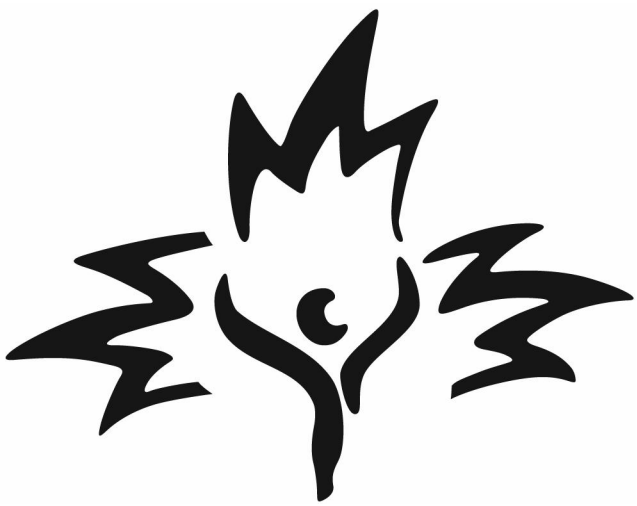

Canadian Conference of the Arts

Speaking notes

Senate Committee on Banking, Commerce and Trade

Bill C-10

April 9, 2008

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Bonjour M. le président et honorables sénateurs et sénatrices,

Je m'appelle Alain Pineau et je suis le directeur général de la Conférence canadienne des arts. À mes côtés, Keith Kelly, ancien directeur général de la CCA et notre actuel Conseiller politique senior.

Nous tenons d'abord à remercier le Comité de nous avoir invités ici aujourd'hui et transmettre des remerciements particuliers à la Greffière du Comité, Mme Gravel, dont l'assistance nous a été très utile tandis que nous nous préparions pour cette discussion.

M. le Président, ce n'est pas la première fois que la CCA apparaît devant un comité parlementaire pour débattre d'un projet de loi perçu généralement comme portant atteinte à la liberté d'expression des artistes, créateurs et professionnels des arts et de la culture. Il semble en effet que cela soit un thème récurrent, quel que soit le parti au pouvoir.

In 1993, the Government introduced and passed with almost record speed child pornography legislation which many feared would erode artistic freedom and cause a chill in the cultural sector. The Deputy Prime Minister of the day, the

Hon. Don Mazankowski, assured the cultural sector that the legislation would never be used against artists. The first person charged under this legislation was Eli Langer, a Toronto artist, who was eventually vindicated of any offense.

In 2002, when further revisions to the Criminal Code were introduced, similar fears developed in the cultural sector. Would unpublished manuscripts or other art works become vulnerable to charges under the proposed legislation? Eli Langer was still fresh in the minds of artists in all disciplines and had shown, if necessary, that those who enforce laws are not those who pass them.

And now, after the current contentious amendment has been in the hopper for several years through different governments, we find ourselves back in somewhat familiar territory, addressing legislative proposals that risk subjecting the work of Canadian artists and producers to vague and discretionary guidelines and the worrisome potential for “after the fact” subjective judgment by politicians and public servants.

In the course of reviewing C-10, it is apparent that the intentions of the Minister and of her officials are consistent with the commitment of this government to greater accountability and transparency in dealing with the public purse. The CCA fully supports the government’s objectives in ensuring the prudent use of public funds for any purpose. The CCA also appreciates the open spirit that the

Minister and her officials have demonstrated in addressing concerns that have arisen about the overly broad nature of Subsection 125.4(1).

However, as the Canadian Library Association has noted in its letter to you, real transparency could be better achieved if the legislation were to require regulations under the *Statutory Instruments* Act rather than propose a less transparent framework based on guidelines which can be changed at will. But while this may represent another option for Parliament, the CCA cannot support any alternative that in the end delivers the same result.

The governmental efforts may be seen by some as overkill, given the extensive provisions within the Criminal Code dealing with every variety of offensive behaviour and depictions. They may be in fact duplicate standards that have been adopted by the broadcast industry and other sectoral bodies and which are found at various stages of the creation of audio-visual content.

The CCA has been somewhat reassured that neither the Minister nor her officials plan to rush to implement guidelines that have not been the subject of extensive consultation with creators, producers and distributors who may be affected by these guidelines. Nonetheless, the question remains are additional measures necessary, and if they are, what should they be? A simple reference to existing legislation may be all that is required and would keep the appropriate arm's

length relationship between politicians and bureaucrats and the public funding of artistic and cultural content.

The CCA does not take any comfort either from the fact that provisions exist in several provincial programs similar to the proposed amendment to the Canadian Film and Video Certification Program. Quite frankly, C-10 may have inadvertently broadened the debate to the provincial level where artists and producers may be encouraged to take up the challenge with their respective governments.

Some suggest that this overly broad amendment to the Income Tax Act could not withstand a Charter challenge. This would involve a lengthy and expensive process which could lead to unnecessary expenditure on the part of the government. Perhaps the Senate Committee could refer this subsection to the Supreme Court for an advance opinion prior to either passing C-10 or, rather than delay the passing of this mammoth Act, delay the proclamation of this particular subsection until such a ruling and the draft guidelines are available for review.

This approach could short circuit what promises to be a contentious and animated debate, not only in Parliament but in the boardrooms where producers, broadcasters and distributors make decisions regarding content every day. The fear of a chill, of second-guessing of responsible decision-makers and, most

importantly, the fear of self-censorship, none of this is mere paranoia when it comes to the issue of public funding of cultural expression.

In closing, I would ask you to keep the experience of Eli Langer in mind as you proceed with the examination of this legislation.

Thank you Mr. Chairman and Honorable Committee members for the opportunity to share our views with you today.