

Contents

Preface to the 2023 Edition.....	iii
Table of Cases.....	lv

Copyright Act

SHORT TITLE	1
Legislative History	1
I. Introduction.....	2
A. The Purpose of the Act.....	2
B. The Premises of Modern Copyright Law	3
C. Highlights of the Applicable Legal System.....	5
II. Constitutional Jurisdiction	6
III. Legislation in Force in Canada Prior to the Act of 1921	7
A. General Framework	7
B. British Legislation	7
C. Canadian Legislation	9
1. Pre-Confederative Legislation.....	9
2. Federal Legislation Between 1867 and 1921.....	9
(a) The Act of 1868.....	9
(b) The Act of 1875.....	9
(c) The Act of 1906.....	10
IV. The Act of 1921 and Amendments	10
A. Results of the Act of 1921	10
B. Amendments to the Act of 1921	12
1. The Act of 1923	12
2. The Act of 1931	12
3. The Act of 1935.....	13
4. The Act of 1936.....	14
5. The Act of 1938.....	14
6. The Act of 1971	14
7. Minor Modifications Between 1971 and 1988.....	15
8. The Acts of 1988.....	15
9. The Act of 1990.....	16
10. The Act of 1992.....	16

11. The Acts of 1993.....	16
12. The Act of 1994.....	18
13. The Act of 1997.....	19
14. The Act of 2012.....	20
15. The Act of 2019.....	21
V. The International Conventions: The <i>Berne Convention</i> , the <i>Universal Convention</i> and the <i>Rome Convention</i> on Neighbouring Rights.....	21
Head Note on the Importance of International and Comparative Law.....	21
A. The <i>Berne Convention</i>	31
B. The <i>Universal Convention</i>	34
C. The <i>Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations</i> ...	35
D. The TRIPS Agreement.....	35
E. The WIPO Copyright Treaty.....	35
VI. Protection of Foreign Authors Prior to the Act of 1921.....	36
A. Introduction.....	36
B. Protection Under the <i>Berne Convention</i>	36
C. Protection Under the Canadian Act.....	37
INTERPRETATION	38
Section 2: “architectural work”.....	38
I. Concept.....	38
II. Distinction Between Plans and Structure.....	39
III. Originality of the Architectural Work.....	42
IV. Case Law.....	51
Section 2: “artistic work”.....	57
I. Concept.....	58
II. “. . . paintings . . .”.....	61
A. Case Law.....	61
III. “. . . drawings . . .”.....	63
A. Case Law.....	63
IV. “. . . sculpture . . .”.....	68
V. “. . . works of artistic craftsmanship . . .”.....	68
A. Case Law.....	69
VI. “. . . architectural work . . .”.....	70
VII. “. . . engravings . . .”.....	70
VIII. “. . . photographs . . .”.....	70
IX. “. . . maps, charts, plans . . .”.....	70

CONTENTS

A. Case Law.....	71
Section 2: “Berne Convention country”	74
Section 2: “Board”	75
Section 2: “book”	76
Section 2: “broadcaster”	76
Section 2: “Canada-United States-Mexico Agreement”	77
Section 2: “choreographic work”	77
Section 2: “cinematographic work”	78
Section 2: “collective society”	82
Section 2: “collective work”	92
I. Concept.....	92
II. Case Law	93
Section 2: “commercially available”	99
Section 2: “communication signal”	99
Section 2: “compilation”	99
I. Case Law	103
Section 2: “computer program”	113
I. Case Law	117
Section 2: “copyright”	120
I. The Origin of the Word “Copyright” Set Out in Section 3	120
A. The Legislative Origin of the Word “Copyright”.....	122
Section 2: “country”	125
Section 2: “defendant”	125
Section 2: “delivery” Repealed	125
Section 2: “dramatic work”	125
I. “dramatic work”	125
II. “any piece for recitation”	128
III. “choreographic work or mime”	128
IV. “the scenic arrangement or acting form of which is fixed in writing or otherwise”	128
A. Case Law.....	129
Section 2: “educational institution”	130
Section 2: “engravings”	130
Section 2: “every original literary, dramatic, musical and artistic work” ...	131

I. Concept.....	132
II. “. . . original . . .”	132
III. Case Law	150
IV. The Concept of Originality: The Diversity and the Consistency of Judicial Solutions	168
Section 2: “exclusive distributor”	174
Section 2: “Her Majesty’s Realms and Territories” Repealed	175
Section 2: “infringing”	175
I. “in relation to a work in which copyright subsists. . .”	176
II. “. . . any copy. . .”	176
III. “. . . including any colourable imitation. . .”	176
A. Concept	177
B. Some Components of the Notion of Colourable Imitation.....	180
IV. “. . . made . . .”	184
Section 2: “lecture”	184
Section 2: “legal representatives”	185
Section 2: “library, archive or museum”	185
Section 2: “literary work”	186
I. Notion	186
II. Literary Merit is Not Important	187
III. The Format of a Published Work May Resemble that of Another Without Infringing that Work	189
IV. News Items Do Not Constitute Literary Works.....	190
A. Case Law.....	192
V. “. . . tables . . .”	192
A. Case Law.....	192
VI. Compilations	193
VII. Translations	193
VIII. Computer Programs	197
IX. Examples of Works Having Been Classified as Literary Works ...	197
Section 2: “maker”	202
Section 2: “Minister”	203
Section 2: “moral rights”	203
I. The Concept in English Law.....	204
II. The Concept in Canadian Law	207
Section 2: “musical work”	212

CONTENTS

I. Concept.....	212
II. Songs as Works of Joint Authorship or Compilation	215
III. Arrangements	218
Section 2: “perceptual disability”	218
Section 2: “performance”	218
I. Concept as to “a Work in Which Copyright Subsists”	219
II. Interpretation of the Definition.....	226
Section 2: “performer’s performance”	229
Section 2: “photograph”	231
Section 2: “plaintiff”	241
Section 2: “plate”	241
I. Case Law	242
Section 2: “premises”	242
Section 2: “receiving device” Repealed.....	242
Section 2: “Rome Convention country”	243
Section 2: “sculpture”	243
I. Case Law	243
Section 2: “sound recording”	244
Section 2: “telecommunication”	245
Section 2: “treaty country”	255
Section 2: “UCC country”	256
Section 2: “WCT country”	256
Section 2: “work”	256
I. An Extensive Definition	257
A. The Primary Meaning of the Word “Work”.....	257
B. The Definition	262
II. “original and distinctive”	268
A. Originality	269
B. Distinctiveness	271
C. Case Law	272
Section 2: “work of joint authorship”	273
I. Concept.....	274
II. Case Law	281
Section 2: “work of sculpture” Repealed	286
Section 2: “WPPT country”	286

Section 2: “WTO Member”	286
Section 2.1(1): “Compilations”	286
Section 2.1(2): “Idem”	286
Section 2.11: “Definition of ‘maker’”	286
Section 2.2(1): “Definition of ‘publication’”	287
I. Concept.....	287
II. “. . . Available to the Public . . .”	288
III. “. . . The Public Performance or Communication of a Work . . .”	289
IV. “. . . The Exhibition in Public of an Artistic Work . . .”	290
Section 2.2(2): “Issue of photographs and engraving”	290
Section 2.2(3): “Where no consent of copyright owner”	290
Section 2.2(4): “Unpublished works”	291
Section 2.3: “Telecommunication”	292
Section 2.4(1): “Communication to the public by telecommunication”	292
Section 2.4(1)(a): “Part of the public”	292
Section 2.4(1)(b): “Only providing the means”	293
Section 2.4(1)(c): “Networks, programming undertakings”	297
Section 2.4(1.1): “Communication to the public by telecommunication” ...	299
Section 2.4(2): “Regulations”	309
Section 2.4(3): “Exception”	309
Section 2.5(1): “What constitutes rental”	310
Section 2.5(2): “Motive of gain”	310
Section 2.6: “Exclusive distributor”	310
Section 2.7: “Exclusive licence”	311

