

Federal Court



Cour fédérale

Date: 20090610

Docket: T-1709-08

Citation: 2009 FC 628

Ottawa, Ontario, June 10, 2009

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

NORIE LYNN JACOBS

Applicant

and

THE ATTORNEY GENERAL OF CANADA AND
THE REGISTRAR OF COPYRIGHTS

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application, pursuant to paragraph 57(4)(c) of the *Copyright Act*, R.S., 1985, c. C-42, by the Applicant, Norie Lynn Jacobs, who seeks an order permitting Registration No. 1061165 to be amended to the name of the Applicant's pseudonym, Lynn Michaels.

Factual Background

[2] The Applicant is author of a textbook entitled *Jack of All Trades, Master of None... But One!*, which details the stories of individuals who have had relationships with people who have

been alleged to have mental health disorders. The author changed the names of these individuals and the places where the events occurred, but could not change the characteristics of the events. As such, certain stories are recognizable to those involved.

[3] On August 20, 2008, the Applicant employed the services of the Business Development Centre to register the copyright to her book. Contrary to her instructions, on August 28, 2008, it registered the copyright under her legal name, Norie Lynn Jacobs, instead of the pseudonym, Lynn Michaels.

[4] Subsequent to discussions with various officers at the Canadian Intellectual Property Office, an officer elected to amend the registration in question to the pseudonym of the author, namely, Lynn Michaels.

[5] The Applicant fears that the copyright as it was registered on August 28, 2008 could provoke a person mentioned in the book or a person connected to such a person, to seek retribution against her given the sensitive nature of the material in the book and this could present a danger to her safety.

[6] The Attorney General of Canada and the Registrar of Copyrights take no position with respect to the matter, did not file any material and did not appear at the hearing.

Relevant Legislation

[7] For ease of convenience, relevant legislative provisions referred to in these reasons are reproduced in an Annex.

Analysis

[8] The Applicant notes that pursuant to section 6.1, the *Copyright Act* provides protection for, among other things, pseudonymous works. Prior to the adoption of this provision, the Supreme Court of Canada held that where it is impossible to determine who the author is, the work will be protected for 50 years from the date of its publication (*Massie & Renwick Ltd. v. Underwriters' Survey Bureau Ltd.*, [1940] S.C.R. 218 at 245).

[9] Pursuant to subsection 14.1(1) of the *Copyright Act*, an author has the right to be associated with the work under a pseudonym and also has the right to remain anonymous. The right to be associated with a work as its author by name or under a pseudonym will be infringed if the work is attributed to someone else. In *Fawcett Modern Fiction Ltd. v. Turvey* (1949), 66 R.P.C. 230 (H.C.J. ch. D.), the Court found that an applicant had a right to the exclusive use of a pseudonym under which he or she had written.

[10] Section 55 of the *Copyright Act* sets out the procedures for application for registration of a work. Specifically, paragraph 55(2)(a) requires that a name and address of the owner of the copyright in the work be provided in the application.

[11] Section 14.1 of the *Copyright Act* states that an author can be associated with the work as its author by name or under a pseudonym and maintains the right to remain anonymous. In such a situation, it should be reasonable to seek registration under a pseudonym.

[12] The Applicant submits that if the amendment by the Copyright Office of the registration of the work in question was merely an exercise of the authority of the Copyright Office to correct a clerical error, the Registrar of Copyrights exercised its authority correctly under section 61 of the *Copyright Act*. However, if the amendment of the author's name is considered in law to be more than a clerical correction, then rectification of the copyright register may only be carried out by an order of the Federal Court pursuant to section 57 of the *Copyright Act*.

[13] On the day of the hearing in Toronto on May 21, 2009, during oral submissions, it was discussed that the remedy sought was in fact in place as the Copyright Office had amended the original registration to be in the pseudonym of the author.

[14] On the same date, the Court received a letter from the Applicant's counsel in which it was alleged that the Copyright Office had once again amended the registration such that it is now in the full legal name of the author and not the pseudonym of the Applicant.

[15] Further to a direction from the Court, the respondent confirmed that on February 12, 2009, the Copyright Register was erroneously amended by the registrar who believed that the Applicant's motion record was an order of the Federal Court.

