

Copyright Board  
Canada



Commission du droit d'auteur  
Canada

**Date** 2021-08-06  
**Citation** *SOCAN Tariff 7 (2018-2022)*, 2021 CB 7  
**Member** René Côté  
**Proposed Tariffs Considered** SOCAN Tariff 7 – Skating Rinks, 2018-2020  
SOCAN Tariff 7 – Skating Rinks, 2021-2022

**Approval of Proposed Tariffs**  
**As**  
***SOCAN Tariff 7 – Skating Rinks (2018-2022)***

**REASONS FOR THE DECISION**

**I. INTRODUCTION**

[1] The Society of Composers, Authors and Music Publishers of Canada (SOCAN) is a collective society that manages public performing rights in musical works on behalf of Canadian and foreign songwriters, composers and music publishers. SOCAN filed two proposed tariffs with the Copyright Board for the public performance, in Canada, of musical or dramatico-musical works in its repertoire in skating rinks, Tariff 7, for 2018-2020 and 2021-2022.

[2] For the following reasons, we find that both SOCAN Tariffs 7 – Skating Rinks (2018-2020 and 2021-2022) proposals are fair and equitable, except for the years 2020 and 2021 where the minimal royalties are reduced to \$56.00. Hence, we approve them with a particular modification to the minimal royalty for these two years due to the COVID-19 pandemic.

**II. CONTEXT**

[3] SOCAN Tariff 7 allows users to perform in public musical works in their repertoire at any time and as often as desired, by means of performers in person or by means of recorded music in connection with roller or ice skating activities.

[4] On May 6, 2017, the last SOCAN Tariff 7 version was approved by the Board for the years 2013 to 2017.<sup>1</sup>

[5] Tariff proposals were filed by SOCAN for the years 2018-2020 and 2021-2022, and published in the *Canada Gazette*.<sup>2</sup> Restaurants Canada and Ridgewood Community League were the only objectors to the proposed tariff for the 2018-2020 period. However, in a letter dated June 28, 2017, Restaurants Canada failed to explain the reasons underlying its objection to the proposed tariff. As for Ridgewood Community League, it pointed out, in a letter dated June 25, 2017, that its facilities had been closed for seven years and it should not be subject to SOCAN Tariff 7.

[6] On December 18, 2020, in Notice CB-CDA 2020-057<sup>3</sup>, the Board asked the objectors to confirm in writing their intention to participate in the SOCAN Tariff 7 approval process. Restaurants Canada and Ridgewood Community League did not answer the Board's request within the allowed timeframe, January 15, 2021. The objectors are therefore deemed to have ceased their participation in the SOCAN Tariff 7 approval process.

### III. ANALYSIS

[7] For the complete duration of the tariff examined herein (2018-2022), the royalties rates proposed by SOCAN remain unchanged in relation to the last approved tariff (2015-2017). The proposed tariff provides for:

A licence allowing the performance, at any time and as often as desired during the years 2018 to 2020, of any or all of the works in the SOCAN repertoire, by means of performers in person or by means of recorded music, as part of roller or ice skating activities, the payable royalties being as follows:

a) where entry fees are collected: 1.2 % of gross receipts from ticket sales, excluding sales and amusement taxes, subject to a minimum annual royalty of \$111.92;

b) where no entry fees are collected: an annual royalty of \$111.92\$.<sup>4</sup>

[8] SOCAN does not propose an increase in relation to the 2015-2017 tariff, not even to factor inflation observed since 2015 in relation to the minimum annual fee.<sup>5</sup>

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<sup>1</sup> SOCAN – Miscellaneous Tariffs, 2007-2017 (06 May 2017), C Gaz Supplement, Vol 151, No 18, p 19-20. [SOCAN Tariff 7, 2007-2017]

<sup>2</sup> Proposed Statement of Royalties to Be Collected by SOCAN for the Public Performance or the Communication to the Public by Telecommunication, in Canada, of Musical or Dramatico-Musical Works 2018-2020, (29 April 2017), C Gaz Supplement, Vol 151, No 17, p 31 [SOCAN Proposed Tariff 7, 2018-2020]; Proposed Royalties to Be Collected by SOCAN for the Public Performance or the Communication to the Public by Telecommunication, in Canada, of Musical or Dramatico-Musical Works 2021-2022, (18 May 2019), C Gaz Supplement, Vol 153, No 20, p 29.

