



Meera Nair, Ph.D.

May 27, 2016

Copyright Officer

Northern Alberta Institute of Technology

Exception v. License

ABC Copyright, Halifax, 2016



Caught in the Act

Laura Murray, faircopyright.ca, 14 Sept. 2007

“He reminds me of some people today who go around feeling furtive for copying an article or a few pages of a book.”

Portrait of a Scholar

Rembrandt van Rijn (1606-1669)

Image courtesy of HermitageMuseum.org

Use and Restrictions on Use:

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Section 3.1 (Copyright Act): “... copyright ... the sole right to produce or reproduce the work or any substantial part thereof in any material form ...”



CCH Canadian v. Law Society of Upper Canada, judgment delivered 9 Nov. 1999 by Gibson J.

“For many decades, the Plaintiffs' publications carried a notice which reads in part: “No part of this publication may be reproduced ... by any ... means ... without the written permission of the publisher” (para. 52).”

Image courtesy of the Law Society Gazette

CCH Canadian Ltd. v. Law Society of Upper Canada, 9 November 1999

Para. 134 The issues for determination are, then, in relation to infringement, ... , the reproduction was of "any substantial part thereof", whether the reproduced material was "sold", whether the distribution was to such an extent as to affect prejudicially the owner of the copyright, whether storage of copies in the memory of a facsimile machine constituted possession for the purpose of sale or distribution, and whether the distribution by facsimile was a communication of the work to the public.

Robertson v. Thomson Corp., 2006 SCC 43

“Parties are, have been, and will continue to be, free to alter by contract the rights established by the Copyright Act (para. 58).”

Universities Canada (formerly AUCC), Fair Dealing Policy (2013)

“Any copying and/or distribution restrictions contained in a licence that permits access to a copyright-protected work will take precedence over the Fair Dealing Policy (p.2).”



Sattva Capital Corp. v. Creston Moly Corp.
2014 SCC 53

“Contractual interpretation involves issues of mixed fact and law as it is an exercise in which the principles of contractual interpretation are applied to the words of the written contract, considered in light of the factual matrix (para. 50).”

Image courtesy of Stephen Boisvert, via Flickr and Creative Commons

What is the factual matrix in which license agreements are situated?

- The construction of the *Copyright Act* itself.

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Section 13(4): The owner of the copyright in any work may assign the right, either wholly or partially, ... and may grant any interest in the right by licence, but no assignment or grant is valid unless it is in writing

Section 17 (2) Moral rights may not be assigned but may be waived in whole or in part.

Section 17 (3) An assignment of copyright in a performer's performance does not by itself constitute a waiver of any moral rights.

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- The construction of the *Copyright Act* itself.
- Parliamentary intent.

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Summary from the last amendment (Bill C-11):

- “permit businesses, educators and libraries to make greater use of copyright material in digital form;
- allow educators and students to make greater use of copyright material;
- permit certain uses of copyright material by consumers” (i.e. Section 29.21)

Canada is moving ahead with the Marrakesh Treaty (1st international treaty on user rights); amendments signalled on the Notice Paper 23 March 2016.

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 - Parliamentary intent.
 - Judicial development.
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Supreme Court: CCH v. LSUC (2004), Education v. Access (2012),
SOCAN v. Bell (2012)

CCH (2004):

“... the fair dealing exception is perhaps more properly understood as an integral part of the Copyright Act ... The availability of a licence is not relevant to deciding whether a dealing has been fair.”

Copyright Board: May 2015 and February 2016

What is the factual matrix in which license agreements are situated?

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- Parliamentary intent.
- Judicial development.
- Supreme Court (1984), “the longstanding rule against waiver or contracting out [of a benefit to public interest, set by statute] should stand.”


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Supreme Court: *Royal Trust v. Potash* (1986)

“In the late nineteenth century, when the section was first enacted the terms of a mortgage and its amortization period coincided. Today this is seldom the case.”

