

ASSURING THE FUTURE OF THE PUBLIC LENDING RIGHT

Meeting the Challenge of Legitimacy –
Strategic Considerations

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The conclusions and opinions stated in this report are those of its author, Keith Kelly. They do not necessarily reflect the official viewpoint and policies of the Public Lending Right Commission.

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Since its creation in 1986, the members and staff of the Public Lending Right Commission have surmounted many difficult challenges. From the creation of the program, the issuance of cheques to authors, dealing with budgetary uncertainties, and coping with a burgeoning growth rate of authors, the Commission has met each challenge with confidence and imagination.

One of the most difficult challenges the Commission has faced is the resolution of its identity as one of Canada's foremost cultural support programs. Lodged with the Canada Council since its inception, the Commission has maintained a difficult balancing act, asserting its independence on one hand, while developing a *modus vivendi* with its host institution.

While the concepts of entrenchment and entitlement in the current political environment are deemed to be highly negative, the quest for stability and a clear legal mandate are totally consistent with the new government mantras of accountability and transparency. This is the perspective that has informed the results of the strategies in this document.

Central to this quest for validation has been the lack of clarity of the status of the Commission itself, and the funds that it delivers to authors. While formally referred to as a Commission, the PLRC has no formal legal status. Nor is there such a creature as a public lending right inscribed anywhere in Canadian law. Its relationship with the Department of Canadian Heritage and that of the Canada Council is a constant work in progress.

There can be little doubt that these factors have preoccupied the Commission for some time. As early as 1989, efforts were made to inscribe the public lending right in the status of the artist legislation that was being drafted. While the Minister of Communications, the Honorable Marcel Masse, provided encouragement to the Commission that it would be included in the Act, this did not come to pass. Rather, there is a reference to the right of artists to be paid for the public use of their work, including the public lending of them.

Subsequent correspondence with the Hon. Perrin Beatty (Mr. Masse's successor) wrote the Commission stating "[the] Status of the Artist Bill does not extend to the entrenchment of cultural support programs. Nevertheless, I hope that you will agree that recognizing the importance to artists for compensation for the public lending of their works provides a useful policy underpinning for the program."

While many regarded the Status of the Artist legislation as a lost opportunity, others mustered their resolve to seek a legislative basis for the Commission. In 1993, the Commission decided to prepare a draft *Public Lending Right Act* and sought the support of its partners and officials within the Department of Canadian Heritage.

The draft legislation was found to be contentious among the Commission's partners and the effort was temporarily suspended. The Commission tried again in 1997 in discussions with the Minister of the day, the Hon. Sheila Copps, who indicated that it should be pursued in the near future.

The Commission was heartened by the Minister and began to develop a legislative document using very general language to legislate the Commission as a body. Subsequent discussions with Heritage

officials identified three different routes to resolving the legislative issue: inclusion in the *Copyright Act*, stand-alone legislation or revisions to the *Canada Council Act*.

By late 1998, the interest of Minister Copps had waned and she declined meetings with writers to discuss legislation. Her senior officials sent clear signals to the Commission that there was no interest in proceeding with legislation and there may not be for several years.

The Commission also pursued other avenues through which to resolve this fundamental identity issue. The Executive Secretary discussed alignment of the Commission with the National Library. However, the Chief Librarian at the time showed little interest.

In 1999, the Commission also sought recognition in the Main Estimates, similar to that given to the Canadian Commission for UNESCO. The visibility of the Commission within this crucial government document would have given some modicum of recognition of the PLR as a sub-program of the Canada Council for the Arts. This effort was scuttled by Treasury Board officials who cited the lack of a specific program authority for PLR as the obstacle to such a listing. The Canadian Commission for UNESCO operates through its own legislation even though it operates under the aegis of the Canada Council. Without legislation or separate program authority, a separate listing in the Main Estimates was not possible.

Undaunted, the Commission also discussed the possibility of redefining its relationship with the Department of Canadian Heritage as a program within its repertoire of cultural support programs. Officials with the Department discouraged such a move due to the vulnerability of all funding programs to spending cuts or reallocations at any point or points in the year.

