

**Pre-Budget Submission
To The Standing Committee On Finance**

**Writers, Productivity and
the Nation's Standard of Living**

Prepared By
The Writers' Union of Canada
September 2005

EXECUTIVE SUMMARY

To support the creative work that is the heart of Canada's cultural economy, The Writers' Union of Canada urges the Government of Canada in its next budget to:

- Increase Funding to the Not-for-Profit Arts Sector, through the Canada Council for the Arts, by \$5 per capita, effectively doubling the current annual contribution.
- Introduce a Copyright-Income Deduction for creators, modeled on that used in the province of Quebec.
- Introduce a Limited Back-Averaging Plan for the professional income of creators whose incomes fluctuate.
- Exempt from taxation subsistence grants for creators administered by the Canada Council for the Arts.
- Grant the Public Lending Right Commission's request for a budgetary increase to bring its hit rate up to a level more aligned with the hit rate established 18 years ago.
- Support The Writers' Union of Canada in its efforts to seek Secured Creditor Status for writers in the event of publishers going into receivership.
- Extend Employment Insurance Benefits to self-employed creators, and creators who work in paid employment to supplement their self-employment, to make them eligible for EI when paid employment is lost.

"With very few exceptions, being a creator or cultural producer in Canada is not economically viable without government intervention, a fact that endangers the very existence of Canadian cultural production."

From **THE ARTS AND CANADA'S CULTURAL POLICY**

Prepared by:

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INTRODUCTION:

The Writers' Union of Canada appreciates the opportunity to participate in Pre-Budget Consultations with the Standing Committee on Finance. This Union, founded by writers for writers in 1973, has evolved into the national voice for over 1,500 writers of books in all general trade genres with a mandate to promote and defend the interests of its creator membership and all Canadians' freedom to write and publish. The Writers' Union of Canada has an important role to play in shaping the application of your objectives.

The overall theme for the 2005 Pre-Budget Consultations, as announced on July 7th by the House of Commons Standing Committee on Finance is Enhancing Productivity Growth in Canada. In its announcement the Committee reported on statistical evidence highlighting a positive relationship between national productivity and the national standard of living.

Unfortunately the equation, where increased productivity results in improved standard of living, does not ring true for writers in Canada.

A Study of Author Income, commissioned by the Department of Canadian Heritage and the Canada Council for the Arts in December 2003 identifies the average writing income reported by the respondents as \$8,125. This is \$3,000 less than was reported in a 1998 study conducted by Quill and Quire. Writers are unable to generate a living wage while the writing and publishing industry is experiencing dramatic growth.

Canadian writers have created an abundance of works of distinction that have provided the writing and publishing industry the raw material necessary for its dramatic growth. This growth can be measured; quantitatively - by the increased number of titles published, economically - by the increase in gross revenues to publishers, and culturally - by the worldwide acclaim Canadian writers receive. Unfortunately this industry does not provide writers the ability to generate a living income from their creative works.

A financial profile of the average Canadian writer, composer and artist can be summed up quickly: a low-income creator who is self-employed and who, at times, endures a wildly fluctuating income.

The December 2003 study identified that compared to the Canadian population writers are highly educated; over half of those surveyed have a graduate degree in comparison to 5% of the Canadian population.

Statistics do not, of course, provide a complete profile. We must add that writers surveyed were not dilettantes or hobbyists. The respondents are full-time professional writers who have been working at their occupation for years. Most were over 50 years

of age -- an age when people in other vocations earn their peak earnings -- and most had been working at least 10 years as writers. Low income was their prime concern.

Other concerns included fluctuating income and no spare time. Writers work long hours to make the meager incomes they do. Often they must take extra jobs to make ends meet. All of these problems are further compounded by the lengthy process involved in publishing books, a process not measured in weeks or months, but in years. Even if the fruits at the end are bountiful, these follow a long duration of creative output and industry production in which income is low or even nonexistent.

Canada has long maintained that financial security should be in place to permit all Canadians the opportunity to thrive, even in the face of short-term setbacks. Because creators are so often self-employed, they fall through the cracks between the structures government policy has put in place to ensure a quality lifestyle. As primarily self-employed workers, creators cannot claim Employment Insurance benefits, for example. Even if they supplement their artistic endeavors with paid work, because they are primarily self-employed, they are again denied the temporary relief of insurance when paid work -- for seasonal or other reasons -- is abruptly ended.

