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Canadian publishers call for urgent reform of the *Copyright Act*

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The Association of Canadian Publishers (ACP) is discouraged by the Supreme Court of Canada's (SCC) July 30 judgement in the long-running legal dispute between York University and Access Copyright. The judgement dismisses appeals from both parties and leaves the Federal Court of Appeal's (FCA) earlier ruling, that tariffs certified by the Copyright Board are not enforceable, in place. Disappointingly, the SCC did not offer a ruling on York's fair dealing guidelines. These guidelines—which are identical to those used by most K-12 and post-secondary institutions across Canada—had previously been found by the Federal Court to be illegal in both their terms and in their application, a decision that was upheld by the FCA in 2020.

“The SCC decision leaves Canadian publishers to navigate an increasingly challenging marketplace without the necessary legal tools to protect our investments in new educational materials, let alone encourage new investment,” said Ruth Linka, ACP President. “Resolution of the fair dealing issue is essential to our ability to continue to supply the K-12 and post-secondary markets with Canadian-specific resources that tell our stories, use our language and measurement systems, and reflect the Canadian experience.”

The SCC decision reinforces that Canada's copyright framework is broken. Amendments made to the *Copyright Act* in 2012 opened the door to mass and systematic copying by the K-12 and post-secondary education sector. The sector's uncompensated copying beyond the legal limits of fair dealing, as determined by the Copyright Board, is in excess of \$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.

“Canadian publishers have been told consistently by successive governments since 2012 to be patient and to let the Courts decide on the question of fair dealing for education,” said Kate Edwards, ACP Executive Director. “After nearly a decade of litigation we find ourselves facing even greater uncertainty than when the *Copyright Act* was amended in 2012, and cannot repair the marketplace on our own. Bold leadership on the part of government is needed to clarify fair dealing provisions, and to ensure that effective mechanisms for copyright enforcement are available to all rightsholders.”

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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