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A Comparison of Ontario's Accessibility for Ontarians with Disabilities Act and the Canadian Copyright Act: Compliance, Enforcement, Risks, and the Implications for Ontario Community Colleges

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A COMPARISON OF
ONTARIO'S *ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT*
AND THE CANADIAN *COPYRIGHT ACT*: COMPLIANCE, ENFORCEMENT, RISKS, AND
THE IMPLICATIONS FOR ONTARIO COMMUNITY COLLEGES

(Spine title: Comparison of Ontario's AODA and the Canadian Copyright Act)

by

Meaghan Shannon

Graduate Program in Studies in Law

A paper submitted in partial fulfillment
of the requirements for the degree of
Master of Studies in Law

The School of Graduate and Postdoctoral Studies
The University of Western Ontario
London, Ontario, Canada

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Abstract and Keywords

Abstract: The *Accessibility for Ontarians with Disabilities Act* [AODA] confers rights of accessibility by detailing how individuals and organizations offering goods and services should comply and monitoring compliance through the Accessibility Directorate of Ontario. By contrast, the federal *Copyright Act* confers rights upon authors and other rights owners without detailing how users of works and other materials can achieve compliance with the Act and without establishing an administrative body to monitor compliance. This research, through a case study of a community college, compares and contrasts the implications of the two different legislative styles in terms of the risks borne by affected institutions.

Keywords: accessibility law, *Accessibility for Ontarians with Disabilities Act*, AODA, copyright law, *Copyright Act*, *Copyright Modernization Act*, fair dealing, rights, compliance, enforcement, administrative bodies, educational institutions, post-secondary educational institutions, community colleges.

Dedication

For My Mom & Dad

&

Wyatt

Acknowledgements

I would like to express my sincere gratitude and appreciation to Professor Margaret Ann Wilkinson who has shown immense and consistent interest, support, and encouragement in both my academic and professional endeavors over the entire duration of my time in the Master of Studies in Law program. Thank you for your patience and guidance and for being such an incredible mentor.

I would also like to thank Professor Isola Ajiferuke for sharing his time and statistical expertise with me over the course of this project.

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/ Introduction

The United Nations classifies both the rights of people with disabilities and the rights associated with intellectual property as human rights. The Universal Declaration of Human Rights¹ states that “everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status”.² This means that people with disabilities are entitled to the same inherent dignity and the equal and inalienable rights as all other members of the human family by way of accessibility laws. The Declaration also states that “everyone has the right to the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which he is the author”.³ This means that creators of works are entitled to the rights conferred by mechanisms of intellectual property law, such as copyright. As a Member State, Canada has pledged to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights.⁴ The Canadian *Charter of Rights and Freedoms*⁵ and provincial legislation such as the *Ontario Human Rights Code*,⁶ the *Ontarians with Disabilities Act*, 2001⁷ and the *Accessibility for Ontarians with Disabilities Act*, 2005⁸ combine to

¹ *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948). See the electronic version at <www.un.org/en/universal-declaration-human-rights/>.

² *Ibid* at Article 2.

³ *Ibid* at Article 27(2).

⁴ *Ibid* at Preamble.

⁵ *Constitution Act*, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, C11. See the electronic version at <laws-lois.justice.gc.ca/eng/const/>.

⁶ *Human Rights Code*, RSO 190, cH19. See the electronic version at <www.ontario.ca/laws/statute/90h19>.

⁷ *Ontarians with Disabilities Act*, 2001, SO 2001, c32. Refer to official electronic version at <www.ontario.ca/laws/statute/01o32>

⁸ *Accessibility for Ontarians with Disabilities Act*, 2005, SO, c11. See the electronic version at <www.ontario.ca/laws/statute/05a11>

create a complex legal framework that endeavors to identify, prevent, and remove physical and social barriers so that people with disabilities may fully participate in society, while the Canadian *Copyright Act*⁹ attempts “to balance the public interest in promoting the encouragement and dissemination of works of the arts and intellect and obtaining a just reward for the creator”.¹⁰ The human rights that are protected in Canada accessibility laws and copyright legislation must be respected by all individuals and organizations, including post-secondary educational institutions such as Ontario Community Colleges.

Ontario Community Colleges must adhere to and comply with the *Accessibility for Ontarians with Disabilities Act*, by making their campuses and services accessible to students, faculty members, staff, and visitors, and must comply with the Canadian *Copyright Act* by lawfully making use of copyright-protected works for education and training-related purposes.¹¹

The *Accessibility for Ontarians with Disabilities Act* confers the right of accessibility upon people with disabilities by detailing how individuals and organizations who offer goods and services, such as Ontario Community Colleges can comply with the Act, and by mandating the encouragement and monitoring of compliance with Act by these organizations through the

⁹ *Copyright Act*, RSC 1985, cC42. See the electronic version at <laws.lois.justice.gc.ca/eng/acts/C-42/>.

¹⁰ *CCH Canadian Ltd. v Law Society of Upper Canada* 2004 SCC 13, [2004] 1 SCR 339. See the electronic version at <scc-csc.lexum.com/scc-csc/scc-csc/en/item/2125/index.do?r=AAAAAQATQ2FuYWV2aWRlbnNlIEFjdAE> at para 23.

¹¹ Students are not actually part of the legal activity of the colleges. They become connected with the colleges through the contracts that they sign with the colleges each year when they pay their tuition. The students have rights in copyright law that are apart from the colleges rights. This paper is about the colleges' rights and obligations under the *Accessibility for Ontarians with Disabilities Act* and the *Copyright Act*.

Accessibility Directorate of Ontario.¹² In contrast the Canadian *Copyright Act* confers a comprehensive set of moral, economic, and other subject matter rights upon authors of works and creators of other subject matter without detailing how users of works or other subject matter might comply with the Act and without establishing an administrative body to encourage or monitor compliance with the Act. This contrast between the two styles of legislation contributes to significant challenges for Ontario Community Colleges in terms of understanding and navigating the two laws and assessing the risks of failing to comply with them.

Ontario Community Colleges, and post-secondary educational institutions in general, have been trying to come to terms with three significant copyright-related events that took place between March of 2010 and November of 2012. These events altered the Canadian copyright landscape and changed the way that Ontario Community Colleges address the use of copyright-protected works within their institutions.

First, Access Copyright¹³ for the first time in history filed an application with the Copyright Board of Canada [the Board]¹⁴ in March of 2010 for a royalty

¹² The Accessibility Directorate of Ontario was established under the ODA to manage the implementation of the legislation. Its mandate was expanded when the Accessibility for Ontarians with Disabilities Act came into force to include monitoring and encouraging compliance with the requirements set out in the accessibility standards. See Ontario, "INFO-GO Employee & Organization Directory: Accessibility Directorate of Ontario" online: <www.infogo.gov.on.ca>.

¹³ Access Copyright, the Canadian Copyright Licensing Agency represents writers, visual artists, and publishers for the reproduction, communication to the public and making available rights of works published in books, magazines, journals, and newspapers. Access Copyright provides access to copyrighted materials by filing tariffs and negotiating licenses that permit uses of works in its repertoire by user groups such as schools, universities, colleges, governments, and corporations in Canada (not Quebec). See Copyright Board of Canada, "Copyright Collective Societies", online: <www.cb-cda.gc.ca/societies-societes/index-e.html>.

¹⁴ The Copyright Board of Canada [the Board] is an economic regulatory body empowered to establish, either mandatorily or at the request of an interested party, the royalties to be paid for the use of copyright-protected works, when the administration of such copyright is entrusted to a collective administration society. The Board also has the right to supervise agreements between users and licensing bodies and issues licenses when the copyright owner cannot be located. See Copyright Board of Canada, "Our Mandate" online: <www.cb-cda.gc.ca/about-apropos/mandate-mandat-e.html>.

rate to be paid by post-secondary educational institutions for reprographic reproduction licenses.¹⁵ The proposed royalty rate was contested by colleges and universities across the country and prompted the Board to implement an interim tariff¹⁶ until a royalty rate could be determined by the Board.

Second, amendments to the *Copyright Act* were passed by the House of Commons and then in the Senate, receiving Royal Assent in June of 2012 and coming into force in November of 2012.¹⁷ These amendments introduced new exceptions to copyright specifically for “educational institutions”¹⁸ and also, for all copyright users, expanded the scope of fair dealing to include “education” as a purpose for which the use of a work would not constitute an infringement of copyright. Third, the Supreme Court of Canada decided in *Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright)*¹⁹ that reproduced excerpts from copyright-protected works that were photocopied by teachers and distributed to students did constitute fair dealing. Following these events, Ontario Community Colleges found themselves in positions wherein they have had to

¹⁵ Previously colleges had paid Access Copyright pursuant to individual blanket licenses without using the tariff process that had been available since 1997 under Part 7 of the *Copyright Act*.

¹⁶ Copyright Board of Canada, *Access Copyright Interim Post-Secondary Educational Institutions Tariff, 2011-2013* as amended April 7, 2011. Refer to official electronic version at <www.cb-cda.gc.ca/tariffs-tarifs/proposed-proposes/2011/Revised_interim_tariff.pdf>.

¹⁷ *Copyright Modernization Act*, SC 2012, c.20, proclaimed in force 7 November 2012, SI/2012-85, (2012) C Gaz II archived online: <canadagazette.gc.ca/rp-pr/p2/2012/2012-11-07/html/si-tr85-eng.html>

¹⁸ The definition of “educational institution” can be found in section 2 of the *Copyright Act*: “educational institution” means

- (a) a non-profit institution licensed or recognized by or under an Act of Parliament or the legislature to provide pre-school, elementary, secondary, or post-secondary education,
- (b) a non-profit institution that is directed or controlled by a board of education regulated by or under an Act of the legislature of a province and that provides continuing, professional or vocational education or training,
- (c) a department or agency of any order of government, or any non-profit body, that controls or supervises education or training referred to in (a) or (b), or
- (d) any other non-profit institution prescribed by regulation.

¹⁹ *Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright)* 2012 SCC 37, [2012] 2 SCR 345. Refer to official electronic version at <<http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9997/index.do>>.

quickly and effectively adapt their policies and practices to reflect this new Canadian copyright landscape by raising awareness amongst their faculty members about the importance of complying with the law and developing resources and services to assist them in doing so. The efforts by Ontario Community Colleges to demonstrate compliance with Canadian copyright law have been both proactive and cautious and they have proceeded without the oversight or support of an administrative body mandated to encourage and monitor copyright compliance because the *Copyright Act* neither establishes nor mandates such a body.

This paper will provide an overview of both the *Accessibility for Ontarians with Disabilities Act* and the Canadian *Copyright Act*, how each piece of legislation came to be and what each is intended to do. It will then compare both pieces of legislation in terms of the enforcement provisions that they prescribe as well as the risks associated with failing to comply with each law. This paper will then identify how Ontario Community Colleges are specifically involved with both pieces of legislation.

As a case study, the initiatives that have been undertaken by one Ontario Community College to raise awareness among faculty members about the applicability of Canadian copyright law to education and training-related uses, and to monitor compliance with the law, will be presented. By comparing the construction and implications of the *Accessibility for Ontarians with Disabilities Act* and the Canadian *Copyright Act*, this paper will demonstrate that the attempt to compliance measures administered by the Accessibility Directorate of Ontario,

the administrative body established and mandated by the *Accessibility for Ontarians with Disabilities Act* to encourage and monitor compliance with that law, can be utilized by Ontario Community Colleges in order to improve and demonstrate complying with Canadian copyright law (in the absence of an administrative body established and mandated by the *Copyright Act* itself to encourage and monitor compliance with Canadian copyright law). The case study also demonstrates a voluntary measure introduced in respect of copyright that, although not required under the *Accessibility for Ontarians with Disabilities Act*, shows promise for helping achieve the outcomes for which the legislation has been enacted.

// Ontario's Accessibility for Ontarians with Disabilities Act

(a) Overview of the Legislation: How it came to be and what it is intended to do

The Canadian *Charter of Rights and Freedoms* provides that every individual, including individuals with mental and physical disabilities, has the right to equal protection and equal benefit of the law without discrimination.²⁰ The *Ontario Human Rights Code* provides that every person has the right to equal treatment with respect to employment, facilities, goods, and services, without discrimination on the grounds of disability, and it requires that the needs of persons with disabilities be accommodated.²¹

Disability rights advocates recognized and argued that a more proactive approach was needed in order to break down the barriers that people with

²⁰ *Supra* note 5.

²¹ *Supra* note 6.

disabilities face in their everyday lives as neither the Canadian *Charter of Rights and Freedoms* nor the *Ontario Human Rights Code* were considered adequate enough to bring about significant changes in a timely manner. The *Americans with Disabilities Act*, which was enacted by the United States' Congress in 1990, requires governments and businesses to take a number of proactive steps in order to address discrimination against people with disabilities.²² The enactment of this American statute provided disability rights activists with the “extra impetus to grow and become more organized over the course of the 1990s”.²³

Ontario was the first province in Canada and one of the first jurisdictions in the world to have enacted legislation that specifically established a goal and timeline for achieving full accessibility²⁴: to achieve a society in which all people are able to realize their full potential.

The Ontario Government responded to calls for change from disability rights activists by passing the *Ontarians with Disabilities Act* in 2001. The *Ontarians with Disabilities Act* requires that government ministries, municipalities, public transportation organizations, and scheduled organizations such as hospitals, school boards, colleges, and universities²⁵ prepare annual accessibility plans that address the identification, removal, and prevention of barriers to people with disabilities that may exist within their by-laws, policies, practices, programs, and services.²⁶ The Act also imposes specific obligations for the

²² Michelle Flaherty & Alain Roussy, “A Failed Game Changer: Post-Secondary Education and the Accessibility for Ontarians with Disabilities Act” (2014) 24:1 Education and Law Journal at 10.

²³ *Ibid.*

²⁴ Ontario, “About Accessibility Laws” online: <www.ontario.ca/page/about-accessibility-laws>.

²⁵ *Supra* note 7 at s 15(1)(b).

²⁶ *Ibid* at s 15(2).

barrier-free design of new or renovated buildings, accessible formats for websites and publications, the accommodation of employees' disability needs, and that accessibility be a consideration in the procurement of goods and services.²⁷ Additionally, the *Ontarians with Disabilities Act* established the Accessibility Directorate of Ontario whose mandate is to develop and conduct public education programs and consult with obligated organizations regarding their accessibility planning, and to recommend changes to laws, policies, and programs in order to improve opportunities for people with disabilities.²⁸ Although the *Ontarians with Disabilities Act* was heralded by many as being a progressive step forward, many disability rights activists perceived this Act as a weak and ineffective piece of legislation because it did not require that accessibility plans address specific barriers; it did not require that actions or initiatives noted within accessibility plans be implemented; and it did not include any enforcement or complaint resolution mechanisms.²⁹

The limited scope of the *Ontarians with Disabilities Act* meant that the opportunity to do more in order to improve accessibility in Ontario for people with disabilities was available. That opportunity was taken when the *Accessibility for Ontarians with Disabilities Act* was unanimously passed by the Ontario Legislature in May 2005 and took effect upon receiving Royal Assent on June 13, 2005.³⁰ The *Accessibility for Ontarians with Disabilities Act* was intended to supplement the existing human rights scheme and to usher in a new era of

²⁷ Mayo Moran, "Second Legislative Review of the *Accessibility for Ontarians with Disabilities Act*, 2005" (2014) at 7.

²⁸ *Ibid* at 8.

²⁹ Flaherty *supra* note 22 at 11.

³⁰ *Supra* note 28.

across-the-board compliance based on proactively meeting the accessibility needs of people with disabilities.³¹ The *Accessibility for Ontarians with Disabilities Act* is a stronger and more effective piece of legislation than the *Ontarians with Disabilities Act* because it is equipped with both compliance and enforcement mechanisms and, whereas the *Ontarians with Disabilities Act* applies only to the Ontario Government and the broader public sector, the *Accessibility for Ontarians with Disabilities Act* applies to every person or organization in both the private and public sectors of the province.³² Although the *Accessibility for Ontarians with Disabilities Act* was built on the *Ontarians with Disabilities Act* without repealing it, the *Accessibility for Ontarians with Disabilities Act* does call for the repeal of the *Ontarians with Disabilities Act* at a date to be proclaimed by the Government.³³ At present, the *Ontarians with Disabilities Act* remains in force, as the Government has not yet proclaimed a repeal date.

The goal of the *Accessibility for Ontarians with Disabilities Act* is to create a society wherein it is possible for all people to realize their full potential. The purpose of the *Accessibility for Ontarians with Disabilities Act* is:

to benefit all Ontarians by developing, implementing, and enforcing accessibility standards in order to achieve accessibility for Ontarians with disabilities with respect to goods, services, facilities, accommodations, employment, buildings, structures and premises on or before January 1, 2025; and providing for the involvement of persons with disabilities, of the Government of Ontario, and of representatives of industries and of various sectors of the economy, in the development of the accessibility standards.³⁴

³¹ Flaherty *supra* note 22 at 17.

