



BILL C-440

ABOLISHING CROWN COPYRIGHT IN CANADA

2019

BRIAN MASSE MP

WINDSOR WEST

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Backgrounder: Crown copyright

- Access to government information and the ability to distribute and encourage its re-use is of fundamental importance to a democratic society (SI/97-5¹).
- The current Canadian Crown copyright provision is antiquated, unnecessary, and at odds with Open Government commitments.
- The federal government of the United States does not provide copyright protection for its works, which creates a CUSMA policy misalignment.
- Barriers created by Crown copyright are detrimental to innovation and cultural stewardship activities.
- Canadian taxpayers fund the production of government works, bear the costs of administering the clearance processes for granting or denying the right to re-use these works, and pay again in cases where the government charges for access to these works.
- An Act to amend the *Copyright Act* (Crown copyright) supports Canada's commitment to Open Government by making publicly accessible government works available for re-use without payment or permission.

Crown copyright was added to the Canadian *Copyright Act* of 1921, based on language in the 1911 UK Act. This provision (Section 12) provides the government with control over the use, re-use, and distribution of government works, despite the fact that necessary controls are now rendered via the *Access to Information Act*, enacted more than 30 years ago (in 1983), and the Treasury Board Secretariat *Policy on Communications and Federal Identity*.

Because of this, Canadians must ask for permission to re-use and distribute government works or risk a claim of copyright infringement. Such requests are often delayed and sometimes denied. For specific examples of such barriers, see Appendix A of this Backgrounder.

In contrast, the United States Congress mandated in 1895 that federal government works in that country were not subject to copyright protection. Thus, U.S. federal works are freely available for re-use without threat of copyright infringement. This feeds the democratic deficit in Canada and creates a policy misalignment within CUSMA that puts Canadian innovators at a disadvantage.

Section 12 creates unnecessary and undemocratic barriers to the access and re-use of government information. There is no justifiable rationale for the government to hold economic control over publications that were created to fulfill a government mandate.

Economic incentives related to copyright are meant to encourage the creation of new works, but the creation of government works is motivated by factors associated with good governance, not economic gain. Indeed, the government's own policies make it clear that economic exploitation of government works is best conducted by private industry.²

¹ Reproduction of Federal Law Order. <https://laws-lois.justice.gc.ca/eng/regulations/si-97-5/page-1.html>

² TBS Policy on Title to IP Arising Under Crown Procurement, s3.3 <http://www.ic.gc.ca/eic/site/068.nsf/eng/00005.html>

For more than four decades, parliamentarians (e.g., 1985 House of Commons Committee,³ MPs in the House of Commons, 1981, 1993⁴), government employees (e.g., 1981 study,⁵ 1984 white paper,⁶ 2002 report⁷), and academics (e.g., Judge,⁸ Vaver,⁹ Dryden¹⁰) have recommended that Crown copyright be reviewed or abolished.

During the previous review of the *Copyright Act*, the Government of Canada received more than 200 submissions¹¹ calling for Crown copyright to be abolished. As part of the current (2018/19) review, a range of stakeholder organizations and individuals have asked parliament to review and/or abolish Crown copyright, as listed in the Appendix B of this Backgrounder.

Restricting re-use of government works is antithetical to the aims of open government and liberal democracy. In addition, the permissions process incurs administrative costs for government departments, who have been fielding such requests since a centralized agency was removed in 2013. This decentralization (and the lack of training or education for federal employees) has resulted in inconsistent approaches between departments, creating complexities and denials for legitimate requests made by Canadians.

In 2017, Copyright Librarian Amanda Wakaruk petitioned Parliament to remove copyright protection from publicly available government works. The petition was signed by almost 1,500 Canadians.¹² In his response, Minister Bains (ISED) noted that parliamentarians will have an opportunity to consider provisions related to Crown copyright during the (now complete) *Copyright Act* review.

The current Act to amend the *Copyright Act* (Crown copyright) supports Canada's commitment to Open Government by making government works available for re-use without payment or permission and removes barriers to important work related to stewardship, scholarship, and journalism.

³ Sub-Committee of the HC Standing Committee on Communications and Culture on the Revision of Copyright recommended that, "Crown copyright be abolished for some categories of materials and that the scope be greatly restricted for other categories." 1985.

⁴ Waddell, June 12, 1981, page 10545 and Kaplan, June 2, 1993, page 20215, Debates of Canada.

⁵ Torno, Barry. *Crown Copyright in Canada: a Legacy of Confusion*. Ottawa : Research and International Affairs Branch, Bureau of Intellectual Property, Consumer and Corporate Affairs Canada, c1981.

