the CA gives the BCPC jurisdiction over civil remedies for copyright infringement. As noted, the CRT is not a court.
21. I acknowledge 131’s argument that the CRT has previously decided claims about copyright infringement. In *Bjørnsen v. Sharpe*, 2020 BCCRT 1425, another tribunal member found that neither party had violated the CA and so they did not need to consider whether the CRT had jurisdiction to award a civil remedy under the CA. In *Derke Mailhiot (dba The Junk Guy) v. 1095148 B.C. Ltd.*, 2020 BCCRT 945, a different tribunal member found the applicant’s claim of copyright infringement under the CA was unproven.
22. So, although the CRT has made decisions about liability for alleged copyright infringement, I find those cases did not consider whether the CRT had jurisdiction over awarding a civil remedy under the CA or address section 41.24 of the CA. I find those earlier CRT decisions are distinguishable from this dispute. In any event, prior CRT decisions are not binding on me.

23. For the above reasons, I find the CRT does not have jurisdiction to remedy any alleged copyright infringement. So, I refuse to resolve 131's claim of copyright infringement against Ms. Windsor-Martin.

## **ORDER**

24. I refuse to resolve this claim under section 11(1)(e) of the CRTA.

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Sherelle Goodwin, Tribunal Member