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Mercredi 20 avril 2005

Standing committee on justice policy

Film Classification Act, 2005

Comité permanent de la justice

Loi de 2005
sur le classement des films

Chair: Shafiq Qaadri
Clerk: Katch Koch

Président : Shafiq Qaadri
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Wednesday 20 April 2005

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Mercredi 20 avril 2005

The committee met at 0908 in room 228.

FILM CLASSIFICATION ACT, 2005
LOI DE 2005 SUR LE CLASSEMENT DES FILMS

Consideration of Bill 158, An Act to replace the Theatres Act and to amend other Acts in respect of film / Projet de loi 158, Loi remplaçant la Loi sur les cinémas et modifiant d'autres lois en ce qui concerne les films.

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, good morning. I'd like to call this meeting of the standing committee on justice policy to order. As you are aware, we're here to consider Bill 158, An Act to replace the Theatres Act and to amend other Acts in respect of film.

SUBCOMMITTEE REPORT

The Chair: We have a report of the subcommittee, and I respectfully ask if Mr. Brown would read it and enter it into the record.

Mr. Michael A. Brown (Algoma–Manitoulin): I'll move the report of the subcommittee.

Your subcommittee on committee business met on Thursday, April 14, 2005, and recommends the following with respect to Bill 158, An Act to replace the Theatres Act and to amend other Acts in respect of film:

(1) That the committee meet for the purpose of holding public hearings in Toronto on Wednesday, April 20, 2005, and if necessary, on Thursday, April 21, 2005.

(2) That the clerk of the committee, as directed by the Chair, advertise information regarding the hearings in the following dailies for one day each: the Globe and Mail, the National Post, the Toronto Star, the Toronto Sun.

(3) That the clerk of the committee, as directed by the Chair, also post information regarding the hearings on the Ontario parliamentary channel and on the Internet.

(4) That the deadline for receipt of requests to appear be Tuesday, April 19, 2005, at 4 p.m.

(5) That the clerk of the committee, in consultation with the Chair, be authorized to schedule all interested presenters on a first-come, first-served basis.

(6) That the length of the presentations for witnesses be 15 minutes for groups and 10 minutes for individuals.

(7) That the deadline for written submission be Monday, April 25, 2005, at 4 p.m.

(8) That the research officer provide a summary of presentations by Tuesday April 26, 2005.

(9) That the administrative deadline for submitting amendments be Tuesday, April 26, 2005, at 4 p.m.

(10) That clause-by-clause consideration of the bill be scheduled for Wednesday, April 27, 2005.

(11) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the adoption of the report of the subcommittee, to commence making any preliminary arrangements to facilitate the committee's proceedings.

The Chair: I welcome any comments or debates on the subcommittee report.

Mr. Peter Kormos (Niagara Centre): I wonder if we could be advised about the response to the notice regarding the committee hearings.

The Clerk of the Committee (Mr. Katch Koch): As you can see, members of the committee, you have the agenda for today in front of you. We were able to fill up most of the day, which means that we will not require a second day of hearings tomorrow.

Mr. Kormos: And the agenda for today goes up till noon—

The Clerk of the Committee: Till noon.

Mr. Kormos: —and then again this afternoon?

The Clerk of the Committee: No. When the House is sitting, this committee is only permitted to sit on Wednesday and Thursday morning.

Mr. Kormos: Now, what does that mean? If there are last-minute requests, we still have tomorrow should we want to entertain requests to appear before the committee that are made after the deadline?

The Clerk of the Committee: That's right, if it is the will of the committee.

Mr. Kormos: Good, because I know we've got two ministry staff here, civil servants, and one, two, three four political staff. Only three? Well, wait a minute. There are at least two or three political staff here, so we'd better move along. There's a good $300,000 or $400,000 a year in salaries sitting here, so let's keep these people occupied. It's costing the taxpayer a fortune. How many bureaucrats does it take to monitor a committee?

The Chair: Any further comments or debate on the subcommittee report? All those in favour of adopting the subcommittee report? Any opposed? Carried.

RESPONSIBLE ONTARIO ADULT RETAILERS

The Chair: I'd now like to welcome our first scheduled presenter, Mr. Nicholas Satschko of Responsible Ontario Adult Retailers. Please come forward, Mr. Satschko. First of all, to remind you, housekeeping: You'll have about 15 minutes to present. Any time you leave remaining at the end will be divided evenly among the various parties, starting with the official opposition. If you would, please introduce yourself and your organization for the purpose of documentation for Hansard, and then please begin.

Mr. Kormos: Chair, I was advised that now there are five political staffers here. My God.

The Chair: Thank you, Mr. Kormos. Mr. Satschko?

Mr. Nicholas Satschko: My name is Nicholas Satschko. I'm here on behalf of our organization, Responsible Ontario Adult Retailers. We're basically individuals who have been distributing, selling, adult-related products in our province of Ontario. With me, on my right, I have Mr. Edmund Peterson, barrister and solicitor, and to his right I have my son, Gerry Satschko. The reason we are here is the hypocrisy of Bill 158.

I have been involved in this from day one, and the evidence I like to give is very simple. I despise, abhor, the term "kiddie porn" that is constantly used with adult-related materials because, to this day, not one retailer in Ontario has ever been accused or served with any notification that he or she is dealing kiddie porn. So let's get that straight. There are two things here: One is a terrible situation, and the other is material that we provide for adult users who willingly walk into a store and are clearly over the age of 19 or 21. The legal age is 19; however, I don't like to deal with anyone under the age of 21. We supply them with a product that is not only legal but approved by the Canadian federal government, which oversees the wrongs of this land, such as legislation toward kiddie porn, bestiality or any other type of inappropriate film viewing.

At this point, I don't know how much of this I'm going to take up with my very close friend Mr. Peterson, but just to go through an article in an Ontario newspaper, the Toronto Star, I had the distinct displeasure of meeting Mr. Robert Dowler four years ago, at which time he led us to believe that he was interested in forming a proper structure to evaluate and to regulate films in Ontario; however, very quickly after, we found out that Mr. Dowler and a whole team at the Ontario Film Review Board were actually working hand in hand with the Montreal distributors of adult video films. For the record, I would say 95% of all film distributors are Quebec-owned and do not pay taxes in Ontario.

Just to go over this very briefly, just the opening of this newspaper here: "The provincial government has decided to retain some censorship power." The only way I can answer that—is that like being a little dead, a little pregnant or a little bit asleep? How can you have some censorship in a free democratic society? Absolutely ridiculous. It's either against the law or it's within the law; you cannot have some censorship for it. How would you like me to tell you what you're going to eat tonight?

At this point, I'm going to hand this over to Mr. Edmund Peterson.

Mr. Edmund Peterson: I'll be rather brief because I'm mindful of the time limit.

The Chair: Would you mind just introducing yourself once again?

Mr. Peterson: Yes, indeed. My name is Edmund Peterson. I'm a barrister and solicitor in Ontario, and I am the legal representative, the solicitor, for both Mr. Satschko and Responsible Ontario Adult Retailers.

Ladies and gentlemen, I just have four points to make. First of all, the difficulty with this legislation is that it does not set a level playing field. This city makes approximately $30 million in profits of various sorts from the International Film Festival, which is held here every year. Anything that is seen at that film festival is seen without anyone from the OFRB having screened it, because there is an exemption. That film festival regularly includes items where not just explicit adult sex is shown, but cases where questionable adult sex is shown. I'll use the example of Fat Girl, the film that featured underage sexuality which the OFRB ultimately approved after a Divisional Court challenge.

I can go, as a private citizen, to the film festival and see something in this artistic milieu that is virtually the same footage that I cannot see unless it has been censored, screened, classified—at $4.20 a minute, I might mention—by some person who has no qualifications except that he was randomly selected to sit on an OFRB panel.

Mr. Justice Juriansz, now of the Court of Appeal, rightfully put his finger on the hypocrisy of this dichotomy. Why should some art film be free from censorship, free from any sort of oversight, while something that is simply rented in a physical location in Ontario isn't? That's my first point.

My second point is, I basically would ask the members to be mindful of the public purse here. On April 30 of last year, Justice Juriansz, in the decision of Glad Day, basically struck down the censorship regulation that forced every movie to be submitted, because it constituted a violation of freedom of expression which was not justified. The argument was over breadth. The law in those days said that you have to put in every single movie, with certain exceptions such as the film festival, to be screened at $4.20 a minute. His Lordship, as he is now, said, "No, that is not constitutional." It was struck down.

The new legislation does not do away with the impugned censorship. It sugar-coats it. It gives it a new name: classification. Yet the universal submission requirement is still there. Everything that I see or you all see, save and except videos showing one how to operate a chainsaw and, of course, the film festival, must be screened by someone with no experience, at $4.20 a minute. That, I submit, flies in the face of Justice Juriansz's judgment, and I reasonably foresee millions of

dollars of taxpayers' money being spent to implement a law that will be struck down as quickly as it is implemented.

0920

My third point is this: It is supremely easy to fix this problem. First of all, as Mr. Satschko said, kiddie porn is a criminal problem; it is not an art representational problem. Everything that comes across the border is screened, unless it comes by Internet. Everything that this young man may see on cable TV has no prior restraint whatever; that's under federal CRTC auspices, and they don't impose any prior restraint censorship. Neither, I might mention, does the province of Alberta. It says Manitoba in the article, but it's Alberta. It's a very simple system, cheap and effective. Every single movie is adults-only by default. If a distributor wants to sell it or rent it to somebody under 18, then he must submit it; otherwise, it's illegal to show it to anyone or rent it to anyone under 18. I'd point to that as effectiveness.

We are flooded, as some people say, with not just pornography but all films from everywhere. Internet films come in, and young people have access to them. Mail order Internet delivery of hard-core films can be effected in a matter of days from their distribution points in California by anyone with access to a credit card, completely unregulated. The only people, oddly enough, who are regulated are the ones who are physically present in Ontario, carrying on business, paying municipal taxes, basically adding to the wealth of Ontario. They're the ones who are being hit and affected by this.

My final point is simply one of money. I don't know if this is clear, but there is a significant economic difference between what are known as adult sex films and what are mainstream films. A mainstream film might be seen by a million people on its first weekend of release, perhaps 5,000 in each theatre. The $4.20-a-minute screening fee means nothing—it's a minor inconvenience—because the film will be seen by so many people. Adult sex films are usually seen by an audience of one or, at most, two in the privacy of an Ontarian's home, yet the exact same fees—which add, I might say, approximately $400 to $500 per title—are imposed on that same film, of which maybe, at most, 100 copies will be made and might be seen by 1,000 people in the whole of the country, whereby the blockbuster, where a million people see it, pays the exact same fee.

Ladies and gentlemen, the adult film business, the mom-and-pop stores on the corner, the ones we see, the ones that this Legislature can control, are being driven out of business. When they are driven out of business, if they are, then this material will be available, completely unregulated, via Internet, via cable TV, not to mention underground. By destroying a business, by demonizing a business, one basically promotes an unregulated business. If this bill passes—and I'm assuming that it may pass in some form, and I am quite certain that the courts will strike it down—it will not cause its effect. I submit that the best way is to do it the Alberta way or put in a default system that simply says if you call it an adult sex film—and most of them, I might mention, are self-evident from their nature—restrict its sales to adults only, and if you want to sell it to children, then you submit the film and get a lower classification. Those are my respectful submissions on behalf of Mr. Satschko and ROAR.

Mr. Nicholas Satschko: I also brought our future, sitting to my right, which I have a great deal of input in. It's a little difficult to get a young man of 12 years of age to express himself, but he's going to try to tell you in the next minute and a half his personal experience with a game that was brought out a couple of years ago, that was brought to the attention of the public of Ontario because the Ontario Film Review Board proudly stood up after the game was already off the shelves and said, "We're going to ban this game. We're going to give it an R rating." At that point, approximately one week before that, my son became aware of the Manhunt game, and in his own words, without any prodding, he promised to tell me only the truth and all the truth.

Mr. Gerry Satschko: I'm Gerry Satschko. Approximately a year ago, the Ontario Film Review Board placed a rating on the game called Manhunt. This game is very violent. You can do such things as cover somebody's head with a plastic bag and suffocate them and cut people's throats and so on and so forth. The people in the game also threaten your family and tell you that your wife is engaging in sexual acts where they're holding the game. It gets more brutal as you go on.

Nobody was playing this game when it first came out. It was on the shelves, but nobody was buying it. After the film review board placed a rating, everybody wanted it because it was rated. The sales went up. Me and my father, Nicholas Satschko, went to EB Games to see if we could purchase this game, but it was off the shelves and backed up and we cannot get a copy of it.

Mr. Nicholas Satschko: Thank you, J. The reason I had J testify is because—one thing he didn't mention, being young and inexperienced in speaking, something like his father, was that he was not aware of this game Manhunt until the Ontario Film Review Board used it as a feather in its own cap: "Look what we're doing for the public. We rated this game R." Guess what? At that point, my son—do you know any of your friends who did not play the game, J?

Mr. Gerry Satschko: No, I do not.

Mr. Nicholas Satschko: They began playing the game Manhunt. Thank you, Ontario Film Review Board, for protecting my son from Manhunt.

That's basically all I have to say. Thank you for your time.

The Chair: Thank you. We actually have minimal time, maybe one question each. Mr. Martiniuk? No? Mr. Kormos?

