

Copyright Board
Canada



Commission du droit d'auteur
Canada

CANADA

Remarks prepared by
Nathalie Théberge
Vice-chair and Chief Executive Officer
Copyright Board of Canada
[Translation]

On the occasion of the 30th anniversary of the Copyright Board of Canada

Ottawa, Ontario
October 30, 2019

Dear friends, guests and colleagues:

First, allow me to thank our Chair, the Honourable Robert Blair, our guest of honour, the Honourable Andrew Greenwood of the Copyright Tribunal of Australia, our panelists and moderator as well as everyone who helped organize this event. A special thank you to my assistant, Sabrina Korolus, who coordinated all the preparations for this event.

The Honourable Justice Blair has very eloquently recapped the past 30 years of the Board.

You just heard in the debate some criticisms, some hope and some ambition for the Board.

If I may, I will use that last discussion to jump right into talking about the future.

This point has been made several times today: over the past 30 years, the Board has played a central role in Canada's creative economy.

We tend to be a little less insistent on the Board's particular responsibilities as a public organization.

Indeed, as confirmed by the Government of Canada in its latest amendments to the *Copyright Act*, the Board's mandate is specific in that, in its decisions, it must take into account the interests of those who are not necessarily appearing before it, but who are still likely to be affected. I am talking about the public interest.

I will leave it to others to define the legal ramifications of such a responsibility to focus instead on its significance from an organizational perspective, and to talk about the wager we have made in the last few months.

The Board has chosen to put transparency at the heart of its vision for the future, not only to support a pressing need to operate more effectively and efficiently, but also to fulfill its mandate with respect to public interest.

Over the last few years, the Board has been criticized for being like a black box. The criticisms were heard, and it quickly became important to us to face them in order to ensure the credibility of our organization in the medium and long term.

Therefore, we quickly put in place a series of concrete initiatives, which will pave the way to attaining two key objectives: making the Board an example and a leader in judicial administration and consolidating its role as facilitator of creativity and innovation.

What does being more transparent mean for an organisation such as the Copyright Board?

At minimum, it means that parties and the public more generally are aware and understand the rules of engagement with the Board so they can better prepare and provide the Board with the information it requires to support its decision-making process.

To achieve that goal, we endeavoured to develop and publish a series of practice notices to clarify the rules of game so that all who wishes to engage with the Board for tariff-setting purposes, and those that have to by law, know in advance what will be expected of them and to some extent how the process will unfold.

On March 27, 2019, we published three practice notices to deal with electronic filing to the Board, Acknowledgement of Expert Witnesses, and Sworn Statements or Solemn Declarations by Fact Witnesses in Oral Hearings.

On August 14, 2019, we published another practice notice on Filing of Proposed Tariffs; and Two additional notices are currently in drafting regarding Extensions of Time for Settlement Discussions and Change to the Status of Parties; and more will certainly be produced in the coming year.

We are also developing a handbook for case management that we will publish on our website so that parties are prepared once case management comes in full swing. We have enlisted the help of experts in the field and inspired ourselves from best practices across administrative tribunals to ensure that our proposal is not only rooted in tested principles but also tailored to our particular needs.

The team is also developing an analytical framework to help guide parties as they prepare their evidence, in particular economic evidence in support of tariff requests. This is not an easy task, but one that is paramount.

Our website will be modernized in the coming months with better and enhanced access to Board past decisions via LEXUM, again with a view to facilitate access by parties and the public to what we do. We plan to eventually go much further by using IT to support our actual processes but we are still at the exploratory stage of that project, so stay tuned.

Of course, in the backdrop, we are working diligently to produce regulations that will give true meaning and actual application to the legislative modifications introduced by the Government last year. These will cover with greater precision the time requirements for the Board to render its decisions but also the terms for case management. We are currently working with the Department of Justice and are hoping to publish draft regulations for consultation in the coming months.

And of course, we continue to do what we do best, receiving, analysing and processing tariffs requests to support our members in their decision-making capacity; managing the unlocatable works regime; answering questions from the public; and increasingly doing outreach with similar organisations in Canada and abroad to share best practices and finds ways to innovate and ultimately do a better job. Justice Greenwood – happy to come and see you anytime!

Attracting talent has also been a new priority for the Board over the last year.

I am very proud that the Board launched the Copyright Board of Canada Graduate Student Paper Prize in Copyright Economics this fall, aimed at promoting research and academic thinking on a key aspect in the economics of intellectual property: copyright. The Board hopes that this prize will contribute to create interest for a fascinating field whose edges are constantly blurred by technological advances.

This, in addition to the work described earlier by our Chair, gives you a sense of the task ahead and the workload we face.

I tell my team that the Board has arrived to the inflexion point of its organizational life.

That is the point after the before and before the after.

This particular moment when you feel overwhelmed yet completely impassioned by the promise of what lays ahead.

The promise is that over the course of the next few years, not only are the legislative changes brought by government fully implemented, but the Board is a more operationally effective, more resilient and more transparent organisation.

And parties are happy, of course.

As CEO, I have the pleasure of working with a team of knowledgeable and passionate professionals who too rarely get the credit they deserve for the work they do.

So tonight, allow me to give my deepest thanks to them first and foremost. Kermit the frog would say *It's not easy being green*, well it hasn't been easy working at the Copyright Board in the last few years. Criticism has been harsh, sometimes fair but not always. But still, these professionals continue to work hard, dedicated to their task and excellence in service to Canadians.

Thank you.