⁶ Minister of Communications and Minister of Consumer and Corporate Affairs. *From Gutenberg to Telidon, A White Paper on Copyright: Proposals for the Revision of the Canadian Copyright Act*. 1984. Excerpt relevant to Crown copyright: <https://drive.google.com/file/d/0B13VrrzqeRbuNG9KV0hBdGNIMTA/view>

⁷ Industry Canada. *Supporting culture and innovation: report on the provisions and operation of the Copyright Act*. 2002. <http://publications.gc.ca/collections/Collection/lu4-19-2002E.pdf>

⁸ Judge, Elizabeth F. "Crown Copyright and Copyright Reform in Canada." in Geist, Michael, ed. *In the Public Interest: The Future of Canadian Copyright Law*. Toronto [Ont.]: Irwin Law, 2005. https://www.irwinlaw.com/sites/default/files/attached/Three_05_Judge.pdf

⁹ Vaver, David. *Copyright and the State in Canada and the United States*. 1995. <https://web.archive.org/web/20100527140536/http://www.lexum.umontreal.ca/conf/dac/en/vaver/vaver.html>

¹⁰ Dryden, Jean. *Rethinking Crown copyright law. Policy Options*. 2018.

<http://policyoptions.irpp.org/magazines/september-2017/rethinking-crown-copyright-law/>

¹¹ Geist, Michael. *The Final Copyright Consultation Numbers: No Repeat Of Bill C-61*. April 9, 2010. <http://www.michaelgeist.ca/2010/04/copycon-final-numbers/>

¹² E-petition 1-1116, Copyright. <https://petitions.ourcommons.ca/en/Petition/Details?Petition=e-1116>

Appendix A: Barriers created by Crown copyright

Prepared by Amanda Wakaruk, Copyright Librarian, University of Alberta

April 2019

Section 12 of the Copyright Act, which pertains to Crown copyright, provides the government with control over the reproduction of government works. Such controls extend beyond the *Access to Information Act* and the *TBS Policy on Communications and Government Identity*. Examples of barriers created by the current copyright overreach and associated clearance culture are provided below.

Cultural stewardship sector

Barriers in this sector threaten both Canada's cultural record and the ability of Canadians to assess their governing bodies.

- Librarians and archivists outside government are stewards and preservationists of government documents and publications. In many cases, government employees will draw on collections in research libraries and archives for access to materials produced by their own agencies, as these resources are routinely lost or discarded by the author agency. Historically, these materials were acquired by libraries and archives in paper. Currently, both the web harvesting of born digital materials and the digitization of legacy print materials are hampered and often prevented by inconsistent interpretations of Crown copyright provisions.
- Copyright chill, especially within cultural memory organizations, has increased since the closure of the Crown Copyright Licensing program in 2013. Crown copyright clearance activities were re-distributed to author agencies without training or education. This has resulted in unreasonable delays and denials of requests to capture content on government web sites for stewardship purposes.
- Today, journalists and scholars rely on spotty web archives from the Internet Archive and, to a lesser degree, Library and Archives Canada (the latter is subject to political influence, as recently realized during the Harper Government years, when digitizing and web archiving programs were halted or scaled back and public access to electronic and print holdings was scaled back or restricted).
- During INDU testimony on December 10, lawyer and partner at Cassels Brock & Blackwell LLP, Casey Chisik responded to a question about Crown copyright by stating, in part, that the process for obtaining clearances is:
 - "(It's) made that much more complicated by the lack of uniformity in licensing, by the fact that in order to license certain types of works you need to figure out which department of which provincial government you need to go to to even seek a licence, let alone worry about whether your inquiry will ever get a response. It poses enormous challenges, which I think may be associated with vesting copyright in entities that aren't really that invested in the idea of managing it."
- The lack of across-the-board government policy related to Crown copyright has also created barriers for persons with perceptual disabilities and the librarians who want to assist with exercising related statutory rights found in s32(1) of the *Copyright Act*. When government employees were asked for centralized ("across the board") support interpreting this provision for government works, the following response was provided via email correspondence on September 27, 2018:
 - As it pertains to Government of Canada publications, the request for alternative formats should be made directly with the department that has authored the

publication. Departments (specifically deputy heads) are required to enable communications with the public by ensuring that their department meets the requirements of the [Standard on Web Accessibility](#) and provides **published information on request that is substantially equal for people with disabilities**. This requirement can be found in the [Policy on Communications and Federal Identity](#) (6.3.5). Also, heads of communications are responsible for ensuring that their communications products are clear, timely, accurate, **accessible** and written in plain language ([Requirement 6.10.3 of the Directive on the Management of Communications](#)).

