

Copyright and Poetry in Twenty-First-Century Canada

Poets' Incomes and Fair Dealing

Twenty-first-century Canada has shifted its definition of copyright to give more weight to fair dealing and to users' rights. Copying original, recently published works without the permission of the copyright owner is more explicitly legal than ever before. The purpose of this essay is to discuss the significance of this historic shift for the unique case of poetry. What effect will the redefinition of fair dealing have on Canadian poetry? Should teachers provide free copies of poems to their students? How important are royalties to poetic creativity? How do contemporary poets make a living, and how does copyright contribute to it? From 2014 to 2015, I directed a survey of approximately fifty active Canadian poets to gather evidence on their sources of revenue and the utility of copyright as they see it.¹ The results indicate that, while the poets unanimously cherish moral rights in their work, the direct commercial benefits of ownership, as measured by the sales of authorized copies, are so low as to be almost negligible. Nevertheless, ownership retains indirect value, in that it provides a framework for the subsidization of poetry. In light of these findings, it is reasonable to advance a complex model for the production of Canadian poetry, one that prizes the established system of government grants for creative writing and authorized book publishing, but that also recognizes the good that comes of unauthorized copying. State sponsorship and fair dealing are compatible tiers in the economics of poetry.

The Legal Context

Jurisprudence and legislation have combined to reform the law of copyright in Canada. In 2004, the Supreme Court delivered a landmark ruling in *CCH Canadian Ltd. v. Law Society of Upper Canada*, stating that fair dealing is a

user's right that should not be interpreted restrictively. The judgment was remarkable but not radical: fair dealing had been an integral component of copyright law since the eighteenth century (Katz 97-104). In 2012, the Supreme Court confirmed the 2004 ruling in a suite of five further decisions that have been dubbed the "Copyright Pentology." Meanwhile, Parliament passed the Copyright Modernization Act, S.C. 2012, c. 20, which explicitly expanded the definition of fair dealing to include not only research, private study, criticism, review, and news reporting, but also parody, satire, and, most importantly for the culture of poetry, education.

Since its origins, copyright law has governed inherently conflicting interests—the private ownership of texts on the one hand, and public access to them on the other. Of the 2012 Supreme Court decisions, the one that touches poetry most closely is *Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright)* [2012] 2 S.C.R. 345, which concerns teachers' photocopying of parts of textbooks for use by their students. Although the Court confirmed the wide scope of fair dealing, it did so in a manner that nevertheless manifests the different interests inherent in copyright. In 2004, a dispute broke out between the provincial ministries of education and Access Copyright, the collective of authors and publishers that licenses educational institutions to copy its clients' works, over the rate of the tariff that schools would pay to cover teachers' photocopying practices. At the Copyright Board of Canada, Access Copyright pressed for the higher tariff, while the education ministries countered that the photocopying constituted fair dealing. The Board found in favour of Access Copyright. The Supreme Court overturned this ruling in the 2012 decision, but not unanimously, and the splitting of the nine judges (five to four in favour of the teachers' fair dealing) attests to the fact that the law will always be a practical negotiation between ownership and use, never an absolute triumph of one over the other.

Delivering the majority opinion, Justice Rosalie Abella identified the photocopying with its final goal, the students' reading: "[T]he teacher's purpose in providing copies is to enable the students to have the material they need for the purpose of studying. The teacher/copier therefore shares a symbiotic purpose with the student/user who is engaging in research or private study" (sec. 23). In a memorable phrasing, she further clarified that "the word 'private' in 'private study' should not be understood as requiring users to view copyrighted works in splendid isolation. Studying and learning are essentially personal endeavours, whether they are engaged in with others or

in solitude” (sec. 27). Finally, she emphasized the barrier of price to access: “If such photocopying did not take place, it is more likely that students would simply go without the supplementary information, or be forced to consult the single copy already owned by the school” (sec. 36). In contrast, the four dissenting judges, led by Justice Marshall Rothstein, insisted that the photocopying constitutes “instruction or ‘non-private’ study” (sec. 43) and that the adjective “private” cannot be evacuated of meaning (sec. 47). Furthermore, he underscored the importance of compensating authors and publishers for their publications:

On the premise that the same class sets of books will be subject to numerous requests for short excerpts . . . it was not unreasonable for the Board to consider . . . that from a practical standpoint, the schools had the option of buying more books to distribute to students or to place in the library or in class sets instead of photocopying the books. (sec. 56)

The struggle over the meaning of “private study” has become a moot point with the addition of education to the list of fair-dealing categories, but it is important to understand that *Alberta (Education) v. Access Copyright*, even as it shored up fair dealing, registered a strong concern for the other principle, too—that authors and publishers should be rewarded for their labour.

