



THE CANADIAN
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May 27, 2019

Via email: kahlil.cappuccino@canada.ca; martin.simard@canada.ca

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Innovation, Science, and Economic Development Canada
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Department of Canadian Heritage
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Dear Mr. Simard and Mr. Cappuccino:

Re: Regulations Establishing Time Limits in Relation to Matters Before the Copyright Board

I write on behalf of the Canadian Bar Association Intellectual Property Section (CBA Section) to comment on the draft Regulations Establishing Time Limits in Relation to Matters Before the Copyright Board (the Regulations)¹.

The CBA is a national association of 36,000 lawyers, Québec notaries, law teachers and students, with a mandate to promote improvements in the law and the administration of justice. The CBA Section deals with law and practice relating to all forms of ownership, licensing, transfer and protection of intellectual property and related property rights, including patents, trademarks and copyright.

The CBA Section agrees that many of the proposed changes in the draft Regulations will improve certainty, clarity and predictability of Copyright Board proceedings. However, we recommend that the meaning of “conclusion” of a hearing be clarified.

¹ Canada Gazette, Part 1, Volume 153, Number 17: [Regulations Establishing Time Limits in Relation to Matters Before the Copyright Board](#)

The draft Regulations provide, among other things, that the Copyright Board must decide on the approval of a proposed tariff, where oral or written hearings have been held, within 12 months “after the conclusion of those hearings.”²

The intent of the Regulations is to give parties who appear before the Board more certainty about timelines, especially about when the Board will render its decision. We support this initiative, as there has been little certainty in the past. In particular, hearings on tariffs often take many years. However, the wording to define when a hearing has concluded must be clarified to give that certainty.

The Regulatory Impact Analysis Statement accompanying the draft Regulations³ states:

a hearing of the matter would constitute the final submissions of every party’s arguments or evidence in support of the party’s position on the substance of the matter — submitted either at a party’s own initiative ***or in response to a query by the Board...*** [emphasis added]

If this comment reflects the federal government’s intention, it is problematic. Our members report that the Board has, on its own initiative, sent follow-up questions months or even a year after hearing the parties’ formal submissions. The timeline may be extended by an additional twelve months, on the eve of the anticipated Board decision, simply by the Board sending a question to the parties.

The Supreme Court of Canada in *Hryniak v. Mauldin*⁴ expressed the view that an administrative tribunal should offer a more specialized and streamlined procedure than a court of law. The Regulations reflect that decision by clarifying timelines. Yet a clear and predictable procedure is not achievable without clarity on when a hearing is concluded.

We recommend that the timeline for rendering a decision (whether within 12 months or another appropriate period mandated by the Regulations) start when the hearing concludes, being (i) in the case of a written hearing, the deadline for final written submissions; and (ii) in the case of an oral hearing, on the last date of the oral hearing before the Board. A hearing should not be continued if the Board submits further questions or queries to the parties. Rather, the Board should be required to submit its questions within the time limit for making its decision (or can extend the deadline in exceptional circumstances). If the intent of the Regulations is predictability, the timeline should run from the deadline for written submissions or the end of the oral hearing, as the case may be.

The CBA Section appreciates the opportunity to comment on the proposed Regulations. Please let us know if you have any questions regarding our recommendation.

Yours truly,

(original letter signed by Sarah MacKenzie for James G. Kosa)

James G. Kosa
Chair, Intellectual Property Section

² Section 2(a) of the Regulations, supra 1.

³ Supra 1

⁴ *Hryniak v. Mauldin*, [2014] 1 S.C.R. 87