- With regards to government works in archival holdings, archivists, “can’t digitize it and put it on the Internet without permission.” This barrier is exacerbated for unpublished government works, which hold perpetual copyright. Archivist Nancy Marrelli provided the INDU committee with a hypothetical example (based on many years of practical experience) during the *Copyright Act* review testimony:
 - “Let’s say the family of a chaplain in a prison received a letter from the head of that prison because that chaplain was killed during a prison riot in the 1800s. Well, that letter is still under perpetual protection because it was never published, but the family wants to write a family history and needs to publish it. Why shouldn’t that letter be included in the materials that we can digitize anyway, if we are looking at prison riots and want to prepare documentation on our websites about that? There’s no reason that material should not be included.” (Canadian Council of Archives INDU testimony, May 31; see Appendix B)
- Egregious barriers and delays related to the digitization of culturally important government works are numerous and detrimental to scholarship and research. Delayed digital access to House of Commons Debates and Royal Commission documents (including Romanow Commission on Health Care and the Royal Commission on Aboriginal Peoples (RCAP)) has prevented scholars and journalists from using these materials in their work. Incredibly, U.S. citizens had access to the Debates via HathiTrust long before Canadians; Health Care Commission supporting documents were removed from the Health Canada website without unmediated access via Library and Archives Canada or the Depository Services Program; a private corporation was provided copyright protection over RCAP documents (a company which was shortly thereafter defunct), which prevented online access to important academic research papers for more than a decade.
- [HathiTrust](#) is a global partnership of more than 140 research institutions and libraries. Their collective digital holdings approach 17 million volumes; approximately 10,000-20,000 volumes in this collection were published by the Government of Canada. Researchers in the U.S. can access these resources but Canadians cannot, as they are restricted due to Crown copyright concerns.

Creative / cultural arts sector

- Documentary filmmakers are delayed and/or cannot afford the fees associated with the re-use of CPAC and PARLVU broadcasts. In addition, “Trying to navigate through the thickets of whether the National Archives owns something or what form of licence a particular item might be available under poses enormous challenges for certain sectors, such as documentary filmmakers—even with legal advice.” (Bob Tarantino, INDU testimony, December 10; see Appendix B)
- “In the United States, where the work of federal employees is automatically placed in the public domain, government-produced photographs are used to illustrate Wikipedia

articles and are subsequently reused by journalists for whom Wikipedia is often the first reference. Currently, many encyclopaedic articles on topics of interest to Canadians are illustrated with photographs from the U.S. government, as they are in the public domain, or with poor quality photographs. If the Government of Canada adopted a policy similar to that of the United States, the government's official photographs would be placed in the public domain and could be used on Wikipedia to illustrate the articles concerned.” (Wikimedia Canada INDU testimony, May 29; see Appendix B)

Corporate sector

- In addition to many of the barriers noted above, which could hamper viable commercial ventures, the terms of use for government web content prohibits re-use without first asking permission.

Education sector

Note: examples above also impact the education sector.

- Institutional fair dealing guidelines and educational exceptions in the *Copyright Act* do not support the reproduction of entire works without seeking permission from the rights holder. Despite non-commercial terms of use found on government websites, most PDFs include a statement that implies separate permission must be sought for re-use. One recent example of this is the Canadian Food Guide, but there are many others. This is a serious disincentive to the re-use of government works. Another disincentive are the contradictory responses to requests for permissions to re-use works in multiple teaching years. That is, institutional practices require requesting permission in each year that the material is re-used in a classroom (when perpetual re-use is not granted). It is common to have such requests (for the same work and for identical uses) be granted in one year and then denied the next, without explanation.
- For the vast majority of web-based government content, a scholar must ask permission to include an image or table or other excerpt in a scholarly article published by a commercial academic publisher, as the terms of use for these works do not include commercial activities and third-party content permissions are expressly required by most commercial publishers. In most cases, academic authors will opt to not use the excerpt from the government work due to delays and/or confusion about onerous clearance forms and departmental contacts. The result is reduced visibility and impact for government research.

Appendix B: Statements of Support for Crown copyright reform

Canadian Federation of Library Associations. (August 1, 2018) Position Statement: Modernizing Crown Copyright. http://cfla-fcab.ca/wp-content/uploads/2018/09/Doc12-CFLA-FCAB_statement_crown_copyright-Aug-1-2018-final.pdf

Related submissions to the ongoing Copyright Act review (2018):

Written briefs requesting removal of Crown copyright

Canadian Legal Information Institute	http://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR10020436/br-external/CanadianLegalInformationInstitute-e.pdf
Council of Atlantic University Libraries	http://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR10040854/br-external/CouncilOfAtlanticUniversityLibraries-e.pdf
Council of Post Secondary Library Directors BC	http://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR10201979/br-external/CouncilOfPostSecondaryLibraryDirectorsOfBritishColumbia-e.pdf
Creative Commons	http://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR9887146/br-external/CreativeCommons-e.pdf
Dalhousie Faculty Association	http://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR9973654/br-external/DalhousieFacultyAssociation-e.pdf
Macewan University	http://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR10008893/br-external/MacEwanUniversity-e.pdf
Maple Ridge Family History Group	http://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR10276811/br-external/MapleRidgeFamilyHistoryGroup-e.pdf
Meera Nair	http://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR9921772/br-external/NairMeera-e.pdf
Microsoft Canada	http://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR10008894/br-external/MicrosoftCanada-e.pdf
Mount Royal University	http://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR9990281/br-external/MountRoyalUniversity-e.pdf