While the judgment in *Alberta (Education) v. Access Copyright* is applicable to the teaching of poetry, it concerned textbooks in general. A more specific controversy over the relation between educational copying and the creation of poetry flared up in the winter of 2017 around Professor Nathan Brown, director of the Centre for Expanded Poetics at Concordia University. According to *The Globe and Mail*, Brown was using a high-end Atiz scanner to digitize entire books by a number of contemporary poets, including Dionne Brand, Anne Carson, Jeramy Dodds, and Claudia Rankine, and then uploading the files to the Centre’s web page, where they were freely accessible to the public (Taylor). The Writers’ Union of Canada alerted the publishers, who complained to Brown. Brown acknowledged that the Centre was in the wrong. He immediately removed the files and purchased five copies of each poet’s book (one for each student in the Centre’s reading group). Indeed, a court would probably have dismissed a fair-dealing defence, given the quantity of the copying (whole books) and the character of it (not restricting access to students). What is of most interest, however, is the assumption on the part of the publishers, the Writers’ Union, and *The Globe and Mail* journalist that the unauthorized copying deprived the poets of a significant portion of their livelihood:

"I find it distressing," said Alana Wilcox, editorial director at Toronto's Coach House Books, the publisher of two of the books. "Poets make so little money . . . making their work available for free on a public website feels very disrespectful. . . . These aren't tenured professors with salaries; these are poets who are scraping by, getting no compensation for their hard work." (Taylor)

The logic espoused here is a common one, namely, that book sales enable the creation and publication of poetry. In removing the digital files and buying copies of the poets' books, Brown appears to have accepted such logic. *The Globe and Mail* report grows heated at its end in its denunciation of "scofflaws in the universities" and its ironic references to "fair dealing," always in scare quotes. However, this indignation is precisely what needs to be examined more closely. Does unauthorized copying threaten the livelihood of the poet?

The legal struggle over this question is anything but resolved. In July 2017, the pendulum swung dramatically back toward private ownership when the Federal Court of Canada decided *Canadian Copyright Licensing Agency (Access Copyright) v. York University* [2017] F.C. 669. This case also centred on a tariff, this time for the copies (photocopied coursepacks and digital copies posted to course websites) that university students could be expected to use during their degree. Access Copyright had proposed an increase in the tariff from \$3.38 to \$45.00 per full-time student, which the Copyright Board cut back to \$26.00. York University countered that educational copying according to its institutional guidelines—10% of a work, a single article, a complete painting, or a whole poem, etc.—falls under fair dealing. Burdened with massive amounts of evidence and contradictory interpretations of it, the court nonetheless swept York's defence aside, criticizing the guidelines as arbitrary and the university as lax in its enforcement of them. Judge Michael L. Phelan ruled that the tariff is mandatory and that budgetary goals, not educational ones, had led York to evade it. Furthermore, Phelan accepted the logic that unauthorized copying would destroy writing and publishing: "It is almost axiomatic that allowing universities to copy for free that which they previously paid for would have a direct and adverse effect on writers and publishers" (sec. 25). Here, again, we would do well to pause, to test the assumption. Does fair dealing have this adverse effect? At the time at which this article is being prepared for publication, it remains to be seen if Judge Phelan's ruling will stand.

Economic Models of Poetry

The extent to which poetry can be explained economically is itself a profound question. On the one hand, some might argue, poets defy the market. They scorn writing for money. Poetry is escape from the very

mindset of wage labour. As one poet put it in response to our Judging Copyright Survey (JCS), “Depuis toujours j’écris, non pour gagner ma vie mais surtout pour ne pas la perdre à vouloir la gagner” (JCS).² If the world turns its back on poetry, poets return the favour, looking to posterity for recognition. In the words of Al Purdy, the ivory carver dies, but “After 600 years / the ivory thought / is still warm” (70). This anti-commercial attitude seems essential to poetry, at least for the poet. No amount of money can guarantee the creation of a good poem. No economic inquiry can ever really get at what it is.