[16] When the error was discovered on May 19, 2009, the information on the Copyright Register was reverted back to reflect the information found on the original copyright application. The Applicant was not aware on May 21 that another amendment had been made to the Register.

[17] Under section 57(4)(c) of the *Copyright Act*, the Federal Court can order the rectification of the Register of Copyrights.

JUDGMENT

THIS COURT ORDERS that the Registration No. 1061165 be amended to the name of the Applicant's pseudonym Lynn Michaels as of August 28, 2008, without costs.

“Michel Beaudry”

Judge

ANNEX

Copyright Act, R.S., 1985, c. C-42:

6. The term for which copyright shall subsist shall, except as otherwise expressly provided by this Act, be the life of the author, the remainder of the calendar year in which the author dies, and a period of fifty years following the end of that calendar year.

6.1 Except as provided in section 6.2, where the identity of the author of a work is unknown, copyright in the work shall subsist for whichever of the following terms ends earlier:

(a) a term consisting of the remainder of the calendar year of the first publication of the work and a period of fifty years following the end of that calendar year, and

(b) a term consisting of the remainder of the calendar year of the making of the work and a period of seventy-five years following the end of that calendar year, but where, during that term, the author's identity becomes commonly known, the term provided in section 6 applies.

14.1 (1) The author of a work has, subject to section 28.2, the right to the integrity of the work and, in connection with an act mentioned in section 3, the right, where reasonable in the circumstances, to be associated with the work as its author by name or under a pseudonym and the right to remain anonymous.

(2) Moral rights may not be assigned but may be waived in whole or in part.

6. Sauf disposition contraire expresse de la présente loi, le droit d'auteur subsiste pendant la vie de l'auteur, puis jusqu'à la fin de la cinquantième année suivant celle de son décès.

6.1 Sous réserve de l'article 6.2, lorsque l'identité de l'auteur d'une oeuvre n'est pas connue, le droit d'auteur subsiste jusqu'à celle de ces deux dates qui survient en premier :

a) soit la fin de la cinquantième année suivant celle de la première publication de l'oeuvre;

b) soit la fin de la soixante-quinzième année suivant celle de la création de l'oeuvre. Toutefois, lorsque, durant cette période, l'identité de l'auteur devient généralement connue, c'est l'article 6 qui s'applique.

14.1 (1) L'auteur d'une oeuvre a le droit, sous réserve de l'article 28.2, à l'intégrité de l'oeuvre et, à l'égard de tout acte mentionné à l'article 3, le droit, compte tenu des usages raisonnables, d'en revendiquer, même sous pseudonyme, la création, ainsi que le droit à l'anonymat.

(2) Les droits moraux sont incessibles; ils sont toutefois susceptibles de renonciation, en tout ou en partie.

(3) An assignment of copyright in a work does not by that act alone constitute a waiver of any moral rights.

(4) Where a waiver of any moral right is made in favour of an owner or a licensee of copyright, it may be invoked by any person authorized by the owner or licensee to use the work, unless there is an indication to the contrary in the waiver.

55. (1) Application for the registration of a copyright in a work may be made by or on behalf of the author of the work, the owner of the copyright in the work, an assignee of the copyright, or a person to whom an interest in the copyright has been granted by licence.

(2) An application under subsection (1) must be filed with the Copyright Office, be accompanied by the fee prescribed by or determined under the regulations, and contain the following information:

(a) the name and address of the owner of the copyright in the work;

(b) a declaration that the applicant is the author of the work, the owner of the copyright in the work, an assignee of the copyright, or a person to whom an interest in the copyright has been granted by licence;

(c) the category of the work;

(d) the title of the work;

(e) the name of the author and, if the author is dead, the date of the author's death, if known;

(f) in the case of a published work, the date and place of the first publication; and

(3) La cession du droit d'auteur n'emporte pas renonciation automatique aux droits moraux.

(4) La renonciation au bénéfice du titulaire du droit d'auteur ou du détenteur d'une licence peut, à moins d'une stipulation contraire, être invoquée par quiconque est autorisé par l'un ou l'autre à utiliser l'oeuvre.