Clouds on the Funding Horizon

The most recent motivation to resolve this identity problem arose as a project related to the twentieth anniversary of the Commission in 2006. After two decades of success, the Commission felt the time was right to fulfill the long-standing issue of legislative status for the program.

The decision not to provide the PLR with a portion of the increase to the budget of the Canada Council was a reminder of the need to secure a distinct legal identity. The logic for the omission of the PLR from a share of the increased resources is based on the fact that these are one-time funds and are not a permanent addition to the base budget of the Council. For this reason, Cabinet decided that the PLRC would not receive a share of the additional funds. While the ongoing granting programs of the Council can adapt to a two-year funding increase and then wean the organizational clientele off additional funds, this is much more challenging when 92% of the PLRC budget supports individual authors.

This decision also raises concerns about the additional funds provided to the Commission through the funding increase to the budget of the Council from the Tomorrow Starts Today (TST) initiative. The funding for the entire Tomorrow Starts Today envelope expires in 2009-10. If the program is not renewed, the Council will lose the \$25 million increase that it received from TST, part of which was dedicated to the PLRC. The challenges such a funding reduction would present to the Commission are considerable.

Budgetary uncertainty is inevitable in the current federal government environment. The Canada Council for the Arts, while entrenched in legislation, is vulnerable on two fronts:

- a) The *Canada Council for the Arts Act* presumes that the operations of the Council will be wholly funded from the proceeds of the initial \$50 million endowment. There is no express provision within the Act that implies that the government is required to provide funding to the Council. While successive governments have provided an annual Parliamentary Allocation to the Council, it is possible that a government could withdraw funding entirely and still be within its legislated responsibilities.
- b) The previous government introduced an ongoing program review exercise, which is ongoing. Within the context of the federal budget process, the government has committed to identifying \$1 billion of federal spending every year to be reallocated from low priorities to higher priorities. This process requires every federal department to contribute to the reallocation process. The Canada Council for the Arts, as a part of the Department of Canadian Heritage Portfolio of agencies and institutions, is included in this process. To date, the Department has moderated the impact on the Portfolio agencies through spending reductions within its own operations. Nonetheless, the day may come when further reductions within the Department are inadequate and the Portfolio agencies will be required to make a financial contribution toward the reallocation target given to PCH.

There is a more general concern arising from the Advantage Canada plan tabled by the Minister of Finance, the Hon. James Flaherty. One of the central elements in this plan is the refocusing of federal spending on areas of federal jurisdiction. For the arts and culture sector this could be problematic.

The Canadian Constitution addresses the respective jurisdictions of the federal and provincial governments in sections 91 and 92. In the delineation of areas of responsibility, while broadcasting is identified as an area of federal jurisdiction, neither culture generally, nor the arts specifically, is mentioned as falling within the jurisdiction of either level of government.

The Advantage Canada plan could re-open the contentious debate about “devolution,” calling upon the provinces to assume responsibility for those areas of federal expenditures that are areas of exclusive provincial jurisdiction.

With these potential challenges ahead, it is understandable that the PLRC is looking for some measure of recognition of the important role it has come to play in the panoply of federal cultural support programs. Understanding the challenges is the first step in formulating a strategy to deal constructively with the longer-term interests of the Commission and the authors.

Current Parliamentary Context

An important part of the strategic considerations the Commission must address in the drive for recognition as an important cultural support program is an appreciation of the current Parliamentary context.

The current government, like its predecessor, finds itself in a minority situation. This reality colours the willingness and the ability of the government to move towards an aggressive pursuit of its policy

agenda. While proclamations such as Advantage Canada outline a broad multi-year financial plan for Canada, the minority situation of the government tempers the pace of implementing many of the measures.

The federal budget for 2007-08 will be delivered on March 19, 2007. This is a moment of particular vulnerability for the government, which can be defeated by a non-confidence motion on the budget itself, or on any of the associated measures required to implement provisions within it.

The prospect of another federal election can be seen as a mixed blessing for the efforts of the Commission. On one hand, a federal election campaign gives the Commission an opportunity to put its issue on the agenda of all federal political parties. The timing of the election would best serve the interests of the Commission if it occurred in the fall of this year or in the spring of next year. A Spring 2007 election would be an opportunity to test messages and strategies with the political parties, but realistically it would be difficult to reasonably expect a breakthrough in the fortunes of the Commission in such a short time frame.