Mr. Kormos: I'm in agreement with you with respect to section 7, which is what purports to retain censorship powers to the Ontario Film Review Board, which makes this a contradiction of the Glad Day ruling and in all likelihood won't stand.

Chair, may I at this point put a question to legislative research? There is nothing in the statutory provisions of this bill that will make it an offence, in any event, to permit a person under 18, or whatever the age might be, to see an adult movie by a theatre or by a retailer or by a Blockbuster. I'm not aware of a similar provision in the existing law, so could research advise us? What are the statutory provisions that in effect would create a penalty for letting a child have access to a so-called adult film? I don't believe there are any. Could she please give us examples from other jurisdictions, whether that is merely advisory and voluntary compliance? Because my presumption is that it's voluntary compliance in any event.

The Chair: Thank you very much, Mr. Kormos, and thank you, representatives of ROAR, for coming forward.

I now invite our next presenter, Mr. Miguel Aguayo, from the Canadian Hard of Hearing Association, Ontario chapter. Is he here? OK. We'll move to Mr. Gary Malkowski. No one's here. All right.

Mr. Kormos: Gary wouldn't hear you if you called his name anyway, right? Let me check and see if he's outside. Apparently Gary's en route.

The Chair: All right. We'll be in recess until our next presenter, say a minimum of 10 minutes.

The committee recessed from 0929 to 0941.

CANADIAN HARD OF HEARING ASSOCIATION, ONTARIO CHAPTER

GARY MALKOWSKI

CANADIAN HEARING SOCIETY, TORONTO

The Chair: I'd like to call the committee back into session. I would now invite, if he is present, Mr. Miguel Aguayo of the Canadian Hard of Hearing Association, Ontario chapter. We'll have some interpreters come and interpret for us.

Mr. Kormos: Mr. Aguayo is being represented by Mr. Scott Simser.

The Chair: We'll have our first presentation by Mr. Aguayo.

Mr. Kormos: On a point of order, Mr. Chair: We have at the table Mr. Simser, the 9:30 participant, who is here on behalf of Mr. Aguayo of the Canadian Hard of Hearing Association, we have the 9:45 participant, Gary Malkowski, and we have the 10 a.m. participant from the Canadian Hearing Society. Subject to their wishes, I'm wondering if we can't treat the next 45 minutes as one bundle, since they're all seated at the table. While they're not saying the same things or addressing the same issues necessarily, there is some commonality.

The Chair: Understood. Is there consent for that from the committee? That's fine.

Since you have introduced the other presenters, I would also, on behalf of the committee, like to welcome Mr. Gary Malkowski, who I understand was the first individual with a hearing impairment to serve in the Legislature of Ontario, from 1990 to 1995. It's a privilege and an honour to have you, Mr. Malkowski.

Mr. Aguayo, you may begin. You have approximately 15 minutes, or I guess we'll distribute the time evenly.

Mr. Kormos: Mr. Simser.

The Chair: I'm sorry. Mr. Simser. Could you identify yourself? Or I guess you'll be identifying him for us. Proceed, please.

Mr. Scott Simser: Good morning. I'm going to try to speak for myself. I was born deaf. If you cannot understand me, let me know.

The Chair: I can understand you, I'm sure.

Mr. Simser: I was born deaf. I was diagnosed at the age of seven months. The doctor prescribed hearing aids for me. About 10 years ago, I got a cochlear implant, because hearing aids didn't help me any more. I became a lawyer about six years ago and I became an advocate for deaf rights on behalf of the disabled.

In 2000, I went to a Famous Players movie theatre to see a James Bond movie. I had of course gone to movies in the past, maybe once a year or so. I didn't enjoy the movie that much. In those days, most deaf people went to action movies that were very visual, but romance, drama and so on, and comedy especially, most deaf people didn't go to because there was no entertainment value. Anyway, in 2000, I went to see a James Bond movie, and that day I thought, I should be enjoying this. Why should I depend on my family and my friends who can hear to tell me what's going on? I decided to start a human rights complaint, because I knew about technology in the United States called rear window captioning. It's good because it doesn't bother anybody else. It's private, it's right in front of me. There are no captions on the screen; the captions are in front of me. I'd never seen that technology before but I'd heard about it.

I started a human rights complaint against Famous Players, and one year later, Famous Players did something. They set up about five captioned screens in Ontario. I enjoyed it. I loved it. I saw Harry Potter as my first movie I saw captioned. I could understand everything. From then on, I went to many movies, but it wasn't enough. I found that even though there are five screens with the equipment, the captioning in Toronto was often for the same movie. For example, Harry Potter, Star Wars and A Beautiful Mind may have captioning, but the five screens in Toronto only played Harry Potter. There are other movies available with captioning but only one movie is being shown across the city. I don't have very much choice. There are many other movies that are not even captioned at all, because the studios chose not to caption the movies.

We have DVD, we have VHS, we have television. They all have captions. It's not very expensive. Why not start earlier in the process? Start at the beginning: Start with the movies. The same captions could be used all the way to the end. You have a beginning and end of the cycle. Why not start at the beginning?

There are two different groups. Number one is the movie studios: Paramount, Universal, Miramax and so

on. They make the movies. They have the power and the copyright to put captions on their movies. Remember, rear window captioning is invisible. It's part of the program, but it's not on the film. The second group is the movie theatres themselves. They have to set up their equipment for captioning. There's a piece of glass or plastic. I put it in front of me. At the back of the theatre they have a huge board, and that's where the captions run backwards. So when I put the glass in front of me, the captions become in the right order. That's how it works.

You need both the movie studios and the movie theatres to do this. If the movie studios don't caption their films, the movie theatre can't do anything. If the movie studios do caption their films but the theatres don't have the equipment, the movie theatre can't do anything. They need to work together.

0950

Under the Theatres Act, the government has a lot of power. They can regulate the distributors. If a movie does not comply with the Theatres Act, then they can't show the film. It's the same for movie theatres: They cannot display the movie and their licence can be revoked.

Please amend the Theatres Act or the Film Classification Act to say that a movie cannot be distributed in Ontario if it's not captioned and that a movie theatre can lose its licence if it doesn't have the equipment. Please do this for the deaf. Please do this for us.

I think Gary is going to talk about the complaints before the Human Rights Tribunal of Ontario. Cineplex, Famous Players, AMC, Alliance Atlantis, Universal Studios and Paramount Pictures are before the tribunal. We went to the hearing last week. There were 20 lawyers in that room and the three of us deaf complainants—not the three of us here, but me and Gary and a woman named Nancy Barker, who is deaf herself. There was only three of us.

Please help us. Thank you.

The Chair: Thank you, Mr. Simser.

Mr. Malkowski, you may begin as well.

Mr. Gary Malkowski (Interpretation): Thank you, Mr. Chair and the standing committee, for inviting us. I feel like I'm back home again here in this room.

Just to let you know some personal information, I was born deaf, and for over 20 years the government tried to get me to be successful in the auditory-verbal method, but it was a waste of money and time.

It's really important to recognize that 70% of deaf children who receive auditory-verbal training, cochlear implants etc. find that it's not effective in allowing them to learn spoken language, similar to Scott Simser's experience. Some 25% are successful, but access for me is in American Sign Language. It's very important for deaf children to have the opportunity to learn both, American Sign Language and spoken English. But for me American Sign Language was the answer to my education. Again, thank you for allowing me to bring ASL into the House.

I'm going to be reading from the document I have distributed to you.

I'm a deaf victim of discrimination created by the Theatres Act.

The Theatres Act clearly discriminates against persons with disabilities by lacking a clear complaint mechanism that ensures consumers have the opportunity to identify discrimination and accessibility issues in the movie theatre, studio and distribution industries.

The Theatres Act does not clarify which party is responsible for providing captioning in the movie theatre, studio and distribution industries to make movies accessible to persons with disabilities including deaf, deafened and hard-of-hearing individuals.

The Theatres Act excludes persons with disabilities from membership on the Ontario Film Review Board. The OFRB's Web site states it is a community board and its members "vary in age, gender, vocation, cultural background, and sexual orientation." No mention is made of people with disabilities, including deaf, deafened and hard-of-hearing individuals.

The Theatres Act forces me to file complaints with the Ontario Human Rights Commission against the Ministry of Consumer and Business Services, Famous Players, Universal Studios Canada Inc., Alliance Atlantis Cinemas and Cineplex Galaxy at taxpayers' expense. The parties reached an agreement that mediation be presided over by former Supreme Court of Canada Justice Peter Cory this coming year. The movie theatre, studio and distribution industries have a powerhouse legal team, including about 15 lawyers, while I am without a lawyer. I am still seeking pro bono legal services.

Complaints against the movie theatre, studio and distribution industries were successfully referred to the Human Rights Tribunal of Ontario. See the attached press release of April 13, 2005, the National Post article dated April 15, 2005, the press release of October 26, 2004, and the Globe and Mail article dated October 28, 2004.

Complaints against the Ministry of Consumer and Business Services under the Theatres Act and the Ministry of Municipal Affairs and Housing under the Ontario building code were denied by the Ontario Human Rights Commission. I have applied for reconsideration. In the event of the OHRC again denying my complaints, I will continue to appeal to a Divisional Court and up to the Supreme Court of Canada. See the attached OHRC case analysis reports and OHRC's decisions.

Barrier-free measures created by the proposed Film Classification Act, 2005:

The Film Classification Act needs to be consistent with the Ontario Human Rights Code and the Accessibility for Ontarians with Disabilities Act.

The Film Classification Act needs to address which party among the movie theatre, studio and distribution industries is responsible for providing captioning to make movies accessible to persons with disabilities, including deaf, deafened and hard-of-hearing individuals.

The Film Classification Act needs to include membership from persons with disabilities on the Ontario Film Review Board.

We strongly believe that individuals who are deaf, deafened and hard of hearing should have the same

freedom as anyone to attend any showing of any movie in any theatre at any time; be seated anywhere within the theatre with their family and friends; receive equal access to the audible portions of the movie through high-quality captioning; have movies made with captioning so that movie theatres can use equipment designed for captioning; and be guaranteed that the presentation of captioning is consistently reliable.

My top four recommendations are:

(1) That the proposed Film Classification Act be amended to ensure that both new and existing movie theatres provide rear window captioning in each screening auditorium, meaning the theatre owners.

(2) That the proposed Film Classification Act be amended to state that a movie may not be shown in Ontario unless it has rear window captioning installed into the film by its studio or distributor so that the movie theatre owner may effectively use its equipment designed for such use.

(3) That the proposed Film Classification Act be amended to include the membership of persons with disabilities on the Ontario Film Review Board.

(4) That the proposed Film Classification Act be amended to include a clear complaint mechanism to ensure that consumers have the opportunity to identify and have resolved discrimination and accessibility issues in the movie theatre, studio and distribution industries.

I'd like to now turn it over to Lori Archer from the Canadian Hearing Society.

Ms. Lori Archer: Thank you, Gary, and good morning, everyone.

I think I'm still slightly out of breath from running through the building chasing Gary up the steps, but I'll do my best.

My name is Lori Archer and I am deafened. I feel I am personally very aware of communication and accessibility issues, particularly relating to the deaf, deafened and hard of hearing. I used to be hearing. I became deafened at the age of 23. I've raised three hard-of-hearing sons, and I currently work in a deaf office.

1000

I am here as a volunteer board member of the Canadian Hearing Society. I am currently serving on the provincial board of directors, in addition to the community development board of the region of Peel Canadian Hearing Society. I first became involved with CHS by taking hearing help classes that also incorporated lip-reading assistance. I then went on to take ASL, American Sign Language, classes for interest's sake many years ago, before I began working in a deaf environment two years ago. I have volunteered in many different capacities, including giving presentations with a hearing health care counsellor on how to communicate with the hard of hearing.

I consider myself somewhat of an expert here after becoming deafened myself and raising my three hard-of-hearing sons. While, many times in the past, I might not have spoken up for myself and my individual requirements, I found I had to speak up and advocate for my children. Educating and advising people of the best communication methods and my sons' requirements became a way of life for me.

I was fortunate to benefit from some of the many programs that CHS has to offer. The hearing help classes taught me many coping strategies in addition to developing my skills in lip-reading and learning to watch for visual clues. The Canadian Hearing Society is a community-based, multi-service, non-profit agency serving the deaf, deafened and hard-of-hearing communities throughout Ontario. CHS was founded in 1940 and is the only agency of its kind in the province. It employs approximately 450 individuals in 13 regional offices and 16 sub-offices. A significant part of CHS's early mandate continues to this day, namely, advocating for and promoting the rights of the deaf, deafened and hard of hearing.

Today I am here to speak to you about the importance of accessibility for the deaf, deafened and hard of hearing in movie theatres.

I grew up with a love of going to the movies. When I was young, there was nothing more enjoyable than seeing the latest Hollywood extravaganza on the big screen, larger than life. I recall my parents taking me as a little girl to see Oklahoma and The Flower Drum Song. It was sheer magic, and back in those days, I could even enjoy the music.

The last time I saw a movie in the theatre and knew what was being said, was actually able to follow the dialogue, was in 1974. That was before my hearing loss developed. For 30 years I had not been able to enjoy a movie in the theatre, until last year. That was when I first saw a movie equipped with rear window captioning. What a joy. I was able to follow the entire dialogue for the first time in 30 years. Prior to that, I would still occasionally go to see a new release on the big screen, and then patiently wait till it came out on video or DVD, with captioning, so I would know what was said and what was really happening.

