

FALL 2022 ISSUE 11

Discovery

ATLANTIC EDUCATION AND THE LAW

INSIDE

Immigration Processing Backlogs
Causing Delays for International
Students

Where Has All the Student
Housing Gone?

That's My Copyright, Right?



With a new academic year well underway, the Atlantic Region is finally seeing signs of recovery from the pandemic. With students returning to campus and the focus shifting away from the impacts of COVID-19, a number of issues that were present before the pandemic continue to remain top of mind for academic institutions across the region.

[BRITTANY TRAFFORD](#)
FREDERICTON, NEW BRUNSWICK
BTRAFFORD@STEWARTMCKELVEY.COM

In our eleventh issue of Discovery Magazine, Stewart McKelvey lawyers provide insight into a variety of timely issues including: the student housing crisis, the impact of processing backlogs on international students, academic copyright protection, and liability for privacy breaches.

In publishing Discovery, Stewart McKelvey aims to cover issues of relevance to universities and colleges in Atlantic Canada. As a result, we welcome any suggestions on topics to cover in future publications.

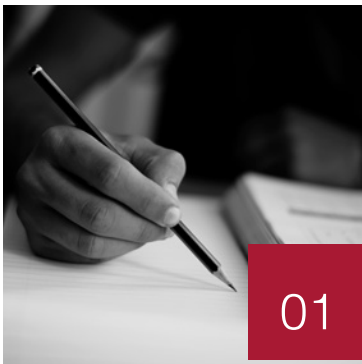
We hope you enjoy this issue, and we wish you a safe and happy fall.

- Brittany, Editor

This publication is intended to provide brief informational summaries only of legal developments and topics of general interest, and does not constitute legal advice or create a solicitor-client relationship. This publication should not be relied upon as a substitute for consultation with a lawyer with respect to the reader's specific circumstances. Each legal or regulatory situation is different and requires a review of the relevant facts and applicable law. If you have specific questions related to this publication or its application to you, you are encouraged to consult a member of our Firm to discuss your needs for specific legal advice relating to the particular circumstances of your situation. Due to the rapidly changing nature of the law, Stewart McKelvey is not responsible for informing you of future legal developments.



Contents



01 Immigration Processing
Backlogs Causing Delays
for International Students



06 Where Has All the Student
Housing Gone?



13 That's My
Copyright, Right?



Immigration Processing Backlogs Causing Delays for International Students

With the 2022 Fall school semester underway, many Canadian universities and colleges are noticing fewer international students on campus than initially anticipated.¹ This is an unexpected challenge for many international students and educational institutions who were hoping this academic year would return to normal after the COVID-19 pandemic derailed much of the past two and a half years.

Over the years, Canada has become a popular destination for international students. In 2019, Canada welcomed a record number of 638,000 international students.² While these numbers

decreased during 2020 and 2021, no doubt related to the COVID-19 pandemic, the country was able to rebound in 2021 where Canada once again welcomed over 621,000 international students.³ While there was optimism that the number of international students may be able to return to and surpass 2019 levels this year, it appears that there is an unexpected issue now coming to the forefront – government processing delays.

APPLICATION BACKLOGS

Thousands of international students intending to study in Canada for the fall 2022 semester are

¹ Jeff Bell, “Student numbers lower than expected at University of Victoria”, Vancouver Sun (“Bell”).

² Eden Crossman et al., “International students as a source of labour supply: A summary of recent trends”, Statistics Canada.

³ Ibid.



still stuck at home waiting for their study permit applications to be processed.⁴ This delay has resulted in many international students needing to defer their studies at least a semester in hopes that their study permits will be approved so that they can join their classmates in January 2023.⁵ These delays in processing study permits are not only concerning for the students themselves, but also for the educational institutions that rely on the tuition fees paid by the international students to help fund operations.⁶

Many groups, including the students and educational institutions themselves, are now pushing Immigration, Refugees and Citizenship Canada (“IRCC”) to act quickly to alleviate this backlog and process the pending study permit applications.

IRCC released data in July 2022 confirming the size of the backlog that the agency is working through. As of July 31, 2022, IRCC was reporting that approximately 59% of all temporary residence applications were outside of regular service standards, with study permits themselves having a backlog of 31%.⁷ IRCC projected that this backlog for study permits would increase over the coming months and peak in September 2022 with an estimated backlog of 42%.⁸ IRCC’s stated goal is to process 80% of all applications within their service standard time,⁹ so the current backlogs are well over what would normally be expected.

