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Canadian publishers call for copyright reform in the face of broken legal framework

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The Association of Canadian Publishers (ACP) is frustrated and disappointed by the Federal Court of Appeal's April 22 decision related to the legal action between Access Copyright and York University. Though the Court confirmed the lower-court decision that fair dealing guidelines adopted by York do not meet the Supreme Court's test for fair dealing, it did not uphold the decision that tariffs certified by the Copyright Board are mandatory. In essence, the decision reaffirms that the Canadian education sector has engaged in illegal and unfair copying on a systematic basis, and makes the prospect of enforcement for small- and medium-sized publishers impossible.

“Through Access Copyright, Canadian publishers have participated in the Copyright Board's multi-year tariff process in good faith, and with an expectation of fair and reasonable compensation for the use of their content,” said ACP Executive Director Kate Edwards. “The Court of Appeal's decision on mandatory tariffs makes future engagement in this process futile, and leaves small- and medium-sized rightsholders in the untenable position of pursuing compliance on their own, rather than through their collective.”

The appeal decision reinforces that Canada's copyright framework is broken. Amendments made to the *Copyright Act* in 2012 opened the door to illegal and systematic copying by the K-12 and post-secondary education sector, which has now accrued cumulative liabilities of more than \$150M. At the same time, amendments have limited statutory damages for non-commercial use to a point that enforcement is impractical. Urgent action on the part of the federal government is needed to

implement reforms that will correct market damage and provide a policy framework that supports future investment in Canadian writing and publishing.

“The education sector’s ‘fair dealing guidelines’ were unfair when they were adopted in 2012, and they were unfair in 2017 when the Federal Court ruled on the York case,” said Edwards. “The Court of Appeal has confirmed that the guidelines remain unfair. It’s time for the education sector to come back to the table, negotiate with rightsholders, and ensure the content they use is compensated.”

ACP is the national voice of English-language Canadian-owned book publishers. ACP contributes to the development and maintenance of vibrant, competitive book publishing companies in order to support and strengthen the contribution that Canadian books make to Canada’s cultural, economic, and educational landscape.

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For more information, please contact Kate Edwards, Executive Director, Association of Canadian Publishers, kate_edwards@canbook.org.