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Debilitating beliefs and emotional distress in patients given immunotherapy for insect sting allergy: A prospective study

Ronit Confino-Cohen, M.D.,^{1,2} Samuel Melamed, Ph.D.,^{2,3} Arnon Goldberg, M.D.^{1,2}

ABSTRACT

Patients who receive venom immunotherapy (VIT) for systemic reactions (SRs) to insect stings are advised that once they reach the maintenance dose they are almost 100% protected against future SRs. However, initial evidence indicates that some patients continue to perceive themselves as highly debilitated by the allergy and are preoccupied with the allergic event. These factors have significant impact on their emotional well-being and allergy-related quality of life (ARQOL). We aimed to explore prospectively whether patients would experience these adverse psychological outcomes after receiving VIT coupled with professional explanation and reassurance of protection. Thirty-four patients who received VIT for systemic insect allergy and were under close medical surveillance were included. Before and 1 year after initiation of treatment, patients completed a questionnaire that measured debilitating beliefs, preoccupation with the SR event, emotional distress, ARQOL, and QOL in general. Physician-graded severity of the reaction was recorded as well. VIT had a beneficial effect on all allergy-related variables. Self-imposed debilitating beliefs, preoccupation with the anaphylactic event, and ARQOL significantly but modestly improved over time. No association was found between ARQOL and QOL in general. The latter variable as well as emotional distress remained unchanged after the VIT. This study shows that patients with sting allergy, guided by trained personnel and treated with VIT show a reduction in dysfunctional beliefs and an improvement in ARQOL. Dispensing medically unfounded beliefs that persist in some patients might improve their ARQOL.

(Allergy Asthma Proc 30:546-551, 2009; doi: 10.2500/aap.2009.30.3266)

Key words: Adverse psychological outcomes, debilitating beliefs, emotional distress, health-related quality of life, Hymenoptera, immunotherapy, insect sting allergy, venom

A systemic allergic reaction (SR) to an insect sting is an acute event that occurs within minutes after the sting and results in one or more of the following symptoms: diffuse urticaria and pruritus, cutaneous or laryngeal edema, bronchospasm, nausea, and vomiting, hypotension, and loss of consciousness.¹ Affected patients are referred to an allergy clinic for primary evaluation and, subsequently, for immunotherapy with the relevant venom. A few months after beginning treatment, most patients reach the maintenance dose and are at no greater risk for SR than the general population.² Severe allergic reaction is a frightening event that may have adverse psychological consequences that can lead to impairments in mobility, outdoor activities, and social and even occupational functioning.³ Such consequences may lead to perceived impairment in quality of life (QOL) in general. To our knowledge, this possibility was never tested.


A previous cross-sectional study of patients receiving immunotherapy for an SR to insect stings⁴ revealed that

some of these patients found the event of the reaction very traumatic and that it continued to influence their lives long after they had been fully protected by the immunotherapy with the threat to their health being almost nonexistent. This observation is consistent with the general findings of studies of patients' illness perceptions. They repeatedly showed that lay people react not as much to their objective physical state, but rather to the cognitive representation of the threat to their health.⁵⁻⁶ This might involve a variety of beliefs concerning the seriousness, controllability, duration, and consequences of the medical symptoms and these beliefs affect their overall emotional state and avoidance behaviors. Findings from the aforementioned cross-sectional study indicated that as much as one-third of these patients had displayed self-imposed, debilitating, illness-related beliefs. They were continuously preoccupied with the events of the SR, experiencing disturbing uncontrolled thoughts that hampered individual adjustment to insect venom allergies and impaired allergy-related QOL (ARQOL). No difference in the psychological response was found between patients at the beginning of treatment, when they were not yet protected and patients after 5 years of full treatment, when the risk of a sting reaction was very low. This finding was fairly disappointing, because it suggested that despite successful immunotherapy, there was no improvement in the patients' psycho-

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 - Principles of contract: freedom to negotiate.
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Elsevier?


For example, even though the CRKN model license contains this clause

“3.3 Nothing in this Agreement shall in any way limit the ability of the Consortium, Authorized Users and Walk-in Users to engage in or conduct any activity that would not constitute an infringement under Canadian copyright laws, in respect of a copyrighted work”

the CRKN license with Elsevier contains this:

“3.3 Intentionally deleted”

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CCH Canadian v. Law Society of Upper Canada, 1999-2002.

“The evidence shows that the members of the Defendant and others have ready access to law reports and other legal publications through numerous sources other than the Defendant.”

“Conclusions ought not be made in a factual vacuum, especially where values are asserted on behalf of hypothetical third parties.”

Image courtesy of the Law Society Gazette



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February 25, 2016

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Thank You