

REGINA vs. Ian McLachlan, Susan Ditta, Al Razutis, David Bierk The Theatres Act Provincial Court, Criminal Division Peterborough, Ontario June 22nd to June 25th, 1982

By AL RAZUTIS

1.0.0 Introduction

On April 28, 1981 charges were laid for the first time in the history of the Ontario Theatres Act in relation to the exhibition of a film. Four people - David Bierk, executive director of Art-space; Susan Ditta, executive director of Canadian Images; Ian McLachlan, board member of Canadian Images and Artspace; and Al Razutis, filmmaker - were charged with exhibiting a film "that had not been approved by the Board of Censors", to wit: *A Message From Our Sponsor*.

This charge stemmed from a March 13, 1981 screening of the film at the Canadian Images Film Festival. After numerous delays, the case was finally brought to trial on June 22, 1982. During three days of testimony and the appearance of 15 witnesses, the filing of 32 exhibits, and two film screenings, the case generated scant news coverage. In fact, several days prior to the trial, a feature story on Mary Brown, director of the Board of Censors, and the operations of the board had appeared in the *Toronto Star*.

By June of 1982, it seemed that this war of nerves between the "Peterborough Four" and the Censor Board, as carried out in the media and the courts, was reaching exhaustion, with the Board demonstrating its upper hand in public relations and legal maneuvers.

1.0.1

The circumstances leading up to the trial bordered on the bizarre. *A Message From Our Sponsor* (henceforth *A Message*) was a nine-minute section of a longer work in progress, *Amerika*, and featured an ironic combination of advertising images juxtaposed with a few stock pornographic shots. Within *Amerika*, *A Message* functioned as a metalinguistic commercial; its intent was to critique and parody sexist advertising, with an explicit focus on connotative codes (arising in images and sounds, character and fable) that appear in the construction of sexual role models and stereotypes.

The theme of the film was the commodification of sexuality and the creation of consumer needs as products; the strategy of the film was to situate the viewer as part of the construction of the subject - an ambiguous subject in this case - as part of a discourse that constantly shifted positioning, meaning and terms of reference. *A Message* was therefore polysemic and unstable - one could construct no single conclusion or point of view from its narrative.

2.0.0. Chronology.

In June, 1980 the film was exhibited as part of the National Gallery Series IV package in Ottawa without incident. It was only when this package was sent to Toronto for a September screening at the Funnel Theatre that it

came to the attention of the Censor Board.

The response of the Board was quick and direct: Mary Brown, director of the Board, contacted the Ontario Provincial Police and relayed through them a directive to the National Gallery curator, Darcy Edgar, that *A Message* would have to be cut or withdrawn. If the offensive material was not eliminated, the police informed Ms Edgar, she would be liable to arrest and prosecution for distributing pornographic material. Mary Brown went public and asserted (in several news articles) that this film contained material that contravened the Criminal Code of Canada.

While the Gallery administration, over the objections of the curator, was prepared to withdraw the film, a protest was mounted by the participating filmmakers (Patricia Gruben, Rick Hancox et al) threatening to withdraw all the films from the package if *A Message* was censored. After several months of protest, letter writing and negotiations between filmmakers and Gallery (negotiations by Anna Gronau acting on behalf of the filmmakers), the results amounted to a standoff: the Gallery reinstated the film, but left it up to the provincial censors to decide the fate of each screening, and the filmmakers dropped the proposed boycott.

2.0.1

Early in 1981 several exhibition houses (the Funnel, Art Gallery of Ontario) obtained special permits from the Board for one-time screenings of selected "art films": *Rameau's Nephew...* and *Presents* by Michael Snow, and *The Art of Worldly Wisdom* by Bruce Elder. The Board said filmmakers of "international reputation" with work exhibiting "artistic merit" qualified for special exemptions.

It is not surprising that these exemptions were granted after personal meetings between Elder, Snow and Mary Brown to discuss how to deal with "art films", since it was in the interest of all parties to safeguard their position, whether political or legal.

What is surprising, however, is that these discussions (and I think "secret negotiations" is appropriate) directly contradicted a public stance (especially on the part of Elder) that portrayed a categorical opposition to censorship. These negotiations resulted in privileging a few artists and dividing the anti-censorship movement between those who sought special exemption for the arts and those who sought an end to censorship.

Never before had the anti-censorship movement been so cleverly manipulated by a state apparatus that eventually could cancel all exemptions or redefine its standards when and if it so wished. For what was made clear by the Elder negotiations was that the politics of the avant-garde were still tainted with bourgeois and elitist art values synonymous to those espoused by the Board.

2.0.2

On the west coast, though not because of any regional difference in politics, the issues of censorship were pursued in a different manner: Cineworks, then a fledgling organization, organized a national tour of its films (including *A Message*) and boycotted any exhibition house (the first being the National Film Theatre in Edmonton) that allowed censorship of the individual films. The Cineworks stance continued the categorical anti-censorship tradition started by the filmmakers of the National Gallery's Series IV.

By spring of 1981, *Not a Love Story*, with its anti-pornography and pro-censorship stance, joined the short list

of films first banned by the Ontario Board of Censors, then granted special permits. The film featured hardcore pornographic imagery similar to that of *A Message* and in length and number that well exceeded the short fragments found in *A Message*.

Presumably the Board saw in the NFB film a context for pornography that was not only redeeming but also synonymous with the Board's own position on pornography and violence. The didactic exposition of *Not a Love Story*, with its submerged pro-censorship message, proved sufficient reason for the Board to grant the film numerous permits for one-time exhibitions to large audiences. In *Not a Love Story* the Board had found an ideological ally and a shining example of its "liberal" educational interests in spreading the gospel of restraint and censorship.

2.0.3

Throughout 1982, the one film that remained banned outright was *A Message*. In the opinion of the Board, this film was "obscene" and represented "undue exploitation of sex". As Douglas Walker (a member of the Board, and the first to recommend the cuts) was later to testify in Peterborough, the only way this film could be shown was "perhaps for a study group... a film study group".

However, Officer Petrozeles of the Ontario Provincial Police "P Squad" felt the film had little film studies merit. Prior to the trial, he candidly remarked to the author that he was convinced the film's analytical material and structure was a smokescreen for the pornography. He further indicated that some (unnamed) academics supported him in these views.

Mary Brown, while concurring with Walker and Petrozeles, added (in a private disclosure to the author during a trial recess) that she believed the film was a rallying point for anarchist attempts to overthrow the authority of the Censor Board.

2.0.4

The various "arrangements" and discussions between the Censor Board, Ontario art exhibitors and the Ontario Arts Council suffered a setback when the film was screened without "permission" at the Canadian Images Film Festival on March 13, 1981.

The collective decision to screen the film was based on discussion and considerations about what constituted civil and institutional rights to free expression, and was supported by the president of Trent University, which was the festival's main backer. Thus, the screening brought out into the open the ideological differences between a more "fine-arts" (read bourgeois) film practice that sought special exemption and a more socially oriented practice that sought to participate in social and legal change.

