



Case in Brief: *York University v. Canadian Copyright Licensing Agency (Access Copyright)*

Judgment of July 30, 2021 | On appeal from the Federal Court of Appeal
Neutral citation: 2021 SCC 32

The Supreme Court rules that a copyright tariff was not enforceable against York University.

From 1994 to 2010, York University (“York”) and Access Copyright (“Access”) had a licencing agreement that allowed York professors to copy published works in Access’ collection in exchange for payments called royalties. Access is not the copyright owner of the works, it is a collective society that administers copyright protection on behalf of authors and publishers. By 2010, the royalties consisted of an annual fee of \$3.38 per full-time student in addition to \$0.10 per page copied into a course pack for sale or distribution to students.

In 2010, York and Access were negotiating to renew the agreement. As the licence expiry date approached, Access asked the Copyright Board of Canada to set an interim tariff. The Copyright Board of Canada is the organisation that sets the royalties to be paid for the use of copyrighted works, when the copyright on such works are being administered collectively by a society. The interim tariff took effect in January 2011 and York paid the royalties until July 2011. It then stopped. York said that the interim tariff was not enforceable and that it had the right to copy from Access’ collection without paying, because of the “fair dealing” provisions in the *Copyright Act*. “Fair dealing” allows for copying of works without requiring permission if done in the public interest. York said this includes copying for research and education.

In 2013, Access asked the Federal Court to enforce the interim tariff. It argued York’s copying was neither licenced, nor protected by the fair dealing provisions. York responded by arguing that its copying was indeed protected. The Federal Court ruled in favour of Access. York then turned to the Federal Court of Appeal, which allowed York’s appeal on the enforcement of tariffs but dismissed its appeal on fair dealing. Both parties then appealed to the Supreme Court of Canada. The Supreme Court has dismissed the appeals.

Tariffs approved by Copyright Board are voluntary for users

In a unanimous decision, the Supreme Court concluded that the tariff was not mandatory and York did not have to pay it. The judges said the *Copyright Act* does not allow Access to enforce royalties against York for any tariffs, interim or final, because it chose not to be bound by the agreement.

Protection of users

The collective administration provisions of the *Copyright Act* are intended to protect users such as York. For example, these provisions provide a cap on the amount that can be charged for a licence. But they do not allow a collective society to force a licence on an unwilling user. That would be contrary to their protective purpose. Users can always choose whether or not to accept a licence.

Not an infringement case

If people accept a licence, but don’t pay the royalties, they will be liable for defaulted payments. If they do not accept the licence, they can be liable for copyright infringement but not for defaulted payments. That is the case with York, because it did not accept the licence. That means it cannot be liable for defaulted payments.

The Court noted that this is not a case of copyright infringement because Access could not make that claim. The only parties who could make that claim are the authors and publishers who own the copyright. Without the proper parties, the Court refused to address the fair dealing issue.

Breakdown of the decision: *Unanimous*: Justice Rosalie [Abella](#) dismissed the appeals (Chief Justice [Wagner](#) and Justices [Moldaver](#), [Karakatsanis](#), [Côté](#), [Brown](#), [Rowe](#), [Martin](#) and [Kasirer](#) agreed)

More information (case # 39222): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

