Literary Press Group of Canada

Written Submission for the Pre-Budget Consultations
in Advance of the Upcoming Federal Budget

Submitted by:
the Literary Press Group of Canada

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Recommendations

- **Recommendation 1:** Increase the budget of the Canada Book Fund by 50 percent to provide critical support for Canadian-published books and Canadian authors.

- **Recommendation 2**: Urgently implement reforms to repair the Canadian copyright framework and ensure that Canadian creators and publishers are fairly compensated for the use of their copyright-protected work.

- **Recommendation 3:** Ensure that the rules for foreign investment in publishing are effectively enforced and undertake a realistic and transparent assessment of net benefit to Canada and the Canadian-owned publishing sector for all proposed foreign investments.

Introduction

The Literary Press Group of Canada (LPG) is a nonprofit national association. Our mission is to support Canada's independent literary publishers and promote Canadian literary culture. We provide critical sales, distribution, marketing, professional development, advocacy, and networking services to member publishers. We connect readers with essential Canadian books.

The LPG's 64 members are located in communities across the country. They produce books by some of Canada's most innovative and creative writers, giving readers access to diverse voices that have not been well represented in mainstream publishing. In addition to their cultural contributions, LPG members are small businesses that support local economies through the full range of their business activities, from editorial, design, and production to marketing, sales, and distribution.

We gratefully acknowledge the support of the Canadian Government through Canada Book Fund and the Canada Council for the Arts, as well as the support of the Ontario Arts Council.

Recommendations

> **Recommendation 1:** Increase the budget of the Canada Book Fund by 50 percent to provide critical support for Canadian-published books and Canadian authors.

We hope and expect that the commitment to double the Canada Book Fund (CBF)'s budget will be restated in the new Minister's forthcoming mandate letter. It is unfinished business and must not be swept aside or overlooked.

The CBF remains essential for our members, helping them to survive in a market dominated by multinational conglomerates. The budget for the CBF has not been increased in 22 years—an entire generation—meaning the real value of its support has declined dramatically over that time, even while Heritage-administered funds dedicated to other cultural industries have increased. Additional investment in the CBF will ensure that it can continue to provide meaningful support to vibrant cultural producers—the Canadian-owned presses that tell our stories and amplify diverse voices.

Today, in the English-language book market, Canadian publishers account for less than five percent of sales; 22 years ago, that figure was 27 percent. The average discount required to sell books into bookstores, libraries, and other accounts 22 years ago was around 45 percent. Today, with all the additional charges we face (for freight, marketing, etc.), that average is approximately 54 percent. Market conditions have worsened significantly for book publishers, while support through CBF has remained static.

We join with our colleague associations ACP and l'Association nationale des éditeurs de livres in calling for this permanent increase to the CBF. Earlier this summer, we took part in roundtable consultations organized by PCH to provide input on how best to keep the CBF innovative and responsive across all the program's components. Renewal and innovation in the context of a permanently increased budget envelope are strongly supported by literary publishers across the country, and we provided suggestions for ways to make the CBF even more effective.

The former Minister's mandate letter also committed to increased investment in Canada Council for the Arts and in the Public Lending Right Program. We continue to strongly support both of these budgetary adjustments. Canada Council for the Arts programs and the Public Lending Right support the literary publishing ecosystem and Canadian authors, and as such are vital programs.

> **Recommendation 2**: Urgently implement reforms to repair the Canadian copyright framework and ensure that Canadian creators and publishers are fairly compensated for the use of their copyright-protected work.

Rightsholders must be fairly compensated for the use of their copyright-protected work, through reform of the *Copyright Act* that is now long overdue. Remuneration for writers and publishers has declined precipitously since 2012, during which time the education sector's interpretation of fair dealing has resulted in widespread and massive copying without regard for the rights of creators and publishers. Accumulated losses to the sector are estimated at over $200 million in licensing income and additional unknown losses in the sale of books. The pandemic brought many pressures to bear on literary publishers, including calls for more digital content, but there is little incentive to invest in such content when copyright protections are lacking.

