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Wednesday 27 April 2005

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(Hansard)**

Mercredi 27 avril 2005

**Standing committee on
justice policy**

Film Classification Act, 2005

**Comité permanent
de la justice**

Loi de 2005
sur le classement des films

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
JUSTICE POLICY**

**COMITÉ PERMANENT
DE LA JUSTICE**

Wednesday 27 April 2005

Mercredi 27 avril 2005

The committee met at 1000 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): Good morning. I call this meeting of the standing committee on justice policy to order.

We're going to begin clause-by-clause consideration of Bill 158, An Act to replace the Theatres Act and to amend other Acts in respect of film.

I'd advise members of the committee that copies of amendments were received by the clerk yesterday at 4 p.m. I believe there are two only, and they have been distributed. We'll actually begin consideration of those.

I'd now like to welcome as well Mr. Wood, legislative counsel, who will help the committee in its deliberations with clause-by-clause consideration of the bill.

Mr. Kormos?

Mr. Peter Kormos (Niagara Centre): I'm grateful once again to Margaret Drent, research officer, who put together yet more packages of material in response to a request from the committee. I appreciate her and others of her staff doing that in such short order.

The Chair: I'll open the floor to members. Are there any comments, questions or amendments to any section of the bill?

Mr. Gerry Martiniuk (Cambridge): Chair, you'll recall that, prior to rising at the end of last Wednesday's sitting, I asked a question of Mr. McMeekin regarding the present outstanding regulation 1031 under the Theatres Act. That particular regulation exempts certain festivals, including our movie festivals, from the operation of the act and the need to obtain classification. The question was to Mr. McMeekin as to whether or not a regulation similar to that will be passed under the new act.

Mr. Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): The simple answer is yes. The elongated answer would also include a reference to the ability of anybody who wants to have the film shown to children to have that classified voluntarily. There would be no cost

associated with that. As I understand it, it's normally just a narrative process. You send a narrative of what's in the film, unless there was some reason to screen it. So the existing protocol would continue, with that additional flexibility for those who were appealing for it the other day.

The Chair: Are there any comments, questions or amendments to any section of the bill, and if so, to which section?

Mr. Martiniuk: You're not going to do it clause-by-clause?

The Chair: Yes, we are. We have 53 sections. With your permission, if I have unanimous consent—if we can do a kind of block-by-block consideration.

Mr. Kormos: You're going to commence with section 1?

The Chair: Yes.

Mr. Kormos: OK. I suggest that you can do 1 through 4.

The Chair: Fine. Sections 1 to 4. I was also thinking of 1 to 13.

Mr. Kormos: No.

The Chair: As you wish: 1 to 4. Do I have consent to consider sections 1 to 4 as a block? Yes.

Shall sections 1 to 4 carry? Carried.

Section 5?

Mr. Kormos: Once again, my more specific comments are to section 6, but section 5 illustrates some of the problems with this act as we debate it here in committee or on third reading. Again, I'm concerned about the incredible delegation of authority to the Lieutenant Governor in Council. Section 5 is the beginning of that. It seems to me that, if we're talking about bringing film classification into the 21st century, this committee should be debating the very sorts of things and hearing from the public about the very sorts of things that section 5 contemplates for regulations.

The Chair: Any comments? There being none, shall section 5 carry? Carried.

Section 6.

Mr. Kormos: Once again, significant delegation to the Lieutenant Governor in Council: it's at this point, because it would seem to me that it would be under the regulations made pursuant to section 6 that this would occur. New Democrats have been increasingly persuaded of the appropriateness of an unreviewed or an unclassified category. We heard that submission made by

some of the public presenters. That would address the issue of film festivals, any number of small filmmakers, small distribution films and low-budget films. Basically the unclassified would be a caveat emptor: This film has not been reviewed by the film review board; it may or may not offend the Criminal Code; that will be dealt with by the police, but buyer beware. Don't take your kid to go and see it or don't go see it yourself if you're squeamish about particular things unless you're satisfied by whatever means you want to make available to you that you're not going to be offended by the film.

I simply want to put on the record at this point that New Democrats are hopeful, and indeed call upon the government to ensure, that there's an unclassified or unreviewed category available when regulations are made pursuant to section 6.

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The Chair: Any further comments?

Mr. McMeekin: We've made note of the presentation, the nature and obviously the will of comments made by members of committee.

The Chair: Any further comments or questions?

Shall section 6 carry? Carried.

Section 7: Mr. Kormos.

