

FILMONTARIO

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Presentation to the Senate Banking, Trade and Commerce Committee

Thursday, April 10, 2008, 10:45am – noon

Presented by: Sarah Ker-Hornell, Managing Director, and
John Weber, Board member; President of Dufferin Gate Productions and
EVP of Production, Peace Arch Entertainment

Good morning to all, and thank you to this Committee for inviting us to participate in these hearings.

My name is Sarah Ker-Hornell and I am the Managing Director of screen-based industry consortium FilmOntario. Joining me today is a member of our Board, John Weber, President of Dufferin Gate Productions, and Executive Vice-President of Production for Peace Arch Entertainment.

FilmOntario is a private sector consortium 30,000 strong, of companies, producers, unions, guilds, banks, legal firms and organizations within the Ontario screen-based sector (film & television and interactive media), and represents over \$1.5 billion in direct-spend economic activity annually.

Honourable Senators, we have consulted our membership and are here to speak to aspects of the proposed Bill C-10. We are interested specifically in the subject of tax credits for Canadian film and television (Cancon). Bill C-10 proposes to empower the Minister of Heritage de refuser d'accorder un credit d'impot pour certaines productions pour lesquels le financement public est juge contraire a l'ordre public, after the projects are financed, produced and distributed in the marketplace.

We do not support this proposal.

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This proposal raises two alarms for us and our members. The first is the issue of censorship. The second is the calamitous business climate that this potential censorship would create.

There has been, and will be much discussion on the issue of censorship, much of it obvious. It is alarming that this Bill purports to codify in the Income Tax Act the power of the Heritage Minister to retroactively decline certification of a film or television production for which, in the Minister's view, "public financial support would be contrary to public policy".

As "pornography" is already excluded from eligibility for the tax credit in the tax regulations, the Minister's guidelines will presumably cover "offensive" productions, which don't constitute "pornography" for purposes of the Criminal Code but are nonetheless objectionable to the Minister.

The Minister and the bureaucracy will be basing their retroactive decision on as yet unknown guidelines that are not regulations. Therefore, they do not have to be tabled in Parliament, and can be changed at any time, at the pleasure of the Minister of the day.

This would pose an impossible hurdle for the business of content creation.

We now propose to explore with you the calamitous business implications of the current language used.

We have heard assurances from government at these hearings that the proposed changes would have a minimal financial impact on the industry going forwards. The government admits that they have

arrived at this conclusion, according to ADM Blais, after “speaking with some in the industry only...the group I spoke to was hesitant”.

Certainly, the retroactive component would mean that any number of projects from the past 5 or 6 years could be affected and be required to refund their tax credits – in most cases, an impossibility.

Further, when asked by Senator Ringuette if they had done an economic impact study on how these proposed amendments in Bill C-10 would impact the industry and employment volumes in advance of proposing this Bill, the response was no.

What the government would have discovered, had they chosen either of these paths, is that producers require reasonable certainty in order to raise financing for their productions.

CAVCO certification is a critical trigger for the various forms of financing required to produce content in this country, including completion bond qualification, bank investment, co-production and other funding access such as the Canadian Television Fund and Telefilm. Obviously, producers will be hard pressed to find lenders and investors who will commit funds to finance development or production in circumstances where a production may be ruled ineligible by the Minister after it is produced and the monies spent.

What we are getting, loud and clear, from our members is that the business model will collapse without the assurance of the integrity of the CAVCO tax credit certification.

The Royal Bank of Canada, one of our members, has asked us to include this statement in our presentation to you today:

Royal Bank is the leading provider of financial services to the Canadian film industry. RBC provides, on a project-by-project basis, the interim financing of tax credits, broadcast licenses, and other Government-related funding programs such as the Canadian Television Fund and Telefilm Canada. Canadian content certification is an absolute necessity for collection of the tax credits and certain payments from broadcasters, the Canadian Television Fund and Telefilm. Should the assumption of eligibility currently underlying all bank loans to this industry be compromised or diminished by Bill C 10, this will indeed limit the ability of the bank to continue funding Canadian content production.

The President of Cinefinance, a completion bond company that handles a large volume of domestic Canadian production activity, has asked that we include this statement:

We provide completion guarantees to financiers and banks, which often involve shooting in Canada. As part of our underwriting due diligence we make certain that any condition precedent to the financing is met prior to issuing our guarantee. Any condition subsequent, such as what I understand is being discussed, would prevent us from issuing our bond and I believe would have a serious detrimental impact on the ability of banks and other financiers to provide financing for independent films, as they all require a completion guarantee as a cp [condition precedent] to financing.

As you can see, any degree of uncertainty over the reliability of CAVCO certification will seriously deter investors and lenders from funding Canadian projects. This would effectively choke the industry.

It should be noted that a Canadian producer can also apply for the Canadian film or video productions services tax credit in Section 125.5 of the Income Tax Act (Services Credit) just like a non-Canadian producer.

As it stands now, on a CRTC co-venture between Canadian and US co-producers, the Canadian co-producer always applies for the Services Credit, as the production will not be eligible for the Cancon credit.

If this Bill should pass as is, we would face the bizarre possibility of a Canadian producer whose production is deemed ineligible for the Cancon Credit because of a Ministerial determination that it is against public policy, potentially applying for the lower Services Credit in respect of the same production.

Introducing additional guidelines on top of the provisions of the Criminal Code will introduce unnecessary complexity and subjectivity to the Tax Credit certification process, and permanently cripple this multi-billion dollar a year industry.

We trust that this Senate Committee appreciates the importance of this issue for the film and television industry, and encourage you to **amend Bill C-10 as it relates to the “public policy” provision of the Canadian Audio-Visual Certification Office (CAVCO) to limit the scope of such provision in a manner that simply seeks to ensure consistency with the relevant provisions under the Criminal Code of Canada.**

Respectfully,

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