On the other hand, others might say that poetry is not outside the economy. Every poet must make a living. Creation depends on propitious circumstances; it thrives precisely on concentrated wealth, if not personal then regional, industrial, and social. If Shakespeare succeeded in the London theatres during the long reign of Elizabeth I, his famous example represents the ways in which poetry benefits from proximity to kindred talents, substantial audiences, and economic power. Poetic creativity needs space and freedom, yes, but it also needs an income: private inheritance, patronage, sinecure, royalties, compatible employment (teaching), institutional residency, arts grants, prizes. It is worthwhile, at least for the scholar, to step back from the purely literary study of poetry to consider the material conditions in which it flourishes.

The simple model of copyright, from the owner’s perspective, is that property in published work motivates authors, since it entitles them to derive revenue from the further copying of their work. Distinguishing between individual copy and intellectual content, John Feather’s definition incorporates this rationale: “The purpose of copyright law is to define the extent to which the owner of the physical object may legitimately make use of the content while ensuring that the creator and owner of the content (who may not be the same person) are appropriately rewarded” (520). It is attractive to conceive of the market as naturally rewarding poets for their work, but if contemporary poetry is to be discussed economically, our theoretical model of it must move beyond the assumption that demand drives supply, for the simple reason that poetry generally does not sell. Although objections can be raised to this generalization—Byron’s books, *The Norton Anthology of Poetry*, books for young children—on the whole it holds that original poetry by living poets has a tiny market. According to Sarah MacLachlan, publisher and president at House of Anansi Press, publishing a book of new poetry is always a clear financial loss. Anansi produces a few of them each year for

reasons of prestige and out of loyalty to its own tradition as a publisher, using money derived from more lucrative titles and from grants. It is an old story in Canada. “A sale of 300 or 400 copies of a new volume of poetry is probably all that is to be expected,” observed John Gray, publisher at the Macmillan Company of Canada, at the Canadian Writers’ Conference in 1955 (63). He continued: “[o]f two volumes of poetry imported from England last season we managed to sell in Canada four and sixty-seven copies respectively; the second volume was by an exceptionally distinguished figure . . . In the face of such indifference what justification can there be for publishing poetry? Certainly no commercial justification” (64). Nevertheless, a few years later, Gray would publish James Reaney’s *A Suit of Nettles* (1958), a book that would go on to win the Governor General’s Literary Award for poetry.

In their recent book of interviews with writers, *Producing Canadian Literature*, Kit Dobson and Smaro Kamboureli examine the economics of poetry as well as fiction and non-fiction in contemporary Canada. The centrality of grants and prizes to poets’ careers is one theme that emerges in the collection, although the administration of such awards is highly contentious among those interviewed. Dissatisfaction with the conventional marketing of poetry is another. For example, Erin Moure emphasizes the vital role of the reader in the life of poetry—“This person is part of your book, because without this person, it’s no different than a block of wood” (108)—and goes on to criticize the “early industrial model of production” that has characterized writing in Canada. She looks forward to

a new model that takes into account electronics, that crosses borders, and that engages the young writers coming up so that they have access. Then there will be a public, rather than this industrial model that has poets being anxious over this object [*holds up a book*]. And anxious about whether their bog-standard book will get on a shortlist. (110)

This veteran poet’s remarks prioritize access over conventional sales.

Dobson and Kamboureli’s interview with Ashok Mathur throws commercial publication into relief through the alternative of the chapbook. The modern chapbook—the small, often self-published edition produced out of relatively uncompromising artistic or political ideals without regard for market value—established itself as a standard form in the twentieth century. In print runs of two hundred to five hundred, Mathur published a dozen chapbooks under his disOrientation imprint in Calgary from 1992 to 1997, including writing by Robert Kroetsch, Roy Miki, and Hiromi Goto. Mathur describes his desire to break away from the meagre financial cycle that characterizes the

mainstream publishing of poetry: “If your book is having print runs of five hundred or a thousand, which is pretty standard, then you’re making a dollar to a dollar fifty a copy. Over the course of a three-year run, you might be making maybe \$500 or \$1000. Is it worth holding out for that money if you’re a poet?” (43). A thousand dollars over three years is not enough to pay the rent. It is not enough for groceries. The essential goal of Mathur’s chapbook publishing was not financial but artistic/social—the creation of “innovative bookworks” (42) and the “distribut[ion of] them more directly and freely” (43).