It is worth noting that the current Minister of Canadian Heritage, the Hon. Bev Oda, has frequently stressed that her priority for federal funding is the individual artist and creator. While the Minister has not formally pronounced herself on the value or future of the Public Lending Right, her fundamental emphasis on the individual artist/creator is somewhat encouraging over the term.

The Role of the Standing Committee on Canadian Heritage

The other important element in the current Parliamentary environment is the Standing Committee on Canadian Heritage. The Standing Committee plays an important role in discussing federal cultural policies, reviewing the Main Estimates for the Department of Canadian Heritage, and the Heritage Portfolio Agencies.

In a majority government situation, the work of the Standing Committee can have a major impact on the shape of policy and priorities for the arts and culture sector within the overall framework of government operations.

The current membership of the Standing Committee is an interesting blend of veterans such as the New Democratic culture critic, Charlie Angus and his Bloq Quebecois counterpart, Maka Koto, who is also his party's culture critic. The newly appointed Liberal culture critic is Tina Keeper, who is a member of ACTRA and performed in the television series North of 60. Jim Abbot, who is the Parliamentary Secretary to the Minister of Canadian Heritage, is also a veteran in the arts and culture area, having previously served as the culture critic for the Reform Party.

While the Standing Committee is preoccupied with undertaking a mandate review for the CBC, which will occupy their time until June 2007, when they hope to issue a report, their work will also include the review of Main Estimates and perhaps addressing the current dispute over the Canadian Television Fund. Nonetheless, the culture critics and Standing Committee members from all political parties are an effective conduit into the policy formulation process of each political party.

As the prospect of an election hovers over Parliament, each political party has begun mapping out campaign platforms that it will take to the Canadian people. The Commission has an opportunity to begin working with the members of the Standing Committee in an initial test of how well the PLRC

is known and understood among Parliamentarians, with a mandate to address issues of importance to arts and cultural policy.

Each political party will designate one its members as the lead in the formulation of the campaign platform. In the case of the Liberals, Stéphane Dion has asked Bob Rae to coordinate the effort. The three other political parties have not yet disclosed the names of their platform team.

At a minimum, the Commission could seek a meeting or send a background document to these individuals to begin a longer-term dialogue on the Commission and how best to secure its future as a cultural support program. Such an approach will require consensus among the key players within the Commission to ensure that a uniform and consistent set of messages are being relayed to all political parties.

Some departmental officials discourage such efforts. They believe that the Commission can be better served by continuing their tradition of efficient program delivery and service to writers. They feel that undue attention to the Commission may undermine the stability of the PLR. Given the many efforts of the Commission to secure its legal status, it may be risk members feel is worth taking.

A list of the members of the Standing Committee is appended to this report.

The Federal Accountability Act

The Commission will also want to ensure that any activities that it directs to elected officials and senior public servants (Assistant Deputy Ministers and above) are consistent with the requirements of the *Federal Accountability Act*.

The Accountability Act is a huge document, which was passed by Parliament in December 2006. The legislation captures any communication with government whether or not it is initiated by government or by an outside party. This means that if the Standing Committee calls upon an individual or organization to make a presentation or to submit a brief, the same rules apply as if the individual or organization were seeking the ear of Parliamentarians or public officials on any matter.

The regulations that interpret the legislative provisions are currently being drafted, which means that most of the elements in the Act are not in effect. An analysis of the state of the Accountability Act, prepared by the law firm Gowlings, is appended for reference.

Nonetheless, once the Act is proclaimed it will be important for the Commission to determine how the provisions of the legislation may affect any sustained campaign to seek the entrenchment of the Public Lending Right as a cultural support program.

It may require the Executive Secretary and any Commission members who constitute delegations to senior public officials and Parliamentarians to register as lobbyists and submit regular reports on any such meetings to the Lobbyists Secretariat. It is important to note that the Executive Secretary of the Commission, like all other employees of the Canada Council, is not a public servant. This brings the position under the disciplines of the *Federal Accountability Act*.