A month after the screening, charges were laid under the Theatres Act of Ontario. No charges were ever brought forward under the Criminal Code (the obscenity sections 158-160 cited by Mary Brown), though this consideration was clearly on the mind of Officer Petrozeles in his new role as a member of a federal task force on pornography. (Petrozeles would continue to maintain, in June 1982, that it was a mistake to charge the film only under a provincial statute, and that an indictment under the federal code would have been appropriate.)

3.0.0 Issues Arising From, and Impinging on, the Peterborough Trial

A trial is hardly a public forum for debate and discussion. Often the case is framed within terms and definitions that are highly procedural, technical if not rhetorical. Thus Mary Brown's declaration that this would be a test case was something of a misnomer. Clearly, she felt the Board's authority was challenged, but aside from the main legal arguments concerning the constitutionality of the Board and its place within a new Charter of Rights, many of the other issues were submerged and deflected.

The defendants, as is common in all criminal proceedings, were advised by counsel to remain silent, to avoid discussing the case or circumstances or issues relating to the screening with the media. In retrospect, this was an unfortunate decision: The silence could be seen as advantageous to the Censor Board and its enforcement allies, the Crown and the police.

The technical advantage of "non-incrimination" (and how can defendants accurately gauge what is incriminating?) should be measured against what was lost in public protest, debate and publicity concerning

ensorship. To be in fear of self-incrimination is to be silent; to be subjected to long waiting periods (the case took over a year to come to trial) is to be subjected to escalating legal costs and difficulty in maintaining an energetic defence. Fortunately, the defendants never broke ranks (accepting "deals" proposed by the Crown) or abandoned their resistance to the charges. Fortunately also, the arts community rallied in support.

3.0.1

In the escalating debates concerning pornography, censorship, the rights of individuals versus the regulatory powers of the state (or to put it in class terms, the rights of the oppressed versus the powers of the oppressors), much division was evident in both avant-garde and feminist circles.

The avant-garde film community was divided between those who viewed art as a special (valued) practice that should exist outside equal application of the law, and those who viewed its politics tied to social change. The commercial sector was content to sit idly and hope for a more liberalizing outcome than the one that required *The Tin Drum* to submit to three cuts in Ontario.

Feminist cultural politics were fragmented along ideological lines and on pragmatic issues between those in favor of various forms of censorship and those categorically opposed to any form of censorship. Pro-censorship was a mixed bag of moralizing arguments that, in effect, cut through the ideological barriers separating the Left from the Right.

There were arguments, for example, that justified censorship as the only method of stopping "hate" literature directed against women and children (that is, violent pornography). This argument, as an essentialist defence of love and innocence, found support in moral majority circles as well as leftist anti-pornography circles, and was fundamental to the anti-pornography lesbian protest.

It was generally agreed that the perversion of eroticism by violence (the introduction of sadism as a term) had to be stopped. What was not clear was what constituted "erotic" expression. To the moral majority, eroticism must be tied to the values that are acceptable within fundamentalist Christian

dogma; to pro-censorship lesbian-separatists erotic terms are specifically anti-male and support an idealized "essence" of womanhood. For a bourgeois fine-art interest, eroticism (for example, Elder's use of masturbatory images in *The Art of Worldly Wisdom*) is a kind of "right to expression", outside of ideology and social discourse.

What unified the pro-censorship exponents was their moralist conception that censorship could rid society of "evil" or "hate" and return eros to the status of purity, love and utopian expression. Thus the defence of women and children (a popular reductive slogan) was as important to left-wing pro-censorship interests as it was to Mary Brown and her censorship model (which she testified was based on the example set in England, where "they have a concern for children").

The pro-censorship stance is precisely an essentialist defence of abstractions and idealized conceptions that (by definition) exist outside society, history and ideology. It is also precisely a reactionary form of political activity that suppresses dialogue and dialectics in favor of moral solutions. The alternative is a socialist critique (and action) that situates the protest within a critique of capitalism, commodification and patriarchal norms of language and definition - that is, within the social, economic and psychic forms of exchange that promote and support pornography.

3.0.2

A socialist-feminist critique such as the one proposed by Varda Burstyn provides the clearest example of analysis, politics and resistance to sexist (hetero- and homo-) dogma. Writing in *Fuse* (February 1983), Burstyn noted the connection between capitalism and sexism when she deliberated on the characteristics of the "vast and intricate sex industry... commodity fetishism" that converts sexuality into consumer goods in the capitalist enterprise of wealth and power. "This sexuality is increasingly commodified and commodities increasingly sexualized", she added.

In Burstyn's view, violent sexual representations are not the same as the actions they depict, but represent extreme stages of repression and alienation. The fetishizing of sexuality

through commodity, the setting in motion of denial and compensation (through consumption of surrogate goods), and the place of these fetishizing practices in maintaining patriarchy and misogyny are concerns crucial to her thesis (as well as that of *A Message*).

Burstyn's arguments are more sophisticated than feminist-essentialist assertions of a psycho-sexuality based on gender difference and cultural conditioning. Her arguments also avoid a reduction to a simple moral equation that situates eroticism in terms of "good" or "bad", "politically correct" or "politically incorrect". "I don't think it's an accident that social doctrines which advocate sexual repression always also express the view that humans are basically nasty," she concludes.

The pro-censorship moralist argument which acts to specify privilege and virtue to sexual activity (either heterosexual or homosexual) usually includes conceptions of good-bad/correct-incorrect binaries situated along gender, class and erotogenic lines. The traditional binary of men (as sadists, voyeurs) versus women (as masochists, exhibitionists) may be satisfactory to a conception that specifies men as rapists and women as victims, but it is precisely this reduction that makes further analysis impossible and any political analysis arising therefrom nonsensical.

The essentialist argument sees nature as something to be feared, something to be repressed. It sees human nature intrinsically tied to violence and Thanatos rather than to love and Eros. The essentialist sees culture (and its institutions) as necessary to the repression or subjugation of nature by language. It may be precisely this repression itself that breeds violence and sadism, as the German "experiment" of the 30s and 40s possibly illustrated.

3.0.3

Ian McLachlan's views speak of the bridging of politics and art within a mutual dialectic of struggle. In *The McGill Daily* (April 8, 1983) he was quoted as saying: "The vitality of any art comes from its resistance to the hierarchies and norms of society... Censorship, on the other hand, is an attempt to suppress such resistance or

reinterpretation... Art is always produced as a break from the system."

Clearly, art cannot exist completely outside the system, nor can it act in complicity with dominant social and cultural norms and institutions if it hopes to be an unsettling force of resistance and change. McLachlan's views are generally uncompromising when it comes to activism and resistance, and it is precisely in this spirit of vitality that the Peterborough arts community acted to resist the Toronto-based Ontario Censor Board.