Such initiatives litter the history of Canadian poetry. Other examples of chapbook series are the Ryerson Poetry Chap-Books, New Writers, Fiddlehead, Carillon, A-Z, Immersion, New Brunswick, Devil’s Whim, Tuatara, and Staccato Chapbooks. Many poets publish small collections outside of any such series. Many others have autofinanced magazines and full-length books. All of this activity questions the extent to which poetry depends on any calculation of revenue from the sale of copies. Someone might object that a thousand dollars over three years is better than nothing. This is true, all things being equal, but what if earning revenue from the sales of books and reaching an increased audience are not mutually exclusive? After all, an audience comprises different tiers of users. Connoisseurs tend to be eager to buy a book, while uncommitted students tend to be loath. The current fair-dealing provisions entice the latter without necessarily replacing the former.

In rethinking the model of publishing poetry, it is also crucial to remember that copyright law provides for moral rights as a distinct category from economic rights. Moral rights are a category that fair dealing does not disturb. Sections 14 and 28 of the Copyright Act, R. S. C. 1985, c. 42, define moral rights to include that of attribution (the right to be acknowledged as the author of one’s work by name or pseudonym or to remain anonymous), integrity (the right to see one’s work published whole and unadulterated), and association (the right to prevent one’s work from being used in connection with a product or service that damages one’s reputation). Even if copies are made under a fair-dealing exception, then, the owner still has the power to control aspects of the work through his or her moral rights. Another series of interviews, conducted by the organization Canadian Women in the Literary Arts (CWILA), provides evidence that poets are used to distinguishing their moral rights, which they hold dear, from their economic ones, which can often be dispensed with. For example, Sachiko Murakami grasps the division between creative reuse and plagiarism:

I'm more interested in the commons than the marketplace. The idea that I own a poem is a weird concept to me. It has no life until a reader comes along and we create meaning together (another collaboration). . . . I don't advocate for everyone just ransacking everyone else's language, though. Sometimes crossing that divide can be an act of aggression.

This commentary may appear paradoxical, since Murakami rejects private ownership of a poem in one breath only to assert the individual possession of language in another. It is quite sensible, however, as an articulation of moral rights. It is fair for others to take Murakami's poem, make their own meaning from it (as readers), and even make it into a new poem of their own (as poets), but it is not acceptable for them to claim her original poem as their own, or to pass off a deliberately adulterated text as hers.

Finally, a revised model should recognize the extent to which the various roles in the life cycle of poetry—writers, publishers, teachers, librarians, students—are more often than not interdependent and entangled rather than discrete. University poetry instructors are often active poets themselves, as will be shown below, and Laura J. Murray and Samuel Trosow recognize complexity such as this when they urge us to move beyond the trope of a battle between owners and users: “People learn to create by seeing, imitating, experimenting, listening, practising, and watching . . . creators are the most ardent consumers of the arts. They need ample and affordable access to the works of others” (xi). The challenge, then, is not to wish for one group, poets or professors, to vanquish the other, but to strengthen the bridge of understanding between them.

The Survey

Understanding of this kind motivated my dual-purpose survey of contemporary Canadian poets, which proceeded under the working title, “Judging Copyright: Legal Pressures and Literary Activity in Canada.” Its first purpose was to gather information about the value of copyright to their writing careers, both their opinions and some quantifiable data, in order to learn about the issue from the writer's perspective. The second purpose was to reach out to them as a representative of their audience—both as a spokesperson for the university educator's interest in fair dealing and as a real reader of their recent work. The goal was thus to open a dialogue between writer and reader, to contribute actively to the social process of negotiating copyright in contemporary Canadian poetry.

