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[Court Files](#)

[Decisions](#)

[Court Process
and Procedures](#)

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[Courts/Justice
System](#)

[FAQ](#)



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- Year
- Style of Cause
- Docket Number
- Neutral Citation

Search Decisions

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Docket: T-1655-04

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- Tax Court of Canada
- Supreme Court of Canada
- Office of the Commissioner for Federal Judicial Affairs

Citation: 2006 FC 1284

OTTAWA, ONTARIO, October 25, 2006

PRESENT: The Honourable Mr. Justice von Finckenstein

BETWEEN:

CANADIAN PRIVATE COPYING COLLECTIVE (CPCC)

Applicant

and

FUZION TECHNOLOGY CORP. and

1565385 ONTARIO INC. and MICKEY YEUNG

Respondents

REASONS FOR ORDER AND ORDER

[1] This is an application brought by the Canadian Private Copying Collective regarding Part VIII of

the *Copyright Act*, R.S. 1985, c. C-42, which established the private tariff copying regime.

[2] That regime was succinctly described by my colleague Mactavish J. in *Canadian Private Copying Collective v. Cano Tech Inc.*, [2006] FC 28 as follows:

The Private Copying Tariffs:

¶ 4 Prior to March 19, 1998, the unauthorized reproduction of musical works, performances and sound recordings (referred to collectively as “recorded music”), for private use, constituted copyright infringement.

¶ 5 Because of the difficulty in enforcing these rights, Parliament enacted Part VIII of the *Copyright Act*, which provides that the copying of recorded music for private use no longer amounts to copyright infringement.

¶ 6 At the same time, the legislation was amended to create a scheme to provide rightsholders with equitable remuneration through the imposition of a tariff or levy on manufacturers and importers of blank audio recording media sold in Canada. As the Federal Court of Appeal noted in *Canada (CPCC) v. Canadian Storage Media Alliance*, [2004] F.C.J. No. 2115, 2004 FCA 424, leave to appeal to the Supreme Court of Canada denied, [2005] S.C.C.A. No. 74, the levy was created to support creators and cultural industries, by striking a balance between the rights of creators and those of users. (at para. 51)

¶ 7 The rate of the levy is fixed each year through the certification of a Private Copying Tariff by the Copyright Board of Canada, in accordance with Part VIII of the Act. Since December of 1999, the Board has certified four tariffs determining which blank audio recording media are subject to levies, the amounts of those levies, and the terms and conditions applicable to the payment of those levies.

¶ 8 The CPCC is a non-share, non-profit corporation, whose members are collective societies holding private copying remuneration rights on behalf of rightsholders. The CPCC has been designated by the Copyright Board of Canada as the collecting body, in accordance with paragraph 83(8)(d) of the Act.

¶ 9 Levies collected by the CPCC are then distributed to eligible collective societies for redistribution to the rightsholders themselves.

¶ 10 Under the provisions of the *Copyright Act* and the Private Copying Tariffs, manufacturers and importers of blank audio recording media are obliged to track and report sales activity to the CPCC. They must also keep records from which the CPCC can readily ascertain, through an audit, the amounts payable. The Tariffs also require that manufacturers and importers pay interest on overdue amounts owed to CPCC.

Terminology

[3] In these reasons I shall refer to:

1. *Copyright Act*, R.S. 1985, c. C-42 as “the Act”;
2. The Tariff Levies to be collected by CPCC in 2003 and 2004 on the Sale in Canada of blank audio recording media as published in the Canada Gazette on Dec 13, 2003 as “the Tariffs”;
3. Blank audio recording media, as that term is used in s. 79 of the Act as “blank discs”;
4. The Canadian Private Copying Collective as “CPCC”;

5. Fuzion Technology Corp. as “Fuzion”; and

6. Micky Yeung as “Yeung”.

Background

[4] From the various affidavits filed in this matter the following facts emerge.

