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

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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
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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 Rights\(^1\) 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, 2001\(^7\) and the Accessibility for Ontarians with Disabilities Act, 2005\(^8\) combine to

\(^2\) Ibid at Article 2.
\(^3\) Ibid at Article 27(2).
\(^4\) Ibid at Preamble.
\(^8\) 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
\(^11\) 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. 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 Copyright for the first time in history filed an application with the Copyright Board of Canada [the Board] in March of 2010 for a royalty

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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.\textsuperscript{15} The proposed royalty rate was contested by colleges and universities across the country and prompted the Board to implement an interim tariff\textsuperscript{16} until a royalty rate could be determined by the Board.

Second, amendments to the \textit{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.\textsuperscript{17} These amendments introduced new exceptions to copyright specifically for “educational institutions”\textsuperscript{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 \textit{Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright)}\textsuperscript{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

\textsuperscript{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 \textit{Copyright Act}.


\textsuperscript{18} The definition of “educational institution” can be found in section 2 of the \textit{Copyright Act}: “educational institution” means

\begin{itemize}
  \item [(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,
  \item [(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,
  \item [(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
  \item [(d)] any other non-profit institution prescribed by regulation.
\end{itemize}

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.

**II 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.\textsuperscript{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”\textsuperscript{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 accessibility\textsuperscript{24}: 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 universities\textsuperscript{25} 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.\textsuperscript{26} The Act also imposes specific obligations for the

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{23} Ibid.
\item \textsuperscript{24} Ontario, “About Accessibility Laws” online: <www.ontario.ca/page/about-accessibility-laws>.
\item \textsuperscript{25} Supra note 7 at s 15(1)(b).
\item \textsuperscript{26} Ibid at s 15(2).
\end{itemize}
\end{footnotesize}
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.\textsuperscript{27} Additionally, the \textit{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.\textsuperscript{28} Although the \textit{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.\textsuperscript{29}

The limited scope of the \textit{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 \textit{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.\textsuperscript{30} The \textit{Accessibility for Ontarians with Disabilities Act} was intended to supplement the existing human rights scheme and to usher in a new era of

\textsuperscript{28} \textit{Ibid} at 8.
\textsuperscript{29} Flaherty \textit{supra} note 22 at 11.
\textsuperscript{30} \textit{Supra} note 28.
across-the-board compliance based on proactively meeting the accessibility
needs of people with disabilities.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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:

\begin{quote}
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.\textsuperscript{34}
\end{quote}

\textsuperscript{31} Flaherty supra note 22 at 17.
\textsuperscript{32} Supra note 24.
\textsuperscript{33} Supra note 8 at s 3.
\textsuperscript{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 Service\textsuperscript{38} became an Ontario Regulation on January 1, 2008.\textsuperscript{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 Ontario\textsuperscript{40}. 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;\textsuperscript{41} accommodate the use of service animals and support persons;\textsuperscript{42} post notices of temporary disruptions in facilities or to services;\textsuperscript{43} provide training to staff about the provision of goods or services to people with disabilities;\textsuperscript{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.\textsuperscript{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.\textsuperscript{46}

The Integrated Accessibility Standards became an Ontario Regulation\textsuperscript{47} on July 1, 2011\textsuperscript{48} and initially included the Information and Communications

\begin{flushleft}
\textsuperscript{39} Moran supra note 27 at 12.
\textsuperscript{40} Supra note 38 at s 1.
\textsuperscript{41} Ibid at s 3.
\textsuperscript{42} Ibid at s 4.
\textsuperscript{43} Ibid at s 5.
\textsuperscript{44} Ibid at s 6.
\textsuperscript{45} Ibid at s 7.
\textsuperscript{46} Ibid at s 2.
\textsuperscript{48} Ibid at 13.
\end{flushleft}
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 formats.53 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

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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. 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 request while public libraries must provide access to, or arrange for, the provision of access to accessible materials where they exist. 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.