**PART I
COPYRIGHT AND MORAL RIGHTS IN WORKS**

Section 3(1): “Copyright in works”	311
Section 3(1)(a): “To translate a work”	311
Section 3(1)(b): “To convert a dramatic work”	311
Section 3(1)(c): “To convert a non-dramatic work by way of performance” ...	311
Section 3(1)(d): “To make any record”	311
Section 3(1)(e): “To adapt a work as a cinematographic work”	312

CONTENTS

Section 3(1)(f): “To communicate the work by telecommunication”	312
Section 3(1)(g): “To present an artistic work at a public exhibition”	312
Section 3(1)(h): “Rental of a computer program”	312
Section 3(1)(i): “Rental of a sound recording”	312
Section 3(1)(j): “Transfer of ownership of tangible object”	312
Section 3(1) <i>in fine</i> : “And to authorize any such acts”	312
I. Concept.....	314
II. Interpretation of Section 3(1).....	318
A. Case Law.....	328
III. “. . . sole right to produce . . .”	332
A. Right to Produce.....	332
1. The Distinction Between the Production and Reproduction: The Controversy Spawned by the <i>Théberge</i> Decision.....	332
B. Application.....	345
1. Case Law	345
IV. “. . . or reproduce the work . . .”	348
V. “. . . or any substantial part thereof . . .”	357
A. Substantial Part — Quantitative Importance	365
B. Substantial Part — Qualitative Importance.....	370
1. Substantial Part — Fictional Characters.....	374
2. Criteria for Determining	376
3. Fictitious Characters Developed in Dramatic and Artistic Works Are Targeted by the Act	378
C. Substantial Part — Jurisprudence.....	382
VI. “. . . in any material form whatever . . .”	382
A. Incidental Copy of a Work.....	385
VII. “. . . to perform . . . in public . . .”	388
A. Background for a Doctrinal Theory which had Considerable Practical Importance, Whereas the Dominant Jurisprudence was to the Contrary.....	388
1. Critique of the Authorities on which the Dominant Theory was Based	404
2. The Law Concerning Retransmission of Works According to Our Interpretation of Case Law.....	407
B. Definition of “Public”.....	414
C. Determinative Criterion — The Person Responsible for Making the Performance Available to the Public.....	418
VIII. “. . . if the work is unpublished to publish the work . . .”	420

A.	The Foundation and the Source of the Right to Publish a Work	420
B.	Principle.....	423
IX.	Section 3(1)(a): To Translate the Work	425
X.	Section 3(1)(b): To Convert a Dramatic Work.....	427
XI.	Section 3(1)(c): To Convert a Non-Dramatic Work by Way of Performance	427
XII.	Section 3(1)(d): To Make Any Record.....	428
XIII.	Section 3(1)(e): To Adapt a Work as a Cinematographic Work...	431
XIV.	Section 3(1)(f): To Communicate the Work by Telecommunication.....	432
A.	Case Law.....	433
XV.	Section 3(1)(h): Rental of a Computer Program.....	444
XVI.	Section 3(1)(i): Rental of a Sound Recording.....	445
XVII.	Section 3(1)(j): Transfer of Ownership of Tangible Object.....	445
XVIII.	Section 3(1) <i>in fine</i> : The Right to Authorize.....	445
	Section 3(1.1): “Simultaneous fixing”	467
A.	Case Law.....	468
	Section 3(1.2): “Interpretation” Repealed	469
	Section 3(1.3): “Restriction” Repealed	469
	Section 3(1.4): “Networks, programming undertakings” Repealed.....	469
	Section 3(1.41): “Regulations” Repealed.....	469
	Section 3(1.5): “Exception” Repealed.....	469
	Section 3(2): “Rental of computer programs” Repealed.....	469
	Section 3(3): “Idem” Repealed	469
	Section 3(4): “Telecommunication to the public” Repealed.....	469
	Section 4: “Repealed”	469
	WORKS IN WHICH COPYRIGHT MAY SUBSIST	469
	Section 5(1): “Conditions for subsistence of copyright”	469
	APPLICATION	470
	Section 5(1.01): “Protection for older works”	470
	Section 5(1.02): “Limitation”.....	471
	Section 5(1.03): “Application of subsections (1.01) and (1.02)”.....	471
	Section 5(1.1): “First publication”	471
	Section 5(1.2): “Idem”	471

CONTENTS

Section 5(2): “Minister may extend copyright to other countries”	475
Section 5(2.1): “Copyright extended to Universal Copyright Convention countries” Repealed	475
Section 5(3): “Copyright in records and contrivances” Repealed	475
Section 5(4): “Nature of copyright” Repealed	476
Section 5(5): “What constitutes rental” Repealed	476
Section 5(6): “Idem” Repealed	476
Section 5(7): “Reciprocity protection preserved”	476
TERM OF COPYRIGHT	476
Section 6: “Term of copyright”	476
Section 6.1(1): “Anonymous and pseudonymous works”	477
Section 6.1(2): “Identity of author commonly known”	478
Section 6.2(1): “Anonymous and pseudonymous works of joint authorship”	478
Section 6.2(2): “Identity of author commonly known”	478
Section 7(1): “Term of copyright in posthumous works”	479
Section 7(2): “Application of subsection (1)”	480
Section 7(3): “Transitional provision”	480
Section 7(4): “Transitional provision”	481
Section 8(1): “Reproduction of work after death of author” Repealed.....	482
Section 8(2): “Regulations” Repealed.....	482
Section 9(1): “Cases of joint authorship”	482
Section 9(2): “Nationals of other countries”	483
Section 10: “Term of copyright in photographs” Repealed	483
Section 11: “Term of copyright in records, perforated rolls, etc.” Repealed.....	484
Section 11.1: “Cinematographic works”	484
Section 12: “Where copyright belongs to Her Majesty”	484
OWNERSHIP OF COPYRIGHT	500
Section 13(1): “Ownership of copyright”.....	500
I. Concept.....	503
II. Author: The Individual Expressing His Thoughts.....	509
III. No Copyright in Ideas.....	517

IV. Author of a Work Reproducing Oral Conversation or an Improvisation	533
Section 13(2): “Engraving, photograph or portrait” Repealed	535
Section 13(3): “Work made in the course of employment”	535
I. Concept.....	536
II. Works Created Within the Framework of a Contract of Service ...	536
III. Collaboration on a Newspaper	551
Section 13(4): “Assignments and licences”	554
I. Concept.....	554
A. Case Law.....	580
II. Distinction Between Assignment of Copyright and Transfer of Property on a Physical Object	584
A. Case Law.....	585
III. “. . . grant any interest in the right . . .”	589
IV. “. . . wholly . . . for the whole term of the copyright. . .”	594
V. “. . . either wholly or partially . . .”	595
VI. “. . . either generally or subject to limitations . . .”	598
VII. “. . . and either for the whole term of the copyright or any other part thereof . . .”	602
VIII. “. . . no assignment . . . is valid unless it is in writing. . .”	603
A. Implied Licences.....	627
B. Implied Licences — Rules.....	632
C. Case Law.....	633
IX. “. . . or by the owner’s duly authorized agent”	636
X. The Seizability of Copyright Rights.....	638
XI. Copyright Rights and Securities.....	641
Section 13(5): “Ownership in case of partial assignment”	642
Section 13(6): “Assignment of right of action”	642
Section 13(7): “Exclusive licence”	643
Section 14(1): “Limitation where author is first owner of copyright”	645
I. Reversion of Copyright	646
II. Condition: The Author Must Be the First Owner	648
Section 14(2): “Restriction”	648
Section 14(3): “Ownership in case of partial assignment” Repealed.....	650
Section 14.01(1): “Performer’s rights (post-WTO performances)” Repealed	650
Section 14.01(2): “Interpretation” Repealed.....	650

CONTENTS

Section 14.01(3): “Restriction” Repealed	651
Section 14.01(4): “Performer’s rights (pre-WTO performances)” Repealed	651
Section 14.01(5): “Term of performer’s rights” Repealed	651
Section 14.01(6): “Assignment of right by performer” Repealed	651
Section 14.01(7): “Limitation” Repealed	651
MORAL RIGHTS	651
Section 14.1(1): “Moral rights”	651
Section 14.1(2): “No assignment of moral rights”	652
Section 14.1(3): “No waiver by assignment”	653
Section 14.1(4): “Effect of waiver”	654
Section 14.2(1): “Term”	655
Section 14.2(2): “Succession”	655
Section 14.2(3): “Subsequent succession”	656

