



the view from the judiciary

“The fair dealing exception is perhaps more properly understood as an integral part of the Copyright Act.... Any act falling within the fair dealing exception will not be an infringement of copyright (CCH 2004).”

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Copyright Act, Fair Dealing, Section 29

Fair dealing for the purpose of research or private study does not infringe copyright.

The Law Society does not infringe copyright when a single copy of a reported decision, case summary, statute, regulation or limited selection of text from a treatise is made by the Great Library in accordance with its access policy.

Emphasis mine.

CCH Canadian Ltd. v. Law Society of Upper Canada, 2004 SCC 13.

... the copying from Forensic Evidence in Canada amounted to the copying of the whole of a 32-page monograph within a 713-page textbook, ... 13 percent of the whole of the textbook.

In the case of the textbook Economic Negligence, which is 306 pages in length, 69 pages were copied amounting to 93 percent of one chapter and 21 percent of the pages of the textbook.

... the copying from Forensic Evidence in Canada amounted to the copying of the whole of a 32-page monograph within a 713-page textbook, ... In the case of the textbook Economic Negligence, which is 306 pages in length, 69 pages were copied ... 21 percent of the pages of the textbook.

Copyright Act, Section 3.1

... copyright, in relation to a work, means the sole right to produce or reproduce the work or any substantial part thereof ...

The contours of fair dealing:

- *each situation must be judged on its own merits*
- *a license is not relevant*
- *fair dealing is transferrable*
- *no liability for uses by patrons [there was no relationship of control, an aspect relevant where students are concerned]*
- *commercial uses may be fair dealing*
- *prevailing practices may be relevant*



Toronto Star (1990) Photographer and author unknown.

Toronto Star Newspapers v. Allen (1997):

“The use of [the cover] was related to the then news; the leadership aspirations of Ms. Copps.... It was apt for the newspaper to contrast the image she was willing to project in 1985. The change in her image was the thrust of the article.

... The cover was reproduced in reduced form. The news story and the accompanying photo received no special prominence in the newspaper. ... The purpose of the reproduction of the cover was to aid in the presentation of a news story, not to gain an unfair competitive advantage over Allen or Saturday Night.”

Allen v. Toronto Star Ltd. (1997) 36 O.R.(3d) 201 (Div. Court) paras. 37-38

From the Copyright Act of the day: “any fair dealing with any work for the purposes of private study, research, criticism, review or newspaper summary [does not constitute infringement] (ibid., para.31).”

Studying and learning are essentially personal endeavors, whether they are engaged in with others or in solitude. By focusing on the geography of classroom instruction rather than on the concept of studying, the Board again artificially separated the teachers' instruction from the students' studying.

Copyright Act, R.S., 1985, c. C-42. Fair dealing for the purpose of research or private study does not infringe copyright.

Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright), 2012 SCC 37, para. 27.
Case was heard December 12, 2011.

The contours of fair dealing:

- *each situation must be judged on its own merits*
- *a license is not relevant*
- *fair dealing is transferrable*
- *no liability for uses by patrons (extends nicely to students)*
- *commercial uses may be fair dealing*
- *prevailing practices may be relevant*
- *entire images may be used via fair dealing*
- *use of supplemental learning materials may be fair dealing*



thank you

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