For the purposes of the legislation, senior officials are defined as Assistant Deputy Ministers, Deputy Ministers, as well as Ministers and Secretaries and Ministers of State.

Positioning PLR in the Public Policy Discourse

While the public policy and political environment are not currently ideal for the extension of programs or rights, it is important to recognize the major assets that the PLRC can marshal in its drive for greater recognition and security.

From the vantage point of key public officials, the PLRC addresses a cultural policy objective as enunciated in the federal status of the artist legislation, namely:

2 (e) the importance to artists that they be compensated for the use of their work, including the public lending of them.”

The PLRC is the only federal program that addresses this recognition by the Government of Canada in law. While the Copyright Act accommodates payment for the public use of the work of an artist/creator, it is the user that must compensate the artist or their agent/collective.¹

It would seem that the PLRC is in a unique position: that is, as the sole instrument by which the federal government can be seen to address section 2(e) of the status of the artist legislation.

In addition to the firm public policy footing for the PLRC, the Commission can take justifiable pride in the fact that two evaluations of the program have confirmed the efficient administration of public funds and the high value that writers place on the public lending right.

The 2003 evaluation also cites the 2002 beneficiary survey, which documented that 73% of respondents felt that the PLRC has “helped to increase public recognition of Canadian writers to some or to a great extent.” This public recognition factor is another very positive dimension to the policy discussion regarding the future of the PLRC.

From a positioning point of view in the current political environment these are key elements in the pursuit of greater political recognition and security.

The other key asset for the Commission is the power of the beneficiaries who live in all parts of the country. The Commission could, as it has done in the past, mount a targeted letter and advocacy campaign stressing the key messages that will emerge from the strategic planning process. This

¹ Efforts within the museum community to replicate the public lending right model to deal with the exhibition right have come to naught. This right, which was included in the 1988 revisions to the Copyright Act, requires museums and art galleries to financially compensate artists for the public exhibition of their work in these institutions. It also gives the right of artists to have a say in how their work is displayed in the institution.

The museum community has argued that the right is an unacceptable financial and administrative burden on affected institutions. The Canadian Museums Association has referred to the Public Lending Right Commission as a more acceptable model for the exercise of the right, with funds being provided by the Department of Canadian Heritage. To date, this proposal has not been seriously considered by the government.

would be a part of a multi-faceted communication plan, which will be discussed later in this document.

Reviewing Key Options

Having set the context for any effort by the Commission to secure a more permanent standing for the PLRC, it is appropriate that the key options for achieving this status be considered.

1) *Confirming the Status of the Public Lending Right Program*

In the Treasury Board document which brought the PLRC into being, it was clear that the Minister and public officials intended the Commission to evolve into a separate legal entity.

Section E of the Remarks portion of the document notes:

“Once the Program is set up, the Commission will consider the appropriateness of becoming a private non-profit corporation with charitable status. Under such terms, the Commission would conclude an agreement with the Canada Council respecting the management of the Program and of the related funds and the measures required to ensure accountability to the Canada Council. Until this option is exercised, the Commission will be using the Canada Council’s administrative services for operating the Program.”

The same document details the roles and responsibilities for the Commission and the Executive Committee, falling short of providing a concomitant legal status to the PLRC. This is a reality that has caused some difficulties in the past, especially regarding relations with the Department of Canadian Heritage and the Canada Council.

The administrative agreements established between the Canada Council and the Commission do not confer any legal status on the PLRC, but merely reflect the initial thoughts of the Treasury Board when the program was established. Twenty-one years later, it is perhaps timely to revisit the issue of a legal status for the Commission.

A mere relocation of the responsibility centre for the Commission in its current state of legal ambiguity would not materially alter the position of the PLRC. The notion of seeking a relationship with the Library and Archives of Canada or the Department of Canadian Heritage would do little towards achieving significant recognition or stability.

In the case of the Department of Canadian Heritage, such a move would increase the administrative load on the Secretariat and expose the Commission’s budget to internal reallocations and cuts which are routine in the life of any government department. The needs of the Commission would have to find a place in the complex hierarchy of priorities that the Department identifies within its annual Planning and Priorities document.

The Library and Archives Canada option would not necessarily address the problem of legal status for the Commission. The situation would be similar to the relationship with the Canada Council, with different players and priorities of the host institution.