Try to imagine lining up and paying your $12 to see a movie you are really looking forward to, only to have to watch just the picture with no sound. That is what it is like for a deaf person. For a deafened or hard-of-hearing person, yes, there may be some sound, but no clarity. For me, I find I have to turn my hearing aids down as the volume is so loud, but I still cannot make out the words. It is similar to having a radio on but slightly off the station. You can hear something, but not enough to distinguish actual words. It's just noise with very little clarity, mostly garbled sounds.

The only movie I have actually seen with rear window captioning is a Harry Potter movie. I was thrilled, when accompanying my friends and children, that it was actually available for me to see and understand with rear window captioning. This is a necessity for all movies to be accessible to the deaf, deafened and hard of hearing. I believe everyone in those three groups should be fully able to access movies in the theatre as their human right, the same as hearing people can sit down and enjoy a movie completely.

According to Statistics Canada in 2001, there were 1.47 million Ontarians over age 65 with hearing loss. By 2026, that number will rise to 2.9 million, a 100% increase. Furthermore, according to Health Canada, approximately 10% of the general population has a significant hearing problem. Also, at least 80% of the elderly in nursing homes have impaired hearing. The CHS 2001 awareness survey of October 2001 revealed that 23% of adult Canadians—almost one in four—report having some degree of hearing loss. Of these, one in four are under the age of 40 and almost half are between 40 and 60 years old. These people are not retirees; they are adult working Canadians.

Hearing loss is on the rise in part due to our aging population; however, hearing loss is also occurring at younger ages because of exposure to an increasingly noisy society.

There are two fundamental issues at the heart of providing full access in theatres and films for the deaf, deafened and hard of hearing. Number one is the issue of safety. Typically, there are no visual fire alarms and emergency alert systems for the deaf, deafened, and hard-of-hearing callers or respondents in movie theatres. Most movie theatres lack public announcement systems for alerting the deaf, deafened and hard of hearing to emergency situations.

The second issue is the lack of rear window captioning in auditoriums, thereby denying deaf, deafened and hard-of-hearing moviegoers access to this form of entertainment. The deaf, deafened and hard of hearing deserve to enjoy the same movie entertainment as all individuals in Ontario. Not making the required effort to provide 100% accessibility in movie theatres is a direct contravention of the Ontario Human Rights Code. It is actually discriminatory against the deaf, deafened and hard of hearing.

Access for the deaf, deafened and hard of hearing involves the provision of TTYs—teletypes/telephones for the deaf—rear window captioning and the use of FM systems. In the interest of safety, movie theatres need to be accessible and able to provide TTYs just as they provide pay phones for the hearing. What would you do in an emergency if you were unable to use the phone to call the appropriate person or service? How would you summon an ambulance, for instance, if you could not hear or speak? You would need a TTY. The deaf person types in their request and the Bell relay operator conveys it. In this day and age, when almost everyone is walking around communicating with a cell phone for immediate and complete accessibility, it is obvious that the deaf and deafened require communication with a TTY.

FM, infrared and audio loop sound amplification systems in theatres would enable access for the deafened and hard of hearing. These systems assist people with hearing loss by bridging the sound to the individual's ear, helping overcome the problems of distance and background noise with which hearing aids cannot cope. These systems would enable the deafened and hard of hearing to listen to and enjoy the dialogue in movies.

By the way, hearing aids are just what they say they are: an aid to hearing. They do not, unfortunately, provide complete and full hearing. It is not like putting on glasses and restoring or correcting your vision. They aid your hearing by amplifying sound; they do not restore it to normal limits. Background noise is often extremely detrimental to the hearing aid user. Extraneous noise can drown out the conversational sounds you want to hear and amplify all those annoying little background sounds, such as the air conditioner humming or the refrigerator running. When riding in a car, for example, the sound of the engine, the air conditioner or the defroster are all magnified over the sounds you are struggling to hear and comprehend. It can really be a guessing game to try and follow a conversation.

My own personal perspective is that the deaf, deafened and hard of hearing can do anything that anyone else can do except hear. In order to provide them with their human rights, accessibility issues need to be addressed. This is paramount to providing equality to a segment of society that has traditionally been overlooked and put at a distinct disadvantage in the everyday world. I would like to encourage the Ontario Film Review Board to enlist representation from the disabled persons community. All persons deserve to be treated with respect, equality and accessibility.

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If I may, I want to add one little thing that's not on here. As you'll notice, I use my voice, I wear hearing aids, and I am learning sign language. I was not able to follow what Gary had to say, because I'm not adept enough in ASL. I'm so far across the room from the interpreter that it's very difficult for me to lip-read and hear, and there's no real-time captioning.

If anyone is interested in finding out more about real-time captioning, it's amazing. All the words are typed, as if you were in a court with a court stenographer. They're on a big screen and everybody can read them. We have that as full accessibility at all the Canadian Hearing Society committee and board meetings. If you'd like a demonstration, come out to our open house on April 28 and you can see a live demonstration of real-time captioning. That would be full accessibility for the deaf, deafened and hard of hearing also.

Thank you for the time to present these views.

The Chair: Thank you, Mr. Simser, Mr. Malkowski and Ms. Archer. We have about 10 minutes for questions. I'll start with the government side.

Mr. Bob Delaney (Mississauga West): Thank you very much for an absolutely fascinating presentation this morning. I'd like to ask you a number of clarification questions to help me understand your wishes in a little more detail. In your view, is access for the hearing-impaired related to any specific class or category of film? For example, are films rated PG or R to be treated the same in regard to access by the hearing-impaired?

Ms. Archer: If films are rated PG, I take it that those are for children under the age of 14?

Mr. Delaney: Like Parental Guidance or General or—

Ms. Archer: There are some movies that would be suitable for children, and there are obviously deaf and hard-of-hearing children who would also require captioning. I believe they need to be accessible for everyone.

Mr. Delaney: Would the same apply to films that are restricted in content, for example, Parental Guidance or adult or, hypothetically, XXX or something like that?

Ms. Archer: If they're not accessible for everyone, then you're separating accessibility for people. Hearing people have full accessibility to movies in all different grounds, correct?

Mr. Delaney: I'm asking questions for clarification here.

Mr. Malkowski (Interpretation): If I could respond, I would like to clarify. I just need clarification from you, if I may. Are you suggesting that there should be some limitations on movies for deaf, deafened and hard-of-hearing people? Is that what you're suggesting? Or are you suggesting that all films should be captioned so that any individual can enjoy that type of entertainment? I just need some clarification.

Mr. Delaney: That's essentially the question: Should all films in all categories be made accessible for the hearing-impaired?

Mr. Malkowski (Interpretation): Yes, it should be equal for everyone. Everyone should have a right to see the movie they choose. Why should they be forced to watch one movie and not another? It should be equal for everyone.

My point, though, is that the problem with the Theatres Act as it stands now is that it does not deal with accessibility issues. For example, the Ontario Film Review Board says nothing about accessibility issues. It does not talk about sensitivity issues toward persons with disabilities. It's silent on that, doesn't speak to that at all. There's nothing in terms of accommodations within this act. It just ends up being referred to the consumer and business ministry to file a complaint with them, and then they refer off to the Ontario Human Rights Commission to file a complaint with them. It takes many, many years to resolve the issue until finally something is made accessible. That's my point. The board needs to include members who sit on the Ontario Film Review Board to speak to access issues, to speak to the fact that movies should not be offensive to persons with disabilities, that type of thing.

Mr. Delaney: Just two short follow-ups. Should the same apply to film trailers shown in theatres and to commercials shown prior to a movie?

Mr. Malkowski (Interpretation): Of course. Any type of commercial, any message that's spoken, should have captioning. That would be the ultimate goal: to have equal access for everyone. If you suffer a hearing loss at some point, you deserve to have access to all of the information that comes to people in movie theatres.

Mr. Delaney: Finally, should the onus on providing access lie with the film producer or with the exhibitor, the exhibitor being the theatre chain and the producer being the entity that releases the movie?

Mr. Malkowski (Interpretation): Both. It's a shared responsibility. I'll start to add to that, if I may.

The Chair: Thank you to the government side for your questions. I now move to the Tory party.

Mr. Gerry Martiniuk (Cambridge): I have a philosophical question which would arise in all cases of this kind where we have persons with disabilities who are neglected because of the circumstance. Who should pay for the remedy? It seems to me that you're indicating it's user pay; in other words, the person who is showing the event or producing the event should pay, and not the state. I may differ with that. Who should be remedying the situation? The state, in terms of money, or should it be user pay?

Mr. Simser: The movie theatres and the movie studios are huge multinational corporations. For example, Viacom makes $20 billion a year in revenue. They can afford captioning or captioning equipment. It's probably 0.0000001% of the expense of making a movie. Another point is that the government of Canada can give a tax break to the movie industry for captioning or the equipment. For example, in the United States, a senator has proposed a tax break for American industries, movie studios and theatres. It hasn't passed yet, but a senator is proposing it. That's a good idea.

Mr. Malkowski (Interpretation): If I could add as well, do companies want 25% of the business from deaf, deafened and hard-of-hearing people? It makes good business sense, if they're going to make revenue. Deaf, deafened and hard-of-hearing people would pay to go into a movie theatre to enjoy a movie if it was made accessible to them. Everybody wins. It's their decision not to provide captioning to us, and that's something the government needs to include. There needs to be some kind of enforcement mechanism. The problem with the Accessibility for Ontarians with Disabilities Act, for example, is that it's silent in terms of applying the same principles to theatres or studios. That's why I think there should be an amendment to include accessibility issues. It's in the spirit of accessibility as it applies to the Accessibility for Ontarians with Disabilities Act.

The Chair: Thank you, Mr. Martiniuk. Mr. Kormos?

Mr. Kormos: Thank you kindly. I think this three-party submission puts the ministry on notice, and it's a good thing that there are political staff here. There are only three here at the moment. Four? OK. At least three. The civil service, who should be here, will undoubtedly send the message back.

The ministry has received a four-month extension from the court on compliance with the court's ruling. This raises a very important issue about incorporating accessibility issues into this film classification legislation. This committee is going to have to debate whether or not we're prepared to report back to the House as readily as we thought we were going to, in terms of the need to consider incorporating accessibility as one of the classification criteria. We've been told that the consideration of Bill 118, the ODA, didn't address film/video, so the ball is clearly in our court.

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I want to ask these folks. You're obviously suggesting theatres, where movies are publicly presented. Are you talking about a Blockbuster as well and being able to rent a DVD? That's knowing that most DVDs, in my experience, have subtitles, captioning; it seems to be part of the DVD technology. But would you go one further: movies that are presented for public display plus movies that are made available to the public through places like Blockbuster? Should both have the accessibility incorporated into them?

Mr. Simser: Yes.

Mr. Kormos: With respect to Mr. Delaney and his XXX films, there isn't much dialogue on those soundtracks anyway. Well, think about it. I don't presume it's going to be much of a burden for the manufacturer; the occasional expletive caption is not going to be extremely difficult for that filmmaker.

I'm interested in the technology, though. You talk about RWC, which is seat by seat, sort of like the movie in an airplane, versus a subtitle on the screen. I'm suggesting that the interest in subtitles might go to a far wider community than simply the community of deaf people. As we approach middle age, some of us, we find it more and more difficult to literally hear the dialogue in movie theatres as we're overwhelmed by sound scores and so on. If you saw the movie Trainspotting, without subtitles it was impossible for anybody to understand the dialogue.

I'm wondering if legislative research can get us—and you might want to comment on it—some information on the state of the technology around RWC and how it is applied to a film versus a DVD format. It's disappointing that nobody in the film distribution industry saw fit to come to these hearings so far. Maybe they'll wish they had, which is fine by me, Chair. But if research could get us some of that material, and perhaps you folks will want to comment on the ideal technology. Is the RWC preferable to an on-screen caption? Yes? Because it seems strange to me that you would have to look down in front of your seat and then up to the screen, but tell us about that, please.

Mr. Malkwoski (Interpretation): The National Captioning Institute's research studies have shown that children developing literacy skills and people who are learning English as a second language benefit greatly from captioning, and also that people who have captioning at home or have exposure to that tend to have higher literacy and education abilities.

If you're speaking about a private type of captioning, like rear window captioning, that is one way. Another technology would be similar to a foreign film where they have added the subtitles.

DVDs do have choices. You can have either French, English or Spanish captioning on a DVD you rent. Video stores like Blockbuster are at just about 100% now where they're providing everything with captioning.

But we are speaking about theatres not having captioning. Figure that out. Why are they so resistant? They have billions and billions of dollars in profit. They are filthy rich. We're talking about 20% of the population not being able to benefit from and enjoy a movie. Think of the profits they're losing. Instead of spending money on litigation, let's spend money on adding captioning and look at it as a business opportunity.

The Chair: Very quickly, if you might, Ms. Archer.

Ms. Archer: I was just going to mention that I think the rear window captioning in the movie theatres is preferable to the words on the screen, because it's personal. It sits down right in front of you and it doesn't interfere with anybody else in the movie theatre trying to watch the movie. I think a lot of people would object if they were going to watch a movie and there was dialogue across the bottom of the screen.

Whenever anyone comes to my home and they want to watch a movie or a television program with me, they have to get used to seeing the captioning, because I only catch maybe 10% or 20% max of whatever is playing without it. At first, people usually say, "Wow, I didn't see what was going on. I was so busy reading the words, I missed the picture." You know what? Unfortunately, if you're hard of hearing, you watch the picture and you don't know what's happening, so you have to watch those words. It takes a little bit a practice, and pretty soon you realize you're kind of watching the picture and reading the words at the same time. It's not as great as being able to do it otherwise, but it's preferable to not catching it at all.

