

BILL C-10: AN ACT TO AMEND THE *INCOME TAX ACT*

**SPEAKING NOTES FOR THE MINISTER OF CANADIAN
HERITAGE'S APPEARANCE BEFORE THE SENATE
COMMITTEE ON BANKING, TRADE AND COMMERCE**

HONOURABLE SENATORS,

I AM HERE TODAY TO SPEAK TO YOU ABOUT CERTAIN ASPECTS
OF BILL C-10: AN AMENDMENT TO THE *INCOME TAX ACT*.

AS YOU ARE AWARE, THIS BILL HAS BEEN THE SUBJECT OF
DISCUSSION RECENTLY AS IT RELATES TO FILM OR VIDEO TAX
CREDITS.

THE TAX CREDIT PROGRAM FOR CANADIAN CONTENT
PRODUCTIONS IS THE CORNERSTONE OF THE GOVERNMENT'S
AUDIOVISUAL TOOLKIT IN SUPPORT OF THE CANADIAN
AUDIOVISUAL INDUSTRY. SINCE 1995, IT HAS CONTRIBUTED TO
OVER 12000 PRODUCTIONS, WITH A TOTAL VALUE OF NEARLY
\$22 BILLION. THE DEPARTMENT OF FINANCE ESTIMATES THAT
FISCAL EXPENDITURES THROUGH THE CANADIAN FILM OR
VIDEO TAX CREDIT WILL AMOUNT TO \$210 MILLION IN 2008.

IN 2006-2007, OUR GOVERNMENT INVESTED OVER \$752 MILLION
IN CANADIAN FILM AND TELEVISION CONTENT THROUGH
OTHER SUPPORT PROGRAMS FOR THE INDUSTRY. THIS DOES

NOT INCLUDE THE OVER \$1 BILLION FUNDING FOR THE CBC/RADIO-CANADA. FOR EXAMPLE, TELEFILM CANADA IS AN IMPORTANT CONTRIBUTOR TO THE DEVELOPMENT OF THE AUDIOVISUAL SECTOR. OUR ANNUAL CONTRIBUTION TO TELEFILM IS AROUND \$120 MILLION.

BILL C-10 CONTAINS A PROVISION THAT WOULD ALLOW THE MINISTER OF CANADIAN HERITAGE TO REFUSE TO GRANT A TAX CREDIT TO CERTAIN FILM AND TELEVISION PRODUCTIONS FOR WHICH PUBLIC FINANCING IS CONSIDERED “CONTRARY TO PUBLIC POLICY”.

IT ALSO REQUIRES THE MINISTER TO DEVELOP GUIDELINES CLARIFYING THE TYPES OF PRODUCTIONS THAT WOULD FALL INTO THIS CATEGORY.

AS YOU KNOW, I WISH TO WORK IN CLOSE COLLABORATION WITH THE INDUSTRY AND ESTABLISH A PARTNERSHIP SO THAT WE MAY FIND A SOLUTION FOR ALL CANADIANS.

FOR THIS REASON, MY DEPARTMENT AND I BEGAN PRELIMINARY DISCUSSIONS WITH KEY INDUSTRY STAKEHOLDERS TO HEAR THEIR CONCERNS.

DESPITE WHAT YOU MAY HAVE READ OR HEARD, THE “CONTRARY TO PUBLIC POLICY” TEST IS NOT A NEW CONCEPT.

IT HAS BEEN A PART OF THE TAX CREDIT LANDSCAPE SINCE ITS INCEPTION IN 1995, THROUGH *INCOME TAX REGULATIONS*.

IN 2002, THE LIBERAL GOVERNMENT OF JEAN CHRÉTIEN DECIDED THAT A PROVISION INVOLVING THE EXERCISE OF DISCRETION WAS BEST MOVED TO LEGISLATION RATHER THAN BE LEFT IN REGULATIONS.

THE PROVISION WAS CONSEQUENTLY ANNOUNCED AS DRAFT LEGISLATION BY THE MINISTER OF FINANCE, JOHN MANLEY, IN 2002, AND AGAIN IN 2003 BY MR. MANLEY AND THE MINISTER OF CANADIAN HERITAGE, SHEILA COPPS

IN NOVEMBER 2006, BILL C-33, WHICH INCLUDED THE AMENDMENTS NOW PROPOSED IN C-10, WAS INTRODUCED IN THE HOUSE BUT DIED AT PROROGATION IN SEPTEMBER 2007.

IN OCTOBER 2007, C-10 WAS INTRODUCED AND ADOPTED BY THE HOUSE WITH ALL PARTY SUPPORT.

AND THE “CONTRARY TO PUBLIC POLICY” REFERENCE IS NOT UNIQUE TO THE FEDERAL GOVERNMENT.