³² *Supra* note 24.

³³ *Supra* note 8 at s 3.

³⁴ *Ibid* at s 1.

The Act operates by bringing accessibility standards into regulation. Accessibility standards are laws that individuals, government, businesses, non-profits, and public sector organizations must follow in order to become more accessible.³⁵ The accessibility standards contain timelines for the implementation of required measures and help organizations identify, remove, and prevent barriers in order to improve accessibility for people with disabilities. The Minister of Economic Development, Employment, and Infrastructure administers the *Accessibility for Ontarians with Disabilities Act* and is responsible for the process of developing and implementing accessibility standards that will achieve the purpose of the legislation. In order to accomplish this:

the Minister establishes Standards Development Committees to develop proposed standards for the Government to consider adopting by regulation. These committees include people with disabilities or their representatives, representatives of the sectors to which the standard is to apply, and representatives of ministries with responsibilities relating to those sectors. Each Standards Development Committee determines the long term accessibility objectives for the affected sectors by identifying the requirements to be implemented by 2025 as well as the timeframe for implementation in stages of five years or less. It then prepares an initial proposed standard, which is released for public comment. After considering the input, the committee makes any changes deemed advisable and submits the final proposed standard to the Minister. It is then up to the Minister to decide whether to recommend the Government adopt the proposed standard by regulation in whole, in part, or with modifications.³⁶

To date, five accessibility standards have been adopted by regulation: the Accessibility Standards for Customer Service and the Integrated Accessibility Standards which include the Information and Communications Standards, the Employment Standards, the Transportation Standards, and the Design of Public Spaces Standards.³⁷

³⁵ *Supra* note 24.

³⁶ Moran *supra* note 27 at 9.

³⁷ *Supra* note 24.

The Accessibility Standards for Customer Service³⁸ became an Ontario Regulation on January 1, 2008.³⁹ The purpose of the Accessibility Standards for Customer Service is to establish accessibility standards for customer service that apply to every designated public sector organization providing goods or services to members of the public or other third parties that have at least one employee in Ontario⁴⁰. This accessibility standard requires organizations that provide goods and services to establish policies, practices, and procedures to govern the provision of their goods and services to people with disabilities;⁴¹ accommodate the use of service animals and support persons;⁴² post notices of temporary disruptions in facilities or to services;⁴³ provide training to staff about the provision of goods or services to people with disabilities;⁴⁴ and provide a process for receiving and responding to feedback about the manner in which goods or services are provided to people with disabilities.⁴⁵ The Accessibility Standards for Customer Service required that designated public sector organizations complied with the requirements of the accessibility standards by January 1, 2010 and that all other providers of goods or services complied by January 1, 2012.⁴⁶

The Integrated Accessibility Standards became an Ontario Regulation⁴⁷ on July 1, 2011⁴⁸ and initially included the Information and Communications

³⁸ O Reg 429/07: Accessibility Standards for Customer Service under *Accessibility for Ontarians with Disabilities Act*, 2005, SO, c11. Refer to official electronic version at <www.ontario.ca/laws/regulation/070429>.

³⁹ Moran *supra* note 27 at 12.

⁴⁰ *Supra* note 38 at s 1.

⁴¹ *Ibid* at s 3.

⁴² *Ibid* at s 4.

⁴³ *Ibid* at s 5.

⁴⁴ *Ibid* at s 6.

⁴⁵ *Ibid* at s 7.

⁴⁶ *Ibid* at s 2.

⁴⁷ O Reg 191/11: Integrated Accessibility Standards under *Accessibility for Ontarians with Disabilities Act*, 2005, SO, c11. Refer to official electronic version at <www.ontario.ca/laws/regulation/110191>.

⁴⁸ *Ibid* at 13.

Standards, the Employment Standards, and the Transportation Standards. The Design of Public Spaces Standards were added to the Integrated Accessibility Standards on January 1, 2013.⁴⁹

The Information and Communications Standards address the ways in which organizations produce and communicate information by outlining how such communicated information must be made accessible to people with disabilities. These accessibility standards require organizations to provide or arrange for the provision of accessible formats and communication supports for people with disabilities;⁵⁰ provide emergency procedures, plans, and public safety information in accessible formats or with appropriate communication supports;⁵¹ and make internet and intranet websites and web content that conforms to the World Wide Web Consortium Web Content Accessibility Guidelines.⁵² The accessibility standards require that education and training institutions provide educational and training resources, materials, student records, information on program requirements, information on program availability, and descriptions of programs in accessible formats⁵³. Additionally, education and training institutions are required to provide educators with accessibility awareness training related to accessible program or course delivery and instruction and that records of the provided training be maintained.⁵⁴ Producers of educational or training materials are required to make textbooks and printed materials accessible or conversion

⁴⁹ Moran *supra* note 27 at 13.

⁵⁰ *Supra* note 47 at part 2, s 12.

⁵¹ *Ibid* at s 13.

⁵² *Ibid* at s 14.

⁵³ *Ibid* at s 15.

⁵⁴ *Ibid* at s 16.

ready upon request.⁵⁵ And lastly, libraries of education and training institutions must provide, procure, or acquire by other means, an accessible or conversion ready format of print, digital, or multimedia resources or materials for people with disabilities upon request⁵⁶ while public libraries must provide access to, or arrange for, the provision of access to accessible materials where they exist.⁵⁷ Organizations to which the requirements of the Information and Communications Standards apply were to have complied within the date range of January 1, 2012 through January 1, 2016.⁵⁸

The Employment Standards require organizations to make hiring and employee support processes accessible throughout the employment life cycle. Specific requirements of the Employment Standards include notifying employees and the public about the availability of accommodations for applicants with disabilities during the recruitment, assessment, and selection processes;⁵⁹ informing employees of policies used to support employees with disabilities;⁶⁰ providing or arranging for the provision of accessible formats and communication supports;⁶¹ providing individualized workplace emergency response information to employees with disabilities;⁶² developing and having in place a written process for the development of documented individual accommodation plans;⁶³ developing, having in place, and documenting a return to work process for

⁵⁵ *Ibid* at s 17.

⁵⁶ *Ibid* at s 18.

⁵⁷ *Ibid* at s 19.

⁵⁸ *Ibid* at part 2.

⁵⁹ *Ibid* at part 3, ss 22-24.

⁶⁰ *Ibid* at s 25.

⁶¹ *Ibid* at part 3, s 26.

⁶² *Ibid* at s 27.

⁶³ *Ibid* at s 28.

employees who have been absent from work due to a disability and require disability-related accommodations in order to return to work;⁶⁴ taking into account the accessibility needs of employees with disabilities and individual accommodation plans when using a performance management process,⁶⁵ when providing career development and advancement opportunities,⁶⁶ and when redeploying⁶⁷ employees with disabilities. Organizations to which the requirements of the Employment Standards apply were to have complied within the date range of January 1, 2013 through January 1, 2016.⁶⁸

The Transportation Standards contain a variety of technical, policy, and operational requirements to identify, remove, and prevent barriers in both conventional and specialized transportation services. Some of the requirements of these accessibility standards include the development of emergency preparedness and response policies⁶⁹ and accessibility plans;⁷⁰ the establishment of fares for support persons;⁷¹ as well as general requirements for conventional⁷² and specialized⁷³ transportation service providers; and technical requirements for conventional transportation vehicles⁷⁴. Municipalities issuing licenses to taxicabs,⁷⁵ and school boards⁷⁶ or other public sector organizations⁷⁷

⁶⁴ *Ibid* at s 29.

⁶⁵ *Ibid* at s 30.

⁶⁶ *Ibid* at s 31.

⁶⁷ *Ibid* at part 3, s 32.

⁶⁸ *Ibid* at part 3.

⁶⁹ *Ibid* at part 4, s 37.

⁷⁰ *Ibid* at ss 41-43.

⁷¹ *Ibid* at s 38.

⁷² *Ibid* at s 46.

⁷³ *Ibid* at s 66.

⁷⁴ *Ibid* at ss 53-62.

⁷⁵ *Ibid* at s 80.

⁷⁶ *Ibid* at s 75.

⁷⁷ *Ibid* at s 76.

that provide transportation services, are classes of organizations that must also comply with the requirements of the Transportation Standards. The dates by which applicable organizations were to or are required to comply with the Transportation Standards range from June 30, 2011 to January 1, 2017.⁷⁸

The goal of the Design of Public Spaces Standards is to help organizations make new and redeveloped outdoor public areas accessible to people with disabilities.⁷⁹ Some of the public spaces and features that the requirements within these accessibility standards apply to include: outdoor eating areas,⁸⁰ outdoor play spaces,⁸¹ parking areas and spaces,⁸² ramps,⁸³ recreational trails,⁸⁴ service counters,⁸⁵ sidewalks,⁸⁶ and waiting areas⁸⁷. The dates by which applicable organizations were to or are required to comply with the Design of Public Spaces Standards range from January 1, 2015 to January 1, 2018.⁸⁸ Enhanced accessibility standards for the built environment that address new construction and the extensive renovation of buildings were incorporated into the *Ontario Building Code* on January 1, 2015.⁸⁹

The *Accessibility for Ontarians with Disabilities Act* establishes accessibility standards and legislates accessibility reporting so that people with disabilities can participate more actively in their communities.⁹⁰ It is one

⁷⁸ *Ibid* at part 4.

⁷⁹ *Supra* note 24.

⁸⁰ *Supra* note 47 at part 4.1, ss 80.16-80.17.

⁸¹ *Ibid* at ss 80.18-80.20.

⁸² *Ibid* at ss 80.32-80.39.

⁸³ *Ibid* at ss 80.13 and 80.24.

⁸⁴ *Ibid* at ss 80.6-80.9.

⁸⁵ *Ibid* at s 80.41.

⁸⁶ *Ibid* at ss 80.21-80.23.

⁸⁷ *Ibid* at s 80.43.

⁸⁸ *Ibid* at s 80.5.

⁸⁹ Moran *supra* note 27 at 13.

⁹⁰ *Supra* note 24.

proponent of an “extensive and rather complex legal framework”⁹¹ to safeguard the rights of people with disabilities and encourages their full participation in society. Now, in 2016, this legal framework for Ontarians includes all of the Canadian *Charter of Rights and Freedoms*, the *Ontario Human Rights Code*, the *Ontarians with Disabilities Act*, and the later *Accessibility for Ontarians with Disabilities Act*.

(b) Enforcement of the *Accessibility for Ontarians with Disabilities Act*

The Accessibility Directorate of Ontario is also responsible for the enforcement of the Act and “uses all of the provisions available to enforce the Act”.⁹² The following enforcement provisions are included within the *Accessibility for Ontarians with Disabilities Act*: inspections,⁹³ Director’s Orders,⁹⁴ administrative penalties,⁹⁵ and court enforcement.⁹⁶ The Accessibility Directorate of Ontario employs these enforcement provisions when the dates by which individuals and organizations must comply with accessibility standards have arrived and passed.

Inspectors are appointed by the Deputy Minister of the Accessibility Directorate of Ontario to carry out inspections that enforce compliance with the requirements of the accessibility standards of the *Accessibility for Ontarians with Disabilities Act*.⁹⁷ The inspectors may enter any lands, buildings, structures, or

⁹¹ Moran *supra* note 27 at 4.

⁹² Ontario, “Access ON: Toward an Accessible Ontario” online: <www.mcass.gov.on.ca>.

⁹³ *Supra* note 8 at part 4.

⁹⁴ *Ibid* at part 5.

⁹⁵ *Ibid*.

⁹⁶ *Supra* note 8 at s 23(2).

⁹⁷ *Ibid* at s 18(1).

premises during business or daylight hours without a warrant⁹⁸ and they have the power to require any person to produce any document, record, or thing that is relevant to the inspection;⁹⁹ remove any document, record, or thing that is relevant to the inspection for the purposes of making copies;¹⁰⁰ question any person on matters that are relevant to the inspection;¹⁰¹ and make use of any data storage, processing, or retrieval device or system that is used to produce documents, records, or things in readable form.¹⁰² Individuals are obligated to produce documents, records, or things upon an inspector's request and they must provide the inspector with assistance when the inspector makes use of any data storage, processing, or retrieval device or systems.¹⁰³ Individuals and organizations are prohibited from obstructing an inspection. Individuals shall not refuse to answer questions on matters that may be relevant to the inspection;¹⁰⁴ they shall not provide false or misleading information to the inspector;¹⁰⁵ and they shall not withhold relevant information from the inspector.¹⁰⁶ The Accessibility Directorate of Ontario conducted 2,000 inspections of organizations in 2014¹⁰⁷ and an additional 1,200 inspections of organizations were to have been conducted in 2015.¹⁰⁸

⁹⁸ *Ibid* at ss 19(2)-19(3).

⁹⁹ *Ibid* at s 19(5)(a).

¹⁰⁰ *Ibid* at s 19(5)(b).

¹⁰¹ *Ibid* at s 19(5)(c).

¹⁰² *Ibid* at s 19(5)(d).

¹⁰³ *Ibid* at s 19(9).

¹⁰⁴ *Ibid* at s 20(8)(b).

¹⁰⁵ *Ibid* at s 20(8)(c).

¹⁰⁶ *Ibid* at s 20(8)(d).

¹⁰⁷ Ontario, "An Accessible Ontario" online: <www.ontario.ca/page/accessible-ontario#section-0>.

¹⁰⁸ *Ibid*.

A Director's Order will inform a person or organization of the nature of the order and the reasons why the order has been issued.¹⁰⁹ A director from the Accessibility Directorate of Ontario may issue a Director's Order when presented with any of the following four scenarios: first, a director may issue a Director's Order when granting an individual or organization with permission to refrain from complying with an accessibility standard if that individual or organization has organized their business, activity, or undertaking in a particular manner.¹¹⁰ Second, a Director's Order may be issued if a director concludes that an individual or organization has failed to file an accessibility report or provide reports or information that a director had requested.¹¹¹ In this second scenario, the Director's Order will require that the individual or organization file an accessibility report that complies with the requirement of an accessibility standard,¹¹² provide the reports or information that had been previously requested,¹¹³ and possibly pay an administrative penalty.¹¹⁴ Third, a Director's Order may be issued if a director concludes that an individual or organization contravened an accessibility standard or a regulation.¹¹⁵ In this third scenario, the Director's Order will require the person or organization to comply with the accessibility standard or the regulation¹¹⁶ and possibly pay an administrative penalty.¹¹⁷ Fourth, a Director's Order may be issued should an individual or

¹⁰⁹ *Supra* note 8 at s 21(7)(a).

¹¹⁰ *Ibid* at s 21(2).

¹¹¹ *Ibid* at s 21(3).

¹¹² *Ibid* at s 21(3)1.

¹¹³ *Ibid* at s 21(3)2.

¹¹⁴ *Ibid* at s 21(3)3.

¹¹⁵ *Ibid* at s 21(4).

¹¹⁶ *Ibid* at s 21(4)1.

¹¹⁷ *Ibid* at s 21(4)2.

organization fail to comply with a previously issued Director's Order within the time specified if that individual or organization had not made an appeal for that order.¹¹⁸ In this last scenario, the Director's Order will require the individual or organization to pay an administrative penalty.¹¹⁹ The Accessibility Directorate of Ontario issued and closed 332 Director's Orders in 2014.¹²⁰

A Director's Order will contain a description of the contravention that has occurred and it will detail what an individual or organization must do in order to comply with the order as well as the date by which the order must be complied with.¹²¹ A Director's Order will also inform the individual or organization that they have the right to appeal the order to the Tribunal within fifteen days of the date that the order was issued.¹²² The License Appeal Tribunal has been designated by the Ontario Government for the purpose of hearing appeals of Director's Orders in relation to the *Accessibility for Ontarians with Disabilities Act*.¹²³

The administrative penalties that individuals or organizations are ordered to pay when they fail to comply with the *Accessibility for Ontarians with Disabilities Act* are intended to serve the following three purposes: first, administrative penalties are ordered so as to encourage individuals and organizations to comply with the Act and the regulations;¹²⁴ second, administrative penalties are ordered with the intention of preventing individuals and organizations from directly or indirectly deriving any economic benefits from

¹¹⁸ *Ibid* at s 21(5).

¹¹⁹ *Ibid* at s 21(5).

¹²⁰ *Supra* note 107.

¹²¹ *Supra* note 8 at s 21(7)(b).

¹²² *Ibid* at s 21(7)(c).

¹²³ *Supra* note 47 at part 5, s 86.