My research assistants and I identified poets for the study using two sources: the annual *Best Canadian Poetry in English* anthologies edited by

Molly Peacock, and Andrew David Irvine's bibliographies of the winners of the Governor General's Literary Awards. For the most part, we selected poets with two or more full-length collections. The reason for this choice was our desire to understand the position of accomplished writers who have an appreciable readership and some commitment to the traditional printed book. Peacock's anthologies are based on Canadian literary magazines, and relying on them thus also slants the survey toward print. We do not pretend to have captured the views of those working only in other media such as born-digital or installation art. Probably because of the two-book threshold, the average age of our poets is fifty. Moreover, only seven francophone poets responded to the survey; our study thus mainly covers English Canada.

We met weekly to discuss our reading of a poem and then contacted the author to share our interpretations and introduce the survey, which was administered online. The respondents have been anonymized to protect their identities and a draft of this article was circulated electronically to all for their approval prior to publication. Of the seventy-four poets identified, nineteen responded to the survey in 2014 and twenty-nine to the revised survey in 2015, totalling forty-eight respondents. This is by no means an exhaustive record, but it is a fair sample. Interpreting poems and composing personalized letters was a slow but effective way to proceed. Although we failed to entice some big names, the response rate was 66%, and the most gratifying result of the project was our exposure to many brilliant new poems, which we had the pleasure of discussing with the authors themselves, and which I have since incorporated into my teaching.

In the survey, we asked respondents to estimate the percentage of their income that comes from various sources, starting with royalties and similar payments. Some of these sources are largely commercial (from sales) and others mainly interventionist (from subsidies), although the two categories overlap. Royalties, of course, are the fraction of the retail price of a book that the publisher pays to the author each time a new copy is sold. They depend on the sale of authorized copies, which generates income for the original publisher. Payments from magazines are similar. A magazine pays a contributor once for permission to publish his or her work—thus recognizing creative property—and then recoups its costs through subscriptions. Canadian literary magazines are also subsidized by governments, universities, and private endowments. Payments from collectives like Access Copyright are more sophisticated but are still based on the commercial logic of consumers paying for their use. In addition to

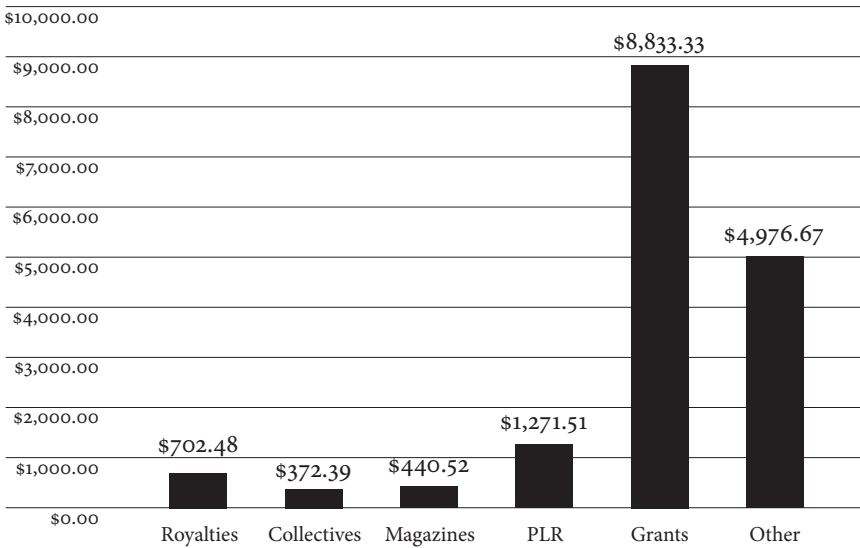
these mechanisms, there are other streams of revenue less tied to the sale of copies. The grants administered by the Canada Council invest in the creation of new literary works. Poets apply for them, and juries adjudicate and rank the applications on merit. The grant is meant to stimulate creation; it is dispersed in advance, whether a work goes on to sell ten copies or ten thousand. Still, a poet's publication record is a salient factor in the adjudication of his or her grant application: the better one's CV, the more one merits the grant. It might be added that, by stabilizing both writer and publisher, the state aims for indirect returns on its investment in the form of taxes. The Canada Council has run many granting programs for writers, covering travel, translation, public readings, and residencies. It also administers the Public Lending Right (PLR) Program, which compensates registered authors according to the frequency with which their books are found in public libraries across the country. In 2015-2016, the PLR Commission paid out approximately \$9.8 million to 21,000 Canadian authors, with per-author payments ranging from \$50 to \$3,556 at an average of \$568 (Public Lending 19). The PLR might be likened to commercial publication in the sense that its rewards are indexed to use rates, but it is essentially a subsidy because the government allots the funds that it pays out each year. Finally, literary prizes are also based on merit and emanate from public or private endowments. In contemporary Canada, the book trade and government funding criss-cross each other at many points.

