

Copyright Board
Canada



Commission du droit d'auteur
Canada

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Citation FILES: Public Performance of Musical Works 1997, 1998, 1999, 2000, 2001, 2002, 2003

Regime Public Performance of Musical Works
Copyright Act, section 68(3)

Members Mr. Justice John H. Gomery
Mrs. Adrian Burns
Mr. Andrew E. Fenus

Statement of Royalties to be collected for the performance or communication by telecommunication, in Canada, of musical or dramatico-musical works in 1997, 1998, 1999, 2000, 2001, 2002 and 2003

Reasons for decision

Pursuant to paragraph 67.1(1) of the *Copyright Act*, the Society of Composers, Authors and Music Publishers of Canada (SOCAN) filed with the Board statements of proposed royalties for the public performance, or the communication to the public by telecommunication, in Canada, of musical or dramatico-musical works for the years 1997, 1998, 1999, 2000, 2001, 2002 and 2003.

These statements were published in the *Canada Gazette* on October 19, 1996, October 18, 1997 and June 13, 1998. At the same time, the Board notified prospective users and their representatives of their right to file objections to the proposed tariffs within the required period of time.

Hereafter are the reasons for the following undisputed tariffs:

For the years 1997 and 1998

Tariff 8 (Receptions, Conventions, etc.);

Tariff 10 (Parks, Streets and Other Public Areas).

For the year 1998

Tariff 3.A (Cabarets, Cafes, Clubs, etc. – Live Music);

Tariff 3.B (Cabarets, Cafes, Clubs, etc. – Recorded Music Accompanying Live Entertainment);

Tariff 5.A (Exhibitions and Fairs);

Tariff 7 (Skating Rinks);

Tariff 13 (Public Conveyances);

Tariff 15.A (Background Music).

For the years 1998 and 1999

Tariff 1.A (Commercial Radio);

Tariff 1.B (Non-Commercial Radio);

Tariff 2.B (TVOntario);

Tariff 3.C (Adult Entertainment Clubs);

Tariff 11 (Circuses, Ice Shows, Firework Displays, Sound and Light Shows and Similar Events; Comedy Shows and Magic Shows);

Tariff 12.A (Theme Parks, Ontario Place Corporation and Similar Establishments);

Tariff 14 (Performance of an Individual Work);

Tariff 15.B (Telephone Music on Hold);

Tariff 21 (Recreational Facilities Operated by a Municipality, School, College or University).

For the years 1998 to 2002

Tariff 4.B.2 (Classical Music Concerts – Annual Licence for Orchestras).

For the year 1999

Tariff 13.B (Public Conveyances – Passenger Ships);

Tariff 13.C (Public Conveyances – Railroad Trains, Buses and Other Public Conveyances, Excluding Aircraft and Passenger Ships).

For the years 1999 to 2003

Tariff 6 (Motion Picture Theatres).

Objections to Tariff 1.A (Commercial Radio) proposed for the years 1998 and 1999 were filed by the Canadian Association of Broadcasters (CAB) and Shaw Radio Ltd. On June 9, 1998, SOCAN filed with the Board a five-year agreement made between it and CAB on May 20, 1998.

The agreement covers the years 1998 to 2002, however the parties have asked the Board to certify the tariff for the years 1998 and 1999 only, in the form and content as certified by the Board for the years 1995 to 1997. The agreement states that SOCAN will annually file Tariff 1.A for the remaining years of the agreement and that CAB will not object to them. In light of this agreement, Shaw Radio Ltd., in letters to the Board dated February 18 and October 28, 1998, withdrew its objections. Consequently, the Board certifies Tariff 1.A for the years 1998 and 1999 in accordance with the terms and conditions of the agreement.

Stardust on Duke ("Stardust") filed an objection to Tariff 3.A (Cabarets, Cafes, Clubs, etc. – Live Music) for 1998, Tariff 3.B (Cabarets, Cafes, Clubs, etc. – Recorded Music Accompanying Live Entertainment) for 1998 and Tariff 4.B (Classical Music Concerts) for 1998 to 2002. In letters dated January 21 and March 1, 1999, after numerous telephone calls to Stardust, the Board asked it to state the reasons in support of its objection. Stardust failed to answer within the required period of time. In a notice dated March 17, 1999, the Board concluded that Stardust's objection was deemed to have been abandoned. Tariffs 3.A and 3.B are consequently certified as filed for the year 1998 and are identical to the ones previously certified by the Board.

On September 25, 1997, a five-year agreement covering the years 1998 to 2002 was made between SOCAN and the Association of Canadian Orchestras on Tariff 4.B.2 (Classical Music Concerts – Annual Licence for Orchestras). Consequently, it is certified according to the terms and conditions of the agreement which reflects the tariff proposed by SOCAN for the years 1998 to 2002 and published in the *Canada Gazette* on October 18, 1997.