In the movie theatre, that works fairly well. It is a nuisance if you're watching baseball, because it goes right over the baseball scores, but if you have a new high-tech device at home, you can probably move the captioning to the top or over to the right. I think the movie theatre would be ideal with rear window captioning, because it doesn't interfere with other people, and you're still able to catch the dialogue and pick up on what's happening yourself and enjoy the thrill of seeing a new release on a big screen and know what's happening.

The Chair: Thank you very much, Ms. Archer, Mr. Malkwoski and Mr. Simser, for your deputation today.

CANADIAN CIVIL LIBERTIES ASSOCIATION

The Chair: I would now invite our next presenter, Noa Aviv, of the Canadian Civil Liberties Association. Ms. Aviv, as you take your place, I invite you to testify for approximately 15 minutes. Any time you leave remaining afterwards will be distributed evenly among the three parties for questions. Please identify yourself and your organization for the purposes of recording in Hansard, and your accompanying deputant should do the same when he speaks as well.

Ms. Noa Mendelsohn Aviv: Good morning, members of the committee. My name is Noa Mendelsohn Aviv, and I am a policy analyst for the Canadian Civil Liberties Association, a member of our legal team and a foreign-trained lawyer. I'm here with my colleague Motek

Sherman, who is a student at law, also working on the legal staff of the Canadian Civil Liberties Association.

I'm very pleased to be here this morning on behalf of the CCLA. I would like to think that our organization is well known to everybody, but in case it's not, a brief review of our organization: The CCLA is a national organization with more than 7,000 individual members, seven affiliated chapters across the country and some 20 associated group members which themselves represent several thousands of people. Our objectives, in brief, include the following: to promote legal protections against the unreasonable invasion by public authority of the freedom and dignity of the individual and to promote fair procedures for the resolution and adjudication of conflicts and disputes.

I am particularly pleased to have the opportunity to discuss with you the implications and consequences of Bill 158 as it now stands, as I am hopeful that in this committee's vigorous work and analysis you will reach certain inevitable conclusions about this bill and about its prior approval scheme. While a great deal of the content and workings of the new scheme remain unclear, since at present it seems to be determined mostly through regulation, it is fairly clear that Bill 158 contemplates a system of prior restraint censorship by requiring films intended for the public's viewing to be approved before they may be distributed or exhibited—most films, that is, and we'll get to that shortly.

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In addition to what the bill shows us as its intentions for a prior restraint scheme, recent amendments to the Theatres Act regulations—amendments that were made following the Glad Day judgment in July of 2004—as well as correspondence that occurred between our organization and the minister, have also led us to the conclusion that the intention seems to be to retain a requirement for prior approval of films that will be viewed by the general public. It is this scheme which I wish to discuss today.

In the first section of my presentation, I hope to appeal to the committee's legal sensibilities, to your rational side and to your commitment to fundamental rights and freedoms by showing that the prior approval scheme contemplated by this bill is not actually necessary and, in fact, is harmful in a free and democratic society. To emphasize this point, I will bring in examples from other provinces and territories and from within Ontario itself.

The second section of my presentation is the legal side—the first section was the policy side—and in it, I hope to appeal to the committee's respect for the law and for the Canadian democratic structure by demonstrating how the judgment of Justice Juriansz in the Glad Day decision expressly considered a prior approval scheme such as the one contemplated by the bill and found this scheme to be unconstitutional.

Starting with the policy section: To call it what it is—and Justice Juriansz had no problem doing so—the prior approval scheme contemplated by Bill 158 is a form of prior restraint censorship. This is a serious curtailment of freedom of expression. In a free and democratic society, the basic principle is that people should be free unless there is a real reason to restrict that freedom: unless they are causing real harm to others.

In the context of film censorship, the premise is the same: In a democracy, people have the right and the need to communicate with each other. "Freedom of expression," as Justice Juriansz said, "is central to our identity as individuals"—I think he was citing Justice Binnie—"and to our collective well-being as a society." Therefore, interference with this freedom is harmful to our most basic values. For this reason, judges, philosophers, thinkers and politicians have firmly established that government should not tell individuals how to communicate, require government permission to communicate or otherwise interfere with these communications unless such interference is absolutely necessary.

In the context of Bill 158, the requirement that people submit their films for prior approval intrudes on their vital freedoms, yet there is no reason to believe that this is necessary. There is no reason to believe, as Justice Juriansz pointed out, that the normal processes of law that are currently in existence, such as the criminal justice system, are inadequate to deal with any problems that may arise or be anticipated.

This point is further proven if we look at other provinces and territories outside of Ontario. The province of Manitoba—again, as Justice Juriansz pointed out—abandoned its system of prior restraint for films and videos. I don't think he mentioned the date, but that was back in 1972. Manitoba relies only on subsequent prosecution to deal with images that it finds problematic, and yet no one has suggested that the residents of Manitoba are going to hell in a handbasket. Despite the lack of this prior restraint scheme, there has been no evidence to show that the residents of Manitoba have suffered any negative consequences or have been exposed to more harmful films and videos than have the residents of Ontario. There's no reason to believe that Manitoba society differs in any relevant way from Ontario society, so how can we understand that Manitoba is managing just fine without a prior approval scheme? The only conclusion is that the scheme is not necessary.

Based on further research, although we had very little time to do it, it seems that Manitoba is not the only province without a prior approval scheme for films. This appears also to be the case in Quebec and Prince Edward Island, not insignificant chunks of our country, and to the best of our knowledge, there is no prior approval scheme either in Newfoundland and Labrador, Nunavut, Yukon or the Northwest Territories. Again, life in these provinces and territories, to the best of our knowledge, has carried on very nicely without a prior approval scheme, so how is this scheme necessary? And if it is not necessary, it is not justifiable. In fact, we might even suggest that the money, time and resources that might be saved by getting rid of the prior approval scheme could be put toward the many other laudable goals that provincial governments may wish to pursue.

Even in Ontario itself, if we look at other expressive media, as Justice Juriansz did in his decision, within the borders of this province, we will see that books, plays, art exhibitions, concerts and other forms of performance do not have to be pre-approved before being shown to the public. Even in the category of films, which is our topic here today, there are entire categories which do not have to be submitted to the board for approval and may be distributed and exhibited without requiring prior censorship.

Outside of the films made for educational, instructional, advertising or demonstration purposes, for medical education or films that are part of a concert or theatrical stage production, the exemption also exists for films shown at a film festival, a public art gallery and a public library. All of these categories of film do not require prior approval, although I should mention that the law does include certain restrictions and exceptions.

The fact is that here, too, while all of these films may be shown at the Toronto International Film Festival, to name one example, no one has suggested that we are going to hell in a handbasket. If these categories of film don't need the board's approval, there is no reason to believe that there is any benefit to society to require that other films need this board's approval. On the contrary, we've already discussed the deleterious effects of the censorship scheme, which harms our fundamental freedoms.

To bring forward one last and very specific example on this point, we can look to the media of newspapers and television news. As the committee may be aware, these media as well do not require prior approval before they are shown to the public. If there is any concern that a newspaper has violated the law, it can be prosecuted or sued after the fact. This is the case, this lack of a need for prior approval, regardless of the content that the newspaper or the news is showing. If, for example, a newspaper wants to comment on world affairs, defence policy or even defence documents, some of which could be highly secret and the disclosure of which could be an offence, there is no requirement for prior approval. What conclusion can we reach from this? It seems then that the community that seeks to censor films considers disclosure of sexual activity a greater threat to the public interest than disclosure of defence secrets.

To summarize this section, there is no justification for a prior approval scheme. It interferes with our vital freedoms when there is no reason to believe it is necessary, and there are many examples, as we've discussed, to show that it is unnecessary.

As for the legal side, though I would be rather happy to have you go on my say-so alone, I'm sure the committee has not forgotten the reason we are here, and that is that a certain Justice Juriansz, formerly of the Superior Court and now with the Court of Appeal for Ontario, struck down the prior restraint censorship scheme in the Theatres Act and ruled it unconstitutional, and this decision was not challenged on appeal.

In the face of such a judgment, I imagine that the committee will wish to examine the ruling very carefully, if it hasn't already done so. After all, once a judge has found a scheme to be unconstitutional, to make a new law that brings an element of that very same scheme that was found to be unconstitutional would be at best a grave error, and at worst it would be a gross violation of the rule of law, which is a fundamental principle in democracies that says that even our lawmakers must obey the law, and the charter is the supreme law in this land. So when a judge rules that a scheme is unconstitutional, the lawmakers cannot simply say, "Well, that may be, but we still don't like it." This would violate the rule of law if the lawmakers were to keep that scheme alive.

For the sake of clarity, in a moment I will direct your attention to the Glad Day judgment and urge members of the committee not to rely on my comments alone but to look at the totality of this judgment, in particular the summarizing statements of Justice Juriansz's analysis and the way he builds up to this analysis and to this conclusion. From these, one cannot escape the conclusion that a prior approval, what he calls a prior restraint scheme, requiring films for the general public to be submitted for approval, has been found to be unconstitutional.

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The discussion of the prior restraint scheme, if anybody has the decision in front of them, begins in paragraph 151 when he talks about the prior restraint scheme for the general public as follows:

"The more fundamental question"—and I emphasize "fundamental"—"remains: Has the government established that prior restraint system is reasonably necessary to achieve its legislative objective? The government led no evidence to support its position."

From here, the judge raises many of the arguments and examples discussed above, and I borrowed freely from them in my policy analysis, as indeed many of these arguments were raised in CCLA's submissions to the court. I will offer in a moment a mere sample of the judge's comments to illustrate his discomfort with the prior restraint scheme and his total rejection of this scheme as it relates to films intended for the general public.

The Chair: You have about two minutes remaining, Ms. Aviv.

Ms. Mendelsohn Aviv: We'll keep it short, then.

Mr. Kormos: Mr. Chair, on a point of order: Seeking unanimous consent to permit them to finish their submission plus five minutes for questions and comments. We've got lots of time today.

The Chair: I'm not hearing unanimous consent.

You have two minutes remaining, Ms. Aviv.

Mr. Kormos: You didn't ask for it, Chair.

The Chair: Do I have unanimous consent for that? No. Not having it, please proceed, Ms. Aviv.

Ms. Mendelsohn Aviv: In light of the above, what I would then do is urge members of the committee to look themselves at paragraph 154 of the decision, which talks about the scheme in Manitoba; paragraph 155, which talks about other media; paragraph 156, which talks again

about Manitoba; and paragraphs 157, 158, 160, 162 and 173, where he rules as unconstitutional what he calls the entirety "of the pure prior restraint scheme."

Mr. Kormos: You're talking about section 7.

Ms. Mendelsohn Aviv: I'm talking about what has now become section 7 of Bill 158.

Mr. Kormos: The bill before us.

Ms. Mendelsohn Aviv: At the time, it was the Theatres Act.

Mr. Kormos: That's what maintains prior restraint in this new legislation?

Ms. Mendelsohn Aviv: That's correct. Thank you, Mr. Kormos.

Mr. Kormos: That's what's going to contravene the charter in the next challenge, right?

Ms. Mendelsohn Aviv: I would expect so.

In light of the above, our organization has corresponded with the minister, and two themes emerged from this correspondence. Firstly, the intention to date has been clear, and that is to retain a prior restraint scheme. We hope this committee will change that intention and get rid of the prior approval scheme in the bill. Secondly, Mr. Alan Borovoy of our organization called the minister on his failure to address the unconstitutionality. Mr. Borovoy cited for him chapter and verse from the decision, as I would have liked to have done for you today, to show his sources as to why the scheme was found to be unconstitutional and called on the minister to cite his sources for maintaining this scheme and how he has complied for the judgment. That failure has not been answered to date.

To conclude, it is incumbent upon the Legislature of this province to do away with any prior restraint scheme that requires films for the general public to be submitted for prior approval. It would not be a difficult amendment to Bill 158, and it is necessary. We understand that prior restraint is being considered by Bill 158, and that will be harmful and unnecessary. Moreover, after Glad Day, to re-enact this unconstitutional scheme would undermine the rule of law and, frankly, it would be disrespectful to the charter, to the judiciary and to our democratic constitutional system.

The Chair: Ms. Aviv, I'd like to thank you on behalf of the committee for your deputation from the Canadian Civil Liberties Association. I would also like to say that we very much value and welcome your contribution. Please feel free to submit any and all written materials to the clerk, which will be distributed to all parties.

ENTERTAINMENT SOFTWARE ASSOCIATION OF CANADA
RETAIL COUNCIL OF CANADA

The Chair: I'd now like to invite our next presenters, who will present jointly: Mr. Doug DeRabbie of the Retail Council of Canada and Danielle LaBossiere of the Entertainment Software Association of Canada. If they are here, would they please come forward?

Mr. Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): While they're coming forward, I just wanted to make a note on the last presentation as I appreciate it. The judge actually said in section 98 of his response, and I read one sentence only from this: "The constitutional validity of a statutory provision requiring films to be submitted solely for the purpose of classification is not an issue in this case."

Mr. Kormos: It means he didn't rule on it.

Mr. McMeekin: "Is not an issue in this case."

Mr. Kormos: It means he didn't rule on it.

Mr. McMeekin: To leave the impression that he was suggesting that was the case is, at best, not complete.

