

LEGAL EYE

by Michael Bergman

Speaking censored

Is censorship obscene or will obscenity drown in censorship?

Censorship of film in Canada is a controversial issue. Those on all sides of the argument are essentially arguing the same thing from a different perspective, namely, freedom of expression. If censorship limits expression it should be abolished. If obscenity offends expression in a free society then obscenity must be suppressed. There is almost a certain argument as to the limit of freedom of expression and apart from the political or philosophical facet of the question there are many interesting legal elements.

One of the newest of these

legal elements is our new Canadian Charter of Rights found in the Canadian Constitution which guarantees freedom of expression subject to the demonstrable limitations in a free and democratic society. The effect of the Charter of Rights has yet to be properly tested in the censorship issue. The Charter of Rights has inserted a new variable into the mix as legal thinking in this area. Prior to the Charter traditional constitutional thinking emphasized the sovereignty of Parliament. It was for Parliament to legislate on appropriate matters and through its own legislation to safeguard fundamental rights.

The creation of a Charter of Rights as the supreme law of the land in the Constitution has now given much of Parliament's previously understood authority to the courts. It is now up to the courts through the use of the Charter of Rights to protect fundamental freedoms.

It is therefore important for those on both sides of the censorship issue to appreciate how courts may look at film censorship problems and apply the law accordingly. There has been a general tendency particularly in obscenity issues to look for the Canadian community standard. Indeed, this is the requirement for prosecution under obscenity provisions of the Canadian Criminal Code. A publication or film is not obscene if it meets Canadian community standards. It takes no great amount of thinking to realize that any kind of community standard is nebulous and changing. Trying to establish a Canadian standard

is of necessity an evening-out process as standards may vary from community to community and region to region in the country.

This has been the problem and source of frequent criticism of using community standards. In today's tolerant society it is not hard to say that the use of Canadian community standards has led the courts to look for the highest common denominator of tolerance and to accept as not being obscene all but the most violent or degrading material.

Just one example of the problem of Canadian community standards arises in the consideration of obscene material as regards women. While there is probably a general attitude that human dignity requires certain respectful treatment of the human person, just what this dignity is is hard to define. To what extent the sexual portrayal of the female body offends human dignity seems to

be uncertain. Today we accept the most explicit demonstrations that cannot be considered dignified in the general sense of the word.

Furthermore, community standards impose the views of the majority. A democratic society seeking to protect minority rights is in principle supposed to be tolerant of dissident views. If the majority considers something obscene, why should this material be suppressed for the willing minority?

The attempt to regulate what we see on the screen through Censor Boards is highly controversial. The imposition of the views of a small group of censors on what we see is surely the reverse of the above example. Here a small minority is imposing their views on the majority. Censor Boards have been the subject of recent litigation, particularly in Ontario where its extensive and seemingly conservative board which has a wide-ranging impact.

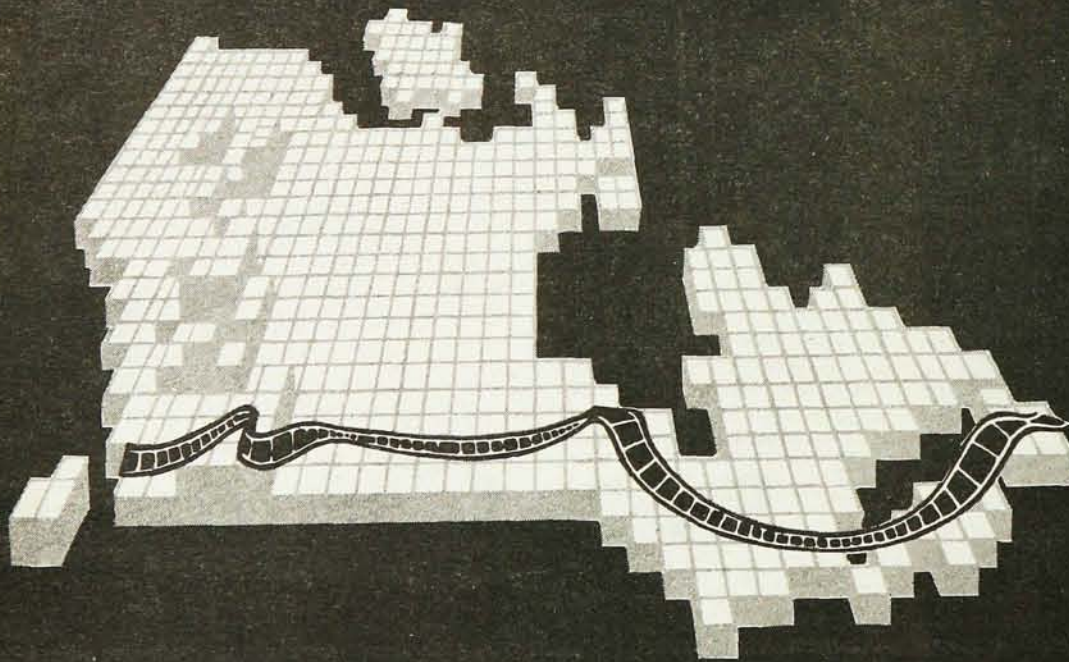
In recent litigation the Ontario Supreme Court found that the previous legislation on which the provincial Censor Board was based contained at best vague guidelines which would not give filmmakers or the general public adequate notice of what kind of standards they would be expected to meet.