[5] Fuzion Technology Corp. (one of the Respondents herein) is an Ontario company incorporated in August 1997, with a registered office at 250 Steelcase Road East, Markham, Ontario (Affidavit of Laurie Gelbloom at paragraph 12).

[6] Micky Yeung (the other Respondent herein), Albert Shum and Alex Lau were the shareholders, directors and officers of Fuzion (Cross-examination of Micky Yeung at questions 111-25).

[7] Fuzion began reporting imports and sales of blank discs to CPCC in October 2002. Fuzion’s reports were signed by Yeung, as vice-president of the company (Affidavit of Laurie Gelbloom at paragraphs 18-20).

[8] CPCC, on the basis of invoices from Fuzion reflecting sales to third parties, doubted that the reports furnished by Fuzion were complete and accurate. Accordingly, in January 2003, CPCC requested an audit of Fuzion’s records (Affidavit of Laurie Gelbloom at paragraphs 23, 29).

[9] CPCC’s auditors attended at Fuzion’s premises on February 10 and 11, 2003, but were refused access to some of the company’s records. The auditors were therefore, unable to conclude whether Fuzion’s statements of account to CPCC were complete and accurate (Affidavit of Laurie Gelbloom at paragraphs 30-31).

[10] CPCC’s auditors met with Yeung on February 24, 2003, to explain what information was needed to complete the audit and followed this up with a letter to Yeung dated March 21, 2003, containing a detailed list of the information required (Affidavit of Laurie Gelbloom at paragraph 32).

[11] According to the affidavit of Yeung, when Albert Shum, the principal shareholder of Fuzion, decided to quit the business and re-establish himself in China, Yeung decided to go into business for himself (Affidavit of Micky Yeung at paragraphs 6-7).

[12] Accordingly, Yeung incorporated 1565385 Ontario Inc. It is an Ontario company having a registered office at 81 McPherson Street, Markham, Ontario, and operates under the registered business name of “FTC Computers”. 1565385 Ontario Inc. will herein after be referred to as FTC. Yeung is the company’s sole shareholder and director and is its president, secretary and treasurer (Affidavit of Micky Yeung at paragraphs 8, 12).

[13] Before the audit of Fuzion could be completed, on April 1, 2003, Fuzion transferred its entire computer stock (including blank discs) on a consignment basis to FTC. Almost all of Fuzion’s employees became employees of FTC.

FTC also adopted Fuzion's phone number, unexpired lease term of the premises at 250 Steelcase Road East, Markham until July 15, 2003. It also took over the Fuzion website and logos, merely changing the URL and the name. However, all invoices issued by FTC since April 1, 2003, displayed its own GST number rather than that of Fuzion (Affidavit of Micky Yeung at paragraphs 10, 12-13, 16-17, 20; Cross-examination of Micky Yeung at questions 126-31).

[14] Despite the transfer, blank discs were sold from the business premises at 250 Steelcase Road East and invoices were issued under the name "FTC Fuzion Technology" until about July 2003. Thereafter, the blank discs were sold under the name "FTC Computers". The invoices issued by FTC were virtually identical to those issued by Fuzion (Affidavit of Micky Yeung at paragraph 12; Exhibits LG-9, LG-10, LG-22 to the Affidavit of Laurie Gelbloom).

[15] The aim, according to Yeung's affidavit was "to allow for a seamless transition for customers and supplies" with the end effect "that when Fuzion ceased operation and FTC was operating fully, Fuzion's suppliers and customers would hopefully not even notice the transition" (Affidavit of Micky Yeung at paragraphs 10, 17).

[16] Yeung, according to his affidavit, resigned from Fuzion as a director and officer on May 31, 2003. Albert Shum sent a letter advising of Yeung's resignation as a director to the Ontario Ministry of Consumer and Business Services on June 3, 2003. However the records of the Ministry, as of September 17, 2006, still show Yeung as a director. They also have the notation 'voluntary dissolution' under the rubric 'Corporation Status' (Affidavit of Micky Yeung at paragraph 4), Exhibit (1) to this application.