The optimal solution is to attain legal status for both the public lending right and the Commission itself. Let us explore some options in that regard.

2) *Revisions to the Copyright Act*

The concept of payment for the public use of the work of an artist/creator or copyright owner is best delineated in the Copyright Act. From the provisions of this legislation a wide range of artists/creators and copyright owners can enjoy the economic and moral rights inherent in their work.

The Canadian Copyright Act is in a perpetual state of amendment, as Parliament seeks to address issues related to technological change and the undertakings it makes through international trade and intellectual property commitments.

As our colleagues in Europe have discovered in their efforts to address European Directive 92/100/EEC, which requires all members states to develop a public lending right, the inclusion of the public lending right in copyright legislation is not a panacea.

While the European Directive was intended to eliminate “*sources of barriers to trade and distortions of competition which impede the achievement and proper functioning of the internal market*”, how each member state approached the implementation of the directive varies greatly.

Each member state addressed the Directive in a slightly different manner. Some states placed it in copyright legislation, while other developed legislation dealing with grants and payments to artists. Some of those states developed separate legislation outside copyright.

The use of legislation other than copyright was designed to avoid national treatment using the guise of the public lending right as a national cultural and linguistic promotional defense.

This position was since discredited by the Courts; if it looks like a copyright benefit, the Court of Justice of the European Community insisted that national treatment for other writers in the community was obligatory.

Copyright provisions are subject to material reciprocity rules. If the PLRC were inscribed in copyright legislation, Canada would be required to compensate all authors from Berne Signatory states for the public use of their work. Such an obligation would be costly in financial and political terms for any government that undertook such a move.

As we have seen in the case of Sweden, the national cultural defense argument has been refuted in European courts and would most certainly meet the same fate in the Canadian legal system.

The same strategy adopted by Canada would likely enjoy the same fate.

While appealing from a recognition and security point of view, the inclusion of the public lending right within copyright legislation is not a viable option.

3) *Incorporating as a Not-for-Profit Organization*

Perhaps the most easily attainable legal status for the Commission rests with its incorporation as a not-for-profit organization. While such a move would not totally provide a secure basis for the PLR, it does create some legitimacy for the Commission in law. The process is relatively simple and inexpensive and would give the Commission some legitimacy in dealing with third parties.

The President of the Treasury Board commissioned a Blue Ribbon Panel to examine the administration of grants and contributions throughout the federal government. The Panel released its report in February and it affirms the importance of not-for-profit organizations in the delivery of government services and policy objectives.

In its Report, the Blue Ribbon Panel articulated four general proposals to Government, namely:

- 1) **Respect the Recipients** – They are partners in a shared public purpose. Grant and contribution programs should be citizen-focused. The programs should be made accessible, understandable and useable.
- 2) **Dramatically simplify the reporting and accountability regime** – It should reflect the circumstances and capacities of recipients and the real needs of the government and Parliament.
- 3) **Encourage Innovation** – The goal of grant and contribution programs is not to eliminate errors but to achieve results, and that requires a sensible regime of risk management and performance reporting
- 4) **Organize information** – So that it serves recipients and program managers alike.

The Panel also recommends multi-year funding and funding for core costs of not-for-profit organizations that regularly receive grants or contributions for fundable activities. The Commission could also argue that as an incorporated entity that has been delivering a public policy objective as outlined in the Status of the Artist Act, it should receive a multiyear commitment from government on budgetary and human resources.

Incorporated status may also streamline negotiations with organizations such as the Canada Council. As a body with legal rights and responsibilities, the Commission can cultivate a different type of relationship with its partners.

By incorporating, the Commission can make a strong case in its dealings with government and third party institutions that it conforms to the four principles outlined in the Blue Ribbon Panel Report.

It has achieved admirable results in designing, administering and delivering on focused program objectives. Through incorporation, the Commission also formally accepts the fiduciary responsibilities for the PLR and can demonstrate its competence both from a legal and an administrative point of view.

Incorporation is not a panacea; however, it does move the Commission closer to the model that was suggested in the Treasury Board submission that created it in 1986.

Incorporation must be considered a stepping-stone, but not an answer to achieving the full entrenchment of the PLRC.