PART II
COPYRIGHT IN PERFORMERS’ PERFORMANCES,
SOUND RECORDINGS AND COMMUNICATION SIGNALS AND MORAL
RIGHTS IN PERFORMERS’ PERFORMANCES

PERFORMERS’ RIGHTS	657
Copyright	657
Section 15(1): “Copyright in performer’s performance”	657
Section 15(1.1): “Copyright in performer’s performance”	658
Section 15(2): “Conditions”	662
Section 15(2.1): “Conditions for copyright”	662
Section 15(2.2): “Conditions for copyright”	662
Section 15(3): “Publication”	663
Section 15(4): “Publication”	663
Section 16: “Contractual arrangements”	663
Section 17(1): “Cinematographic works”	664
Section 17(2): “Right to remuneration”	664
Section 17(3): “Application of subsection (2)”	665
Section 17(4): “Exception”	665
Section 17.1(1): “Moral rights”	665

Section 17.1(2): “No assignment of moral rights”	665
Section 17.1(3): “No waiver by assignment”	666
Section 17.1(4): “Effect of waiver”	666
Section 17.2(1): “Application and term”	666
Section 17.2(2): “Succession”	666
Section 17.2(3): “Subsequent succession”	666
RIGHTS OF SOUND RECORDING MAKERS	666
Section 18(1): “Copyright in sound recordings”	666
Section 18(1.1): “Copyright in sound recordings”	667
Section 18(2): “Conditions for copyright”	667
Section 18(2.1): “Conditions for copyright”	667
Section 18(2.2): “Conditions for copyright”	668
Section 18(3): “Publication”	668
Section 18(4): “Publication”	668
PROVISIONS APPLICABLE TO BOTH PERFORMERS AND SOUND RECORDING MAKERS	668
Section 19(1): “Right to remuneration — Canada”	668
Section 19(1.1): “Right to remuneration — <i>Rome Convention</i> country”	673
Section 19(1.2): “Right to remuneration — WPPT country”	675
Section 19(2): “Royalties”	675
Section 19(3): “Division of royalties”	676
Section 19.1: “Deemed publication — Canada”	676
Section 19.2: “Deemed publication — WPPT country”	676
Section 20(1): “Conditions — Canada”	677
Section 20(1.1): “Conditions — <i>Rome Convention</i> country”	677
Section 20(1.2): “Conditions — WPPT country”	677
Section 20(2): “Exception — <i>Rome Convention</i> country”	677
Section 20(2.1): “Exception — WPPT country”	678
Section 20(3): “Exception” Repealed	678
Section 20(4): “Application of section 19” Repealed	678
RIGHTS OF BROADCASTERS	678
Section 21(1): “Copyright in communication signals”	678

CONTENTS

Section 21(2): “Conditions for copyright”	679
Section 21(3): “Exception”	679
RECIPROCITY	679
Section 22(1): “Reciprocity”	679
Section 22(2): “Reciprocity”	680
Section 22(3): “Application of Act”	680
Section 22(4): “Application of Act”	680
TERM OF RIGHTS	681
Section 23(1): “Term of copyright — performer’s performance”	681
Section 23(1.1): “Term of copyright — sound recording”	681
Section 23(1.2): “Term of copyright — communication signal”	681
Section 23(2): “Term of right to remuneration”	681
Section 23(3): “Applications of subsections (1) to (2)”	682
Section 23(4): “Berne Convention countries, Rome Convention countries, WTO Members”	682
Section 23(5): “Where term of protection expired”	682
OWNERSHIP OF COPYRIGHT	682
Section 24: “Ownership of copyright”	682
Section 25: “Assignment of rights”	682
PERFORMERS’ RIGHTS — WTO COUNTRIES	683
Section 26(1): “Performer’s performance in WTO country”	683
Section 26(2): “Where country joins WTO after Jan. 1, 1996”	683
Section 26(3): “Performer’s performances before Jan. 1, 1996”	683
Section 26(4): “Where country joins WTO after Jan. 1, 1996”	683
Section 26(5): “Term of performer’s rights”	683
Section 26(6): “Assignment of rights”	684
Section 26(7): “Limitation”	684

PART III
INFRINGEMENT OF COPYRIGHT AND MORAL RIGHTS
AND EXCEPTIONS TO INFRINGEMENT

INFRINGEMENT OF COPYRIGHT	684
General	684
Section 27(1): “Infringement generally”	684

1. Infringement in Relation to a Work in Which Copyright Subsists	685
I. Concept.....	685
II. Infringement of the Right to Authorize	698
III. Infringer May Not Invoke the Protection of the Law.....	721
IV. Infringer’s Ignorance Irrelevant.....	722
V. Good Faith Does Not Justify Infringement.....	724
VI. Absence of Commercial Use Irrelevant.....	730
VII. Infringement of Performing Rights and the Right to Communicate a Work Publicly	731
VIII. Infringement of Rights to Produce or Reproduce	735
A. Criteria Concerning Infringement of Reproduction Rights	737
1. Simple Copying of a Work.....	738
2. Reproduction of a Substantial Part of a Work.....	741
3. Use of an Idea Does Not Constitute Infringement.....	761
4. Arrangements or Systems Are Not Subject to Protection	776
B. Certain Criteria Concerning the Substantial Part.....	780
IX. Infringement of the Right to Publish a Work	798
X. Territorial Jurisdiction.....	799
Section 27(2): “Secondary infringement”	802
Section 27(2.1): “Clarification”	811
Section 27(2.11): “Secondary infringement — exportation”	811
Section 27(2.12): “Exception”	811
Section 27(2.2): “Secondary infringement related to lesson”	811
Section 27(2.3): “Infringement — provision of services”	812
Section 27(2.4): “Factors”	812
Section 27(3): “Knowledge of importer”	813
Section 27(4): “Plates”	814
Section 27(5): “Public performance for profit”	814
Parallel Importation of Books	815
Section 27.1(1): “Importation of books”	815
Section 27.1(2): “Secondary infringement”	815
Section 27.1(3): “Limitation”	816
Section 27.1(4): “Exclusive distributor”	816

CONTENTS

Section 27.1(5): “Notice”	816
Section 27.1(6): “Regulations”	817
Section 28: “Report in newspaper of political speech no infringement” Repealed	817
Section 28.01: “Retransmission” Repealed	817
Section 28.02: “Infringement of performer’s rights” Repealed	817
Section 28.03: “Certain right and interests protected” Repealed	817
MORAL RIGHTS INFRINGEMENTS	817
Section 28.1: “Infringement generally”	817
Section 28.2(1): “Nature of right of integrity”	823
I. Concept	823
II. Application in Canadian Law	826
Section 28.2(2): “Where prejudice deemed”	833
Section 28.2(3): “When work not distorted, etc.”	833
EXCEPTIONS	837
Fair Dealings	846
Section 29: “Research, private study, etc.”	858
Section 29.1: “Criticism or review”	875
I. Source and Author’s Name	876
II. Fair Dealing	878
III. Review	880
IV. Criticism	881
A. Parody as a Form of “Critique”	884
Section 29.2: “News reporting”	886
Non-commercial User-generated Content	888
Section 29.21(1): “Non-commercial user-generated content”	888
Section 29.21(2): “Definitions”	888
Reproduction for Private Purposes	889
Section 29.22(1): “Reproduction for private purposes”	889
Section 29.22(2): “Meaning of ‘medium or device’”	889
Section 29.22(3): “Limitation — audio recording medium”	889
Section 29.22(4): “Limitation — destruction of reproductions”	890
Fixing Signals and Recording Programs for Later Listening or Viewing	890
Section 29.23(1): “Reproduction for later listening or viewing”	890

