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Appeal from Federal Court decision (2023 FC 749) in copyright infringement action finding appellant's claim barred by limitation period; that respondent's activities fell within *Copyright Act*, R.S.C., 1985, c. C-42, s. 64(2) to avoid finding of infringement of moral rights infringement — Appeal concerned scope of defence provided by Act, s. 64(2) against allegations of infringement of copyright, moral rights — Matter in present case involved **Poppy Dalmation Puppy** (Poppy Puppy), plush toy created by appellant in 1998, representing Dalmatian dog whose spots appear as poppies — Poppy Puppy is object of industrial design, copyright registrations in Canada — Industrial design registration expired in 2013 — Appellant also obtained design patent, copyright registration in United States in relation to Poppy Puppy — In 2003, appellant sold 150 000 units of Poppy Puppy (in two sizes) to respondent — Respondent is organization that advocates for veterans and their dependents, and sells "Poppy", "Legion" branded items through its Legion Supply Catalogue and its website — Respondent made no purchases of Poppy Puppy from appellant after 2003 — Many years later, in 2020, appellant became aware that Poppy Puppy was still being advertised in respondent's Supply Catalogue — Federal Court found that advertising statement in question appeared in respondent's Supply Catalogue from 2004 until 2021 — In 2021, appellant commenced action against respondent in Federal Court claiming infringement of copyright, moral rights in Poppy Puppy — In support of his claim, appellant alleged in particular that respondent had switched to alternative supplier for Poppy Puppy but Federal Court found that there was no evidence to support this allegation; determined that appellant barred by limitation period — Accordingly, appellant did not pursue copyright infringement claim in present appeal — Appellant argued that statement in respondent's Supply Catalogue was false claim of authorship of Poppy Puppy; that statement infringed his right to be associated with his work as its author or to remain anonymous as contemplated in Act, s. 14.1(1) — Federal Court found it unnecessary to decide question of moral rights infringement because it found that any acts by respondent that might otherwise have constituted infringement fell within Act, s. 64(2); hence avoided infringement — Despite this finding, Federal Court was clearly concerned that statement in question problematic — Whether Federal Court erred in finding that respondent's activities fell within s. 64(2) to avoid finding of infringement of moral rights — Federal Court provided little analysis to support its conclusion that s. 64(2) applied — Its analysis in this regard focused mainly on whether exception in s. 64(3) applied to deny respondent benefit of s. 64(2); concluded that s. 64(3) did not apply — Appellant argued that Federal Court should have found that s. 64(3) applied to deny respondent benefit of s. 64(2) — Federal Court's identification of Poppy Puppy as whole as being object of appellant's copyright was finding of mixed fact and law without extricable question of law — Accordingly, conclusion of Federal Court deferred to since not making error that was both palpable, overriding — Appellant also argued that Federal Court erroneously read s. 64(2) as if any potential infringement of moral rights was contemplated therein — Respondent, on other hand, argued that defense of s. 64(2) applied; urged Court to read s. 64(2)(d) such that "made as described in paragraph (c)" clause would apply to "reproduction" and/or "drawing" mentioned in paragraph (d) but not to "article" — However, s. 64(2)(d) was not to be read this way — Was clear that reference to "an article, drawing or reproduction" in paragraph (d) is intended to correspond to "article" mentioned in s. 64(2)(c)(i), "drawing or other reproduction" mentioned in s. 64(2)(c)(ii) — Accordingly, "article" mentioned in s. 64(2)(d) must have been "made as described in paragraph (c)" — While other arguments addressed, what had to be determined was what limits Parliament intended to place on defence against

infringement provided for in s. 64(2) — Answer to limits that Parliament intended to place on defence provided for in s. 64(2) did not come from that provision but from Act, s. 14.1(1), which defines author's moral rights — Infringement of moral rights is defined in Act, s. 28.1 — Act, s. 14.1(1) contemplates two aspects of moral rights: integrity of work, authorship — Only authorship aspect was relevant in this appeal — Text relevant to authorship is limited to right "in connection with an act mentioned in section 3", which defines rights associated with copyright — Reference in s. 14.1(1) to these rights ties author's moral rights to copyright in work in same way that s. 64(2) is tied to a use of copyright — This suggested that defence to infringement of moral rights provided for in s. 64(2), including s. 64(2)(d), is intended to cover any infringement of author's moral rights — For there to be infringement of moral rights, it must be in connection with copyright; if there is no act in connection with copyright, there is no infringement of moral rights — Given limited scope of moral rights contemplated in s. 14.1(1), false statement by respondent concerning authorship could not fall outside s. 64(2)(d) as appellant argued (because it was not associated with reproduction of design of Poppy Puppy), yet still be infringement of moral rights — Either s. 64(2)(d) benefitted respondent as defence to infringement of moral rights (if false statement was associated with reproduction of Poppy Puppy) or there was no infringement of moral rights in first place (because false statement was not associated with reproduction of Poppy Puppy) — Either way, respondent was not liable for infringement of appellant's moral rights — Though Federal Court's analysis of application of Act, s. 64(2) in this case was insufficient, it made no reviewable error in dismissing appellant's claim of infringement of moral rights — Appeal dismissed.

FRENCH V. ROYAL CANADIAN LEGION (DOMINION COMMAND), A-158-23, 2024 FCA 63, Locke J.A., reasons for judgment dated March 27, 2024, 15 pp.)