



THE WRITERS'
UNION OF CANADA
200-90 Richmond Street East, Toronto, Ontario M5C 1P1
T 416-703-8982 F 416-504-9090 www.writersunion.ca

For immediate release

Canada's writers promise to continue the "Fair Dealing" fight
– *The Writers' Union of Canada concerned for the future of the "creator class"* –

Toronto, July 13, 2012 – Schools boards and school administrators should not expect Canada's writers to submit quietly to recent assaults on their right to fair compensation for the use of their work.

Yesterday, the Supreme Court of Canada decided that the Copyright Board should reassess the tariff it had set for photocopying in the nation's elementary and secondary schools. The Writers' Union of Canada (TWUC) was one of eight writers' organizations that intervened in the educators' challenge to the tariff – a challenge that was denied by the Federal Court of Appeal. Now, in a judgment written by Justice Rosalie Abella, the Board is instructed to pay better attention to its assessment of the "fairness" of this copying. Four of the nine judges on the Court disagreed with her.

This comes on the heels of Royal Assent for the Copyright Modernization Act (formerly Bill C-11), which includes for the first time an exemption for "fair dealing" for the purpose of "education".

"But what is fair? When schools want to photocopy, *for free*, excerpts from a book for a whole class rather than buying copies for the classroom or for the school library, that is an attack on our right to be fairly compensated for what we do," says Marilyn Simonds, Chair of TWUC.

Some commentators suggest that these recent decisions are a killing blow to collective licensing. In fact, the educators' Supreme Court challenge concerns only about 17 million of a total of almost 250 million copies made annually across Canada in elementary and secondary schools. Nevertheless, the damage is real. Following the passage of the Copyright Modernization Act, with its "fair dealing for education exemption," a third of Canadian universities have not signed new blanket licensing agreements that give students access to millions of books and pay writers and publishers for their use.

"Universities that have opted not to sign a new blanket licensing agreement with Access Copyright should take no comfort from this Supreme Court decision," says Simonds. "The real significance of this case is that it was sent back to the Copyright Board for further consideration. Who knows what the Copyright Board will now decide?"

What is clear is that the court challenges have only just begun. TWUC argued in the Senate for amending the Copyright Act to include the "Three-Step Test" from the Berne Convention – a test that gives consideration to authors' interests – in order to assist judges in interpreting exceptions in a way that ensures Canada's compliance with international standards. Indeed, the US last week indicated their desire for this Test to be adopted by countries involved in the Trans-Pacific trade talks now underway.

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“Distributors of digital content and manufacturers of digital devices are making big profits from offering free content to the public,” says Simonds. “The real losers are the creators, who are increasingly under threat. Is this the Canada we want? A Canada that has to import its literature because it forced its own creators to work for free until eventually they gave up?”

In recent years Canadian writers, with support from The Writers’ Union of Canada, have launched lawsuits against two major media corporations that claimed the right to free digital reproduction. After more than a decade of litigation, they were successful in both cases. The issues are different, but our resolve to ensure fair compensation for use of our work remains unchanged.

The Writers’ Union of Canada is our country’s national organization representing more than 2,000 professional authors of books. Founded in 1973, the Union is dedicated to fostering writing in Canada, and promoting the rights, freedoms, and economic well-being of all writers.

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For additional information
Kelly Duffin, Executive Director
The Writers’ Union of Canada
416.703.8982 Ext. 221
kduffin@writersunion.ca
www.writersunion.ca