As a result of this overwhelming backlog of applications, IRCC has announced efforts to combat and shrink the number of applications waiting in the queue. In particular, the Government of Canada announced that IRCC will hire an additional 1,250 employees by the end of the fall to increase the agency’s processing capacity.¹⁰ The expectation is that this increased processing capacity will allow IRCC to return to pre-pandemic service standards moving forward.

While these new efforts will not immediately resolve the backlog of applications, it will hopefully result in faster processing times for students still waiting for their study permits to be processed and less significant backlogs moving forward.

EXTENDED MEASURES FOR DISTANCE LEARNING

In an apparent effort to mitigate the issues caused by the significant study permit processing delays, IRCC has once again extended its temporary measures with respect to distance learning.¹¹ These temporary measures are aimed at preserving international students’ eligibility for a Post-Graduation Work Permit (“PGWP”). This version of the extended temporary measures has been reduced in scope from its previous form and is intended to act as a transition period, with the end result being a full return to in-Canada studies.

As a reminder, the PGWP Program provides students who have graduated from certain Canadian educational institutions with a route to obtain an open work permit (otherwise known as a PGWP). Among other requirements, to be eligible for a PGWP a student would generally need to study in Canada in a program eight months in duration or longer, maintain full-time student status during each academic session, and have held a study permit within 180 days of applying for the PGWP.

Due to the continued processing delays, many international students will need to begin or continue their studies online from outside of Canada. The Government is temporarily allowing international students who have valid study permits or who applied for a study permit no later than August 31, 2022 and who are enrolled in PGWP-eligible programs between March 2020 and August 31, 2022 to complete up to 100% of their program online from outside of Canada without impacting their PGWP eligibility. That said, the Government has added additional restrictions to these extended measures, including how study from abroad impacts the length of a PGWP.

While the new extended measures do continue to allow 100% of a study program to be completed abroad as long as the program was started between March 2020 and August 3, 2022, it is important to note that any study time completed outside of Canada after August 31, 2023, will be deducted

⁴ Talia Ricci, “Thousands of international students still waiting on permits after Canadian school year begins”, CBC News.

⁵ Carmen Groleau, “Study permit delays impacting thousands of international students coming to Waterloo region”, CBC News.

⁶ Bell, *supra* note 1.

⁷ Government of Canada, “Building a stronger immigration system”, Immigration, Refugees and Citizenship Canada.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Government of Canada, “Tackling immigration backlogs to help Canadian businesses grow”, Immigration, Refugees and Citizenship Canada.

¹¹ Government of Canada, “Transition period for distance learning measures”.



from the length of a student's PGWP, regardless of when a student began their studies.

There are reduced facilitation measures in the new extended measures that are aimed at international students starting programs from September 1, 2022, to August 31, 2023. These requirements include:

- No more than 50% of the credits earned can be completed outside Canada to remain eligible for a PGWP; and
- Studies completed online from outside Canada after August 31, 2023, will be deducted from the length of a future PGWP.

It is important to note that while these measures have been extended to ensure that those international students impacted by the processing backlog can continue to study abroad while awaiting their study permit application approval, the current measures now have limits not included in their previous form. In particular, students must be aware that any study time conducted from abroad beginning September 1, 2023 will be deducted from the length of their PGWP. Additionally, any international student beginning

their studies on or after September 1, 2022, must complete at least 50% of their program in Canada to remain eligible for a PGWP.

It appears that the temporary extension of the COVID-19 measures are in place now to mitigate the issues caused by the Government's processing backlog. That said, the recent changes to these measures appear to be a clear effort to have international students physically return to Canada to complete their studies in-person moving forward. Whether the Government's backlog reduction efforts remove the need for the temporary distance learning measures will be closely monitored.

EXPANDED OFF-CAMPUS WORK ELIGIBILITY FOR STUDY PERMIT HOLDERS AND AUTOMATED EXTENSION APPLICATION PROCESSING

On a more positive note for study permit holders, the Government of Canada announced new measures which have the potential to provide international students with faster processing times on study permit extensions and more freedom to work off-campus during regular scheduled academic sessions.