3.0.4

The coming together of a politicized avant-garde film practice, a politicized arts community of educators and administrators, and the present-day contexts of media, representation and activism characterized the Canadian Images film screening of *A Message*.

The Toronto-based "high-art" values of Elder had proven to be self-serving and politically counter-productive; the hand of the Censor Board was forced, not by secret negotiations, but by a public action that challenged a form of repression that had succeeded in dominating both the Left and the Right.

4.0.0. Excerpts from the Peterborough Trial Transcript

As of this writing, the case is still under appeal. We cannot comment on or interpret trial evidence and testimony. However, we offer excerpts from the 600-page trial transcript as a kind of "found evidence", a companion piece to the stock found footage of *A Message*.

While much of the trial concerned itself with motive and "guilty mind" (i.e. whether the defendants had knowingly contravened the Theatres Act), definition and the law, and issues of the legality and jurisdiction of the Board (did the Board act within the law, were its decisions arbitrary and inconsistent?), the more important issue of civil rights was reserved for written arguments submitted to the judge after courtroom proceedings were over.

The issues arising from definition and the law, and the legality and jurisdiction of the Board, necessarily implicate the views of the Board (as represented by Douglas Walker and Mary Brown) as to what constitutes obscenity and community standards.

Equally interesting is the nature of the Board's response to the various

test cases, some resulting in exemption, some in redefinition, some in prosecution. The reader may find notable the Board's assertion that on-screen depiction of sexual activity (or sexual organs) is more reprehensible, more objectionable, than off-screen depiction of brutality, rape and sexual violence.

Equally interesting may be Mary Brown's analogies between censorship and liquor control, between community standards and protection of women and children. Arguments concerning civil rights and arguments challenging the Board's constitutional status (as infringement on the rights guaranteed by the Charter of Rights) are presently unavailable since they constitute issues that are part of current appeals.



CENSOR BOARD

A ruling that could severely limit or end the censoring powers of the Ontario Censor Board is being appealed to the Supreme Court of Canada.

The Ontario Court of Appeal had ruled that the Censor Board violates the Canadian Charter of Rights and Freedoms and is therefore illegal. The decision substantially upheld a Divisional Court ruling last year that sections of the Ontario Theatres Act violate the freedom-of-expression guarantee in the charter.

That decision was the result of a case which challenged the Censor Board's ruling on four films: *A Message From Our Sponsor* by Al Razutis, *Rameau's Nephew* by Michael Snow, *The Art of Worldly Wisdom* by Bruce Elder and the NFB's *Not a Love Story*. The Censor Board had ordered cuts on the first three and would not allow *Not a Love Story* to be shown in general release.

The Appeal Court ruled that the Theatres Act section permitting the board to censor or cut films is "ultra vires as it stands" - meaning the section goes beyond the power the Censor Board is legally permitted. However, while the judgment is under appeal to the Supreme Court, the Censor Board may continue to legally classify and cut films.

The Ontario Film and Video Appreciation Society brought the case to court and the Ontario government has been ordered to pay part of its legal costs no matter what the outcome of the Supreme Court ruling, expected next spring. The society's lawyer, Lynn King, had argued that the Censor Board's guidelines left a filmmaker with no way of knowing what was permitted under the law.

CANADA

Ontario film censor board ruled illegal

TORONTO (CP) — The scissors of the controversy-plagued Ontario Censor Board have been blunted by the province's highest court.

Ontario Court of Appeal ruled Monday the censor board is operating in violation of the Charter of Rights and Freedoms and is therefore illegal.

The decision substantially upheld a Divisional Court ruling last year that sections of the Ontario Theatres Act violate the freedom-of-expression guarantee in the charter.

In its ruling last March, Divisional Court, a branch of Ontario Supreme Court, said some form of censorship "is demonstrably justifiable," but the board's standards were vague and subject to change at "the whim of an official."

The Appeal Court ruled Monday that the Theatres Act section permitting the board to censor or cut films "is ultra vires as it stands" — meaning the section goes beyond the power the board is legally permitted.

Crown lawyer Julian Polika said in an interview the Ontario government will seek leave to appeal in the Supreme Court of Canada. In the interim, the censor board can legally classify, but cannot cut films, he said.

The board, which must see and approve every film shown in Ontario for profit or to the public, gained international notoriety for films it banned, such as the critically acclaimed *The Tin Drum* and *Pretty Baby*.

"Right now, there is really no censorship in Ontario," said Lynn King, lawyer for the Ontario Film and Video Appreciation Society, reacting to the court decision. "They have no standing whatsoever."

King, who appeared for the society before Divisional Court, argued last March that the censor board's guidelines left a film-maker with no way of knowing what was permitted under the law.

But the case, which challenged the board's ruling on four award-winning Canadian films, did not challenge the obscenity provisions of the Criminal Code, she said.

The censor board had ordered cuts on three of the films — *Rameau's Nephew* by Michael Snow, *Amerika* by Al Razutis and *Art of Worldly Wisdom* by Bruce Elder — which King described as experimental art films.

The other was *Not a Love Story*, a National Film Board documentary on pornography, which the censor board would not allow to be shown in general release, although it has been approved for special screenings across the province.

After the ruling last March, King said she expected the other seven provinces with censor boards would pay close attention to the decision.

She said the film and video society will continue fighting the case until the censors are irrevocably defeated.

"I wouldn't want to be in their shoes," King said of the province. "If they do change the legislation to put it (the board) within reasonable limits, they will have to be sure they are not invading federal jurisdiction."

With its current vague, unlegislated guidelines, the Ontario government avoided a showdown, said King.

But this showdown will be inevitable once the province enacts some kind of well-delineated guidelines that the Appeal Court has, in effect, demanded, she said.

Undue Exploitation, Differing Standards, Special Exemptions...

On the second day of the trial, Wednesday, June 23, 1982, Crown counsel Harry Carleton called Douglas Walker to testify. Walker, a member of the Censor Board and in particular one of the first members to censor A Message..., testified at length on the methods of censorship practiced by the Board, the reasons for censoring A Message..., and the relationship of the Board to the various film institutions in the province. The following extract is excerpted from the cross-examination conducted by Alan Lenczner, counsel for Ian Mclachlan and Susan Ditta.

MR. LENCZNER: Q. Well, we start from this...let's go back Mr. Walker... I am not talking about specific sections of the Criminal Code...what I am trying to do is say this...you started by saying that the Board's policy was, "We do not allow anything that contravenes the Criminal Code", and I just wanted to understand that, because, as you know the Criminal Code deals with a lot of things, including break and enter and so forth, and that's not what you are talking about?

A. No, I am talking about our interpretation to film with regard -

Q. Your interpretation of film?

A. That's right.

Q. And to narrow it down, as you have told me, the Board's policy when you get...forgetting the sections of the Criminal Code...what you are talking about is an undue exploitation of violence and sex?

