

# Censorship and pornography: ACTRA replies to dissidents

(A response to David Cronenberg, Lynne Gordon, Jackie Burroughs, and June Callwood, *Cinema Canada* No. 106)

Your letter has been brought to the attention of the officers and Executive of the Alliance.

The Alliance has enshrined the right of members to express their views in the Constitution of the organization. Therefore, your views, as individual members, on the matter of censorship and pornography are respected.

However, we do differ with the contents of your letter. Far from acting in an irresponsible manner, as your letter suggested, we believe that ACTRA's Board, in adopting the Policy Statement on Censorship and Pornography, acted responsibly and demonstrated leadership within the arts community and the society at large.

All artists cherish freedom of expression. But, perhaps more than other artists, writers are acutely aware of threats to that freedom and therefore feel compelled to speak out when they see such threats looming on the horizon.

Inadvertently or not, the proposed MacGuigan amendment to Canada's Criminal Code represents such a threat and the Alliance, representing writers and performers, cannot let it become law without making every effort within our power to point out the dangers it poses to writers, to other artists, and, indeed, to all Canadians.

We are addressing ourselves here to that part of the MacGuigan amendment that deals with obscenity. We are fully aware that the proliferation of so-called pornographic materials, especially in the United States, has created a climate in Canada that renders a crackdown on such proliferation a popular move. But we must examine the implications of such a move.

In neither the existing Criminal Code nor in the MacGuigan amendment is the definition of obscenity very clear. Arriving at such a definition may, in fact, be virtually impossible.

The existing Code says that "any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, shall be deemed to be obscene."

The MacGuigan amendment goes much farther, stating that "any matter or thing is obscene where a dominant characteristic of the matter or thing is the undue exploitation of any one or more of the following subjects, namely, sex, violence, crime, horror or cruelty, through degrading representations of a male or female person or in any other manner."

What this means is that the portrayal of sex alone - unrelated to violence, horror or cruelty - can be categorized as an obscenity. As writers we cannot accept the notion that sex in and of itself is obscene.

Nobody - least of all Mr. MacGuigan - can translate what is meant by "or in any other manner." Similarly meaningless is the use of the words "degrading representations."

Is a pie in the face degrading? Is crime to be banished from the screen? May there be no more films about the horrors of war? Is the cruelty of a totalitarian regime never to be shown?

This may not be the intention of the MacGuigan amendment, but it is certainly the working of it. And who shall interpret these vague and undefined "obscene" acts?

Apparently, the Criminal Code, as amended, would leave such crucial decisions up to that old bugaboo of Canadian censorship legislation, "community standards" as interpreted by the courts.

But some judge or censor board in one area could find the horrors of war as depicted in *The Wars* obscene, while another may not. Another judge could be outraged by a love scene in *The Grey Fox* or *The Tin Flute*. Yet another might be offended by some language in *The Terry Fox Story*. Why not? The MacGuigan amendment leaves them the loophole of "or in any other manner."

Mr. MacGuigan goes even farther. According to his new Criminal Code, where a court convicts a person of an offence under the section, "it shall make an order declaring the matter or thing by means of or in relation to which the offence was committed forfeited to Her Majesty in right of the province in which the proceedings took place, for disposal as the Attorney General may direct."

This is nothing short of legalized book-burning - or destruction of film, video-tape, a painting, a sculpture, or any other "matter or thing" that offends a judge.

Clearly, this is unacceptable. In fact, it goes in precisely the wrong direction. Rather than tightening, by clear definition, restrictions against specific types of portrayed actions (i.e. sex combined with torture, brutality, etc.) it throws a large, loose net over virtually all "obscene" matters or things and, into the bargain, places in peril writers and other artists whose work can be confiscated and who could face fines or jail sentences for offending so-called community standards "or in any other manner" falling afoul of this allegedly improved Criminal Code.

This ambiguous broadening of the meaning of obscenity jeopardizes the freedom of writers, artists, producers and directors. Worse still, it lays the legal groundwork for the persecution (and not merely prosecution) of anyone in any "community" who does not happen to meet the standards of the particular, and frequently fallible, judge who will pass on the "matter or thing."

That is why we propose an alternate approach to the improvement of the Criminal Code, one in which proscribed acts are spelled out, in which much less is left to the whim of "community standards," and in which a defendant would have the right to rebut the case against him or her by proving that the work or material has literary, artistic, scientific or educational merit which taken as a whole has redeeming value.

No Canadian who believes in freedom of expression should settle for anything less.