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; informing employees of policies used to support employees with disabilities; providing or arranging for the provision of accessible formats and communication supports; providing individualized workplace emergency response information to employees with disabilities; developing and having in place a written process for the development of documented individual accommodation plans; developing, having in place, and documenting a return to work process for

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55 Ibid at s 17.
56 Ibid at s 18.
57 Ibid at s 19.
58 Ibid at part 2.
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
redeploying\(^{67}\) 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 policies\(^{69}\) and accessibility plans;\(^{70}\) the
establishment of fares for support persons;\(^{71}\) as well as general requirements for
conventional\(^{72}\) and specialized\(^{73}\) transportation service providers; and technical
requirements for conventional transportation vehicles\(^{74}\). Municipalities issuing
licenses to taxicabs,\(^{75}\) and school boards\(^{76}\) or other public sector organizations\(^{77}\)

\(^{64}\) 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.  

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. Some of the public spaces and features that the requirements within these accessibility standards apply to include: outdoor eating areas, outdoor play spaces, parking areas and spaces, ramps, recreational trails, service counters, sidewalks, and waiting areas. 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. 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.

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

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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”\textsuperscript{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 \textit{Charter of Rights and Freedoms}, the \textit{Ontario Human Rights Code}, the \textit{Ontarians with Disabilities Act}, and the later \textit{Accessibility for Ontarians with Disabilities Act}.

\textbf{(b) Enforcement of the \textit{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”.\textsuperscript{92} The following enforcement provisions are included within the \textit{Accessibility for Ontarians with Disabilities Act}: inspections,\textsuperscript{93} Director’s Orders,\textsuperscript{94} administrative penalties,\textsuperscript{95} and court enforcement.\textsuperscript{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 \textit{Accessibility for Ontarians with Disabilities Act}.\textsuperscript{97} The inspectors may enter any lands, buildings, structures, or

\begin{footnotesize}
\begin{enumerate}
\item Moran \textit{supra} note 27 at 4.
\item Ontario, “Access ON: Toward an Accessible Ontario” online: \textltt{www.mcss.gov.on.ca}.\textsuperscript{\textit{ supra} note 8 at part 4.}
\item \textit{Ibid} at part 5.
\item \textit{Ibid}.
\item \textit{Ibid} at s 23(2).
\item \textit{Ibid} at s 18(1).
\end{enumerate}
\end{footnotesize}
premises during business or daylight hours without a warrant and they have the power to require any person to produce any document, record, or thing that is relevant to the inspection; remove any document, record, or thing that is relevant to the inspection for the purposes of making copies; question any person on matters that are relevant to the inspection; 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. 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. 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; they shall not provide false or misleading information to the inspector; and they shall not withhold relevant information from the inspector. The Accessibility Directorate of Ontario conducted 2,000 inspections of organizations in 2014 and an additional 1,200 inspections of organizations were to have been conducted in 2015.

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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 organization

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.\textsuperscript{118} In this last scenario, the Director’s Order will require the individual or organization to pay an administrative penalty.\textsuperscript{119} The Accessibility Directorate of Ontario issued and closed 332 Director’s Orders in 2014.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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 \textit{Accessibility for Ontarians with Disabilities Act}.\textsuperscript{123}

The administrative penalties that individuals or organizations are ordered to pay when they fail to comply with the \textit{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;\textsuperscript{124} second, administrative penalties are ordered with the intention of preventing individuals and organizations from directly or indirectly deriving any economic benefits from

\textsuperscript{118} Ibid at s 21(5).
\textsuperscript{119} Ibid at s 21(5).
\textsuperscript{120} Supra note 107.
\textsuperscript{121} Supra note 8 at s 21(7)(b).
\textsuperscript{122} Ibid at s 21(7)(c).
\textsuperscript{123} Supra note 47 at part 5, s 86.
\textsuperscript{124} Supra note 8 at s 21(6)1.
their contravention of the Act or the regulations; 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.