On average, the surveyed poets reported making less than 2% of their annual household income directly from commercial sources (see Chart 1). Royalties, magazine payments, and payments from collectives added up to 11% of the poets' income earned as writers. Since their average income as writers (\$13,121.80) was only a fraction (18%) of their and their spouses' average combined total household income (\$72,417.39), however, these sources yielded only 1.98% of their living. Grants, PLR payments, and other non-commercial sources amounted to 89% of their income as writers, but still only 16% of their total household income. These quantities, although less exhaustive than suggestive given the modesty of the survey, nevertheless confirm how little poetic creativity derives from the free market. Poets depend overwhelmingly on various forms of support, from other personal income to grants and prizes.

In their qualitative comments to the survey, the poets rejected the idea that money motivates, limits, or permits their writing. "I don't write for money—I've written consistently when income has been high or low," noted

Chart 1

Income Earned as Writer: Annual Averages



This chart breaks the poets' average earnings from their writing down into different sources.

The "magazines" category includes one-time fees charged for inclusion in an anthology. The "other" category includes revenue from public readings, editing, jury work, residencies, and literary prizes, many of which are funded, like the Public Lending Right payments and creative writing grants, by government (JCS). The chart is based only on the revised survey from 2015, which divided income streams more precisely. For this reason, these columns will not add up to the average income for writers reported above (\$13,121.80), which was calculated from both the 2014 and 2015 surveys.

one poet (JCS). We asked them whether royalties, magazine payments, and payments from copyright collectives are an important factor in enabling them to write poetry, and their answer was negative: the average and median answer was "not really" (2 out of a 5-point scale), and the mode "definitely no" (1 out of 5). At the same time, however, many poets described the validation that even a little money brings with it:

These amounts may not be large, but they do help out, practically; moreover, they give me a sense of fair treatment in situations where other people will be making money (however small an amount) because of the publication of my work. There is a certain amount of validation in making money for something, even if it's a small payment, that allows you to say to your family (and yourself!), see, what I do is important. (JCS)

Another poet wrote, “[S]ometimes my royalty cheques, especially for older books, can be as little as \$14.00. Still, it is good to know that books are being bought years after they were written” (JCS). Another pointed out that “[i]t is valuable to be compensated but also valuable to know that your books are being used” (JCS). Clearly, the quantitative measure of income does not tell the whole story. Money has a non-monetary value, too.

We polled poets on the interrelated issues of ownership and access through several questions. Would they approve if they knew that a school or university instructor was distributing unauthorized copies of their work to students? Would it be acceptable to them if another poet or another artist used their work in his or her creative process? Have they ever come across their work posted online without their permission and how did they react? In the aggregate, their responses expressed wariness. On average, they were “neutral” (3 out of 5) on the prospect of finding their work used without their permission in another medium, such as a film. They did “not really” (2 out of 5) approve of unauthorized copying, whether by an educator, a fellow writer, an anthropologist, or a blogger.

