

Copyright Ownership in the Workplace: What Employers and Employees Need to Know

By Bruna Kalinoski and Florence Hogg

Earlier this year, the Ontario Court of Appeal addressed the issue of copyright ownership in the workplace in its decision *Nexus Solutions Inc. v. Krougly*¹ (***Nexus Solutions***). The Court held that the *Copyright Act* limits employers' right to ownership to situations where works are developed in the course of the actual duties an employee is responsible for, and does not include everything that an employee could have been asked to do or generally related to the employee's expertise.² Understanding exactly what is within the purview of one's employment responsibilities is paramount for employees who undertake side projects in tandem with other employment duties and develop intellectual property in doing so.

What You Need to Know

In *Nexus Solutions*, the Ontario Court of Appeal considered an employer's claim of copyright ownership under the *Copyright Act*. The default ownership rule for copyright is predicated on the idea that an author of a work shall be the first owner of the copyright.³ The Court in *Nexus Solutions* was called to interpret the provision of the *Copyright Act* that concerns "work made in the course of employment."⁴ That provision prescribes that an employer is the first owner of the copyright to a work when an author's work was made in the course of the author's employment—unless there is an alternative agreement to the contrary.⁵

The Ontario Court of Appeal noted that the underlying rationale for recognizing the employer as the owner of copyrighted works created by employees in the course of their employment is because the employer is the one providing the resources, means, and direction for the ideation and development of the work. The employer also assumes the major financial, organizational, and associative risks involved with the creation, production, and distribution of the work, so the employer should retain full control over the exploitation of that work, including with respect to third parties.⁶

The Court considered the key issue in *Nexus Solutions* to be whether the making of the work in question was something that the employee was "actually" asked or expected to do, either expressly or by necessary implication, as part of their employment responsibilities.⁷

¹ [2026 ONCA 199](#) (***Nexus Solutions***).

² [Nexus Solutions at paras 32-34, 40.](#)

³ [Copyright Act at section 13\(1\).](#)

⁴ [Copyright Act at section 13\(3\).](#)

⁵ [Copyright Act at section 13\(3\).](#) Unless the author's works is a contribution to a newspaper, magazine or similar periodical – in which case the author maintains the right to restrain the publication of the work.

⁶ [Nexus Solutions at paras 27-28.](#)

⁷ [Nexus Solutions at para 29.](#)

Key Facts of *Nexus*

Mr. Krougly was a software developer under the employ of Nexus Solutions Inc. (**Nexus**). He was tasked with maintaining and developing Nexus' emissions-monitoring software, the "CEMView".⁸ During the time he was employed with Nexus, Mr. Krougly developed a competing software called "Limedas".⁹ He used his personal time and personal equipment to do so.¹⁰ Mr. Krougly marketed Limedas to Nexus' customers once he resigned from the company.

The dispute centered on Nexus' claim that they owned the copyright to Limedas under section 13(3) of the *Copyright Act*. The trial judge held that the copyright to Limedas belonged to Mr. Krougly, and the Court of Appeal dismissed Nexus' appeal.

The Court of Appeal's Decision in *Nexus Solutions*

Interpreting section 13(3) of the *Copyright Act*, the Ontario Court of Appeal held that a company's copyright ownership under that provision arises when works are created in relation to an employee's actual job duties, not generally work the employer could have assigned to the employee but never did.¹¹

Ultimately, the employee, Mr. Krougly, maintained his copyright ownership over Limedas because:

- Limedas did not substantially copy CEMView;¹²
- Mr. Krougly developed Limedas independently, and his development of Limedas was clearly a side venture;¹³
- Creating new software products was not part of Mr. Krougly's work duties; in fact, he was expressly prohibited from unauthorized software development in his job description;¹⁴
- Nexus did not direct, fund, or assume any risk related to Limedas;¹⁵ and
- There was no written employment agreement addressing IP ownership.¹⁶

The Court recognized that an employer may have other legal claims against an employee who engages in conduct that may be offside their employment terms and surreptitiously

⁸ [Nexus Solutions at paras 5-6.](#)

⁹ [Nexus Solutions at paras 7-8.](#)

¹⁰ [Nexus Solutions at paras 7-8.](#)

¹¹ [Nexus Solutions at paras 34, 40.](#) The Court of Appeal considered a hypothetical example as an explanation of this in [paras 35-38.](#)

¹² [Nexus Solutions at para 11\(1\).](#)

¹³ [Nexus Solutions at paras 11\(2\), 11\(5\).](#)

¹⁴ [Nexus Solutions at para 11\(3\).](#)

¹⁵ [Nexus Solutions at paras 11\(6\), 11\(7\).](#)

¹⁶ [Nexus Solutions at para 11\(4\).](#)

develops a similar software intended to compete in the employer's market. But a proprietary claim under copyright laws is not it.¹⁷

Takeaways from *Nexus Solutions*:

1. **The scope of someone's employment duties is critical to understanding the copyright ownership implications related to work created in the course of employment.** Mr. Krougly's developed new software (i.e., Limedas) not during his working hours or with the employer's resources or direction, so he retained copyright ownership over the work.
2. **Copyright laws do not provide a means to "punish" an employee's conduct or behavior that is inconsistent with his employment duties.** Beyond the IP implications, the lawyer should consider available claims under contract and equity, including breach of confidence, loyalty, and fiduciary duties.
3. **An employer does not automatically own all works created by an employee just because the works relate to the employee's expertise.** The idea that any work falling within the general class of software development that Mr. Krougly was capable of performing automatically belonged to the company was incorrect.¹⁸
4. **Employment agreements can clarify the employer's intentions when it comes to copyright and other IP created by employees.** Notably, in *Nexus Solutions*, the employment agreement could have increased the employee's scope of work that the employer could claim copyright ownership in relation to, or expanded the restrictions on development of new and competing software.

Future Implications

Employers and employees are well advised to seek guidance from IP counsel in formalizing employment agreements to have a clear delineation of the employer's expectations and the employee's duties when it comes to the creation of copyrighted work or other IP—especially in circumstances where evolving job descriptions and expectations implied in employment agreements may quickly become outdated.

The increasing adoption of AI in the creation process may also affect ownership rights in the workplace. Ultimately, what is included in an employee's scope of work typically drives how courts will consider the allocation of IP rights between employers and employees.

BD&P's [Intellectual Property & Technology](#) team can help companies and creators navigate copyright ownership, review existing agreements, and develop practical strategies to protect intellectual property.

¹⁷ [Nexus Solutions at para 13](#) repeating what was held in the Trial Decision.

¹⁸ [Nexus Solutions at paras 32-34](#).