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. 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. 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. 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. The third rule requires a director to determine whether the contravening individual or organization is considered a corporation or an individual or unincorporated organization. The fourth rule requires a director to determine the amount of the

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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.\textsuperscript{132}

The administrative penalties within Schedule 3 range from $500 to $15,000.\textsuperscript{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.\textsuperscript{134} The administrative penalties within Schedule 2 range from $200 to $2,000.\textsuperscript{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.\textsuperscript{136}

The License Appeal Tribunal\textsuperscript{137} has been designated by the Ontario Government for the purpose of hearing appeals of administrative penalties in relation to the \textit{Accessibility for Ontarians with Disabilities Act}.\textsuperscript{138} If an individual or organization fails to comply with an order to pay an administrative penalty within

\textsuperscript{132} Ibid at s 83(1)4.  
\textsuperscript{133} Ibid at Schedule 3.  
\textsuperscript{134} Ibid at s 83(1)4.  
\textsuperscript{135} Ibid at Schedule 2.  
\textsuperscript{136} Ibid at s 83(1)5.  
\textsuperscript{137} Ibid at part 5, s 86.  
\textsuperscript{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.\textsuperscript{139}

The risks associated with failing to comply with the \textit{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{142} Lastly, it is an offence for an individual or organization to obstruct an inspection.\textsuperscript{143} Every individual and unincorporated organization that is found guilty of an offence under the \textit{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.\textsuperscript{144} Every corporation that is found guilty of an offence under the Act is liable on conviction to a fine of not more than

\textsuperscript{139} Supra note 8 at s 23(1).
\textsuperscript{140} Ibid.
\textsuperscript{141} Ibid at s 37(1)(a).
\textsuperscript{142} Ibid at s 37(1)(b).
\textsuperscript{143} Ibid at s 37(1)(c).
\textsuperscript{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.\textsuperscript{145}

The \textit{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 \textit{Accessibility for Ontarians with Disabilities Act}.

\textbf{(c) Complying with the \textit{Accessibility for Ontarians with Disabilities Act}}

\textbf{(i) Generally}

In the Second Legislative Review of the \textit{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 \textit{Accessibility for Ontarians with Disabilities Act}”.\textsuperscript{146}

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

\textsuperscript{145} \textit{Ibid} at s 37(3)(b).
\textsuperscript{146} Moran \textit{supra} note 27 at 33.
\textsuperscript{147} See note 11.
force to include monitoring and encouraging compliance with the requirements set out in the accessibility standards.\textsuperscript{148}

The \textit{Accessibility for Ontarians with Disabilities Act} states that individuals and organizations must file accessibility reports annually,\textsuperscript{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 accurate\textsuperscript{150}. 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 necessary\textsuperscript{151}. This self-reporting mechanism is fundamental, as the review of accessibility reports is the primary tool for monitoring compliance with the \textit{Accessibility for Ontarians with Disabilities Act}.\textsuperscript{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

\textsuperscript{148} Ontario, “INFO-GO Employee & Organization Directory: Accessibility Directorate of Ontario” online: <www.infogo.gov.on.ca>. \hfill  
\textsuperscript{149} Supra note 8 at s 14(1). \hfill  
\textsuperscript{150} Supra note 8 at s 15. \hfill  
\textsuperscript{151} Ibid at s 16. \hfill  
\textsuperscript{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 Change\(^{155}\) 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 Wizard\(^{156}\) 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.ca\(^{157}\) 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. 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 penalties. In 2014, the Accessibility Directorate of Ontario resolved 1,800 Notices of Proposed Order.

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. As a result of the efforts and resources mentioned above, the Accessibility Directorate of Ontario noted that the compliance rates for private sector accessibility reporting had more than doubled from 16% in December 2012 to 38% in December 2014. It was also noted that the broader public sector had achieved an accessibility reporting compliance rate of 100% in 2013.

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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

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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.  

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.  

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. 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; developing and having in place a written process for the

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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 plans\textsuperscript{174} 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;\textsuperscript{175} and taking into account the accessibility needs of employees with disabilities and individual accommodation plans when using a performance management process,\textsuperscript{176} when providing career development and advancement opportunities,\textsuperscript{177} and when redeploying employees with disabilities,\textsuperscript{178} were to have been complied with by January 1, 2014.\textsuperscript{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.\textsuperscript{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.\textsuperscript{181}

Ontario Community Colleges demonstrate and achieve compliance with the \textit{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.