IT IS ALSO ECHOED IN SEVERAL PROVINCIAL TAX CREDIT REGIMES. OTHER PROVINCES EMPLOY VERY SIMILAR CONCEPTS IN THEIR FILM AND TELEVISION PROGRAMS.

THE POLICY RATIONALE FOR “CONTRARY TO PUBLIC POLICY”
PROVISION IS QUITE SIMPLE.

IT WOULD ENSURE THAT THE GOVERNMENT HAS THE ABILITY,
IN EXCEPTIONAL CIRCUMSTANCES, TO EXCLUDE FROM PUBLIC
SUPPORT CERTAIN MATERIAL.

THERE IS MATERIAL THAT IS POTENTIALLY ILLEGAL UNDER
THE *CRIMINAL CODE* SUCH AS INDECENT MATERIAL, HATE
PROPAGANDA AND CHILD PORNOGRAPHY. CURRENTLY, THERE
ARE NO PROVISIONS IN THE *INCOME TAX ACT* OR *REGULATIONS*
THAT EXCLUDE SUCH MATERIAL.

THIS IS A LOOPHOLE THAT C-10 WOULD, IN PARTICULAR,
ADDRESS.

I NEED TO STRESS THAT THE APPLICATION OF THE “CONTRARY
TO PUBLIC POLICY” TEST WILL NOT BE TAKEN LIGHTLY.
THE INTENT IS TO AFFECT A VERY SMALL NUMBER OF
PRODUCTIONS – LIKELY ONLY A HANDFUL OF THE OVER 1000
CANADIAN CONTENT PRODUCTIONS THAT RECEIVE A TAX
CREDIT ANNUALLY.

SOME IN THE FILM AND TELEVISION INDUSTRY ARE WORRIED
THAT THIS PROVISION IS TANTAMOUNT TO CENSORSHIP.

THIS IS ABSOLUTELY NOT THE CASE. IT IS SIMPLY A MATTER OF RESPONSIBILITY AND INTEGRITY.

PRODUCERS WILL REMAIN FREE TO FINANCE THEIR PROJECTS WITHOUT PUBLIC FUNDING.

OUR GOVERNMENT IS COMMITTED TO FREEDOM OF EXPRESSION AND WILL CONTINUE TO SUPPORT THE CREATION OF EXCELLENT AND ENTERTAINING CANADIAN CONTENT.

WE ARE ALSO COMMITTED TO ENSURING INTEGRITY AND ACCOUNTABILITY WHEN IT COMES TO MANAGING PUBLIC FUNDS AND MAINTAINING THE PUBLIC'S TRUST.

I STATE AND REPEAT: BILL C-10 IS ABSOLUTELY NOT A QUESTION OF CENSORSHIP. IT IS A QUESTION OF RESPONSIBILITY, INTEGRITY AND EFFICIENCY.

WITH ALL OF THIS DEBATE, IT MUST NOT BE FORGOTTEN THAT THIS BILL ALSO INCLUDES AMENDMENTS THAT HAVE BEEN LONG-SOUGHT BY THE CANADIAN AUDIOVISUAL INDUSTRY.

THESE AMENDMENTS PROMISE GREATER TRANSPARENCY SINCE THE NAMES OF TAX CREDIT RECIPIENTS AND CREATIVE PERSONNEL ASSOCIATED WITH THE PRODUCTIONS WILL BE MADE PUBLIC. THIS WILL ADDRESS THE POTENTIAL ABUSES OF THE TAX CREDIT WHICH HAVE OCCURRED IN THE PAST.

IT ALSO EXTENDS THE SCOPE OF THE TAX CREDIT PROGRAM TO THE VERY EARLY STAGE OF SCRIPT WRITING LABOUR EXPENSES.

THESE ARE CHANGES THAT THE CANADIAN FILM AND TELEVISION INDUSTRY IS ANXIOUSLY WAITING FOR.

THE RECENT CELEBRATION OF TELEFILM CANADA'S 40th ANNIVERSARY MARKS A SIGNIFICANT MILESTONE IN THE DEVELOPMENT OF THE CANADIAN FILM AND TELEVISION INDUSTRY.

TODAY, THANKS TO TELEFILM CANADA, THE TAX CREDIT PROGRAM AND OTHER IMPORTANT INSTRUMENTS IN CANADA'S AUDIOVISUAL TOOLKIT, THE TOTAL ANNUAL VOLUME OF AUDIOVISUAL PRODUCTION IS JUST UNDER \$5 BILLION. THIS INDUSTRY DEVELOPS WORLD-CLASS CONTENT IN PRODUCTION CENTRES SPREAD ACROSS THIS COUNTRY AND BOASTS INTERNATIONALLY RECOGNIZED AND AWARD-WINNING PRODUCERS, DIRECTORS, WRITERS AND ACTORS.