4) *Attaining a Separate Program Authority*

Some efforts were made by the Commission to have a separate line in the Main Estimates confirming the budgetary allocation to the Public Lending Right Commission. The objective of these efforts was to distinguish the PLRC as distinct from and within the Parliamentary Allocation to the Council. The Canadian Commission for UNESCO has such a distinct listing in the Main Estimates for the Canada Council for the Arts.

Treasury Board rejected this request on the basis that the PLRC has no legal status, unlike that of the Canadian Commission for UNESCO. In moving forward to resolve the legal status of the Commission, it is not clear that such a move would completely insulate the program from spending cuts or other changes imposed by the Council or any other department, institution or agency with whom the Commission may affiliate.

Essentially, to obtain a separate program authority, the Department of Canadian Heritage would prepare a Treasury Board submission, essentially creating a new program. Treasury Board would develop the terms and conditions under which the program would operate, including an accountability framework and other conditions deemed appropriate to the administration of public funds.

The maximum term for a program is five years. To seek renewal for another five-year period the Department would have to undertake an evaluation of how the program achieved the objectives that were set out in the initial Treasury Board submission. Renewal is not automatic and the evaluation process is extensive and complex.

Nevertheless, if the Commission were to proceed with incorporation and negotiated multi-year core funding from the Department of Canadian Heritage, it may be worth another discussion with Treasury Board officials to determine if both the incorporated status and the multi-year agreement would be sufficient to justify a separate listing in the Main Estimates under the Canada Council estimates.

It is unclear how attaining a separate program authority would advance the ultimate objective of the Commission.

5) *The Public Lending Right as a Quasi-judicial Agency*

From time to time, the federal government will create quasi-judicial agencies to administer a legal provision on its behalf. In the cultural domain there is the Copyright Board, the Canadian Artists and Producers Professional Relations Tribunal, the Canadian Radio Television and Telecommunications Commission and the Canadian Cultural Property Export Review Board. The enabling provisions of the Cultural Property Export Review Board from the Cultural Property Export and Import Act are appended for further reference.

These agencies operate with a high level of independence and are recognized in law, in the Main Estimates, and cannot be changed without the oversight and consent of Parliament.

In 2007, the Canadian Council of Chief Executives published a discussion paper called "From Bronze to Gold". The discussion paper addressed the challenges of increasing productivity and innovation within the Canadian economy. It also endorsed a proposal that had been put forth that the federal government follows the lead of Quebec and exempt copyright revenues from income tax.

The Department of Canadian Heritage has put forward this proposal a number of times in the context of advancing the socio-economic status of Canada's artists/ creators and copyright owners.

If the government were to adopt the inclusion of this exemption within the Income Tax Act, there is a possibility that a reasonable extension of this concept could be a refundable tax credit for the public lending right.

To accomplish this objective, the Commission would work with the Department of Canadian Heritage to prepare the requisite Memorandum to Cabinet and Treasury Board submissions. These documents would estimate the cost to the Treasury both in terms of tax credits and operating expenses for the Commission. The documents should consider the growth rate of participants and any new operating expenditure associated with the quasi-judicial status. The decision would be then left to Cabinet on the revision to the Income Tax Act and to Treasury Board on operating expenses.

Were this to be enacted, the Public Lending Right Commission could be named as the administrative body to oversee the refundable tax credit to authors that would constitute their payment under the program. It could ask that the Commission's by-laws be used as the basis for any regulations that are developed once the Income Tax Act is amended. The Government may seek the ability to appoint federal officials to the Commission in addition to the current membership. However, such a nomination could not have a material effect on the independent status of the Commission as a quasi-judicial agency.

The Commission would retain the responsibility of establishing and verifying eligibility requirements for registered authors, dealing with the calculation of the hit rate through whatever methodology it adopts, and the issuance of a tax credit certificate which the author would include with his or her annual federal income tax return.

Once the income tax return has been processed, the author would receive a rebate in the amount showing on the tax credit certificate issued by the Commission.

Such an approach would circumvent many of the difficulties identified with inclusion in the Copyright Act or a separate program authority. The authority of the Commission would be established in the Income Tax Act, giving it the legal status and legislative recognition it seeks.