[17] Fuzion, notwithstanding the sale by way of consignment to FTC continued to send sales reports (albeit marked "nil") to CPCC until January 2004. Yeung signed the sales report on behalf of Fuzion until September 2003, and Albert Shum, Fuzion's president, signed the remainder (Exhibits LG-7 to the Affidavit of Laurie Gelbloom).

[18] A request by CPCC to FTC to be allowed to complete the audit of Fuzion by auditing the books of FTC was turned down. FTC asserted that it purchased all its blank discs from Canada and was therefore not subject to the Tariffs (Affidavit of Laurie Gelbloom at paragraphs 41-42).

[19] CPCC thereupon started this application on September 10, 2004, asking for the following relief:

1. An order directing that within thirty (30) days of judgment herein the respondents Fuzion Technology Corp., 1565385 Ontario Inc. and Mr. Micky Yeung to make available to CPCC's auditors, for the purpose of audit, all of the business, accounting and financial records of Fuzion Technology Corp. and 1565385 Ontario Inc. from which CPCC's auditors can readily ascertain the amounts payable and the information required under the Private Copying Tariffs certified by the Copyright Board;
2. An order directing Fuzion Technology Corp., 1565385 Ontario Inc. and Mr. Micky Yeung to pay to CPCC, within thirty (30) days of CPCC's demand for such payment, any and all amounts of levies to which CPCC is entitled, should the audit disclose that levies due to CPCC have not been reported by Fuzion Technology Corp. or 1565385 Ontario Inc. or that they have been understated;
3. An order directing Fuzion Technology Corp., 1565385 Ontario Inc. and Mr. Micky Yeung to pay to CPCC, pursuant to the provisions of the private copying tariffs, the reasonable costs of the audit within thirty (30) days of CPCC's demand for such payment, if the audit discloses that the amounts due to it have been understated by more than 20% in either of the January and February 2000 or March and April 2000 accounting periods, or by more than 10% in any other accounting period or semester;

4. An order directing Fuzion Technology Corp., 1565385 Ontario Inc. and Mr. Micky Yeung to pay to CPCC, pursuant to the applicable Private Copying Tariffs, outstanding interest on all amounts owed to CPCC, calculated in accordance with the private copying tariffs.

(Underlining added)

Issues

[20] This application raises the following issues:

1. Is CPCC entitled to an order against Fuzion, FTC and Yeung mandating the audit of the books of Fuzion and FTC to ascertain whether levies regarding blank discs are payable by Fuzion and/or FTC?
2. Is CPCC entitled to an order against Fuzion, FTC and Yeung mandating the payment of any levies discovered to be due as a result of the audit under (1) as well as the cost of the audit and any outstanding interest on arrears of such levies?

Issue 1: With respect to Fuzion

[21] Fuzion was not represented at the hearing of this matter. In any event, the Respondents do not dispute the Applicant's right to audit the books of Fuzion. The authority for the right to audit can be found in the *Private Copying Tariff, 2003-2004*, s.9 which provides:

Accounts and Records

9. (1) Every manufacturer or importer shall keep and preserve for a period of six years, records from which CPCC can readily ascertain the amounts payable and the information required under this tariff.

(2) CPCC may audit these records at any time on reasonable notice and during normal business hours.

(3) If an audit discloses that the amounts due to CPCC have been understated by more than ten per cent in any accounting period or semester, as the case may be, the manufacturer or importer shall pay the reasonable costs of audit within 30 days of the demand for such payment.

Registres

9. (1) Le fabricant ou importateur tient et conserve pendant une période de six ans les registres permettant à la SCPCP de déterminer facilement les montants exigibles et les renseignements qui doivent être fournis en vertu du présent tarif.

(2) La SCPCP peut vérifier ces registres à tout moment durant les heures régulières de bureau et moyennant un préavis raisonnable.