OUR GOVERNMENT AND CANADIANS BELIEVE IN THIS INDUSTRY. WE ARE PROUD TO HAVE CONTRIBUTED TO ITS DEVELOPMENT AND WILL CONTINUE TO SUPPORT IT.

THIS IS WHY, IN THE CONTEXT OF C-10, IT IS IMPORTANT TO ADDRESS THE CONCERNS OF THE INDUSTRY AND PARLIAMENTARIANS.

HOWEVER, IN ORDER TO MOVE FORWARD AND TO CONTINUE TO BUILD ON THE SUCCESS OF THE CANADIAN FILM AND TELEVISION INDUSTRY, I AM PROPOSING THE FOLLOWING STRATEGY.

FIRST, AFTER C-10 RECEIVES ROYAL ASSENT, THE GOVERNMENT OF CANADA FORMALLY UNDERTAKES NOT TO APPLY THE “CONTRARY TO PUBLIC POLICY” PROVISION OVER THE NEXT TWELVE MONTHS.

DURING THAT TIME, I INVITE THE CANADIAN FILM AND TELEVISION PRODUCTION INDUSTRY TO LEAD THE DEVELOPMENT OF GUIDELINES AND ADMINISTRATIVE PROCEDURES AND PROPOSE THEM TO ME.

THESE GUIDELINES WOULD COVER THE TYPES OF CONTENT THAT MAY BE ILLEGAL UNDER THE *CRIMINAL CODE* AS WELL AS OTHER TYPES OF CONTENT FOR WHICH PUBLIC SUPPORT IS CLEARLY UNACCEPTABLE.

THE GUIDELINES WOULD ALSO COVER HOW THEY ARE TO BE APPLIED AND ADMINISTERED.

I RECOMMEND THIS APPROACH FOR THE FOLLOWING REASONS.

FIRST, IT IS A FAIR AND TRANSPARENT PROCESS AIMED AT CONTINUING THE OPEN DIALOGUE THE GOVERNMENT HAS ALWAYS HAD WITH THE CANADIAN FILM AND TELEVISION INDUSTRY.

SECOND, THIS APPROACH HAS BEEN USED BEFORE WITH THE INDUSTRY, NOTABLY CANADIAN BROADCASTERS WHEN THEY DEVELOPED THEIR VOLUNTARY CODE ON VIOLENCE AT THE REQUEST OF THE CRTC.

THIRD, IT PROVIDES EVIDENCE OF GOOD FAITH ON THE PART OF OUR GOVERNMENT. WE BELIEVE THAT THE INDUSTRY ITSELF HAS THE MATURITY TO PLAY A LEADING ROLE IN DEVELOPING GUIDELINES THAT WILL APPLY TO ITS MEMBERS.

AND FOURTH, IT REASSERTS THE PRINCIPLE THAT THERE IS AUDIOVISUAL MATERIAL WHICH MAY NOT BE ILLEGAL BUT WHICH TAX PAYERS SHOULD SIMPLY NOT BE EXPECTED TO PAY FOR.

THE AUDIOVISUAL INDUSTRY KNOWS THAT THE ONGOING LEGITIMACY OF GOVERNMENT SUPPORT FOR THEIR INDUSTRY REQUIRES THE UTMOST RIGOUR ON HOW TAX DOLLARS ARE SPENT.

I, ALONG WITH OFFICIALS FROM MY DEPARTMENT, HAVE HAD INITIAL DISCUSSIONS WITH KEY INDUSTRY STAKEHOLDERS ON THEIR CONCERNS AND ON THE PROPOSED STRATEGY.

AT THIS STAGE, THEY ARE STILL HESITANT. I CONTINUE TO LEAVE THE DOOR OPEN AND INVITE THEM TO SERIOUSLY CONSIDER MY PROPOSAL. I FIRMLY BELIEVE THAT WORKING TOGETHER IS THE BEST APPROACH.

LET ME REITERATE THAT OUR GOVERNMENT RECOGNIZES THE IMPORTANT ROLE IN SOCIETY THAT IS PLAYED BY ARTISTS AND CREATORS.

THE GOAL OF THIS BILL, AS IT RELATES TO FILM OR VIDEO TAX CREDITS, IS TO ENSURE THAT THERE IS GREATER CLARITY FOR THE INDUSTRY WITH REGARD TO INELIGIBLE CONTENT, AND TO ENSURE ACCOUNTABILITY WHEN IT COMES TO MANAGING PUBLIC FUNDS.

BILL C-10 CONTAINS MANY IMPORTANT AMENDMENTS THAT HAVE BEEN LONG SOUGHT AFTER BY THE FILM AND TELEVISION INDUSTRY.

IT IS IMPORTANT THAT IT BE PASSED SWIFTLY.

MY OFFICIALS AND I WOULD BE PLEASED TO ANSWER YOUR QUESTIONS.

THANK YOU.