

May 2, 2004

The Hon. Michael Bryant
Attorney General
Ministry of the Attorney General
720 Bay Street, 11th floor
Toronto, Ontario M5G 2K1

Dear Mr. Bryant:

Re: Superior Court ruling on the Ontario Film Review Board censorship powers

I am writing to urge the Ontario government to appeal the ruling by Superior Court Judge Russell Juriansz striking down the power of the Ontario Film Review Board to censor and/or prohibit films.

The *Theatres Act* is not a perfect piece of legislation and definitely needs to be re-written, but it needs to be **strengthened**, not weakened, and we must have additional provincial legislation to address the video game and recording industry. Indeed, when you were in opposition, you identified the need to classify recordings because of the violent lyrics of performers such as Marshall Mathers (Eminem), while in a letter to me on the issue of video games, you wrote that you were “very concerned about the effects of media violence -- and particularly violent video games – on our children”.

Last December, I completed a research project on media violence funded by the Office for Victims of Crime “Revictimization Prevention Grant Program”. My report details a dire situation, as shocking levels of violence have infected all aspects of the entertainment industry. Violent pornography, for instance, is increasingly crossing over into the mainstream of popular culture. Your concern about the effect of media violence is well founded, and this is not the time to abandon **any** aspect of regulation.

As an activist on the issue of media violence, I have monitored the activities of the OFRB for many years. In 1992, I obtained a copy of edits ordered by the Board to adult sex films submitted to the OFRB during the month of October 1992. These are excerpts:

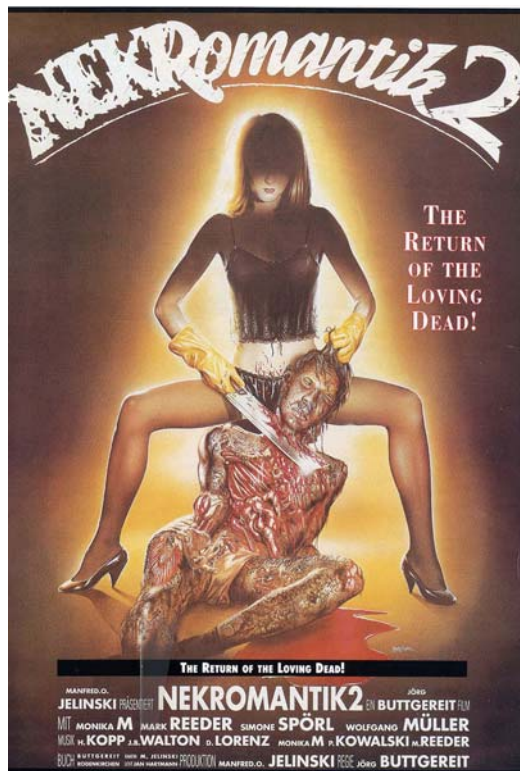
Eliminate scene of urination, scene of rape entirely, eliminate scene of men chasing woman yelling “rape her to death”, all scenes of attempted rape, eliminate scenes of impalement (Deadly Dream Woman)

Eliminate all scenes of woman with wrists tied together and man throttling woman during sexual activity (Girls Without Tomorrow 1992)

Eliminate scenes in which the woman is intended to represent a person under the age of sixteen (On Trial Part 4 – The Verdict)

Eliminate scenes of man with female person who appears to represent a minor (In Charm's Way)

The Ontario Film Review Board provides a critical barrier to the distribution in Ontario of violent and degrading pornography. Without the OFRB acting as a gatekeeper, there is no question that extremely harmful pornography will become much more widely available. As the Board states on their web site, police forces do not have the resources to "check the thousands of films and videos that the OFRB and other boards check on a daily basis".



Film Threat Video Guide, Issue 7

Provincial review boards can prevent the widespread distribution of films such as *Nekromantik 2*, submitted to the British Columbia Film Classification Office, and subsequently classified as "Prohibited" by that Office, making it illegal to sell or rent it in B.C. In fact, the history of this movie provides a very good example of why provincial regulation is so important, and also why film festivals should **not be** exempt from having their films reviewed by the OFRB.

In 1992, *Nekromantik 2* (a film about necrophilia) was shown at the Toronto Cult Film and Video Festival. When the film ended, Rob Salem, one of the Festival's organizers and a Toronto Star entertainment reporter, told the audience that it had probably witnessed history because the movie wouldn't likely be seen again for a long time. During the screening, he'd been told that German authorities had arrested the film's director and producer, **charged them with the improper use of human remains and ordered all copies of the movie seized.**¹

A few years later, a film distributor attempted to have this disgusting piece of trash approved for release in British Columbia. If the province did not have the power to prohibit films, this movie, showing the desecration of real human corpses – not

¹Movie has questionable plot, Globe and Mail, November 12, 1992

Hollywood-style special effect corpses -- would be available for rent and sale. If the exploitation of sex in this movie is not "undue", it would not contravene the obscenity provision of the *Criminal Code*, and could not be taken off the market under that law. The picture shown was a promotion for *Nekromantik 2* as it appeared in Issue 7 of *Film Threat Video Guide*.

The following thoughtful explanation of why the Board has the power to refuse to approve films is posted on the Board's web site:

Why does the Ontario Film Review Board have the power to refuse to approve films?

We often get asked the above question, usually closely followed by "Why not just let the marketplace or the police do the job?"