This committee's expressed intention to provide Canadians with equal opportunity to succeed cannot help but find writers and other artists deserving. Its commitment to policy that generates a decent standard of living and quality of life must take into consideration the sacrifices of its creators. Equally important, however, Canada's leadership role is threatened as long as inequities to writers remain uncorrected. At risk are Canada's cultural wellspring, its diversity, its cultural thoughtfulness, and the proliferation of work by its artists who make a profound contribution to the progress of our civilization.

Some of the proposals that follow are not new but we maintain they can address the inequalities writers and other artists face. We respectfully submit they can help this committee achieve its state objectives.

FUNDING TO THE NOT-FOR-PROFIT ARTS SECTOR:

Currently, government investment in the Canada Council for the Arts supports 2,100 arts organizations and a similar number of individual professional artists like writers, musicians, dancers, actors, painters and sculptors.

At issue is that each year, 12,000 eligible arts organizations and artists must be turned down for support, resulting in the loss of enormous creative potential for Canada. Since 1998, Canada Council has seen a 50% increase in the number of applications from arts organizations and a 30% increase from individual artists. We believe it is critical that public funding keep pace with both the growth in the number of artists in Canada and their drive for excellence.

Canada's not-for-profit arts organizations and artists are the backbone of the \$39 billion cultural sector in Canada. This sector is bigger than the agriculture, forestry, mining and oil and gas sectors combined. However, current federal contributions add less than 10% to the revenues of a typical Canadian arts organization. Earned revenue and private donations (corporate and individual) generally account for at least 75% of an arts organization's budget, greatly outstripping public investment. In fact, Canada's contribution to the arts lags far behind most of its European counterparts both in terms of per capita spending and spending as a percentage of GDP.

COPYRIGHT-INCOME DEDUCTION:

Twice in the last few years, Parliament has considered a Private Members Bill calling for copyright-income deduction for writers and other artists. Although the first Bill was general in tone and lacked specifics, it nonetheless captured the spirit of the inequity writers face and the general principles of what might help correct it. We again recommend that the Department of Finance institute a Copyright-Income Deduction for creators.

This deduction has been used in Quebec for several years, where it not only corrects the tax penalty implicit in the Income Tax Act but also works to encourage, rather than penalize those who try to make a living from their creations. In Quebec, the provision applies to writers, artists, filmmakers, and composers: any artist who produces copyright material that generates income. Since copyright is clearly defined under the Copyright Act, such a provision is very easy to administer. There can be no argument as to who the first copyright holder is: it is the creator, exactly the person we as a country must encourage.

The Copyright-Income Deduction effectively removes fluctuations from creators' incomes since, although most creators cobble together a living from a variety of sources, it is the royalties earned on copyright material that create the wild income fluctuations.

The Copyright-Income Deduction requires almost no calculation and fits easily within the existing framework of the Income Tax form. There are many precedents already on the form, such as the "Deduction for employment income earned outside Canada," or the "Deduction for employees of certain international organizations like the United Nations." Canada has a long history of giving special consideration to enterprise that furthers the national interest: for instance, scientific research and experimental development. Likewise, the contribution made by Members of Parliament is appropriately recognized through a tax-exempt allowance. The Copyright-Income Deduction would function in the same way, providing an incentive to those who create the nation's cultural products.

The cost to the Government would be miniscule and the return to the economy would be dramatic. Setting a reasonable upper limit of income -- and only that income derived from the artistic endeavor-- would ensure that only those writers and artists with low incomes would be able to derive benefit from the deduction. We respectfully suggest that, as creators, we are unlike any other taxpayers. Our creativity provides the raw materials for the entire cultural sector that receives a variety of subsidies and incentives at the production and dissemination levels. We are seeking equitable treatment. As well, as we pointed out during our discussions with this committee, no less than 6,000 authors, earning less than \$12,000 per annum, support a book publishing industry of taxpayers who earn an average of \$40,000 per annum.

Encouraging creators to produce raw material is an important way to stimulate the entire cultural industry. Without them, the number of other taxpayers in the industry (who have significantly larger incomes than creators) will diminish, with a negative impact on Government revenues.