The Chair: Ms. Aviv, I would suggest that you respond by correspondence or perhaps in the hallway afterward.

Mr. Kormos: So McMeekin can put an erroneous comment like that on the record and these people can't respond, telling him that he's full of hot air.

The Chair: Mr. Kormos.

I'd now invite our next presenters, Mr. DeRabbie from the Retail Council of Canada and Ms. LaBossiere from the Entertainment Software Association of Canada. Ms. LaBossiere and Mr. DeRabbie, just to inform you, you have approximately 15 minutes to present. Any time left over afterwards will be evenly distributed among the parties for questions. Please begin.

Ms. Danielle LaBossiere: I'll just provide these to the clerk. This is my submission.

Good morning, everyone, and thank you very much for giving us the opportunity to present to you this morning. My name's Danielle LaBossiere and I'm the executive director of the Entertainment Software Association of Canada. We're a newly formed trade association that represents video game publishers. Most of the big publishers in Canada, Microsoft, Xbox, Sony PlayStation, Nintendo, EA and a whole variety of others, are members of our association.

I want to keep my comments fairly brief, seeing as there are two of us sharing the time here. First and foremost, I want to say that we are happy to lend our support to Bill 158 on behalf of the industry. I'd like to start by providing a little bit of context for who plays video games and a little bit about how video games are rated. I think there are a lot of misconceptions now, that it's all young boys playing video games in their parents' basement, when in fact that's not actually the case.

First of all, let me give you a sense of the industry in Canada. This is a very important industry for us. Sales growth in Canada of entertainment software products increased by 31% in 2004, which is tremendous. In terms of retail revenues, that's a significant amount of revenue for the economy. We're also becoming a bit of a centre of excellence in terms of the development of video games in Canada. We have two of the largest development studios in the world located in Vancouver and Montreal. In Ontario, there are a number of very important developers and publishers that operate here and create jobs here. Certainly schools like Sheridan College are among

world leaders in terms of training digital animation students to grow up and have jobs in this industry. So this is definitely a key part of our economy.

Who plays games? This is an important thing to note: The average age of the person who plays video games today is 29 years old, and it's getting older. Thirty-four per cent are under 18, 46% are between 18 and 50 and 17% are over 50. The average age of video game buyers is 36. We can say that a vast majority, between 80% and 90% of people who actually purchase video games today, according to the research we've done in North America, are over the age of 18. The vast majority of our market is in fact adults.

In terms of the games they play, if you look at media reports, you might think that every video game out there is violent or inappropriate for children, but in fact only 18% of games that were sold in Canada in 2004 were rated M; 82% were rated E for Everyone or T for Teen. In addition to that, 70% of the 20 top-selling video games were rated E or T.

I'll talk a little bit about the way games are rated currently. Since the inception of the video game industry, we've been self-regulated. In 1994, the trade association in the US started the ESRB, which is the Entertainment Software Ratings Board. This is a self-regulatory body that independently rates and enforces ratings, advertising guidelines and online privacy principles.

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In terms of ratings, there are a number of different categories. There's Early Childhood, E for Everyone, E10, a new category for children 10 and older, T for Teen, M for Mature, and AO for Adults Only. In terms of the percentages of games rated, it is very similar to the percentage of games sold: The vast majority are rated E, E10 or T for Teen.

According to the research we've done, 78% of parents are aware of the ESRB ratings, 70% of parents use the ratings every time or most of the time when buying video and computer games for their families, and an overwhelming majority of the time, 83%, parents agreed with the ratings, while in another 5% of the time they thought the ratings were too strict. I think that's evidence that this rating system is effective, that it works. Parents and consumers are aware of it. As an industry association, we're commissioning research unique to Canada to quantify those numbers in this country as well, but we believe they're very similar to the numbers we've seen in the US.

We certainly support this legislation, because it provides a good compromise between the needs of industry and retailers and the concerns that have been expressed by government in terms of keeping inappropriate material out of the hands of children. That's certainly something that we as an industry have advocated. We're working very hard, in partnership with the Retail Council and of our own volition as well, to try to implement programs, do public service advertisements. You'll see that on the back page of this submission I've included a copy of one of our public service advertisements, which has appeared in a number of different publications. We're really making best efforts to try to prevent M- and AO-rated games from being sold directly to children. This legislation certainly goes a step further, in terms of providing legal penalties for retailers and corporations selling inappropriate material to children.

I know one of the concerns that have been expressed about the rating system is the fact that it's an American rating system. In fact, it's an objective rating system that was developed with the assistance of academics and educators, and the ratings are applied by independent raters who have no ties to the video game industry. They view footage of the video games—there are several raters who view every game—and then establish the rating. To appease the concern about the lack of Canadian involvement in the rating system, I'm working with the ESRB and the IFCCC, which is the interprovincial coalition on film classification, to establish a mechanism to provide Canadian input into the ratings process. We're going to establish a committee, and we'll definitely have a means for Canadians to raise issues or concerns about the rating system. That's something we're hoping to finalize by the end of the month.

I won't speak too much longer on this, because Doug will focus on a joint initiative we've undertaken, but I just want to say again that we are very supportive of this legislation. We think it adequately addresses the concerns of industry in terms of a level playing field across the country, consistent information for parents, and generally just not reinventing the wheel. These ratings have been in place since 1994, they're working, and parents are aware of them. We're definitely in support.

Mr. Doug DeRabbie: Thanks very much, Danielle. My name is Doug DeRabbie; I'm the director of government relations for the Retail Council of Canada. Thank you for the opportunity to appear before you today. I will try to move through the presentation quickly so we have some opportunity for questions.

The Retail Council of Canada has been the voice of retail since 1963. We represent an industry that touches the daily lives of most people in the province. Our 9,000 members represent all retail formats: mass merchants, independents, specialty stores and on-line merchants. Approximately 90% of our members are small independent retailers, and over 40% of our membership is based in Ontario.

The retail industry is a dynamic and fast-paced industry. With almost $129 billion in annual sales, over 85,000 storefronts and over 760,000 employees, the retail sector truly touches the daily lives of most Ontarians.

Before discussing the legislation itself, I would like to begin by saying that retailers agree with the Ontario government regarding the policy issue of preventing the sale or rental of adult material to children and are committed to assisting parents in making informed entertainment choices for their families regarding the purchase or rental of interactive video and computer games. That is why, at the request of our members, Retail Council of Canada, in conjunction with ESA Canada and the ESRB,

launched the national rollout of Commitment to Parents in October 2004. This initiative limits the sale or rental of Mature or Adult-Oriented video games to children through a system of video game ratings on the packaging and point-of-purchase controls.

RCC was pleased to work together with Ontario's Minister of Consumer and Business Services to launch Commitment to Parents last fall. On behalf of RCC and its members operating in Ontario, I would like to thank the minister again for his tremendous support of this initiative. Indeed, the minister is to be commended for his leadership and his commitment to working with industry on this important matter. I would also like to thank Mr. Ted McMeekin for his support and his tireless efforts to promote to parents the fact that they now have access to the information they need to make informed and appropriate entertainment choices for themselves and for their families.

Through Commitment to Parents, participating retailers check age identification to ensure that Mature-rated video games are not sold or rented to customers under the age of 17. In addition to being an extension of retailers' commitment to customer service, Commitment to Parents will also better equip parents to decide what's appropriate for their children. As part of the program, the video gaming industry and retailers launched a public awareness campaign to educate and inform parents about the ESRB rating system. The OK to Play campaign includes point-of-purchase displays, informational brochures and rating cards for parents.

In this instance, we all share the same goal: to support and empower parents, to ensure they have the information and tools they need to make their decisions about what is appropriate video and computer game programming for their children. We start with the premise that the best control of entertainment is parental control, and there is no better place than a retail store for parents to control the content of the video and computer games to which their children have access. Above all else, Commitment to Parents is about retailers helping parents to make more informed entertainment choices for their families through a parental empowerment program that combines ratings education with voluntary ratings enforcement.

To provide you with a quick update on how the program is performing, at the launch last October the following retailers were the first signatories to the national retailer code: Hudson's Bay Company retail outlets the Bay and Zellers, Best Buy, Blockbuster Canada, EB Games, Future Shop, Radio Shack, Rogers Video, Toys "R" Us and Wal-mart. Since then, five more retailers have signed on: Sears Canada, Costco, London Drugs, Staples Business Depot, and Le SuperClub Videotron, which owns Jumbo Video. Moreover, we are now beginning an outreach campaign to small video game retailers to encourage them to sign on to the code.

Turning our attention to the legislation before us today, RCC is pleased to offer its support for Bill 158. As noted earlier, retailers agree with the Ontario government on the policy issue of preventing the sale or rental of adult material to children. We feel that partnering with governments is the best and most effective way of reaching this goal. The proposed legislation is important because it would allow the Ontario Film Review Board to adopt video game classifications provided by the ESRB. This would harmonize Ontario's classification standards with other provinces and it would ensure that consumers are provided with consistent information.

With the passage last year of Bill 70, the film review board was given the authority to adopt the ESRB rating system, which it did in March 2005. With Bill 158, the board would be able to continue to have this rating system in place. This is important, as the ESRB rating system is an unbiased, standardized way to help a parent determine whether a game is appropriate for their child. It is the industry standard for North America, and RCC has made it a priority that increasing awareness of the ESRB rating system must be part of any plan to help parents make more informed decisions regarding their children's entertainment choices.

Bill 158 also reflects, we believe, the government's belief that when it comes to protecting children from access to video game material that is inappropriate for their age, the first and best line of defence is parental education. Indeed, this initiative is giving consumers and parents the tools they need to understand the ESRB rating system and make informed entertainment decisions for their family. RCC's partnership with the Ontario government demonstrates our mutual commitment to working together to bring about change that parents and consumers want.

RCC, the Ontario government and most everyone share a common goal: We want parents and consumers to have the information they need to select or recommend age-appropriate titles for children and youth, and we want the information we provide to be as clear and as objective as possible. Passing Bill 158 will help us to achieve this objective.

Thank you again for your time today. I hope that leaves some time for questions.

The Chair: We have just a couple of minutes, starting with the government side—actually, one minute, Mr. McMeekin.

Mr. McMeekin: I just want to pause for a second to thank the Entertainment Software Association of Canada and the Retail Council of Canada for their exceptional leadership in coming to the table and partnering with the government.

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Retailers are clearly onside, parents are clearly onside. In fact, listening to the presentation, 78% of the time, parents use the rating system as a guide. It's important to note that only 5% of the time do they disagree with it. That clearly is government on the right track in working with retailers who, in turn, are on the right track. It's a great partnership.

Mr. Martiniuk: Perhaps Mr. McMeekin, as the PA to the minister, can help me. Is it the intent of the gov-

ernment to have a regulation adopting the ESRB rating system, or does the government in these cases merely delegate the authority to make that decision to the classification board?

Mr. McMeekin: We're happy with the delegated authority at this point. It's working very well, as I think the presenters have indicated.

Mr. Martiniuk: But that means the board could alter that decision and choose not to adopt this system.

Mr. McMeekin: We're quite prepared to use that system. It's working very well. That's the government's position.

The Chair: Thank you, Ms. LaBossiere and Mr. DeRabbie, for your testimony.

JOHN PORTER

The Chair: I would now invite our next presenter, Mr. John Porter, if he is in the room. Mr. Porter comes to us in his capacity as a private individual. Sir, I remind you that you have approximately 10 minutes in which to offer your presentation. Please be seated. If there is any time remaining, it will be evenly distributed amongst the parties afterward for questions. If you might identify yourself, you have 10 minutes. Please begin.

Mr. John Porter: Thank you for allowing me to speak. My name is John Porter. I have been a filmmaker in Toronto for 37 years, but I have never worked in the film industry. I consider myself to be a fine artist, like a painter, but one who works in the medium of personal film. My films are personal because, like paintings, they are made by one person. I perform all the tasks: writing, acting, directing, photography, editing and financing. Financing is easy because, like paintings, my films cost about $50 each, so I'm able to make many each year, just like a painter. I've made 300 films, each one just a few minutes long, about as long as some people look at a painting. I show my films in art galleries and film festivals and I have received arts grants, including from the Ontario Arts Council.

Most fine artists produce work primarily as a form of expression, not to make a profit. We would like to earn a living from our art, but that is secondary. We produce to suit ourselves and then hope to find an audience. Most artists must earn a living and finance their work by taking regular jobs like driving a taxi, waiting tables, teaching or arts administration. I was a letter carrier for five years and a bicycle courier for 10 years and I get occasional work teaching and publishing, in addition to my artist's fees and grants.

My films cost so little to make because I make and show them on silent 8mm and Super 8 film, the old home movie formats before video. I don't like video and I choose to not use it, in the same way that an oil painter chooses to not use acrylic paint or watercolour, or a stone sculptor chooses to not use wood.

Last week, the Toronto Star published a full-page article about Super 8 film enduring as an art form, and I am quoted extensively in it. This is a photograph of me performing in one of my films in 1981. I have provided copies of this article for you.

One thing that makes Super 8 film inexpensive is that you can exhibit the same roll of film that was in the camera without making a copy, just like video. It's not a negative, as with larger film formats; it's a positive or reversal image, like 35-millimetre slides. It's the camera-stock film. It's the original, one-of-a-kind film, just like an original painting, and I prefer to exhibit my originals, just like a painter. They look better than any copy. So I don't make copies, partly to save money. I would rather spend money making new films than copies of old ones. Showing the original film also allows it to be exhibited just hours after shooting it, like an improvised performance.