<sup>3</sup> CB-CDA 2020-057 (18 December 2020) Board Notice.

<sup>4</sup> SOCAN Proposed Tariff 7, 2018-2020, *supra* note 2, p 31.

<sup>5</sup> Tariff 7 provided for, during the 2013-2014 period, a minimal royalty of \$104.31, while it was \$111.92 for 2015-

[9] Since the proposed fees are consistent with those previously approved for the same use, these rates represent the best applicable proxy for the tariff period covered herein. We have no information that would lead us to question it.

[10] In other respects, in the context of the COVID-19 pandemic and its impact on Canadian society, we notice that royalties may vary depending on revenue actually collected by the skating rinks during the year preceding the January 31 payment each year. The absence or reduction in revenues, due to the closure of skating rinks because of the health measures decreed by the government authorities, would be reflected in the royalties to be paid to SOCAN, subject to the minimum fee.

[11] However, one question remains: is the minimum annual fee fair and equitable taking into account the pandemic and is the amount adequate? According to the proposed tariffs, whether a skating rink charges entry fees or not, a minimum annual fee of \$111.92 should be paid to SOCAN, whereas the skating rinks were closed for several months in 2020 and 2021. The 1.2% royalty from gross receipts, excluding sales and amusement taxes, remains adequate, but the minimum annual fee is hardly acceptable due to loss of revenue and cost increase for skating rink operations to comply with sanitary measures. Indeed, the amount of the minimum fee is not nominal compared to other minimum fees, which are not related to music use. Because the minimum fee in this case appears intended to cover more than the tariff administration costs, and therefore is intended to compensate for some level of use, it is appropriate to reduce it to account for a reduction of use due to the pandemic.

[12] It is against this background that we are reducing the minimum annual fee for the years 2020 and 2021 and we set it at \$56.00. We took into account the fact that the progress achieved in terms of vaccinations in 2021 would not necessarily result in a full return to normal operating conditions for the skating rinks this year. This is an interim measure, in response to exceptional circumstances, that reflects the fact that the impact of the pandemic was not the same in all business sectors.

[13] Finally, we are making some changes to the proposed tariffs with respect to provisions that are either not relevant to skating rinks (e.g. the reference to acts of making works available by telecommunication) or not appropriate, for the same reasons as the ones given by the Board recently. We reproduce them hereunder:

[18] The general provisions of the tariff proposals include a paragraph stipulating that each licence shall subsist according to the terms set out therein and that SOCAN shall have the right at any time to terminate a licence for breach of terms or conditions upon 30 days' notice in writing. As the Board recently did in relation to similar provisions, we strike out this paragraph as it pertains to language of an individual contractual licence rather than a tariff. This also

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2017. SOCAN Tariff 7, 2007-2017, *supra* note 1, p 19.

touches upon copyright liability and provisions in the Act governing remedies against tariff users. As such, it is a compliance and enforcement issue rather than a tariff certification issue.<sup>6</sup>

[14] Furthermore, we point out that the relevant provisions retained found originally in the general provisions of the proposed tariffs were integrated into the approved tariff - which therefore does not comprise general provisions. It is essential not to conflate licence and tariff, and to maximize the clarity of the latter.

#### **IV. CONCLUSION**

[15] For the reasons described above, we approve the proposed tariffs as *SOCAN Tariff 7 – Skating Rinks (2018-2022)*. The royalty rates remain the same as those of SOCAN Tariff 7 (2015-2017), except with respect to the minimum annual fee for the years 2020 and 2021 which is reduced to \$56.00. The terms and conditions are essentially unchanged compared to the tariff for the years 2013-2017.

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<sup>6</sup> *SOCAN - Tariff 21 (Recreational Facilities Operated by a Municipality, School, College, University, Agricultural Society or Similar Community Organizations), 2013-2020*, (07 December 2018), Copyright Board. Decision available online: <https://decisions.cb-cda.gc.ca/cb-cda/decisions/en/item/367464/index.do>.