(3) Si la vérification des registres révèle que les sommes à verser à la SCPCP ont été sous-estimées de plus de dix pour cent pour toute période comptable ou semestre, le fabricant ou l'importateur assume les coûts raisonnables de la vérification dans les 30 jours suivant la date à laquelle on lui en fait la demande.

[22] The authority for this court to order such an audit is found in s. 88(3) of the *Copyright Act* which states:

Order directing compliance

Ordonnance

(3) Where any obligation imposed by this Part is not complied with, the collecting body may, in addition to any other remedy available, apply to a court of competent jurisdiction for an order directing compliance with that obligation.

(3) L'organisme de perception peut, en sus de tout autre recours possible, demander à un tribunal compétent de rendre une ordonnance obligeant une personne à se conformer aux exigences de la présente partie.

Thus, there is no question that the Applicant is entitled to an order directed at Fuzion.

Issue 1: With respect to FTC

[23] Both FTC and Yeung allege that they have no ties to Fuzion. Fuzion, according to them, is a separate legal entity for which they are not responsible. The Applicant on the other hand alleges there is such a close connector between Fuzion and FTC that the court can pierce the corporate veil and make an order against FTC and Yeung (as FTC's sole shareholder).

Piercing the corporate veil

[24] The principle of separate corporate existence, generally referred to as the corporate veil, was first enunciated in the famous British case of *Salomon v. Salomon* [1897] A.C. 22. It is fundamental to modern industrial society. However it is not absolute and will be pierced in certain circumstances. In *Lockharts Ltd. v. Excalibur Holdings*, [1987] 210 A.P.R. 181, Davidson J. canvassed the history of the law regarding piercing of the veil. First, he observed in respect to English law at paragraph 25:

In England there have been signs that the firm principle of *Salomon* has been the subject of some erosion and the most often quoted comments are those of Lord Denning in ***Littlewoods Mail Order Stores Ltd. v. McGregor***, [1969] 3 All E.R. 855 at 860:

I cannot accept this argument. I decline to treat the Fork Company as a separate and independent entity. The doctrine laid down in ***Salomon v. Salomon & Co., Ltd.*** (7) has to be watched very carefully. It has often been supposed to cast a veil over the personality of a limited company through which the courts cannot see. But that is not true. The courts can and often do draw aside the veil. They can, and often do, pull off the mask. They look to see what really lies behind. ... I think that we should look at the Fork Company and see it as it really is - the wholly-owned subsidiary of the taxpayers. It is the creature, the puppet, of the taxpayers in point of fact; and it should be so regarded in point of law.

....

[25] He then canvassed Canadian law and arrived at the following conclusion at paragraph 33:

The Saskatchewan Court of Appeal in ***Nedco v. Clark et al.***, [1974] (1973) 43 D.L.R. (3d) 714 referred to ***Toronto v. Famous Players Canadian Corp.***, [1936] 2 D.L.R. 129 as an illustration of how the Supreme Court of Canada has recognized "the right to pierce the corporate veil for a specific purpose". After

reviewing a number of authorities, Chief Justice Culliton concluded at p. 721:

... while the principle laid down in *A Salomon v. Salomon & Co., Ltd.*, supra, is and continues to be a fundamental feature of Canadian law, there are instances in which the Court can and should lift the corporate veil, but whether it does so depends upon the facts in each particular case. Moreover, the fact that the Court does lift the corporate veil for a specific purpose in no way destroys the recognition of the corporation as an independent and autonomous entity for all other purposes.