So I handle my fragile, precious, original films with great care, usually preferring to travel with them and oversee the projecting, and never sending them away to strangers with strange projectors. I do not submit my films for classification to the Ontario Film Review Board, and none of my fellow film and video artists do, which means that all of our screenings are either illegal and underground, so we can't publicize them very much—and in fact we can't talk about them in some circles—or they are automatically classified as Restricted, regardless of the content of the work. Anyone under the age of 18 cannot attend. But my films are perfect for all ages, and I have done screenings for children. Children like my films and I like having children in my audience.

I have been protesting Ontario's film classification laws since 1979, when the review board began requiring the classification of personal film and video art such as mine. In 1983, I was devastated to see my 9-year-old nephew turned away from a solo screening and performance of my films at an art gallery in Peterborough, Ontario, where he lived, because my films had not been submitted for classification. He was disappointed and confused, wondering what was wrong with my films that he wasn't allowed to see them. He never got another chance to see his uncle's show, and now that he is living permanently in Dublin, Ireland, he may never get another chance. The Ontario government took that one special family occasion away from us forever, and I will never forgive them for that. Since then, I have been passionately consumed with fighting this law, as you can see.

It continues to break my heart, witnessing many other such incidents at public screenings over the years. Other film and video artists bring young family members to their own screenings, but are turned away even though the films are appropriate. This hurts even more when I see that my artist friends who work in other art disciplines, like painting, writing, music, dance and theatre, are not required to submit to forced prior classification of their work. It's discrimination. I have done nothing wrong. I have never been in trouble with the law. What have I done to deserve being treated by my own provincial government like a convicted pornographer on parole? I'm required to check with my local review board before I'm allowed to show my films to children. It's

degrading, and my only crime has been that I chose to work in film or video. Out of respect for myself, my family and my life's work, I can never accept this law.

I said that I have received grants from the Ontario Arts Council, but since the incident with my nephew in 1983, I stopped applying for Ontario grants. I felt that Ontario was rewarding its film and video artists with one hand and slapping us on the wrist with the other. It's paternalistic and I don't want your support under those conditions.

The Chair: Thank you, Mr. Porter. We have approximately two minutes. Mr. Kormos, if you might begin.

Mr. Kormos: Mr. Porter, your submission, after hearing from the Canadian Civil Liberties Association, adds to the increasingly compelling arguments to not support Bill 158. New Democrats opposed it on second reading. I am intrigued by the proposal by Judge Juriansz in his Glad Day decision—his contemplation of yet one step further from, let's say, Manitoba, to which he made frequent reference—and that was the category of unclassified, which then is caveat emptor. You'd better be satisfied that you have a reasonably good idea of what's in it before you take your seven-year-old kid. The onus is upon you. If film classification is truly to be about merely consumer advice rather than backdoor censorship, we have to have the classification of uncategorized, otherwise it becomes censorship by the requirement of classification.

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Section 7 will be ruled unconstitutional by the court. If you have any doubt about what the Court of Appeal will say, think about this. Judge Juriansz is now on the Court of Appeal, so that should give you some idea of where the Court of Appeal is going to be. But the next stage is to challenge the requirement that the film be submitted for classification. If it's truly consumer advisory, there wouldn't be a requirement because there would be the class of caveat emptor. There is nothing in this bill that says it's going to be against the law to sell a XXX movie, you know, Debbie Does Dallas—I'm dating myself—to a kid, never mind SpongeBob SquarePants or whatever the name of that particular character is.

Thank you very much for coming.

Mr. Porter: I'd like to add that I would like to see in the act, and not in the regulations, which can be changed more easily, a category for unclassified films. People can choose not to submit for classification, and that is a warning to parents or anyone going out to screenings of an unclassified film: beware. All we would lose by not getting a classification is extensive commercial distribution, which we're not that interested in and wouldn't get anyway.

The Chair: Thank you, Mr. Porter, for your testimony.

LIAISON OF INDEPENDENT FILMMAKERS OF TORONTO

The Chair: I would now invite our next presenter, Mr. Roberto Ariganello from the Liaison of Independent Filmmakers. Mr. Ariganello, you have 15 minutes in which to present. Any time left remaining at the end will be distributed evenly among the parties for questions. Please begin.

Mr. Roberto Ariganello: Thank you for allowing me to speak. I believe that Bill 158 and any previous legislation concerning film censorship and classification have been primarily concerned with the commercial film industry and, more specifically, with the sale and distribution of pornography. However, within Ontario there exists a large and vibrant not-for-profit media arts network of organizations that are community-based and entirely accessible by Ontarians. This community includes many film and video festivals, production co-ops, distribution centres and artist-run galleries. Many of these organizations are funded by the Ontario government through the Ontario Arts Council as well as the Canada Council for the Arts and local community arts councils. These not-for-profit organizations are represented nationally by art service organizations such as the Independent Media Arts Alliance, and provincially by Artist-Run Centres and Collectives of Ontario, ARCCO. All of these organizations are mandated by the arts councils, which fund them, to promote the creation and dissemination of media art work that is non-commercial in nature and demonstrates innovation and artistic merit in their particular art form. Unfortunately, this community network of media arts organizations, while directly affected by Bill 158, is largely unknown by the politicians who are responsible for Bill 158.

I would like to spend a few minutes describing the organization that I represent and the community within which it exists.

LIFT, the Liaison of Independent Filmmakers of Toronto, is a non-profit, charitable, artist-run centre dedicated to celebrating excellence in film and the moving image. LIFT exists to provide support and encouragement for independent filmmakers and artists working with film. When we say "film," we actually mean it. LIFT supports Super 8, 16mm and 35mm film production. We aspire to provide the industry standard in film production equipment to meet the needs of our membership.

LIFT was incorporated in 1981 as a non-profit corporation. The organization began with 25 members and an annual budget of $1,800. In the early period of LIFT, membership included now-noted filmmakers such as Bruce McDonald, Patricia Rozema, Atom Egoyan, Jeremy Podeswa, John Greyson and Michael Snow.

From its inception, LIFT had an open-door policy which allowed anyone, regardless of their level of expertise or financial situation, access to our facilities and resources. LIFT also provides free memberships to visiting artists from across the province and from across Canada, as well as a foreign visiting artist residency program that brings artists from abroad to Toronto to create new film art and exhibit their work.

Over the past 24 years in Toronto, literally thousands of people from groups who do not traditionally have

access to film resources have been able to pursue their independent artistic vision with LIFT's assistance. LIFT members produce films of all styles and genres, including narrative, experimental, animation and documentary. Our membership is a very diverse group that includes artists practising in a wide variety of media, who all share a passion for filmmaking and visual art. Moreover, LIFT members are often people who have surmounted formidable economic and social barriers in striving to complete their projects.

I mention the early period of LIFT's history because there are many small production centres throughout Ontario that are in the early stages of development. Sudbury, Thunder Bay, North Bay and Kingston are but a few of the communities in Ontario that are in the process of creating media arts production centres and addressing the needs of their respective communities. Many of these organizations will employ an artist-run model similar to that which exists at LIFT. It is vital that these fledgling organizations have the opportunity to grow, especially in small rural communities, since they will have a significant impact on cultural and artistic production in their particular regions.

LIFT does not produce the work of its membership, but rather provides a wide range of tools and support for independent filmmakers. We define independent filmmakers as those individuals who exercise creative control over their projects. This is a significant distinction. The term "independent filmmaker" is overused in the film industry. Very rarely does the industry definition of "independent filmmaker" involve exercising creative control over an individual's project. At media arts organizations throughout the province, aspiring filmmakers are allowed the opportunity to freely exercise their creativity in any way that they choose. As a result, Ontario actually produces a large number of successful film artists whose films are screened across the world. We heard from one just a moment ago.

LIFT currently has over 600 members, many of whom are employed in the commercial film industry yet belong to our community in order to exercise their creativity. Our accessing membership produces approximately 120 to 150 film projects per year that are screened internationally and frequently win awards. LIFT also produces Film Print magazine, a bimonthly publication that showcases the independent film community that falls under the radar of mainstream media.

LIFT's mandate has been made more significant by the recent decision by many media arts programs at technical schools and universities to divest their institutions of traditional filmmaking equipment in favour of primarily digital video services. Moreover, the rising costs of post-secondary tuition have also created a significant barrier to Ontario youth and aspiring artists in pursuit of their artistic goals through post-secondary institutions. As a result, LIFT provides over 90 workshops and six film courses a year that are extremely affordable and entirely accessible to the public. In 2005, LIFT anticipates that our educational services will reach over 1,000 participants. Media arts production centres across the province are providing vital educational services and training opportunities for Ontarians interested in the art of filmmaking.

Despite the fact that production and education are our primary concerns, LIFT exhibits a large number of films throughout the year. Our most popular event is the Salon des Refusés, where we screen short Canadian films rejected from the Toronto film festival. We recently launched a New Direction in Cinema series, which highlights achievements of our mid-career and established members. Each summer for the past 12 years, we have screened films at the Ward's Island clubhouse.

LIFT partners with a number of film festivals in Toronto each year to produce and exhibit new films. In the past year alone, we've worked with the Reel Asian Festival, the Images Festival, the Female Eye Festival, the Rendezvous with Madness Festival, AluCine Festival of Latin American Film, the Splice This! Super 8 Festival and the Moving Pictures Festival of Dance, as well as art exhibition organizations such as Harbourfront Centre, the Power Plant and YYZ Gallery. Many of these screenings take place at a variety of venues, including Innis Town Hall at the University of Toronto, Cinecycle, an alternative underground cinema, and Latvian Hall community centre. We are also currently involved in a tour of Ontario with a program entitled The $99 No Excuses Festival.

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Every time LIFT participates in a screening, we break the laws of Ontario because we do not submit our films for prior approval to the review board. We do not submit our films for prior review and classification for a number of reasons:

(1) Submitting films would be an administrative burden.

(2) We believe it's a waste of precious funds that would be better used for our programming.

(3) There is a possibility of damaging original films that have no preview copies available.

(4) The entire process is discriminatory, since other art disciplines are not required to submit their work for prior classification. Writers, painters, sculptors and all other artists are free from classification and censorship, yet artists who choose film are subject to government regulation.

The proposed Bill 158 is flawed. What is being proposed is a redrafting of the former legislation that was struck down in the courts. I believe there are three routes that the committee can take:

(1) You can recommend a series of regulations that would exempt media arts organizations such as LIFT from the law. However, you must also be prepared to exempt other groups such as churches, libraries and charitable organizations that wish to exhibit and distribute videos and films for fundraising purposes.

(2) You can employ the Manitoba model. However, this model is flawed. All arts organizations in Manitoba are obligated to submit their films and videos for classi-

fication. The Winnipeg Film Group, LIFT's counterpart in Manitoba, spends approximately $800 a year just for classification, a terrible waste of money better spent on programming. This model will also be struck down when challenged in the courts.

(3) You can simply let go of this legislation. The genesis of Bill 158 occurred almost 100 years ago, during the dawn of cinema, when film was a powerful propaganda tool. Times have changed. The current need for film classification is unnecessary. There are provisions under the Criminal Code that will punish anyone who breaks the law. The provincial government would do better to focus it's attention on the Internet, considering that the whole nature of commercial distribution will dramatically change over the next five to 10 years.

I'd like to thank you for this opportunity to voice my opinion and represent my community. I look forward to your recommendations concerning Bill 158.

The Chair: Thank you very much. We have about five minutes, to be divided evenly, starting with the government side. No questions? I'd move to the PC side.

Mr. Martiniuk: Thank you, Chair.

Again, I have a question for Mr. McMeekin, and I don't expect it to be answered today, either. I would like an answer, if possible, at the time we do clause-by-clause. As you are aware, at the present time film festivals and libraries and various other organizations are exempt from the classifications of the Theatres Act, pursuant to regulation 1031. My question to yourself and the minister is, is it the intent of the ministry to pass regulations exempting the organizations presently exempted in 1031 under the new act? As that's a complicated question, as I say, a think an answer at the time we do clause-by-clause would be fair.

Mr. McMeekin: We'll do our best to get you a complicated answer.

The Chair: Any further questions?

Mr. Kormos: I'm particularly intrigued by your comments, which, of course, were noted in the Juriansz judgment about the lack of, never mind prior approval, but even the implicit restraint by virtue of the requirement that you submit for classification not applying to other disciplines, and of course this conjures up recollections—and I just had occasion outside to note that law enforcement has been, if anything, zealous in terms of enforcing the Criminal Code, because the case law is more notable for the number of acquittals than the number of convictions. So they appear to have been very eager to attempt to apply the Criminal Code. If we go back to, I think it was the 1980s, in the United States, Mapplethorpe, who's the paint artist—

Interjection.

Mr. Kormos: Yes, Eli Langer, here in Toronto. I wonder if legislative research—as I recall, at the New Yorker Theatre on Yonge Street, not some off-the-way place, last year or the year before, there was the Toronto performance of Puppetry of the Penis, where two guys made puppets out of their penises on stage, apparently, for an hour. I don't know how long that performance lasted. I know how long I would have lasted—about three seconds—before I fled.

I wonder if legislative research could tell us whether or not Puppetry of the Penis, a live performance of two guys playing with their penises as if they were puppets, had to undergo any classification by the province, whether it had to display any warnings, or was the title of the performance enough to let people know that there were penises involved, so as not to endanger the health, welfare, sensibilities, well-being—this was right on Yonge Street. I remember the marquee. I wonder if legislative research would respond to that.