¹²⁴ *Supra* note 8 at s 21(6)1.

their contravention of the Act or the regulations;¹²⁵ and third, administrative penalties are ordered with the intention of recovering the costs of enforcing the Act and the regulations against individuals and organizations that contravene them.¹²⁶

The Accessibility Directorate of Ontario determines the amount and severity of administrative penalties based upon five rules that are outlined in the Integrated Accessibility Standards. The first rule requires the director ordering the payment of an administrative penalty to determine whether the severity of the impact of the contravention is minor, moderate, or major in nature.¹²⁷ The impact of a contravention of administrative requirements is considered minor while the impact of the contravention of a requirement for organizational preparedness is considered moderate.¹²⁸ Major contraventions involve the failure to comply with a requirement of an accessibility standard or any contravention that could pose health or safety risks to people with disabilities.¹²⁹ The second rule requires a director to determine whether the individual or organization has demonstrated a history of contravention over the current two accessibility reporting periods.¹³⁰ The third rule requires a director to determine whether the contravening individual or organization is considered a corporation or an individual or unincorporated organization.¹³¹ The fourth rule requires a director to determine the amount of the

¹²⁵ *Ibid* at s 21(6)2.

¹²⁶ *Ibid* at s 21(6)3.

¹²⁷ *Supra* note 47 at s 83(1)1.

¹²⁸ *Ibid* at ss 83(2)1- 83(2)2.

¹²⁹ *Ibid* at s 83(2)3.

¹³⁰ *Ibid* at s 83(1)2.

¹³¹ *Ibid* at s 83(1)3.

administrative penalty using Schedule 3 of the Integrated Accessibility Standards if the contravening individual or organization is determined to be a corporation.¹³²

The administrative penalties within Schedule 3 range from \$500 to \$15,000.¹³³ If the contravening individual or organization is determined to be an individual or unincorporated organization, the director must determine the amount of the administrative penalty using Schedule 2 of the Integrated Accessibility Standards.¹³⁴ The administrative penalties within Schedule 2 range from \$200 to \$2,000.¹³⁵

The fifth rule in determining the amount of an administrative penalty that an individual or organization must pay applies only when the contravention is considered major. When this is the case, a director may use Schedule 2 or Schedule 3 of the Integrated Accessibility Standards to determine the amount of the administrative penalty that an individual or organization will be ordered to pay on a daily basis for each day that the contravention occurs or continues to occur up to a maximum of \$100,000 for corporations and \$50,000 for individuals and unincorporated organizations.¹³⁶

The License Appeal Tribunal¹³⁷ has been designated by the Ontario Government for the purpose of hearing appeals of administrative penalties in relation to the *Accessibility for Ontarians with Disabilities Act*.¹³⁸ If an individual or organization fails to comply with an order to pay an administrative penalty within

¹³² *Ibid* at s 83(1)4.

¹³³ *Ibid* at Schedule 3.

¹³⁴ *Ibid* at s 83(1)4.

¹³⁵ *Ibid* at Schedule 2.

¹³⁶ *Ibid* at s 83(1)5.

¹³⁷ *Ibid* at part 5, s 86.

¹³⁸ *Ibid*.

the time specified in the order and an appeal of the administrative penalty has not been made, the order to pay the administrative penalty may be filed with a local registrar of the Superior Court of Justice and it would then be enforced as an order of the court.¹³⁹

The risks associated with failing to comply with the *Accessibility for Ontarians with Disabilities Act* are significant: ultimately individuals and organizations that fail to comply with the Act risk the enforcement mechanisms of Ontario's Superior Court of Justice.¹⁴⁰ There is also criminal enforcement provided under the Act. It is an offence for an individual to furnish a director of the Accessibility Directorate of Ontario with false or misleading information by way of a filed accessibility report or in another manner.¹⁴¹ It is also an offence for an individual or organization to fail to comply with an order issued by a director of the Accessibility Directorate of Ontario or the License Appeal Tribunal.¹⁴² Lastly, it is an offence for an individual or organization to obstruct an inspection.¹⁴³ Every individual and unincorporated organization that is found guilty of an offence under the *Accessibility for Ontarians with Disabilities Act* is liable on conviction to a fine of not more than \$50,000 for each day, or part of a day, on which the offence occurred or continued to occur.¹⁴⁴ Every corporation that is found guilty of an offence under the Act is liable on conviction to a fine of not more than

¹³⁹ *Supra* note 8 at s 23(1).

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid* at s 37(1)(a).

¹⁴² *Ibid* at s 37(1)(b).

¹⁴³ *Ibid* at s 37(1)(c).

¹⁴⁴ *Ibid* at s 37(3)(a).

\$100,000 for each day, or part of a day, on which the offence occurred or continued to occur.¹⁴⁵

The *Accessibility for Ontarians with Disabilities Act* does not include any enforcement mechanisms that may be employed by private individuals to assert their rights as people with disabilities. Therefore an Ontario Community College cannot be sued directly by a person with a disability under Ontario law or federal law for failure to comply with the provisions of the *Accessibility for Ontarians with Disabilities Act*.

(c) Complying with the *Accessibility for Ontarians with Disabilities Act*

(i) Generally

In the Second Legislative Review of the *Accessibility for Ontarians with Disabilities Act*, Mayo Moran, Dean of the Faculty of Law at the University of Toronto, insisted that a “robust, effective, and visible enforcement regime is of vital importance to the integrity of the *Accessibility for Ontarians with Disabilities Act*”.¹⁴⁶

The Accessibility Directorate of Ontario plays a critical role in both monitoring and encouraging the compliance with the *Accessibility for Ontarians with Disabilities Act* by individuals and organizations. As mentioned above,¹⁴⁷ the Accessibility Directorate of Ontario was established under the *Ontarians with Disabilities Act* to manage the implementation of the legislation. Its mandate was expanded when the *Accessibility for Ontarians with Disabilities Act* came into

¹⁴⁵ *Ibid* at s 37(3)(b).

¹⁴⁶ Moran *supra* note 27 at 33.

¹⁴⁷ See note 11.

force to include monitoring and encouraging compliance with the requirements set out in the accessibility standards.¹⁴⁸

The *Accessibility for Ontarians with Disabilities Act* states that individuals and organizations must file accessibility reports annually,¹⁴⁹ or at specified times, with the Accessibility Directorate of Ontario. An accessibility report must outline how the individual or organization has demonstrated or achieved compliance with the requirements of applicable accessibility standards and detail the steps that they have taken, or will continue to take, in order demonstrate or achieve compliance. The accessibility report must also include a statement certifying that the information contained within the report is accurate¹⁵⁰. A director from the Accessibility Directorate of Ontario will review the accessibility report to determine whether the individual or organization has demonstrated or achieved compliance and will request additional reports or information if necessary¹⁵¹. This self-reporting mechanism is fundamental, as the review of accessibility reports is the primary tool for monitoring compliance with the *Accessibility for Ontarians with Disabilities Act*.¹⁵² In order to be in full compliance with the Act, individuals and organizations must meet the requirements of the accessibility standards, file accessibility reports with the Accessibility Directorate of Ontario that certify that they have met the requirements of the accessibility standards, and have their

¹⁴⁸ Ontario, "INFO-GO Employee & Organization Directory: Accessibility Directorate of Ontario" online: <www.infogo.gov.on.ca>.

¹⁴⁹ *Supra* note 8 at s 14(1).

¹⁵⁰ *Supra* note 8 at s 15.

¹⁵¹ *Ibid* at s 16.

¹⁵² Moran *supra* note 27 at 10.

accessibility reports accepted, reviewed, and approved by the Accessibility Directorate of Ontario.

The Accessibility Directorate of Ontario has published an Accessibility Compliance Action Plan that details the Ontario Government's strategy to help organizations comply with the *Accessibility for Ontarians with Disabilities Act*.¹⁵³ In an effort to raise awareness about the need to comply with the Act, the Accessibility Directorate of Ontario launched a marketing campaign in November of 2014 that promoted, via radio and social media, the programs and tools that have been developed and made available to both encourage and help individuals and organizations demonstrate and achieve compliance with the legislation.¹⁵⁴ Examples of these programs and tools include: the EnAbling Change¹⁵⁵ program which shares the costs of projects that have been developed and implemented in order to educate specific industries or sectors about the requirements of the accessibility standards that are applicable to them; the Accessibility Compliance Wizard¹⁵⁶ which is an online tool that will tell users which requirements of the accessibility standards they must meet, and when they must meet them, based on information that individuals and organizations provide upon using the tool; and the accessforward.ca¹⁵⁷ website which contains training modules for all of the Integrated Accessibility Standards training-related requirements. In addition to these programs and tools, the Accessibility Directorate of Ontario employs the following two measures to further encourage compliance with the *Accessibility for*

¹⁵³ *Supra* note 24.

¹⁵⁴ *Supra* note 107.

¹⁵⁵ Moran *supra* note 27 at 37.

¹⁵⁶ *Ibid* at 38.

¹⁵⁷ *Ibid* at 39.

Ontarians with Disabilities Act: the conduction of audits and the issuing of Notices of Proposed Order. Upon request, the Accessibility Directorate will conduct audits of organizations to confirm that those organizations are in compliance with the Act.¹⁵⁸ These audits will indicate only what an organization will need to do in order to demonstrate and achieve compliance with the Act and they will not result in any administrative penalties. Notices of Proposed Order will advise individuals and organizations of why they are not in compliance with the Act and they will detail what must be done in order to avoid administrative penalties¹⁵⁹. In 2014, the Accessibility Directorate of Ontario resolved 1,800 Notices of Proposed Order¹⁶⁰.

The progress report on the Accessibility Compliance Action Plan summarizes the Accessibility Directorate of Ontario's progress in monitoring and encouraging compliance with the *Accessibility for Ontarians with Disabilities Act*.¹⁶¹ As a result of the efforts and resources mentioned above, the Accessibility Directorate of Ontario noted that the compliance rates¹⁶² for private sector accessibility reporting had more than doubled from 16% in December 2012 to 38% in December 2014.¹⁶³ It was also noted that the broader public sector had achieved an accessibility reporting compliance rate of 100% in 2013.¹⁶⁴

¹⁵⁸ *Supra* note 92.

¹⁵⁹ *Ibid.*

¹⁶⁰ *Supra* note 107.

¹⁶¹ The 2014 edition of the progress report is currently available online. The website does not indicate when the 2015 edition of the progress report will be made available online. See Ontario, "About Accessibility Laws" online: <www.ontario.ca/page/about-accessibility-laws>.

¹⁶² The method for calculating compliance rates was not made available.

¹⁶³ *Supra* note 107.

¹⁶⁴ *Ibid.*

(ii) Complying with the *Accessibility for Ontarians with Disabilities Act* in Ontario Community Colleges

Career Colleges in Ontario and Ontario Colleges of Applied Arts and Technology are organizations that are required to comply with the *Accessibility for Ontarians with Disabilities Act*. They must implement the required measures to ensure that barriers to accessibility for faculty, staff, students, and visitors are identified, removed, and prevented. Although the accessibility standards outline what Ontario Community Colleges must do and by when in order to comply with the *Accessibility for Ontarians with Disabilities Act*, the requirements of the accessibility standards are not as specific as the conditions and requirements of the exceptions for educational institutions that are contained within the *Copyright Act*.

Ontario Community Colleges were to have complied with the Accessibility Standards for Customer Service by meeting the following requirements on or by January 10, 2010:¹⁶⁵ establishing policies, practices, and procedures to govern how their goods and services are provided to people with disabilities;¹⁶⁶ accommodating the use of service animals and support persons;¹⁶⁷ posting notices of temporary disruptions in facilities or to services;¹⁶⁸ providing training to staff about the provision of goods and services to people with disabilities;¹⁶⁹ and establishing a process for receiving and responding to feedback about the

¹⁶⁵ Ontario, "Accessibility Rules for Educational Institutions" online: <www.ontario.ca/page/accessibility-rules-school-libraries>.

¹⁶⁶ *Supra* note 38 at s 3.

¹⁶⁷ *Ibid* s 4.

¹⁶⁸ *Ibid* s 5.

¹⁶⁹ *Ibid* at s 6.

manner in which their goods and services are provided to people with disabilities.¹⁷⁰

Most of the dates by which Ontario Community Colleges were to have complied with the requirements within the Information and Communications Standards ranged from January 1, 2012 to January 1, 2016, with one requirement carrying a compliance date of January 1, 2020.¹⁷¹

As organizations that employ faculty, staff, and students, Ontario Community Colleges are required to comply with the Employment Standards. By January 1, 2012, individualized workplace emergency response information was to have been provided to employees with disabilities.¹⁷² All of the other requirements within the Employment Standards that related to making the employment practices of Ontario Community Colleges accessible, such as, notifying employees and the public about the availability of accommodations for applicants with disabilities during the recruitment, assessment, and selection processes;¹⁷³ developing and having in place a written process for the

¹⁷⁰ *Ibid* at s 7.

¹⁷¹ Emergency procedures, plans, and public safety information were to have been provided and made available in accessible formats with appropriate communication supports by January 1, 2012. Accessibility awareness training related to accessible program and course delivery and instruction was to have been provided to educators at Ontario community colleges by January 1, 2013, and educational and training resources, materials, student records, information on program requirements, information on program availability, and descriptions of programs were to have been made available in accessible formats by this date also. The Internet and intranet websites of Ontario community colleges, as well as the content embedded in those websites, were to have conformed to the World Wide Web Consortium Accessibility Guidelines by January 1, 2014. Libraries offering services at or to Ontario community colleges were to have provided, procured, or acquired accessible or conversion ready print resources and materials by January 1, 2015. Digital and multimedia resources and materials must be provided, procured, or acquired by January 1, 2020. Lastly, Ontario community colleges were to have provided or arranged for the provision of accessible formats and communication supports for people with disabilities by January 1, 2016. See O Reg 191/11: Integrated Accessibility Standards under *Accessibility for Ontarians with Disabilities Act*, 2005, SO, c11. Refer to official electronic version at <www.ontario.ca/laws/regulation/110191> at part 2, ss 13, 16, 15, 14, 18, and 12 respectively.

¹⁷² *Supra* note 47 at part 2, s 27.

¹⁷³ *Ibid* at part 2, ss 22-24.

development of documented individual accommodation plans¹⁷⁴ and a return to work process for employees who have been absent from work due to a disability and require disability-related accommodations in order to return to work;¹⁷⁵ and taking into account the accessibility needs of employees with disabilities and individual accommodation plans when using a performance management process,¹⁷⁶ when providing career development and advancement opportunities,¹⁷⁷ and when redeploying employees with disabilities,¹⁷⁸ were to have been complied with by January 1, 2014.¹⁷⁹

Should an Ontario Community College provide transportation services, such as shuttles to satellite campuses, they would have had to comply with the requirements of the Transportation Services Standards for both conventional and specialized transportation services by July 1, 2011.¹⁸⁰

Lastly, Ontario Community Colleges would have also had to comply with the requirements of the Design of Public Spaces Standards by making all new or redeveloped public spaces accessible by January 1, 2016.¹⁸¹

Ontario Community Colleges demonstrate and achieve compliance with the *Accessibility for Ontarians with Disabilities Act* by meeting the requirements set out in the accessibility standards and filing annual accessibility reports, certifying that they have done so, with the Accessibility Directorate of Ontario.

¹⁷⁴ *Ibid* at s 28.

¹⁷⁵ *Ibid* at s 29.

¹⁷⁶ *Ibid* at part 2, s 30.

¹⁷⁷ *Ibid* at s 31.

¹⁷⁸ *Ibid* at part 2, s 32.

¹⁷⁹ *Supra* note 165.

¹⁸⁰ *Ibid*.

¹⁸¹ *Ibid*.

The programs and tools that the Accessibility Directorate of Ontario has made available to encourage and help individuals and organization achieve compliance with the Act, such as the EnAbling Change program,¹⁸² the Accessibility Compliance Wizard,¹⁸³ and the accessforward.ca website,¹⁸⁴ are available for use by Ontario Community Colleges. In addition to these programs and tools, the Accessibility Directorate of Ontario partnered with the Ministry of Training, Colleges, and Universities in 2014 to develop pilot programs and projects that would increase the ability of career colleges and Ontario Colleges of Applied Arts and Technology to demonstrate and achieve compliance with the *Accessibility for Ontarians with Disabilities Act*.¹⁸⁵

When the dates by which Ontario Community Colleges must have complied with each of the requirements of the accessibility standards of the *Accessibility for Ontarians with Disabilities Act* arrive, the Ontario Community Colleges then become subject to the enforcement provisions described above.¹⁸⁶

Failing to comply with the *Accessibility for Ontarians with Disabilities Act* could harm the reputation of an Ontario community college and could result in significant financial consequences.

¹⁸² Moran *supra* note 27 at 37.

¹⁸³ *Ibid* at 38.

¹⁸⁴ *Ibid* at 39.

¹⁸⁵ *Supra* note 107.

¹⁸⁶ See above at 16.