The recognition of the right by the Supreme Court of Canada is even more apparent since the dicta of Madam Justice Wilson in **Constitution Insurance Co. Of Canada v. Kosmopoulos et al.** (1987), 34 D.L.R. (4th) 208 at 213-4:

The law on when a court may disregard this principle (Salomon) by "lifting the corporate veil" and regarding the company as a mere "agent" or "puppet" of its controlling shareholder or parent corporation follows no consistent principle. The best that can be said is that the "separate entities" principle is not enforced when it would yield a result "too flagrantly opposed to justice, convenience or the interest of the Revenue": L.C.B. Gower, *Modern Company Law*, 4th ed. (1979), at p. 112. I have no doubt that theoretically the veil could be lifted in this case to do justice, as was done in *American Indemnity v. Southern Missionary College*, supra, cited by the Court of Appeal of Ontario. But a number of factors lead me to think it would be unwise to do so.

There is a persuasive argument that "those who have chosen the benefits of incorporation must bear the corresponding burdens, so that if the veil is to be lifted at all that should only be done in the interests of third parties who would otherwise suffer as a result of that choice"....

Her Ladyship went on to point out that in the case before her, ignoring the corporate entity would be of benefit to the shareholder who chose to incorporate the company and secure the benefits of that incorporation. In the case before me lifting the veil benefits the innocent third party.

What can be drawn from the foregoing authorities? In my assessment, the fundamental principle enunciated in the Salomon case remains good law in Canada and "One Man Corporations" should be considered as separate entities from their major shareholder save for certain exceptional cases. A judge should not "lift the veil" simply because he believes it would be in the interest of "fairness" or of "justice". If that was the test the veil in the Salomon case would have been lifted. On the other hand the courts have the power, indeed the duty, to look behind the corporate structure and to ignore it if it is being used for fraudulent or improper purposes or as a "puppet" to the detriment of a third party.

(Underlining added.)

[26] Upon examination of the facts in this case the following pertinent facts come into focus:

1. By Yeung's own statement "the desire was that when Fuzion ceased operation and FTC was operating fully, Fuzion's suppliers and customers would hopefully not even notice the transition". Thus there was a deliberate move to assume the mantle of Fuzion;
2. FTC acquired the goodwill of Fuzion (customer lists, use of name, website, logos, phone and fax numbers) from Fuzion. There is no evidence that any payment was made for this goodwill;
3. FTC was allowed to use the premises of Fuzion for three months. There is no evidence that any payment was rendered for the use of these premises;

4. Yeung was a director, officer and shareholder of both corporations concurrently for at least two months;
5. Yeung continued to sign on behalf of Fuzion, the levy reports filed with CPCC until September 30, 2003;
6. FTC bought Fuzion's entire stock of computer goods (including blank disks) on April 1, 2003, for \$638,919.30 on consignment. However, no evidence was provided that any payment was ever made by FTC to Fuzion under this sale by way of consignment; and
7. Yeung in his affidavit makes references to sales of blank disks (which he styles CD-R-1 to CD-R-5) and provides invoices for them. Clearly, therefore, either FTC or Yeung has or can have access to the records of Fuzion.

[27] This evidence shows that FTC, directed by Yeung, took over the business of Fuzion. It did so in a deliberately obscure way so that customers would not notice the change in ownership. A situation was deliberately created to blur the boundaries between Fuzion and FTC. There may have been legitimate business reasons for so doing. There is also no evidence that this was done to defraud creditors. However, that being said, one cannot help but come to the conclusion that the effect of the actions of FTC and Yeung is to defeat the legitimate statutorily authorized aims of CPCC to audit the books of a vendor of blank disc who may be subject to levies. It thus, amounts to an 'improper purpose' in the sense enunciated by Davidson J. in *Lockharts, supra*.

[28] Given that FTC deliberately assumed the mantle of Fuzion and took physical control of the computer stock of Fuzion, it must now assume responsibility and account for the computer stock that was sold on a consignment basis.

[29] I am prepared to pierce the corporate veil to the extent of allowing CPCC to audit the books of FTC to ascertain whether any of the blank disks sold by FTC are subject to levy under Part VIII of the *Copyright Act*.