\begin{itemize}
\item \textsuperscript{174} \textit{Ibid} at s 28.
\item \textsuperscript{175} \textit{Ibid} at s 29.
\item \textsuperscript{176} \textit{Ibid} at part 2, s 30.
\item \textsuperscript{177} \textit{Ibid} at s 31.
\item \textsuperscript{178} \textit{Ibid} at part 2, s 32.
\item \textsuperscript{179} \textit{Supra} note 165.
\item \textsuperscript{180} \textit{Ibid}.
\item \textsuperscript{181} \textit{Ibid}.
\end{itemize}
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,\textsuperscript{182} the Accessibility Compliance Wizard,\textsuperscript{183} and the accessforward.ca website,\textsuperscript{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 \textit{Accessibility for Ontarians with Disabilities Act}.\textsuperscript{185}

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

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

\textsuperscript{182} Moran \textit{supra} note 27 at 37.
\textsuperscript{183} \textit{Ibid} at 38.
\textsuperscript{184} \textit{Ibid} at 39.
\textsuperscript{185} \textit{Supra} note 107.
\textsuperscript{186} See above at 16.
Ill Canadian Copyright Act

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

The Copyright Act is one component of the Canadian intellectual property law regime, a regime that also includes the Patent Act, the Trade-marks Act, and the Industrial Design Act. 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. 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. 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 Anne was passed by the British Parliament in 1710 and granted monopolies to publishing

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187 Supra note 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.
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 19\(^{th}\) 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.

British presses.\textsuperscript{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.\textsuperscript{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 \textit{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.\textsuperscript{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.\textsuperscript{200} The Canadian Parliament passed a \textit{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.\textsuperscript{201}

\textsuperscript{197} Murray \textit{supra} note 192 at 24.
\textsuperscript{198} \textit{Ibid}.
\textsuperscript{199} Maple Leaf Web, “History of Copyright Law in Canada” online: <mapleleafweb.com/features/copyright-law-canada-introduction-canadian-copyright-act>.
\textsuperscript{200} Gendreau \textit{supra} note 196 at 114.
\textsuperscript{201} \textit{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/artielc/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 Copyright215 received royal assent in June of

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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_is.asp?ls=c60&parl=38&ses=1>.
2012 and came into force in November of 2012\textsuperscript{216} as the Copyright Modernization Act.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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”.\textsuperscript{220}

\begin{itemize}
\item \textsuperscript{216} Supra note 17.
\item \textsuperscript{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>.
\item \textsuperscript{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.
\item \textsuperscript{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>
\item \textsuperscript{220} Supra note 10 at para 23.
\end{itemize}
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 works\textsuperscript{221} and limited rights in other subject matter,\textsuperscript{222} and moral rights in works and the other subject matter of performers’ performances.\textsuperscript{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.

\textsuperscript{221} Supra note 9 at s 3.
\textsuperscript{222} Ibid at ss 15, 18, and 21.
\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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,\textsuperscript{237} to reproduce any fixation of it that was made without the broadcaster’s consent,\textsuperscript{238} to authorize another

\textsuperscript{232} Ibid at s 15(1)(e).
\textsuperscript{233} Ibid at s 26(1)(b).
\textsuperscript{234} Ibid at s 18(1).
\textsuperscript{235} Ibid at s 18(1.1)(a).
\textsuperscript{236} Ibid at s 18(1.1)(b).
\textsuperscript{237} Ibid at s 21(1)(a).
\textsuperscript{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.\textsuperscript{245} Others may have recourse to the Copyright Board from time to time as they choose,\textsuperscript{246} as is the case with the print collectives Access Copyright\textsuperscript{247} and Copibec.\textsuperscript{248}

The moral rights are the second category of rights that the \textit{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,\textsuperscript{249} the right, where reasonable

\begin{footnotesize}
\begin{enumerate}
\item[Ibid] at ss 66.52 and 71.
\item[Supra] note 9 at s 70.12.
\item[Refer] to description of Access Copyright at note 13.
\item[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>.
\item[Copibec] (10 November 2014) online: <copibec.qc.ca>.
\item[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.
\end{enumerate}
\end{footnotesize}
in the circumstances to do so, to be associated with their works as author by
name or pseudonym or to remain anonymous. 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.

