

WHO OWNS COPYRIGHT IN A REGISTERED PLAN OF SURVEY – A BRIEF UPDATE

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In May 2018 we reported on the Ontario Court of Appeal decision in *Keatley Surveying Ltd.*^[1] which held that a land surveyor did not own the copyright in a plan of survey presented for registration or deposit in Ontario's land registry system. In our earlier bulletin we noted that the surveyor had filed an application for permission (leave) to appeal to the Supreme Court of Canada. Teranet filed an application for leave to cross-appeal.

On June 21, 2018 the Supreme Court of Canada granted the surveyor leave to appeal the decision of the Ontario Court of Appeal to the Supreme Court of Canada. It also granted leave to Teranet to cross-appeal.^[2]

The Supreme Court of Canada does not give reasons when granting leave to appeal, so it is difficult to say very much about the case except that the Court will look at the issues raised by the parties.

The surveyor sought leave on the proper interpretation of s. 12 of the *Copyright Act*. It contends that the section should be given a narrow meaning, and that it cannot be read to mean that if a government body chooses to publish a work whose copyright is held by another party the government becomes the owner of the copyright.

In order to understand Teranet's cross-appeal it is necessary to recall that *Keatley* was a certified class action, and the decision under appeal arose from motions for summary judgment by the parties on the common issues following the certification. The ownership of the copyright had been certified as common issue 2. There were other common issues that we not dealt with in the Court of Appeal, as Teranet's success on common issue 2 meant that those other issues did not need to be addressed. In the Supreme Court of Canada Teranet sought leave to cross-appeal and have the other common issues referred back to the Ontario Court of Appeal for determination in the event that *Keatley* succeeds in its appeal.

The Attorney General of Ontario made very brief submissions in a letter to the effect that *Keatley's* application for leave did not raise an issue of national or public importance.

by Peter Wells

[1] *Keatley Surveying Ltd. v. Teranet Inc.* [2017 ONCA 748](#); 139 OR (3d) 340

[2] *Keatley Surveying Ltd. v. Teranet Inc.* [SCC Case 37863](#)

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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