



My Journey through Risk Management

**by Anthony Lennie*

What's inside

- **Eastern Illinois University Historic Building Fire**
- **The Law Society of Upper Canada V. CCH Canadian Limited**
- **Dates to Mark on Your Calendar**
- **Web Site Focuses on Dormitory Fires**

*Anthony Lennie,
Director of Finance
at Victoria
University,
Toronto.

Like many of you, as a Director of Finance I proudly display “Risk Management” on my C.V. And, like many of you, when I worked at a larger institution than I do now, my involvement with this area generally meant getting regular updates from my risk manager. I had a great one, Jim, who handled almost everything. A new building- call Jim, a new program- call Jim, a new, well, you get the idea.

There has never been any doubt in my mind that risk management is a legitimate profession, so when I became the Director of Finance at Victoria University, it wasn't without some trepidation that I took over the risk portfolio, without having a dedicated risk manager. Fortunately, I have been able to fill the void, with the assistance of the competent folks at CURIE and others. Just as I had come to rely on internal expertise, I have now come to rely heavily on external professionals.

Here at Victoria, over the past several years, we have been expanding our definition of risk. Health and safety, construction, reputation, hazardous waste, communicable diseases, student clubs, transportation, etc., are now captured under the risk rubric. These issues seem to be coming in staccato succession, requiring huge dollops of one's time and energy.

Last year for the first time I decided to spend some of my time and energy at the CURIE Annual General Meeting, and was extremely pleased I chose to do so. I found many of the topics to be directly relevant to what we are dealing with here at Victoria, and I especially enjoyed the opportunity of meeting other people who handle the risk portfolio at their institutions.

At the CURIE sessions we learned about many issues. Did you know that a construction loss can be a catastrophic event, or that your construction policy may contain a watchman warranty that is impossible to satisfy? DID YOU KNOW THAT TRADITIONAL INSURANCE POLICIES ARE WRITTEN FOR A WORLD THAT NO LONGER EXISTS? DO YOU KNOW HOW TO READ YOUR CURIE INSURANCE POLICIES? WHERE TO LOOK FOR EXCLUSIONS?

Each year CURIE plans its AGM around the RIMS Canada Conference and encourages members to stay on for the conference following the CURIE AGM. At the RIMS Canada sessions I was able to delve more deeply into the growing field of enterprise risk management. RIMS brought in many notable speakers (Steven Wilder, vice president risk management for the Walt Disney Company to name but one), who shared their own experiences and perspectives with us. These sessions were very helpful in gaining a broader perspective of risk issues.

In conclusion, I would suggest that if my story finds resonance with your situation you should strongly consider attending the next CURIE AGM and perhaps stay on for the RIMS Canada conference. I know you will not be disappointed. ■

Eastern Illinois University Historic Building Fire

by Keith Shakespeare

On April 28th, 2004 a fire swept through the 91 year old Blair Hall which housed academic and administrative offices.

The fire burned away the roof and third floor of the building and the first and second floors sustained heavy water damage. Officials believe that the building exterior may be saved.

It took six different fire companies, 6 hours to get the fire under control. While the cause of the fire has not yet been determined, the building was undergoing renovations at the time.

The President of the University indicated that there was property insurance on the building but there is no insurance possible for the loss of scholarly research. He also indicated that the building was not sprinklered.

No one was injured in the fire.■



The Law Society of Upper Canada V. CCH Canadian Limited:

An Important Copyright Decision By The Supreme Court of Canada

On March 4, 2004, the Supreme Court of Canada ("SCC") handed down what may be, for post-secondary institutions, the most important decision involving Canadian copyright law in the last decade. The case of *The Law Society of Upper Canada v. CCH Canadian Limited* provides crucial clarification and affords broad protection for allegations of copyright infringement against universities and colleges (public and private) whose library holdings are used for research. In addition, staff and researchers using university and college library collections now have a safe harbour from allegations of copyright infringement when they reproduce, or allow others to reproduce, copyrighted materials by photocopying. Ultimately the decision by Canada's highest court may prove to be a positive outcome for post-secondary institutions. Lower administrative costs, more research and thus more creation, dissemination and commercialization of knowledge may result because of the case.

The case stands for a number of important legal propositions. In this article, our focus is on the "fair dealing" exception for research under section 29 of the *Copyright Act*. The case discusses a variety of other important copyright law principles including the definition of originality, as required for copyright subsistence, and communications to the

Reproduced from
Clark, Wilson's
Campus Counsel
(Clark, Wilson is a
BC Law Firm).

public where fax transmissions are involved. Please refer to the case (located on the web at: www.lexum.umontreal.ca/csc-scc/en/rec/html/2004scc013.wpd.html) or consult the writer for information regarding these copyright law principles.

Summary of the Facts

The case dealt with allegations of copyright infringement against the Law Society of Upper Canada ("LSUC") by a number of publishers of legal materials. The LSUC, which regulates the legal profession in Ontario, maintains and operates the Great Library of Osgood Hall in Toronto, a reference and research library with one of the largest collections of legal materials in Canada. The Great Library provides a request-based (custom) photocopy service which allows LSUC members, the judiciary and other authorized researchers to request legal materials at the Great Library to be photocopied for a fee. The Great Library also provides a number of self-serve photocopiers for its patrons.