Written briefs requesting review / reform of Crown copyright

Council of Atlantic University Libraries	http://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR10040854/br-external/CouncilOfAtlanticUniversityLibraries-e.pdf
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Canadian Council of Archives	http://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR10008890/br-external/CanadianCouncilOfArchives-e.pdf
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Note: Microsoft Canada brief includes government reports in its list of "raw materials" that should be available for re-use in AI innovations:

<http://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR10008894/br-external/MicrosoftCanada-e.pdf>

Oral testimony supporting review or abolishment of Crown copyright, Industry Committee, *Copyright Act* review:

Canadian Association of University Teachers Questions from MP Terry Sheehan and MP David de Burgh Graham, with responses from Charlotte Kiddell and Paul Jones	April 17, 2018 https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-101/evidence
Canadian Association of Research Libraries	April 24, 2018 https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-102/evidence
Canadian Federation of Library Associations	April 26, 2018 https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-103/evidence
Brianne Selman	May 10, 2018 https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-113/evidence
Canadian Association of Law Libraries Question from MP Terry Sheehan with response from Kim Nayyer	May 11, 2018 https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-114/evidence
Susan Paterson	May 11, 2018 https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-115/evidence
Wikimedia Canada Questions from MP Frank Baylis and MP Maxime Bernier, with responses from Jean-Philippe B�eland	May 29, 2018 https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-118/evidence
Canadian Council of Archives Questions from MP Frank Baylis, MP David de Burgh Graham, and MP Mary Ng, with responses from Nancy Marrelli	May 31, 2018 https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-119/evidence
Question from MP Dan Albas, with response from Paul Gagnon	October 3, 2018 https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-130/evidence
Creative Commons Canada and Open Media Questions from MP David de Burgh Graham, with responses from Kelsey Merkley and Laura	October 29, 2018 https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-134/evidence

Tribe	
Question from MP Dan Albas, with response from Jeremy de Beer	November 28, 2018 https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-140/evidence
Michael Geist Questions from MP Dane Lloyd, MP Brian Masse, and MP David de Burgh, with responses from Michael Geist, Bob Tarantino, Casey Chisick, and Ysolde Gendreau	December 10, 2018 https://www.ourcommons.ca/DocumentViewer/en/42-1/INDU/meeting-143/evidence

2019-04-09

Bill C-299. Introduction and first reading

Mr. Brian Masse (Windsor West, NDP) moved for leave to introduce Bill C-299, An Act to amend the Copyright Act (term of copyright).

He said: Mr. Speaker, it is an honour to rise to introduce my bill to amend the Copyright Act. In particular we would drop section 12, and that is "...Without prejudice to any rights or privileges of the Crown, no copyright subsist in any work that is or has been prepared or published by or under the direction of the control of Her Majesty or any other government department".

As things stand right now, the government is a closed door when it comes to government publications, research and a number of periodicals that are published. In fact, this costs us a significant amount of taxpayers' money. Second, it is against open government, and this is based upon a law that Canada enacted in 1921, which was based on a law from 1911 from the U.K.

Therefore, this bill would save money for taxpayers, it would provide for educators and innovators, open government and bring accountability. Most importantly, it would bring Canada in line with so many other countries that have information available for businesses or civil society and for the advancement of our nation and our country of Canada.

(Motions deemed adopted, bill read the first time and printed)

First Session, Forty-second Parliament,
64-65-66-67-68 Elizabeth II, 2015-2016-2017-2018-2019

HOUSE OF COMMONS OF CANADA

BILL C-440

An Act to amend the Copyright Act (Crown
copyright)

FIRST READING, APRIL 9, 2019

Première session, quarante-deuxième législature,
64-65-66-67-68 Elizabeth II, 2015-2016-2017-2018-2019

CHAMBRE DES COMMUNES DU CANADA

PROJET DE LOI C-440

Loi modifiant la Loi sur le droit d'auteur
(droit d'auteur de la Couronne)

PREMIÈRE LECTURE LE 9 AVRIL 2019

MR. MASSE

M. MASSE

BILL C-440

An Act to amend the Copyright Act (Crown copyright)

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

R.S., c. C-42

Copyright Act

1 Section 12 of the *Copyright Act* is replaced by the following: 5

No copyright — Her Majesty

12 Without prejudice to any rights or privileges of the Crown, no copyright subsists in any work that is, or has been, prepared or published by or under the direction or control of Her Majesty or any government department.