Currently, international students are eligible to work up to 20 hours per week off-campus during the regular scheduled academic sessions if they meet specific eligibility criteria. These criteria include that the international student must be attending one of Canada's designated learning institutions on a full-time basis in a program that is at least six months in length and that will lead to a degree, diploma, or certificate.



BRENDAN SHERIDAN

HALIFAX, NOVA SCOTIA

BSHERIDAN@STEWARTMCKELVEY.COM

The new temporary measure provides that from November 15, 2022, until December 31, 2023, international students in Canada who hold a study permit with off-campus work authorization will not be restricted by the 20-hour-per-week limit during regularly scheduled academic sessions.¹² That said, international students must continue to pursue their full-time studies to be eligible to work in Canada on their study permit.

Additionally, the Honourable Sean Fraser, Minister of Immigration, Refugees and Citizenship, also announced that IRCC is launching a new pilot project to explore the benefits of automating study permit extension applications. Specifically, this pilot project will rely on technology to expedite processing of these straight-forward applications to ultimately reduce backlogs and improve processing times.¹³ The Minister did confirm that any decision to refuse an application will continue to be made by an officer, not the automated process.

CONCLUSION

Many international students and educational institutions have been negatively impacted by IRCC's overwhelming backlog of applications. While IRCC has taken steps to reduce the backlog moving forward, many students will be required to defer their studies or begin their studies abroad. IRCC has temporarily extended distance learning measures, but these measures are now more restrictive and so it is vital to understand how they impact eligibility for a PGWP so that students can plan accordingly.

Should you have any questions related to study permits or other immigration applications, our [immigration law team](#) would be pleased to provide advice on these matters.

¹² Government of Canada, "[International students to help address Canada's labour shortage](#)", Immigration, Refugees and Citizenship Canada.

¹³ *Ibid.*



“

With 1.5 million student renters in Canada and rising rent prices, many students who may otherwise have rented off-campus are turning to student housing. ”



Where Has All the Student Housing Gone?

If you've been following the news, the housing crisis is no surprise. What may come as a surprise to those removed from the post-secondary education sphere, however, is the severe impact the crisis is having on students.

SOME FACTORS THAT ARE CONTRIBUTING TO THE STUDENT HOUSING CRISIS

1. **Ratio of Housing Prices to Income:** According to the National Bank of Canada, housing affordability has been deteriorating for six consecutive quarters.¹
2. **Investment:** Notwithstanding the decrease in affordability, investors played a huge role in the recent increases in the demand for housing.²
3. **More International Students:** Statistics Canada reports that international student enrolment in Canadian post-secondary institutions has been on the rise.³
4. **Interest Rates:** Interest rates have been rising in an attempt to cool the housing market.
5. **AirBnB:** With the implementation of caps on rent increases in a number of jurisdictions, many home owners have moved to AirBnB rather than the traditional rental model.

Each of these factors has resulted in less supply and/or increased demand on the rental market.

¹ Kyle Dahms et al., "Housing affordability: The worst deterioration in 41 years in Q2 2022", Housing Affordability Monitor, National Bank of Canada.

² Rishi Sondhi, "Canadian housing outlook: Testing the foundation", TD Bank.

³ "International students accounted for all of the growth in postsecondary enrolments in 2018/2019", The Daily, Statistics Canada.



THE RESULT

Waitlists, but for student housing. With 1.5 million student renters in Canada⁴ and rising rent prices, many students who may otherwise have rented off-campus are turning to student housing.

POSSIBLE SOLUTIONS

Post-secondary institutions and their students have been getting creative. Some examples of alternative and/or non-traditional solutions include:

Residences Reimagined

Building new student housing is clearly a solution. University Affairs notes that:

Universities and even some colleges are energetically exploring ways to build more student housing of all kinds, either by themselves or in partnership with private developers. Some are looking to use their existing land more creatively – for example, by building student housing right on top of new academic buildings – as Ryerson is doing. A few have even bought and converted hotels.⁵

Following the tiny home trend, the University of British Columbia has invested in residences containing “nano-suites” - minimalist suites with a convertible desk/bed, full private bathroom, kitchenette and closet in 120 square feet. These

“nano-suites” combine the privacy of solo living with the convenience of being on campus.