Issue 1: With respect to Yeung

[30] For an order directing Fuzion and FTC to submit to an audit to be effective, an order must also be directed at Yeung. Yeung, as the sole shareholder, officer and director of FTC, and in light of his overlapping capacity as director, officer and shareholder of Fuzion, he has the best knowledge as to how the records of Fuzion and FTC were handled and kept. His affidavit demonstrates that he had possession of or access to pertinent records of Fuzion, and as director and officer of FTC, he has access to FTC's records as well. As he was principally involved in this deliberate blurring of the boundary between Fuzion and FTC, which helped frustrate the auditing activities of CPCC, the order has to include Yeung to ensure his absolute cooperation.

Consignment issue

[31] However there is another reason why the audit should be ordered. According to the affidavit of Yeung:

“On April 1, 2003, FTC purchased from Fuzion, on consignment all of their leftover computer stock, which had a cost of about \$597,120.84”.

(Affidavit of Micky Yeung at paragraph 20)

[32] The contract was marked 'consignment' and according to Yeung, the arrangement worked as follows:

The agreement between FTC and Fuzion with respect to the consignment purchase was that FTC would attempt to sell the items, and at each month end, would advise Fuzion how much was sold. Fuzion would then invoice FTC for the prices agreed to in the April 1, 2003, invoice. Copies of Fuzion's invoices for the months of April 2003 through April 2004 are attached to this affidavit as Exhibit "H".

(Affidavit of Micky Yeung at paragraph 21)

[33] The law of consignment is very clear. As Saunders J. stated in *Stephanian's Persian Carpets Ltd. (Re)*, [1980] O.J. No. 156:

5 In its simplest terms, a consignment is the sending of goods to another. An arrangement whereby an owner sends goods to another on the understanding that such other will sell the goods to a third party and remit the proceeds to the owner after deducting his compensation for effecting the sale is an example of a consignment agreement.

A consignment does not transfer title to the consignee. As Brian Colburn noted in his article entitled "*Consignment Sales and the Personal Property Security Act*", (1981-82) 6 Can. Bus. Law J. 40 at 40:

Consignments are transactions in which a consignor physically delivers goods to a consignee (who normally is a retailer of goods of that type) for sale or lease by the consignee on the basis of principal and agent. The consignee acts as the consignee's agent in selling or leasing the goods, and receives the proceeds of sale or lease in trust for the consignor. Title to the goods remains with the consignor. On resale by the consignee, title passes directly to the retail purchaser from the consignor through the agency of the consignee.

[34] Given the fact that the bill of sale between Fuzion and FTC was marked "consignment" and given Yeung's description of how the consignment was implemented, in my mind, there is no doubt that this was a simple consignment that fits the above mentioned definition. Thus, although FTC held the goods, the title still remained with Fuzion. In addition, I also note that no evidence of payment from FTC to Fuzion for the computer goods was provided.

[35] Section 82(1) of the Act provides:

82. (1) Every person who, for the purpose of trade, manufactures a blank audio recording medium in Canada or imports a blank audio recording medium into Canada

(a) is liable, subject to subsection (2) and section 86, to pay a levy to the collecting body on selling or otherwise disposing of those blank audio recording media in Canada; and

(b) shall, in accordance with subsection 83(8), keep statements of account of the activities referred to in paragraph (a), as well as of exports of those blank audio recording media, and shall furnish those statements to the collecting body.

82. (1) Quiconque fabrique au Canada ou y importe des supports audio vierges à des fins commerciales est tenu :

(a) sous réserve du paragraphe (2) et de l'article 86, de payer à l'organisme de perception une redevance sur la vente ou toute autre forme d'aliénation de ces supports au Canada;

(b) d'établir, conformément au paragraphe 83(8), des états de compte relatifs aux activités visées à l'alinéa a) et aux activités d'exportation de ces supports, et de les communiquer à

(Underlining added)

[36] Giving property to a consignee for the purpose of selling does not amount to sale or disposition. For there to be a sale or disposition there has to be some form of transfer of title. Lest there be any doubt as to the term "disposition", I merely need to refer to *Tennant v. Canada (Minister of National Revenue - M.N.R.)*, [1993] F.C.J. No 25, where Teitelbaum J. said:

The word "disposition" is defined in Black's Law Dictionary as follows:

Disposition. Act of disposing; transferring to the care or possession of another. The parting with, alienation of, or giving up property.

