

## Publisher's Note

2018 – Release 5

Previous release was 2018-4

From Your Library:

<input type="checkbox"/>	_____

McKeown

# Fox on Canadian Law of Copyright And Industrial Designs, 4<sup>th</sup> Edition

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

This release features updates to the Legislative Histories under the *Copyright Act* in Appendix 1 (Canadian Copyright Legislation, Regulations, and Related Materials). This release also includes the addition of the Draft Industrial Design Office Practice Manual, May 30, 2018 to Appendix 2 (Industrial Design Legislation, Regulations and Office Practices). This release includes the rearranged documents of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership documents in Appendix 3 (International Conventions, Treaties, and Related Agreements). This release also features updates to Appendix 4 – Quantum Table – Copyright Infringement. This release also includes updates to the Words and Phrases Judicially Defined.

## Highlights

- **Quantum Table – Copyright Infringement – Damages for Infringement of Copyright** – The judge declined to award any damages for Paragon's lost textbook sales as to award both damages and lost profits on textbooks sales would essentially result in a double recovery. Paragon established that Lee

THOMSON REUTERS CANADA<sup>®</sup>

Customer Support

1-416-609-3800 (Toronto & International)

1-800-387-5164 (Toll Free Canada & U.S.)

Fax 1-416-298-5082 (Toronto)

Fax 1-877-750-9041 (Toll Free Canada Only)

Email [CustomerSupport.LegalTaxCanada@TR.com](mailto:CustomerSupport.LegalTaxCanada@TR.com)

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.

infringed the copyright and trade-marks of Paragon, resulting in proven losses of \$80,796.54, comprised of: a) \$62,301.34 (cost of replacing compromised test questions), and b) \$18,495.20 (investigation costs). Section 35(1) of the *Copyright Act* provides that a plaintiff is entitled to disgorgement of profits, in addition to an award of damages, where copyright infringement has been established. Paragon had proven that Lee profited from his misuse of Paragon's copyrighted information. The revenue received by Lee was estimated based on reasonable estimates of amounts charged for average purchases each month. A Paragon investigator signed up for Lee's course and program and was able to gain knowledge of the amounts charged by Lee for various aspects of the program and materials. The judge accepted Paragon's estimate as a reasonable estimate of revenue received by Lee from his improper use of the Paragon Materials from May 2015 and March 2018. This estimate is \$78,880 in total, based on the following: a) Revenue from online course from May 2015 to March 2018: \$27,200 b) Revenue from in class instruction from May 2015 to March 2018: \$34,000 c) Revenue from sale of textbooks: \$17,680. Paragon met the burden upon it to prove the revenue improperly received by Lee. Pursuant to s. 35(2) of the *Copyright Act*. Once Paragon met the burden to prove revenue derived from the infringement, the onus shifted to Lee to prove costs and expenses incurred to earn such revenue. Lee chose not to appear and provided no contradictory evidence. As such, Paragon was entitled to disgorgement of profits in the amount of \$78,880: *Paragon Testing Enterprises Inc. v. Lee*, 2018 CarswellBC 954, 2018 BCSC 634 (B.C.S.C.).