

A Brief Submitted to the Standing Committee on Industry, Science and Technology
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RE: 2018 Statutory Review of the Copyright Act

Copyright and the 50-Year Rule

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Interest groups continue to pressure the Canadian government to increase the period during which copyright restrictions on written material apply from 50 years after the death of the author to 70 years after the death of the author. It's pressure that Canada should continue to resist.

Let's think for a moment of how very, very long copyright restrictions *already* apply in Canada:

Leonard Cohen died in 2016; his *The Spice-Box of Earth*, published in 1961, will not enter the public domain until January 1, 2067—106 years after it was published. Cohen's now-classic 1966 novel *Beautiful Losers* will enter the public domain the same year—101 years after it was first published.

P.K. Page died in 2010. Her breakthrough book of poetry, *The Metal and the Flower*, published in 1954, will not enter the public domain until 2060—106 years after it was published.

Mavis Gallant died in 2014. Her breakthrough short story "The Other Paris," first published in *The New Yorker* in 1953, will not enter the public domain until 2064—111 years after it was published.

What about the works of authors who are still young or middle-aged today?

Yann Martel was born in 1963, Miriam Toews in 1964; *Life of Pi* was published in 2001, *A Complicated Kindness* in 2004. If each lives to at least 85—these days, an average lifespan—those already-classic Canadian novels will not enter the public domain before 2099 (in the case of Martel's) and 2100 (in the case of Toews).

Terese Marie Mailhot was born in 1983; her memoir *Heart Berries* was published in 2018. Assuming she lives to at least 85, that acclaimed work will not enter the public domain until 2118—100 years after it was published.

Look at examples such as these, and it's hard to imagine that the large publishers would like copyright to be extended even further into the future, but such is the case. They'd like to keep "The Other Paris" out of the public domain until 2084—131 years after it was published, and *The Spice-Box of Earth* out of the public domain until 2087—136 years after it was published.

What practical difference does any of this make? Quite a bit, actually. Copyright protection gives publishers a monopoly for as long as it extends—and with it, monopoly pricing power. As I write this the only in-print edition of Robertson Davies' famous 1970 novel *Fifth Business* is a deluxe paperback retailing for \$22.00.

By definition, a monopoly also prevents competition. Where classic novels are in the public domain, editions tend to proliferate; readers can choose a deluxe edition or a cheap edition; professors can choose for their students an edition that offers just the text itself or an edition that offers the text together with a range of critical essays (as with the Norton's Critical Editions series), or an edition that offers the text together with a range of contextualizing historical material (as with the Broadview Editions series).

Because copyright restrictions extend so long, that range of options is simply not available for classics of late twentieth century literature—or even for the literature of mid century. Even with copyright law as it is now, a publisher such as Broadview will not be able to publish "value-added" editions of classics such as Gabrielle Roy's *The Tin Flute (Bonheur D'Occasion)* or Margaret Laurence's *The Stone Angel* until 2034 and 2038 respectively. If copyright were extended by another 20 years, we'd be prevented from offering those sorts of editions to readers until 2054 and 2058 respectively.

It's not just works by Canadian authors that are affected by Canadian copyright law, of course. Currently we at Broadview publish a superb edition of T.S. Eliot's *The Waste Land and Other Poems*. A few years ago the only edition of *The Waste Land* that was available in Canada was that issued by Faber & Faber, which included no explanatory notes (other than Eliot's own), no introduction, and no supplementary materials. That edition remains available for those who prefer a bare-bones edition, but now that Eliot's works have entered the public domain in Canada readers can also choose the Broadview edition, with its wealth of explanatory notes and background materials on modernism—or the excellent Norton Critical edition, with a different set of background materials, or a fine edition from Penguin.

T.S. Eliot died in 1965; if Canadian law mandated 70-years after the death on copyright, Eliot's 1922 poem would not enter the public domain until 2036—114 years after it was first published!

Dorothy Richardson's *Pointed Roofs* is another telling example. This 1915 novel was the first to use what came to be known as "stream of consciousness" technique. We at Broadview have published an edition (edited by Canadian scholars Stephen Ross and Tara Thomson) that does a wonderful job of setting this modernist classic in context by including a wide range of background materials alongside the novel itself.

