

Submission To The Senate Committee on Banking, Trade and Commerce

Bill C-10: An Act to amend the Income Tax Act, including amendments in relation to foreign investment entities and non-resident trusts, and to provide for the bilingual expression of the provisions of that Act.

Prepared By
The Writers' Union of Canada
April 17, 2008

EXECUTIVE SUMMARY

The Writers' Union of Canada is deeply concerned with conformity to "public policy", as interpreted by a Minister of the Crown or government of the day, becoming a test for tax benefits for Canadian artistic productions. The application of this principle to film production is unacceptable. The Union fears that, if allowed to pass as is, Bill C-10 could open the way to using Canada's tax system as a *de facto* film censor. Canada has laws that deal with violence, hate, obscenity and child pornography that can be used to prevent the distribution of films with illegal content. The potential denial of support to film producers through tax credits would not only make it impossible to finance films that financiers anticipate might not be appreciated by the government of the day, but would also impose a "chill" on artists involved in making films.

The Writers' Union of Canada encourages the Senate to defeat this bill and return it to the House of Commons, where it can be redrafted to speak only to Banking, Trade and Commerce issues and not to artistic issues.

INTRODUCTION:

The Writers' Union of Canada appreciates the opportunity to participate in the Senate consultations on Bill C-10. This Union, founded by writers for writers in 1973, has evolved into the national voice for over 1,650 writers of books, mainly fiction and non-fiction, with a mandate to promote and defend the interests of its creator membership and the freedom of all Canadians to read, write and publish. The Writers' Union of Canada has an important role to play in helping to shape legislation that will achieve those objectives.

The relationship between this country's writers and its film industry dates back to the silent era, during the very beginnings of film. Over time, Canada's writers and filmmakers have shared a welcome and inspired responsibility in articulating the wonder, magic, and rich cultural diversity of Canada, a country with an imposing geography and different regions whose people need films and stories to help us know one another. This successful marriage of writing and film has helped to make household names of some of our most exciting writers. These authors include: Pierre Berton, *The Last Spike*; Margaret Laurence, *The Diviners*; Michael Ondaatje *The English Patient*; Margaret Atwood, *A Handmaid's Tale*; Susan Swan, *Lost And Delirious*; Barbara Gowdy, *Kissed and Falling Angels*; Nino Ricci, *Lives Of The Saints*; Guy Vanderhaeghe, *An Englishman's Boy*, and Alice Munro, *Away From Her*.

These book-to-film adaptations have helped to broaden our artistic tradition and in many cases, promote an awareness of Canada to the world. For instance, the film based on Munro's story recently won an Oscar nomination. A few years back Ondaatje's film adaptation of *The English Patient* won an Oscar. The film *Lost and Delirious* based on a novel by Susan Swan was shown as a feature in 33 countries and recently made into a *Manga* comic in Japan.

We come before you today to strongly state that we want the excellence of Canadian filmmaking encouraged, not sabotaged by a bill that will allow a Minister of the Crown to withhold a tax credit after the film is made because it may be considered to be "contrary to public policy". The guidelines for grants to books, for instance, are applied before a book is written. To apply guidelines retroactively, after a film is made, will unquestionably make it more difficult to shoot Canadian films.

We believe that despite good intentions this bill will seriously discourage film investors from taking a risk on a controversial film. It is already extremely difficult to raise money to make a film in Canada.

Subsection 120(3)(b) is not necessary to protect the public. Canada has laws in its Criminal Code to deal with violence, hate propaganda, obscenity and child pornography, and other unlawful material and activities. It is, for example, very hard in

many cases to distinguish gratuitous violence from necessary artistic violence in the context of a film. It may sometimes be hard to draw the line between a film inciting hatred against a minority group and one exploring a social issue. The Writers' Union is concerned that the Minister of Canadian Heritage will be put in a position to make judgments about subject matter that is already subject to existing law – in fact, not only to decide whether or not a film should be funded through a tax credit because of possible illegal content but also to decide whether a film is offensive and unworthy of funding, although perfectly legal. The drafters of the bill seem to overlook this danger, and no amount of reassurance from the Minister of Canadian Heritage convinces us that such decisions would always, now and in the future, be made objectively, consistently and without subjective bias.

We believe the Minister of Canadian Heritage the Honourable Josée Verner when she states that she is “committed to ensuring integrity and accountability when it comes to managing public funds and maintaining the public’s trust.” However, we also believe that subsection 120(3) (b) of Bill C-10 is a misguided encroachment on freedom of expression and an infringement of the *Canadian Charter of Rights and Freedoms* that is unacceptable to a free and democratic society.

The role of a writer is to hold up a mirror to society, to probe human experience and to explore the truth as he or she sees it. The whole of society is deprived if restraints are placed on the writer’s pursuit of his or her vision.

Our members are aghast at subsection 120 (3) (b), of the 50-page Bill (*C-10: An Act to amend the Income Tax Act*). This subsection proposes changes to the Income Tax Act that would be a peculiar new form of regressive and retroactive censorship.

“Canadian film or video production certificate” means a certificate issued in respect of a production by the Minister of Canadian Heritage certifying that the production is a Canadian film or video production in respect of which that Minister is satisfied that ... (b) public financial support of the production would not be contrary to public policy.”

The Union finds the concept of the Minister of Canadian Heritage ruling on whether public financing of a particular Canadian film and television production is “contrary to public policy”, and subsequently denying its eligibility for a tax credit antediluvian. To be able to deny tax credits, after an enormously expensive work is completed, is to force creative artists to attempt to make the kind of films that conform to a particular government's view of what may or may not be acceptable, and opens the door to extreme self-censorship.

The Writers' Union of Canada has long been concerned about the self-censorship that writers do to their own stories to avoid the risk of possible prosecution under the Criminal Code’s broad provisions on obscenity and child pornography, to reduce the likelihood of libel actions. Bill C-10 introduces a new reason for this “chill” on

expression and consequent self-censorship ... financial. Writers and other artists must have freedom to express their opinions, so long as they do not contravene the Criminal Code or the rights of other individuals, so their works can stimulate debate on public issues that affect Canadians.

Even though the current Minister promises consultation with the film industry, our members are further concerned that Bill C-10 requires guidelines to be issued by the Minister that would define what is “contrary to public policy” but leaves that definition entirely to the discretion of the Minister. Guidelines are open to easy and arbitrary change and completely within the discretion of the Minister or a future government that may find certain types of material distasteful. We are concerned that a system of certification of films by the Minister in accordance with guidelines gives far too much power to the Minister and the Minister’s staff and does not give those who make and finance films the certainty they need.

CONCLUSION AND RECOMMENDATIONS:

We do not need an extrajudicial mechanism to judge our films. To do so, contravenes the democratic principle of collective sharing of public costs for institutions like our schools and other public bodies and introduces a Big Brother approach to the arts, an approach that gives unwarranted and dangerous powers to the federal government and confirms that Canadian culture is entering perilous times. Canadian courts, enforcing existing Canadian law, can and will perform that function if need be.

We believe that the subsection 120(3)(b) of Bill C-10 will lead to increased self-censorship by writers and other artists and cast a greater chill on expression of ideas. This is unacceptable to a society that has enshrined freedom of expression in its Charter of Rights, and we call on the Senate to defeat this bill and return it to the House of Commons.

RESPECTFULLY SUBMITTED ON BEHALF OF THE WRITERS’ UNION OF CANADA.

by: Susan Swan and Deborah Windsor