

CALL/ACBD (Copyright Committee)

Annual Report 2019 - 20

May 2020 – Virtual

Committee Chair(s): Susannah Tredwell & George Tsiakos

Members: Kim Nayyer (Executive Liaison)

Activities and initiatives that the committee has completed during this past year:

1) 2020 CALL Conference

We proposed the following session for the 2020 CALL Conference:

Title

The Crown, Copyright, and the Law Revisited

Abstract

2019 saw significant analysis of copyright in Canada with the release of the Standing Committee on Industry, Science and Technology's Statutory Review of the Copyright Act Report (INDU Report), a culmination of a process in which both CALL/ACBD and CanLII testified, and the Supreme Court of Canada decision *Keatley Surveying Ltd v Teranet Inc (Keatley)*, in which CALL/ACBD and CanLII were interveners. The 36 recommendations of the INDU Report address the denseness of copyright law, Crown copyright practices, and protections for traditional and cultural expressions. In *Keatley*, the SCC rendered its first decision on s 12 of the *Copyright Act* and Crown copyright. In majority and concurring reasons, the Court unanimously held that any copyright in survey plans rests in the government through a land registry system filing process. The Court emphasized that s 12 is dated and in need of reform.

This program will look at implications of the INDU Report and *Keatley* and comparisons with analogous Supreme Court litigation in the USA. It will also explore the limits of 'fair dealing' with updates on *Canadian Copyright Licensing Agency v York University* and the place of protection for traditional and cultural expressions. We will explore the current state of the law, new and continuing developments, and possible further action in the Canadian legal information community.

Presenters

Kim Nayyer, Xavier Beauchamp, and George Tsiakos

The proposal was accepted, however, the 2020 CALL/ACBD Annual Conference has been postponed. The presenters has agreed to present at a possible CALL 2020 Virtual Conference.

2) SCC Intervention

On September 26, 2019 the Supreme Court of Canada issued its decision in *Keatley Surveying Ltd. v. Teranet Inc.*, in which the Canadian Association of Law Libraries was one of the interveners. While the SCC did not directly address the question of section 12 and primary law (case law and legislation), the following sections of the judgment are of particular interest:

[54] ... There is also a danger of Crown copyright undermining the very purpose it was meant to serve if interpreted too expansively. Sweeping classes of works into the scope of Crown copyright, when such rights were heretofore unacknowledged as being subject to copyright at all, risks impeding the public interest in accessing these works and could compromise the existence of a robust public domain ...

[142] Multiple interveners in this case raised concerns regarding the copyright status of what they termed “primary sources of law” or “public legal documents”, encompassing statutes, regulations and judicial decisions. They advanced public policy arguments as to why such documents should be excluded from the scope of s. 12 and why no entity — including the Crown — should hold the copyright in them. In our view, determining the proper copyright status of these legal documents raises unique and complicated issues that are beyond the scope of this case. Therefore, we leave this issue for another day in which the Court has received full submissions on the issue.

The *Canadian Lawyer* interviewed Kim Nayer regarding this judgment – the article is accessible [here](#). Kim also wrote an article for CanLII Connects about the judgment, which is accessible [here](#).

3) CFLA-FCAB Liaison

George Tsiakos replaced Kim Nayer as CALL/ACBD liaison to the CFLA-FCAB Copyright Committee after the October 15, 2019 meeting.

4) Crown Copyright Statement

We have been working on a statement on behalf of CALL/ACBD regarding the status of primary law and crown copyright in light of the *Keatley* decision and the INDU Report for presentation to Parliament. Kim Nayer is currently reviewing the draft.

Activities and initiatives that the committee hopes to tackle for the next business year:

Complete final draft of Crown Copyright statement and submit to Parliament. However, given Parliament’s focus on COVID-19 crisis, presentation will likely have to wait for an appropriate time.

Review and update the Copyright Committee Mandate and description document on CALL website (<https://callacbd.ca/resources/Documents/!Copyright%20Committee1.pdf>)