In line with the UBC nano model, micro-living spaces have been constructed by the private sector in Fredericton, Wolfville and Antigonish, and academic term leases are being offered.

Canada HomeShare

As an interim measure, many universities in Atlantic Canada have reached out to their communities for home owners willing to rent rooms to students without housing. The University of Prince Edward Island administers a homestay program that provides students with a family-like environment. Canada HomeShare takes this concept to a different level.

An intergenerational housing initiative in Toronto and neighbouring areas, Vancouver and Edmonton, Canada HomeShare matches students in need of housing with older adults who have space in their homes. According to its website, “[i]n exchange for reduced rent of \$400-\$600 per month, the student provides up to seven hours of companionship and/or assistance with completing light household tasks, such as preparing and sharing meals, tidying up, carrying groceries, or walking a pet.”⁶

Canada HomeShare plans to expand to Fredericton in the coming year.⁷

⁴ “Data and research”, Unité de travail pour l’implantation de logement étudiant.

⁵ Frances Bula, “Solving the student housing crisis”, University Affairs.

⁶ Canada HomeShare.

⁷ Sparrow McGowan, “With rentals scarce, a program that houses students with seniors is growing fast”, University Affairs.



Partnering with the Private Sector

With space on campus at a premium and the cost of building materials increasing, another option to increase the availability of student housing is partnering with the private sector. A 2022 report on student housing prepared by Cushman & Wakefield notes that “[i]nterest in the student housing market continued to increase in 2021 as investors recognized the benefits of this sector and superior returns offered” and states that the outlook for the industry remains strong.⁸

According to the 2022 Cushman & Wakefield report, Simon Fraser University recently partnered with a real estate investment trust to build the Simon Fraser East/West Towers. Benefits of partnering with the private sector include the ability for a post-secondary institution to avail itself of the private sector partner’s expertise in construction and design and not having to bear all the costs, while the post-secondary institution provides a near-guaranteed tenant list.

Notwithstanding the benefits, there are several considerations when partnering with a private sector partner, including but not limited to, what the relationship is going to look like, who will be contributing what to the project, whether financial contributions will be lump sum or based on completion of benchmarks, what the expectations are of each party at each stage of the project, how long the partnership is intended to last, and what happens if one of the parties doesn’t fulfil its obligations under the agreement.



JULIA PARENT

SAINT JOHN, NEW BRUNSWICK

JPARENT@STEWARTMCKELVEY.COM

⁸ “[Canadian student housing overview](#)”, Cushman & Wakefield.

“

The principle of vicarious liability is of particular importance to employers as it sets out circumstances where an employer may find itself liable for the misconduct of its employees.

”



Employer Liability for Privacy Breaches by Employees

The principle of vicarious liability is of particular importance to employers as it sets out circumstances where an employer may find itself liable for the misconduct of its employees. The principle was recently applied by the British Columbia Supreme Court in the context of a class action lawsuit in [Ari v. Insurance Corporation of British Columbia](#), 2022 BCSC 1475. In *Ari*, the Court found the defendant, Insurance Corporation of British Columbia (“ICBC”), vicariously liable for the actions of its former employee who improperly accessed personal information maintained by ICBC. ICBC was ordered to pay damages to the members of the class as a result of the privacy breach.

For universities and colleges in Atlantic Canada that are subject to public or private sector privacy laws, this decision confirms the importance of ensuring that personal information collected and maintained by the institution is not improperly accessed, used, or disclosed by employees. It also serves as a warning about the importance of having privacy policies in place as deterrents for such breaches.

FACTS

The defendant, ICBC, is the operator of a universal compulsory vehicle insurance plan and maintains databases that include personal information on everyone in British Columbia who holds a driver’s licence or is a registered owner of a motor vehicle. This information includes names, addresses, claims histories, and details on the individual’s vehicle.

Between April 2011 and January 2012, houses and vehicles belonging to 13 individuals were targeted in arson and shooting attacks. The only commonality between the victims was that their vehicles had, at some point, been parked in the parking lot of the Justice Institute of British Columbia. An investigation revealed that the

victims were among a larger group of ICBC customers whose personal information had been accessed and sold to a third party by an ICBC claims adjuster. The third party had, in turn, provided the personal information to an individual who committed the attacks.

A class action was brought against ICBC on behalf of all individuals whose personal information was improperly accessed by the employee and those who live with them. Those who were victimized in the attacks formed a subclass within the action.

