

Copyright Changes in Bill C-36

(Based on a report to the archival community from the Copyright Committee of the Bureau of Canadian Archivists, April 2003)

In the last round of amendments to Canadian copyright law there were significant changes made to copyright protection of unpublished works. Bill C-32 received Royal Assent in April 1997.

The amendments included a provision for transition from perpetual copyright for unpublished works to standard protection of life plus 50 years. Some stakeholders were very unhappy about the final terms of this transition and some of those whose interests were affected (in particular the heirs of L.M. Montgomery and other authors whose unpublished works would come into the public domain in 2004) began lobbying to change the terms of the transition period. Some discussions and meetings were held in 1997-1999 but the matter was not resolved.

In early 2002 the government hired Wanda Noel to see if a compromise solution might be possible. Meetings and discussions were held with various stakeholders and a proposed solution was developed which on the one hand adjusted the transition period, and on the other hand addressed certain complications to the exception allowing archives to provide researchers with single copies of unpublished works that were in an archives before September 1, 1999. The participants in the meetings were representatives of the Canadian Historical Association, the Bureau of Canadian Archivists (Copyright Committee), the National Archives of Canada, and the Writers Union of Canada. There were difficult negotiations and eventually there was give and take on both sides. The solution that resulted was approved by the boards/governing bodies of all the stakeholder organizations, including the Council of the CHA.

Wanda Noel's detailed report on the process is available at:

<http://strategis.ic.gc.ca/epic/internet/incrp-prda.nsf/vwGeneratedInterE/rp01107e.html>

Her report summarizes the solution as follows:

"The solution consists of two parts.

First, section 7 of the Act would be amended to provide the following:

- a) where an author died before January 1, 1930 with a work which had not been published by December 31, 2003, the work is protected until December 31, 2003. If, however, the work is published on or before December 31, 2003, the work is protected for 20 years from the date of publication.

- b) where an author died after December 31, 1929 and before January 1, 1949 with a work which had not been published by December 31, 2003, the work is protected until December 31, 2017. If, however, the work is published on or before December 31, 2017, the work is protected for 20 years from the date of publication.

The second part of the solution would amend section 30.21 which provides archives with an exception to make single copies of unpublished works in an archival institution for research and private study purposes, provided that certain conditions are met. This exception creates two categories of unpublished works: those which were in an archive before September 1, 1999 (the date the exception came into force) and those which are placed in an archive after September 1, 1999. For the first category (unpublished works already in an archive before September 1, 1999) there are currently two statutory conditions. The copy can be made only if the archive 'is unable to locate the [copyright] owner', and records must be kept of copies made under this section. The second part of the proposed solution is to amend section 30.21 to eliminate both of these conditions."

Note that the amendments to Section 7 are essentially an adjustment in the terms of transition in the 1997 Act. They do not affect the copyright situation of published works by authors who died before the end of 1998 (50 years from date of publication) or of unpublished work by authors who die after the end of 1998 (50 years from the author's death). Neither do they affect the "fair use" provision normally used by historians in quoting from published or unpublished materials. Note as well that the second part of the solution will considerably ease the work of archivists and the speed with which historians can obtain copies, and will eliminate the ethically debatable requirement that the archivists keep records of use.