

Federal Court



Cour fédérale

**Ottawa, July 12, 2017** – A judgment was issued today by the Honourable Michael L. Phelan of the Federal Court in file T-578-13:

**IN THE MATTER OF THE CANADIAN COPYRIGHT LICENSING AGENCY ("ACCESS COPYRIGHT") v. YORK UNIVERSITY**

**Summary:** This was an action by The Canadian Copyright Licensing Agency (“Access Copyright”) [Access] against York University [York] to enforce an Interim Tariff first issued by the Copyright Board of Canada on December 13, 2010 (as subsequently varied during its term) in respect to copying activities engaged in by its employees in the period September 1, 2011, to December 31, 2013. York counterclaimed seeking a declaration that any such reproductions made fell within the Fair Dealing Guidelines it issued and therefore constituted the “fair dealing” exception under s 29 of the Copyright Act [Act]. The declaration sought covered all reproductions of all copyright-protected works made prior to April 8, 2013, and thereafter regardless of whether such works were part of Access’s repertoire. In the main action, the issue was “whether the interim tariff issued by the Copyright Board on December 23, 2010 as amended is enforceable against York”. In the counterclaim, the issue is: “was York’s dealings fair for the purposes of s 29 of the Act”? The net effect would be that if the Interim Tariff was enforceable and hence royalties payable, York would be exempt because of “fair dealing”.

In the main action, the Court concluded that the Interim Tariff is mandatory and enforceable against York. It found that to hold otherwise would be to frustrate the purpose of the tariff scheme of the Act and the broad powers given to the Copyright Board to make an interim decision pursuant to s 66.51 of the Act. Furthermore, the Interim Tariff arose because of the objections to the proposed final tariff governing the photocopying at York and other post-secondary educational institutions. All interested parties had actual notice of the Interim Tariff by virtue of their participation in the tariff application process, and the Interim Tariff was never judicially reviewed.

In the counterclaim, the Court concluded that Fair Dealing Guidelines [Guidelines] do not withstand the application of the two-part test laid down by Supreme Court of Canada jurisprudence. York’s dealings with copyrighted material meets part one of the test in that it falls within the named activities in s 29 – education, research and private study. However, the Court found that the Guidelines fail an analysis of “fair dealings” and a consideration of the fairness factors. The declaration requested was therefore denied with costs to the Plaintiff.

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The decision is available in English only, as delay of its issuance would be prejudicial to the public interest. A French language summary of the conclusions is available. A certified translation will be provided at the earliest possible time.

A copy of the judgment can be obtained via the Web site of the Federal Court: [http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/fc\\_cf\\_en/Index](http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/fc_cf_en/Index)

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