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”. 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”. 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”. 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

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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 protection\textsuperscript{255} 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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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”.\textsuperscript{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”.\textsuperscript{260} The community colleges must rely upon the Copyright Office to establish whether a work or other subject matter is protected under the Copyright

\begin{itemize}
  \item \textsuperscript{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.
  \item \textsuperscript{256} Supra note 9 at s 6.
  \item \textsuperscript{257} Copyright Act, RSC 1985, cC42 at s 46 creates the Copyright Office.
  \item \textsuperscript{258} Supra note 9 at section 55(2).
  \item \textsuperscript{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.
  \item \textsuperscript{260} Ibid.
\end{itemize}
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 is there 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 only, that only the copyright owner has the right to do.\(^2\) This concept also applies to infringement of the rights held in “other subject matter” (performances,\(^3\) sound recordings,\(^4\) and broadcasts\(^5\)).

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.\(^6\) Secondary infringement occurs when a person sells or rents out such copies;\(^7\) distributes such copies to such effect that the copyright owner is prejudicially affected;\(^8\) by way of trade distributes, exposes, offers for sale or rental, or exhibits in public such copies;\(^9\) possessing such copies for the

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\(^2\) Supra note 9 at s 27(1).
\(^3\) Ibid at s 15.
\(^4\) Ibid at s 18.
\(^5\) Ibid at s 21.
\(^6\) Ibid at s 27(2).
\(^7\) Ibid at s 27(2)(a).
\(^8\) Ibid at s 27(2)(b).
\(^9\) Ibid at s 27(2)(c).
purpose of sale, rental, or distribution;\textsuperscript{269} and importing into Canada such copies for the purpose of sale, rental, or distribution.\textsuperscript{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.\textsuperscript{271}

Since 2012, in addition to providing protection against infringement, the Copyright Act also prohibits a number of acts\textsuperscript{272} in connection with its new provisions concerning technological protection measures and rights management information, including the circumvention of technological protection measures;\textsuperscript{273} the offering of services to the public or provision of services for the purposes of circumventing a technological protection measure;\textsuperscript{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;\textsuperscript{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

\textsuperscript{269} Ibid at s 27(2)(d).
\textsuperscript{270} Ibid at s 27(2)(e).
\textsuperscript{271} Ibid at s 28.1.
\textsuperscript{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)).
\textsuperscript{273} Supra note 9 at s 41.1(1)(a).
\textsuperscript{274} Ibid at s 41.1(1)(b).
\textsuperscript{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 Code278 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

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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.\footnote{See \textit{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); \textit{R v JPM} [1996] 67 CPR (3d) 152 (NSCA) (where juvenile convicted of infringing rights in computer software); \textit{R v Aquantey} [1998] 79 CPR (3d) 318 (Ont Prov Ct) (where there was a conviction against a video rental store); \textit{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 \textit{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).}

The \textit{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 \textit{Competition Act}, has access, under the \textit{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.\footnote{Owen \textit{supra} note 258 at 832.}

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.\footnote{\textit{Supra} note 9 at section 42.}

Otherwise, neither the Copyright Office nor the Copyright Board of Canada nor any other agency is mandated to enforce the \textit{Copyright Act}.

Authors and copyright owners are individually responsible for the enforcement of the rights that the \textit{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...
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.

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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;\textsuperscript{299} uses of copyright protected works by educational institutions,\textsuperscript{300} libraries, archives, museums,\textsuperscript{301} and persons with perceptual disabilities;\textsuperscript{302} uses involving computer programs,\textsuperscript{303} encryption research,\textsuperscript{304} security,\textsuperscript{305} incidental inclusion,\textsuperscript{306} temporary reproductions for technological purposes,\textsuperscript{307} ephemeral recordings,\textsuperscript{308} retransmission,\textsuperscript{309} network services,\textsuperscript{310} and statutory obligations\textsuperscript{311} and miscellaneous uses\textsuperscript{312} 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”\textsuperscript{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.\textsuperscript{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