LIABILITY OF ICBC

One of the primary issues in the class action was whether the employee breached the class members’ privacy pursuant to British Columbia’s [Privacy Act](#) when she accessed the class members’ personal information. Second, if there was a breach of the *Privacy Act*, the issue became whether ICBC was liable to its customers whose personal information was improperly accessed and misused by its employee.

Section 1(1) of the *Privacy Act* provides that it is a tort for a person to wilfully and without a claim of right violate the privacy of another. The Court found that a reasonable person providing information to ICBC, even contact information, would expect that ICBC would only use that information for the purposes related to ICBC’s duty to operate the insurance plan or for purposes related to vehicle registration. In accessing the class members’ information without a business purpose, the employee breached the *Privacy Act*, whether or not she passed the information on to a third party.

The Court then found that ICBC was vicariously liable for the actions of the employee. The Court confirmed that, to find an employer vicariously liable for the wrongful act of an employee, there



must be some connection between the employee's wrongful conduct and their relationship to the employer. In this case, the Court found that the employee's wrongdoing was directly connected to her employment. ICBC had created the risk of wrongdoing by an employee as it gave employees access to the databases, and the risk of misuse was foreseeable given that it told employees of the need to protect the privacy of customer's information and of the consequences of breaching this privacy.

As a result of the breach, the Court found that the class members were entitled to an award of non-pecuniary damages arising from the mere fact that their privacy was violated. It was further determined that individual class members may be entitled to pecuniary damages if they incurred expenses as a result of the privacy breach.

ICBC's argument that it should not be held liable for the damages incurred by the subclass members' as a result of the attacks was dismissed by the Court. The Court found that there was a direct connection between the information supplied by the employee and the attacks. Although the employee did not supply the information directly to the attacker, but had supplied it to a third party who acted as an intermediary, she knew or should have known that the information could be shared with others once

she disclosed the information outside of ICBC. The Court therefore found there was sufficient connection between the breach and the attacks to render ICBC liable for those damages.

However, the Court dismissed the claim for punitive damages. The plaintiff argued that ICBC had a history of employees abusing the databases and ICBC had failed to implement controls and detection measures previously recommended by the Information and Privacy Commissioner to prevent such an incident from reoccurring. The Court found that ICBC had in fact implemented some of the recommendations made by the Commissioner and therefore dismissed this argument. Further, the Court found that there was no evidence to suggest that these recommendations would have been sufficient to prevent the privacy breach that occurred in these circumstances.

KEY TAKEAWAYS

The decision in *Ari* is based on a statutory actionable privacy violation. Newfoundland has a similar statutory privacy violation – the tort of invasion of privacy, pursuant to the *Privacy Act*, RSNL 1990, c P-22. Post-secondary institutions in Newfoundland should therefore take note of this decision. Although a similar tort is not currently





legislated in New Brunswick, Nova Scotia or Prince Edward Island, post-secondary institutions in these provinces should still take note of this decision as they may be subject to public sector privacy laws.

Post-secondary institutions in Atlantic Canada that are considered public sector institutions are subject to the public sector privacy laws in each province. These public sector privacy laws generally protect personal information, including names and addresses, from use or disclosure except as authorized by the applicable legislation. The privacy laws additionally provide that it is an offence for a person to collect, use or disclose personal information in willful contravention of the legislation or to maliciously use or disclose personal information.¹

Post-secondary institutions collect and maintain databases similar to those maintained in *Ari* – databases of personal information of both employees and students, including names and addresses and which may include financial information or even information regarding vehicles if the institution provides parking passes. All of this information must be protected from misuse or unauthorized disclosure.

If an employee of the university or college were to access, use or disclose this information for any unauthorized purpose, this would be considered a violation of the applicable privacy law. As outlined in *Ari*, employers may be held vicariously liable for the breach of the privacy legislation by that employee.

Additionally, the decision in *Ari* serves as a caution regarding the importance of having policies in place warning employees about the importance of maintaining the privacy of these records, and of implementing recommendations made by privacy commissioners. As noted above, the Court in *Ari* declined to make an award of punitive damages, finding that ICBC had implemented some of the recommendations of the Information and Privacy Commissioner after a previous breach of its databases by an employee was identified; ICBC further had policies in place to try to prevent such a breach from happening. Had ICBC not implemented these recommendations or not had these policies in place, it may have found itself subject to an award of punitive damages.

