

Determining Fair Dealing under Canadian Copyright Law

The Supreme Court of Canada has identified six factors which must be considered equally when assessing whether an instance of copying can be defended under the Fair Dealing exception in the Copyright Act. Portions in quotation marks below are quoted from the Supreme Court's ruling in *CCH vs. LSUC*, 2004.

The Purpose of the Dealing

Is it for education, research, private study, criticism, review, parody, satire or news reporting? The Supreme Court has stated that these allowable purposes should not be given a restrictive interpretation or this could result in the undue restriction of users' rights.

The Character of the Dealing

How were the works dealt with? Was there a single copy or were multiple copies made? Were these copies distributed widely or to a limited group of people? Was the copy destroyed after its purpose was accomplished? What are the normal practices of the industry?

The Amount of the Dealing

How much of the work was used? What was the importance of the infringed work? Quoting trivial amounts may alone sufficiently establish fair dealing. In some cases even quoting the entire work may be fair dealing.

Alternatives to the Dealing

Was a non-copyrighted equivalent of the work available to the user? Could the work have been appropriately used without being copied?

The Nature of the Work

Copying from a work that has never been published could be more fair than from a published work "in that its reproduction with acknowledgement could lead to a wider public dissemination of the work - one of the goals of copyright law. If, however, the work in question was confidential, this may tip the scales towards finding that the dealing was unfair."

The Effect of the Dealing on the Work

Is it likely to affect the market of the original work? "Although the effect of the dealing on the market of the copyright owner is an important factor, it is neither the only factor nor the most important factor that a court must consider in deciding if the dealing is fair." A statement that a dealing infringes may not be sufficient, but evidence will often be required.