This definition appears to suggest that where a person is said to have "disposed" of property, then that person has not only formulated the intention of giving up the property but he has, in fact, alienated the property to the point where he no longer retains a legal interest in it.

[37] In a consignment as noted above, the title stays with the consignor (see *Access Cash International Inc. v Elliot Lake and North Shore Corp. for Business Development*, [2000] O.J. No. 3012). Thus, FTC cannot advance the argument that no levy was eligible by virtue of the consignment.

[38] Accordingly, in my view, the consignment alone constitutes sufficient grounds to order an audit of the books of FTC. Since the computer stock was in its possession and since it sold such stock, it must have the records regarding such stock. The records will show whether or not the sales will attract levies.

Conclusion Re Issue 1

[39] Consequently an order, as requested, will issue against Fuzion, FTC and Yeung.

Issue 2: Payment, Cost of Audit, Interest on Arrears

[40] With respect to the Applicant's request for an order regarding payment of levies, the cost of the levy and interest on levies outstanding, I am of the view that such an order would be premature.

[41] The legislation addresses the collection issue. First, it provides that a person manufacturing or importing blank audio recording medium must pay a levy (s. 82(1)). Second, it provides for the designation of a collecting body (s. 83). Third, it allows the designated collecting body to sue for unpaid levies (s. 88). Additionally, it empowers the court to award penalties in appropriate cases (s. 88). However, unlike other statutes that deal with statutorily imposed charges such as taxes or duties (see for instance the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) s. 222) there is no provision for an assessment or a provision that the amount assessed is due upon receipt of the notice of assessment. Any collection of levy due under part VII of the Act must therefore, rely on the applicable principles of debtor-creditor law. Without the debt being established, I am not prepared to order payment thereof, let alone the cost of the audit or arrears of interest.

Conclusion Re Issue 2

[42] The Applicant will obtain its order mandating the audit. Once the audit is complete and if payment of levies is found to be due and no payment is made or no suitable arrangement is arrived at between the parties, the Applicant is free to come back to this court to ask for such an order. Such application may be supported by evidence obtained as a result of the audit evidencing the outstanding levy debt, interest thereon and the cost of the audit. I shall remain seized of this matter and such application, if required, will be heard at the earliest possible date.

-
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ORDER
-

THIS COURT ORDERS that:

1. Within thirty (30) days of this order the Respondents, Fuzion Technology Corp., 1565385 Ontario Inc. and Mr. Micky Yeung, shall make available to the Applicant's auditors, for the purpose of an audit, all of the business, accounting and financial records of Fuzion Technology Corp. and 1565385 Ontario Inc., from which the Applicant's auditors can readily ascertain:
 - i. the amounts payable, and
 - ii. the information required,under the Private Copying Tariffs certified by the Copyright Board;
2. If the audit reveals any amounts payable and demand therefore is made by the Applicant and no payment is made by the Respondents within 30 days of such demand, the Applicant may bring this matter back before this court on 10 days notice;
3. Any renewed application under paragraph 2 above, may be accompanied by affidavit evidence, based on the results of the audit, demonstrating the outstanding levy debt, interest due thereon and the cost of the audit;
4. I shall remain seized of this matter and will hear, if necessary, the renewed application referred to in paragraph 2 above; and
5. The Applicant shall have their costs in this matter from the Respondents.

"Konrad W. von Finckenstein"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: T-1655-04

STYLE OF CAUSE: Canadian Private Copying Collective v. Fuzion Technology Corp. et al

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: October 18, 2006

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AND ORDER: von Finckenstein J.

DATED: October 25, 2006

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Top of Page

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