Section 29.23(2): “Limitation”	890
Section 29.23(3): “Definitions”	890
Backup Copies	891
Section 29.24(1): “Backup copies”	891
Section 29.24(2): “Backup copy becomes source copy”	891
Section 29.24(3): “Destruction”	892
Acts Undertaken Without Motive of Gain	892
Section 29.3(1): “Motive of gain”	892
Section 29.3(2): “Cost recovery”	892
Educational Institutions	893
Section 29.4(1): “Reproduction for instruction”	893
Section 29.4(2): “Reproduction for examinations, etc.”	893
Section 29.4(3): “If work commercially available”	894
Section 29.5: “Performances”	896
Section 29.6(1): “News and commentary”	898
Section 29.6(2): “Royalties for reproduction and performance” Repealed	898
Section 29.7(1): “Reproduction of broadcast”	898
Section 29.7(2): “Royalties for reproduction”	899
Section 29.7(3): “Royalties for performance”	899
Section 29.8: “Unlawful reception”	899
Section 29.9(1): “Records and marking”	899
Section 29.9(2): “Regulations”	900
Section 30: “Literary collections”	900
Section 30.01(1): “Meaning of ‘lesson’”	901
Section 30.01(2): “Application”	901
Section 30.01(3): “Communication by telecommunication”	901
Section 30.01(4): “Participation by telecommunication”	901
Section 30.01(5): “Reproducing lessons”	901
Section 30.01(6): “Conditions”	902
Section 30.02(1): “Exception — digital reproduction of works”	902
Section 30.02(2): “Exception”	902

CONTENTS

Section 30.02(3): “Conditions”	903
Section 30.02(4): “Restriction”	903
Section 30.02(5): “Restriction”	903
Section 30.02(6): “Deeming provision”	904
Section 30.02(7): “Maximum amount that may be recovered”	904
Section 30.02(8): “No damages”	904
Section 30.03(1): “Royalties — digital reproduction agreement”	905
Section 30.03(2): “Royalties — tariff”	905
Section 30.04(1): “Work available through Internet”	906
Section 30.04(2): “Conditions”	906
Section 30.04(3): “Non-application”	907
Section 30.04(4): “Non-application”	907
Section 30.04(5): “Non-application”	907
Section 30.04(6): “Regulations”	907
Libraries, Archives and Museums	908
Section 30.1(1): “Management and maintenance of collection”	908
Section 30.1(2): “Limitation”	908
Section 30.1(3): “Destruction of intermediate copies”	908
Section 30.1(4): “Regulations”	908
Section 30.2(1): “Research or private study”	909
Section 30.2(2): “Copies of articles for research, etc.”	909
Section 30.2(3): “Restriction”	909
Section 30.2(4): “Conditions”	909
Section 30.2(5): “Patrons of other libraries, etc.”	909
Section 30.2(5.01): “Deeming”	910
Section 30.2(5.02): “Limitation regarding copies in digital form”	910
Section 30.2(5.1): “Destruction of intermediate copies”	910
Section 30.2(6): “Regulations”	910
Section 30.21(1): “Copying works deposited in archive”	911
Section 30.21(2): “Notice”	911
Section 30.21(3): “Conditions for copying of works”	911
Section 30.21(3.1): “Condition for providing copy”	911

Section 30.21(4): “Regulations”	911
Section 30.21(5): “Where copyright owner cannot be found” Repealed....	912
Section 30.21(6): “Notice” Repealed	912
Section 30.21(7): “Posthumous works” Repealed.....	912
Machines Installed in Educational Institutions, Libraries, Archives and Museums	912
Section 30.3(1): “No infringement by educational institution, etc.”	912
Section 30.3(2): “Application”	912
Section 30.3(3): “Order”	913
Section 30.3(4): “Agreement with copyright owner”	913
Section 30.3(5): “Regulations”	913
Libraries, Archives and Museums in Educational Institutions	913
Section 30.4: “Application to libraries, etc. within educational institutions”	913
Library and Archives of Canada	913
Section 30.5: “Permitted acts”	913
Computer Programs	914
Section 30.6: “Permitted acts”	914
Section 30.61(1): “Interoperability of computer programs”	914
Section 30.61(2): “No limitation”	915
Encryption Research	915
Section 30.62(1): “Encryption research”	915
Section 30.62(2): “Limitation”	915
Section 30.62(3): “Limitation — computer program”	915
Security	916
Section 30.63(1): “Security”	916
Section 30.63(2): “Limitation”	916
Section 30.63(3): “Limitation — computer program”	916
Incidental Inclusion	917
Section 30.7: “Incidental use”	917
Temporary Reproductions for Technological Processes	918
Section 30.71: “Temporary reproductions”	918
Ephemeral Recordings	921

CONTENTS

Section 30.8(1): “Ephemeral recordings”	921
Section 30.8(2): “Record keeping”	922
Section 30.8(3): “Right of access by copyright owners”	922
Section 30.8(4): “Destruction”	922
Section 30.8(5): “Royalties”	922
Section 30.8(6): “Archive”	922
Section 30.8(7): “Definition of ‘official archive’”	922
Section 30.8(8): “Application”	922
Section 30.8(9): “Telecommunications by networks”	923
Section 30.8(10): “Limitations”	923
Section 30.8(11): “Definition of ‘programming undertaking’”	923
Section 30.9(1): “Ephemeral recordings — broadcasting undertaking”	923
Section 30.9(2): “Record keeping”	926
Section 30.9(3): “Right of access by copyright owners”	926
Section 30.9(4): “Destruction”	926
Section 30.9(5): “Royalty”	926
Section 30.9(6): “Application” Repealed	926
Section 30.9(7): “Definition of ‘broadcasting undertaking’”	926
Retransmission	926
Section 31(1): “Interpretation”	926
Section 31(2): “Retransmission of local and distant signals”	928
Section 31(3): “Regulations”	930
Network Services	934
Section 31.1(1): “Network services”	934
Section 31.1(2): “Incidental acts”	934
Section 31.1(3): “Conditions for application”	934
Section 31.1(4): “Hosting”	935
Section 31.1(5): “Condition for application”	935
Section 31.1(6): “Exception”	935
Persons With Perceptual Disabilities	935
Section 32(1): “Reproduction in alternate format”	935
Section 32(2): “Limitation”	936

Section 32(3): “Limitation” Repealed.....	936
Section 32.01(1): “Print disability — outside Canada”	936
Section 32.01(2): “Available in other country”	937
Section 32.01(3): “Marrakesh Treaty country”	937
Section 32.01(3.1): “Not Marrakesh Treaty country”	937
Section 32.01(4): “Royalty”	938
Section 32.01(5): “If copyright owner cannot be located”	938
Section 32.01(6): “Reports”	938
Section 32.01(7): “Regulations”	938
Section 32.01(8): “Meaning of ‘print disability’”	939
Section 32.02: “Definition of non-profit organization”	939
Statutory Obligations	939
Section 32.1(1): “No infringement”	939
Section 32.1(1)(a): “Disclosure of records”	939
Section 32.1(1)(b): “Disclosure of personal information”	939
Section 32.1(1)(c): “Reproduction for deposit”	940
Section 32.1(1)(d): “Copy to comply with the <i>Broadcasting Act</i> ”	940
Section 32.1(2): “Limitation”	940
Section 32.1(3): “Destruction of fixation or copy”.....	940
Miscellaneous	940
Section 32.2(1): “Permitted acts”	940
Section 32.2(1)(a): “Where the author is not owner”	940
Section 32.2(1)(b): “Architectural work and work permanently situated in a public place”	942
Section 32.2(1)(c): “Publication of a report of a lecture delivered in public”	943
Section 32.2(1)(d): “Recitation of reasonable extract”	944
Section 32.2(1)(e): “Report of political speech”	944
Section 32.2(1)(f): “Use of a photograph or portrait”	944
Section 32.2(2): “Further permitted acts”	944
Section 32.2(3): “Further permitted acts”	947
INTERPRETATION	949
Section 32.3: “No right to equitable remuneration”	949