A. That's right.

Q. Is that right?

A. Yes.

Q. That's the Board's policy...all right. Now then, when we talk about undue exploitation of violence and sex, of course it has to be talked about in the context of...let's talk about film...of the film that it is shown in. You don't look at a clip and say, that alone may be undue exploitation of violence and sex...you say, looking at the film as a whole...is that what the purpose or the purport is...am I right...it's done in a context?

A. It's done in a context.

Q. All right. And then, do I come to this sir, that when you...and we will just deal with you for a moment...saw the film, *A Message From Our Sponsor*, in August of 1980, that you applied that standard, is that right?

A. Yes.

Q. And that you felt that the scenes that are objected to...the three scenes, in your opinion are an undue exploitation of violence and sex in the context of the whole movie...that's your opinion, is it?

A. Yes...now you mentioned violence...in this particular film...

Q. So you don't say...there is no violence here?

A. I would say it's strictly sex.

Q. All right, so that we have it...with regard to this film in August of 1980, in the context of the whole nine-minute film, you felt that those three scenes constituted an undue exploitation of sex?

A. That's right.

Q. Now, is that because of the context it was in, or is it because you next then said in-chief, that if there is in any film, any fellatio, any penetration or any masturbation, you automatically exclude those scenes?

A. If this is on camera, yes.

Q. All right...so that breaking down again what you mean by undue exploitation of sex in this case...let's leave out violence...you say that any depiction on camera of fellatio, masturbation, penetration or cunnilingus, is undue exploitation of sex?

A. Yes.

Q. And that's...is that the Board's view as well?

A. I can't say for all 14 members, how they really feel on that, but I can say for myself, yes.

Q. All right, for yourself...I just want to have it absolutely crystal clear, that any depiction in any film that is going to be shown to the public of penetration or masturbation or fellatio, or cunnilingus, is prohibited, because that in your opinion, is undue exploitation of sex?

A. Yes, I would not release that for commercial distribution.

Q. All right, and now you say you can't say for the other 14 members of the board...I have to know what the Board's policy is...are the other members...do they take a differing approach in your discussions with them? Do they think that some penetration is permissible, depending on the context, or do they all say any penetration is taboo?

A. I feel that the board is of the opinion that any penetration is taboo.

Q. All right...so any penetration and the board feels in any film is taboo. All right...and what about masturbation...do they say any masturbation on film, in any film is taboo?

A. Masturbation on camera.

Q. On camera, all right. And fellatio, is that the same?

A. Yes.

Q. All right. Now sir, are you familiar with a film

called *Rameau's Nephew*, by Michael Snow?

A. I know it went through the Board.

Q. Have you seen the film?

A. I did see that film, but I didn't finish the film, because it was very boring.

Q. All right. Now sir, I am going to show you what I understand to be a summary report of the Board of Censors. Would you look at that and please tell me if that is the summary report of the Board of Censors of Ontario?

A. That's right.

Q. And that report sir says this...it's about *Rameau's Nephew*, is that right?

A. Umhumm.

Q. And the observations are these, "Certain scenes in this film contravene the guidelines"...and stopping there, the guidelines...the ones we have just talked about?

A. Yes.

Q. That is this undue exploitation of sex and/or violence, right?

A. Umhumm.

Q. But the recommendation is that the guidelines be set aside for showing only at the Art Gallery of Ontario.

A. That's right.

Q. And the reasons given are, there was an explicit scene of penetration, is that right?

A. Yes.

Q. And an explicit scene of urination?

A. That's right.

Q. And I see it says there, "see attached"...so I haven't given you the attachment...and this is the attachment as I understand it, I am sorry...all right, so there is another attachment as well, apparently.

A. Okay.

Q. Just tell me if those are the attachments?

A. Okay.

Q. All right. May I have that marked Your Honour...I'm going to deal with it a little further, as the next exhibit.

CLERK: Ten Your Honour.

THE COURT: Exhibit Ten.

MR. LENCZNER: Thank you.

EXHIBIT NUMBER TEN - Summary Report and attachments re *Rameau's Nephew* - Produced and marked.

MR. LENCZNER: Now while we are having that marked...

THE COURT: That's the summary.

MR. LENCZNER: There is the summary report on the front and there are two attachments which are noted therein.

Q. Now, the reason that this contravened the guidelines as it states on its front, Mr. Walker, is there is an explicit scene of penetration, and you have told me, any penetration is taboo with the Board on film?

A. This is for commercial distribution, I am talking about.

Q. Aw, aw...I see...so that, do we have different standards, whether it is for commercial or for non-commercial distribution?

A. For commercial distribution it has to go by the guidelines.

Q. I see, so that we can...what we have been talking about, commercial distribution ...all right ...but if this were for commercial distribution...let's deal with it for a moment, it wouldn't be allowed because of an explicit scene of penetration, and an explicit scene of urination?

A. No, it wouldn't.

Q. It wouldn't be allowed, all right. Now then, the reason this was allowed, we have something written here...do you recognize this handwriting...is that Mary Brown's handwriting?

A. No.

Q. No, all right...well somebody wrote on the attachment and I want you to help me with this, "There is an implicit community standard reciprocity in our acceptance of the disputed scene (vaginal penetration)." Now what does that mean? I don't understand implicit community standard reciprocity. What if somebody -

A. You better ask them.

Q. You don't know either.

A. I can't make his writing out...does it really say that? Standard...you better go and -

Q. You don't know?

A. Really, it could mean a lot.

Q. Okay. Well then the next attachment is...it looks like Mary Brown wrote something as well ...is that her initials, M.B., with her secretary's initials beside it?

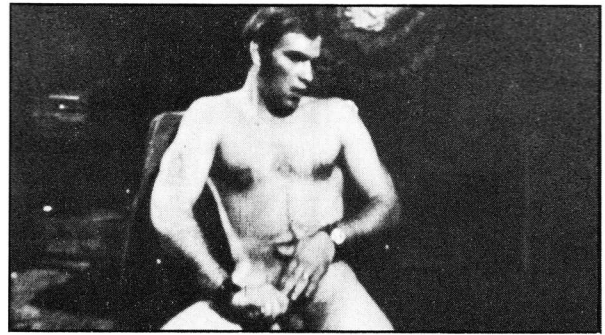
A. That's her initial.

Q. Yes, and she says this, "The four-and-a-half-hour film *Rameau's Nephew* includes a scene which seriously contravenes our guidelines and our perception of community standards - namely a prolonged close-up explicit portrayal of vaginal penetration. It is not the Board's mandate to determine what is art. However, people of stature and credibility in the Ontario community have indicated, and we have no reason to doubt, that Michael Snow is a distinguished Canadian artist of international reputation." And then in the...the court will have the rest of this, but the last sentence, "It is in deference to Michael Snow's international reputation and the special context of the scene in question that has determined this extraordinary decision." Now, I am not quite sure...are you letting that through, that film, or was Mary Brown letting that film through partly because it's from Michael Snow, and partly because of the context of the scene of penetration in the movie, or is there some other reason?