Mr. Kormos: Section 7 is an incredibly offensive section because what it does is retain prior approval, the very thing the court said that the government could not do, that it didn't have the constitutional authority to do. This very specifically talks about the power to approve, implying that non-approval means that the film can't be shown. This is separate and apart from classification or categorization or labelling or identifying content. So I want to indicate very emphatically that New Democrats are opposed to section 7. We will be voting against it, and it should be struck from the bill—an admonition to the government that maintaining section 7 will simply result in yet more litigation and, in all likelihood successful litigation.

Mr. McMeekin: I'm sure Mr. Kormos won't be surprised to hear that we're in fundamental disagreement around the issue of classification. As we look at this bill before us, there's a very real effort to respond positively to the recent ruling of the judge and to really restrict that area where I think there's clear consensus that this kind of mechanism needs to be in place. We'll just have to agree to disagree on that. If there's legal action down the road, we're confident that the government's position, particularly given the sensitive regulations that will be developed and put in place, will withstand whatever legal test is there.

Mr. Kormos: Yes, but the government was confident it was going to prevail in the Glad Day books case, spent a fortune on legal fees and lost miserably. Fair enough.

Mr. McMeekin: We didn't appeal that because we were so confident that when we reworked the bill, as per the guidance of the court with the regulations, we would do such an exceptionally good job at it that it wouldn't be a problem.

Mr. Kormos: You see, that's the sort of comment that's going to have costs assessed against the government for showing not just modest respect for the court but actual indifference and arrogance. It's very regrettable. That comment is liable to cost the taxpayer huge amounts of money when the court assesses costs in the next round of litigation.

Mr. McMeekin: Let me be clear: There's no arrogance or indifference to the court. We're very sensitive to what the court has suggested, and the bill is a very good attempt to reflect that.

The Chair: Any further comments on section 7?

Mr. Kormos: Recorded vote, please.

Ayes

Brown, Brownell, Delaney, Martiniuk, McMeekin, Racco.

Nays

Kormos.

The Chair: Section 7 carries.
Section 8?

Mr. Kormos: Chair, if I may suggest, insofar as we're concerned, you can proceed right up to section 13.

The Chair: Do I have consent for block consideration of sections 8 to 13? Fair enough.

Mr. Martiniuk: Sections 8 to 12, and then we'll deal with 13.

The Chair: Sections 8 to 13, and then we'll get to you.

Shall sections 8 to 13 carry?

Mr. Bob Delaney (Mississauga West): Sections 8 to 12.

The Chair: To section 13.

Mr. Kormos: He's not amending section 13.

Mr. Martiniuk: I'm adding to it, I guess.

The Chair: Shall sections 8 to 13 carry? Carried.

Now we have an addition, not an amendment. Section 13.1: Mr. Martiniuk?

Mr. Martiniuk: If I read slowly, it's because I forgot my reading glasses this morning.

I move that the bill be amended by adding the following section:

“Rear window captioning

“13.1 No person shall exhibit a film unless the person provides rear window captioning for the film upon request, except if an exemption under the regulation applies.”

The Chair: Any comments?

Mr. McMeekin: I was thinking hard on this last night, and sketched out a response that I think is appropriate. It's our position that the issue of rear-window captioning is clearly not within the scope of Bill 158. Matters of accommodation are covered under the Ontario Human Rights Code, which is, in fact, why the situation has been deferred to the Human Rights Commission. As I under-

stand it, there's currently a complaint to the human rights tribunal to consider under that very legislation.

The ministry did receive a complaint regarding the Theatres Act and the rear-window captioning, and I'm pleased to say that the commission considered this matter and decided not to refer the matter to the human rights tribunal. In so deciding, they stated, "The purpose of the Theatres Act is not to address the issue of providing captioning in films."

So as the matter is currently before the tribunal, and the human rights folk have said it isn't something that falls within the purview of this act, we think it would be inappropriate and certainly premature to support the amendment.

Mr. Martiniuk: We've heard from a number of individuals regarding the lack of accessibility. They unfortunately cannot attend movies because their hearing is impaired. They came to the committee with this problem. They are not being treated the same as the rest of the population. There is a lack of accessibility to public movie viewings. There are some difficulties, I'm sure, in a section of this kind, but I think all members of the committee surely recognize that we as a society must provide accessibility for those with an affliction. I think it's incumbent on us to hear from them without throwing technical arguments in the way, and look at it as a matter of pure justice in our society.