Transitional Provision

Copyright ceases to subsist

2 Without prejudice to any rights or privileges of the Crown, any copyright subsisting in a work referred to in section 12 of the *Copyright Act*, as it read immediately before the day on which this Act comes into force, ceases to subsist as of the day of that coming into force. 10 15

PROJET DE LOI C-440

Loi modifiant la Loi sur le droit d'auteur (droit d'auteur de la Couronne)

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

L.R., ch. C-42

Loi sur le droit d'auteur

1 L'article 12 de la *Loi sur le droit d'auteur* est remplacé par ce qui suit : 5

Aucun droit d'auteur — Sa Majesté

12 Sous réserve de tous les droits ou privilèges de la Couronne, il n'existe pas de droit d'auteur sur les œuvres préparées ou publiées par l'entremise, sous la direction ou la surveillance de Sa Majesté ou d'un ministère du gouvernement. 10

Disposition transitoire

Fin de l'existence du droit d'auteur

2 Sous réserve de tous les droits ou privilèges de la Couronne, tout droit d'auteur existant sur une œuvre qui est visée à l'article 12 de la *Loi sur le droit d'auteur* dans sa version antérieure à la date d'entrée en vigueur de la présente loi cesse d'exister à cette date d'entrée en vigueur. 15

April 4, 2019

The Honourable Navdeep Singh Bains
Minister of Innovation, Science and Economic Development

The Honourable David Lametti
Minister of Justice and Attorney General of Canada

Dear Minister Bains and Minister Lametti,

As a national voice for the interests of the academic community and its libraries in a balanced and fair approach to copyright, the Canadian Association of Research Libraries (CARL) would like to express our support for proposed changes to Canada's Crown copyright provision, as is reflected in the private member bill presented by MP Brian Masse, currently before the House of Commons.

CARL had raised this important issue in our [brief](#) to the INDU Committee, as part of the review of the *Copyright Act*.

By removing copyright protections for government-produced works, we believe this bill is in the public interest for Canadians citizens, who are fundamentally the owners of these works, as it will give them the unobstructed right to use and distribute documents and publications created by their government.

CARL members include Canada's twenty-nine largest university libraries as well as two national libraries. A number of librarians, archivists, and other information professionals within our member institutions have contributed to a separate letter submitted by Amanda Wakaruk, outlining how the work of Canadian cultural memory organization has been negatively impacted by inconsistent and overreaching interpretations of the current Crown copyright provision (Section 12 of the Copyright Act), and how it conflicts with the principles of Open Government and exacerbates the democratic deficit. We would also like to take this opportunity to express support for the position articulated in this letter.

No action at this time will result in the exacerbation of the barriers described above, given that copyright term extensions associated with CUSMA will apply to Canadian government works while government works in the United States enter the public domain by default.

Sincerely,



Susan Haigh
Executive Director



Canadian Federation of Library Associations
Fédération canadienne des associations de bibliothèques

April 8, 2019

The Honourable Navdeep Bains
Minister of Innovation, Science and Economic Development

The Honourable David Lametti
Minister of Justice and Attorney General of Canada

Dear Minister Bains and Minister Lametti,

The Canadian Federation of Library Associations/Fédération canadienne des associations de bibliothèques (CFLA-FCAB) is the national voice of Canada's library associations. Our purpose is to advance library excellence in Canada, champion library values and the value of libraries and influence national and international public policy impacting libraries and their communities.

CFLA-FCAB has requested amendments to the *Copyright Act* concerning Crown Copyright that would expand access in its past interventions and submissions, the most recent being in the 2018 review of the *Copyright Act*. In its submissions, CFLA-FCAB documented the many barriers faced by librarians and archivists as a result of Crown Copyright, ranging from digitization and format shifting, to lack of government openness and difficulty in securing permissions for use of government works. CFLA-FCAB has also documented the impact of the persistence of Crown Copyright on Canadians, which exacerbates the lack of unhindered access to government information, suppresses the redistribution of government works, and prevents the preservation of analog and born digital materials, thus inhibiting democratic engagement.

Mr. Brian Masse, MP has put forward a private member's bill that begins to address Canada's problems with Crown Copyright. CFLA-FCAB supports the intent of Mr. Masse's private member's bill to amend Crown Copyright. Libraries and archives require the unfettered ability collect, preserve, and make government works available to all Canadians. CFLA-FCAB encourages Parliament to embrace this opportunity to address this longstanding impediment to full access to government works.

Sincerely,

Katherine McColgan
Executive Director



Canadian Association of University Teachers
Association canadienne des professeures et professeurs d'université

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Sent by email: brian.masse@parl.gc.ca

April 9, 2019

Brian Masse, MP
House of Commons
Ottawa, ON

Dear Mr. Masse:

Re: Crown Copyright Private Member's Bill C-440

I write on behalf of the Canadian Association of University Teachers to thank you for championing changes to Section 12 of the *Copyright Act* to address Canada's approach to Crown works.

