

Toronto house copyright case raises questions about the law

By Jennifer Pritchett, Associate Editor



A case involving a Toronto couple who alleged their neighbours copied the look of their home highlights how housing architecture can be copyrighted but to prove it, the structures have to be identical and there must be evidence to show one was essentially replicated, says Toronto civil litigator [Sarah O'Connor](#).

"Most people don't realize that architecture is art and it can be protected by copyright," she tells [AdvocateDaily.com](#).

To prove it, you have to point to how unique aspects of the design were copied and that can be difficult.

"There is a fine line between making a compliment in the repetition of a design and making a strict reproduction."

O'Connor, principal of [O'Connor Richardson Professional Corporation](#), says in looking at copyright, such things as what makes the building unique is considered.

For example, if a person copied the design of the OCAD University building in Toronto and erected it next door that would clearly be copyright infringement, she says.

But for two homes or commercial buildings to share the same style is not copyright infringement, she adds.

In the Toronto dispute, a Forest Hill couple took their neighbours to court, alleging their home was renovated to be "strikingly similar" to theirs, reports the [Toronto Star](#). They filed a lawsuit against the owner of the remodelled home, her builder husband and architect brother-in-law for copyright infringement in federal court. They also filed the suit against the real estate agent who profited from the house's sale after the renovation and the contractors who worked on it, the article says.

The couple sought \$1.5 million in damages, \$20,000 in statutory copyright damages, \$1 million in punitive damages and a mandatory injunction on the defendant to change her home's design, says the [Star](#).

The renovated home's owner denied the allegations and said it was inspired by Tudor stone cottages and that the window colour, doors and stonework, as well as the application of the Tudor-style stonework for a facade has been common for centuries and is not protectable by copyright, the article says.

Even though the dispute went on for three years, the allegations weren't proven in court and the parties settled; the terms of the settlement weren't disclosed, says the newspaper.

O'Connor says normally copyright rests with the creator and generally speaking when it comes to homes and other buildings, the copyright sits with the architect and not the homeowner.

"It's usually an architect suing another architect firm for the plans," she says.

O'Connor says there are few cases of copyright infringement involving homes in Canada and the Toronto matter may be one of the first.

"It's a unique area of law," she says.

But there are many such cases in the United States, she says.