



## Copyright in Choreography in Canada

October 15, 2011 by Bob Tarantino

Pop mega-star Beyoncé was accused this past week of copying dance moves in her video for the song "Countdown" ([Beyoncé accused of 'stealing' dance moves in new video](#)). Is it possible to infringe copyright by "copying" a dance?

The *Copyright Act* (Canada) includes a definition for "[choreographic work](#)", which is one of the enumerated types of works which make up the category of "dramatic work". However, in one of the charming drafting felicities for which the Canadian Copyright Act is so renowned, "choreographic work" is simply defined to "include[] any work of choreography, whether or not it has any story line". One benefit of that definition is that it makes it clear that copyright extends to sequences of movements even if they bear no necessary relationship to any external narrative.

To obtain copyright protection a given work of choreography would need to have the characteristics of originality and fixation. The "fixation" requirement stems from the definition of "dramatic work" which states that "dramatic work" includes "any piece for recitation, *choreographic work* or mime, the scenic arrangement or acting form of *which is fixed in writing or otherwise*" [emphasis added]. The "or otherwise" is useful in that it clarifies that a work of choreography can be "fixed" either by written notation, pictorial depiction or by means such as filming (it is worth noting that the film resulting from the recording of a choreographic work may also qualify for protection as a cinematographic work).

(As an aside, the performance of a choreographic work may itself be protected as a "performer's performance" and hence subject to the "neighbouring rights" regime of the *Copyright Act* (Canada), which would accord the performer of the choreographic work certain exclusive rights in the performance, such as the exclusive right to film/record the performance.)

So, yes, it is possible to infringe copyright, in a variety of senses of that term, by copying a dance. That being said, there is almost no Canadian caselaw which provides guidance on the matter. The case of *Pastor v. Chen*, [2002 BCPC 169 \(CanLII\)](#), 19 CPR (4th) 206 (where a dance instructor sued a former student of his who was teaching the instructor's dance sequences to other customers) is often cited as precedent for copyright in choreography, but a close reading shows that the court found for the plaintiff on the basis of the breach of a confidentiality agreement, and the court's comments relating to copyright were clearly *obiter*.

For the most comprehensive online treatment of Canadian copyright law as it relates to choreography, see Laurent Carrière's "[Choreography and Copyright](#)", a 44-page masterful summation of Canadian law which includes comparative examples from other jurisdictions. For US commentary on the topic, see [this 1961 US Senate report](#), Merlyne Jean-Louis' [Dancing Around the Issue of Copyright of Choreographic Works](#), and [this interesting discussion](#) of the issue of fixation, written by Joy Mkrdichian.

---

The articles and comments contained in this publication provide general information only. They should not be regarded or relied upon as legal advice or opinions. © Heenan Blaikie LLP.