

Canada: By stealth, Ottawa seeks to censor film and television production

David Adelaide
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Had a loose-cannon, right-wing evangelical minister not been given to boasting, it might have been many more months before the public became aware of a federal government scheme to silence critical film and television production in Canada. Instead, a *Globe and Mail* interview with Charles McVety, president of the Canada Family Action Coalition, became the catalyst for a controversy that has quickly exposed the *modus operandi* of all the parties in the Canadian political establishment.

At the centre of the controversy lie a few brief lines buried in a massive bill, C-10, otherwise devoted all but entirely to taxation minutiae. According to the legislation, the federal tax credits routinely given to Canadian film and video productions are henceforth to be granted only if the Minister of Canadian Heritage feels that “public financial support of the production would not be contrary to public policy.” The legislation also grants the minister the right to retroactively revoke these tax credits.

In his *Globe* interview, McVety claimed that the “hidden” legislation was the result of his own lobbying efforts, including discussions with multiple government ministers and officials. Although no one in the governing Conservative Party would confirm meeting with McVety, his interview nonetheless opened a Pandora’s box: the bill in question had passed the House of Commons, supported by both the Liberals and the New Democratic Party, with no mention made of the new powers to be given the minister over film and video credits—and hence over film and video production—and no debate.

The tax credits in question are vital to Canadian film and television production not only because they reduce the total expenses of a given production, but also because they are commonly used to secure further “real” funding (whether from public granting agencies or private investors).

The primary effect of the change to the law would be an immediate chill on artistic expression. Financial backers would be inclined to withhold funding from productions that may eventually offend the government, thus losing their tax credits and going bankrupt. In other words, the legislation

would not even need to be enforced in order to silence controversial productions. The clear and present potential that it might be enforced against a wide range of productions would be enough to discourage free artistic creation.

Figures in and around the minority Conservative government claim the bill is necessary because of an amorphous and omnipresent child pornography threat (which one has reason to believe includes any and all films dealing with sexuality in a way that makes blinkered social conservatives uncomfortable) as well as the proverbial “gratuitous” violence. It should be noted that the Conservatives recently pushed through legislation raising the age of legal sexual consent from 14 to 16.

In truth, given the origins of the ruling Conservatives in the former right-wing populist Reform Party, which was hostile to science and the arts, and the growing push of the Canadian elite to criminalize dissent, there are any number of things that might offend the government, including film and television productions critical of the Canadian Armed Forces’ role in the Afghan War.

The reaction from the Canadian film industry has been swift, unanimous and opposed. A litany of prominent actors and directors have publicly spoken against the bill, including at the recent Genie awards ceremony. A Facebook group formed to oppose the legislation has grown to over 37,000 members in just a handful of weeks. The Directors Guild of Canada, the Writers Guild of Canada, and the Saskatchewan Arts Alliance, among others, have all denounced the bill.

With the cat thus out of the bag, the government has officially been at pains to suggest that their intent was never to establish a new censorship regime but rather to eliminate a “loophole” in the tax-law. The Conservatives claim that existing tax law would allow a film that was contrary to the criminal code to still receive the tax credit. Unsurprisingly, they have not been able to cite a single instance where this has taken place.

A certain amount of discussion has been devoted to the question of what the guidelines would be for the Heritage minister in determining what productions are contrary to

public policy. A March 8 article in the *National Post* cited Jim Russell, an entertainment lawyer at Heenan Blaikie LLP: “There is a suspicion among the production community—and that includes lawyers, bankers, accountants as well as producers—that the government has already created its guidelines, that the government has already been working on definitions of what would constitute being contrary to public policy.”

It remains unclear whether such guidelines have been drafted or not. Nevertheless, with the passage of Bill C-10 the current Conservative regime and future Canadian governments would have a powerful instrument for imposing a state-defined morality, discouraging controversial productions, and pursuing a right-wing, anti-intellectual agenda. And once the minister is given the power to issue guidelines stipulating what productions do and do not have the right to receive tax credits, those guidelines could be expanded without recourse to further legislation.

Another aspect of this issue that bears careful scrutiny is the role of the opposition parties.

As it happens, legislation giving the government the power to withhold film and video tax credits was drafted in 2003 by the then-governing Liberal Party, nominally as an attempt to placate right-wing furor over a film about the brutal, multiple child-rapes and murders perpetrated by Paul Bernardo and Karla Homolka.

In late 2007 both the Liberals and the nominally social-democratic New Democratic Party (NDP) voted unanimously in favor of Bill C-10, thereby giving the Minister of Canadian Heritage the power to determine which productions will receive “public financial support” in the form of tax credits. (The Conservatives only form a minority government, and thus require the support of the other parties in parliament to pass legislation.)

Following the public exposure in February 2008 of the legislation’s potential to stifle artistic freedom, both the Liberals and the NDP rushed to claim that they would never have allowed Bill C-10 to pass had they known it contained such a provision concerning film tax credits. The Conservatives had “hidden” the tax credit clauses in Bill C-10 and taken the other parties unawares (never mind that the legislation was first proposed by the Liberals), or so the argument goes.

The Liberals have gone on to propose that the offending legislation be amended in the Senate, where they hold a majority of the seats, and have vowed “that a tiny clause in the Income Tax Act [will] not become a tool of government censorship.” A string of Liberal senators have since expressed their opposition to the legislation, presently in the hands of the Senate Banking committee, which will hold

hearings on the bill April 2.

The NDP, meanwhile, half-heartedly suggested that the bill should be returned to the House of Commons for the public debate that the Conservatives were supposedly solely responsible for thwarting. This suggestion arises partly out of the invariable role of the NDP as the most faithful champion of the Canadian parliament, come what may, and partly out of the need to propose something different than the Liberals that, since it would never to come to pass, would stand little chance of restricting the NDP’s future parliamentary maneuvers.

For both the Liberals and the NDP, the issue is essentially an opportunity to burnish their thoroughly tattered credentials as opposition parties. Since the Conservative minority government came to power, it has been sustained through crisis after crisis by the Liberals, the NDP, or both.

The assistance lent to them by the opposition parties has allowed the Conservatives to proceed with their radical right-wing agenda despite a lack of electoral and popular support. In the 2006 election, with more than a third of the electorate abstaining, the Conservatives won 40 percent of the seats with 36 percent of the vote. In other words, somewhat less than one in four Canadians voted for the Conservatives, and this despite the fact that the big-business controlled media had swung decisively behind them, including trumpeting the claim that Liberal “corruption” transcended all other issues.

Most recently, the Liberals voted with the Conservatives to extend the highly unpopular participation of the Canadian Armed Forces (CAF) in the US-NATO counter-insurgency war in Afghanistan. The CAF role in Afghanistan is now set to last to the end of 2011, and Liberals challenged about their previous call for the mission to end in February 2009 will presumably seek to change the subject of conversation as quickly as possible.

What the fate of the film tax credit legislation will be in the Liberal-controlled Senate remains to be seen. It is probable that the Liberals will avail themselves of this opportunity to oppose the Conservatives on an issue that they consider of secondary importance. Even should that come to pass, the failure of the opposition parties to even notice (if one takes their word for it) the government bid to censor film and television production demonstrates that the defense of artistic freedom cannot be entrusted to any section of the Canadian political establishment.



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