III Canadian Copyright Act

(a) Overview of the Legislation: How it came to be and what it is intended to do

The *Copyright Act*¹⁸⁷ is one component of the Canadian intellectual property law regime, a regime that also includes the *Patent Act*,¹⁸⁸ the *Trade-marks Act*,¹⁸⁹ and the *Industrial Design Act*.¹⁹⁰ The Canadian *Copyright Act* has evolved over an extensive period of time, establishing a balance between the interests of authors of works and owners of rights in other subject matter on the one hand, and the interests of those who use authors' works and other subject matter on the other.¹⁹¹ Canada's copyright law was initially shaped by both British and French colonial influences.

British copyright law dates back to 1557 when the Crown granted a publishing monopoly to the Stationers' Company of London in an attempt to control the proliferation of treasonable and seditious works as a result of the advent of the printing press.¹⁹² The flourishing book trade that grew out of the demand for printed material in Britain and its colonies led the British Parliament to introduce legislation that would regulate the book trade by granting exclusive rights to publishing companies and authors. The Statute of Anne¹⁹³ was passed by the British Parliament in 1710 and granted monopolies to publishing

¹⁸⁷ *Supra* note 9.

¹⁸⁸ *Patent Act*, RSC 1985, c.P-4. See electronic version at <laws-lois.justice.gc.ca/eng/acts/P-4/>.

¹⁸⁹ *Trade-marks Act*, RSC 1985, c.T-13. See electronic version at <laws-lois.justice.gc.ca/eng/acts/t-13/>.

¹⁹⁰ *Industrial Design Act*, RSC 1985, c.I-9. See electronic version at <laws-lois.justice.gc.ca/eng/acts/I-9/>.

¹⁹¹ Please note that copyright-protected works include artistic, dramatic, literary, and musical works while other subject matter that is protected by copyright includes performer's performances, sound recordings, and broadcast signals.

¹⁹² Laura J. Murray & Samuel E. Trosow, *Canadian Copyright A Citizens Guide* (Toronto: Between the Lines, 2013) at 17.

¹⁹³ An Act for the Encouragement of Learning by vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned, 1709 [1710] 8 Anne c19.

companies and authors so that they could exploit the economic potential of their works while also controlling and restricting the use of their works for a limited period of time.

The National Convention of France passed law governing *droit d'auteur*, the right of the author, in 1793.¹⁹⁴ This legislation was based on the philosophical view that a work is an extension of its author. *Droit d'auteur* confers upon authors of works limited rights in their work. It eventually encompassed as well, moral rights that protect the integrity of authors in their works and their rights to be associated with their works.¹⁹⁵ The French legislation has also come to include a limited number of exceptions to the authors' rights ensuring that members of society may use authors' works for specific purposes.

The *British Colonial Statute* of 1832 was the first Canadian colonial copyright statute. The Act was passed by the Parliament of Lower Canada and granted copyright to residents of the colony of Lower Canada so as to cultivate an artistic and literary colony through literature, bookshops, and local presses. Almost a decade later, the *British Colonial Statute* of 1841 was enacted when the Provinces of Upper Canada and Lower Canada were unified to form the Province of Canada.¹⁹⁶

During the 19th Century, Canadians were mainly reading American reprints of books that had been written by British authors and originally published by

¹⁹⁴ Murray *supra* note 192 at 22.

¹⁹⁵ There are other aspects of moral rights but it is these that eventually entered international and then Canadian law.

¹⁹⁶ Ysolde Gendreau, *An Emerging Intellectual Property Paradigm: perspectives from Canada* (Cheltenham UK: Edward Elgar Publishing, 2009) at 110.

British presses.¹⁹⁷ The books that were printed in Britain were costly in terms of both purchase prices and shipping charges so the unauthorized reprints that the American publishers were producing in large quantities and at low costs were an attractive alternative to Canadian readers and booksellers.¹⁹⁸ Concerned about the potential loss of their British North American book market and the possible waning of Canadians' loyalty to the Queen, the British Parliament passed the *Imperial Copyright Act* of 1842 which prohibited the importation of unauthorized reprints into Britain and its colonies and heavily taxed all publications originating from American that were imported into Britain and its colonies.¹⁹⁹

Canadian newspaper printers saw the potential for national markets and broader economic development after Confederation. The demand for national and local news was increasing and American printers simply could not provide the appropriate content within an adequate amount of time. Canadian publishers and newspaper printers began lobbying for a licensing scheme similar to that granted by the British Parliament to American publishers and printers that allowed them to reprint British books without permission as long as a standard royalty was paid.²⁰⁰ The Canadian Parliament passed a *Copyright Act* in 1872 that included a provision for such a licensing scheme but the British Parliament opposed the legislation and it never received Royal Assent.²⁰¹

¹⁹⁷ Murray *supra* note 192 at 24.

¹⁹⁸ *Ibid.*

¹⁹⁹ Maple Leaf Web, "History of Copyright Law in Canada" online: <mapleleafweb.com/features/copyright-law-canada-introduction-canadian-copyright-act>.

²⁰⁰ Gendreau *supra* note 196 at 114.

²⁰¹ *Ibid.*

The Canadian Parliament “attempted several times to enact its own copyright laws: in 1889, 1890, 1891, and 1895. In each case, however, British authorities denied passage of the legislation”.²⁰² The *Copyright Act* that was passed by the British Parliament in 1911 granted Canada the right to make its own laws on the matter of copyrights.²⁰³ The Canadian Parliament passed Canada’s first domestic copyright legislation in 1921:²⁰⁴ the Canadian *Copyright Act* came into force in 1924 and saw only minor amendments over the next few decades.²⁰⁵

The most recent consolidation of the Canadian *Copyright Act* came into force in 1985 and was followed by three phases of reform designed to modernize the legislation. The first phase of reform began with the amendment of 1988 and amended the Act by including choreographic works and computer programs among the works protected by copyrights, clarifying the moral rights conferred upon authors of works, and addressing the collective administration of copyright by expanding the scope for collective societies and the rules relating to them and establishing their supervision²⁰⁶ by the Copyright Board of Canada.²⁰⁷

²⁰² *Supra* note 199.

²⁰³ *Ibid.*

²⁰⁴ *Ibid.*

²⁰⁵ It was stated in Laura J. Murray & Samuel E. Trosow, *Canadian Copyright A Citizens Guide* (Toronto: Between the Lines, 2013) at 27 that “it was not until 1982, with the repatriation of the Constitution, that Canada was able to craft copyright law free from the United Kingdom” but this is not accurate as “The Statute of Westminster, of 11 December 1932, was a British law clarifying the powers of Canada’s Parliament and those of the other Commonwealth Dominions. It granted these former colonies full legal freedom except in those areas where they chose to remain subordinate to Britain”. See “Statute of Westminster” in The Canadian Encyclopedia, online: <www.thecanadianencyclopedia.ca/en/article/statute-of-westminster/>.

²⁰⁶ *An Act to amend the Copyright Act* SC 1988, c65.

²⁰⁷ Refer to mandate of Copyright Board of Canada at note 14.

The second phase of reform was in 1997 and amended the Act by including exceptions to copyright for “educational institutions”,²⁰⁸ “libraries, archives, and museums”,²⁰⁹ and persons with a “perceptual disability”;²¹⁰ introducing other subject matter rights for performer’s performances, sound recordings, and broadcast signals; and also clarifying certain changes for collective societies and the Copyright Board of Canada.²¹¹

The third phase of reform reached Parliament in 2001 but dissolution of Parliament in 2005,²¹² in 2008,²¹³ and again in 2011²¹⁴ (before proposed amending legislation passed) delayed any progress in amending the *Copyright Act* until Bill C-11: *An Act to Amend Copyright*²¹⁵ received royal assent in June of

²⁰⁸ Refer to definition of “educational institution” at note 18.

²⁰⁹ The definition of “library, archive or museum” can be found in section 2 of the *Copyright Act*: “library, archive or museum” means

- (a) an institution, whether or not incorporated, that is not established or conducted for profit or that does not form a part of, or is not administered directly or indirectly controlled by, a body that is established or conducted for profit, in which is held and maintained a collection of documents and other materials that is open to the public or to researchers, or
- (b) any other non-profit institution prescribed by regulation.

²¹⁰ The definition of “perceptual disability” can be found in section 2 of the *Copyright Act*: “perceptual disability” means a disability that prevents or inhibits a person from reading or hearing a literary, musical, dramatic, or artistic work in its original format, and includes such a disability resulting from

- (a) severe or total impairment of sight or hearing or the inability to focus or move one’s eyes,
- (b) the inability to hold or manipulate a book, or
- (c) an impairment related to comprehension.

²¹¹ *An Act to amend the Copyright Act* AC 1997, c24.

²¹² Bill C-60, *An Act to amend the Copyright Act*, 1st Sess, 38th Parl, 2005. Refer to official electronic version at <www.lop.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?ls=c60&parl=38&ses=1>.

²¹³ Bill C-61, *An Act to amend the Copyright Act*, 2nd Sess, 39th Parl, 2008. Refer to official electronic version at <www.lop.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?Language=E&ls=C61&Mode=1&Parl=39&Ses=2&source=library_prb>.

²¹⁴ Bill C-32, *An Act to amend the Copyright Act*, 3rd Sess, 40th Parl, 2010. Refer to official electronic version at <www.lop.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?Language=E&ls=C32&Mode=1&Parl=40&Ses=3&source=library_prb>.

²¹⁵ Bill C-11, *An Act to amend the Copyright Act*, 1st Sess, 41st Parl, 2012. Refer to official electronic version at <www.lop.parl.gc.ca/Content/LOP/LegislativeSummaries/41/1/c11-e.pdf>.

2012 and came into force in November of 2012²¹⁶ as the *Copyright Modernization Act*.²¹⁷

This third phase of reform modernized and amended the *Copyright Act*. It allows users to share, format shift, and make computer backup copies as long as no digital locks are involved. It expands the scope of fair dealing to include education, satire, and parody. It introduces a new exception for users to use copyright-protected works user-generated content. It also introduces the concept of digital locks into the Act and prohibits their circumvention.²¹⁸ The Act now limits the amount of damages that a court can award in respect of either commercial or non-commercial infringement. The amendments introduced into Canadian copyright law the concept of a notice and notice regime for Internet service providers. Additionally, the Act now makes performers and photographers the primary owners of their commissioned works. Lastly, the Act now calls for a review of copyright law every five years.²¹⁹ The next review of the *Copyright Act* is to begin in 2017.

The Canadian *Copyright Act* does not include a stated purpose but judicial decisions have stated that the purpose of Canadian copyright law is “to balance the public interest in promoting the encouragement and dissemination of works of the arts and intellect and obtaining a just reward for the creator”.²²⁰ The

²¹⁶ *Supra* note 17.

²¹⁷ *Copyright Modernization Act*, SC 2012, C.20. Refer to official electronic version at <laws-lois.justice.gc.ca/eng/annualstatutes/2012_20/page-1.html>.

²¹⁸ The exceptions to these provisions are not the same as in respect of copyright: no fair dealing or educational institutions or libraries, archives, and museums exceptions for instance.

²¹⁹ *Copyright Modernization Act*, SC 2012, C.20. Refer to official electronic version at <laws-lois.justice.gc.ca/eng/annualstatutes/2012_20/page-1.html>

²²⁰ *Supra* note 10 at para 23.

Copyright Act achieves this balance in respect of the rights owners by conferring at least one, if not two, categories of rights upon them: economic rights in works²²¹ and limited rights in other subject matter,²²² and moral rights in works and the other subject matter of performers' performances.²²³

Section 3 of the *Copyright Act* provides for the economic rights associated with works and states that:

'copyright' means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof, and includes the sole right:

- (a) to produce, reproduce, perform or publish any translation of the work,
- (b) in the case of a dramatic work, to convert it into a novel or other dramatic work,
- (c) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of a performance in public or otherwise,
- (d) in the case of a literary, dramatic, or musical work, to make any sound recording, cinematograph film or other contrivance by means of which the work may be mechanically reproduced or performed,
- (e) in the case of any literary, dramatic, musical or artistic work, to reproduce, adapt and publicly present the work as a cinematographic work,
- (f) in the case of any literary, dramatic, musical or artistic work, to communicate the work to the public by telecommunication,
- (g) to present at a public exhibition, for a purpose other than sale or hire, an artistic work created after June 7, 1988, other than a map, chart or plan,
- (h) in the case of a computer program that can be reproduced in the ordinary course of its use, other than by a reproduction during its execution in conjunction with a machine, device or computer, to rent out the computer program,
- (i) in the case of a musical work, to rent out a sound recording in which the work is embodied,
- (j) in the case of a work that is in the form of a tangible object, to sell or otherwise transfer ownership of the tangible object, as long as that ownership has never previously been transferred in or outside Canada with the authorization of the copyright owner,

and to authorize such acts.

²²¹ *Supra* note 9 at s 3.

²²² *Ibid* at ss 15, 18, and 21.

²²³ *Ibid* at ss 14 and 17.

The other subject matter rights apply specifically to performer's performances, sound recordings, and broadcast signals.

Performers' copyrights in their performances consist of the sole right to do or authorize certain acts in relation to a performance or any substantial part of it.²²⁴ These acts include the communication of the performer's unfixed performance to the public by telecommunication;²²⁵ the public performance of it if it is communicated to the public by telecommunication otherwise than by communication signal;²²⁶ and the fixation of it in any material form²²⁷ including a sound recording.²²⁸

If a performer's performance is fixed in a sound recording, the performer's rights include control over reproducing that fixation;²²⁹ renting out the sound recording;²³⁰ and making the sound recording available to the public by telecommunication in a way that allows a member of the public to have access to the sound recording from a place and at a time individually chosen by that member of the public and communicating the sound recording to the public by telecommunication in that way.²³¹

If the performer's performance is fixed in a sound recording that is in the form of a tangible object, the performer has the sole right to sell or otherwise transfer ownership of the tangible object as long as that ownership has never

²²⁴ *Ibid* at s 15.

²²⁵ *Ibid* at s 15(1)(a)(i).

²²⁶ *Ibid* at s 15(1)(a)(ii).

²²⁷ *Ibid* at s 15(1)(a)(iii).

²²⁸ *Ibid* at s 26(1)(a).

²²⁹ *Ibid* at s 15(1)(b).

²³⁰ *Ibid* at s 15(1)(c).

²³¹ *Ibid* at s 15(1)(d).

been transferred in or outside of Canada with the authorization of the owner of the copyright in the performer's performance.²³²

Lastly, if the performer's performance has been fixed in a sound recording without the performer's authorization, the performer then has the right to reproduce the fixation or any substantial part thereof.²³³

A sound recording maker's copyright in a sound recording consists of the sole right to publish the sound recording for the first time, to reproduce it in any material form, to rent it out, and to authorize any such acts.²³⁴ The sound recording maker can also make the sound recording available to the public by telecommunication in a way that allows a member of the public to have access to it from a place and at a time individually chosen by that member of the public and to communicate it to the public by telecommunication in that way.²³⁵ If the sound recording is in the form of a tangible object, the sound recording maker has the right to sell or otherwise transfer the ownership of the tangible object as long as that ownership has never previously been transferred in or outside of Canada with the authorization of the owner of the copyright in the sound recording.²³⁶

A broadcaster's copyright in the communication signals that it broadcasts consists of the sole right to do the following in relation to the communication signal or any substantial part thereof: to fix it,²³⁷ to reproduce any fixation of it that was made without the broadcaster's consent,²³⁸ to authorize another

²³² *Ibid* at s 15(1)(e).

²³³ *Ibid* at s 26(1)(b).

²³⁴ *Ibid* at s 18(1).

²³⁵ *Ibid* at s 18(1.1)(a).

²³⁶ *Ibid* at s 18(1.1)(b).

²³⁷ *Ibid* at s 21(1)(a).

²³⁸ *Ibid* at s 21(1)(b).

broadcaster to retransmit it to the public simultaneously with its broadcast,²³⁹ to perform it in a place open to the public on payment of an entrance fee if it is a television communication signal,²⁴⁰ and to authorize any of the above.²⁴¹

The rights conferred upon authors of works by copyright and the other subject matter rights are often referred to as the economic rights because they allow for the economic potential of the work to be exploited because these rights can be transferred and form the basis of commercial trade.²⁴² A distinction can be made between the author of a work and the owner of the copyright associated with a work. Where the statute makes the author the first owner of the work, the author may retain her or his economic rights in part or in whole or she or he may license, transfer, or sell any one or part, one, or all of them to another person, whether an individual or an organization.²⁴³ Should the economic rights be transferred or sold or should the author have been an employee at the time the work was created and therefore was never the owner of the copyright in the work.²⁴⁴ The author of the work retains the status of author of the work but the individual or organization to whom the economic rights were transferred or sold will assume ownership of the rights transferred and be known as the copyright owner of those rights. More than one copyright owner can be involved in any given work at any given time.

²³⁹ *Ibid* at s 21(1)(c).

²⁴⁰ *Ibid* at s 21(1)(d).

²⁴¹ *Ibid* at s 21(1).

²⁴² *Ibid* at s 13(4).

²⁴³ *Ibid*.

²⁴⁴ *Ibid* at s 13(3).