MR. CARLETON: The objection is this, excuse me Mr. Walker. The objection is this Your Honour...as my friend is now aware, and was explicitly made aware during the morning recess, Mrs. Brown will be a witness in these proceedings.

THE COURT: I think that is a question that can be put to Mrs. Brown.

MR. LENCZNER: Okay, thank you.

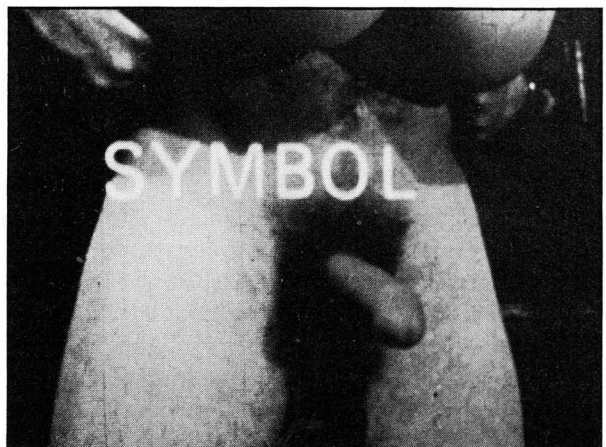


"The Only Way I Would Release This to be Shown..."

Following Lenczner's lengthy cross-examination, Charles Campbell, counsel for Al Razutis, conducted his cross-examination of Douglas Walker, and placed the following questions forward in this short excerpt from the testimony:



A Message From Our Sponsor



MR. CAMPBELL: Q. Could I ask you this hypothetical question...if the question...if you understood today, or at that point that the question for you to answer was, can the film *A Message From Our Sponsor* be shown to a limited audience in a private screening, however that may be defined...what would the answer of yourself or the board be to that question?

A. Had that been suggested that day?

Q. Yes?

A. I think the answer to that would have been that it would be released with a restricted category with three eliminations, simply because we are dealing...at least we felt that we were dealing with hard-core footage.

Q. I interpret that what you are saying is that in those circumstances, you would give an exemption for the film *A Message From Our Sponsor* to be shown to a private audience, is that correct?

A. That didn't arise.

Q. Well, I appreciate it didn't arise, and I asked a question which was a hypothetical question...if it had arisen, what would the answer have been?

A. Probably there would have been some consideration. It would have been at least talked about by the Board, but this is not the way it was.

Q. Let me ask you. Perhaps you can't tell us what the Board would have said, because you can only speak for yourself...what would your position have been...what would your vote have been if the issue before you was, can we show this particular film in a private screening?

A. Well, there again, it would depend on the audience...who was going to attend and what the reasons were behind it for showing it.

Q. Well, let me ask you this sir...tell me the kind of audience and the reasons and circumstances in which you would have permitted this film to be shown to a limited audience in a private screening?

A. Is that a fair question?

THE COURT: Well...

MR. CARLETON: It's certainly hypothetical Your Honor.

THE COURT: It's so very hypothetical.

MR. CARLETON: Frankly...well I had an argument to make, but I also have a reply question to ask of this witness on this business of private...because these terms are being thrown around here, I think rather loosely, as compared with what the wording of the Statute is, and I think the witness may well be confused, because of the plethora of private, individual, one-time, whatever...

THE COURT: It all helps to give us a picture of how the Board operates I suppose, but I would consider the answer tends to be somewhat speculative...the question tends in that case.

MR. CAMPBELL: Do I take it from that that the witness is not to be required to answer the question?

THE COURT: If you want the question answered, I will permit you to pose the question, but I think you know, a good many of these questions that are being put involve speculative answers, but some of them though, a little beyond.

MR. CAMPBELL: I appreciate that Your Honor.

THE COURT: And have a very diminished probative value and I would put this question in that category.

MR. CAMPBELL: If I might have the answer to the question, whatever it may be, and I don't know...I think it may have some probative value in conjunction with other answers, and we don't know until after we can put the evidence together.

THE COURT: That's a stock remark...very good, but there are many sins that are hidden by that response. However, go ahead and ask the question for whatever it's worth.

MR. CAMPBELL: Q. Mr. Walker, the question is, will you tell the court, what would be the circumstances in which you would agree that this particular film, *A Message From Our Sponsor*, might be shown? You have said it would depend on who was going to see it and when and what the reasons were?

MR. CARLETON: Now I would, with the greatest respect, I would suggest that the question go on to include, in its uncut form...make that clear.

MR. CAMPBELL: Q. Yes, in its uncut form. Now what would be the answer?

A. Now this is a personal answer you want, because I can't give a Board answer on that.

Q. I understand.

THE COURT: The answer will be given by you as you would consider it if you were a member of the Board...if you can do that.

A. The only way I would release this to be shown, is perhaps for a study group...a film study group...perhaps experimental film. Certainly not for commercial...but perhaps for a study group.

MR. CAMPBELL: Q. I don't want to belabor the hypothetical question, but in numbers, what do you mean by a study group? Is that five, is that five hundred, is it what?

THE COURT: Well, he's answered the question...a group is a group, and a great deal will depend on the circumstances...I think I said before, I think that question had limited probative value...I am persuaded that it has a limited probative value, but now counsel, with respect, you are going beyond the pale.

Art and Liquor - Analogy Drawn by Mary Brown

On Thursday, June 24, 1982, the Crown called Mary Brown, director of the Ontario Board of Censors, to testify. After a lengthy examination in-chief conducted by Harry Carleton, Mrs. Brown was cross-examined by Alan Lenczner. The following extracts reveal some of her thoughts on the practices of the Board and her view of the film in question.

Q. Mrs. Brown, you are familiar with the film *Not a Love Story*?

A. Yes.

Q. And that film came before the Board for screening?

A. Yes, it did.

Q. And you, yourself, have seen or screened that film?

A. I have seen it unofficially, yes.

Q. Well, you have seen it, in any event?

A. Yes, I have.

Q. And would I be correct madam that that scene includes the following: a prolonged scene of copulation...

A. I don't remember whether it would be called prolonged.

Q. All right. It is not called prolonged. It includes a scene of copulation?

A. I believe so.

Q. It includes a scene of fellatio?

A. I honestly can't remember.

Q. All right. Well, we have it here so we'll...

A. I would suspect, in thinking about the subject matter of the film, it probably would have, yes.

Q. All right, and I also understand that it includes a scene of cunnilingus?

A. Maybe simulated cunnilingus.

Q. Well, would you agree with me, Mrs. Brown, that it contravenes the standards, or the guidelines, of the Board for public viewing in a commercial arena?

A. I believe the report of the Board indicated that was so.

Q. All right, so it could not be shown publicly, as you have put it, to unlimited commercial distribution?

A. I believe that's what the Board report said, yes.

Q. Now, are you aware, madam, that that film was shown at the following places and approximately the following times? It was shown at the Canadian Images Festival here in the city of Peterborough in 1982. Are you aware of that?