55. (1) La demande d'enregistrement d'un droit d'auteur sur une oeuvre peut être faite par l'auteur, le titulaire ou le cessionnaire du droit d'auteur, ou le titulaire d'une licence accordant un intérêt dans ce droit, ou en leur nom.

(2) Elle doit être déposée au Bureau du droit d'auteur avec la taxe dont le montant est fixé par les règlements ou déterminé en conformité avec ceux-ci, et comporter les renseignements suivants :

a) les nom et adresse du titulaire du droit d'auteur;

b) une déclaration précisant que le demandeur est l'auteur, le titulaire ou le cessionnaire de ce droit ou le titulaire d'une licence accordant un intérêt dans celui-ci;

c) la catégorie à laquelle appartient l'oeuvre;

d) le titre de l'oeuvre;

e) le nom de l'auteur et, s'il est décédé, la date de son décès si elle est connue;

f) dans le cas d'une oeuvre publiée, la date et le lieu de la première publication;

(g) any additional information prescribed by regulation.

g) tout renseignement supplémentaire prévu par règlement.

57. (1) The Registrar of Copyrights shall register an assignment of copyright, or a licence granting an interest in a copyright, on being furnished with

57. (1) Le registraire des droits d'auteur enregistre, sur production du document original ou d'une copie certifiée conforme ou de toute autre preuve qu'il estime satisfaisante et sur paiement de la taxe dont le montant est fixé par les règlements ou déterminé conformément à ceux-ci, l'acte de cession d'un droit d'auteur ou la licence accordant un intérêt dans ce droit.

(a) the original instrument or a certified copy of it, or other evidence satisfactory to the Registrar of the assignment or licence; and

(b) the fee prescribed by or determined under the regulations.

(2) [Abrogé, 1992, ch. 1, art. 51]

(2) [Repealed, 1992, c. 1, s. 51]

(3) Any assignment of copyright, or any licence granting an interest in a copyright, shall be adjudged void against any subsequent assignee or licensee for valuable consideration without actual notice, unless the prior assignment or licence is registered in the manner prescribed by this Act before the registering of the instrument under which the subsequent assignee or licensee claims.

(3) Tout acte de cession d'un droit d'auteur ou toute licence concédant un intérêt dans un droit d'auteur doit être déclaré nul à l'encontre de tout cessionnaire du droit d'auteur ou titulaire de l'intérêt concédé qui le devient subséquent à titre onéreux sans connaissance de l'acte de cession ou licence antérieur, à moins que celui-ci n'ait été enregistré de la manière prévue par la présente loi avant l'enregistrement de l'instrument sur lequel la réclamation est fondée.

(4) The Federal Court may, on application of the Registrar of Copyrights or of any interested person, order the rectification of the Register of Copyrights by

(4) La Cour fédérale peut, sur demande du registraire des droits d'auteur ou de toute personne intéressée, ordonner la rectification d'un enregistrement de droit d'auteur effectué en vertu de la présente loi :

(a) the making of any entry wrongly omitted to be made in the Register,

a) soit en y faisant une inscription qui a été omise du registre par erreur;

(b) the expunging of any entry wrongly made in or remaining on the Register, or

b) soit en radiant une inscription qui a été faite par erreur ou est restée dans le registre par erreur;

(c) the correction of any error or defect in the

c) soit en corrigeant une erreur ou un défaut dans

Register,
and any rectification of the Register under this
subsection shall be retroactive from such date as
the Court may order.

le registre.
Pareille rectification du registre a effet rétroactif
à compter de la date que peut déterminer la
Cour.

61. Clerical errors in any instrument of record in
the Copyright Office do not invalidate the
instrument, but they may be corrected under the
authority of the Registrar of Copyrights.

61. Un document d'enregistrement n'est pas
invalide en raison d'erreurs d'écriture; elles
peuvent être corrigées sous l'autorité du
registraire des droits d'auteur.

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: T-1709-08

STYLE OF CAUSE: **NORIE LYNN JACOBS and
THE ATTORNEY GENERAL OF CANADA AND
THE REGISTRAR OF COPYRIGHTS**

PLACE OF HEARING: Toronto, Ontario

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**REASONS FOR JUDGMENT
AND JUDGMENT:** Beaudry J.

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