Individual comments ran the full gamut. On the question of classroom use, there were strong statements for ownership and the seeking of permission:

It is of utmost importance to me that I retain copyright of my own written work, and that there are laws in place to make that copyright meaningful in a practical, economic and moral sense. . . . I do not think it’s unduly difficult for people, whether they are educators or creators or others, to seek permission (and where appropriate, to offer compensation) to use another’s work. (JCS)

This measured position aligns with the stance of the Writers’ Union of Canada, as laid out on the Union’s website. Others wrote in favour of free use and the exposure this promotes. One underscored the prevalence of subsidy-based economics over sales: “Poets have ample opportunities to earn income from grants, prizes and author appearances. There is so much public funding available to support poetry that it is shortsightedly selfish to insist on payment for work used in a public education setting” (JCS). Another identified him/herself as both creator and user, making explicit the entanglement of positions noted above:

As a university teacher, I have often photocopied pertinent poems by way of illustrating an instructional matter that has come up in class. I can hardly complain if someone used my poem in a similar way. No sales are lost in this process, in my judgment: in fact, students introduced to a writer’s work via poems handed out in class frequently seek out books by that poet, i.e., book sales can result from such free distribution of samples of an author’s work for pedagogical purposes. (JCS)

Given that twenty of the forty-eight respondents identified education as their principal sector of employment, it is not surprising that several expressed this sort of ambivalence: “I stand on both sides of this argument” (JCS).

On the question of creative reuse, the poets distinguished between acknowledgement and plagiarism. “It would certainly depend on the degree of reworking,” responded one, “but I have no problem with this in principle, as long as best practices are followed. It must be either relevant or transformative” (JCS). A second answered, “if I use any part of another work I always make a note of it at the end of the poem or at the end of the book. I also acknowledge when I write ‘after’ another poet’s poem” (JCS). Wrote a third, “it wouldn’t be a problem if I were properly credited. I want my work read” (JCS). “This is how art is made in general” (JCS), observed a fourth. The tenor of these remarks is that artistic reuse is acceptable on condition that due credit is given. One case came up, however, in which a hypersensitivity to intellectual property encroached even on the best practices of “writing after”:

On two poems in my last book I had included short epigraphs with full attribution. One was a line from Cocteau’s *Orphée*; the other was a brief excerpt from a microscopy text. To my amazement, the publisher asked me to drop them because there was no time to ask for permissions. . . . The changes I had to make were damaging to both poems, and I regret them. (JCS)

Another respondent queried the limits of acceptable reuse: “I work quite frequently with found material and always cite my sources but am never entirely certain how much material can be borrowed/transformed, what constitutes ‘borrowing’ versus ‘adaptation’” (JCS). A particularly frank response delved into the subconscious layers of creative reappropriation: “I feel a lot of anxiety of influence. Like, you finish a poem, and you really like it, and then a month later you’re reading somebody’s book from a few years ago, and you’re like, oh. Drat. Now I know where that trick came from. That’s not a bad thing, necessarily” (JCS). Acknowledging one’s fellow poet is a good rule, but it is only a convention. Because language is social, poetic creativity will cross the asserted perimeters of private property from time to time.

Reactions to online copying ranged from lukewarm to cold. A lukewarm response ran thus: “I have found several of my poems reprinted via Tumblr and other web sites. I don’t know how one goes about monitoring such online posts. However, to be honest, I am just glad that people are reading

my poetry—or any poetry!” (JCS). A colder one was as follows: “There are several YouTube videos of me reading poems. I did not give permission” (JCS). Lingering on this issue allowed certain respondents to question the extent to which poetry can even really proceed via the Internet: “The Internet is for surfing, not for reading with the kind of deliberate care poetry requires” (JCS). Another respondent confirmed this distinction, judging the form of copy (handwritten sheet, printed book, photocopy, online post) according to the author’s moral right to the integrity of a work: “The infringement of moral right online is out of control. . . . When the work is not copied correctly—and in most cases it isn’t—this sort of unauthorized publication, attributing to authors things they have not said, constitutes a form of libel” (JCS). These last two quotations exhibit experiences of two cultures of reading: one centred on the printed book, and one on electronic devices. Given the criteria we used to select poets for the survey, it is not surprising that a number of our respondents questioned the compatibility of poetry and the Internet.