A. I am aware that several special occasion permits, if you would, have been issued for the film *Not a Love Story*.

Q. All right. Are you aware that one of these several special occasion permits was granted to the Canadian Images Festival to show it here in the city of Peterborough, in the spring of 1982?

A. I would not disagree with it. As I say, with 1800 films, I'm not sure. I know that many, many films, or permits, for public exhibition have been issued for *Not a Love Story*.

Q. Well, I just want to get the extent of them and perhaps, if you are not aware, you can tell me if you don't dispute this. My information also is that it was shown at the festival in Toronto known as the Festival of Festivals, in 1981?

A. That's correct.

Q. All right, and it was also shown at the National Film Theatre in Kingston, Ontario?

A. Possibly, yes...I would not dispute any of these, no.

Q. You would not dispute that...and it was also shown at the St. Lawrence Centre in Toronto?

A. Yes.

Q. And it was also shown at OISE, in Toronto?

A. Yes, yes.

Q. And, in fact, in addition to those places I've mentioned, special permits have been granted by the Board for showing of that film on a number of other occasions?

A. Yes.

Q. And would it be fair to say, Mrs. Brown, that literally thousands of people in this province have seen that film?

A. If you would include the private screenings, I would agree, yes.

Q. Well, the ones that I have mentioned or special permit screenings...what do you call those? Does the Board call those public or do you call those private?

A. If we were involved at all, they would be public.

Q. They were public...all right.

A. Umhumm.

Q. All right, and well, just dealing with it, I don't know many...if you know how many people were there, but certainly, the St. Lawrence Centre is a large centre and can accommodate a number of people, can it not?

A. Oh, yes. I was there that evening.

Q. You were there? How many people were there?

A. I would say about 200, maybe.

Q. The Festival of Festivals is a well-known festival in Toronto which attracts a lot of people?

A. Correct.

Q. Do you remember what theatre that was shown at?

A. No.

Q. But in any event, we are able to say that on those applications that I know of on which permits were granted and that you don't dispute, there were a considerable number of citizens in this province who saw it, do you agree?

A. I agree, yes.

Q. And madam, you say that that film was permitted to be shown to the public even though it contravenes the Board's guidelines because of special permit that the Board issued?

A. Umhumm.

Q. Is that right?

A. Yes, yes. Permit for it...this special permit, yes, as did *Rameau's Nephew*.

Q. All right, let's talk about *Rameau's Nephew*. *Rameau's Nephew* was screened by the Board and was permitted...it contravened the guidelines of the Board, did it not, for commercial...

A. For unlimited commercial distribution, yes.

Q. And, in fact, I have a...this is Exhibit Ten...this is a note by yourself, I believe, and would you, maybe, confirm that you wrote this, Mrs. Brown...M.B., are those your initials?

A. Umhumm.

Q. And is that what you wrote?

A. Yes, it would be.

Q. And it says that, "It includes a scene which seriously contravenes our guideline and our perception of community standards." Is that what you wrote?

A. (No audible response.)

Q. I'm sorry, you can't nod.

A. Yes, I did. Yes, I'm sorry.

Q. And you would agree with it that *Rameau's Nephew*, according to the Board, seriously contravenes the guideline?

A. For unlimited commercial distribution, yes.

Q. And yet, you permitted, or the Board rather...not you, but the Board permitted it to be shown on a number of occasions on a special permit, is that right?

A. That's correct, yes.

Q. That is to say, a couple that I know of...you allowed it to be showed at the Funnel Theatre in Toronto?

A. Correct.

Q. And we've had evidence here called by the Crown from an Anna Gronau...you know who she is?

A. Yes.

Q. And she said that you gain access or entry to the Funnel Theatre by, either buying a ticket at the door or belonging to a membership for an annual fee, is that right...you understand that?

A. I understand that was that...I would assume, if that's how you say they operate, that would be it, yes.

Q. You also allowed it to be shown at the Art Gallery of Ontario?

A. That's correct.

Q. All right, and as I understand it again, to gain access to this film at the Art Gallery of Ontario, you can either buy a ticket at the door, is that right?

A. That's correct.

Q. Or you can belong as an annual member, is that right?

A. Yes.

Q. Now, just while we are on that subject of how you gain access, let's go back to *Not a Love Story*. Certainly, you knew that when you allowed it to be shown at Canadian Images, here in the festival in Peterborough, that anyone who bought a pass, could go and see that film, isn't that right?

A. I was not sure how it was structured at Canadian Images Festival. The details of it were not really relevant. Either it was a public exhibition or it was not. When we issued the permit to exhibit the film at that time, we assumed it would...it was requested on the basis that they had planned exhibiting it to the public.

Q. So it's to public and you knew the public would have to pay for it in some form, whether it goes by pass, or it goes by buying a ticket at the door. It's really of no concern to the Board?

A. No.

Q. So, I'm having this difficulty, Mrs. Brown, and that is this. Thus, I could have gone to see *Rameau's Nephew* at the Funnel Theatre just by buying a ticket at the door as a member of our province and our community.

A. Umhumm.

Q. And yet, you won't let it be shown to me at the Odeon Theatre in Toronto or one of those large commercial theatres in Toronto. What's the difference? I can go and see it somewhere. What is the difference?

A. I would say probably, if we go back to our analogy that if it were in a commercial distribution throughout the province and in widespread distribution that can impact very directly on the community as a whole, very strict rules or criteria are in place as they would be for in an established liquor lounge. If it's a special occasion permit for liquor, for example, the rules are less stringent. You don't have to have the chairs affixed to the floor. You don't have to have 15 exits. You can go and have a drink on a special occasion without all the rules that are in force if you are in a public bar or lounge situation. That's about the only way I can draw an analogy, I think.

Classification as an Art Film: The Privileged Few

Later that day, Mr. Lenczner pressed Mary Brown for indications as to which films were permitted to be screened and which were not:

MR. LENCZNER: Q. All right. Now you, I think, know that *A Message From Our Sponsor* was shown at the Art Gallery of Ontario?

A. No, I did not know that.

Q. You were not aware of that?

A. No.

Q. You were not aware until today?

A. No.

Q. It was also shown at the National Gallery in Ottawa?

A. I was not aware of that.

MR. CARLETON: Excuse me. I don't think that we have even established that it was ever shown at the Art Gallery of Ontario. It's another one of these situations. Is he going to call some evidence to say, "Yes, *A Message From Our Sponsor* was shown at the Art Gallery of Ontario on such and such a date." If he is then it is a proper question.

THE COURT: He may. I will allow counsel to ask the question, but he will have to be satisfied with

her answer...can't argue with her.

MR. LENCZNER: Well, I am just going to ask you, Mrs. Brown...I'm just going to ask you if you were aware that it was shown at the National Gallery of Canada. Were you aware of that?

A. No, I wasn't, and I would say...if I may, I think it's important to do an analogy...I mean, you catch...

THE COURT: No, just please, ma'am...