Having policies in place to inform and instruct employees on the importance of privacy surrounding personal information and on the consequences of breaching privacy laws is important to help deter such breaches and to reduce the potential liability on the part of the employer if a breach of privacy does occur. While an employer may still be held vicariously liable for the employee's breach, these policies may deter these breaches and reduce any additional liability (e.g. punitive damages) imposed on the employer.



KATHLEEN NASH

FREDERICTON, NEW BRUNSWICK

KNASH@STEWARTMCKELVEY.COM

¹ New Brunswick: [Right to Information and Protection of Privacy Act](#), s. 82(1)(a); Newfoundland and Labrador: [Access to Information and Protection of Privacy Act, 2015](#), s. 115; Nova Scotia: [Freedom of Information and Protection of Privacy Act](#), s. 47(1); Prince Edward Island: [Freedom of Information and Protection of Privacy Act](#), s. 75(1)(a).



That's My Copyright, Right?



UNIVERSITY OF TORONTO WORKS WITH PROFESSORS TO ENFORCE ACADEMIC COPYRIGHT PROTECTION AGAINST THIRD-PARTY TUTORING SERVICE

On May 11, 2022, the University of Toronto (“U of T”) [issued a statement](#) to confirm that it had taken unprecedented steps to address what it believes to be copyright infringement and exploitative behaviour by Toronto-based Easy Group Inc., and a group of related companies (“Easy Group”). Established by a U of T alumnus and headquartered just steps away from U of T’s St. George Campus, Easy Group offers a number of services to international students, including the sale of packages of course materials and academic tutoring services.

U of T and three of its professors allege that Easy Group copied lecture slides, course syllabi, tests and exams, and are selling them to students without authorization or legal rights to do so.

In its statement on the matter, U of T said that its issues with Easy Group dated back as far as October 2020, when U of T representatives met with Easy Group to discuss concerns about infringement of academic materials. After what appears to be a series of exchanges on the matter, unsatisfactory to U of T, it commenced an action against Easy Group on May 9, 2022.

Easy Group has denied all of the allegations made by U of T and the three named professors, and has launched its own claims against U of T in response.

WHAT COPYRIGHT ARE WE TALKING ABOUT HERE? AND WHOSE COPYRIGHT IS IT?

Like many academic institutions, U of T’s [Copyright Policy](#) provides that teaching staff own the copyright in all of the teaching materials that they create. When teaching staff create teaching materials, these materials are automatically protected by copyright.

These protections provide the teaching staff with the sole right to publish, produce or reproduce their teaching materials. This means that the lectures, slides, syllabi, assignments and exams created by teaching staff can only be published and reproduced by those individuals, unless they specifically authorize someone else to do so. Where someone else publishes, produces or reproduces the material, the teaching staff, as the owners of the teaching materials, have the authority to enforce their copyright in the face of an infringement of those rights.

The creator of the teaching materials also maintains “moral rights”, which are granted to protect the integrity of the work and the reputation of the



creator. The right of integrity means that the owner is protected from the modification of the work or association with goods or services which are prejudicial to the creator's reputation. This is intended to stop any individual from changing the work without the creator's authorization.

WHAT CAN THE OWNER OF THE COPYRIGHT DO?

Proving copyright infringement is no easy task. The owner of the copyright has to be able to prove that a copyright exists, that they are the owner of the content, and that there was an infringement upon their work. There are also a number of defences or exceptions to copyright infringement, including that the work was not "substantially" copied or that the use was in the course of fair dealing (such as for the purpose of research, private study or education). However, where an infringement has been proven, the remedies can be substantial.

Based upon the *Copyright Act* (Canada), there are both statutory and civil actions available.

The *Copyright Act* creates multiple offences, including the offence of knowingly selling an infringing copy of a work that is protected by copyright. A conviction for such an offence is punishable by a fine of up to \$1,000,000 and/or imprisonment up to five years. Such proceedings, however, can only be brought by the Crown.