The OFRB is one of many film boards that have the ability to refuse to approve film. Other countries, including Britain, Australia, New Zealand, Denmark, France and Germany, all have this authority. At the federal level, Canada Customs may seize films and videos that contravene guidelines that are very similar to those in place in Ontario

Film boards are responsible for drawing boundaries around activities that are acceptable for public display and consumption, according to community standards. The Ontario Film Review Board has the authority - and the responsibility - to refuse to approve films that contain depictions of extreme violence and brutality, explicit sexual assault, degrading and dehumanizing activities, sexual activities with minors, cruelty to animals, and so on.

Most societies have value systems that are created to allow their members to live in relative peace and security. The checks and balances that prevent seriously harmful activities from becoming prevalent and undermining these value systems are usually enshrined in the laws of the land. The ability to limit public exposure to extremely brutal or violent images is one of the safeguards that helps to prevent seriously harmful activities from becoming the normative values of society.

The police do not have the resources to check the thousands of films and videos that the OFRB and other boards check on a daily basis. The marketplace is also not a good safeguard as there will always be a minority of citizens that will create a market for these portrayals.

Therefore, the Ontario Film Review Board, through the Theatres Act, continues to limit access to films in those areas where there is a potential for harm to society, particularly to those who are most vulnerable.

The production of violent pornography has become increasingly widespread, and the need to limit it is even more pressing and substantial than it was when the Supreme Court of Canada released the landmark *Butler* decision in 1992. The material produced by our good neighbours to the south is shocking in its depravity, violence and

degradation of women. Violent pornography has been allowed to proliferate freely in the United States for many years. Recently, the U.S. government initiated its first obscenity prosecution in **over a decade**.

In November 2003, *60 Minutes* did an item on this issue. Mary Beth Buchanan, the U.S. Attorney assigned as the Justice Department's point person in their campaign to rein in pornography said, "We have just had a proliferation of this type of material that has been getting increasingly worse and worse." One of the movies she cited was *Forced Entry*. It includes scenes of women being raped and murdered, and it also includes suffocation, strangulation, beatings and urination. Rob Black, the owner of Extreme Associates, the company that produced the movie, calls it a "slasher film with sex". As Ms Buchanan said, "what they wanted to do was to make the most disgusting material available on the market. And they succeeded."² The company is being prosecuted now, but for over a decade, porn producers have been allowed to freely produce movies like that.

As you may recall, Mr. Bryant, Canadian media giant Bell ExpressVu was caught broadcasting violent and degrading pornography on two of its pay-per-view channels in 2001. Crown Attorney David Butt, an obscenity expert with the Ontario Ministry of the Attorney General, assessed the material and offered his opinion that it was obscene as defined by the *Criminal Code*. The channels were on the air for almost a year, so this wasn't just a brief lapse with limited exposure, and some of the movies Bell broadcast were produced by the above-noted Extreme Associates, a company producing some of "the most disgusting material available on the market".

This is, unfortunately, not a small niche market limited to a few sex offenders with deviant and sadistic appetites as the situation with Bell ExpressVu illustrates. There appears to be a significant demand for it, as well as a significant supply of it. Given that reality, we need to use every regulatory avenue available to ensure that violent pornography does not circulate in Ontario. The Ontario Film Review Board is absolutely critical in that regulatory scheme, and their right to ban some movies outright must be defended by the Ontario government because of the harm that will be caused if they lose that authority.

Yes, people can order movies from other countries, but if they contain violent pornography, Customs can stop them at the border. Customs, of course, cannot stop all violent pornography, but neither can Customs stop all guns at the border. That doesn't mean we should throw out our laws and open the border because Customs doesn't provide a perfect solution. And, yes, people can download movies from the Internet, but people can download child pornography from the Internet too, and few would suggest revoking the child pornography law because it does not provide a perfect solution. Laws cannot stop the distribution of harmful material – or harmful behaviour, for that matter -- but they can reduce both.

² *Porn in the U.S.A.*, 60 Minutes transcript, CBSNews.com, November 21, 2003

In their 1992 *Report on the Powers of the Ontario Film Review Board*, the Ontario Law Reform Commission stated their belief that the Supreme Court of Canada would uphold the right of the province to prohibit films, saying:

... given the direction taken by the Supreme Court of Canada in the Butler and Keegstra cases... we would have to conclude that limits on expression of the kind that now exist in the Theatres Act and its regulations will likely satisfy the section 1 test. The debates in the Ontario Legislature of 1984 reflect a goal of avoiding a pressing and substantial harm as opposed to controlling morality.³

The Law Reform Commission is a distinguished legal body, and the Supreme Court of Canada does, in fact, have a significant record of upholding limits on freedom of expression if harm to society can be demonstrated, and particularly, harm to women. I believe women will be harmed if this decision is allowed to stand, and I respectfully urge the government to appeal it.

Sincerely,

Valerie Smith

Copies to

The Hon. Jim Watson, Minister of Consumer and Business Services
The Hon. Sandra Pupatello, Minister Responsible for Women's Issues
Joseph Tascona, M.P.P., Conservative Party Critic, Attorney General
Robert Runciman, M.P.P., Conservative Party Critic, Consumer and Business Services
Elizabeth Witmer, M.P.P., Conservative Party Critic, Women's Issues
Scott Newark, Vice Chair and Special Counsel, Office for Victims of Crime,
Ministry of the Attorney General
Bill Moody, Chair, Ontario Film Review Board
Steven Pelton, A/Deputy Director, B.C. Film Classification Office

³*Report on the Powers of the Ontario Film Review Board*, Ontario Law Reform Commission, 1992