



COPYRIGHT

INFRINGEMENT

Application seeking declaration as to applicant's rights, respondents' breach thereof for infringement of copyright — Applicant Canada's national broadcaster — Respondents publishing advertisement during 2019 federal election period, tweets reproducing excerpts from original television segments produced by applicant — Advertisement part of respondents' political campaign — Widely disseminated in mass emailing, websites — Applicant sending five letters threatening injunctive relief if advertisement, tweets not removed — Both removed October 10, 2019 without admission of liability — Respondents taking position that, in context of quantitative, qualitative analysis, portions of applicant's works taken by them not substantive — Whether respondents' exhibiting of advertisement, tweets constituting "taking" substantial part of applicant's works — Whether respondents' actions constituting "fair dealings" — What was appropriate remedy — In *Cinar Corporation v. Robinson*, 2013 SCC 73, [2013] 3 S.C.R. 1168 (*Cinar*), Supreme Court setting approach to determining "substantial part" as "qualitative and holistic" — Test for determining substantial part should not break copied features into component parts as this "abstraction" preventing holistic assessment — Respondents not meeting qualitative aspect of test — In qualitative analysis, copied feature can reproduce "substantial part" of work if it represents substantial portion of skill, judgment expressed in underlying work — Respondents took all of copyrighted work in brief clips they used as they took all skill, judgement used to create original — While facts, information, ideas not protected by copyright, taking in present case was of applicant's style of audio-visual material — Applicant not establishing having suffered adverse impacts from respondents' use of its works — Applicant's works, Leaders' Debate all proper subject matter of copyright — Purpose of appropriation to save time, money, to create impactful political campaign, to influence voters — Appropriation of applicant's works made for allowable purpose — Applicant, in focusing inquiry on scope of "criticism", ignoring words of *Copyright Act*, R.S.C., 1985, c. C-42, s. 29 that focuses inquiry on purpose of taking, not just on type of communication or composition — Respondents' purpose to criticize ideas, actions of Prime Minister — Not merely text or composition of work that may be object of criticism but also idea set out therein — Act, s. 29.1 reference to criticism having to be read in context of review, parody or satire where fair dealing allowing for challenge to content, not just format of expression — Artificial to limit criticisms to expression of how work produced but preclude showing ideas or actions being challenged — Factors in fairness inquiry as determined in *Society of Composers, Authors and Music Publishers of Canada v. Bell Canada*, 2012 SCC 36, [2012] 2 SCR 326 weighing in favour of fairness — Respondents' use of CBC works fair on facts of case — Given Court's disposition, simple dismissal was appropriate, necessary remedy — Application dismissed.

CANADIAN BROADCASTING CORPORATION V. CONSERVATIVE PARTY OF CANADA (T-1663-19, 2021 FC 425, Phelan J., reasons for judgment dated May 13, 2021, 32 pp.)