

## CCH, para. 53

- (1) the purpose of the dealing;
- (2) the character of the dealing;
- (3) the amount of the dealing;
- (4) alternatives to the dealing;
- (5) the nature of the work; and
- (6) the effect of the dealing on the work



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**six factors if necessary**  
**but not necessarily six factors**

Para. 53: “... Although these considerations will not all arise in every case of fair dealing, this list of factors provides a useful analytical framework to govern determinations of fairness in future cases.”

Para: 60: “These factors may be more or less relevant to assessing the fairness of a dealing depending on the factual context of the allegedly infringing dealing. In some contexts, there may be factors other than those listed here that may help a court decide whether the dealing was fair.”

*The Canadian fair dealing defense is “statutorily restrictive and not easily capable of a remedial, flexible, or evolutionary interpretation.” ... The tendency amongst Canadian courts was to reject the fair dealing defense by invoking (and often creating) a bright-line mechanical rule that would preclude fair dealing on the facts of the case.*

Carys Craig with a nod to Howard Knopf

In Michael Geist, ed., *In the Public Interest: The Future of Canadian Copyright Law* (Toronto: Irwin Law, 2005)

*The right of quotation is permitted by law; to refuse it would be in effect to suppress the right of literary criticism. Nevertheless, a critic cannot, without rendering himself liable for infringement, reproduce the entirety of the work criticized without the authorization of the author.*

Angers J.  
Zamacoïs v. Douville (1943) para. 107

*What amounts to 'fair dealing with any work for the purpose of private study, research, criticism or newspaper summary' within the meaning of ... the Copyright Act is a matter which must necessarily depend upon the facts of each case.*

Angers J.  
Zamacois v. Douville (1943) annotation

*Are the Six Factors the new  
bright-line mechanical rule?*





Cover of Saturday Night magazine  
(November 1985)

Article title: “Sheila Copps, M.P.; the  
Leader of the Pack – future leader of the  
Liberals?”

Author: Robert Mason Lee

Photographer: Jim Allen



*Toronto Star* (1990) “Crafty Cops keeps wits up and tone down,” by Val Sears. Photographer unknown.

*Toronto Star Newspapers v. Allen* (1997):

“The use of [the cover] was related to the then news; the leadership aspirations of Ms. Copps.... It was apt for the newspaper to contrast the image she was willing to project in 1985. The change in her image was the thrust of the article.

... The cover was reproduced in reduced form. The news story and the accompanying photo received no special prominence in the newspaper. ... The purpose of the reproduction of the cover was to aid in the presentation of a news story, not to gain an unfair competitive advantage over Allen or Saturday Night.”



Active use of fair dealing – revised framework for fairness analysis\*

1. Why is the work being used?
2. How is the work being used?

*\*see [fairduty.wordpress.com](https://fairduty.wordpress.com), February 2017*

*for similarly supportive US case law concerning active fair use:*

*<https://fairduty.wordpress.com/2015/09/26/no-permission-needed/>*

**“... given the present-day notions of intellectual property, exchange would be looked at askance. It is only very vigorous epochs that can give and take without wasting words.”**



***A plea for the university tradition***  
**by Harold Adams Innis (1894-1952)**

**Copied from *Dalhousie Review***  
**Volume 44, Issue 3, 1946**