Mr. Kormos: New Democrats enthusiastically support this amendment to the bill. Equality rights are absolute. You can't pick and choose. You can't create a scenario where some people are more equal than others, or you have equality some of the time or equality when it's convenient. I'm not suggesting for a minute that there isn't going to be some inconvenience, and perhaps some cost—we understand that—to require rear-window captioning, but for films that are exempted. Mr. Martiniuk in his motion, I think, has been very generous in permitting that exemption. The pick-and-choose approach to equality is a very dangerous road to travel. Here you have a legislative committee that has an opportunity to create access or provide access for, in this instance, deaf people, people who are hearing impaired. I regret that it appears we won't be seizing that opportunity.

New Democrats enthusiastically support this amendment to the bill. I'll be calling for a recorded vote, please.

Mr. McMeekin: It's ironic that the Human Rights Commission, which is in place, in fact, to ensure the pure justice applications of the law, is the very agency that's suggesting that this falls outside the scope of the bill.

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That said, I think every member of this committee was pleased that, notwithstanding the unsuitability of dealing with this particular cause in this particular context, I found the sharing of the hearing-impaired community valuable and helpful. I certainly don't deny that they have what appears to be a legitimate concern, and that is in an adjudication process at this moment. Thank goodness we live in a country where we do put provisions in place, where we can get a balanced, detailed, legal hear-

ing on this issue of rights under the Charter of Rights and Freedoms. We're going through the process now.

The Chair: Are there any further comments or questions?

Mr. Kormos: Recorded vote, please.

The Chair: We have a request for a recorded vote.

Ayes

Kormos, Martiniuk.

Nays

Brown, Brownell, Delaney, McMeekin, Racco.

The Chair: I declare section 13.1 lost.

Do I have consent for block consideration of sections 14 to 46? Fine.

Shall sections 14 to 46 carry? Carried.

Section 47.

Mr. Martiniuk: I move that subsection 47(1) of the bill be amended by adding the following clause:

"(c) requiring"—

The Chair: It's clause (e), I believe.

Mr. Martiniuk: Oh, sorry, clause (e).

"(e) requiring that rear window captioning for film meet the prescribed standards."

If I may speak to it, I just reiterate what I have said in the past.

As I say, I don't have my reading glasses this morning, which leaves me with a disability, and when we're talking about disabilities, I know how uncomfortable it makes me feel. I can't imagine the feelings and emotions of a person coming to this committee with a disability of a hearing impairment, and how these people must feel in our society, where there are so many barriers against them. That is the intent of the amendment.

Mr. Kormos: Once again, New Democrats applaud Mr. Martiniuk for this amendment, and we support it enthusiastically.

Mr. McMeekin: I'll applaud Mr. Martiniuk too for his concern but will declare that we differ in terms of how best to get there. Based on the advice we're getting from the human rights folk and the fact that this is again before the courts, we would be out of place to be—can you imagine going through the tribunal and somebody coming in and saying, "Well, Your Honour, you're redundant. Mr. Kormos, Mr. Martiniuk, Mr. McMeekin, Mr. Racco, Mr. Delaney and what have you have already prejudged this. They didn't want to hear anything about the cost to anybody or the options or working together; they just wanted to preclude the hearings"? I don't think that's a wise course.

The advice we're getting is that it's inappropriate in the context of this particular bill, which is why the government will not support it.

Mr. Kormos: It's incredible how politicians who will, from time to time, whine and moan and groan about so-called judicial activism, at the same time fail to under-

stand that so-called judicial activism is the result of gutless politicians who won't seize issues by the horns and enact appropriate legislation. How many more examples do we have to have where Parliaments or Legislatures have been delinquent or, as I maintain, outright gutless in refusing to deal with issues or running from issues, which is why they end up before these tribunals? Chief Justice McMurtry has made that point over and over again, seemingly to people who have no interest whatsoever in listening to him.

A recorded vote.

The Chair: Are there any further comments on subsection 47(1)? We have a request for a recorded vote.

Ayes

Kormos, Martiniuk.

Nays

Brown, Brownell, Delaney, McMeekin, Racco.

The Chair: It is lost.

Shall section 47 carry? Carried.

Do I have unanimous consent for block consideration of sections 48 to 53?

Shall sections 48 to 53 carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 158 carry?

Mr. Kormos: Recorded vote.

Ayes

Brown, Brownell, Delaney, McMeekin, Racco.

Nays

Kormos, Martiniuk.

The Chair: Carried.

Shall I report the bill to the House?

Mr. Kormos: Recorded vote.

Ayes

Brown, Brownell, Delaney, McMeekin, Racco.

Nays

Kormos, Martiniuk.

The Chair: Carried.

Any other business before the committee? I declare this committee adjourned.

The committee adjourned at 1025.

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