CONTENTS

COMPENSATION FOR ACTS DONE BEFORE RECOGNITION OF COPYRIGHT OF PERFORMERS AND BROADCASTERS	949
Section 32.4(1): “Certain rights and interests protected”	949
Section 32.4(2): “Compensation”	949
Section 32.4(3): “Limitation”	950
Section 32.5(1): “Certain rights and interests protected”	950
Section 32.5(2): “Compensation”	950
Section 32.5(3): “Limitation”	950
Section 32.6: “Certain rights and interests protected”	950
COMPENSATION FOR ACTS DONE BEFORE RECOGNITION OF COPYRIGHT OR MORAL RIGHTS	951
Section 33(1): “Certain rights and interests protected”	951
Section 33(2): “Compensation”	951
Section 33.1(1): “Certain rights and interests protected”	951
Section 33.1(2): “Compensation”	952
Section 33.2(1): “Certain rights and interests protected”	952
Section 33.2(2): “Compensation”	952

**PART IV
REMEDIES**

CIVIL REMEDIES	952
Infringement of Copyright and Moral Rights	953
Section 34(1): “Copyright”	953
1. In Relation to a Work in Which Copyright Subsists	954
I. Concept.....	954
II. “Remedies . . . that are or may be conferred by law for the infringement of a right”	957
III. Evidence of Infringement	968
A. <i>Prima Facie</i> Evidence	981
B. Repeated Errors	984
C. Direct Use of the Infringed Work	987
IV. “. . . by way of injunction . . .”	994
A. Interlocutory Injunction.....	994
1. The <i>Prima Facie</i> Proof Justifies the Issuance of an Interlocutory Injunction in those Cases Where the Infringement is Blatant.....	1010
B. Permanent Injunction.....	1026

1. Injunction Covering a Single Part of a Work Which Only Partially Infringes Another.....	1032
C. The Mareva Injunction	1033
D. The Anton Piller Injunction.....	1035
E. Norwich Order	1039
F. Site-blocking Order	1043
V. Accounts.....	1044
Section 34(2): “Moral rights”	1046
I. Case Law	1047
Section 34(3): “Costs”	1049
Section 34(4): “Summary proceedings”	1060
Section 34(5): “Practice and procedure”.....	1061
Section 34(6): “Actions”	1061
Section 34(7): “Meaning of ‘application’”	1062
Section 34.1(1): “Presumptions respecting copyright and ownership”	1062
Section 34.1(1)(a): “Unless contrary proved, work shall be presumed to be a work in which copyright subsists”.....	1062
Section 34.1(1)(b): “Author presumed to be owner of the copyright”	1070
Section 34.1(2): “Where no grant registered”	1073
Section 34.1(2)(a): “If a name purporting to be that of . . .”	1073
Section 34.1(2)(b): “If a name other than the author’s is indicated on the work”	1074
Section 34.1(2)(c): “If the name of the maker of the cinematographic work appears”	1078
Section 35(1): “Liability for infringement”	1081
I. Damages	1081
A. General Principles Regarding Quantum	1090
B. Principles as Applied to Material Damages.....	1095
II. Exemplary Damages.....	1105
III. Just and Proper Proportion of Profits Made from the Infringement	1128
Section 35(2): “Proof of profits”	1140
I. Application	1140
Section 36(1): “Protection of separate rights” Repealed	1142
Section 36(2): “Where copyright owner to be made party” Repealed	1143
Section 36(3): “Owner’s liability for costs” Repealed.....	1143

CONTENTS

Section 36(4): “Apportionment of damages, profits” Repealed	1143
Section 37: “Concurrent jurisdiction of Federal Court” Repealed	1143
Section 38(1): “Recovery of possession of copies, plates”	1143
I. Concept.....	1143
Section 38(2): “Powers of court”	1147
Section 38(3): “Notice to interested persons”	1147
Section 38(4): “Circumstances court to consider”	1148
Section 38(5): “Limitation”	1148
Section 38.1(1): “Statutory damages”	1149
Section 38.1(1.1): “Infringement of subsection 27(2.3)”	1150
Section 38.1(1.11): “Deeming — infringement of subsection 27(2.3)”	1150
Section 38.1(1.12): “Infringements not involved in proceedings”	1150
Section 38.1(1.2): “No other statutory damages”	1151
Section 38.1(2): “If defendant unaware of infringement”	1160
Section 38.1(3): “Special case”	1160
Section 38.1(4): “Limitation — certain acts”	1166
Section 38.1(4.1): “Acts for the purposes of subsection (4)”	1167
Section 38.1(5): “Factors to consider”	1167
Section 38.1(6): “No award”	1187
Section 38.1(7): “Exemplary or punitive damages not affected”	1187
Section 38.2(1): “Maximum amount that may be recovered”	1190
Section 38.2(2): “Agreements with more than one collective agency”	1191
Section 38.2(3): “Application”	1191
Section 39(1): “Injunction only remedy when defendant not aware of copyright”	1191
I. Concept.....	1191
II. The Work Need Not Be Registered Immediately After its Creation	1199
III. Ignorance of Copyright Does Not Signify Ignorance as to the Owner of the Copyright	1199
IV. Ignorance May Not Be Pleaded When Infringement Continues After the Reception of a Notice from the Owner of Copyright	1200
Section 39(2): “Exception where copyright registered”	1202
Section 39.1(1): “Wide injunction”	1202

Section 39.1(2): “Application of injunction” 1203

Section 40(1): “No injunction in case of a building” 1204

Section 40(2): “Certain remedies inapplicable” 1205

Technological Protection Measures and Rights Management Information.... 1205

Section 41: “Definitions” 1205

Section 41.1(1): “Prohibition” 1206

Section 41.1(2): “Circumvention of technological protection measure”... 1209

Section 41.1(3): “No statutory damages” 1209

Section 41.1(4): “Services, technology, device or component” 1209

Section 41.11(1): “Law enforcement and national security” 1210

Section 41.11(2): “Services” 1210

Section 41.11(3): “Technology, device or component” 1210

Section 41.12(1): “Interoperability of computer programs” 1210

Section 41.12(2): “Services” 1210

Section 41.12(3): “Technology, device or component” 1210

Section 41.12(4): “Sharing of information” 1211

Section 41.12(5): “Limitation” 1211

Section 41.12(6): “Non-application” 1211

Section 41.12(7): “Non-application” 1211

Section 41.13(1): “Encryption research” 1211

Section 41.13(2): “Non-application” 1212

Section 41.13(3): “Technology, device or component” 1212

Section 41.14(1): “Personal information” 1212

Section 41.14(2): “Services, technology, device or component” 1212

Section 41.15(1): “Security” 1213

Section 41.15(2): “Services” 1213

Section 41.15(3): “Technology, device or component” 1213

Section 41.15(4): “Non-application” 1213

Section 41.16(1): “Persons with perceptual disabilities” 1213

Section 41.16(2): “Services, technology, device or component” 1214

Section 41.17: “Broadcasting undertakings” 1214

Section 41.18(1): “Radio apparatus” 1214

CONTENTS

Section 41.18(2): “Services or technology, device or component”	1214
Section 41.18(3): “Definitions”	1214
Section 41.19: “Reduction of damages”	1215
Section 41.2: “Injunction only remedy”	1215
Section 41.21(1): “Regulations”	1215
Section 41.21(2): “Regulations”	1215
Section 41.22(1): “Prohibition — rights management information”	1221
Section 41.22(2): “Removal or alteration of rights management information”	1221
Section 41.22(3): “Subsequent acts”	1221
Section 41.22(4): “Definition of ‘rights management information’”	1222
Section 41.23(1): “Protection of separate rights”	1222
I. Concept.....	1222
II. Case Law	1228
Section 41.23(2): “Copyright owner to be made party”	1234
Section 41.23(3): “Owner’s liability for costs”	1239
Section 41.23(4): “Apportionment of damages, profits”	1239
Section 41.24: “Concurrent jurisdiction of Federal Court”	1240
I. Concept.....	1240
II. Sources of the Basic Rules in Copyright.....	1248
A. The Principle of the Exclusion of Common Law, Torts, Civil Law and Liability	1248
1. Case Law: Jurisdiction of the Federal Court	1254
2. Case Law: Jurisdiction of a Provincial Court	1261
III. Territorial Jurisdiction.....	1265
PROVISIONS RESPECTING PROVIDERS OF NETWORK SERVICES OR INFORMATION LOCATION TOOLS	1268
Section 41.25(1): “Notice of claimed infringement”	1268
Section 41.25(2): “Form and content of notice”	1269
Section 41.25(3): “Prohibited content”	1269
Section 41.26(1): “Obligations related to notice”	1269
Section 41.26(2): “Fees related to notices”	1270
Section 41.26(3): “Damages related to notices”	1278
Section 41.26(4): “Regulations — change of amounts”	1278