CAUT has long spoken out about the barrier that Crown copyright represents to researchers, students, librarians, archivists, and the Canadian public. The ability to distribute and re-use government works is of fundamental importance to a democratic society. In CAUT's written submission to the parliamentary review of the *Copyright Act*, we call for the public to have access to government works upon their release.

We welcome the opportunity that your bill represents for Parliament to address Crown copyright. We encourage public and all party support for Crown copyright reform.

Sincerely,

A handwritten signature in blue ink, appearing to read 'David Robinson', with a long horizontal flourish extending to the right.

David Robinson
Executive Director



uOttawa

L'Université canadienne
Canada's university

Faculté de droit Faculty of Law
Section de common law Common Law Section
Michael Geist

Canada Research Chair in Internet and E-commerce Law

April 5, 2019

Brian Masse, MP
House of Commons
Ottawa, ON

Dear Mr. Masse:

Re: Crown Copyright Private Member's Bill

I write to express my support for your private member's bill that would amend the Copyright Act by effectively repealing the crown copyright provision found at Section 12.

As you are aware, Canada still retains crown copyright, which reflects a centuries-old perspective that the government ought to control the public's ability to use official documents. The existence of crown copyright affects both print and audiovisual worlds and is increasingly viewed as a barrier to innovation, including in Canadian filmmaking, political advocacy and educational publishing. The government has established an open licence to address some crown copyright concerns, but a more innovative system, consistent with Canada's innovation ambitions, would be to establish a presumption that government materials belong to the public domain and are to be freely used without prior permission or compensation. Your private member's bill would achieve that goal, simultaneously removing the unnecessary restrictions established by crown copyright and facilitating a more innovation approach to copyright law.

I believe the bill deserves public and all-party support.

Sincerely,

Michael Geist
Canada Research Chair in
Internet and E-commerce Law

April 5, 2019

Dear Minister Bains (Innovation, Science and Economic Development) and Minister Lametti (Justice and Attorney General):

We are writing to express our support for a proposed legislative change to Canada's antiquated Crown copyright provision, which is currently before the House of Commons as a private Member bill presented by MP Brian Masse.¹ This bill removes copyright protections for government-produced works. The necessary protections for government works have been available via the *Access to Information Act* since 1983 and also through Treasury Board Secretariat publishing policies and procedures.

The librarians, archivists, and allies listed below represent dedicated information professionals committed to their roles as stewards of the public record, in service for the public good. Our work has been hampered — and at times prevented — by inconsistent and sometimes overreaching interpretations of the current Crown copyright provision, section 12 of the *Copyright Act*.

Section 12 was directly transcribed from the 1911 UK Copyright Act (section 18), the undemocratic spirit of which dates back to 17th-century Britain. Relying on a piece of legislation that was not created in our country or with an understanding of our current access to information principles and legislation creates a barrier to the redistribution of government works. This hampers accessibility and stifles democratic engagement, which is out of step with technological innovations and Open Government commitments made over the past century.

Currently, the digitization and other format shifting or migration of legacy government works, as well as the curation of born-digital government works, is subject to the approval of government rights-holders at the author agency level (agencies that may or may not still exist). Unfortunately, there is little consistency in responses to such requests and delays can result in project abandonment and cultural losses.

The removal of copyright protections for government works is long overdue, would mirror existing copyright policy in the United States, and would allow Canadians and cultural memory organizations alike to collect, preserve, and make available to the public works produced by their government without fear of copyright infringement. This is a reform that has been recommended by academics, government employees,

¹ MP Masse's bill is similar to Bill C-442, presented to the House of Commons in 1993 by MP and former Solicitor General of Canada, Bob Kaplan.

librarians, and archivists and has also been endorsed by MPs over multiple decades and governments.

It is in the public interest for Canadians to have the unimpeded right to use and distribute documents and publications created by their government. Fundamentally, as citizens, we are the owners of these works. Unduly restricting such rights, as is the current situation, is antithetical to the aims of Open Government and exacerbates the democratic deficit.