A. No, I was not aware.

MR. LENCZNER: Q. Now, were you aware that it was shown at the Grierson Festival...we've had some evidence on this?

MR. CARLETON: Excuse me, Your Honor. I would suggest...we're talking about a place, how about a date? I could suggest...

A. Could I...I think I...

MR. CARLETON: Just excuse me.

A. All right.

MR. CARLETON: The objection is...

MR. LENCZNER: I don't finish my question before he is on his feet. Would you kindly let me...it's my cross-examination, please?

THE COURT: All right. Let me hear the objection.

MR. CARLETON: Yes. My suggestion by way of objection, Your Honor, is that when he is suggesting as to where this film may have been shown, it might be helpful to the witness to have a suggested date.

THE COURT: All right. Are you able to suggest a date, counsel?

MR. LENCZNER: I'm not able to suggest a date for the Grierson Festival, but all I wanted to ask her is if she was aware it was shown. If she says no, she says no; that's fine. It's not that mystical, I think.

A. Maybe just to clarify...we have never issued a permit for a public exhibition of *A Message From Our Sponsor*. If exhibitions to the public took place, they were in violation of The Theatres Act. I was not aware of it.

Q. All right. So you were not aware then that it was shown at the Grierson Festival of Niagara-On-The-Lake?

A. No, I was not.

Q. All right. Now then, we've talked about *Numero Deux* and I just want it clearly from you, Mrs. Brown, that *Numero Deux* also contravened the standards of the Board, in that it showed explicit scenes of sexual activity?

A. I think more important, *Numero Deux* did not have a permit to be exhibited publicly.

Q. Well Mrs. Brown, can you answer my questions...did it or did it not have explicit scenes of sexual activity?

A. I did not see *Numero Deux*, as far as I know.

Q. You haven't seen it? All right, thank you.

A. It could have been violence.

Q. Well, you don't know. You haven't seen it?

A. I don't know. I just know it was not approved.

Q. All right. Do you know why the Board would not approve it?

A. No, I don't.

Q. You don't. Mrs. Brown, are you aware of a film called *The Art of Worldly Wisdom*?

A. That was a Bruce Elder film, was it not? Yes, if it was a Bruce Elder film, I am, yes.

Q. And are you aware that it was given a special permit to be shown at the Canadian Images Festival in 1982 here in Peterborough?

A. That's possible, because I believe it was screened originally for the Funnel, I think.

Q. All right, and was it also given...was the Funnel...it was given a permit to be shown at the Funnel as well?

A. I believe so. It's...

Q. All right. We've already spoken about the Funnel and how you get into the Funnel. But here at the Canadian Images Festival, in 1982, you knew that admission to the films was by pass?

A. I didn't know whether it was by pass or by admission at the door. It wasn't relevant.

Q. All right, but you knew, at least, that the members of the public could go upon payment of some kind of a fee?

A. I just knew that members of the public would be in attendance. I didn't know what the monetary arrangements were.

Q. And do you know that it includes scenes that contravene the standards and guidelines of the Board?

A. That would be the standards and guidelines for the unlimited commercial exhibition, I would assume.

Q. Yes. It contravened those standards?

A. I don't believe I screened that.

Q. All right, but you are not disputing that it does contravene the standards for commercial distribution...or exhibition?

A. I'm really not sure, you know. I know that there was a request to show it at the Funnel and at the Festival, I believe.

Q. Now, when *Not a Love Story*...just so that I cover everything, when it was shown at the various places we have discussed about, you permitted it to be shown in its uncut version?

A. Yes.

Q. Similarly for *Rameau's Nephew*?

A. Yes.

Q. Similarly for *The Art of Worldly Wisdom* as far as you are aware?

A. As far as I am aware, yes. I believe that if *The Art of Worldly Wisdom* was shown, it would be in its entirety because as an art film, it wouldn't be a question of cutting it.

Q. So, it is an art film...art films are permitted to be shown to the public. The public would pay

money to go in on a one-time permit, is that right?
 A. I'm sorry, what was the question?
 Q. Well, you've classified *Art of Worldly Wisdom* as an art film, is that right?
 A. Yes.
 Q. And you've permitted it to be shown to members of the public?
 A. Umhumm.
 Q. On a one-time basis upon payment of a fee...you know that they are going to pay something, one way or another, is that right?
 A. Well, it depends on where they were showing it. If it were the Art Gallery, they may not...I don't know.
 Q. All right. Well, we've spoken of...you know that the Art Gallery of Ontario that you have to pay to get in...you know that, don't you?
 A. To get into the Art Gallery perhaps, but not necessarily to get into, you know, specific venues for the film.
 Q. Well, Mrs. Brown, I take it you really are fencing with me. Don't you know that to go to these films you have to pay either by pass or at the door?
 A. Not to get to the film...to get into the Art Gallery, yes. I don't know whether they were charging for the film or not.
 Q. All right. Well, do you have to pay to get into the Art Gallery to get down to see the film?
 A. Yes.
 Q. Okay, thank you...and surely you know enough about the Canadian Images Festival in Peterborough to know that its passes are sold?
 A. I do now.
 Q. And so that if it is an art film, the Board will allow it to be shown to the public on a one-time basis in a particular venue...even in its uncut version...that's what's happened on many occasions in the past?
 A. Permits have been given for different kinds of films for one-time exhibitions for numbers of reasons, yes.
 Q. For numbers of reasons?
 A. Yes.
 Q. One of the reasons is that it is an art film?
 A. Another could be that it is an educational film.
 Q. Another could be that it's an educational film?
 A. And in some provinces, for example, they would have a special permit for a special venue if it's a porn film.
 Q. For a pornographic film?
 A. Yes.
 Q. All right. Now, if it is an art film and can be shown once to the general public at a theatre in Peterborough, why can't it be shown to the general public at a theatre in Peterborough the very next night...a second time, a third time? What's the magic number in once?
 A. I don't know that there is a magic in "one". It

seems to me that on the special permit basis, once it has been established, that on subsequent applications for exhibition in specific milieus, the permit is granted. The permit would designate the time and the place where they wanted to exhibit the film. There is no magic in "one".
 Q. There's no magic in the number of times? There's no magic in the number of people that attend? I mean, you don't control how many people go in the door at these places. It could be 200; it could be 50; it could be 1000. Once you allow it to go out for a one-time permit, it could be any number of people that could cram into the location. Is that fair?
 A. Within safety standards, I suppose.
 Q. All right...within safety standards?
 A. Yes.
 Q. So there's no magic in the number of times it's shown. There's no magic in the number of people that see it. It's classified as either an art film or an educational film, or a pornographic film...all right. Now, there's *A Message From Our Sponsor*...you've seen it. Would you not consider that an art film?
 A. This would be considered experimental art.
 Q. Experimental art film?
 A. Yes.
 Q. At the time that has been given a one-time permit?
 A. Oh, but many art...oh, yes, right. All art films because they are designated for specific milieus, whether or not it's a Bambi-type film, operate on a one-time permit, because they have been applications to exhibit in a specific milieu.
 Q. All right, but it is an art film of the kind that has been one-time permits, is it not?
 A. Well, all films for the Funnel Theatre, for example, are given one-time permits.
 Q. All right, and they are art films or experimental art films?
 A. It's just that...the content isn't relevant. You know, it could be very innocuous content...just that the application was for one specific theatre.
 Q. Now then Mrs. Brown, and the filmmaker, Al Razutis...you consider him to be a premier filmmaker of the same calibre as Michael Snow?
 A. I really couldn't make a judgment in that area.
 Q. Well, let me see if I can read you something that you wrote and see if you can agree with this, if I can find it quickly enough, excuse me. I'm showing you...well, I will read you from the letter, that I think you wrote...is that your signature, Mrs. Brown?
 A. About Michael Snow and Al Razutis...probably.
 Q. Is that your signature?
 A. Yes, it is.
 Q. And I'll just read you what you said: "I am sure the segments of our community, who are