Section 41.27(1): “Injunctive relief only — providers of information location tools”	1278
Section 41.27(2): “Conditions for application”	1280
Section 41.27(3): “Limitation”	1280
Section 41.27(4): “Exception”	1281
Section 41.27(4.1): “Factors — scope of injunction”	1281
Section 41.27(4.2): “Limitation”	1281
Section 41.27(5): “Meaning of ‘information location tool’”	1281
CRIMINAL REMEDIES	1282
Section 42(1): “Offences”	1282
I. Concept	1283
II. Interpretation of the Word “Knowingly”	1286
III. Interpretation of “By Way of Trade Exposes or Offers for Sale”	1291
IV. Interpretation of “Distribute”	1293
V. Interpretation of “Infringing Copies”	1293
VI. Penalty	1293
Section 42(2): “Possession and performance offences”	1296
Section 42(2.1): “Punishment”	1297
Section 42(3): “Power of court to deal with copies or plates”	1297
Section 42(3.01): “Notice”	1297
Section 42(3.1): “Circumvention of technological protection measure” ..	1297
Section 42(3.2): “Offence — infringement related to rights management information”	1298
Section 42(3.3): “Punishment”	1298
Section 42(3.4): “Definition of ‘rights management information’”	1298
Section 42(4): “Limitation period”	1298
Section 42(5): “Parallel importation”	1299
Section 43(1): “Infringement in case of dramatic, operatic or musical work”	1299
Section 43(2): “Change or suppression of title or author’s name”	1299
LIMITATION OR PRESCRIPTION PERIOD	1299
Section 43.1(1): “Limitation or prescription period for civil remedies” ...	1299
Section 43.1(2): “Restriction”	1310

CONTENTS

IMPORTATION AND EXPORTATION 1311

Interpretation 1311

Section 44: “Definitions” 1311

Prohibition and Detention by Customs Officer 1311

Prohibition 1311

Section 44.01(1): “Prohibition on importation or exportation” 1311

Section 44.01(2): “Exception” 1312

Request for Assistance 1312

Section 44.02(1): “Request for assistance” 1312

Section 44.02(2): “Information in request” 1312

Section 44.02(3): “Validity period” 1312

Section 44.02(4): “Security” 1312

Section 44.02(5): “Update” 1313

Measures Relating to Detained Copies 1313

Section 44.03: “Provision of information by customs officer” 1313

Section 44.04(1): “Provision of information to pursue remedy” 1313

Section 44.04(2): “Detention” 1314

Section 44.04(3): “Notice of proceedings” 1314

Section 44.04(4): “Continued detention” 1314

Section 44.05(1): “Restriction on information use — section 44.03” 1314

Section 44.05(2): “Restriction on information use — subsection 44.04(1)” ... 1315

Section 44.05(3): “For greater certainty” 1315

Section 44.06: “Inspection” 1315

Section 44.07(1): “Liability for charges” 1315

Section 44.07(2): “Exception — paragraph (1)(a)” 1316

Section 44.07(3): “Exception — paragraph (1)(c)” 1316

Section 44.07(4): “Joint and several or solidary liability” 1316

Section 44.07(5): “Exception” 1316

No Liability 1317

Section 44.08: “No liability” 1317

Powers of Court Relating to Detained Copies 1317

Section 44.09(1): “Application to court” 1317

Section 44.09(2): “Minister’s consent”	1317
Section 44.09(3): “ <i>Customs Act</i> ”	1317
Section 44.09(4): “Continued detention”	1318
Section 44.09(5): “Security”	1318
Section 44.1(1): “Damages against copyright owner”	1318
Section 44.1(2): “Damages awarded to copyright owner”	1318
Section 44.1(2.1): “Who may apply” Repealed.....	1318
Section 44.1(3): “Order of court” Repealed.....	1318
Section 44.1(4): “How application made” Repealed.....	1319
Section 44.1(5): “Court may require security” Repealed	1319
Section 44.1(6): “Application for directions” Repealed.....	1319
Section 44.1(7): “Minister may allow inspection” Repealed.....	1319
Section 44.1(8): “Where applicant fails to commence an action” Repealed	1319
Section 44.1(9): “Where court finds in plaintiff’s favour” Repealed	1319
Section 44.1(10): “Other remedies not affected” Repealed	1319
Prohibition Resulting from Notice	1319
Section 44.11: “Importation of certain copyright works prohibited”	1319
Court-ordered Detention	1319
Section 44.12(1): “Power of court”	1320
Section 44.12(2): “Who may apply”	1320
Section 44.12(3): “Order of court”	1320
Section 44.12(4): “How application made”	1320
Section 44.12(5): “Security”	1320
Section 44.12(6): “Application for directions”	1321
Section 44.12(7): “Minister may allow inspection”	1321
Section 44.12(8): “If applicant fails to commence action”	1321
Section 44.12(9): “If court finds in plaintiff’s favour”	1321
Section 44.12(10): “Other remedies not affected”	1321
Section 44.2(1): “Importation of books”	1322
Section 44.2(2): “Who may apply”	1322
Section 44.2(3): “Limitation”	1322

CONTENTS

Section 44.2(4): “Application of certain provisions” 1322
Section 44.3: “Limitation” 1322
Section 44.4: “Importation of other subject-matter” 1323
Section 45(1): “Exception” 1323
Section 45(2): “Satisfactory evidence” 1324

**PART V
ADMINISTRATION**

COPYRIGHT OFFICE 1324
Section 46: “Copyright Office” 1324
Section 47: “Powers of Commissioner and Registrar” 1324
Section 48: “Registrar” 1324
Section 49: “Duties of Commissioner and Registrar” 1324
Section 50: “Other duties of Registrar” 1325
Section 51: “Repealed” 1325
Section 52: “Control of business and officials” 1325
Section 53(1): “Register to be evidence” 1325
Section 53(2): “Owner of copyright” 1325
Section 53(2.1): “Assignee” 1330
Section 53(2.2): “Licensee” 1330
Section 53(3): “Admissibility” 1339
REGISTRATION 1339
Section 54(1): “Register of Copyrights” 1339
Section 54(2): “Entries by authors, etc.” Repealed 1340
Section 54(3): “Single entry sufficient” 1340
Section 54(4): “Indices” 1340
Section 54(5): “Inspection and extracts” 1340
Section 54(6): “Former registration effective” 1340
Section 54(7): “Subsisting copyright” 1340
Section 55(1): “Copyright in works” 1341
Section 55(2): “Application for registration” 1341
Section 56(1): “Copyright in subject-matter other than works” 1342
Section 56(2): “Application for registration” 1343

Section 56.1: “Recovery of damages”	1343
Section 57(1): “Registration of assignment or licence”	1343
Section 57(2): “Repealed”	1344
Section 57(3): “When assignment or licence is void”	1344
Section 57(4): “Rectification of Register by the Court”	1345
Section 58(1): “Execution of instruments”	1349
Section 58(2): “Execution of instruments”	1350
Section 58(3): “Seals to be evidence”	1350
Section 58(4): “Other testimony”	1350
FEES	1350
Section 59: “Fees regulation”	1350

**PART VI
MISCELLANEOUS PROVISIONS**

SUBSTITUTED RIGHT	1351
Section 60(1): “Subsistence of substituted right”	1351
Section 60(2): “Where author has assigned the right”	1351
Section 60(3): “Definition of ‘author’”	1352
Section 60(4): “Works made before this Act in force”	1352
CLERICAL ERRORS	1352
Section 61: “Clerical errors do not invalidate”	1352
REGULATIONS	1352
Section 62(1): “Regulations”	1352
Section 62(2): “Rights saved”	1353
Section 63: “No copyright unless under this Act” Repealed	1353
INDUSTRIAL DESIGNS AND TOPOGRAPHIES	1353
Section 64(1): “Interpretation of ‘article’, ‘design’, ‘useful article’ and ‘utilitarian function’”	1353
I. Concept	1354
A. Designs Covered by the <i>Industrial Design Act</i>	1354
1. Definition of “design”	1354
B. Rules in the <i>Copyright Act</i> Concerning Designs Prior to the 1988 Amendments	1356
1. Relevant Provisions	1356
2. Author Did Not Lose Copyright Protection	1358