Sincerely,

Amanda Wakaruk, Copyright Librarian
Aspi Balsara, Librarian
Karen Banuga, Copyright Officer
Guylaine Beaudry, Vice-Provost Digital Strategy and University Librarian
Eleanor Berry, Research and Evaluation Analyst, Knowledge Management
Mary Bertulli, Library Technical Assistant, Interlibrary Loan
Sonya Betz, Head, Library Publishing and Digital Production Services
Gwen Bird, University Librarian and Dean of Libraries
Kathryn Blair, Copyright Specialist
John Bolan, Head of Instructional Services
Geoffrey Boyd, Library Technical Assistant - Web Services
Emily Brennan, Library Assistant
Mélanie Brunet, Copyright Services Librarian
Amy Buckland, Head, Research & Scholarship
Chris Burns, Data Services Librarian
Lauren Byl, Copyright & Licensing Librarian, Collection Development
Anita Cannon, Research Librarian
Jeff Carpenter, Course Production Coordinator
Pamela Carson, Web Services Librarian
Tina Clarke, Senior Library Assistant
Valerie Critchley, Systems & Copyright Librarian
Rosie Croft, University Librarian
Katie Cuyler, Public Services Librarian
Joshua Dickison, Copyright Officer
Duncan Dixon, Assistant Librarian, Reference & Information Literacy
Janice Dudas, Library Technician
Tobe Duggan, Copyright Coordinator
Mirela Djokic, Liaison Librarian
Tonya Elliott, Learning Design Manager
Heather Empey, Interim University Librarian
Janice Fralic-Brown, Circulation Supervisor
Alana Gaulin, Copyright Advisor
Diane Gerun, Copyright Officer

Carla Graebner, Librarian for Data Services and Government Information
Rumi Graham, University Copyright Advisor & Graduate Studies Librarian
Myron Groover, Archives and Rare Books Librarian
Percilla Groves, Reference Librarian (retired)
Siobhan Hanratty, Data/GIS Librarian
Melanie Hardbattle, Special Collections and Rare Books
Paul Hebbard, University Archivist and Coordinator of Information and Privacy (acting)
Shely Henry, Copyright Officer
Sigrid Kargut, Liaison Librarian
Emma Hill Kepron, Digital Infrastructure Librarian
Jasmine Hoover, Scholarly Resources Librarian
Peter Houston, Archivist and Special Collections Librarian
Andre Iwanchuk, Business Librarian
Meris James, Reference Librarian
Krista Jamieson, Digital Services Manager
Wanjiku Kaai, Public Services Librarian
Paule Kelly-Rhéaume, Web Services and Liaison Librarian
Kim Kemmer, Copyright Permissions Assistant
Michelle Lake, Government Publications Librarian
Kate Langrell, Copyright Coordinator
Dominique Lapiere, Copyright Office Manager
John Latour, Teaching & Research Librarian
David Layton, Acquisitions Librarian
Sam-chin Li, Reference & Government Information Librarian
Amy Lorencz, Metadata and Copyright Librarian
Ann Ludbrook, Copyright and Scholarly Engagement Librarian
Nancy Marrelli, Archivist/Copyright Advisor
Heather Martin, Copyright Officer and Manager, E-Learning and Reserve Services
René Martin, Director, Learning Services
Austin Matheson, Library Technical Assistant, Copyright
Suzanne McBeath, Corporate Librarian
Michael B. McNally, Associate Professor
Keshav Mukunda, Research Data Librarian
Karen Meijer-Kline, Scholarly Communications Librarian
Cari Merkley, Associate Professor
Andrea Mills, Digitization Program Manager
Patricia Moore, Scholarly Communications & Research Engagement Librarian
Tomasz Mrozewski, Data, GIS and Government Documents Librarian
Todd M. Mundle, University Librarian
Stephanie Orfano, Scholarly Communications and Copyright Office
Susan Paterson, Government Publications Librarian
Anne Pottier, Associate University Librarian
Marian Ramage, Reference and Electronic Services Librarian
Ryan Regier, Research and Scholarship Librarian
Eva Revitt, Librarian
Nathalie Richard, Bibliothécaire

Chloe Riley, Research Commons Librarian
Jane Roberts, Serials Specialist
Denyse Rodrigues, E-Learning & Library Research Services Librarian
Sarah Rutley, Data, GIS & Government Publications Librarian
Aleksandra Rybak, Copyright Technician
Mandi Schwarz, Library Technical Assistant – Electronic Resources
Brienne Selman, Scholarly Communications and Copyright Librarian
Sara Sharun, Assistant Professor
Judith Sherwood, Instructional Digital Media Developer
Graeme Slaght, Scholarly Communications & Copyright Outreach Librarian
Shelby Sluth, Copyright Administrative Assistant
Seline So, Reference Librarian
Kevin Stranack, Head, Digital Publishing & Managing Director
Donald Taylor, University Copyright Officer and Research Repository Coordinator
Jocelyne Thompson, Director, Collections
Robert Tiessen, Collection Development Librarian
Chris Trainor, Head of Archives and Research Collections
Ross Tyner, Director of Library Services
Leah Vanderjagt, Head, Digital Repository and Research Data Management Services
Frank van Kalmthout, Librarian
Colleen van de Voort, Liaison Librarian
Doris Wagner, Public Services Librarian
Martin Warkentin, Copyright Librarian
Brandon Weigel, Coordinator and Project Manager
Heather H. Whipple, Data/Liaison Librarian
Wade Wyckoff, Associate University Librarian, Collections
Nich Worby, Government Information and Statistics Librarian
Pia Zeni, Online Learning Consultant
Jennifer Zerkee, Copyright Specialist
Laura Zikovic, Instructional Digital Media Developer

FOR IMMEDIATE RELEASE

APRIL 10, 2019

**NDP AIMS TO OPEN GOVERNMENT BY ABOLISHING CROWN
COPYRIGHT**

Masse introduces bill to eliminate Crown Copyright and save Canadians' money

OTTAWA – Yesterday, NDP Critic for Innovation, Science and Economic Development, Brian Masse MP (Windsor West), introduced Bill C-440 at a press conference on parliament hill, that would end undemocratic and unnecessary barriers to the access and re-use of government information.