\textsuperscript{299} Ibid at s 29.3.
\textsuperscript{300} Ibid at ss 29.4, 30.3, and 30.4.
\textsuperscript{301} Ibid at ss 30.1, 30.3, 30.4, and 30.5.
\textsuperscript{302} Ibid at s 32.
\textsuperscript{303} Ibid at s 30.6.
\textsuperscript{304} Ibid at s 30.62.
\textsuperscript{305} Ibid at s 30.63.
\textsuperscript{306} Ibid at s 30.7.
\textsuperscript{307} Ibid at s 30.71.
\textsuperscript{308} Ibid at s 30.8.
\textsuperscript{309} Ibid at s 31.
\textsuperscript{310} Ibid at s 31.1.
\textsuperscript{311} Ibid at s 32.1.
\textsuperscript{312} Ibid at s 32.2.
\textsuperscript{313} Supra note 10 at para 12.
\textsuperscript{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

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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,\textsuperscript{322} the nature of the dealing,\textsuperscript{323} and the effect of the dealing on the work.\textsuperscript{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.\textsuperscript{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”.\textsuperscript{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.

\textsuperscript{322} Ibid at para 57.
\textsuperscript{323} Ibid at para 58.
\textsuperscript{324} Ibid at para 59.
\textsuperscript{325} Ibid at paras 60 and 53.
\textsuperscript{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 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

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.”

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. 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

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329 Supra note 9 at ss 30.01 and 30.04.
thirty days of the course becoming inactive, are adhered to. 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. 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.

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330 Ibid at s 30.01.
331 Ibid at s 30.04.
services.\textsuperscript{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 \textit{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 \textit{Copyright Act} now in
respect of pieces of content that were being hosted within their course delivery
systems.\textsuperscript{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' \textit{Fair Dealing Guidelines}.

On July 12, 2012, the Supreme Court of Canada released its decision in
\textit{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 \textit{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

\textsuperscript{332} \textit{Ibid} at s 41.25.
\textsuperscript{333} Please note that although the amended \textit{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 \textit{Copyright
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 if 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 Copyright*[^336] 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).

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

On November 10, 2014, Copibec\textsuperscript{340} 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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{343}
According to Judge Michel Beaupré, “copyright infringement issues require an
individualized case analysis for each author and each publisher”\textsuperscript{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.\textsuperscript{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
344 Ibid.
345 Nicolas Gary, “Quebec: nouvelle passé d’armes entre Copibec et l’université Laval” ActuaLitté (9 March
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 system\(^ {346} \) 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

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\(^ {346} \) 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.\textsuperscript{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.\textsuperscript{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 \textit{Copyright Act}. See \textbf{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 \textit{Copyright Act}.\textsuperscript{347}

\textsuperscript{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.\textsuperscript{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 the 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**

<table>
<thead>
<tr>
<th>Average Compliance Rate of Course Sites Facilitated by Faculty Members who attended both General &amp; Customized Presentations*</th>
<th>Fall 2013</th>
<th>Winter 2014</th>
<th>Summer 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>73.5%</td>
<td>68%</td>
<td>72%</td>
<td></td>
</tr>
</tbody>
</table>

| 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**

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

(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

<table>
<thead>
<tr>
<th></th>
<th>Fall 2013</th>
<th>Winter 2014</th>
<th>Summer 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average Compliance Rate of Course Sites Facilitated by Faculty Members who did have a Faculty Consultation with the College’s Copyright Services Officer</td>
<td>89%</td>
<td>75%</td>
<td>85%</td>
</tr>
<tr>
<td>Average Compliance Rate of Course Sites Facilitated by Faculty who did not have a Faculty Consultation with the College’s Copyright Services Officer</td>
<td>62%</td>
<td>56%</td>
<td>55%</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th></th>
<th>Fall 2013</th>
<th>Winter 2014</th>
<th>Summer 2014</th>
</tr>
</thead>
</table>
| 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  
P (T<=t) two tail: 0.03117  
t Critical one-tail: 1.67655  
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  
P (T<=t) two tail: 0.67076  
t Critical one-tail: 1.66039  
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  
P (T<=t) two tail: 0.00053  
t Critical one-tail: 1.66023  
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

<table>
<thead>
<tr>
<th></th>
<th>Fall 2013</th>
<th>Winter 2014</th>
<th>Summer 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average Compliance Rate of Course Sites Facilitated by Faculty Members who made use of the College’s Copyright Management System</td>
<td>N/A*</td>
<td>95%</td>
<td>96%</td>
</tr>
<tr>
<td>Average Compliance Rate of Course Sites Facilitated by Faculty Members who did not make use of the College’s Copyright Management System</td>
<td>N/A*</td>
<td>53%</td>
<td>56%</td>
</tr>
</tbody>
</table>

* 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

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

(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.