CONTENTS

II. Case Law	1359
Section 64(2): “Non-infringement re certain designs”	1360
Section 64(3): “Exception”	1364
Section 64(4): “Idem”	1368
Section 64.1(1): “Non-infringement re useful article features”	1369
Section 64.1(2): “Exception”	1371
Section 64.2(1): “Application of Act to topographies”	1371
Section 64.2(2): “Computer programs”	1371
Section 64.2(3): “Definitions”	1371
Section 65: “Adherence to Convention of Berne” Repealed	1371

**PART VII
COPYRIGHT BOARD**

Section 66(1): “Establishment”	1372
Section 66(2): “Service”	1382
Section 66(3): “Chair”	1382
Section 66(4): “Tenure”	1382
Section 66(5): “Re-appointment”	1382
Section 66(6): “Prohibition”	1382
Section 66(7): “Members deemed public service employees”	1383
Section 66.1(1): “Duties of Chair”	1383
Section 66.1(2): “Absence or incapacity of Chair”	1383
Section 66.1(3): “Duties of Vice-chair”	1383
Section 66.2: “Remuneration and expenses”	1383
Section 66.3(1): “Conflict of interest prohibited”	1383
Section 66.3(2): “Termination of conflict of interest”	1384
Section 66.4(1): “Staff”	1384
Section 66.4(2): “Idem”	1384
Section 66.4(3): “Technical assistance”	1384
Section 66.5(1): “Concluding matters after membership expires”	1384
Section 66.5(2): “Decisions”	1384
Section 66.501: “Fair and equitable”	1386
Section 66.502: “Informal and expeditious”	1386

Section 66.503: “For greater certainty”	1388
Section 66.504(1): “Case manager”.....	1388
Section 66.504(2): “Powers”.....	1388
Section 66.504(3): “Deemed direction or order of Board”	1388
Section 66.504(4): “Delegation”	1389
Section 66.51: “Interim decisions”	1389
Section 66.52: “Variation of decisions”	1391
Section 66.6(1): “Regulations”	1394
Section 66.6(1.1): “Case management”	1394
Section 66.6(2): “Publication of proposed regulations”	1395
Section 66.6(3): “Exception”	1395
Section 66.7(1): “General powers, etc.”	1395
Section 66.7(2): “Enforcement of decisions”	1397
Section 66.7(3): “Procedure”	1397
Section 66.7(4): “Effect of variation of decision”	1397
Section 66.71: “Distribution, publication of notices”	1397
Section 66.8: “Studies”	1398
Section 66.9(1): “Report”	1398
Section 66.9(2): “Tabling”	1398
Section 66.91(1): “Regulations”	1398
Section 66.91(2): “Regulations regarding time”	1398
Section 66.91(3): “Inconsistency or conflict”	1399
I. Concept of Collective Administration	1401
II. Operations in Relation to the Public Performance of Musical Works Before the 2019 Amendments.....	1404

**PART VII.1
COLLECTIVE ADMINISTRATION OF COPYRIGHT**

COLLECTIVE SOCIETIES	1412
Section 67(1): “Filing of proposed tariffs”	1433
Section 67(2): “Mandatory filing for certain royalties”.....	1440
Section 67(3): “Entering into agreements”	1440
Section 67.1: “Designation of collective society — paragraph 19(2)(a)”	1440

CONTENTS

Section 67.1(2): “Where no previous tariff” Repealed	1441
Section 67.1(3): “Effective period of tariff” Repealed	1441
Section 67.1(4): “Prohibition of enforcement” Repealed	1441
Section 67.1(5): “Publication of proposed tariffs” Repealed	1441
Section 67.2: “Requests regarding repertoire”	1441
Section 67.3: “Continuation of rights” Repealed	1443
TARIFFS	1443
Proposed Tariffs	1443
Section 68: “Filing”	1443
Section 68(2): “Criteria and factors” Repealed	1444
Section 68(3): “Certification” Repealed	1444
Section 68(4): “Publication of approved tariffs” Repealed	1444
Section 68.1(1): “Form and content”	1444
Section 68.1(2): “Minimum effective period”	1445
Section 68.1(3): “Definition of ‘advertising revenues’” Repealed	1445
Section 68.1(4): “Preferential royalty rates” Repealed	1445
Section 68.1(5): “Regulations” Repealed	1445
Section 68.2: “Publication and notification”	1445
Section 68.2(2): “Proceedings barred if royalties tendered or paid” Repealed	1445
Section 68.2(3): “Continuation of rights” Repealed	1445
Section 68.3(1): “Filing of objection”	1445
Section 68.3(2): “Time for filing objection”	1446
Section 68.3(3): “Copy to collective society”	1446
Section 68.4(1): “Reply to objection”	1446
Section 68.4(2): “Copy to be provided”	1446
Withdrawal or Amendment of Proposed Tariff	1446
Section 69: “Request to withdraw or amend”	1446
Section 69(2): “Radio performances in places other than theatres” Repealed	1447
Section 69(3): “Expenses to be taken into account” Repealed	1447
Section 69(4): “Board may make alternations” Repealed	1447
Section 69.1(1): “Approval by Board”	1447

Section 69.1(2): “For greater certainty”	1447
Approval of Tariffs	1448
Section 70(1): “Approval”	1448
Section 70(2): “Factors — performances of musical works and sound recordings”	1451
Section 70(3): “Small cable transmission system”	1451
Section 70(4): “Small retransmission systems”	1452
Section 70(5): “For greater certainty”	1452
Section 70(6): “No discrimination”	1452
Section 70(7): “Regulations”	1452
Section 70.1: “Publication of approved tariff”	1452
Section 70.11: “Public information” Repealed	1453
Section 70.12: “Tariff or agreement” Repealed	1453
Section 70.13(1): “Filing the proposed tariffs” Repealed	1453
Section 70.13(2): “Where no previous tariff” Repealed	1453
Section 70.14: “Application of certain provisions” Repealed	1453
Section 70.15(1): “Certification” Repealed	1453
Section 70.15(2): “Application of certain provisions” Repealed	1453
Section 70.16: “Distribution, publication of notices” Repealed	1453
Section 70.17: “Prohibition of enforcement” Repealed	1453
Section 70.18: “Continuation of rights” Repealed	1453
Section 70.19: “Where agreement exists” Repealed	1453
Section 70.191: “Agreement” Repealed	1454
Section 70.2(1): “Application to fix amount of royalty, etc.” Repealed ..	1454
Section 70.2(2): “Fixing royalties, etc.” Repealed	1454
Section 70.3(1): “Agreement” Repealed	1454
Section 70.3(2): “Idem” Repealed	1454
Section 70.4: “Effect of Board decision” Repealed	1454
Section 70.5(1): “Definition of ‘Commissioner’” Repealed	1454
Section 70.5(2): “Filing agreement with the Board” Repealed	1454
Section 70.5(3): “Idem” Repealed	1454
Section 70.5(4): “Access by Commissioner” Repealed	1454

CONTENTS

Section 70.5(5): “Request for examination” Repealed	1455
Section 70.6(1): “Examination and fixing of royalty” Repealed	1455
Section 70.6(2): “Idem” Repealed.....	1455
Sections 70.61-70.67: “Royalties for Retransmission” Repealed.....	1455
Section 70.7: “Owners Who Cannot Be Located” Repealed.....	1455
Section 70.8: “Board may determine compensation” Repealed	1455
FIXING OF ROYALTY RATES IN INDIVIDUAL CASES	1455
Section 71(1): “Application to fix”	1455
Section 71(2): “Fixing royalties, etc.”	1457
Section 71(3): “Application of subsections 70(2) and (3)”	1458
Section 71(4): “For greater certainty”	1458
Section 71(5): “Copy of decision and reasons”	1458
Section 71(6): “Definition of ‘user’”	1458
Section 71.1: “Agreement”	1458
SPECIAL RULES RELATED TO ROYALTY RATES	1458
Section 72(1): “Special royalty rates”	1458
Section 72(2): “Wireless transmission systems”	1459
Section 72(3): “Community systems”	1459
Section 72(4): “Effect of paying royalties”	1459
Section 72(5): “Definition of ‘advertising revenues’”	1459
Section 72(6): “Regulations”	1459
Section 72.1(1): “Radio performances in places other than theatres”	1460
I. Adoption of this Section	1460
II. Interpretation of this Section	1463
A. Nature and Effects of the Royalties	1465
B. Definition of “Gramophone”	1467
C. Definition of “Radio Receiving Set”	1469
III. Gramophone Performance	1471
A. Gramophone Performances Require Unity of Time, Place and Control	1471
B. Definition of Gramophone and Notion of Gramophone Performance	1474
Section 72.1(2): “Expenses to be taken into account”	1475

