

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Atlantic Canada Regional Council of Carpenters, Millwrights, and Allied Workers v. Maritime Environmental Training Institute Ltd.*, 2014 NSSC 64

**Date:** 20140220

**Docket:** Hfx No. 418412

**Registry:** Halifax

**Between:**

Atlantic Canada Regional Council of Carpenters, Millwrights, and Allied  
Workers and United Brotherhood of Carpenters and Joiners of America,  
Local 1588

Applicants

v.

Maritime Environmental Training Institute Limited

Respondent

**Judge:** The Honourable Justice M. Heather Robertson

**Heard:** January 17, 2014, in Halifax, Nova Scotia

**Decision:** February 20, 2014

**Counsel:** Ronald A. Pink, Q.C., and Kelsey McLaren,  
for the applicants

Tim Hill, Q.C., and Geoffrey Franklin, for the  
respondent

**Robertson, J.:**

[1] The Atlantic Canada Regional Council of Carpenters, Millwrights, and Allied Workers (“ACRC”) and United Brotherhood of Carpenters and Joiners of America, Local 1588 (“UBC”) the applicants, claim copyright infringement against Maritime Environmental Training Institute Limited (“METI”) by reason of the use and reproduction of scaffolding training manual, to which the applicants claim ownership.

[2] METI is an accredited career college registered pursuant to the *Private Career Colleges Regulation Act*, 1998, c. 23, s.1, which operates primarily in Sydney, Nova Scotia.

[3] The applicants state in their brief that the manual in question was developed when “In or around 1991, Carpenters Local 579 retained the services of a company based in the United Kingdom (“the UK company”), the actual name of the company can no longer be recalled, to develop a scaffolding manual.”

[4] Successor unions now claim ownership of the manual. Gus Doyle the Executive Secretary Treasurer of ACRC sets out in para. 6 of his affidavit:

6. The ACRC was formed on June 2, 2011, and consolidated the following regional councils of the UBC and UBC locals:
  - a) the Newfoundland and Labrador Regional Council of Carpenters, Millwrights, and Allied Workers (which included Carpenters Local 579);
  - b) the Nova Scotia and Prince Edward Island Regional Council of Carpenters, Millwrights, and Allied Workers;
  - c) the New Brunswick Regional Council of Carpenters, Millwright, and Allied Workers; and
  - d) United Brotherhood of Carpenters and Joiners of America, Local 1588.

[5] Mr. Doyle states:

7. I was on the Executive of Carpenters Local 579 in or around 1991, when it retained the services of a company based in the United Kingdom (the “UK company”), whose name I can no longer recall, to develop a scaffolding manual to train instructors to Carpenters Local 579 to, in turn, train members of the local union in the skill of scaffolding.
8. Representation of the UK company travelled to Newfoundland to meet with Carpenters Local 579 and we jointly developed the original version of the document currently labeled the UBC, Local 1588, Scaffolding Manual (the “UBC Scaffolding Manual”).
11. The UK company created the original version of the UBC Scaffolding Manual with assistance from Carpenters Local 579 and at the direction and under the control of Carpenters Local 579.
12. It as expressly agreed orally between Carpenters Local 579 and the UK company that the scaffolding manual was the property of Carpenters 579.

[6] He indicates that the document developed was subsequently given to “the Carpenter, Millwright Trades College as well as other colleges with the ACRC and UBC International, including but not limited to UBC, Local 1588.” for use as a training manual and that “Local unions often place their local union label on the first page of the UBC Scaffolding Manual (as shown in Exhibit “A”).” to his affidavit.

[7] Mr. Doyle also asserts that the manual was “revised from time to time over the years with additional information provided by UBC International and UBC local unions to meet the changing needs of the industry.”

[8] The UBC Local 1588 teamed up with various colleges to provide a scaffolding course for its members.

- 1) Nova Scotia Community College, Marconi Campus, in 2004/5;
- 2) METI from 2006-2011; (the respondent) and
- 3) Carpenter Millwright Trades College (“CMTC”) from 2011-present.

[9] Joseph Pembroke, the President of METI outlines METI's involvement with the applicants between 2006-2011, which they jointly offered a 160-hour scaffolding training programme. In 2011 the UBC Local 1588 announced to METI they were going to offer their own scaffolding programme at the Carpenter Millwright Trades College in Lower Sackville, Nova Scotia (paras. 19-38 Pembroke affidavit).

[10] He states at para 28:

In 2011, (sic) after five years of working side by side with Carpenters Local 1588, the Union advised METI that it was going to offer its own scaffolding program at CMTC. The president of Carpenters Local 1588, Gordon Jacobs, stated to me that METI was charging too much money to facilitate the program. He did not mention anything about curriculum. He did not ask METI to discontinue offering the program.

[11] Since 2011, METI has continued to offer scaffolding training through its association with Scaffolding and Access Industry Association ("SAIA") and has provided its own instructors trained in Kansas, Missouri, by SAIA to teach the course.

