

Federal Court



Cour fédérale

**Date: 20090727**

**Docket: T-1168-08**

**Citation: 2009 FC 769**

**Vancouver, British Columbia, July 27, 2009**

**PRESENT: The Honourable Mr. Justice Hughes**

**BETWEEN:**

**MICHAEL J. CULHANE**

**Plaintiff**

**and**

**PHILIP ANDREW CROUCHER d.b.a  
ELECTROCUTION TECHNICAL PUBLISHERS,  
BLITZPRINT INC., KEVIN LANUKE, PETER FRIEBEL,  
KIM MCNAIR, GWEN GADES, HAMMOND AVIATION LIMITED,  
RICK HAMMOND, SANDRA HAMMOND, DEREK HAMMOND,  
AVIATION WORLD CANADA INC., d.b.a. AVIATION WORLD and  
AERO TRAINING PRODUCTS A DIVISION OF AVIATION WORLD,  
LEONARD G. NEATH, GARY NEATH, STEPHEN NEATH**

**Defendants**

**REASONS FOR ORDER AND ORDER**

[1] This is a motion brought on behalf of all Defendants except Blitzprint Inc., Kevin Lanuke, Peter Friebel, Kim McNair and Gwen Gades to strike out the Statement of Claim and for a vast amount by way of costs.

[2] This motion raises concerns, first that the Plaintiff, who is also a lawyer representing himself, has prepared a bare bones Statement of Claim raising unsubstantiated allegations, and second, that the moving party Defendants' lawyers have overreacted and brought a heavy-handed motion to strike without first attempting to resolve the matter with the Plaintiff. As a result, I will allow the motion to strike with leave to file an amended Statement of Claim within 30 days with costs payable to the moving party Defendants fixed in the sum of \$500. I will not make the costs payable forthwith. The reason for fixing costs and treating them in this manner is because the moving party Defendants' lawyers did not make reasonable efforts or any efforts to resolve the matter beforehand. Counsel have a duty to the Court and the profession to do so.

[3] The Statement of Claim as presently drafted is not so deficient as to be struck out without leave, the bare elements of a cause of action are made out, however, much needs improvement including:

- copyright arises when the author is a Canadian citizen or citizen of certain other countries and, when the work is published, it is first published in Canada or certain other countries, this must be pleaded;
- copyright endures for the lifetime of the author plus 50 years, if the author is living this must be pleaded, if deceased then the year of death must be pleaded;
- infringement occurs where a substantial portion or portions of a work have been copied, those portions must be identified;

- if directors or officers of a corporation are named as defendants by reason of their status, the pleadings must set out how, beyond their normal activities as directors or officers, they are implicated in infringement.
- if secondary infringement (section 27(2) of the *Copyright Act*) is pleaded, facts establishing knowledge or a basis for “ought to have known” such as notice or a letter or otherwise, must be pleaded.
- premature or exemplary damages cannot simply be claimed, the basis for such a claim must be pleaded.

[4] In this present case, the Statement of Claim is deficient and must be amended.

**ORDER**

For the reasons above,

**THIS COURT ORDERS that:**

1. The Statement of Claim filed July 25, 2008, is struck out with leave to amend provided that such Amended Statement of Claim is filed within 30 days from the date of this Order;
2. The moving party Defendants are entitled to costs fixed in the sum of \$500.

“Roger T. Hughes”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-1168-08

**STYLE OF CAUSE:** MICHAEL J. CULHANE v. PHILIP ANDREW  
CROUCHER et al.

**PLACE OF HEARING:** Vancouver, BC

**DATE OF HEARING:** July 27, 2009 (by videoconference)

**REASONS FOR ORDER  
AND ORDER:** HUGHES J.

**DATED:** July 27, 2009

**APPEARANCES:**

Mr. Michael J. Culhane FOR THE PLAINTIFF  
(On his own behalf)

Ms. Mala Joshi FOR THE DEFENDANTS

**SOLICITORS OF RECORD:**

Michael J. Culhane FOR THE PLAINTIFF  
Richmond, BC (On his own behalf)

Ridout & Maybee LLP FOR THE DEFENDANTS  
Toronto, ON