You are, of course, advocating a category of simply not submitted for classification?

Mr. Ariganello: Yes. I know that this Manitoba model is being held up by—

Mr. Kormos: As a beginning.

Mr. Ariganello: As a beginning. You have to understand that a lot of these not-for-profit media arts organizations are underfunded, and there are costs involved in actually submitting the film. It doesn't sound like a lot of money when you say $800, but it represents a significant amount for a small not-for-profit organization.

Mr. Kormos: As I understand it, a church group that wants to do a DVD of the choir performing for an hour and then sell that DVD as a fundraiser, based on what's eligible for exemption, would have to submit that DVD—because you can do that very easily now in-house with your Mac and your burner, but to do that as a fundraiser, the church choir, Dr. Qaadri, for fear that somebody should slip an obscenity into Ave Maria, would have to be submitted, and you've got to pay per-minute costs.

Mr. Ariganello: Yes.

Mr. Kormos: Good grief. I mean SpongeBob SquarePants, or whatever that guy is, has to be submitted at the $3 or $4 a minute, when we all—well, then again, I read about what those pastors in the United States had to say. Maybe he should be submitted; dangerous SpongeBob SquarePants—a subversive game.

The Chair: Thank you, Mr. Kormos, for your theatre insights. Thank you, Mr. Ariganello, for your presentation.

PLEASURE DOME

The Chair: I would now invite our next presenter, Ms. Linda Feesey, who is the president of Pleasure Dome. Ms. Feesey, please introduce yourself to the committee. I'd remind you that you have approximately 15 minutes in which to offer your deputation. If there's any time remaining, it will be distributed evenly among the parties. Please begin.

Ms. Linda Feesey: Good morning, members of the justice committee. I am Linda Feesey, president of the board of directors of the Artists Film Exhibition Group of Ontario, which presents film and video programming under the name Pleasure Dome.

Pleasure Dome is a non-profit, artist-run organization. We are one of over 100 film and video festivals and

exhibitors spread over the province who are dedicated to screening artists' film and video to the public. The films and videos we present are independent, non-commercial, local and international, contemporary, historical, experimental, innovative, short and feature length, all made by artists to be viewed in the context of larger historical trends within the production of art worldwide. We believe that our programming is being inadvertently subject to the legal implications of Bill 158. The Theatres Act is designed to govern the commercial film and video industry, not independent media arts.

Pleasure Dome consists of one paid program coordinator, 12 volunteer board members who are the programming collective, a computer, a Super 8 film projector, a DVD player and some cords. It is financially supported by three levels of government through the Ontario Arts Council, the Toronto Arts Council and the Canada Council for the Arts. Founded in 1989, Pleasure Dome is one of the oldest media arts exhibitors in Ontario. We program 20 events in a year-round screening series, and I want to stress that each event is unique.

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Pleasure Dome is an important contributor to the independent media arts in Ontario. We nurture the development of Ontario curators and their critical writing. The 12 members of the programming collective choose work and themes for each show. They write program notes and curatorial essays.

Pleasure Dome has published five books on media art and individual artists. Pleasure Dome nurtures the further development of Ontario artists. We pay to present their work to the public. Through commissioning grants, we pay for the creation of new works and their dissemination. We often bring artists to Toronto from within Canada and abroad to discuss their work, and we pay for their travel. We provide a forum for a dialogue with the international film and video community, so that our audience can evaluate contemporary, theoretical and aesthetic issues.

Pleasure Dome's principal audience is Toronto's ever-expanding film and video community. Also, the student body at a number of media arts programs, including OCAD, Ryerson University, University of Toronto, York University and Sheridan College, are all part of Pleasure Dome's target audience.

I think for now I'm just going to continue with my section on Bill 158 and play the video at the end. It's a sample of the kind of work we're showing to the public. But I don't want to risk going over.

The intent of Bill 158 and the current Theatres Act is to govern the exhibition and distribution of commercial film and video, and its measures are not appropriate for independent media art. The film and video artwork created and exhibited by our community is non-commercial and intended for cultural purposes. We request that our sector be written out of the Ontario Theatres Act. This would be a better solution than the current regime of exemptions in the regulations and more in keeping with last year's judgment, Regina v. Glad Day.

Pleasure Dome—this is our policy—does not submit its film and video programming for prior approval by any censoring bodies. Bill 158 effectively renders our screenings illegal. We do not submit works for classification because it is a form of prior restraint that infringes on our charter right to freedom of expression. We are ideologically opposed to censorship in any form.

There are also practical considerations. As stated in the Ontario Superior Court judgment, prior approval is a financially and administratively burdensome practice. This is especially so for our type of administratively thin organization, not to mention discriminatory, as other art disciplines are not required to submit their work for prior classification. It is an unnecessary and costly administrative burden to Pleasure Dome, because we exhibit works only once and usually show many short films at an event. Often the work of a touring international artist is brought directly to the screening, so there's no window of time for prior approval.

The regulations attached to the previous Theatres Act provided exemptions to art galleries, libraries, educational institutions and festivals if they posted a sign restricting admission to those 18 years or older. We object to any kind of age restriction on our audience. Much of the work is appropriate for educating all ages in the arts, yet the law prohibits access to younger audiences for the sectors exempted in the regulations. Programmers and curators are well-educated, responsible citizens who are capable of self-regulating and are in the best position to make decisions about access to the work. An interest in art is a process of intellectual development that starts in childhood or adolescence. No one who chooses to be an artist or art historian sees their first painting at age 18. Also, books, paintings and other cultural products are not subject to prior approval.

This sector to which Pleasure Dome belongs, specifically exhibitors and distributors of non-commercial artists' film and video, should be written out of the film classification section of Bill 158 altogether, or perhaps placed in an unclassified category. We want this contained in Bill 158 rather than in its regulations, to ensure a secure environment for the dissemination of non-commercial, artist-made film and video in Ontario.

Now I'd like to show you an example of our work, of something that we've shown. It's a commissioned piece by artist Judith Doyle. She's also a teacher at OCAD. Unfortunately, I couldn't bring the one that I did cite, because it's in the PAL format, which is European. You're going to see something on the history of the moving image and also some great footage shot in our own Beaches neighbourhood.

The Chair: How long is this video?

Ms. Feesey: I'm not sure. You can cut it off if we're going over.

Video presentation.

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Ms. Feesey: That's the end.

The Chair: We've got one minute remaining, and we'll start with the government side. No questions? Mr. Martiniuk?

Mr. Martiniuk: No questions.

The Chair: Mr. Kormos, one minute please.

Mr. Kormos: Don't go away, please. I'm curious as to why you place exemptions first and then you sort of say, "Maybe an unclassified provision."

Ms. Feesey: That would be our second choice.

Mr. Kormos: Why wouldn't you go full blast into proposing a category of films that have not been submitted for classification? Would you rather have an exemption, or would you rather have this broader category of film not submitted for classification—without any presumption of it being adult material? The first submitter today was the fellow who was involved, presumably, in the distribution of adult movies—because again, the church choir singing could be a film not submitted for classification, as readily as something one of your colleagues produced.

The Chair: You have just about a minute, Ms. Feesey, please.

Ms. Feesey: I think what we'd like to see is somehow to have the law written so that it just does not address our sector at all, because we're non-commercial. If it can be written just to cover things that are within the industry, within commercial venues, that would be the first choice. Is that possible?

Mr. Kormos: Anything's possible. It's a matter of political will. I get you, but I don't know.

Ms. Feesey: But our second choice is the unclassified category for our type of non-commercial artist, educational film and video.

The Chair: Thank you, Ms. Feesey, for your deputation, as well as the film.

IMAGES FESTIVAL

The Chair: I would now invite our next presenter, Ms. Petra Chevrier, of Images Festival. Ms. Chevrier, I remind you that you have approximately 15 minutes in which to offer your presentation. Any time remaining will be distributed evenly among the parties afterward. If you might identify yourself for the purposes of recording for Hansard, you may please begin.

Ms. Petra Chevrier: Good morning, members of the committee. Thank you for giving me the opportunity to speak on behalf of our organization with respect to Bill 158 and the previous legislation it amends, the Ontario Theatres Act. I join these two together because it seems clear that the regulations which affected us through the Ontario Theatres Act will likely be sustained into the new regulations.

Again, my name is Petra Chevrier, and I'm currently employed as the executive director of the Images Festival of Independent Film and Video, known familiarly as Images Festival.

Images Festival is presented annually in April by a not-for-profit charitable organization devoted to the exhibition, public education and promotion of film, video and related artwork.

In the past, I've also been involved as a board member with several other not-for-profit and/or artist-run organizations that exhibit film and video art, such as Pleasure Dome—we just heard from Linda Feesey, president of Pleasure Dome—and YYZ Artists' Outlet, a Toronto multidisciplinary art gallery that exhibits time-based media art as a regular component of its programming. I have also in the past made and exhibited films of my own, and continue to do so occasionally. My presentation this morning is from my vantage point as the executive director of a film and video festival but, of course, this perspective is informed by many years of work in this discipline within different capacities.

Images Festival began 18 years ago as a festival of independently produced film and video, and has grown to be one of the largest events of its kind in Canada. It's located here in Toronto, and we just wrapped the festival last weekend, actually. I'm going to reiterate the definition of "independent." By independent, we mean works whose copyright is retained by the artist-creator and wherein the artist-creator retains complete creative control over the final work, including the manner in which it is disseminated and exhibited.

This distinction is important in identifying the genre of work we exhibit, as this type of creative control and exclusive ownership of copyright seldom exists within the commercial film and television industry. Thus one could say that we exhibit works that are of a non-commercial nature, although that's somewhat difficult to define. Images Festival is not considered generally to be a film industry event, but rather an event that focuses on contemporary film and video art. To be very specific, Images Festival is an exhibitor of works of art that are based on and/or derived from—here I'm actually going to quote section 1 of the proposed act—"a moving image, including an interactive moving image ... that may be generated for viewing from any thing including, but not limited to, videotapes, video discs, film or electronic files ('film')". So film, in the sense of the act, encompasses a very wide range of media.

As a presenter of contemporary art based on the moving image, I find this definition very inclusive of the full breadth of the medium as we understand it. Images Festival staff and the artists we present to the public very often stay up late into the night thinking of new ways to present and exhibit media artworks in novel formats and contexts. In this way, the definitions and boundaries of the medium traditionally known as film are constantly being challenged, tested and explored by artists in every way imaginable. Inevitably, the work we present crosses over into the domain of the visual arts, such as within the art gallery or museum setting, into cyberspace with online and virtual projects, into the street and other venues with public projections, live performances and so on.

Now I get to my key point: When we consider the effect this proposed legislation will have on the film and video arts sector, it is hard to conceive of a more futile, censorial and discriminatory process than the one being reinstated by the proposed act. It is clear that the new

legislation retains prior approval of all film art or time-based art generally as a central goal. My position is that government regulations that seek to control, via a censorship scheme based on the prior approval of exhibited works, the creative output of artists working with the moving image are an unreasonable suppression of the right of freedom of expression.

I'll briefly outline my arguments around these three points.

(1) Futile: Currently, the largest-growing area of exhibition and distribution for film, as defined in the act, is via electronic computer files distributed from Internet servers. Images Festival has for many years been involved in the curating and presentation of on-line Web-based projects as part of our activity, so we are very aware of the range and potential growth in this area. It's clear to everyone involved that the entire field is growing at an incredible rate, largely through unregulated and unregulatable on-line distribution environments. Ontario viewers of almost any age can readily view works streaming from sites all over the world.

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Another very important growing area for film and video artists is art-gallery-based exhibition, often referred to as "installation." Installation art increasingly features elements of recorded moving images as part of the work. My reading of the proposed act suggests that the revised legislation intends to include this range of film-based art within its scope. Is this really an enforceable and desirable outcome? Can a rating system designed to regulate the fairly narrow range of commercial film distributed through theatres and in video stores be realistically applied across the full spectrum of time-based media arts exhibition, and even to include on-line dissemination of film art? This is truly an ambitious project, and one that becomes more ambitious with every quantum increase in Internet bandwidth and server storage capacity, wherein self-distribution and localized micro-distribution become commonplace. With the proliferation of artist access to digital technologies in many other environments, the scope of this regulatory project will likewise increase.

(2) Censorial: The focus of the proposed revised legislation on specifically censoring film art using a process of prior approval is clearly documented within the act's own explanatory note. This has been discussed by several other presenters this morning, so I won't dwell on this.

However, this brings me to the issue of exemptions, the ubiquitous and apparently more-or-less functional exemptions from the act, such as the key exemptions that allow art galleries and film festivals to continue to operate without apparent—key word "apparent"—or excessive interference from the Ontario Film Review Board. I would like to spend some of my remaining time looking more closely at the negative effects of these exemptions on audience development, on art education and specifically at the important area of art education for youth under 18 years of age. This is a project that we're involved with on a regular basis.

As many of you will know, under the previous regulations and as a predictable component of the new regulations, film festivals and art galleries were granted exemptions from the prior approval provisions of the Ontario Theatres Act in exchange for announcing that the exhibited artworks are restricted to those aged 18 or over. On the surface, this blanket R rating of all exhibited works seems like a reasonable compromise. The film festival avoids the burdensome submission process, particularly for works arriving just before the scheduled screening, and most of the film festival audience, including the Images Festival audience, is over 18 anyway, so why worry? When was the last time anyone remembers actually seeing a Restricted sign outside an art gallery video art installation? My perception is that the previous act was only selectively enforced within the media art exhibition world. So many organizations have been quite happily continuing to work under these so-called exemptions schemes.