The plaintiff legal publishers alleged that the provision of the custom photocopy service amounted to an infringement of their copyright in the legal materials that they published. They also alleged that the provision of self-serve photocopy machines at the Great Library amounted to "authorizing" the patrons of the library to unlawfully reproduce the legal materials, and such authorization also amounted to infringement of copyright by the Law Society.

Fair Dealing for the Purpose of Research

The SCC rejected the allegations of the publishers in a unanimous ruling (9 to 0 - the legal equivalent of a slam-dunk). The SCC's judgement, delivered by Chief Justice Madam Beverly McLachlin (a former UBC law professor before being appointed a judge), states that the making of single copies of the copyrighted works in issue was not copyright infringement. The SCC expansively applied the fair dealing exception for the purpose of research, under section 29 of the *Copyright Act*, to the allegations of copyright infringement.

The SCC stated that, as a general point, "...fair dealing ... is perhaps more properly understood as an integral part of the *Copyright Act* than simply a defence. Any act falling within the fair dealing exception will not be an infringement of copyright." The SCC then went on to state, "The fair dealing exception ... is a user's right" and that "... it must not be interpreted restrictively" (emphasis added). Quoting from Canada's foremost copyright expert, David Vaver (another former UBC law professor), the SCC stated "User rights are not just loopholes. Both owner rights and user rights should therefore be given the fair and balanced reading that befits remedial legislation". The recognition of user rights is itself a novel pronouncement by the SCC. The *Copyright Act* has been traditionally interpreted as legislation that favours owners over users of copyright rights. The balance now appears to be shifted slightly in favour of users.

The SCC confirmed the legal principle that the fair dealing research exception includes research that is not limited to non-commercial research. Thus, on the facts of the case, the SCC determined that "lawyers carrying on the business of law for profit are conducting research within the meaning of 1.29 of the *Copyright Act*".

Maintaining Photocopiers is not an Authorization of Copyright Infringement

The SCC also held that the LSUC did not "authorize" copyright infringement by maintaining self-service photocopiers in the Great Library for use by its patrons. A long-standing, general concern before the case was decided was the potential liability for libraries and librarians alike from such photocopier usage.■

The SCC's judgement, delivered by Chief Justice Madam Beverly McLachlin (a former UBC law professor before being appointed a judge), states that the making of single copies of the copyrighted works in issue was not copyright infringement.



DATES TO MARK ON YOUR CALENDAR



October 2 & 3, 2004 **CURIE University & College Risk Management Conference (AGM)**
The Fairmont Winnipeg, Winnipeg, MB

CURIE University & College Risk Management Conference (Sat. 9-4, Sun. 9-1)

-  **CURIE Board/Staff Update Presentation** by Ian Nason (CURIE - Chair)
-  **Welcome to Mediation** by the CURIE Cast
-  **Hurricane Juan - How to Survive a Catastrophe** by R. Cochrane (St. Mary's), I. Nason (Dalhousie) and S. Roberts (CURIE)
-  **FM Global Services** by Greg Gribbon (FM Global)
-  **Failure to Educate** by D. Orth(Lang Michener) & A. Rudakoff (Macleod Dixon)
-  **Library Study** by R. Snucins & N. Wilson (American Appraisal)
-  **Member roundtable discussion (bring your questions &/or problems to discuss with your peers)**

REGISTRATION FORMS WILL BE SENT OUT IN LATE JULY OR EARLY AUGUST TO OUR SUBSCRIBERS. IF YOU WOULD LIKE TO ATTEND BUT DO NOT RECEIVE YOUR FORM, PLEASE CALL TERRY PAGE (905-336-3366) OR E-MAIL (tpage@curie.org)

RIMS Canada Conference
October 3-6, 2004 at
Winnipeg, MB.

UPCOMING
CURIE
WORKSHOPS

Eastern Region
 November 16, 2004
 Halifax, NS

Western Region
 To be announced

Ontario Region
 November 25 &
 26/04
 Ottawa, ON

EDITORS NOTE:

Web Site Focuses On Dormitory Fires

A new fire safety web site (www.collegefiresafety.org) is being underwritten by Victaulic Company of America (a mechanical piping system manufacturer). Its target audience includes college administrators, safety and risk managers, as well as students.

The site includes information on residence life, safety technologies and hazard and related safety tips. Fire authorities in the U.S. investigate over 1700 dormitory and fraternity fires every year. About 33% of these fires are a result of arson. The two other major causes of dorm fires are smoking and cooking.

A number of universities have been upgrading their fire protection systems and policies as a response to the growing number of dorm fires.

CURIE Risk Management Newsletter

Published and distributed by Canadian Universities Reciprocal Insurance Exchange (CURIE), 5500 North Service Rd., 9th Floor, Burlington, Ontario L7L 6W6 ISSN 1196-085X

Telephone: (905) 336-3366 Fax: (905) 336-3373 Editor: Keith Shakespeare

Opinions on insurance, financial, regulatory and legal matters are those of the editor and others, professional counsel should be consulted before any action or decision based on this material is taken.

Permission for reproduction of part or all of the contents of this publication will be granted provided attribution to CURIE Risk Management Newsletter and the date of the Newsletter are given.