



April 1, 2008

Senator W. David Angus, Chair  
Senator Yoine Goldstein, Vice-Chair  
Senate Committee on Banking, Trade and Commerce  
The Senate of Canada  
Ottawa, Ontario K1A 0A4

*via e-mail*

Dear Sen. Angus and Sen. Goldstein:

The Canadian Library Association/Association canadienne des bibliothèques (CLA) is Canada's largest national library association, representing the interests of public, academic, school and special libraries, professional librarians and library workers, and all those concerned about enhancing the quality of life of Canadians through access to information and cultural productions. CLA represents the interests of approximately 57,000 library staff and thousands of libraries of all kinds across Canada on a range of public policy issues.

On behalf of CLA, I am writing to express deep concerns about provisions hidden in Bill C-10, an amendment to the *Income Tax Act* passed by the House of Commons in October and now before your Committee, that represent a major departure from past practice in tax benefits for Canadian film and television productions.

While the library community is not directly engaged in the production of motion pictures and television programming, one of the core values of librarianship is freedom of expression, both nationally and globally, and therefore advocacy for intellectual freedom is a core activity of the Association. It is our belief that Bill C-10 poses a threat to freedom of artistic expression for all Canadians.

CLA has serious doubts that the proposed provisions would withstand Charter scrutiny. Section 120(3)(b) amends the definition of "Canadian film or video production certificate" in subsection 125.4(1) of the Act to add the requirement that the Minister is satisfied that "public financial support of the production would not be contrary to public policy". Subsection 120(12) further provides that the Minister shall issue guidelines respecting this condition and that such guidelines are not statutory instruments, as defined in the Statutory Instruments Act (SIA). The difference between a "guideline" and a "regulation" is important, because the latter must go through the process set forth in the SIA, while the former need not.

By delegating the power to the Minister to issue “guidelines” that are not subject to the transparency requirements of the SIA, Bill C-10 in effect vests the Minister with the broad authority to censor films under the authority of guidelines that do not have to be broadly vetted by the public, as would a regulation.

Moreover, the provisions of Bill C-10 that allow the Minister to deny funding to productions that are “contrary to public policy” would have a chilling effect on motion pictures and television programming dealing with controversial subjects. CLA views this as a direct threat to freedom of expression and to the right of Canadians to examine controversial subjects through any medium of communication.

Finally, it is the position of CLA that burying these controversial changes inside a 600-page money bill is deeply contrary to the spirit of democracy and open debate in Canada.

We call on the Senate to remove the offending provisions from the tax bill. Because we do not wish to delay the passage of a tax measure that is otherwise uncontroversial, CLA suggests that the best course of action is to send the bill back to the House of Commons without the offending sections.

It is the position of CLA that current legislation, regulations, and practices are adequate in that projects funded through the tax credit program must conform to a code of broadcasting ethics as well as to various sections of the Criminal Code pertaining to obscenity, child pornography and hate speech.

Nevertheless, if the government still believes otherwise, we would look forward to the introduction of a new stand-alone bill in the House that would deal specifically with the “public policy” issues and that would contain a clear statement of purpose as well as the substance of the guidelines. In this way, the bill could be properly debated and scrutinized by Canadians as a cultural policy issue and for its impact on freedom of expression and artistic merit in Canada.

Sincerely,



Alvin M. Schrader  
*President*

c.  
Clerk of the Senate Committee on Banking, Trade and Commerce  
Rt. Hon. Stephen Harper, Prime Minister  
Hon. Josée Verner, Minister of Canadian Heritage  
Hon. Stéphane Dion, Leader of the Opposition  
Hon. Jack Layton, Leader of the NDP  
Mr. Gilles Duceppe, Leader of the Bloc Québécois

Canadian Conference of the Arts  
Canadian Film and Television Production Association  
The Association des producteurs de films et de television du Quebec  
Alliance of Canadian Cinema, Television and Radio Artists