The Commission may well ask how such an arrangement would affect the relationship it currently enjoys with the writing community. The answer is: very little.

Under such a scheme the Commission would:

- set the criteria for eligibility for the public lending right benefit,
- deal with the authors directly in any matter concerning the administration of the program and the right,
- correspond with the writers annually to forward their tax credit certificate,
- the Commission could engage the authors in further efforts to refine or expand the benefit as the need or opportunity arises
- enjoy legal recognition of the existence and the role of the Commission and the program.

How would the writers fare? The writers who are registered in the program would:

- have recourse to the Commission staff to assist them in any related manner or to answer questions about the program
- receive an annual letter from the Commission containing the tax credit certificate
- receive their benefit in one payment per year, perhaps a month or two later than is currently the case
- not be taxed on the public lending right benefit due to the exemption of copyright and residual income from federal income tax.

The Commission would have to ensure that it still retained the flexibility it requires to manage the Program with a high level of autonomy. This autonomy is of great importance to the writing community.

This is not a quick fix. The Commission would have to develop and implement a communication plan and work in cooperation with other organizations that are seeking an exemption from federal income tax for copyright and residual income. The Commission would have to establish the public lending right recognition as an inherent and essential dimension in the drive for tax exemption.

The next federal election may provide a proving ground for some of the argumentation and an assessment of the political viability of the exemption. The endorsement of the Canadian Council of Chief Executives is but one element that needs to be underscored and broadened to secure the endorsement of other key groups beyond the cultural sector.

Initial discussions with the Department of Canadian Heritage have been encouraging, however such encouragement is tempered by the realization of the complexity of this task.

How Do We Get There?

Brand Recognition

In order to succeed in gaining recognition of the aspirations of the PLRC inside or out of an election campaign, any initiative must strike a familiar chord with politicians and decision-makers.

It would appear, from discussions with officials within government and the PLR itself, that the Commission has largely focused its efforts on the Department of Canadian Heritage and the Minister of Canadian Heritage.

This is a logical strategy, which has borne fruit for the Commission from its inauguration to periodic budget increases to the Council, and which may come with an amount earmarked for the PLRC. However, to achieve the ambitious goal that the Commission has set for itself, much more remains to be done.

The Commission must be prepared to invest considerable and sustained energy in the task of ensuring that every Member of Parliament and Senator understands the PLRC and its value to writers and Canadians. They must be able to appreciate that the program is not merely some abstract benefit buried in the array of funding programs of the Canada Council for the Arts, but a unique and efficient mechanism that supports Canadian culture in a concrete manner.

The current Minister of Canadian Heritage has repeatedly insisted that her interest is the support of Canadian artists and creators as her first priority. It would appear that movements such as the Canadian Arts Coalition have been stressing that this can be best achieved through the doubling of the budget of the Canada Council. The Coalition has this objective as its exclusive focus and has developed an active and ambitious campaign targeting MPs and Senators alike.

The challenge to the PLRC is to be seen as a distinct and unique form of support to Canadian writers, publishers and users of the Canadian library system.

How can this be done? Through the PLRC, writers in every part of Canada who register for the program receive an annual payment. Does their Member of Parliament know who they are? Are they aware of the local impact of the PLRC on individuals within their own constituency? Has the local library expressed its support for the program? What have Canadian publishers to say about the program to parliamentarians?

The Canada Council ran a Parliamentary Advocacy Program from 1999-2005. Every quarter, the Director of the Canada Council sent a letter with a list of grant recipients in each constituency in Canada. These lists were assembled by running the grants approved by the Board of the Council through a computer program, which identified the riding of each grant recipient. In the case of Senators, they were sent a list of grant recipients for their province.

The Parliamentary Advocacy program increased the awareness of parliamentarians about the Council, and also gave them a sense of the local impact of Council funding. It decreased hostile questioning in the House of Commons, and acted as a mechanism for the Parliamentarian to build bridges in their local arts community. Members of Parliament would often write congratulatory letters to grants recipients or visit them in person.

The PLRC should consider the development of a similar program as one route to building broader brand recognition among Parliamentarians of all political stripes. The program is affordable, as no postage is required to correspond with Parliamentarians, and the computer program can be purchased or updated by the Council Informatics Unit at a relatively modest cost.