In the civil context, the owner of a copyrighted work can bring a claim for copyright infringement, and the creator of a copyrighted work can also bring a claim for a breach of their moral rights. Where a claim is successful, remedies include a permanent injunction to stop the use or sale of the copyrighted work without authorization, the return of copied goods, and monetary remedies to compensate for the infringement. Monetary remedies may include not only damages for the breach of copyright, or statutory damages contemplated by the *Copyright Act*, but also a full accounting and disgorging of profits made as a result of the breach of copyright where copyrighted works were sold without authorization, for example.

STORY IN CONTEXT

The claim brought by U of T and the three named professors asserts their ownership in specific teaching materials used by Easy Group in certain course packages, and alleges that the materials were used without authorization. The claim seeks the

return of the copied materials, monetary damages, and disgorgement of profits to compensate the professors and U of T for the unauthorized use of teaching materials. The claimants further seek significant punitive damages to punish behaviour that they consider exploitative, and perhaps even to set an example to cause providers of similar services to think twice.

The fact remains, however, that in the event that the U of T claim is successful, notwithstanding Easy Group's defence, this would not necessarily mean that all of the Easy Group course packages would automatically be considered to be infringing of copyright. This is not a blanket claim or a class action lawsuit and would thus apply only to those specific teaching materials identified by U of T in the lawsuit. Any further claim for copyright infringement for any other teaching materials would have to be assessed and proven on its own merits.

To complicate matters further, the claim also alleges that the moral rights of the professors have been infringed. The claim suggests that Easy Group allowed for the educational community, which includes students who purchased the course packages and paid for tutoring services, to believe that Easy Group was endorsed by U of T and its professors – an endorsement which U of T vehemently denies.

While the legal matter remains to be decided, and all of the claims have been denied by Easy Group, it appears that academic consequences are beginning to pile up against students who have used Easy Group course packages and tutoring services.

MORE THAN EDUCATION AT RISK

Easy Group's target demographic is easy to ascertain: international students from China who are studying, or are hoping to attend school, in Canada. Their services, aside from the sale of course packages and tutoring, include study abroad planning to attend schools in North America, educational counselling, and even housing and immigration services.

U of T, in its suit, has expressed the concern that receiving "unauthorized academic assistance" from Easy Group's services may actually lead to serious academic consequences.

U of T's *Code of Behaviour on Academic Matters* states that it is an offence for a student to



knowingly use or possess unauthorized aids or obtain unauthorized assistance in connection with any form of academic work. For such offences, a sanction may be placed on the student's academic record and transcript, and it is recommended that sanctions range from a zero on the assignment or test to a final grade of zero for the course. However, depending on the circumstances of the offence, sanctions may be more severe, and can include the suspension, or even expulsion, of students.

It appears that U of T has taken the view that the use of Easy Group's tutoring services or course packages may constitute the receipt of unauthorized academic assistance. Its May 11, 2022, statement and its statement of claim suggest that it has sanctioned students for academic misconduct related to the use of Easy Group services.

While academic misconduct is never something to be taken lightly, there are added consequences for those within Easy Group's target demographic. For international students, a suspension from a post-secondary institution can potentially cause the suspension or cancellation of a student's study permit, which could necessitate a return to their home country.

Without a clear understanding of what would constitute "unauthorized academic assistance" in these circumstances, the risks for students using these services are significant, and could have not only academic, but also immigration, impacts.

HOW CAN UNIVERSITIES ADDRESS THESE ISSUES?

There are really two concerns for academic institutions and their teaching staff:

1. Copyright infringement of teaching materials; and
2. Risk of academic misconduct for students who access unauthorized assistance.

When it comes to the protection of copyrighted teaching materials, the struggle in most instances stems from the fact that because individual academic staff maintain ownership in their intellectual property, it would be those individuals who would have to act to protect their interest in their materials, which places a significant burden on the individuals, as opposed to the educational institution by which they are employed. In the case of U of T, two of the named professors assigned

rights in teaching materials to U of T. Otherwise, U of T would have no standing to bring any sort of claim.

Practically speaking, this means that in most instances when copyright infringement is identified by academic staff, their only avenue to protect their teaching materials would be to bring a claim on their own behalf, which is undoubtedly a difficult thing for any individual to take on.