Dorothy Richardson died in 1957; T.S. Eliot died in 1965; if Canadian law mandated 70-years after the death on copyright, her 1915 novel would not enter the public domain until 2028—113 years after it was first published.

Currently, we at Broadview are looking at publishing “value added” editions of works by a number of authors who have been dead for more than 50 but fewer than 70 years—works such as Ian Fleming’s 1953 novel *Casino Royale*—the book with which the James Bond series began—and E.M. Forster’s classic 1908 novel *A Room with a View*; we plan to publish in 2021 editions of both those titles that will include a wealth of background contextual material in addition to the text itself. If Canadian copyright restrictions were extended 20 years beyond their current level, we would be prevented from publishing those editions in Canada until 2035 (in the case of *Casino Royale*—Fleming died in 1964) and 2041 (in the case of *A Room with a View*—Forster died in 1970).

That last is worth repeating. If copyright restrictions in Canada were extended for a further 20 years beyond their current level, competing editions of Forster’s 1908 novel could not be made available to Canadian readers until 2041—an astonishing 133 years after the book was first published.

It’s often imagined that extending copyright to 70 years beyond an author’s death benefits that author and his or her descendants. More often than not it works in the other direction. To be sure, the grandchildren and great-grandchildren of the few authors that remain highly popular 50 years or more after their death may receive an undeserved windfall. But the vast majority of works do not remain popular 50 years after the author’s death; they do not even remain in print. Should a publisher wish to try to bring those works back into print, it’s not always easy to do; with decades having elapsed, copyright holders are often very difficult to locate. Neglected authors stand a far better chance of being recovered if their work has entered the public domain.

In saying all this I should make clear that I am not writing simply from the perspective of a publisher of a large series of literary editions. I’m also speaking as the literary executor for my father, Douglas LePan, who won two Governor General’s awards in the 1950s and 1960s, but whose work was receiving little attention by the time he died in 1998. Next year a new selection of his poems will appear from Porcupine’s Quill, and his novel *The Deserter* will be re-issued by Dundurn Press; neither publication would be possible were it not for my (a) having made information as to the whereabouts of the copyright holder for my father’s Estate readily available, and (b) being willing to ask for virtually nothing by way of royalties, and no advance. It is absolutely in the interests of the author in a case such as this for the author’s heirs to make the work readily available, and virtually free for prospective publishers (who will of course still need to make the usual investments in editing, typesetting, printing, and so on, as well as paying for a new introduction for the re-issue.) To ensure that my father’s literary works remain accessible a generation from now, my preference would be to have those works enter the public domain even *before* 50 years have elapsed beyond his death. Since Canada is a signatory to the

Berne convention I'm sure that's not likely to happen, but I would hate to see 50 years extended to 70 years.

I'm also writing from the perspective of an author myself. My third novel is projected for 2019; my first, *Animals: A Novel*, was published in 2009 by Véhicule in Canada and in 2010 Soft Skull/Counterpoint in the US. It was widely acclaimed—Nobel Prize winner J.M. Coetzee called it “a powerful piece of writing and a disturbing call to conscience”—and it received many positive reviews. But already annual sales have slipped significantly. Would I want that book to still be under copyright protection (and thus more difficult for prospective publishers to rediscover and re-issue) more than 50 years after my death? Absolutely not. Even in the highly unlikely event that the existing edition were selling well at that point, I don't see any reason why the book should decades from now carry a higher price than it would otherwise, merely so that royalties can be paid to my grandchildren.

The interest groups that push for extending copyright even further (and the high-powered media corporations and media lawyers who support them) like to suggest that those who oppose any extension of the 50-year rule in Canada are in a dwindling minority—that inevitably nations such as Canada will have to step into line with the United States and the EU. In fact Canada is far from alone in having resisted the push by the large corporations to extend copyright restrictions further and further. There are approximately 100 nations who have some form of the 50-year rule in their copyright laws—and that list includes some very significant players (among them China, Japan, South Africa, the Philippines, and New Zealand). In Australia a 2017 Commission recommended reducing that country's length of copyright protection from 70 years to 25 years after the death of the author. At the moment that seems unlikely to happen—but the very fact that it's been recommended by a reputable group is an indication of the degree to which the tide is starting to turn.

Canada has shown real courage thus far in standing firm on this issue in the face of pressure from the United States and from large media conglomerates. Let's not give in now!

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