EFFECTS RELATED TO TARIFFS AND FIXING OF ROYALTY RATES	1475
Permitted Acts and Enforcement	1475
Section 73: “Effect of fixing royalties”	1476
Section 73(2): “No discrimination” Repealed.....	1481
Section 73(3): “Publication of approved tariffs” Repealed	1481
Section 73.1: “Order — compliance with terms and conditions”.....	1481
Section 73.2: “Continuation of rights”	1481
Section 73.3: “Proceedings barred — tariff”	1481
Section 73.4: “Approval of request made under section 69”	1482
Section 73.5(1): “Effect of fixing of royalties”	1483
Section 73.5(2): “Authority during application”	1483
Effects of Agreement	1483
Section 74: “No application”	1483
Section 74(2): “Regulations” Repealed.....	1483
CLAIM BY COPYRIGHT OWNER — PARTICULAR ROYALTIES ...	1484
Section 75(1): “Claims by non-members”.....	1484
Section 75(2): “Payment to non-members”	1485
Section 75(3): “Exclusion of other remedies”	1485
Section 75(4): “Measures”	1486
EXAMINATION OF AGREEMENTS	1486
Section 76(1): “Definition of ‘Commissioner’”	1486
Section 76(2): “Filing agreement with the Board”	1487
Section 76(3): “Non-application of section 45 of <i>Competition Act</i> ”	1487
Section 76(4): “Access by Commissioner”	1487
Section 76(5): “Request for examination”	1487
Section 76.1(1): “Examination and fixing of royalty”	1487
Section 76.1(2): “Copy of decision and reasons”	1487
PART VII.2	
CERTAIN APPLICATIONS TO BOARD	
OWNERS WHO CANNOT BE LOCATED	1488
Section 77(1): “Circumstances in which licence may be issued by Board”	1488

CONTENTS

I. Published Work	1488
Artistic Works	1490
Literary Works	1491
Compilations of Diverse Works	1492
Section 77(2): “Conditions of licence”	1492
I. Published Work	1493
A. Terms and Conditions	1493
Artistic Work	1493
Section 77(3): “Payment to owner”	1496
Section 77(4): “Regulations”	1497
COMPENSATION FOR ACTS DONE BEFORE RECOGNITION OF COPYRIGHT OR MORAL RIGHTS	1497
Section 78(1): “Board may determine compensation”	1497
Section 78(2): “Limitation”	1497
Section 78(3): “Interim orders”	1497
PART VIII PRIVATE COPYING	
INTERPRETATION	1497
Section 79: “Definitions”	1498
COPYING FOR PRIVATE USE	1501
Section 80(1): “Where no infringement of copyright”	1501
Section 80(2): “Limitation”	1505
RIGHT OF REMUNERATION	1506
Section 81(1): “Right of remuneration”	1506
Section 81(2): “Assignment of rights”	1507
LEVY ON BLANK AUDIO RECORDING MEDIA	1507
Section 82(1): “Liability to pay levy”	1507
Section 82(2): “No levy for exports”	1510
Section 83(1): “Filing of proposed tariffs”	1510
Section 83(2): “Filing of proposed tariff”	1510
Section 83(3): “Form and content”	1510
Section 83(4): “Minimum effective period”	1511
Section 83(5): “Publication”	1511

Section 83(6): “Copy of objection”	1511
Section 83(7): “Reply”	1511
Section 83(7.1): “Copy to objector”	1511
Section 83(8): “Approval”	1511
Section 83(8.1): “Terms and conditions”	1512
Section 83(8.2): “Designation”	1512
Section 83(9): “Publication of approved tariffs”	1512
Section 83(10): “Continuation of rights”	1512
Section 83(11): “Authors, etc., not represented by collective society”	1512
Section 83(12): “Exclusion of other remedies”	1513
Section 83(13): “Powers of Board”	1513
Section 83(14): “Single proposed tariff”	1513
DISTRIBUTION OF LEVIES PAID	1513
Section 84: “Distribution by collecting body”	1513
Section 85(1): “Reciprocity”	1514
Section 85(2): “Reciprocity”	1514
Section 85(3): “Application of Act”	1514
Section 85(4): “Application of Act”	1515
EXEMPTION FROM LEVY	1515
Section 86(1): “Where no levy payable”	1515
Section 86(2): “Refunds”	1515
Section 86(3): “If registration system exists”	1515
REGULATIONS	1515
Section 87: “Regulations”	1515
CIVIL REMEDIES	1516
Section 88(1): “Right of recovery”	1516
Section 88(2): “Failure to pay royalties”	1516
Section 88(3): “Order directing compliance”	1516
Section 88(4): “Factors to consider”	1517
PART IX	
GENERAL PROVISIONS	
Section 89: “No copyright, etc., except by statute”	1518

CONTENTS

I. Case Law	1520
Section 90: “Interpretation”	1521
Section 91: “Adherence to Berne and Rome Conventions”	1522
Section 92: “Review of Act”	1522
SCHEDULE I	1523
SCHEDULE II	1523
SCHEDULE III	1524
CERTIFICATION OF COUNTRIES GRANTING EQUAL COPYRIGHT PROTECTION NOTICE MADE UNDER THE COPYRIGHT ACT	1525
COPYRIGHT REGULATIONS	1527
DEFINITION OF LOCAL SIGNAL AND DISTANT SIGNAL REGULATIONS	1532
DEFINITION OF “SMALL RETRANSMISSION SYSTEMS” REGULATIONS	1535
DEFINITION OF “SMALL CABLE TRANSMISSION SYSTEM” REGULATIONS	1537
RETRANSMISSION ROYALTIES CRITERIA REGULATIONS	1539
PROGRAMMING UNDERTAKING REGULATIONS	1540
REPRODUCTION OF FEDERAL LAW ORDER	1541
REGULATIONS ESTABLISHING THE PERIOD WITHIN WHICH OWNERS OF COPYRIGHT NOT REPRESENTED BY COLLECTIVE SOCIETIES CAN CLAIM RETRANSMISSION ROYALTIES	1545
DEFINITION OF “WIRELESS TRANSMISSION SYSTEM” REGULATIONS	1546
REGULATIONS DEFINING “ADVERTISING REVENUES”	1547
LIMITATION OF THE RIGHT TO EQUITABLE REMUNERATION OF CERTAIN ROME CONVENTION COUNTRIES STATEMENT (REPEALED)	1550
STATEMENT LIMITING THE RIGHT TO EQUITABLE REMUNERATION OF CERTAIN ROME CONVENTION OR WPPT COUNTRIES	1552
CINEMATOGRAPHIC WORKS (RIGHT TO REMUNERATION) REGULATIONS	1555
BOOK IMPORTATION REGULATIONS	1556

EXCEPTIONS FOR EDUCATIONAL INSTITUTIONS, LIBRARIES, ARCHIVES AND MUSEUMS REGULATIONS	1563
REGULATIONS PRESCRIBING NETWORKS (COPYRIGHT ACT).....	1567
AN ACT TO AMEND THE COPYRIGHT ACT	1568
EDUCATIONAL PROGRAM, WORK AND OTHER SUBJECT-MATTER RECORD-KEEPING REGULATIONS.....	1569
BANKRUPTCY AND INSOLVENCY ACT	1573
AN ACT RESPECTING THE CRIMINAL LAW	1577
Index.....	1581