Where there are institutional concerns about copyright infringement upon academic teaching materials, educational institutions have no avenue but to work with their academic staff, as U of T did, to bring forward a claim. In U of T's circumstance, two professors assigned their rights in certain teaching materials to the institution, presumably so that it could lead the charge, so to speak, to protect the teaching materials of its identified professors. This is one possible avenue for academic institutions to take under similar circumstances in order to tackle known issues of infringement upon teaching materials. It is worth noting, however, that Easy Group has suggested that this may amount to an illegal agreement to maintain or finance litigation.

If the assignment of the copyright in the teaching materials is either undesirable or impractical, the academic institution may wish to support its academic staff in bringing forward a claim. This could mean assisting with logistical support in the claim, or perhaps providing access to institutional counsel for academic staff who allege that their rights have been infringed. This would decrease the barriers, including both time and cost, which may otherwise stop many academic staff from bringing forward a claim to enforce the intellectual property rights in their academic materials.

However, the infringement of intellectual property rights is not the only thing at stake here. The U of T claim makes it clear that there is a significant concern about the success and welfare of students. Students using these services risk academic sanctions and penalties if they receive unauthorized academic assistance.

The risk to students who would obtain these course packages or use tutoring services to assist with assignments or tests is significant. However, it is also conceivable that the students who use these services do not understand or appreciate that they may potentially be in breach of an academic code



of conduct. Easy Group's defence articulates several cultural considerations, including not only a desire for international students to receive assistance in their first language, but also the customary use of private tutors in China.

As a result, academic institutions should make efforts to ensure that students understand the nature of the academic offences and what could constitute such an academic offence. This may require taking additional steps to ensure that students understand the penalties associated with academic offences, particularly students who face additional consequences as a result of academic offences, such as international students.

Academic institutions should review their intellectual property policies to ensure that the rights of their academic staff are stringently protected from unauthorized use of any form, while also considering how those materials are currently being used by students and whether those uses are in fact appropriate. Further, academic institutions should ensure that their academic codes of conduct are clear about when the use of certain types of tutoring services or the receipt of course materials from others may constitute an academic offence. Clarity is the key to ensuring that the rights and obligations of staff and students are understood, followed and enforced.

As a final note, the very success of academic services such as those provided by Easy Group goes to show that there is a demand for academic assistance, in this case by those students who are receiving instruction in a language that is not their first language. If Easy Group's services are found to be infringing upon academic copyright, or the use of the services may constitute an academic offence, then academic institutions should consider how services can be provided in a manner that is lawful and would abide by relevant policies and codes of conduct.

This may create an opportunity for academic institutions to develop new programs or services which cater to the specific needs of students who require additional assistance, or for third parties to work with academic institutions to develop and deliver lawful and approved programs or materials. If the end goal is both the protection of academic copyright and the ultimate success of students, appropriate services must fill the gap.

The U of T claim may act as a cautionary tale for academic institutions to assess their own academic

support programs to ensure that they are meeting the needs of all students, including international students seeking academic assistance in their first language. U of T has a number of academic support services, including writing centres and dedicated workshops for international students, and yet Easy Group's course packages and tutoring services continue to thrive on U of T's campus, and at universities all across North America. Easy Group claims that there are no comparable culturally-specific services at U of T. From this, we can only infer that something is missing, some need unserved for this contingent of students, and as a result, academic institutions should strive to understand what services these students require, and seek to fill the gap that is being filled through means which may appear to place students at significant risk.

Collaboration and communication between academic staff and students about expectations, resources, policies, and supports may go a long way in solving a problem which appears to be growing within the education system, and may bring about a lasting and positive change for staff, students and the institutions themselves.



SARAH BYRNE
ST. JOHN'S, NEWFOUNDLAND
SBYRNE@STEWARTMCKELVEY.COM

Spotlight

JULIA PARENT, PARTNER

SAINT JOHN, NEW BRUNSWICK
JPARENT@STEWARTMCKELVEY.COM

Julia is a Partner practicing out of our office in Saint John, New Brunswick with a focus on commercial and residential real estate acquisitions, leasing, and banking and finance law. Her clients include mortgage lenders, financial institutions, builders and landlords. She provides clients with expert advice on matters including real estate acquisitions, financing and sales, real property matters including leasing, financings and insolvency and bankruptcy matters.

Admitted to the Bar in both New Brunswick (2013) and Ontario (2022), Julia is a member of the Canadian Bar Association and the Law Society of New Brunswick, and is the Vice President of the Saint John Law Society Council.





think: major in knowledge