When a copyright owner authorizes a third party to exercise a right on her, his, or its behalf with respect to a work, this is usually done through the legal contractual vehicle of a license which will detail the scope and limits of the agreed use of the work to be made by the third party as well as the costs to be paid for the use of the work to the copyright owner by that third party.

As noted above, since 1988, authors of works and copyright owners may enlist collective societies to administer their economic rights, license the use of their copyright-protected works, and collect any royalties generated by the use of their copyright-protected works. Some collective societies, such as music rights societies, in Canada are fully regulated by the Copyright Board of Canada, which makes decisions on royalties and their related terms and conditions.²⁴⁵ Others may have recourse to the Copyright Board from time to time as they choose,²⁴⁶ as is the case with the print collectives Access Copyright²⁴⁷ and Copibec.²⁴⁸

The moral rights are the second category of rights that the *Copyright Act* confers, historically only upon authors of works but now, since 2012, also upon certain “other subject matter” creators – the performers. Authors of works and performers have the right to protect the integrity of their works and, in connection with an act mentioned in section 3 and section 15,²⁴⁹ the right, where reasonable

²⁴⁵ *Ibid* at ss 66.52 and 71.

²⁴⁶ *Supra* note 9 at s 70.12.

²⁴⁷ Refer to description of Access Copyright at note 13.

²⁴⁸ Copibec, whose official name is Société québécois de gestion collective des droit de reproduction, is a not-for-profit created in 1998 by the Union des écrivaines et écrivains québécois (UNQ) and the Association nationale de éditeurs de livres (ANEL) to manage the reproduction rights for copyright-protected works in print and digital formats. See Copibec, News Release, “\$4 Million Class Action Lawsuit Against Université Laval For Copyright Infringement” (10 November 2014) online: <copibec.qc.ca>.

²⁴⁹ *Copyright Act*, RSC 1985, cC42 at s 17.1(1): a performer of a live aural performance or a performance fixed in a sound recording has the right to the integrity of the performance, and the right, when reasonable under the circumstances to be associated with the performance as its performer by name or under a pseudonym and the right to remain anonymous.

in the circumstances to do so, to be associated with their works as author by name or pseudonym or to remain anonymous.²⁵⁰ Unlike the economic rights, the author of a work or a performer may waive her or his moral rights but may not license, transfer, or sell otherwise transfer any such rights to any other individual or organization.²⁵¹

In order for economic or moral rights copyright to subsist in a work, that work must be an original expression of an idea that is fixed in some form. “Copyright protection does not extend to facts or ideas but is limited to the expression of ideas”.²⁵² The manner in which ideas are expressed must be original and the standard for originality was introduced by the Supreme Court of Canada in 2004: “a work must have originated from the author, not be copied, and must be the product of the exercise of skill and judgment that is more than trivial”.²⁵³ The requirement that an original expression in a work be fixed in some form was introduced into Canadian law by the Exchequer Court in 1954: “for copyright to subsist in a work it must be expressed to some extent at least in some material form, capable of identification and having a more or less permanent endurance”.²⁵⁴ Examples of fixation include words written in a document, a musical score recorded in a sound recording, and an image captured on film. If a work has met these criteria then it will be protected by

²⁵⁰ *Supra* note 9 at ss 14.1(1) and 17.1(1).

²⁵¹ *Ibid* at ss 14.1(2) and 17.1(2).

²⁵² *Supra* note 10 at para 22.

²⁵³ *Ibid* at para 28.

²⁵⁴ *Canadian Admiral Corp. v. Rediffusion* 1954 Ex CR 382, 20 CPR 75. [This Court was a precursor to the present federal courts of Canada.]

Canadian copyright law and this protection²⁵⁵ will endure from the moment the work is created, throughout the lifetime of the author of the work, until the end of the calendar year that is fifty years after the date upon which the author of the work has died.²⁵⁶ When this term of protection has lapsed, the work becomes part of the public domain wherein its use by anyone is free and unrestricted.

An original expression of an idea that is fixed in some form will receive automatic copyright protection under Canadian copyright law and does not require registration. The author of a work may choose to register for copyright protection by submitting an application to the Copyright Office.²⁵⁷ This application must be accompanied by a fee and contain information pertaining to the name and address of the copyright owner, the title of the work, the category of the work, and a declaration that the applicant is the owner or assignee of the copyright in the work.²⁵⁸ The registration of copyrights does not include any examination or verification processes. “The Registrar of Copyrights simply receives and processes copyright registration applications and registers copyright in accordance with the Act”.²⁵⁹ The role of the Copyright Office “is not robust, it merely maintains the register of copyrights in an environment where registration is an option”.²⁶⁰ The community colleges must rely upon the Copyright Office to establish whether a work or other subject matter is protected under the *Copyright*

²⁵⁵ *Copyright Act*, RSC 1985, cC42 at s 14.2: moral rights in respect of a work subsist for the same term as the copyright in the work.

²⁵⁶ *Supra* note 9 at s 6.

²⁵⁷ *Copyright Act*, RSC 1985, cC42 at s 46 creates the Copyright Office.

²⁵⁸ *Supra* note 9 at section 55(2).

²⁵⁹ Victoria Owen, “Who Safeguards the Public Interest in Copyright in Canada?” (2012) 59:4 *Journal of the Copyright Society of the USA* at 829.

²⁶⁰ *Ibid.*

Act or not. However, if there is a valid copyright registration in place and the community college infringes, the consequences of that infringement, under the *Copyright Act*, can be more severe than in cases where there is no registration.

(b) Enforcement of the Canadian *Copyright Act*

The enforcement of the *Copyright Act* centers around the concept of “infringement”. There are three categories of infringement. The first category of infringement is copyright infringement, which involves a person doing an act, without the consent of the copyright owner, that only the copyright owner has the right to do.²⁶¹ This concept also applies to infringement of the rights held in “other subject matter” (performances,²⁶² sound recordings,²⁶³ and broadcasts²⁶⁴).

The second category of infringement is secondary infringement, which applies to copies of works, sound recordings, fixations of performer’s performances, and communication signals that a person knows or should have known infringes copyright or would have infringed copyright had the copies been made in Canada.²⁶⁵ Secondary infringement occurs when a person sells or rents out such copies;²⁶⁶ distributes such copies to such effect that the copyright owner is prejudicially affected;²⁶⁷ by way of trade distributes, exposes, offers for sale or rental, or exhibits in public such copies;²⁶⁸ possessing such copies for the

²⁶¹ *Supra* note 9 at s 27(1).

²⁶² *Ibid* at s 15.

²⁶³ *Ibid* at s 18.

²⁶⁴ *Ibid* at s 21.

²⁶⁵ *Ibid* at s 27(2).

²⁶⁶ *Ibid* at s 27(2)(a).

²⁶⁷ *Ibid* at s 27(2)(b).

²⁶⁸ *Ibid* at s 27(2)(c).

purpose of sale, rental, or distribution;²⁶⁹ and importing into Canada such copies for the purpose of sale, rental, or distribution.²⁷⁰

The third category of infringement is the infringement of moral rights, which involves any act or omission that is contrary to any of the moral rights of the author of a work or the performer of a performer's performance, in the absence of the author's or performer's consent, that infringes their moral rights.²⁷¹

Since 2012, in addition to providing protection against infringement, the *Copyright Act* also prohibits a number of acts²⁷² in connection with its new provisions concerning technological protection measures and rights management information, including the circumvention of technological protection measures;²⁷³ the offering of services to the public or provision of services for the purposes of circumventing a technological protection measure;²⁷⁴ the manufacture, importation, distribution, offering for sale or rental, or provision of any technology, device, or component for the purposes of circumventing a technological protection measure;²⁷⁵ the removal or alteration of any rights management information in electronic form without the consent of the copyright owner in order to facilitate or conceal any copyright infringement or to adversely affect the

²⁶⁹ *Ibid* at s 27(2)(d).

²⁷⁰ *Ibid* at s 27(2)(e).

²⁷¹ *Ibid* at s 28.1.

²⁷² With regard to prohibited acts, the court may award damages or profits to a copyright owner in the case of removed or altered rights management information (s 41.23(3)), and, in the case of imported infringing copies of works, the court may make any order, and assign any remedy (s 44.1(10)), it considers appropriate in the circumstances, including that the copies of the work be destroyed, or that they be delivered up to the copyright owner as the copyright owner's property absolutely (s 44.1(9)).

²⁷³ *Supra* note 9 at s 41.1(1) (a).

²⁷⁴ *Ibid* at s 41.1(1)(b).

²⁷⁵ *Ibid* at s 41.1(1)(c).

copyright owner's right to remuneration;²⁷⁶ and the importation of any work in which copyright subsists or that if the works were made in Canada would infringe copyright.²⁷⁷

In addition to these categories [within the *Copyright Act*] of infringement and of prohibiting certain acts, since 2007, the *Criminal Code*²⁷⁸ states that it is an offence to record the performance of a cinematographic work or its soundtrack without the consent of the theatre manager ²⁷⁹ and it is also an offence to do so for the purpose of selling, renting out, or commercially distributing the unauthorized copy of the cinematographic work or its soundtrack.²⁸⁰

If either of those *Criminal Code* provisions pertaining to copyright-related acts is breached, the state can prosecute the party involved. The *Criminal Code* prescribes that a person is liable to imprisonment for a term of not more than two years if that person is found guilty of the offence of recording the performance of a cinematographic work or its soundtrack in a movie theatre without the consent of the theatre manager.²⁸¹ The Code also prescribes that a person is liable to imprisonment for a term of not more than five years if that person is found guilty of recording the performance of a cinematographic work or its soundtrack in a movie theatre without the consent of the theatre manager and for the purpose of sale, rental or other commercial distribution of the unauthorized copy.²⁸²

²⁷⁶ *Ibid* at s 41.22.

²⁷⁷ *Ibid* at s 44.

²⁷⁸ *Criminal Code*, RSC 1985, c C-46, s 745. See the official electronic version at <laws-lois.justice.gc.ca/eng/acts/C-46/>.

²⁷⁹ *Ibid* at s 432(1).

²⁸⁰ *Ibid* at s 432(2).

²⁸¹ *Supra* note 279.

²⁸² *Supra* note 280.

It has been very rare, even in the past, for the state to involve itself in copyright enforcement by bringing prosecutions.²⁸³

The *Copyright Act* does not involve the state in civil enforcement matters except to the extent that the Copyright Board of Canada becomes involved in setting tariffs. To the extent that the Board is involved, it is as an exception to the wider powers of the Competition Bureau.

The Commissioner of Competition, whose authority is derived from the federal *Competition Act*, has access, under the *Copyright Act*, to the tariff decisions and may request the examination of agreements if the Commissioner considers them to be contrary to the public interest.²⁸⁴

Criminal remedies for secondary infringement and for the circumvention of technological protection measures include fines of no more than \$25,000 and/or up to six months in prison upon summary conviction or fines of no more than \$1,000,000 and/or up to five years in prison depending upon whether that matter is pursued summarily or by indictment.²⁸⁵

Otherwise, neither the Copyright Office nor the Copyright Board of Canada nor any other agency is mandated to enforce the *Copyright Act*.

Authors and copyright owners are individually responsible for the enforcement of the rights that the *Copyright Act* confers upon them. The manner and extent to which an author or copyright owner might enforce her, his, or its rights will vary. Some may elect to enforce their rights aggressively while others

²⁸³ See *R v Laurier OfficeMart*, [1994] 58 CPR (3d) 403 (Ont Prov Div), affirmed [1995] 63 CPR (3d) 229 (Ont Gen Div) (involving a copyshop near the University of Ottawa where there was no convictions); *R v JPM* [1996] 67 CPR (3d) 152 (NSCA) (where juvenile convicted of infringing rights in computer software); *R v Aquintey* [1998] 79 CPR (3d) 318 (Ont Prov Ct) (where there was a conviction against a video rental store); *R v Farrell* [2002] 19 CPR (4th) 538 (NBQB) (the accused was acquitted of copyright infringement in a criminal case involving both copyright and trademark charges of counterfeit hats and sunglasses). By contrast, in *R v AFC Soccer* [2002] MJ No 441 (Man PC) (a store was convicted of selling infringing imported goods and fined \$45,000 (25% of gross revenues from the infringing items)).

²⁸⁴ Owen *supra* note 258 at 832.

²⁸⁵ *Supra* note 9 at section 42.

may choose not to enforce them at all. Those authors and copyright owners who do elect to enforce their rights may employ such enforcement provisions as cease and desist letters, takedown notices,²⁸⁶ and litigation in the pursuit of remedies.

Civil remedies for economic rights infringement and the infringement of moral rights include injunctions, damages, accounts, and delivery up of infringing materials as conferred by the statute for the infringement of a right.²⁸⁷ Instead of damages and profits, a copyright owner may elect an award of statutory damages in the amount of \$100 to \$5,000 for each use of a work or other subject matter if the infringements were for non-commercial uses and \$500 to \$20,000 for each use of a work or other subject matter if the infringements were for commercial uses.²⁸⁸

Therefore the *Copyright Act* takes a very different approach to enforcement then does the *Accessibility for Ontarians with Disabilities Act*. As has been described, the *Accessibility for Ontarians with Disabilities Act* relies on public enforcement and provided for no private causes of action,²⁸⁹ whereas the *Copyright Act* approaches enforcement in a virtually opposite manner providing for, and relying upon, private enforcement rights.

²⁸⁶ Cease and desist letters and takedown notices are not statutory mechanisms of enforcement just notices of possible future legal ramifications if the recipient does not change behaviors.

²⁸⁷ *Supra* note 9 at s 34.

²⁸⁸ *Ibid* at s 38(1).

²⁸⁹ See above at 23.

(c) Complying with the Canadian *Copyright Act*

(i) Generally

In order to comply with the *Copyright Act*, users of copyright-protected works must not infringe the rights that the Act confers upon authors of works. The Act does not however, detail in the same way as does the Ontario legislature in the *Accessibility for Ontarians with Disabilities Act*, how users of copyright-protected works can achieve compliance with the law. It does not detail how users of copyright-protected works can avoid copyright infringement. Nor does it detail how users of copyright-protected works can obtain authorization for the use of a work from authors or copyright owners other than to provide how a copyright owner can assign rights²⁹⁰ and that an author²⁹¹ or performer²⁹² can waive their moral rights.

The Act does, however, include a number of exceptions to copyright,²⁹³ uses of works that do not constitute an infringement of copyright if specified conditions and requirements are met. These exceptions exist within Part Three of the *Copyright Act* and address fair dealing;²⁹⁴ non-commercial user-generated content;²⁹⁵ reproduction for private purposes;²⁹⁶ fixing signals and recording programs for later listening or viewing;²⁹⁷ backup copies;²⁹⁸ acts undertaken

²⁹⁰ *Supra* note 9 at ss 13(4) and 25.

²⁹¹ *Ibid* at s 17.1(2).

²⁹² *Ibid* at s 14.1(2).

²⁹³ It is important to note that the exceptions to copyright apply only to copyright and the other subject matter rights. The exceptions to copyright are not exceptions to the moral rights.

²⁹⁴ *Supra* note 9 at s 29.

²⁹⁵ *Ibid* at s 29.21.

²⁹⁶ *Ibid* at s 29.22.

²⁹⁷ *Ibid* at s 29.23.

²⁹⁸ *Ibid* at s 29.24.

without motive or gain;²⁹⁹ uses of copyright protected works by educational institutions,³⁰⁰ libraries, archives, museums,³⁰¹ and persons with perceptual disabilities;³⁰² uses involving computer programs,³⁰³ encryption research,³⁰⁴ security,³⁰⁵ incidental inclusion,³⁰⁶ temporary reproductions for technological purposes,³⁰⁷ ephemeral recordings,³⁰⁸ retransmission,³⁰⁹ network services,³¹⁰ and statutory obligations³¹¹ and miscellaneous uses³¹² of copyright-protected works. The Supreme Court of Canada, in a unanimous judgment of the Chief Justice, writing for the full Court, has held that these exceptions to copyright are “perhaps more properly understood as users’ rights”³¹³ because:

users’ rights are not just loopholes. Both owner rights and user rights should therefore be given the fair and balanced reading that benefits remedial legislation.³¹⁴

Because copyright owners are able to begin legal proceedings to protect their rights under the Act directly against those they allege infringe their rights, even if a user of a copyright-protected work is confident that she, he, or it has met the conditions and requirements of an exception to copyright, the user may find herself, himself, or itself facing legal proceedings brought by an author, broadcaster, sound recording maker, performer, or other rights owner alleging

²⁹⁹ *Ibid* at s 29.3.

³⁰⁰ *Ibid* at ss 29.4, 30.3, and 30.4.

³⁰¹ *Ibid* at ss 30.1, 30.3, 30.4, and 30.5.

³⁰² *Ibid* at s 32.

³⁰³ *Ibid* at s 30.6.