The survey resulted in one collateral finding, namely, the persistent material nationality of Canadian poetry. A question asked respondents to tally the number of books, chapbooks, and magazine pieces that they have had published in Canada, the US, and other countries. Its purpose was to help us assess the respondent’s depth of experience as a published poet. What it yielded was evidence of geographical rootedness. There is an overwhelming tendency among Canadian poets to have their books published in Canada. Of the 308 books published over the course of their careers to date, the surveyed poets collectively reported that 265 (86%) were published in Canada. This fraction rises even higher (to 94%) if one anomalous poet (with 30 Canadian books, 24 American, and 4 others) is not counted. A similar, if less pronounced, trend appears in magazine publication: together, the respondents reported 882 poems published in Canadian magazines, 268 in American ones, and 250 in other international ones. This finding may be biased by the method of selecting poets; however, finding a poet in a Canadian anthology would not necessarily exclude his or her publishing elsewhere too. Short of evidence to the contrary, it appears that Canadian publishers are crucial to poets working in Canada. Despite globalization, contemporary poetry is still enclaved in the state, and what this material nationality means for this study is that Canadian copyright law matters to Canadian poetry.

Conclusion

Authors, publishers, and readers all co-operate to build literary culture, and it is important to find ways past simplistic assumptions that would pit them against each other as hostile opponents. One such assumption is that copying a poem is an act of theft that deprives the poet of his or her living. This assumption is attractive, even “axiomatic,” but it is not borne out by the findings on poetry presented here, which, although preliminary, suggest that contemporary Canadian poets derive approximately 2% of their annual household income from royalties and other commercial payments, 16% from government funding or privately endowed prizes, and 82% from other sources. Many poets, as writers and educators, have an entangled position on both sides of the line between private property and public access. Several identified their chief interest to be the reading of their work. Are the fair-dealing provisions of the Copyright Act, then, really a threat to the poet’s livelihood? Ariel Katz points out that such provisions have been with us for a very long time. Justice Abella reminds us not to assume that stricter enforcement of owners’ rights would turn every unauthorized copy into an authorized sale, and as the case of Nathan Brown indicates, educational copying that is deemed unfair can still be stopped.

Another unhelpful assumption, however, is that all poems are now free and that readers should no longer have to pay anything for them. On the contrary, the creation of poetry is deeply proprietary. Poets view their work as the inscription of their life and the record of their being. They value payments from the sale of copies of their works. Any amount of income is better than none, and it not only encourages but legitimates writing as a profession. For publishers such as Sarah MacLachlan, poetry is part of a wider business plan involving prestige and grants. How far fair dealing affects publishers reporting net losses on their poetry lines is the next question that should be studied with disinterest, especially given the emphasis that *Access Copyright v. York University* placed on such losses, both real and projected. For the state, poetry is an institution with cultural and economic facets. The rise in state sponsorship of literature in the late twentieth century, which made Canada a place where writers wished to live (like Michael Ondaatje) rather than escape (like Bliss Carman), followed the stabilization of literary property across North America, a development that suggests an indirect but compelling causal relation between authors’ property and public investment. Unlike royalties,

government funding does make a major financial contribution to Canadian poets' income. It is a strategy that makes all citizens pay for poetry whether they read it or not.

One way past the deadlock of mutually hostile assumptions is to view contemporary Canadian poetry as possessing a multi-tiered economic structure that combines private and public dimensions compatibly. In this view, writing and publication are supported by the state while reception is encouraged through fair dealing. The audience for poetry consists of specialists, who will continue to gravitate to authorized editions because of their aura; it also consists of members of the wider public, who should have the stillness of poetry thrown into their busy path by every available means, including fair dealing, not least because the demands that poetry makes of them as readers is barrier enough to their accessing it. Instructors should direct their students to buy books of poetry, teaching them that buying not only supports poets and publishers directly, if symbolically, but also helps build one's own personal library. At the same time, teachers should practise fair dealing, making texts accessible to a limited extent if there is no good alternative, and if doing so serves pedagogical goals and supplements the required books without unduly negatively affecting the original works. Readers should be taught to buy and copy poetry, partly because citizens pay taxes that uphold the state's sponsorship of the arts, and especially if students pay tariffs up front for copying that they may or may not do, but most of all because, by reading, they complete what a writer can only begin. As they mingle their life with that of poetry, they grow into the responsibility of giving poets their living.

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NOTES

- 1 This research adhered to standards set out in the CIHR, NSERC, and SSHRC *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans*.
- 2 "I have always written, not in order to earn my living, but above all so as not to lose my life through trying to earn a livelihood."

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