With the Charter of Rights, it will be a difficult task to formulate guidelines and standards for any Censor Board. Censorship is a limit on the absolute freedom of expression. To what extent this limit is reasonable in a democratic society will be open to intense debates and subject to changing community attitudes. It is for this reason that censorship imposition will probably become increasingly more difficult to sustain in the face of continuing litigation over the subject. Censorship, particularly of political or artistic and creative expression, amounts to a restriction of ideas. Surely if freedom of expression is to mean anything it means tolerating even objectionable notions. The limits of this are difficult to define. When objectionable notions become perversion cannot be said with precision.

The law does not like uncertainty or interpretations based on the events of the moment. It is for this reason that the Charter will probably ultimately reduce censorship activities to manifest horrors such as child abuse and sexual violence that would repel most people. This is not to say that government will not be able to impose viewing restrictions as to what age groups may view certain material.

A particular application of the censorship problem applies to home videos and other films which may be viewed in the privacy of one's residence.

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There is some move afoot to restrict and censor home videos, a notion which flies in the face of the king-of-the-castle concept. If we are the ultimate authority within the confines of our private residence, is it not an invasion of privacy for others to restrict what we see within those confines?

Censorship is both a political issue and a legal issue. Making the film community's views

known will be an important factor in determining both political and legal results. On the political level the reason for this is obvious: government response to lobbying groups. On the legal level, though, there is much work to be done by the film industry. The development, for example, of obscenity guidelines within the industry as a kind of internal regulation might be a code the courts will

take into account in determining what is objectionable. Furthermore, organized guidelines would tend to eliminate the argument that Censor Boards provide a policing role which the industry has abdicated. Not that the industry should censor itself, but rather at least control the most obvious expressions blatant depravity.

Such guidelines, made in consultation with all elements

of the industry community, will no doubt enhance the image among the general public and provide an important tool to fend off the censor's hand.

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Ontario production down vs. summer '84

TORONTO - Film production is down in Ontario compared to this time last year. Gail Thomson of the Ontario Film & Video Office told Cinema Canada that "it's quite a bit less" but she had no official figures. She cited four pictures in production as of mid-June including *Anne of Green Gables*, *The Campbells*, *Night Heat* and *Over Night*. Thomson said that there were many more productions in the works but nothing had firmed. She said that she was "fairly confident that production will be up by the end of the summer."

ACPAV wins with Petit Prince adaptation in Spain

MONTREAL - The Association Cooperative de Productions Audio Visuelle (ACPAV) production of *Cher Monsieur l'Aviateur* has been awarded first prize in the short fiction category at the International Short Festival held in Murcia, Spain Apr. 17-26.

The film was directed in 1984 by Michel Poulette and was conceived and written by Normand Desjardins based on the famous Saint-Exupery story *Le Petit Prince*.

SuperEcran

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has already fallen below 30%, to around 25-26%, and that will continue to drop as time goes on. To further compound the paradox of Canadian content, in-house promotion of non-Canadian film clips, about an hour per day of Super Ecran's programming, does count as Canadian content.

At the same time, Harel says that, had pay-TV gained access to the Broadcast Fund (an access nixed by last March's revisions), "that would have given us the motivation to search for available (production) investment." As things stand, however, Harel says Super Ecran has no plans at present to go into production, "though we intend to when our means will allow us."

TORONTO - The Directors Guild held a two-day symposium June 15-16 on television production. Ray Sager, organizer of the event, said that the aim of the symposium was to "reeducate the guild about television." He pointed to the fact that most of production work today was for television. He said that turnout had been reasonable with 105 people registered.

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