³⁰⁴ *Ibid* at s 30.62.

³⁰⁵ *Ibid* at s 30.63.

³⁰⁶ *Ibid* at s 30.7.

³⁰⁷ *Ibid* at s 30.71.

³⁰⁸ *Ibid* at s 30.8.

³⁰⁹ *Ibid* at s 31.

³¹⁰ *Ibid* at s 31.1.

³¹¹ *Ibid* at s 32.1.

³¹² *Ibid* at s 32.2.

³¹³ *Supra* note 10 at para 12.

³¹⁴ *Ibid* at para 48.

that rights have been infringed. The determination of whether infringement of copyright, moral rights, or a technological protection measure or rights management information violation has occurred will then be up to the courts should the user of and the copyright owner be unable to reach an agreement or settlement before the matter reaches the court.³¹⁵

It therefore becomes important for users to correctly interpret the users' rights provisions of the *Copyright Act* which enlarge their ability to legitimately use material in copyright.

The fair dealing exception is of great importance in this context as it is “an integral part of the scheme of copyright law”.³¹⁶ The *Copyright Act* states that fair dealing for the purpose of research, private study, education, parody or satire, criticism or review, or news reporting does not infringe copyright.³¹⁷ Beyond these listed purposes, the Act does not define or detail what would be considered fair. Whether a dealing with a copyright-protected work is fair is a question of fact and depends on the facts of each case.³¹⁸ The Supreme Court of Canada has identified six factors that could be considered when assessing whether a dealing with a copyright-protected work is fair: the purpose of the dealing,³¹⁹ the character of the dealing,³²⁰ the amount of the dealing,³²¹ available alternatives to

³¹⁵ By contrast, the disabled persons under the *Accessibility for Ontarians with Disabilities Act* cannot sue the institute responsible for complying with the *Accessibility for Ontarians with Disabilities Act*, she or he can only submit a complaint through the ServiceOntario website or to the Ontario Human Rights Tribunal. If the matter reaches the courts, it will only be as a question of judicial review of the response to the complaint, never as an action against the institution.

³¹⁶ *Supra* note 10 at para 49.

³¹⁷ *Supra* note 9 at ss 29, 29.1, and 29.2.

³¹⁸ *Supra* note 10 at para 52.

³¹⁹ *Ibid* at para 54.

³²⁰ *Ibid* at para 55.

³²¹ *Ibid* at para 56.

the dealing,³²² the nature of the dealing,³²³ and the effect of the dealing on the work.³²⁴ These factors provide a useful analytical framework to govern determinations of fairness and they may be more or less relevant to assessing the fairness of a dealing depending on the factual context of the allegedly infringing dealing.³²⁵ The six factors were not incorporated into the Act when it was last amended in 2012, they remain in case law. As such, users of copyright-protected works can employ the six factors when attempting to determine whether their use of a copyright-protected work may be considered fair but, as with the other exceptions to copyright within the Act, a copyright owner or moral rights holder could still allege that her, his, or its rights had been infringed and the consideration of the applicability of the factors determining of fair dealing would ultimately be up to the courts, leaving a user as the defendant, “procedurally required to prove that his or her dealing with a work had been fair”.³²⁶

The most fool-proof method of avoiding a lawsuit alleging the infringement of rights conferred upon copyright owners by the Act is to obtain authorization for the use of copyright-protected works from copyright owners and waivers for moral rights holders. By upon waivers given or adhering to the terms of permissions and grants of authorization, users of works in copyright will be in compliance with their obligations and virtually ensured of a favorable finding from a court even in the case where an action against them is commenced in a court of law.

³²² *Ibid* at para 57.

³²³ *Ibid* at para 58.

³²⁴ *Ibid* at para 59.

³²⁵ *Ibid* at paras 60 and 53.

³²⁶ *Ibid* at para 48.

(ii) Complying with the Canadian *Copyright Act* In Ontario Community Colleges

Ontario Community Colleges rely heavily on copyright-protected works for education and training-related purposes. Faculty members distribute reproduced excerpts from copyright-protected works to students in the form of handouts, within coursepacks, or as digital postings to online course sites. Films and music are performed in classrooms, images are incorporated into presentation slides, and online content is sourced and used within course materials in all manner of ways.

Many Ontario Community Colleges have adopted the *Fair Dealing Guidelines*³²⁷ as an appendix to their copyright policies but it is important to note that these Guidelines are just that, guidelines, and adherence to them does not guarantee indemnity from a finding of infringement.

Licensing inevitably requires a college to pay for its uses, and even obtaining free permission or waivers is administratively costly, whereas relying on your users' rights under the Act is free for the college. Therefore, from a financial standpoint, it is better for colleges to rely upon users' rights. On June 29, 2012, when the *Copyright Modernization Act* was passed by the Senate, received Royal Assent, and came into force on November 7, 2012 (as documented above), it amended the *Copyright Act* by expanding the scope of fair dealing to include "education" among the purposes for which a copyright-protected work may be used without the authorization of an author or copyright was not defined.

It will be recalled that "educational institutions" is a defined term in the Act and therefore there are institutions involved in education in Canada which

³²⁷ Association of Canadian Community Colleges, "Fair Dealing Guidelines" (2012).

cannot qualify for the exceptions because they fall outside of the Act's definition. Second, the statute states that "the exemption from copyright infringement provided by paragraph (1)(b)...does not apply [except in the case of manual reproduction] if the work or other subject matter is commercially available in a medium that is appropriate for the purpose referred to in that paragraph..." Third, the exemption is not available if the "action referred to" is carried out with motive or gain.³²⁸

This would seem to have important implications for wider users' rights for educational institutions, not just "educational institutions" as defined in Section 2 of the *Copyright Act*, such as community colleges but how wide remains problematic to determine given how recently the amendment has been made and that of consequent jurisprudence to date.

When, around the turn of this century, Ontario Community Colleges were beginning to implement course delivery systems, the *Copyright Act*, most recently amended in 1997, did not include any exceptions to copyright that specifically addressed or accommodated online courses or the use of online content. In addition to expanding the scope of fair dealing, the 2012 *Copyright Modernization Act*, in addition to adding "education" to fair dealing also introduced to the *Copyright Act* two new exceptions to copyright for "educational institutions" that were intended to address the online learning environment.³²⁹ With regard to online courses, neither the communication by telecommunication of a lesson to students enrolled in a course for which that lesson formed a part, nor the fixation of a lesson, is an infringement of copyright if specified conditions, such as the recognition of the attribution right and destruction of fixations of lessons within

³²⁸ Margaret Ann Wilkinson, "Filtering the Flow from the Fountains of Knowledge: access and copyright in education and libraries" in Michael Geist ed, *In the Public Interest: the future of Canadian copyright law* (Toronto: Irwin Law Inc., 2005) at 352-353.

³²⁹ *Supra* note 9 at ss 30.01 and 30.04.

thirty days of the course becoming inactive, are adhered to.³³⁰ With regard to online content, the reproduction, communication by telecommunication, and performance of copyright-protected works available through the Internet is not an infringement of copyright if specific conditions, such as the use of such works for educational and training-related purposes and the recognition of the attribution right, and non-application clauses, such as the avoidance of works protected by technological protection measures or accompanied by notices prohibiting their use, were respected.³³¹ If applied practically and thoughtfully by the courts, these new exceptions will significantly reduce the number of potentially infringing pieces of content within the course delivery systems used by Ontario Community Colleges: faculty members can be encouraged to add attribution statements to handouts and presentation slides that include reproduced content, make use of legitimate publicly accessible online content, and replace questionable digital copies with links to or attributed reproductions of legitimate publicly accessible online content.

While all these three 2012 amendments can definitely be interpreted and applied in a way that will benefit Ontario Community Colleges and improve their ability to comply with Canadian copyright law without sacrificing use of technology and materials, the 2012 *Copyright Modernization Act* also introduced to the *Copyright Act* new law concerning respecting providers of network services and prescribed measures that such providers need to take in order to limit their liability with regard to providing suspected infringing content over their network

³³⁰ *Ibid* at s 30.01.

³³¹ *Ibid* at s 30.04.

services.³³² For Ontario Community Colleges which have opted to host course delivery systems internally and provide all of the services related to operation of those systems, the coming into force of these provisions applying to Internet Service Providers bring greater responsibilities under the *Copyright Act* to the college in terms of policing faculty members and the pieces of content those faculty upload to those course delivery systems: the colleges will be considered responsible for carrying out responsibilities under the *Copyright Act* now in respect of pieces of content that were being hosted within their course delivery systems.³³³

In light of the recent changes to the Act and the recent decision of the courts, Ontario Community Colleges might best be cautious in implementing the Association of Canadian Community Colleges' *Fair Dealing Guidelines*.

On July 12, 2012, the Supreme Court of Canada released its decision in *Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright)* in which it decided that a teacher's provision of copies of short excerpts from copyright-protected works to their students for the purposes research or private studying did constitute fair dealing. This decision did not include any consideration by the court of the changes to the statute made by Parliament in 2012 under the *Copyright Modernization Act* because the facts of the case were before those statutory changes came into force. While the facts of this case pertained only to the use of paper copies by teachers and students in primary

³³² *Ibid* at s 41.25.

³³³ Please note that although the amended *Copyright Act* came into force on November 7, 2012, the provision set forth in s 41.25 was held back and came into force on January 1, 2015. See *Copyright Modernization Act*, SC 2012, c.20, proclaimed in force 1 January 2015, SI2014-58, (2014) C Gaz II archived online: <gazette.gc.ca/rp-pr/p2/2014/2014-07-02/html/si-tr58-eng.php>.

and secondary schools, the Association of Canadian Community Colleges interpreted the decision and released a set of *Fair Dealing Guidelines* to colleges across the country in August of 2012. In these Guidelines, the Association of Canadian Community Colleges took the position that the reproduction of short excerpts, from copyright-protected works, in the form of paper handouts, digital postings to course delivery systems, and coursepacks may constitute fair dealing if the short excerpt does not consist of a substantial amount of the source from which it was reproduced and if an acknowledgement of the source from which the short excerpt had been reproduced was clearly visible within the digital posting.³³⁴

As stated above, in general, for all copyright users, the most fool-proof way for an Ontario Community College to comply with Canadian copyright law is by licensing copyright-protected content, obtaining both copyright use authorization and moral rights waivers from authors and copyright owners for the use of materials.

As authors and copyright owners enforce their rights individually, some more aggressively than others, while some not at all, this places colleges in a perpetual risk assessment situation in which they are always bracing for the worst-case scenario of a court finding of copyright or moral rights infringement and imposition of consequent remedies by the court. The absence of an administrative body legislatively mandated to consistently encourage and monitor appropriate compliance with Canadian copyright law by Ontario Community

³³⁴ *Supra* note 327 at ss 2, 3, and 4.

Colleges such as exists under the *Accessibility for Ontarians with Disabilities Act* is noticeable. The risks for Ontario Community Colleges in copyright are significant as they can be subject to litigation, which can harm their reputations and result in detrimental financial consequences even if the colleges ultimately wins but especially if they do not. *Copibec v. Université Laval*³³⁵ and The Canadian Copyright Licensing Agency (*Access Copyright*) v. *York University* are two current lawsuits that highlight the risks cases that Ontario Community Colleges could potentially face.

On April 8, 2013 Access Copyright³³⁶ filed a statement of claim against York University with the Federal Court in Toronto. Access Copyright claimed that York University's Fair Dealing Guidelines "authorize and encourage educators and students to reproduce a substantial part of copyright-protected works" and they are "incapable of any effective, reliable, or consistent enforcement".³³⁷ York University filed a statement of defense and counterclaim on September 5, 2013.³³⁸ The trial between Access Copyright, and York University is currently scheduled to commence on May 16, 2016.³³⁹ Ontario Community Colleges are anxiously awaiting a decision in this case as it will impact their attitudes towards their currently implemented institution-wide copyright policies and guidelines as well as their perspectives on the use of copyright-protected works as paper

³³⁵ Société québécoise de gestion collective des droits de reproduction (Copibec) c Université Laval 2016 QCCS 900. Refer to electronic version at <canlii.ca/t/gnm6p>.

³³⁶ Refer to description of Access Copyright at note 13.

³³⁷ *The Canadian Copyright Licensing Agency (Access Copyright) v York University* (8 April 2013), Toronto, Ont CA T-578-13 (statement of claim).

³³⁸ *The Canadian Copyright Licensing Agency (Access Copyright) v York University* (5 September 2013), Toronto, Ont CA T-578-13 (statement of defence and counterclaim).

³³⁹ Federal Court (Canada), "Hearing List" online: <cas-cdc-www02.cas-satj.gc.ca/portal/page/portal/fc_cf_en/Ont_List#113>.

handouts, digital postings uploaded to course delivery systems, and within coursepacks in terms of infringement or non-infringement.

On November 10, 2014, Copibec³⁴⁰ filed a motion in Quebec Superior Court for authorization to launch a class action on behalf of thousands of authors and publishers from Quebec, the rest of Canada, and other countries around the world because their copyright-protected works had been reproduced by Université Laval without permission.³⁴¹ Copibec intended to ask the court to sentence Université Laval to pay those authors and publishers approximately \$2 million in unpaid royalties, \$1 million in moral damages, and \$1 million in punitive damages in addition to any profits earned from the sale of coursepacks to students.³⁴² On February 26, 2016, the Superior Court of Quebec refused to authorize the class action that Copibec wished to undertake against Université Laval on behalf of all authors and publishers from Quebec and abroad.³⁴³ According to Judge Michel Beaupré, “copyright infringement issues require an individualized case analysis for each author and each publisher”.³⁴⁴ While the court’s refusal to certify the class of authors could be viewed as a positive outcome, it nonetheless reinforces that uses of copyright-protected works are to be assessed on a case-by-case basis. There is news that an appeal is underway.³⁴⁵

³⁴⁰ Refer to description of Copibec at note 247.

³⁴¹ Copibec, News Release, “\$4 Million Class Action Lawsuit Against Université Laval For Copyright Infringement” (10 November 2014) online: <copibec.qc.ca>.

³⁴² *Ibid.*

³⁴³ Copibec, News Release, “Authors and Publishers Will Appeal the Court’s Decision Denying Their Class Action Authorization Against Laval University” (26 February 2016) online: <marketwired.com>.

³⁴⁴ *Ibid.*

³⁴⁵ Nicolas Gary, “Quebec: nouvelle passé d’armes entre Copibec et l’université Laval” ActuaLitté (9 March 2016), online: <www.actualitte.com>.

IV Comparing Ontario's Accessibility for Ontarians with Disabilities Act and the Canadian Copyright Act

Briefly summarizing the foregoing discussions, **Appendix 1** presents a comparison of Ontario's *Accessibility for Ontarians with Disabilities Act* and the Canadian *Copyright Act* in terms of the following elements: people upon which rights are conferred, those who are required to comply with the law, administrative bodies who encourage and monitor compliance with the law, compliance measures, administrative bodies who enforce the law, enforcement provisions, risks associated with failing to comply with the law, and how Ontario Community Colleges are potentially affected by the law.

Both the *Accessibility for Ontarians with Disabilities Act* and the Canadian *Copyright Act* confer rights upon select groups of people while requiring a larger contingent of individuals and organizations to comply with the law in order to allow realization of those rights by the selected groups. Both laws include an array of enforcement provisions as well as significant risks that are associated with failing to comply with either piece of legislation. Additionally, both pieces of legislation apply to Ontario Community Colleges. Where the Acts differ however, is in terms of how their compliance measures have been created and whether, and to what extent, administrative bodies play a part in bringing about compliance. While the *Accessibility for Ontarians with Disabilities Act* includes mandatory compliance measures such as programs, tools, audits, and Notices of Proposed Order, the *Copyright Act* does not, leaving compliance solely up to the affected users of material covered by the *Copyright Act* itself.

The Accessibility Directorate of Ontario is mandated to encourage, monitor and enforce the *Accessibility for Ontarians with Disabilities Act* while there is no such administrative body assigned to or responsible for the encouragement or monitoring of compliance with the *Copyright Act* or for the enforcement of the Act. Authors, other copyright owners, and moral rights holders must individually enforce through the courts the rights conferred upon them by the Act.

V Case Study: One Ontario Community College's Experience

(i) Background

The following case study is designed to test whether the measures employed by the Accessibility Directorate of Ontario to encourage and monitor compliance with the *Accessibility for Ontarians with Disabilities Act* can be utilized by Ontario Community Colleges in an attempt to achieve demonstrable compliance with Canadian copyright law.

The College opted to self-host the course delivery system, which meant that the system would exist within servers located at the College and that all operational and technical support relating to the system would be conducted and provided by College staff.

The uploaded pieces of content include the submitted assignments of students as well as the handouts, presentation slides, tests, and various forms of media that are uploaded by faculty members. The pieces of content that are uploaded by faculty members can be divided into the following two groups: those pieces of content that are the original works of faculty members or the College,

and those that originated from, or include content from, copyright-protected works that are external to the College.