<table>
<thead>
<tr>
<th>Copyright Services Office at the College</th>
<th>Accessibility Directorate of Ontario</th>
</tr>
</thead>
<tbody>
<tr>
<td>Website</td>
<td>Website</td>
</tr>
<tr>
<td>Handouts &amp; Posters</td>
<td>Marketing Campaign</td>
</tr>
<tr>
<td>Presentations General Overview &amp; Customized</td>
<td>EnAbling Change Program</td>
</tr>
<tr>
<td>Faculty Consultations</td>
<td>N/A</td>
</tr>
<tr>
<td>Copyright Management System</td>
<td>Accessibility Compliance Wizard</td>
</tr>
<tr>
<td>Reviews &amp; Reports</td>
<td>Audits &amp; Notices</td>
</tr>
</tbody>
</table>

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\textsuperscript{349} and the Agreement on Trade-Related Aspects of Intellectual Property Rights\textsuperscript{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 Canada\textsuperscript{351} 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.


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

Legislation: Canada

Statutes

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

An Act to amend the Copyright Act SC 1997, c24.


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

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>


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

Ontarians with Disabilities Act, 2001, SO 2001, c32. See the electronic version at <www.ontario.ca/laws/statute/01o32>

Codes

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

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

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


Regulations


Proclamations and Royal Instructions


Tariffs


Legislation: Foreign

*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.

Legislation: International


JURISPRUDENCE

*Canadian Admiral Corp. v Rediffusion* 1954 Ex CR 382, 20 CPR 75.


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

*The Canadian Copyright Licensing Agency (Access Copyright) v York University* (8 April 2013), Toronto, Ont CA T-578-13 (statement of claim).
The Canadian Copyright Licensing Agency (Access Copyright) v York University (5 September 2013), Toronto, Ont CA T-578-13 (statement of defence and counterclaim).

SECONDARY MATERIAL

Monographs


Articles


Encyclopedias


OTHER MATERIAL

Comments on Legislation


Guidelines

Online Magazines


News Releases

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


Websites

Copyright Board of Canada, “Copyright Collective Societies”, online: <www.cb-cda.gc.ca/societies-societes/index-e.html>


Copyright Board of Canada, “Our Mandate” online: <www.cb-cda.gc.ca/about-apropos/mandate-mandat-e.html>

Federal Court (Canada), “Hearing List” online: <cas-cdc-ww02.cas-satj.gc.ca/portal/page/portal/fc_cf_en/Ont_List#113>


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

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

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

Ontario, “An Accessible Ontario” online: <www.ontario.ca/page/accessible-ontario#section-0>
Ontario, “Access ON: Toward an Accessible Ontario” online: <www.mcss.gov.on.ca>

Appendices

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

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<thead>
<tr>
<th>Rights Conferred Upon</th>
<th>Accessibility for Ontarians with Disabilities Act</th>
<th>Copyright Act</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Rights Conferred Upon</strong></td>
<td>People with Disabilities</td>
<td>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).</td>
</tr>
<tr>
<td><strong>Required to Comply</strong></td>
<td>All Individuals and Organizations offering goods and services.</td>
<td>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.</td>
</tr>
<tr>
<td><strong>Compliance Encouraged &amp; Monitored By</strong></td>
<td>Accessibility Directorate of Ontario</td>
<td>No Administrative Body</td>
</tr>
<tr>
<td><strong>Compliance Measures</strong></td>
<td>Programs, Tools, Audits, and Notices of Proposed Order.</td>
<td>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)</td>
</tr>
<tr>
<td><strong>Enforced By</strong></td>
<td>Accessibility Directorate of Ontario</td>
<td>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.</td>
</tr>
<tr>
<td><strong>Enforcement Provisions</strong></td>
<td>Inspections, Director’s Orders, Administrative Penalties, Court Enforcement, and Prosecution.</td>
<td>[Cease and Desist Letters—Non-legal], [Request for Takedown-Non-legal], Notice &amp; Notice re ISP Provisions, Insinuations of Infringement Proceedings, Customs Infringement Remedies, and Prosecution in accordance with the Criminal Code although rarely.</td>
</tr>
<tr>
<td><strong>Risks Associated with Failure to Comply</strong></td>
<td>Fines.</td>
<td>Civil Remedies including Injunctions, and Criminal Remedies.</td>
</tr>
<tr>
<td><strong>Ontario Community Colleges Required to Comply</strong></td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>
Appendix 2: Assessment Schematic for Links