In your letter, you raised the objection that the Board of Directors of the Alliance had no right to adopt a policy statement on censorship and pornography.

Let us be very clear on the responsibility of the Board of Directors. The Constitution of the Alliance clearly demands of the Board that it "shall define the policies necessary to achieve the aims and the objects of the Alliance."

The Board is comprised of Directors elected by members of each Branch of the Alliance from coast to coast. The January 1984 meeting of the Board was attended by 45 elected Directors, representing the Writer Branches, the Performer Branches and the Composite Branches of the Alliance.

The policy statement on censorship and pornography was not an impulse, or a spur of the moment statement. This resolution of the Board was developed, debated and refined in the most comprehensive manner. The effort involved committees across the country at the branch level, at the Performer and Writer Guilds level, and from the Board of Directors. An enormous volume of reference material was provided to Directors and committees. Among the members who actively - and at great sacrifice of time and energy - worked on the statement were writers, performers, members who work in public affairs programs and members who are academics in different disciplines, including law.

Preparations for the discussion on the subject commenced at the October 22nd and 24th, 1983 meeting of the Board of Directors. The October Board meeting adopted a motion to refer the subject of censorship and pornography to the Branches, the Guilds, the National Committee on Women's Issues and any other interested ACTRA groups for study. The motion further directed that this subject matter be a priority item on the agenda of the January 1984 meeting of the Board.

Following the October Board meeting, Branch Committees were established in Branches from British Columbia to Montreal. These Committees developed draft papers which were examined by Branch Councils and, in some cases, membership meetings.

During the course of the January 1984 Board meeting, a representative committee of writer and performer members met to coordinate the presentations from all bodies of ACTRA and to develop a draft policy for the consideration of the Board.

The issue of censorship and pornography was examined, distilled and resolved in the most democratic manner.

## The Resolution

The Resolution is divided into two sections. The first section addresses proposed changes to the Criminal Code. While ACTRA endorses the intent to re-examine and amend the Criminal Code in relation to obscenity, we are opposed to the changes proposed by Justice Minister Mark MacGuigan. In our view, the obscenity provisions in the Criminal Code must be detailed and specific like other sections of the Code. Take the drug laws for example. There is a schedule of proscribed drugs, not a loose law that says any drug which is manufactured, distributed, possessed or used is an indictable offence if it offends the community standard. (Then you might have a person convicted for possession of a headache pill with codeine!) The obscenity laws similarly must be based on proscribed conduct, which does not leave room for subjective interpretation.

Rather than oppose the effort of ACTRA to amend the law in a manner that will be clear and protect the writer, the director, the producer and the performer, we urge you to support ACTRA's efforts to persuade Parliament to reject the MacGuigan amendment and support ACTRA's positive proposition.

We also urge you to support our

efforts as a union to protect performer colleagues when faced with very real pressure to work in pornographic productions.

Your opposition to Part Two is based upon the right of the individual member to accept or refuse to act or participate in productions which the member considers morally unacceptable. However, the experience of ACTRA members is that refusal to accept work in such productions leaves the member open to being listed as one who has refused to work, and jeopardizes future opportunities.

The purpose of the union is to protect members. The Policy Statement declares ACTRA's concern and abhorrence to productions that advocate or condone abusive sexual behaviour or productions in which children are used as sexual objects. This Statement will be submitted by ACTRA to engagers for inclusion in ACTRA's collective agreements in upcoming negotiations.

The Board of Directors considered the issue of censorship and pornography as irrevocably related. The Board acted because it is the livelihood of members that is at stake and this issue is a real social problem that must be faced.

The statement embodies a common ground, cherishing freedom from censorship and recognizing pornography as a form of hate propaganda which is intolerable in a responsible society.

The Alliance looks forward to your contribution to oppose the MacGuigan amendment and supporting the carefully developed change in the obscenity law approved by the Board. The Alliance also looks to your support in ensuring that the union is able to negotiate provisions in collective agreements that will prevent the coercion of performers into appearing in productions whose exhibition will perpetuate a kind of hate propaganda we all detest.

**Paul Siren**

General Secretary  
ACTRA

## LETTERS

### Imposter exposed

On page 41 of your April issue under the heading *Canadian Showcase Winners* you credited Al Sims of Vancouver as producer of the animated film *Acting Out*.

This gentleman is an imposter. On several occasions, he and another fellow called Al Sands, have taken credit for animated films produced by myself. Perhaps you could expose these two contemptuous gentlemen to your readers.

**Al Sens**  
Vancouver