All of the other tariffs certified herein have either not been disputed and if they were, objections were withdrawn. They are identical to those previously certified, with the exception of Tariff 3.C (Adult Entertainment Clubs) for 1999 where the mention "*seating and standing capacity*" has been added; Tariff 11.A which also covers firework displays, sound and light shows and similar events since 1998 in addition to circuses and ice shows; and Tariff 6 (Motion Picture Theatres) where the rates per seat per annum and the minimum fees have increased. Consequently, the Board certifies them as filed.

Multiple Licensing and Related Issues

In the Fall of 1998, the Board initiated an examination process of various tariffs which have preoccupied it for many years and which raised many complaints or objections, particularly by the Canadian Restaurant and Foodservices Association, the Hotel Association of Canada and, more recently, by several small rural communities of Alberta now represented by the Alberta Association of Agricultural Societies (AAAS). The tariffs at issue are:

Tariff 3.A (Cabarets, Cafes, Clubs, etc. – Live Music);

Tariff 3.B (Cabarets, Cafes, Clubs, etc. – Recorded Music Accompanying Live Entertainment);

Tariff 5.A (Fairs and Exhibitions);

Tariff 7 (Skating Rinks);

Tariff 8 (Receptions, Conventions, etc.);

Tariff 9 (Sports Events);

Tariff 10 (Parks, Streets and Other Public Areas);

Tariff 15.A (Background Music);

Tariff 18 (Recorded Music for Dancing);

Tariff 19 (Fitness Activities; Dance Instruction);

Tariff 20 (Karaoke Bars and Similar Establishments).

In general, the first two Associations raise the administrative burden and the unfairness of having to pay under separate tariffs (i.e. 3.A, 3.B, 8, 15.A, 18 and 20) for music being performed in the same place. As for AAAS, its major concerns, amongst others, are the impact of charging minimum fees to small communities as well as the different tariff rates which disregard low assistance to activities in smaller communities and the unfairness of imposing the same fees for music use where the attendance is much lower in smaller communities. In addition, AAAS raises the fact that the use of music in Tariff 8 for receptions and conventions allows for a fixed rate per event, notwithstanding the number of events per year or the number of participants to each of these events.

In a letter dated July 23, 1999, SOCAN sent a report to the Board updating it on the status of the issues and the “productive” discussions being held with AAAS. The tariffs listed above will therefore be the subject of a later decision. However, given the administrative difficulties that would be involved for SOCAN, the Board sees no point in going back further in time. Therefore, examination and eventual certification will start with the year 1999, with the exception of Tariffs 9 and 20 which cover the years 1998 to 2000 and Tariff 18 which covers the years 1998 to 2002.

Other tariffs have not been disputed but have been addressed by the Board to SOCAN, either because they are new (i.e. Tariff 13.A.3 [Public Conveyances – Music as Part of Audio Visual Presentations] for 1999 and Tariff 23 [Hotel and Motel Room Services Not Covered by Tariff 17.A or 17.B] for 1999), or reflect substantial rate increases (i.e. Tariff 18 for the years 1998 to 2002 and Tariff 20 for the years 1998 to 2000) which users had not been informed of other than by publication in the *Canada Gazette*. In a letter dated July 9, 1999, SOCAN provided the Board with information on these tariffs. The Board will see if they can be certified later in light of the information received.

Other Tariffs

In addition to the tariffs mentioned earlier, the following tariffs have been objected to. They are being examined by the Board and will also be the subject of later decisions:

Tariff 2.A (Commercial Television Stations) for 1998 and 1999;

Tariff 2.C (Télé-Québec) for 1998 and 1999;

Tariff 2.E (CTV Network) for 1999;

Tariff 4.A (Popular Music Concerts) for 1998 to 2002;

Tariff 4.B.1 (Classical Music Concerts – Per Concert Licence) for 1998 to 2002;

Tariff 4.B.3 (Classical Music Concerts – Annual Licence for Presenting Organizations) for 1998 to 2002;

Tariff 5.B (Exhibitions and Fairs – Concerts) for 1998 to 2002;

Tariff 12.B (Paramount Canada's Wonderland) for 1998 and 1999;

Tariff 16 (Background Music Suppliers) for 1998 and 1999;

Tariff 17.A (Transmission of Pay, Specialty and Other Cable Services – Television) for 1996, 1997, 1998 and 1999;

Tariff 17.B (Transmission of Pay, Specialty and Other Cable Services – Radio) for 1997, 1998 and 1999;

Tariff 22 (Transmission of Musical Works to Subscribers via a Telecommunications Services Not Covered under Tariff Nos. 16 or 17) for 1996, 1997 and 1998.



Claude Majeau
Secretary to the Board