[12] Mr. Pembroke does not deny use of the manual from 2011 to April 2013, but says METI also revised and changed the manual. In April 2013 they fully adopted the SAIA curriculum and manuals and no longer use any materials originally provided by UBC 1588.

[13] Mr. Pembroke states that METI was not contacted by either of the applicants with any concerns prior to July 2013, when Mr. Pink wrote to METI on their behalf. This correspondence is Exhibits D, E and F of the Pembroke affidavit.

[14] ACRC and UBC Local 1588 do not claim that the UK company was employed under a contract by them, but rather that the unknown UK company was a contractor hired to create the original version of the manual with assistance from the Carpenters Local 579. They appear to be claiming joint authorship or ownership by an express oral agreement.

## LAW

[15] Under the *Copyright Act*, R.S.C. 1985 c. C-42 (the “*Act*”) copyright subsists in every original literary work.

### Conditions for subsistence of copyright

5. (1) Subject to this Act, copyright shall subsist in Canada, for the term hereinafter mentioned, in every original literary, dramatic, musical and artistic work if any one of the following is met:

(a) in the case of any work, whether published or unpublished . . . the author was, at the date of the making of the work, a citizen or subject of, or a person ordinarily resident in, a treaty country;

[16] The *Act* confers on the owner of copyright certain exclusive right, including the right of reproduction.

### Copyright in works

3. (1) For the purposes of this Act, ‘copyright’, in relation to a work, means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof . . .

[17] The applicants must satisfy the court they are the owners of the copyright.

### Ownership of copyright

13. (1) Subject to this Act, the author of a work shall be the first owner of the copyright therein.

. . .

(3) Where the author of a work was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright, . . .

[18] The affidavit of Gus Doyle, now Executive Secretary Treasurer of ACRC, purports to give evidence establishing the applicants' ownership.

[19] If ACRC and UBC Local 1588 are to be deemed the successor joint author of the manual they will need to satisfy the court of their contribution as a joint author, to this original work.

[20] Joint ownership is defined in the *Act*:

Definitions

2 . . . “work of joint authorship” means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors;

[21] The requirement of authorship are described in *Halsbury's Laws of Canada – Copyright* (LexisNexis) at HCY-9:

A joint author of a work must contribute to the creation of a work — its original expression, not merely ideas; to establish that he or she is a joint author, a person must demonstrate that he or she made a substantial or significant contribution to the work and that there was an intent that such person be a co-author, although intent to create joint authorship may not always be necessary.

[22] In *Hugues G. Richard and Laurent Carrière, Canadian Copyright Act - Annotated* (Carswell, looseleaf) at §2:4.1, the authors state:

As the contribution of a joint work must be protectable in itself, only the expression of ideas, not the ideas themselves, will give rise to a protectable interest. Thus providing sketches, ideas or supervision over copyrightable materials will not be sufficient to make one a joint author: see *Bank Training Video Systems v. First American Corp.* (1992) 21 U.S.P.Q. 2d 2013 (6<sup>th</sup> Car. 1992) at p. 27.

[23] Cased cited by the respondents *Neudorf v. Netzwerk Productions Ltd.* (1999), B.C.J. No. 2831, [2000] 3 W.W.R. 522 and *Wall v. Horn Abbott Ltd.*, 2007 NSSC 197, also set out the requirements for joint authorship that include both

originality and expression . Although it is not required that joint authors make an equal contribution, the joint author must made a substantial contribution to the expression of the ideas.

[24] In *Neudorf, supra*, the court accepted that there was an express intention of joint ownership and a desire that the book would be presented to the public as a joint work.

[25] On the issue of ownership by an express oral agreement, the failure to reduce such an agreement to writing is fatal to copyright.

#### Ownership of copyright

13(4) The owner of the copyright in any work may assign the right, either wholly or partially, and either generally or subject to limitations relating to territory, medium or sector of the market or other limitations relating to the scope of the assignment, and either for the whole term of the copyright or for any other part thereof, and may grant any interest in the right by license, but no assignment or grant is valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by the owner's duly authorized agent.

[26] I have carefully read the affidavit evidence of Gus Doyle. The applicants have failed to convince me, on the civil standard of the balance of probabilities, that the scaffolding manual was a work of joint authorship. His affidavit evidence does not establish in any manner, the applicants' contribution to the creation of this work. His affidavit consists of bare assertions as to ownership of the work. It appears to me to be a commissioned work written by the unknown UK company. I am persuaded that the UK company was the original author of the manual in whom the copyright would have vested in 1991. Clearly there was no assignment of the copyright by the UK company.

[27] In any event, the issue of infringement of copyright is almost moot as it is not ongoing. I accept Joseph Pembroke's affidavit evidence that copyright infringement could only have occurred between the spring of 2011 and April 2013, when METI was using a revised version of the manual, but then replaced it entirely with the new SAIA materials.

[28] I find that the applicants have not established that they are the owners of copyright in the UBC training materials and therefore cannot enforce that copyright.

[29] The application for enforcement of copyright is dismissed.

[30] Costs: \$750 to the respondent.

Justice M. Heather Robertson