

3 (1) For the purposes of this Act, copyright, in relation to a work, means the **sole right** to produce or **reproduce the work** or any substantial part thereof in any material form whatever, to perform the work or any substantial part thereof in public or, if the work is unpublished, **to publish the work** or any substantial part thereof, and includes the sole right (...)

- (f) in the case of any literary, dramatic, musical or artistic work, **to communicate the work to the public by telecommunication,**

# Toronto Star v. AG Ontario, 2018 ONSC 2586 (CanLII)

## IV. Freedom of expression

[54] “The open court principle is one of the hallmarks of a democratic society...[and] is inextricably tied to the rights guaranteed by s. 2(b) of the *Charter*.”<sup>48</sup> The Supreme Court has declared that this principle includes “guaranteed access to the courts to gather information”, and that “measures that prevent the media from gathering that information, and from disseminating it to the public, restrict the freedom of the press.”<sup>49</sup> Counsel for the Toronto Star correctly indicates that this includes the presumptive right to Adjudicative Records,<sup>50</sup> including exhibits entered into evidence,<sup>51</sup> photocopies of all such records,<sup>52</sup> and the ability to disseminate those records by means of broadcast or other publication.<sup>53</sup>

## Fundamental Freedoms

2. Everyone has the following fundamental freedoms:
- (a) freedom of conscience and religion;
  - (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
  - (c) freedom of peaceful assembly; and
  - (d) freedom of association.

# Toronto Star v. AG Ontario, 2018 ONSC 2586 (CanLII)

## IV. Freedom of expression

[54] “The open court principle is one of the hallmarks of a democratic society...[and] is inextricably tied to the rights guaranteed by s. 2(b) of the *Charter*.”<sup>48</sup> The Supreme Court has declared that this principle includes “guaranteed access to the courts to gather information”, and that “measures that prevent the media from gathering that information, and from disseminating it to the public, restrict the freedom of the press.”<sup>49</sup> Counsel for the Toronto Star correctly indicates that this includes the presumptive right to Adjudicative Records,<sup>50</sup> including exhibits entered into evidence,<sup>51</sup> photocopies of all such records,<sup>52</sup> and the ability to disseminate those records by means of broadcast or other publication.<sup>53</sup>

[48] *Canadian Broadcasting Corp. v New Brunswick (Attorney General)*, 1996 CanLII 184 (SCC), [1996] 3 SCR 480, para 26.

[49] *Ibid.*

[50] *R v Canadian Broadcasting Corp.*, *supra*, para 44.

[51] *Canadian Broadcasting Corp. v The Queen*, 2011 SCC 3 (CanLII), [2011] 1 SCR 65, para 12.

[52] *Edmonton Journal v Alberta (Attorney General)*, 1989 CanLII 20 (SCC), [1989] 2 SCR 1326, 1338.

[53] *R v Canadian Broadcasting Corp.*, 2010, *supra*, para 50.

[54] *Southam Inc. v Minister of Employment and Immigration*, [1987] 3 FC 329, para 9 (Fed Ct).

Wilson & Lafleur inc. c. Société québécoise d'information juridique, 2000  
CanLII 8006 (QC CA)

[26] Dans l'affaire *Société Radio-Canada c. Nouveau Brunswick*,<sup>16</sup> le juge La Forest, s'exprimant alors au nom de la Cour, écrivait encore:

Certes, la liberté de la presse représente un attribut important et essentiel d'une société libre et démocratique et il est évident que des mesures interdisant aux médias de publier des renseignements estimés d'intérêt public limitent cette liberté. De même, il est possible d'affirmer que *des mesures qui empêchent les médias de recueillir l'information et de la diffuser limitent la liberté de la presse*<sup>17</sup>.  
[Nous soulignons.]

[27] Sous cet angle, l'accès des citoyens aux décisions des tribunaux s'impose de lui-même et doit donc être réel. En ce sens, comme l'a d'ailleurs reconnu à l'audience le procureur général du Québec, le droit québécois consacre par le biais de sa législation l'accessibilité des justiciables aux décisions rendues par les tribunaux judiciaires québécois. Ainsi, le premier alinéa de l'article 474 du C.p.c. prévoit-il que:

Le jugement doit être inscrit sans délai dans les registres du tribunal; le greffier conserve la minute et en délivre des expéditions sur demande.

- © For **cases**:
  - © Could do better than piggybacking on freedom of the press which is probably too narrow.
  - © Absent positive obligation for courts to self-publish, you still need individual deals.
- © For **legislation**: Shouldn't have to pay or ask for permission

# Reproduction of Federal Law Order

SI/97-5

Registration 1997-01-08

Reproduction of Federal Law Order

P.C. 1996-1995 1996-12-19

Whereas it is of fundamental importance to a democratic society that its law be widely known and that its citizens have unimpeded access to that law;

And whereas the Government of Canada wishes to facilitate access to its law by licensing the reproduction of federal law without charge or permission;

Therefore His Excellency the Governor General in Council, on the recommendation of the Minister of Canadian Heritage, the Minister of Industry, the Minister of Public Works and Government Services, the Minister of Justice and the Treasury Board, hereby makes the annexed *Reproduction of Federal Law Order*.

## Reproduction of Federal Law Order

Anyone may, without charge or request for permission, reproduce enactments and consolidations of enactments of the Government of Canada, and decisions and reasons for decisions of federally-constituted courts and administrative tribunals, provided due diligence is exercised in ensuring the accuracy of the materials reproduced and the reproduction is not represented as an official version.

SI/98-113(F).



## Reproduction of Federal Law Order



Can be rescinded, pretty much by the executive power alone



Only mentions “reproduction” and not the right to communicate to the public



Doesn't contain any express obligation on governments, courts, legislatures (etc.) to actually provide access in a usable format



Doesn't apply to provinces, territories, municipalities