

# THE ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

CRITIQUE OF CURRENT AND PROPOSED CENSORSHIP LEGISLATION IN ONTARIO JUN 27 1984

Films and videotapes are unique in the province of Ontario; unlike any other medium of art or communication they cannot be shown to the public until the Government-appointed Board of Censors has given permission. This is discrimination against these media. It is also a case of films and tapes being considered "guilty" until proven "innocent." Similar intrusions against theatre, painting, the printed word or any other form of expression would be unthinkable in our society.

The Ontario Censor Board may demand cuts from any tape or film before it can be shown, or may ban it outright. The Board's rationale is that pre-censoring will stop pornography and that it will protect children from unsuitable material. In fact, prior censorship is ineffective in fighting pornography. If the Board cuts pornographic films the exhibitor of those films is somewhat protected from prosecution under Federal obscenity laws, but pornography continues to be produced and is circulated, uncut, underground. As for the protection of children, a classification system which restricts on the basis of age is adequate for keeping problematic subject matter from children. Classification also informs adults of a film's content so that they may exercise their own choices. Cutting and banning are not necessary to attain either of the ends espoused by the Ontario Censor Board, neither are they effective.

Prior censorship of film and video is not merely an ineffective means of controlling certain perceived social harms, however. In practice, it has considerable negative consequences. The Censors are free to approve, rate, cut and ban on any grounds they choose - even political, aesthetic and religious if they should wish. In recent years, it has become clear that fear of this practice is not ungrounded. "A Message From Our Sponsor" which is an experimental film that criticizes the exploitation of women in advertising has been barred from being shown uncut in this province by the Board. A feminist film entitled "Born in Flames" showed women resisting harassment. The Censors attempted to make cuts in this film because it implied rape in their view. More recently the Censors' powers were the cause of a cancellation of a video art exhibition. The Burlington Cultural Centre, rather than submit work to the Board instead decided not to exhibit the work. The list of infringements on the freedom of expression of legitimate producers and organizations goes on and on.

There have been half-hearted attempts by the Censors to appease some cultural organizations through a process called "Examination by Documentation." But apart from slightly easing bureaucratic pressures, this system is no less oppressive, and no less prior censorship than any other method. In fact, exhibitors are still required under this system to pay money for censorship and even further restricted in that "Examination by Documentation" allows for exhibition only on a "one time, one place" basis. The Board demands the right to see any film or tape submitted by this method and can cut and ban as always. Further, admittance to screenings approved by documentation are rated "Adults Only".

Both the Ontario Supreme Court and the Ontario Court of Appeal have recently ruled that the Censor Board is acting in violation of the Charter of Rights and Freedoms in the new Canadian Constitution. They found that the Censor Board has no legal standards upon which they base their rulings. This means that decisions to cut, ban or rate films and tapes are totally arbitrary and are based only on the whim of the officials of the Censor Board. Given the challenge to the Board's extensive powers that the courts have made, it is doubly offensive that the Government of Ontario has now introduced Bill 82, a series of amendments to the Ontario Theatres Act.

The Ontario Court of Appeal granted the Censor Board a stay of execution during which time they could decide to appeal the ruling or draft new laws that would be in keeping with the Justices' decision. Having chosen to appeal to the Supreme Court of Canada, the Ontario Government seems to want to have it both ways. They have even asked the Supreme Court to rule on the provinces' right to censor films. Despite court battles, lobbying, briefs and petitions, legislation has been drafted with no consultation of the community that has protested current practices so vehemently.

Recent statements in the press by representatives of the Government and the Censor Board have hinted at possible exemptions or special status for cultural organizations. However, there is no mention of such matters in Bill 82. Claims that the Censor Board does not want to interfere with the freedom of expression of cultural organizations are belied by the content of these proposed amendments. Bill 82 is even more oppressive than the legislation it is designed to replace. Arts organizations and other non-profit producers, distributors and exhibitors will suffer the most in terms of new infringements upon their freedom of expression if Bill 82 becomes law. Ultimately, however, it will be all Ontarians who stand to lose if Bill 82 goes through.