Canada needs creators and innovators. A weak copyright law is like weak patent laws; creators and innovators will move to other nations where their work will be respected by law, while investors and trading partners may avoid the market altogether. This risk is underlined by the fact that Canada remains on the US Trade Representative's Watch List[1] in its annual intellectual property report. "The United States remains deeply troubled by the ambiguous education-related exception added to the copyright law in 2012," the report notes. Canada's reputation with trading partners has been damaged by our flawed copyright regime.

We were encouraged that Budget 2022 included a commitment to ensure that the *Copyright Act* protects all creators and copyright holders and that the educational publishing industry is sustainable. But that promise has not been delivered to date.

The cumulative effect of government inaction is that we now face a **new crisis**: Access Copyright, the organization that publishers and creators rely on for administration of licensing revenue from the use of copyright-protected material, has announced that it will significantly downsize and restructure by the end of 2023. Access Copyright provides an effective collective solution for our members, who are small and medium-sized businesses with extremely limited staff resources. Literary publishers have no capacity to administer permissions and chase payments for every use of their books in educational settings across the country—assuming they would even be informed of such use. Individual Canadian writers will be even less equipped to carry out this onerous administrative work on their own. We need Access Copyright to continue as a viable organization, which means we need users of copyright-protected work to compensate creators and publishers.

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[1] U.S. Trade Representative, 2023 Special 301 Report, p. 73
https://ustr.gov/sites/default/files/2023-04/2023%20Special%20301%20Report.pdf

At a minimum, the *Copyright Act* must be amended so that **fair dealing for education only applies when a work is not commercially available under licence by the owner or a collective.**

In addition, we call for the following measures:

- The *Copyright Act* must be amended to clarify that tariffs approved by the Copyright Board are enforceable against infringers of copyright-protected works.
- Adequate statutory damages must be available to all copyright collectives.

Recommendation 3: Ensure that the rules for foreign investment in publishing are effectively enforced and undertake a realistic and transparent assessment of net benefit to Canada and the Canadian-owned publishing sector for proposed investments.

The *Revised Foreign Investment Policy in Book Publishing* (1992) requires an assessment of the net benefit to Canada and to the Canadian-controlled publishing sector, and a determination that a proposed acquisition or merger is consistent with national cultural policy. In practice, however, transactions have been approved over the years that have not met these standards, in our view, and whose related undertakings have had little of the intended impact or appear not to have been enforced.

While the proposed acquisition of Simon & Schuster by Bertelsmann / Penguin Random House was abandoned due to US litigation, it highlighted the need for more effective and transparent policy enforcement. The Canadian book market is already highly concentrated and tilted toward the biggest multinational publishers and retailers. If this acquisition had proceeded, the domestic market would have been utterly dominated by two foreign-owned conglomerates (PRH/S&S combined and Harper Collins/Harlequin), whose profits are sent out of the country, and whose distribution infrastructure is likewise outside Canada. A similar transaction is likely to be proposed soon, so the policy question remains an urgent one. (Indeed, the New York Times reported earlier this week that second-round bids for Simon & Schuster have now been received.) We can expect consolidation among the biggest publishers to continue.

When faced with such enormous scale and market power as combined Big Five publishing houses would wield, Canadian literary presses would be disadvantaged in every way: competing for authors, staff, sales and distribution services, retail shelf space, reasonable shipping rates, and media attention.

Despite the many disadvantages that Canadian literary publishers experience vis-à-vis major foreign-owned publishing houses, they consistently produce high quality, award-winning literature. This record is a testament to persistence, resilience, and commitment to art-making, regardless of punishing market conditions.

Canadian literary publishers operate across the entire country, in communities large and small, reflecting the specific realities of those locales to a much larger audience. They are an essential part of the cultural and economic fabric, including as employers poised to train the next generation of publishing professionals. They nurture and take commercial risks on new, diverse voices, bringing them to

Canadian and international readers. They deserve to have the chance to thrive and grow in their own market, as the current cultural policy, with its net benefit test, was designed to achieve.

Conclusion

Throughout the pandemic and into the recovery period, Canadian literary publishers have demonstrated extraordinary resilience in the face of numerous obstacles. We remain grateful for public investments in arts and culture, which have helped ensure that diverse voices continue to be nurtured and amplified through the books our members produce.

Thank you for the opportunity to provide the LPG's views as the new budget is developed.

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