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FOX ON CANADIAN LAW OF COPYRIGHT AND INDUSTRIAL DESIGNS, 4th EDITION

John S. McKeown

Release No. 6, October 2026

This comprehensive statement of Canadian law and practice has been the bedrock of Canadian copyright research and argument for more than half a century.

What's New in This Update

This release features updates to Appendix B—Canadian Copyright Legislation, Regulations and Related Materials, Appendix C—Table of Copyright Board Approved Tariffs, Appendix F—Quantum Table—Copyright Infringement and Appendix WP—Words & Phrases Judicially Defined.

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Highlights

- **Quantum Table—Copyright Infringement—Accounting of Profits—**Mauro appealed only the monetary award. The Court of Appeal noted that the calculation of the monetary award came from sales charts Mauro produced on examination for discovery. She argued before the motion judge that amount did not take into account all of the expenses related to the sales, including labour, taxes, rent, and other things. However, no quantification of those expenses was provided. The motion judge made no deduction for them, given the absence of evidence to support them. The motion judge noted Mauro's obligation to put her best foot forward, and that it was her onus to prove all the deductions she said should be made from the proceeds of sale. The Court of Appeal saw no error in the motion judge's conclusion that would warrant appellate interference. The Court of Appeal explained that Mauro did not meet the onus in a copyright infringement case of proving any costs claimed as deductions from the revenues earned from selling goods that infringed copyright by simply referring to categories of expenses without proving them by evidence. The Court of Appeal was satisfied she was appropriately on notice that the calculation of damages was an issue, and of her onus to prove her expenses. She specifically gave an undertaking on discovery to provide a breakdown of her actual profits but did not fulfill it before the motion was heard. Her factum responding to the summary judgment motion listed damages as one of the issues to be decided and advanced her position that no profits were earned. The Court of Appeal could not give effect to Mauro's calculations of those expenses, presented without evidentiary support for the first time on appeal: *Lakehead District School Board v. Mauro*, 2026 CarswellOnt 4574, 2026 ONCA 230, 2026 A.C.W.S. 1515 (Ont. C.A.).

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