



Ontario has copyright in plans of survey filed in the province's land registry, the Supreme Court has ruled.

Copyright protects original works of writing, theatre, music, or art. A person who has copyright in something has the exclusive right to produce, copy, publish, or perform it. Canadian copyright law tries to balance two goals. The first is to reward the people who create new works. The second is to make sure that the public has access to new ideas and works.

There are special rules in the *Copyright Act* for when the Crown can own copyright. ("The Crown" is a legal term that basically means "the government.") Section 12 of the *Copyright Act*, which is over a century old, says the Crown has copyright in what it prepares (creates) or publishes. It also says the government has copyright where it directs or controls what someone *else* prepares or publishes.

Ontario has an electronic land registry system. The land registry is a database about all properties in the province. It says who owns (or has other rights to) each one. The database contains many kinds of documents, including plans of survey. Plans of survey show information about a specific property (like its size and shape), like an official map of the property. Even though the land registry is electronic, plans of survey still have to be physically brought to a land registry office to be scanned.

The electronic land registry system is run by a company called Teranet, which helped create it. Teranet paid independent surveyors to help build the database and provide plans of survey. A regulation says that all plans added to the land registry become property of the Crown (that is, of the Ontario government). Surveyors bring plans of survey to the land registry office to be included. When they do, Teranet makes copies of the plans available electronically. Teranet does all of this on Ontario's behalf.

Keatley Surveying, a land survey company, launched a class action in 2007. A class action is a special kind of lawsuit when a group of people with the same kind of problem get together to sue. The class action was on behalf of land surveyors who provided plans of survey to the land registry. It said the surveyors (not the Crown) had copyright in the plans of survey they had created. It said Teranet was therefore infringing the land surveyors' copyright by storing and copying plans of survey. It said the Crown should only get copyright in works that it created itself (or where it ordered or controlled creation by someone else). Teranet argued that the Crown should get copyright in everything it published. In 2016, a judge said Ontario owned the copyright and said Keatley Surveying's class action couldn't go forward. The Court of Appeal agreed.

All the judges at the Supreme Court agreed that Ontario owned the copyright in the plans of survey.

The majority said the plans of survey were in a narrow category of documents that fell under Crown copyright. Crown copyright protects the public interest by giving the Crown copyright in things whose creation or publication it very much directed or controlled. This case was about publication, not creation, since the Crown didn't create the plans of survey itself. A number of laws set out how the land registry system worked, the requirements for plans of survey, and how Ontario could use the plans. The government directed and controlled every aspect of the publication of the plans of survey. The laws also gave Ontario the exclusive right to make changes to them, and make them available to the public. This amount of control meant the Crown owned the copyright, and could allow Teranet to make copies of the plans of survey on the government's behalf. There have been many changes in Canada's approach to copyright law in the last hundred years, and the majority took them into account when interpreting section 12.

Section 12 of the *Copyright Act*, which deals with Crown copyright, is over a century old. This is the first time the Supreme Court has looked at this section.

Breakdown of the decision: *Majority:* Justice Rosalie Silberman [Abella](#) dismissed the appeal (Justices [Moldaver](#), [Karakatsanis](#), and [Martin](#) agreed) | *Concurring:* Justices Suzanne [Côté](#) and Russell [Brown](#) agreed that the Crown had copyright in the plans of survey, but said the section on Crown copyright in the *Copyright Act* should only cover government works that serve a public purpose in order protect against overly broad application (Chief Justice [Wagner](#) agreed)

More information (case # 37863): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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