LIMITED BACKWARD-INCOME AVERAGING:

As we have described, most writers cobble together their incomes from various sources: teaching, editing, or driving a cab. Still, book royalties and advances account for a third of a writer's income, on average. And it is this income that is subject to the fluctuations that create the unfair taxation.

A book, like any large creative endeavor, can take years to write. Yet the bulk of the income generated from that book usually arrives in one fell swoop or, at best, over one or two tax years. For most authors, there is very little in the way of deductions to write off against such income. Creative work is by and large a human endeavor, a product of the intellect and the imagination. A creator puts in years of labour and often years of sacrifice, incurring debt, doing without. Then, when the payoff comes, that income is taxed as if it were earned entirely within that taxation year.

In 1997, Price Waterhouse noted that, "the Department of Finance . . . has cautioned that general tax reductions are not affordable." Even then, however, it pointed out that the government "has indicated that selected, targeted cuts may be feasible." Now that the Government's policies are showing financial benefits, the time is right to rectify this injustice by instituting measures that will ease the tax burden on Canada's creators.

We are pleased that in the past this Committee has recognized the injustice of this inequity and has recommended that the Government institute income backward averaging for creators.

We urge the Members of this Committee to again request the Government to include creators in these considerations. A targeted income backward-averaging program for self-employed creators would be easy to apply and to enforce. Revenue Canada has issued Bulletins defining writers and artists already, thus ensuring that the backward-averaging measure would be easily targeted and specific. And, as we know from the recent writers' survey, the majority of writers earn low incomes, which makes them all the more vulnerable to tax penalties in years when their incomes fluctuate.

SUBSISTENCE GRANTS:

One of the most confusing inequities has been policy towards subsistence grants for writers and artists. These are grants that provide minimal stipends for artists to live for several months while they create their cultural product. Hence their name, "subsistence." We contend these grants should be tax-exempt.

People otherwise employed on a full-time basis are ineligible to apply for these grants. Only self-employed creators may apply. If grants arrive at the beginning of the year, the grant usually has been exhausted at tax time by rent, food and the necessities of life required during the period of the grant. Creators may have to borrow money in order to pay the tax on these grants. In essence, taxing grants such as these undermines the principle of survival that inspired their creation.

Given that the maximum value of these grants is only \$20,000, for several months' work, the overall tax revenue they produce is minimal, but taxation's impact on the struggling artist can be severe. Also, they often arrive at the end of the calendar year. When a writer receives a subsistence grant in the winter, before the beginning of the period it is designed to offset, too often a third or more of the grant is lost to tax immediately.

For years creators have been subsidizing innovation through this unfair tax penalty. It is time now for the Government of Canada to encourage the creators of this country -- not only to ensure an uninterrupted flow of creative content for the burgeoning technology of the new economy, but also to signal to the nation and to the world that Canada values creative work -- by making subsistence grants tax-exempt.

PUBLIC LENDING RIGHT:

Canada has the distinction of being one of only a handful of progressive countries in the world with a Public Lending Right Commission. The call to create the Public Lending Right was spearheaded by The Writers' Union of Canada. Public Lending Right provides for a modest annual payment to Canadian book authors whose works are available in Canadian libraries for lending.

At the time of PLR's creation, the Government agreed to periodically inject increased funding into the program to ensure its success long into the future. Unfortunately government funding into PLR has not met the increased demand for funds as is reported in the recent PLR Annual report. The Union believes it is imperative that the Public Lending Right Commission's request for a budgetary increase be funded in the next budget, to bring its hit rate up to a level more aligned with the hit rate established 18 years ago.

SECURED CREDITOR STATUS FOR AUTHORS:

As this Committee is aware, a spate of bankruptcies in the publishing industry -- the most significant being the demise of the General Publishing empire -- have demonstrated the worsening fragility of the publishing industry in Canada. Bankruptcy or receivership of publishers creates a terrible inequity and hardship for Canadian authors, who do not receive royalties owed to them.

We submit that authors should be treated as preferred creditors and should be entitled to receive their unpaid royalties *pari passu* with the unpaid wages of employees. We submit that a provision to this effect in the BIA should be backed up by a provision in the *Canada Business Corporations Act* (and its provincial counterparts) to make the directors of corporations jointly and severally liable for the royalties of authors. This will make publishers more cautious about using royalties owed to authors for new projects when their future revenues are in doubt.