The College elected to establish a Copyright Services Office and create a staff position that would be dedicated to the management of copyright within the College by advising on and monitoring compliance with current and proposed copyright legislation and by designing systems and processes to collect data to demonstrate compliance with such legislation.

As the Fall 2012 term was beginning, the College's Copyright Services Officer had developed a suite of resource and service offerings to assist faculty members with the development of copyright literacy skills and achieve compliance with Canadian copyright law: (1) a website dedicated to providing faculty members and staff with copyright information had been launched; (2) handouts in the form of brochures and reference sheets had been created and distributed; (3) presentations that provided a general overview of copyright as well as (4) presentations that provided customized copyright-related information specific to a department's specialty were being delivered; (5) consultation appointments were available to faculty members in person or via phone, email, or online chat; and (6) a copyright management system³⁴⁶ that would operate alongside the course delivery system was developed and implemented.

The case study involves a certain number of course sites from each of the College's departments over three consecutive terms. This data is intended to accurately reflect the compliance rate of the College over an entire academic

³⁴⁶ The Copyright Management System was not available for use in preparation for the Fall 2013 term, see **Table C1** below.

year. The Fall 2013 review of content included three course sites from each of the College's seventeen departments for a total of 51 reviewed course sites while both the Winter 2014 and Summer 2014 reviews of content included six course sites from each of the College's seventeen departments for a total of 204 reviewed course sites, 102 course sites from each of these two terms. Each term's review process began after the term had closed so that all pieces of content used within that course site during that term were accessed and assessed.

The Researcher randomly selected the course sites from each department's course offerings.³⁴⁷ Assessment of the copyright compliance of each course site was made by the same individual, the Researcher. This ensured a consistent approach to assessment across the entire case study.³⁴⁸

Links to content were assessed to determine whether they directed to a legitimate and compliant website, webpage, and piece of content in accordance with section 30.04 of the *Copyright Act*. See **Appendix 2** for an Assessment Schematic regarding links. Images within handouts and presentations slides were assessed to determine whether they complied with section 30.04 of the *Copyright*

³⁴⁷ Once selected, the faculty members who taught, facilitated, or were responsible for each course were contacted via email and notified that the course site for that course would be reviewed and that they would be provided with a report that detailed the findings, suggestions for improvement, if any, and the overall course compliance rate when the review of all of the involved course sites had been completed. The faculty members were also asked to refrain from removing or altering any content within their course sites. The Deans and Chairs of each department were also contacted via email and notified of the course sites of courses offered by their respective departments that were to be reviewed and that they too would be provided with the results of each course site's review as well as their department's overall compliance rate.

³⁴⁸ Each "copyright compliance score" was based on one individual's assessment of the application of Canadian copyright law to the pieces of content found within the three samples of course sites. If this had been a larger study, the data generated by the assessment of pieces of content and the calculation of compliance rates could have been coded by multiple researchers and the results would then have been compared for inter-coder reliability. In the instance of this case study, that was not possible as the data was received already coded by just one coder. Different coding by multiple researchers may be considered for future research.

Act, whether their use was permitted by the publisher of the course's adopted textbook, and whether their use was permitted by a license agreement of some sort. See **Appendix 3** for an Assessment Schematic regarding images. Handouts were assessed to determine whether they adhered to the Association of Canadian Community Colleges' Fair Dealing Guidelines, whether they originated from a library database or e-resource, and whether they originated from an online source and complied with section 30.04 of the *Copyright Act*. See **Appendix 4** for an Assessment Schematic regarding handouts. Presentation slides were assessed to determine whether their use or the use of the content they contained was permitted by the publisher of the course's adopted textbook, whether the content they contained originated from online sources and complied with section 30.04 of the *Copyright Act*, and whether any content found to be original to any sources external to the College had been appropriately attributed.

The assessment of each piece of content concluded with the recording of it being either a compliant or non-compliant piece of content.

Upon completion of a course site's review, a compliance rate was calculated by dividing the number of compliant pieces of content within the course site by the number of assessed pieces of content within the course site and then multiplying that number by 100 to determine a percentage. This method of calculating compliance rates was also used to determine each department's compliance rate as well as the College's overall compliance rate for each term.

The compliance rates of the individual course sites of courses offered by the College's seventeen departments were then used to determine whether the

resources and offered by the College's Copyright Services Officer had contributed to College's compliance rates. The resources and services provided, as set out above, included (1) a website, (2) handouts, (3) presentations, (4) customized presentations, (5) faculty consultations, and (6) the Copyright Management System.

Although usage statistics show that the (#1 above) website is a frequently visited resource at the College, there was no way to distinguish whether a faculty member whose course site had been reviewed had ever visited the website or consulted information available through it. Similarly, there was no way to distinguish whether a faculty member whose course site had been reviewed had received or consulted a (#2 above) handout that the Copyright Services Officer had distributed or made available. It was possible, on the other hand, to determine (a) which course sites were taught or facilitated by faculty members whose departments had hosted a (#3 above) presentation or (#4 above) customized presentation, (b) which faculty members had had a (#5 above) consultation with the Copyright Services Officer, and (c) which faculty members had made use of the (#6 above) copyright management system.

A series of comparisons of averages of compliance rates were conducted in order to determine whether there was a correlation between these latter three categories of resource and service offerings and the compliance rates of the course sites, which were identified and isolated for being facilitated by faculty members who had (a) attended a presentation, (b) had had a consultation with

the Copyright Services Officer, and (c) had made use of the copyright management system.

During the Fall 2013 review, 15,447 pieces of content were assessed with 6,945 pieces of content found to be non-compliant and 8,502 pieces of content found to be compliant for an overall compliance rate of 55%.

During the Winter 2014 review, 41,685 pieces of content were assessed with 13,056 pieces of content found to be non-compliant and 28,629 pieces of content found to be compliant for an overall compliance rate of 68%. This represents an increase of 13% over the previous term, Fall 2013.

Lastly, during the Summer 2014 review, 28,899 pieces of content were reviewed with 9,566 pieces of content found to be non-compliant and 19,333 pieces of content found to be compliant for an overall compliance rate of 67%.

(ii) Results

The tables below present the average compliance rates of those course sites that did not take advantage of the specified resource or service offering. Each table then presents the compliance rates of those course sites that did take advantage of the specified resource or service offering.

In order to demonstrate that the reported observations of the sampled course sites over the three terms are statistically significant, a series of T Tests were conducted to establish whether there was a significant correlation between the three categories of offered copyright resources and services and the calculated compliance rates. The tables below provide the results generated by the T Tests. The p values that are displayed within the tables indicate whether

the observations are statistically significant. A p value greater than 0.05 indicates that there is no statistical significance between the offered copyright resource or service and the calculated compliance rate, while a p value less than 0.05 indicates that a statistical significance between the offered copyright resource or service and the calculated compliance rate does exist.

Table A1: About Presentations

	Fall 2013	Winter 2014	Summer 2014
Average Compliance Rate of Course Sites Facilitated by Faculty Members who attended both General & Customized Presentations*	73.5%	68%	72%
Average Compliance Rate of Course Sites Facilitated by Faculty Members who attended only General Presentations	65%	56%	65%
Average Compliance Rate of Course Sites Facilitated by Faculty Members who did not attend either a General or Customized Presentation	67%**	49%	44%

* It was not possible to calculate the average compliance rate of course sites that had been facilitated by Faculty Members who had attended only a Customized Presentation as Customized Presentations were delivered to Faculty Members within a Department only after that Department had hosted a General Presentation.

** During the Fall 2013 term, only two Departments did not host either General or Customized Presentations. The nature of the courses offered by these two Departments did not require their corresponding course sites to be populated with numerous pieces of copyright-protected content. Most of the pieces of content that these course sites contained were property of the College such as course outlines, course schedules, and links to various College policies. As such, the average compliance rate of these course sites was higher than the averages of Winter 2014 and Summer 2014 course sites that were facilitated by faculty members who did not attend either a General or Customized Presentation.

Where presentations were available as a copyright resource and service offering, it can be seen from the facts that the average course site compliance rates are above those course sites whose Departments did not host a presentation. The compliance rates of those course sites that were facilitated by faculty members who attended presentations that provide a general overview of copyright law and its application were higher than those of faculty members who did not attend such a presentation. Lastly, those faculty members who attended both general overview presentations and presentations that were customized for

their departments, had higher compliance rates than each term's overall average compliance rate. See **Table A1** above.

Table A2: Significance of Presentation Results

	Fall 2013	Winter 2014	Summer 2014
No Presentation v. General Presentation	Mean: 0.66667 Variance: 0.14055 Observations: 9 Pooled Variance: 0.11349 Hyp Mean Diff: 0 df: 43 t Stat: 0.13939 P (T<=t) one tail: 0.4449 t Critical one-tail: 1.68107 P (T<=t) two tail: 0.88979 t Critical two-tail: 2.01669	Mean: 0.4925 Variance: 0.13833 Observations: 12 Pooled Variance: 0.13575 Hyp Mean Diff: 0 df: 70 t Stat: -0.7424 P (T<=t) one tail: 0.23016 t Critical one-tail: 1.66691 P (T<=t) two tail: 0.46033 t Critical two-tail: 1.99444	Mean: 0.4425 Variance: 0.129011 Observations: 12 Pooled Variance: 0.1448 Hyp Mean Diff: 0 df: 70 t Stat: -1.0734 P (T<=t) one tail: 0.14339 t Critical one-tail: 1.66691 P (T<=t) two tail: 0.28678 t Critical two-tail: 1.99444
No Presentation v. Customized Presentation	Mean: 0.66667 Variance: 0.14055 Observations: 9 Pooled Variance: 0.14557 Hyp Mean Diff: 0 Df: 13 t Stat: -0.033982 P (T<=t) one tail: 0.36971 t Critical one-tail: 1.77093 P (T<=t) two tail: 0.73942 t Critical two-tail: 2.16037	Mean: 0.4925 Variance: 0.13833 Observations: 12 Pooled Variance: 0.10733 Hyp Mean Diff: 0 df: 40 t Stat: -1.70837 P (T<=t) one tail: 0.04766 t Critical one-tail: 1.68385 P (T<=t) two tail: 0.09532 t Critical two-tail: 2.02108	Mean: 0.4425 Variance: 0.12911 Observations: 12 Pooled Variance: 0.1005 Hyp Mean Diff: 0 df: 40 t Stat: -2.53509 P (T<=t) one tail: 0.00763 t Critical one-tail: 1.68385 P (T<=t) two tail: 0.01526 t Critical two-tail: 2.02108
General Presentation Only v. General & Customized Presentations	Mean: 0.64917 Variance: 0.1073 Observations: 36 Pooled Variance: 0.11309 Hyp Mean Diff: 0 Df: 40 t Stat: -0.57883 P (T<=t) one tail: 0.28297 t Critical one-tail: 1.68385 P (T<=t) two tail: 0.56595 t Critical two-tail: 2.02108	Mean: 0.579 Variance: 0.13527 Observations: 60 Pooled Variance: 0.12219 Hyp Mean Diff: 0 df: 88 t Stat: -1.33908 P (T<=t) one tail: 0.092 t Critical one-tail: 1.66235 P (T<=t) two tail: 0.18399 t Critical two-tail: 1.98729	Mean: 0.57167 Variance: 0.14773 Observations: 60 Pooled Variance: 0.12859 Hyp Mean Diff: 0 df: 88 t Stat: -1.81251 P (T<=t) one tail: 0.03666 t Critical one-tail: 1.66235 P (T<=t) two tail: 0.07332 t Critical two-tail: 1.98729

(T Test: Two-Sample Assuming Equal Variance)

In terms of the efficacy of presentations as a copyright resource and service offering, the T Tests indicate that there is a significance between the calculated compliance rates of the Summer 2014 course sites facilitated by faculty members who had not attended a presentation and the Summer 2014 course sites facilitated by faculty members who had attended a customized presentation as there was a correlation between the customized presentation attendance and the calculated compliance rates of Summer 2014 course sites.

These statistics indicate that faculty members who attend general and customized presentations will achieve higher copyright compliance rates than those faculty members who do not attend either the general presentations or the customized presentations. Additionally, as is the case with the results of the T Tests pertaining to the Summer 2014 term, those faculty members who receive copyright information specific to their subject matter and the kinds of pieces of content used within their course sites via a customized presentation are more likely to achieve higher compliance rates than those faculty members who attend a general presentation or no presentation at all. See **Table A2** above.

Table B1: About Faculty Consultations

	Fall 2013	Winter 2014	Summer 2014
Average Compliance Rate of Course Sites Facilitated by Faculty Members who did have a Faculty Consultation with the College's Copyright Services Officer	89%	75%	85%
Average Compliance Rate of Course Sites Facilitated by Faculty who did not have a Faculty Consultation with the College's Copyright Services Officer	62%	56%	55%

Concerning whether faculty consultations were helpful in achieving copyright compliance, it can be seen in **Table B1** above that those faculty members who met with the Copyright Services Officer for a consultation had, on average, higher compliance rates than those faculty members who did not have a consultation.

Table B2: Significance of Faculty Consultation Results

	Fall 2013	Winter 2014	Summer 2014
No Faculty Consultation v. Faculty Consultation	Mean: 0.61884 Variance: 0.121135 Observations: 43 Pooled Variance: 0.10545 Hyp Mean Diff: 0 df: 49 t Stat: -2.21874 P (T<=t) one tail: 0.01558 t Critical one-tail: 1.67655 P (T<=t) two tail: 0.03117 t Critical two-tail: 2.00958	Mean: 1.80718 Variance: 126.982 Observations: 78 Pooled Variance: 98.7699 Hyp Mean Diff: 0 df: 99 t Stat: 0.42638 P (T<=t) one tail: 0.33538 t Critical one-tail: 1.66039 P (T<=t) two tail: 0.67076 t Critical two-tail: 1.98422	Mean: 0.53866 Variance: 0.14421 Observations: 82 Pooled Variance: 0.11959 Hyp Mean Diff: 0 df: 100 t Stat: -3.58109 P (T<=t) one tail: 0.00027 t Critical one-tail: 1.66023 P (T<=t) two tail: 0.00053 t Critical two-tail: 1.98397

(T Test: Two-Sample Assuming Equal Variance)

With regard to the category of faculty consultations as a copyright resource and service offering, the T Tests indicate that there is a significance between the calculated compliance rates of the Fall 2013 and Summer 2014 course sites facilitated by faculty members who had not had a consultation with the Copyright Services Officer and the Fall 2013 and Summer 2014 course sites facilitated by faculty members who did have a consultation with the Copyright Services Officer as there is a correlation between the faculty consultations and the calculated compliance rates of Fall 2013 and Summer 2014 course sites. These statistics indicate that faculty members who have consultations with the Copyright Services Officer will achieve higher copyright compliance rates than those faculty members who do not have consultations. Additionally, as is the case with the results of the T Tests pertaining to the Fall 2013 and Summer 2014 terms, those faculty members who receive copyright information specific to their subject matter and the kinds of pieces of content used within their course sites via a consultation with the Copyright Services Officer are more likely to achieve higher compliance rates than those faculty members who do not consult with the Copyright Services Officer. See **Table B2** above.

Table C1: About the Use of the Copyright Management System

	Fall 2013	Winter 2014	Summer 2014
Average Compliance Rate of Course Sites Facilitated by Faculty Members who made use of the College's Copyright Management System	N/A*	95%	96%
Average Compliance Rate of Course Sites Facilitated by Faculty Members who did not make use of the College's Copyright Management System	N/A*	53%	56%

* The Copyright Management System was not available for use during or in preparation for the Fall 2013 term as it was launched in time for the screening and processing of pieces of materials to be used within course sites of courses offered during the Winter 2014 term and subsequent terms. As such, data pertaining to the use of the Copyright Management System in relation to the Fall 2013 term was not available because the data does not exist.

Lastly, with regard to the use of the copyright management system as a copyright resource and service, the data demonstrates that those faculty members who made use of the copyright management system, in the terms it was available, had much higher compliance rates than those faculty members who did not make use of the copyright management system in those terms. See **Table C1** above.

Table C2: Significance of Copyright Management System Use Results

	Fall 2013	Winter 2014	Summer 2014
No Use of the Copyright Management System v. Use of the Copyright Management System	N/A*	Mean: 0.50813 Variance: 0.11881 Observations: 80 Pooled Variance: 0.09545 Hyp Mean Diff: 0 df: 100 t Stat: -5.7027 P (T<=t) one tail: 6E-08 t Critical one-tail: 1.66023 P (T<=t) two tail: 1.2E-07 t Critical two-tail: 1.98397	Mean: 0.55133 Variance: 0.13152 Observations: 90 Pooled Variance: 0.11738 Hyp Mean Diff: 0 df: 100 t Stat: -3.86546 P (T<=t) one tail: 9.9E-05 t Critical one-tail: 1.66023 P (T<=t) two tail: 0.0002 t Critical two-tail: 1.98397

(T Test: Two-Sample Assuming Equal Variance)

* The Copyright Management System was not available for use during or in preparation for the Fall 2013 term as it was launched in time for the screening and processing of pieces of materials to be used within course sites of courses offered during the Winter 2014 term and subsequent terms. As such, data pertaining to the use of the Copyright Management System in relation to the Fall 2013 term was not available because the data does not exist.

