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PRACTICE

Motion by third party Rio Tinto Alcan Inc. (Rio Tinto) seeking to examine for discovery engineer employed by GE Hydro France, French affiliate of plaintiff, in copyright infringement action — Plaintiff's claim asserting ownership of copyright in manufacturing drawings related to piece of equipment known as "butterfly valve" — Plaintiff claiming defendant infringed copyright in those drawings in context of defendant's work on refurbishment of Rio Tinto's hydroelectric power plant — Stated that authors of drawings were Cyril Chatron, three other employees — Parties conducted examinations for discovery of adverse parties — In parallel, Rio Tinto also requested opportunity to examine GE Hydro France pursuant to *Federal Courts Rules*, SOR/98-106, r. 237(4) as assignor of copyright in which plaintiff claiming ownership — Rio Tinto suggested Mr. Chatron would be suitable representative of GE Hydro France — Plaintiff refused, leading to this motion — Whether Rio Tinto having right to examine Mr. Chatron as assignor pursuant to r. 237(4) — If not, whether leave should be granted to examine Mr. Chatron pursuant to r. 238 — Mr. Chatron not an assignor of copyright asserted by plaintiff in action since he was never an owner of Canadian copyright in works at issue — Rio Tinto having no right to examine him under r. 237(4) — By operation of *Copyright Act*, R.S.C., 1985, c. C-42, ss. 13(1),(3) author of work is generally first owner of copyright in work — However, where author created work in course of employment, their employer is first owner of work, absent agreement to contrary — No dispute that Mr. Chatron was employed by GE Hydro France, that his authorship of works at issue was done in course of his employment by GE Hydro France — Mr. Chatron signed agreements with GE Hydro France in connection with his employment, one of which addresses intellectual property rights, confidential information — *Copyright Act*, s. 13 applying to determine first ownership of works in question, despite their being authored in France by French national — No requirement in *Copyright Act* that copyright in work be recognized in its country of origin — Text, context, purpose of s. 13(1) indicating that Parliament intended first ownership rule to apply to all works, regardless of where they were authored — This interpretation of s. 13(1) inherently ousting application of any common law conflicts of laws rules that might otherwise prevail — Nothing in text or context of s. 13(3) suggesting that it is limited to employment relationships governed by Canadian law, to those with Canadian employer or employee, or to works created in Canada — Language chosen by Parliament effectively making legislative choice that first ownership of copyright protected in Canada will be governed by Canadian law, regardless of any resulting differences with laws of other jurisdictions — This conclusion also supported to some degree by French approach to ownership of foreign works — GE Hydro France therefore first owner of Canadian copyright in those works, absent "agreement to the contrary" — Simple fact that Mr. Chatron assigned his copyright to GE Hydro France not constituting implicit agreement between parties that Mr. Chatron would be first owner of copyright in Canada despite s. 13(3) — Mr. Chatron, GE Hydro France did not enter into an agreement to the contrary" so as to oust application of s. 13(3) — Conditions for granting leave to examine Mr. Chatron as third party under r. 238 not met — Motion dismissed.

GE RENEWABLE ENERGY CANADA INC. V. CANMEC INDUSTRIAL INC. (T-1471-21, 2024 FC 322, McHaffie J., reasons for order dated February 28, 2024, 26 pp.)