Click on Link
  ↓ Website Not Found
  ↓
Copy & Paste into Google Chrome
  ↓ Website Not Found
  ↓
Copy & Paste into Microsoft Bing
  ↓ Website Not Found
  ↓
Could Not Assess
  Note Suggestion to replace link.

Website Found
  ↓ Authentic & Legitimate Site
  ↓ Yes
  ↓ No - Not Compliant
    Note suggestion to find alternative site.

Assess content as per s30.04 of Copyright Act
  ↓ Technological Protection Measure Preventing Access
  ↓ Yes - Not Compliant
    Note suggestion to find alternative site.
  ↓ No
    Authentic & Legitimate Content (is likelihood of content posted with the consent of the copyright owner.)
    ↓ Yes
      No - Not Compliant
      Note suggestion to find alternative site.
    ↓ No
      Compliant
Appendix 3: Assessment Schematic for Images

Cited from Print Source

No

Yes
Additional Image(s) cited from same source

Yes
Compliant as per Fair Dealing Guidelines

Not Compliant

Note exceeds Fair Dealing Guidelines, alternative image or permission required.

Cited from Online Source

No

Yes
Access Website & Assess as per s30.04 of Copyright Act

Not Compliant

Note Citation Acknowledging Source Required

Authentic & Legitimate Site

Yes

No - Not Compliant

Note alternative image required.

Technological Protection Measure preventing access/use.

No

Yes - Not Compliant

Note alternative image required.

Visible Copyright Notice prohibiting use.

No

Yes - Not Compliant

Note alternative image required.

Authentic & Legitimate Image

Yes

No - Not Compliant

Note alternative image required.

Watermarked Image from Online Source (cited or not)

Not Compliant

Note alternative required.

Publisher-Watermarked Image from Online Source (e.g. publisher website, image bank, etc.)

Publisher of Required Textbook = Publisher of Watermarked Image

Yes

No

Citation Acknowledging Textbook & Publisher

Yes

Not Compliant

Note permission from publisher or alternative required.

Compliant

Not Compliant

Note citation acknowledging textbook & publisher required.

ClipArt

From Microsoft Office Products

Yes

No
ClipArt.org

Compliant, covered by site license

Yes

No
ClipArt.com (license/purchase required)

Compliant, CC license public domain

Not Compliant without license/purchase

Note alternative required.
Appendix 4: Assessment Schematic for Handouts

Scanned & Posted from Print Source

Additional Handout(s) from same source

Yes → No
Length/Size of Excerpt complies with Fair Dealing Guidelines

Not Compliant
Note permission or alternative required.

Yes → No
Citation Acknowledging Source

Not Compliant
Note permission or alternative required.

Compliant → Not Compliant
Note citation acknowledging source required.

Printed, Scanned & Posted from Online Source

Online Source is Library database/e-resource

Yes → No
Access Online Source & Assess as per s30.04 of Copyright Act

Not Compliant
Note copy must be replaced with persistent link.

Authentic & Legitimate Site

Yes → No
Technological Protection Measure preventing access/use.

Not Compliant
Note alternative content required.

Handout is Original to the College - No Issue.

Handouts & PPT Slides Created/Assembled by Faculty

Component(s) Original to Faculty

No Issue

Component(s) from sources external to the College - assess components as per schematics above.

Citation(s) Acknowledging Source(s)

No → Not Compliant
Note citation acknowledging source(s) required.

Compliant

Citation(s) Acknowledging Source(s)

Yes

Note citation acknowledging source(s) required.