Looking at this in detail now, what kind of message is this requisite R rating sending to our potential future audiences? Our film festival brochures and program guides contain the steady message, "Screenings restricted to persons aged 18 or over." Is this informing our audience that the content of our film festival is excessively violent and degrading, contains sexually explicit scenes or even just contains images of genitalia and is therefore not suitable for anyone under 18? No, not at all. We are simply satisfying a regulatory imperative. The reality is quite the opposite. Most of the films we exhibit contain nothing that would invoke a Restricted rating or even anything close to a Restricted rating.

Take Barbara Hammer's Resisting Paradise as a case in point, which Images Festival premiered in 2004. That's the previous catalogue. This experimental feature-length documentary examines the life of French painter Henri Matisse during World War II and contrasts it with the world of the resistance movement taking place in the south of France, combining this with a stirring account of the attempted escape of Jewish writer Walter Benjamin across the Pyrenees, an escape attempt that ended tragically in his suicide. This amazing and thoughtful film, completely suitable for an adolescent audience, particularly one with an interest in art history, was forcibly screened with an R rating.

Of course, there are the odd exceptions. What about the small number of films at the Images Festival that should be reserved for adult audiences or where adult accompaniment is considered to be necessary? I think that the responsibility for declaring a screening restricted or for explaining the content to a potential guardian bringing a teen or a child to a screening should fall to the curators and programmers who always attend our festival screenings on behalf of the festival.

Festivals have a vested interest in taking responsibility for these important issues around age suitability, but the enforced blanket Restricted rating takes away our ability to exercise this responsibility with regard to younger audience members, and hence takes away our freedom of

expression as an exhibitor. If the film festivals were given the freedom to self-regulate, I'm entirely convinced that we would do so in the most conscientious and responsible manner and from the most informed positions as educators and programmers.

How much time do I have left?

The Chair: You have about five minutes.

Ms. Chevrier: Five minutes. OK, good.

And when we do embark on youth education—and we're doing a project this year which is actually documented in the catalogue—and art education aimed at high school students, in these cases we are required to submit the works for approval to obtain a rating prior to the screening. When we do this, it turns that out no one at the Ontario Film Review Board seems to be very worried about previewing the works anyway. So we write out the description on a form, send the form in to the Ontario Film Review Board, and they send back the rating, sight unseen: PG. We could have known that, since we selected it ourselves with a teen viewer in mind. Plus, we actually looked at the work.

All this bureaucracy, all these regulations, and in the end we decide what we will show and to what age group, with a rubber stamp applied by the Ontario Film Review Board. It really doesn't make that much sense to us. But this seemingly microscopic permissiveness hides the overall censorial legacy of the act.

I'll conclude this section of my discussion of age censorship, and that's what I call this: a form of age censorship. The current regulatory situation creates an environment where children are exposed, via commercial film distribution and television, and from a very early age, to nearly every form of commercial film production, albeit with some restrictions and a steady stream of content warnings supplied by the OFRB. On the other hand, the age censorship inherent in the existing and proposed legislation, together with the chill effect that the prior approval requirements generate within the art world, combined with the general absence of independently produced programming in mass media markets, has created the truly strange effect of actively preventing access to works created by independent film and video artists for anyone under age 18. Linda mentioned that you cannot start to begin your appreciation of art at the age of 18.

What effect is this having on the future of our society, a society where youth have nearly zero access to the many important media works created by independent artists and nearly unlimited access to commercially driven productions?

(3) Discriminatory: As a final point, only artists working in the time-based arts are required to submit their work for prior approval. This point has already been made, so I'll skip ahead a bit.

For film and video artists it has become commonplace to refuse to allow their own works to be submitted to the OFRB. They simply philosophically are opposed to it and they simply tell us that they will not allow us to submit their work. We have to follow along with that. Therefore, we're in a position where we cannot even present it to teens, because it prevents us from doing that. They see it as unconstitutional and they see it as an unreasonable restriction on their freedom of expression. This phenomenon is at the core of the chill effect that I mentioned above, and this effect has become endemic now within the film and video arts sector.

Isn't it time that Ontario ended the era of enforced prior approval of all film, video and other art based on the moving image?

Thank you very much for your time and attention.

The Chair: Thank you, Ms. Chevrier, for your presentation. Regrettably, we won't have any time left for questions.

RAJ PANNU

The Chair: I now invite our next presenter, Raj Pannu, who has also submitted some written materials which have been distributed. Mr. Pannu, if you might come forward—oh, it's Ms. Pannu.

Ms. Raj Pannu: I know I have a unisex name, but it's Ms. Raj Pannu.

The Chair: Ms. Pannu, you have 10 minutes in which to present. Any time remaining will be distributed for questions amongst the parties. Please begin.

Ms. Pannu: Good morning, committee members, ladies and gentlemen. My name is Ms. Raj Pannu. I'm appearing before you to speak in support of Bill 158, titled Film Classification Act. With your permission, I will read a brief prepared statement, after which, time permitting, I'll be happy to answer any of your questions.

I immigrated to Canada in 1981, after practising as a lawyer in the Bombay High Court in India. For 16 years I was educated by the Irish nuns of the Convent of Jesus and Mary in northern India. Prior to being called to the bar in India, I worked as a lecturer of English and was a secondary school vice-principal.

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Once in Canada, over a period of 10 years I worked in various official positions as a legal expert with the departments of Quebec immigration and Canada immigration in Montreal. During this period, I worked with the Security Intelligence Review Committee in Ottawa, the Royal Canadian Mounted Police, the Federal Bureau of Investigation, Quebec provincial police, the Superior Court of Justice in Montreal, the Immigration and Refugee Board, the immigration appeals division and the Supreme Court of Canada. I was promoted as a case presenting officer and transferred to the Greater Toronto Enforcement Centre in 1991.

Presently, I am a practising barrister and solicitor in Mississauga, as well as a qualified teacher and principal with the Ontario College of Teachers. I am proficient in six languages. The Ontario Lieutenant Governor in Council appointed me as a member of the Ontario Film Review Board in December 2002. I served in that position until December 2004. Today I am an ex-board member. I have no affiliation with any political party. I stand

before you as a well-informed and experienced member of Canadian society.

During my five days of initial orientation at the Ontario Film Review Board, every evening I returned home with severe migraine headaches and a heavy heart. I did a lot of introspection as to what the ramifications of my watching such sexually explicit and gruesome material might be, material which was exhibited under the label of "entertainment." I was shocked beyond words. I hailed from a country which was still passing through a period of Victorian moral prudery. My whole life as I knew it was shaken up. Was this some form of poetic justice? Whatever it was, it flew in the face of my protected upbringing and traditional values. I was tempted to walk away from this nightmare. It was a protracted, harrowing experience for me to watch adult films. I could not envisage myself working day after day, viewing adult sex films which were so violent, explicit, degrading and dehumanizing.

But I accepted it as a challenge. I understood the important role I was assigned when I became part of the film classification and approval system. I decided to adopt an objective and clinical approach in order to fulfil the stressful demands of my position as a panel member of the OFRB.

My experience with the OFRB has been a real eye-opener for me. The OFRB does not interfere with the viewers' selection of what they watch. It renders only objective and consistent classification decisions which reflect the community standards of the province of Ontario. It fulfils the basic objective, which is to classify films and videos and, thereby, provide the public with sufficient information to make informed choices for themselves and their families.

The board's work is not censorship. It does not interfere with the viewing rights of the public. The public is free to view any age-appropriate classified film or video. The OFRB provides the viewing public with more consumer education and awareness initiatives which better meet the needs of the parents—example: video games. I cannot emphasize enough that OFRB members are not censors; they are classifiers. They do not remove or suppress what is considered to be morally, politically or otherwise objectionable viewing material.

The proposed act requires persons distributing or exhibiting a film to be licensed. It also establishes a licensing process, one that affords an applicant the right to request a hearing before the Licence Appeal Tribunal.

Bill 158 provides for the designation of inspectors who have general powers to inspect business premises, to seize material which contravenes the act and also to apply for warrants to seize material from distributors or store owners who are reluctant to surrender the contravening materials.

The powers of investigators have been well defined under Bill 158. This act clearly establishes the provisions that pertain to offences and penalties.

This bill separates authorities per the rulings of our courts. It separates the authority to classify films from the authority that approves films. The criteria used in approving films, adult sex products and video games which appear to be criminally obscene will be set out in the regulations. Those that do not meet the essential criteria will then be refused approval. Of course, there is always the right of appeal.

Canada's freedoms are spelled out for us in our Charter of Rights and Freedoms, which can be found in the Constitution Act, 1982. Prime Minister Pierre Trudeau once asserted, "The state has no business in the bedrooms of the nation." His statement was aimed at protecting the privacy of all Canadians, but, on the other hand, Mr. Trudeau knew that the state has a responsible role to play in the public life of its citizens. It was Émile Rousseau, another French philosopher, who said, "Man is born free, but everywhere he is in chains."

Section 1 of our Charter of Rights is a constant reminder that our freedoms are limited by the duties and responsibilities imposed upon us by a free and democratic society.

The Chair: Another reminder, Ms. Pannu: You have two minutes.

1210

Ms. Pannu: If the only way we can protect our children is by placing chains upon the depiction of sexually explicit and violent movies, DVDs and video games that fit the criteria for criminal obscenity, then Bill 158 has an important role to play.

Bill 158 is based upon objective classification guidelines to educate parents. As an educator, I was appalled to see that a grade 6 class at a senior public school was viewing a Mike Myers 14A movie that was loaded with sexual innuendo and coarse language. Although the film had been classified, no one had bothered to check the appropriateness of the film for grade 6 students. Some mainstream films, videos and DVDs receive public screenings without first having been classified by the OFRB in Ontario. They are advertised as NR or STC, which stand for "not rated" or "still to be classified," in the newspapers along with show timings. This is now a violation under sections 10 and 11 of the proposed Film Classification Act, 2005.

Many foreign-language films are presently being shown in our communities without any OFRB classification. DVDs, videos and video games are being rented or sold in grocery stores in Ontario without any classification whatsoever by the OFRB. Adult DVDs and videos are displayed in the backrooms of video stores without any classification. Product which would never be approved is being held under the counter and freely circulated in ethnic community stores in many neighbourhoods across Ontario.

The Chair: If you might bring your remarks to a conclusion, Ms. Pannu.

Ms. Pannu: We cannot undermine the importance of classification and the legislation under Bill 158. The Ontario Superior Court of Justice's decision, dated April 30, 2004, in R. v. Glad Day Bookshops Inc., played a

pivotal role in the amendment of the Theatres Act that was redundant and did not meet society's needs.

Since I have overstayed my time here, I would like to conclude by saying that this act is not perfect. Nothing is perfect. I have mentioned the pitfalls and shortcomings of this act in my written presentation. Thank you very much for hearing me out.

The Chair: Thank you very much, Ms. Pannu. Regrettably, there will be no time left for questions.

If there is any other further business on behalf of the committee—yes, Mr. Martiniuk?

Mr. Martiniuk: If I may, I have a short motion requiring information. I'll read it. I just made it up as I went along.

I move that this committee request that legislative counsel prepare an amendment providing that rear window captioning be a category of classification required to show movies in Ontario theatres; and secondly—and this was made at the request of my colleague Mr. Kormos, and I agreed with it, by the way—that this bill be referred to Commissioner Keith Norton for his comments regarding accessibility to the hearing-impaired, said comments to be received by April 26, 2005, which is the day before our clause-by-clause.

I think that is self-explanatory.

The Chair: Any comments and debate on that particular motion? Is it on that particular motion, Mr. Kormos?

Mr. Kormos: Yes. Thank you kindly. I support the motion. I think some of the presentations today raised some very serious matters around the bill's failure to address accessibility in the context of a Bill 118 that doesn't address it. This is an appropriate time to deal with that. I think the committee would be remiss if it did not support the motion requesting legislative counsel to provide a draft amendment addressing the issue of identifying a film as being accessible and/or requiring people producing film and displaying it to make it accessible; similarly, in view of the comments made by Mr. Malkowski, among others, that a prompt referral to Norton for his comments would be astute, responsible and appropriate.

The Chair: Any further comments or debate?

Mr. McMeekin: I made some copious notes while the members of the deafened community were speaking here. That's certainly something we're prepared to take under advisement.

I would point out, Mr. Chairman, with all due respect, that there is currently a case before the Human Rights Tribunal on this issue. It therefore would be I think inappropriate for us to prejudge that adjudication process by declaring in advance the resolution that is implied in the motion that's presented. So we ought to listen carefully. I think we've done that today. I think we ought to make notes. We ought to consult with our legal counsel with respect to it. There might be a reference in clause-by-clause at some point, but I think there's a basic argument that it falls outside the scope of this particular bill. In addition to that, it is currently before the Human Rights Tribunal. So the motion is almost, by definition, inappropriate.

The Chair: Be that as it may, are there any further comments and debate on the motion?

Mr. Martiniuk: I'd ask for a recorded vote.

Ayes

Kormos, Martiniuk.

Nays

Brown, Brownell, Delaney, McMeekin, Racco.

The Chair: The motion is defeated. There being no further business of the committee, I declare this committee adjourned.

The committee adjourned at 1215.

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