“Government belongs to the people and so should its information,” Masse stated. “The fact that Canadians have to pay three times for the same information is outrageous and wasteful. It is absurd that crown copyright originates from a time when the model T was the biggest selling automobile. That car does not exist today and neither should crown copyright.”

Crown copyright was added to the Canadian Copyright Act of 1921, based on language in the 1911 UK Act. This provision (Section 12) provides the government with control over the use, re-use, and distribution of government works, despite the fact that necessary controls are now rendered via the Access to Information Act and the Treasury Board Secretariat Policy on Communications and Federal Identity. This forces Canadians to ask for permission to re-use and distribute government works or risk a claim of copyright infringement. Such requests are often delayed and denied.

Canadian taxpayers fund the production of government works, bear the costs of administering the clearance processes for granting or denying the right to re-use these works, and pay again in cases where the government charges for access to these works.

In contrast, U.S. federal works are freely available for re-use since the United States Congress mandated in 1895 that they were not subject to copyright protection. This puts Canadian researchers, scientists, archivists, cultural stewards and innovators at a disadvantage.

Masse was joined by Amanda Wakaruk (Copyright Librarian University of Alberta), Katherine McColgan (Executive Director of the Canadian Federation of Library Associations), Julie Morin (Canadian Association of Research Libraries), Brenda Lauritzen (Canadian Association of Law Libraries) and Archivist Nancy Moretti.

In 2017, Copyright Librarian Amanda Wakaruk petitioned Parliament to remove copyright protection from publicly available government works. The petition was signed by almost 1,500 Canadians. "Crown copyright is hurting the work of our cultural memory organizations and the public they serve. It is also bolstering the democratic deficit. It needs to be abolished so we can all do our work without fear of infringement," Wakaruk stated.

-30-

For more information: Mohummed Peer, 519-982-8816 or Brian.masse.al@parl.gc.ca.

Brian Masse

Member of Parliament
(Windsor West)



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April 30, 2019

Dear Friends,

Your support for C-440 will be essential in passing the bill. With the endorsement of the Canadian Association of Research Librarians, the Canadian Federation of Library Associations, the Canadian Association of University Teachers, and over 100 librarians, archivists, academic leaders, researchers and entrepreneurs from across the country in support of abolishing Crown Copyright in Canada the momentum for change is building.

The fact that Canada still retains this archaic restriction that is more than 100 years old that stops Canadians from accessing and using information that they have paid for is outrage. Canadians must ask for permission to re-use and distribute government works or risk a claim of Copyright infringement. Such requests are often delayed and denied. These barriers have hindered the work of thousands of Canadians on a daily basis while impeding our economy. By amending the *Copyright Act*, this bill supports Canada's commitment to Open Government by making publicly accessible government works available for re-use without payment or permission.

I am asking for your support in participating in a social media campaign we have launched to engage all Canadians to join the conversation to abolish Crown Copyright in Canada which will increase access to information, improve transparency, encourage innovation and save money for Canadian tax payers.

The Facebook page can be found at: <https://www.facebook.com/BillC440/> as well as an online petition: <https://www.change.org/p/justin-trudeau-abolish-crown-copyright-in-canada>. Your stories regarding Crown Copyright are welcomed and encouraged on the Facebook page. I also encourage you to share the petition with your respective organizations and to address letters of support of Bill C-440 to:

-Your Member of Parliament

-NDP Critic for Innovation, Science and Economic Development Brian Masse, MP Windsor West – Brian.Masse@parl.gc.ca

-Prime Minister **Justin Trudeau** - Justin.Trudeau@parl.gc.ca

-The Minister of Justice and Attorney General of Canada, **David Lametti**
David.Lametti@parl.gc.ca

-The Minister of Innovation, Science and Economic Development, **Navdeep Bains** –
Navdeep.Bains@parl.gc.ca

In conclusion, your support is greatly appreciated and will be instrumental to abolishing Crown Copyright in Canada.

Sincerely,

A handwritten signature in blue ink that reads "Brian Masse". The signature is written in a cursive, flowing style.

Brian Masse, MP Windsor West
NDP Critic for Innovation, Science and Economic Development