The Access to Information Act allows the name and location of the individual grant recipient to be released to the public. If, however, addresses and other contact information were included, it would require the written permission of the grant recipient. The Canada Council included a check-off option on its grants to individual applications to permit it to release such information to Parliamentarians. It is entirely optional for the individual to agree or to refuse such a request.

While the annual list of writers to parliamentarians is a start, it is not enough in itself. The PLRC should consider sending delegations from the Commission to meet with members of the Standing Committee on Canadian Heritage, and the Heritage critics, as a priority. These parliamentarians have a special responsibility to understand and address cultural policy issues. A regular briefing or discussion with them would do a great deal to increase their brand recognition of the PLRC as an important cultural support program.

Another possibility is developing a national PLR day when writers would invite their Members of Parliament to join them in a literacy promotion event. The public access to libraries and fostering literacy and the appreciation of Canadian writers could be the underlying theme. The Commission could develop a media campaign around this day to highlight the benefits of the public lending right to writers, as well as their libraries and ongoing literacy projects.

Coalition Building

An essential element in achieving success in the goals of the Commission will be to build an effective and broad coalition which can actively support the drive for recognition of the public lending right and the exemption of copyright and residual income from federal income tax.

There is currently a broad coalition working solely for a doubling of the budget of the Canada Council for the Arts. This coalition consists of arts organizations that would be the principle beneficiaries of such an increase. Politicians and policy-makers look askance at any effort that is so strongly colored by the preponderance of self-interest.

A constant refrain heard from the current government is how Canadians benefit from whatever you are proposing. This is not a rhetorical question. It is one of the benchmarks the current government uses to assess which direction it will take in policy or budgetary questions.

The authors who receive public lending right benefits are an important element in the equation, and they can be helpful in fleshing out the perception that the PLRC is a useful tool in the promotion of Canadian writers who have won acclaim at home and around the world. Organizations like the Canadian Chamber of Commerce, the Federation of Canadian Municipalities and the Creative City Network are some organizations that could be co-opted into supporting the entrenchment of the PLRC.

If possible, the PLRC must assemble a coherent message that is used consistently and tenaciously throughout whatever campaign is mounted to press the case for the PLRC entrenchment. It must be seen to represent a united front among the key organizations represented by the PLRC and those non-cultural organizations that support it.

Documentation, success stories, literacy objectives and the reach into the lives of Canadians are integral elements of a successful pitch to politicians and policy-makers alike. Coupled with the

exemplary management of public funds, the PLRC has the potential to tell a compelling success story of how a relatively small amount of money can exact such a broad range of benefits for Canada and Canadians.

Ambassadors

Over the years the PLRC has developed some high-profile supporters who either are beneficiaries of the program or are public officials who respect the achievements of the Commission.

A long standing and former Executive Secretary of the PLRC notes that Michael Ignatieff is one such person who could, with others play an important ambassadorial role for the Commission and the effort to secure recognition.

Members of the Commission themselves would be an important source in the compilation of such a list of individuals. Equipped with the communications messages of the Commission, such individuals may be able to bring the message into quarters not readily accessible to everyone.

Were a Michael Ignatieff to join with Tina Keeper, Mauril Belanger and others in the Liberal caucus in putting forward with conviction and vigor the proposal to exempt copyright and residual income from federal income tax and to confer upon the PLRC the responsibility to administer the public lending right portion of the exemption, it must be taken seriously.

Certainly the Executive Secretary mentioned above may be pressed into service in this regard. Although she is now formally retired, her passion and commitment to the PRLC still burns hot and bright.

Academics, community and literacy leaders can join with the efforts of the writers and commissioners to ensure that the proposals are given a fair and unbiased hearing by our politicians and policy-makers. This is a good news story and with an array of voices speaking out, it may be one that is irresistible to politicians seeking the support of the Canadian voting public.

In Conclusion

This paper has presented some options to move toward fulfilling the aspiration of the Commission of recognition and firmer footing in the array of cultural support programs. Nothing will be achieved without solidarity and tenacity, two traits the Commission has demonstrated throughout its history.