The claim of an unpaid supplier to repossess goods ranks above all other claims (other than a subsequent purchaser for value without notice). A publisher's "goods" are more than the physical inventory of a work, as they include the author's intellectual property. If that intellectual property has not been fully paid for, the author should have a lien on the physical books to the extent of the accrued royalties or other shortfall in payment. What we are asking for is comparable to the special right of farmers, fishermen and aqua culturists to a charge against the bankrupt's inventory securing unpaid amounts for their products.

We request that this Committee lend its support to secured creditor status for authors in cases of receivership or bankruptcy of publishers.

EMPLOYMENT INSURANCE BENEFITS:

We request that this committee review the report drafted by The Standing Committee on Human Resources Development pertaining to Bill C-2, an act to amend the Employment Insurance Act. Some of its recommendations apply to any consideration by the Standing Committee on Finance of the inequities faced by creators. Two recommendations in particular could have positive effects on writers and other artists

who ply their trade by being self-employed or by some combination of self-employment and paid employment. Recommendation 8 states: "In view of the growing incidence of self-employment in the Canadian labour market, the Committee recommends that the government consider developing a framework for extending EI coverage, both in terms of regular and special benefits, to self-employed workers."

Recommendation 9 is equally appropriate to creators. "The Committee recommends that the government consider extending better EI coverage to workers employed in both paid and self-employment. In the event that the government does not extend coverage to self-employed workers, a premium refund should be provided to those who work in insurable employment but are unable to establish a claim because they are also self-employed."

CONCLUSION:

As we have pointed out many times, creators are at the heart of a knowledge-based economy. We produce the intellectual property on which the entire cultural sector is built. During your hearings, you will receive representations from the cultural industries, the filmmakers and the publishers, the art galleries and museums. Without the individual artist who dedicates her or his working life to creative expression, developing screenplays and composing opera scores, writing books and filling galleries with paintings and sculptures, all of these industries would collapse.

The Cultural sector is large and growing. Depending on how you calculate whom it embraces, it accounts for between five and eight percent of the Canadian labour force, larger than agriculture, logging, forestry, mining and oil and gas combined, second only to health and social services. And at the heart of this enormously productive, vital part of our economy is a miniscule core of creators who, even by Statistics Canada's count, earn incomes that are between 25 and 50 percent below other jobs within their sector. Being self-employed, these creators function without the social safety net that employees take for granted. Their earnings are low, they pay more than their fair share of tax, and yet they are not eligible for group insurance and pension benefits, and can rarely obtain employment insurance benefits.

In today's business-oriented environment, the role of the entrepreneur is well understood and rewarded. There are grants for research into new technologies, new sources of fuel for our engines. There are tax breaks to encourage the development of new consumer products. In our rush to the bottom line, we must not forget that **our greatest resource is the individual human mind**. If we neglect to nurture our nation's creators, we will be a nation of moneychangers without a temple.

In summary, we urge the Members of the Committee to recommend once again that the Government remove the tax inequity currently carried by creators with fluctuating incomes, through a targeted copyright-income deduction and the introduction of income backward-averaging for creators. In addition, we further urge the Committee to recommend that subsistence grants received by artists from the Canada Council for the Arts be made tax-exempt.

To further secure the position of creators within the cultural sector, we urge the Committee to increase funding to the Not-for-Profit Arts Sector, through the Canada Council for the Arts, by \$5 per capita, effectively doubling the current annual contribution.

We request this committee support the recommendations of the Standing Committee on Human Resources Development whereby Employment Insurance coverage be extended to reflect self-employed creators or creators who eke out their living through combination of self-employment and paid employment.

We further seek this Committee's support in ensuring that the Public Lending Right Commission be adequately funded, in the next budget. The Union expects this committee not to forget the serious crisis facing our senior writers, due to low incomes, and identify to government the need for funding to implement an income support program for these well-respected writers. We seek this Committee's support in our initiative to achieve secured creditor status for authors so that they do not lose royalties owed them in cases of publisher bankruptcy or receivership.

In these ways, this Committee will be ensuring that writers and other artists too have an equal opportunity to succeed and can live in an economic and social environment with the best possible quality of life and standard of living. Most of all, creators will be able to contribute handsomely to a prosperous Canada and play a leadership role in the new economy.

Respectfully submitted on behalf of The Writers' Union of Canada,

Brian Brett,
Chair, The Writers' Union of Canada,