The following is a list of objections to Bill 82:

1. Section 1(1)(a) The Ontario Board of Censors will be re-named the Ontario Film Review Board. Although this sounds less oppressive it is clearly euphemistic, since the Board will have even more power to censor than before.
2. Section 3(5)(a), Section 1(2)(ba) Under Bill 82, the Board will have the power to censor not only films and tapes that are exhibited, but also those that are distributed "for direct or indirect gain." "Indirect gain" is not defined. It could include other than monetary gain, for example gain in reputation as an artist, political gain, social gain, etc. This section will mean that even films and tapes distributed for non-commercial or private viewing must be submitted for Board approval. Thus, the Board will have broad powers not only to classify, but also to cut, ban and restrict all material distributed in the province.
3. Section 35(2) Even though the Court of Appeal of Ontario stated that the lack of standards in the Act was unconstitutional, this section lays out no standards upon which the Board must make rulings. Instead it gives the Board the power to censor "in accordance with the criteria prescribed by the regulations." Regulations for the Theatres Act are decided by Cabinet, with no necessary input from the legislature or community and may be changed at any time.

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have to  
submit*

No regulations have been issued at this time to indicate what criteria are to be used. However, current criteria for censorable material that the Board uses include such broad and vague terms as "explicit portrayal of sexual activity," and moralistic admonitions against such things as "scenes of urination."

- one time  
one place*
4. Section 35(3) Bill 82 sets out the powers of the Censor Board to limit exhibition of a film or tape to a specific time and a specific place if they wish. This power, although not stated in previous legislation, has been used consistently in the past to control smaller and non-commercial exhibitors. *arbitrary*
  5. Section 3(9) This section of Bill 82 exempts the Censor Board from Part 1 of the Statutory Powers Procedure Act. This is an attempt by the Censor Board to avoid any obligation to provide a full and fair hearing such as one would receive in a court of law. This covers decisions regarding approval, censoring and classification of films or tapes.
  6. Section 35(5)(6)(7) Under the amended Theatres Act, a Board decision may be appealed. In paying lip-service to a principle of fairness, the appeal panel will consist of different Board members than those who made the original ruling. Never-the-less it is the Board itself that will hear appeals. It should be noted that standard practice for legal appeals is that they are to be heard by a higher and different court altogether.  
The appeal board's decision will be final, and a person who submits a film or tape to the appeal board must pay a second fee.
  7. Section 40 (3) Like the standards for censoring films and tapes, standards for censoring of advertising of films will be set out in regulations where they will be subject only to Cabinet approval. Bill 82 does not give any indication of the criteria that will be listed in the new regulations. In the past, advertising for the Canadian film "Surfacing" was censored for including a depiction of a bare-breasted woman diving into the water.
  8. Section 4(2)(c)(d)(3)(4)(5)(6)(7) Under Bill 82, the exact powers of inspectors are spelled out more clearly and specifically with regard to seizure of equipment of films and tapes. Seizure of goods is permitted even if no charges are laid. This is an unnecessary and excessive control. It should be sufficient to lay charges if a law is violated. Seizure of goods does not serve any purpose and provides undue opportunity for harassment of selected organizations or individuals.
  9. Section 10(2) The present Theatres Act requires that a theatre which exhibits "standard" film (35mm movies) must be licenced. Bill 82, however, will extend licencing requirements to include any "premise used primarily for the exhibition of other than standard film." This means that any gallery, screening room, cinematheque or other establishment that shows primarily video, 16mm or 8mm film must be licenced.
  10. Section 11.7.(2)(c) The amended Theatres Act will give the Theatres Branch Director (who is also Chairman of the Censor Board) the power to refuse to issue a licence if "the applicant is a corporation and the past conduct of an officer, director or shareholder affords reasonable grounds for belief that the applicant will not comply with this Act and the regulations..." Like the section of Bill 82 that deals with seizure of goods, this section is an unnecessary and excessive restriction. Since there is not even a definition in the Bill of "reasonable grounds for belief" the potential for discriminatory application of this section is immense. Further, the extended licencing requirements in Section 10(2) will make a much larger number of small or non-profit institutions vulnerable to discriminatory withholding of licences.

11. Section 10(1) If an organization does not primarily use their premises for the exhibition of film or video, the new law will require that any equipment itself will have to be licenced if used for public exhibition. Thus Bill 82 will make it impossible for anyone to exhibit film or video without a licence, either for the equipment or for the premises.
12. Section 35a.(1) Although Bill 82 states that the Censor Board's decision on an appeal that it hears is final from the point of view of the person submitting the tape or film, the Censor Board itself may require a film to be re-submitted under the new Act. This will happen when "...the Chairman of the Board is of the opinion that the criteria prescribed by regulation respecting subject-matter or content in films have changed since a film was originally approved and classified..." It is clear from this section that standards of rating are intended to remain a matter of opinion and subject to change with no concern for consistency. There will be substantial potential for harassment of selected organizations or individuals if this section becomes law.

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