With regard to the use of the Copyright Management System as a copyright resource and service, the T Tests indicate that there is a significance between the calculated compliance rates of the Winter 2014 and Summer 2014

course sites facilitates by a faculty member who had not used the Copyright Management System and the Winter 2014 and Summer 2014 course sites facilitated by a faculty member who had used the Copyright Management System as there is a correlation between the use of the Copyright Management System and the calculated compliance rates of Winter 2014 and Summer 2014 course sites. These statistics indicate that faculty members who make use of the Copyright Management System will achieve higher copyright compliance rates than those faculty members who do not attend either the general presentations or the customized presentations. Additionally, as is the case with the results of the T Tests pertaining to the Winter 2014 and Summer 2014 terms, those faculty members who receive copyright information specific to their subject matter and the kinds of pieces of content used within their course sites by making use of the Copyright Management System are more likely to achieve higher compliance rates than those faculty members who do not make use of the Copyright Management System. See **Table C2** above.

VI Conclusions from the Case Study

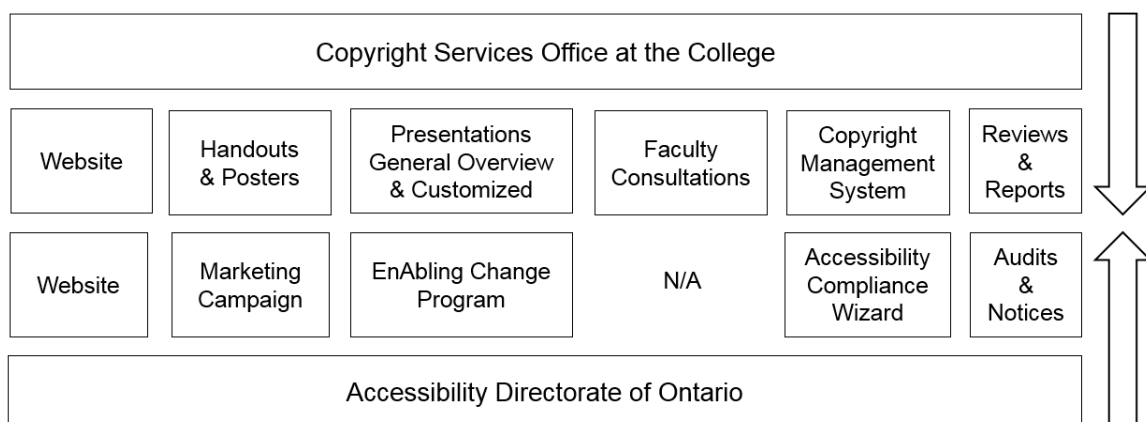
Misconceptions abound when it comes to Ontario Community College faculty members' understanding and application of Canadian copyright law. Faculty members often find copyright law to be quite overwhelming as they have been accustomed to online content being easily accessible and available for reproduction and inclusion within education and training-related materials. They also find copyright law to be intimidating as they often assume that because their purpose for using copyright-protected works is education and training-related

there would not be any other factors to consider (certainly nothing further considering copyright law), or any need to have to prove any aspect of their process of determining whether they may use those copyright-protected works.

The changes in Canadian copyright law since 2010 have presented Ontario Community Colleges with an opportunity to raise awareness about the implications of copyright law and to implement resources and services to educate and offer assistance to faculty members in order to assist them so as to comply with the law and attempt to limit their risks and the colleges' risks of infringing the rights conferred upon authors and copyright owners by the *Copyright Act*.

Figure 1 below illustrates how the copyright-related resources and services offered by the Copyright Services Office at the College align with the compliance measures that are employed by the Accessibility Directorate of Ontario to encourage and monitor compliance by the College with the *Accessibility for Ontarians with Disabilities Act*. It may be noted that the reviews and reports provided to the faculty members at the College via the Copyright Services Office operate in a fashion similar to the audits and Notices of Proposed Order that are issued pursuant to the *Accessibility for Ontarians with Disabilities Act* process and indicate, in both regimes, how individuals and organizations can improve their compliance with the law.

Figure 1: Aligning the Copyright Services Office's resources and services with the compliance measures employed by the Accessibility Directorate of Ontario.



As the results of the reviews of content used within course sites in this case study of a College have demonstrated, in the case of presentations and a copyright management system, Ontario Community Colleges can utilize compliance measures employed by the Accessibility Directorate of Ontario, with the *Accessibility for Ontarians with Disabilities Act*, to improve awareness and compliance with Canadian copyright law. The copyright-related presentations and the Copyright Management System align respectively with the EnAbling Change Program and the Accessibility Compliance Wizard that have been developed and made available by the Accessibility Directorate of Ontario in an effort to encourage compliance with the *Accessibility for Ontarians with Disabilities Act*.

Moreover, while the Accessibility Directorate of Ontario does not currently offer a resource or service that aligns with the faculty consultations offered by the Copyright Services Office at the College, the results of the case study indicate that the offering of such a resource and service does result in the demonstration of compliance with Canadian copyright law and may well be a measure worth

considering in the context of compliance with the *Accessibility for Ontarians with Disabilities Act*. Indeed, it had the greatest impact of copyright compliance in this case study and therefore its inclusion in the *Accessibility for Ontarians with Disabilities Act* regime could be important to the overall success of that regime.

Furthermore, the similarities between Ontario Community Colleges and other Canadian post-secondary educational institutions, in terms of copyright management, strongly suggests that this case study may be taken to demonstrate that the offering of such copyright resources and services, as provided at this College, as well as the conduct of reviews of content within course sites are methods of enhancing compliance with Canadian copyright law that can be extended to and adopted by other Canadian post-secondary educational institutions.

Nevertheless, as the availability of resources will vary from one post-secondary educational institution to another and the interpretation of the Canadian *Copyright Act* and related case law will also vary from individual to individual, it remains the opinion of this author that an administrative body mandated to encourage and monitor compliance with Canadian copyright law, in addition to the statutory copyright environment, would certainly benefit Ontario Community Colleges, Canadian post-secondary educational institutions, and all users of copyright-protected works. It is suggested that the Accessibility Directorate of Ontario is a model upon which the establishment of a copyright-focused administrative body could be based. It is acknowledged that the *Berne*

*Convention for the Protection of Literary and Artistic Works*³⁴⁹ and the *Agreement on Trade-Related Aspects of Intellectual Property Rights*³⁵⁰ both prescribe minimum requirements for the protection of copyright-related works and neither requires the establishment of an administrative body to oversee the encouragement or monitoring of compliance with copyright law but, by the same token, it appears that neither would prohibit it and therefore it would be open to the Canadian Parliament to decide to establish such an administrative body or mandate an existing administrative or regulatory body to encourage and monitor compliance with Canadian copyright law. Environment and Climate Change Canada³⁵¹ is an example of an administrative body established and mandated by Parliament to encourage and monitor compliance with a number federal statutes pertaining to the protection of the environment, pollution prevention, and the provision of weather information. As the *Copyright Act* is a federal statute and Parliament has the power to establish and mandate administrative bodies to oversee federal laws, perhaps the establishment of an administrative body to encourage and monitor compliance with the *Copyright Act* is something that Parliament could consider when the *Act* is reviewed in 2017.

³⁴⁹ *Berne Convention for the Protection of Literary and Artistic Works*, adopted Sept. 9, 1866, S Treaty Doc No 99-27, 1161 UNTS 3. Refer to the official electronic version at <www.wipo.int/wipolex/en/treaties/text.jsp?file_id=283693>.

³⁵⁰ *Agreement on Trade-Related Aspects of Intellectual Property Rights*, signed Apr. 15, 1994, *Marrakesh Agreement Establishing the World Trade Organization*, Annex C. Refer to official electronic version at <www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm>.

³⁵¹ Government of Canada, "Environment and Climate Change Canada" online: <www.ec.gc.ca/cc/>.

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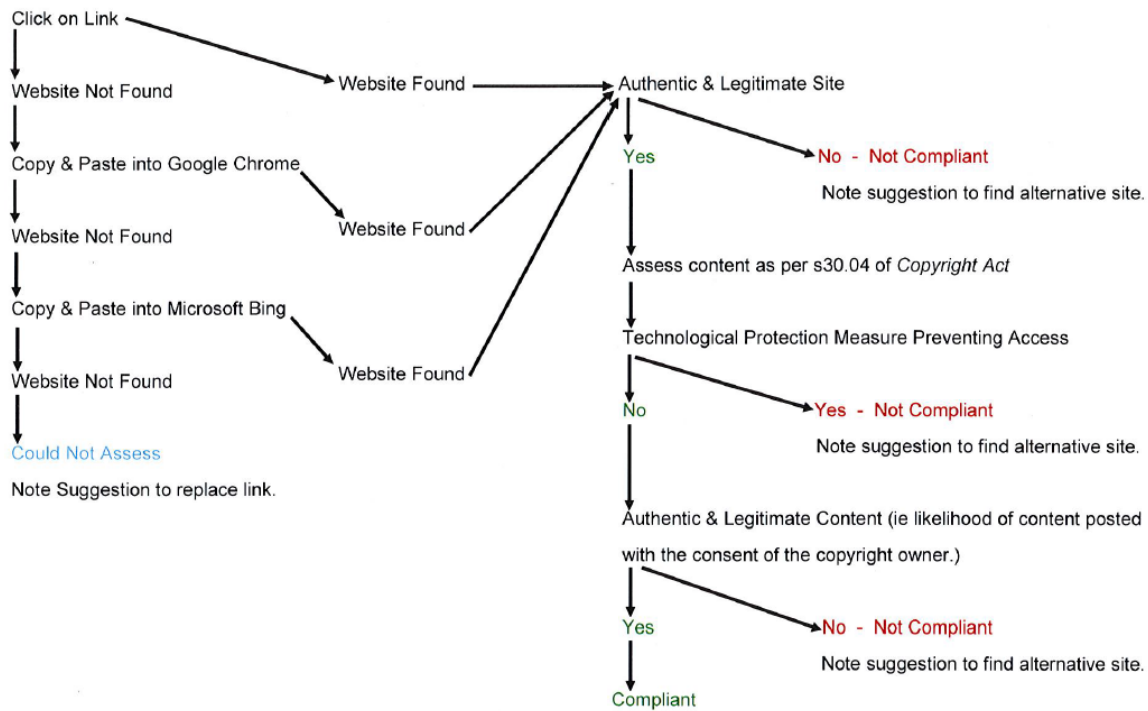
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Appendix 1: Comparing Ontario's *Accessibility for Ontarians with Disabilities Act* and the Canadian *Copyright Act*

	<i>Accessibility for Ontarians with Disabilities Act</i>	<i>Copyright Act</i>
Rights Conferred Upon	People with Disabilities	Authors of Works, Copyright Owners, All Internet Service Providers, and Other Subject Matter Rights Owners (Performers, Sound Recorders, Broadcasters, Technological Protection Measures Implementers, and Rights Management Information Implementers).
Required to Comply	All Individuals and Organizations offering goods and services.	All Users of Copyright-Protected Works and Other Subject Matter, Users of Technological Protection Measure and Rights Management Information protected material, and All Internet Service Providers.
Compliance Encouraged & Monitored By	Accessibility Directorate of Ontario	No Administrative Body
Compliance Measures	Programs, Tools, Audits, and Notices of Proposed Order.	None (only in the case of Educational Institutions or Libraries, Archives, and Museums exceptions which include specific requirements and conditions that, if met, could consolidate reliability of access to that users' right)
Enforced By	Accessibility Directorate of Ontario	Authors of Works, Performers, Copyright Owners, and Other Subject Matter Rights Owners. Rarely, by the Crown through Criminal prosecutions and by the Copyright Board of Canada in relation to a Tariff.
Enforcement Provisions	Inspections, Director's Orders, Administrative Penalties, Court Enforcement, and Prosecution.	[Cease and Desist Letters–Non-legal], [Request for Takedown–Non-legal], Notice & Notice re ISP Provisions, Insinuations of Infringement Proceedings, Customs Infringement Remedies, and Prosecution in accordance with the <i>Criminal Code</i> although rarely.
Risks Associated with Failure to Comply	Fines.	Civil Remedies including Injunctions, and Criminal Remedies.
Ontario Community Colleges Required to Comply	Yes	Yes

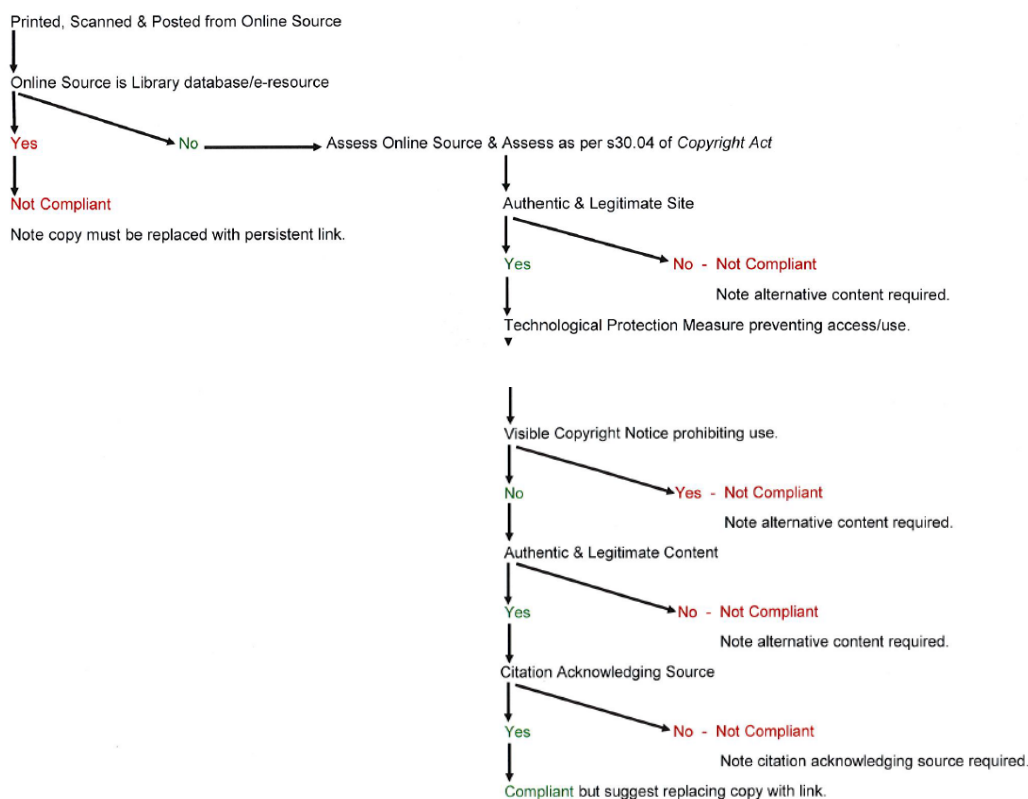
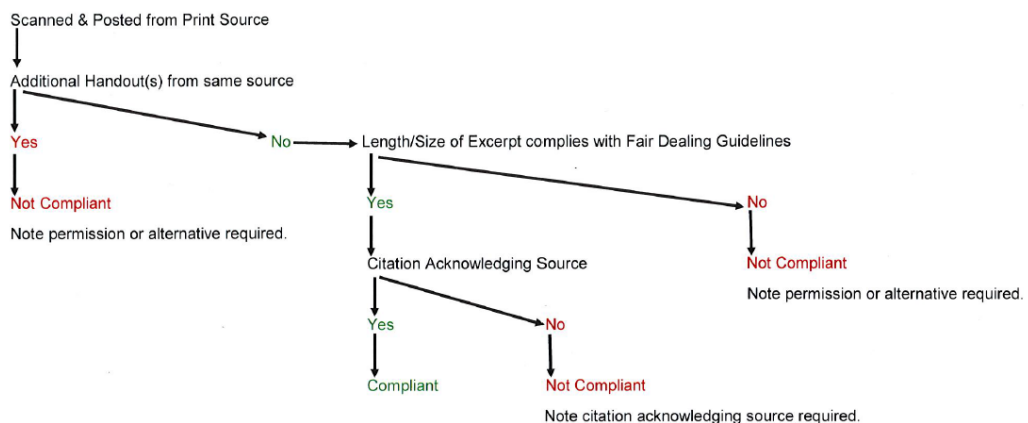
Appendix 2: Assessment Schematic for Links



Appendix 3: Assessment Schematic for Images



Appendix 4: Assessment Schematic for Handouts



Handout is Original to the College - No Issue.

