Whether, in pursuing their goal, they have gone too far in favour of user's interests by precluding any leeway.

QB In CCH, the Supreme Court of Canada adopted a standard for originality in copyright which requires more than that the work originated from the author. As stated by the Court, original does not equal originated, it is something more. The Court adopted a test that requires that an original work be the product of an author's exercise of skill and judgment. This was a step higher than the previous "sweat of the brow" approach, and requires that skill and judgement be involved to the point where it is not merely a "purely mechanical exercise". It has been noted, however, that the standard is still relatively low. J. Mclachlin did not adopt the even higher "creativity approach", which would require

a minimal amount of creativity. As such, the standard is still quite low, even with the CCH standard, and for good reason. For one, we do not want judicial censorship, with the Court acting as society's ~~[redacted]~~ gauge over what works are worth enough to be considered valuable. A low standard of creativity allows the consumer to be the judge. As well, with copyright, often ~~[redacted]~~ ~~Creative~~ very valuable works do not encompass a great deal of creativity. By not adopting a creativity test, the Court has left some room for the protection of such works. Finally, copyright does not grant a monopoly, and independent creation is a defense. As such, a low standard does not have the potential for monopolistic pricing that patent does. If we protect something, one can create it

themselves, and the idea is not protected. Furthermore, if it is worthless, what does it matter that it has copyright protection?

Patents, on the other hand, present a much greater danger economically to ~~the~~ society. The patent bargain, in theory, represents a contract in which the state grants the creator a monopoly, which can extend to ideas if claimed properly (concrete expression), in return for giving society the tools to create the invention when the patent expires and ideas to build upon. However, because of the power of a patent monopoly, the "non-obviousness" requirement has been set higher. Theoretically, the "correct" obviousness standard requires that only those inventions which require the patent laws should be patentable. However, the "but-for" test (John Deere)

which was put forth to try and implement this standard was unworkable. The knowledge required to put it into effect, including extensive residual incentive information, makes its implementation by judges and ~~appeal~~ lawyers "utterly unschooled in the scientific substance" ~~of~~ inapplicable in many instances. The test now adopted by the Beloit test (TSM), has lowered the standard when it arose, arguably, allows in too many patents that did not require the patent law. Its grant step back from the Graham question, has seemingly reduced it to a test of novelty, asking whether a rather stupid scientist would have "come directly and without difficulty to the solution", as the thought has always been that the nonobviousness Standard is low because the obviousness standard ~~for~~ filters out bad

products, perhaps the patent requirement for non- 6
obviousness has moved too far towards the copyright 3
standard of originality, requiring a higher standard for 6
utility, such as that for Brenner to ensure that the 3
state is not getting the bad end of the
"patent bargain". Due to the potential costs of 3
granting the patent monopoly, the "non-obviousness" 4
requirement must remain high, as a matter of policy.

Question 4

There are several advantages to early examination which supports its use. For one, it grants a certain degree of certainty. While it is certainly not conclusive, as it may be later challenged, the examination at least provides a good indication ~~of~~ that it is a proper patentable invention. This reduces uncertainty in the market,