familiar with them, applaud the works of Snow and Razutis." And that's in a letter that you wrote to the national spokesperson of ANNPAC...A-N-N-P-A-C?

A. Yes.

Q. Can I take it from that, fairly, that you know of Mr. Razutis as a well-known Canadian filmmaker?

A. I didn't say...well, I didn't say that. I said that...

Q. Well, you didn't say it.

A. I said on the basis of the letters they had sent to me that he seemed to be recognized in that particular community.

Q. And you don't know anything about him then? Is that fair to say?

A. I don't, no.

Q. You don't? All right, well let's get back to our position then that you would consider *A Message From Our Sponsor* an art film...an experimental art film, I think you said?

A. (No audible response.)

Q. If Canadian Images were to apply to you... the Board, to show *A Message From Our Sponsor* at a festival that they hold here annually in the same way that they applied to you for *Not a Love Story*, would you permit the showing of Al Razutis' *A Message From Our Sponsor* on a one-time basis in a theatre in Kitchener...in Peterborough to pass holders?

A. I would say that the Board would not.

Q. Ah! Why *Not a Love Story*? Why did you allow *Not a Love Story*...why did you allow *Rameau's Nephew* and why don't you allow Al Razutis' film? What's the difference?

A. Well, I think the decisions for each of the Board's recommendations, and each of those films, are in the Summary Report. Now, I don't remember what the Summary Report said. They were put together by the Board members, but the official reasons for decisions on each of those films are quite clear.

Q. All right, but you have agreed with me, and we'll show it, that *Not a Love Story*...

MR. CARLETON: Not necessarily.

MR. LENCZNER: Q. ...Not necessarily...well, you have agreed with me, Mrs. Brown, that *Not a Love Story* has scenes of copulation, of cunnilingus, of fellatio...you've agreed with me that *Rameau's Nephew* has similar scenes which go against the guidelines. You've agreed with me that *The Art of Worldly Wisdom* does the same thing as far as you know. Will you agree with me that of the nine minutes of Al Razutis' film, the three cuts that the Board wants, total 28 or 29 seconds...that we have the scene of masturbation, I think, which is three or four seconds. We have a scene of fellatio, which I think is seven seconds and we have a scene of rear copulation, which I think is 15

seconds. All right, not significant lengths of time for each of those, is there? It's not significant, is it?

A. Well, I think, you know, if you are viewing it, it's more significant than it sounds, but go ahead.

Q. Well, *Not a Love Story*...

A. Yes.

Q. You remember that...the scene of those acts, that I have discussed with you, go on for much longer periods of time, do they not?

A. You are going to have to forgive me because I have seen so many films, really I don't remember the time sequence in things.

Q. All right. Well, let's leave apart the time then...the timing then. What's the difference between those films, which have the similar types of scenes which go against the rules of the Censor Board, and Al Razutis' film...how do you distinguish?

A. Well, I think it's very...I think what you have to be very clear about is the same type of scene with a different camera angle, with a different kind of setting or purpose...the same type of scene in different films can be...have a different impact altogether and you cannot compare one film with another. Now, example...

Q. All right, just excuse me for a moment. I will give you a chance...so, you mean context has a lot to do with it?

A. And explicitness.

Q. And explicitness?

A. And camera angle...many things.

Q. Just excuse me for a moment, because we have the evidence of Mr. Walker, yesterday. He's a member of your Board?

A. Umhumm.

Q. And I went over this with him, ad nauseum yesterday...and even His Honour agrees with it. He said context didn't matter. If you have any of these scenes of copulation, or rear copulation, or fellatio, or masturbation, it didn't matter what context it was in; that's out, as far as he is concerned...for the Censor Board. It contravenes the rules of the Censor Board.

A. It contravenes the guidelines for commercial distribution, yes.

Q. But you don't agree with him because you say, ah, we will let those things go through on a special permit provided we talk about camera angle, explicitness, length; that type of thing. Is that what all we're down to?

A. You know, if you're not actually working...I think the problem is, if you're not working with the guidelines and with the infinite number of films that we screen every year, it's hard to explain how context, camera angles, the closeness or the distance of the shots...would certainly govern the report and the assessment of the film as a whole.

Q. That's not what Mr. Walker says and he's a member of your Board, and he screens these

films...that's not what he says. He says, context doesn't matter. Is there a divergent opinion amongst the Board?

'But There are Degrees...'

Alan Lenczner's cross-examination of Mary Brown continues in exploring guidelines applied to censoring a variety of films:

A. We're talking about *A Message From Our Sponsor*.

Q. Yes, but...I'm back to it...I'm sorry. Doesn't *Not a Love Story* involve...you've agreed, it involves a scene of copulation, of cunnilingus, of fellatio...aren't those explicit portrayals of sexual activity...are they?

A. Okay, just a moment. They are, but there are degrees...there is gratuitous expression...there is gratuitous portrayal...there's...any number of factors would influence the Board's decision.

Q. So you can't tell us...so, it's a matter of degree is what you are telling us?

A. It would depend on each Board's perception of the film...each Board member's perception of the film and their recommendation, which would be based on a lot of different things, but...which would...the bottom line would be the guidelines agreed to by all the members.

Q. All I guess I am trying to point out is that the guidelines are so broad, that when you say "explicit portrayal of sexual activity", that covers the film *Not a Love Story*...it covers *Rameau's Nephew*, which you've told us about...we've all agreed to that. So, what you are saying is, that isn't the beginning and the end of the question or the answer.

A. I would say that the guidelines also say that where these are guidelines, they must...each film must be viewed on its own merits and the guidelines must be applied with flexibility in view of the specific film...that's part of our official guidelines, are in the preamble.

Q. All right. Now, just a slightly different area...are you aware of the film called *Primal Scream* in English...known as *Mourir a Tue-tete* in French?

A. Yes.

Q. And you've seen that?

A. Yes.

Q. And would you agree with this statement, that it begins with a brutally humiliating attack, during which a rapist urinates on his victim in close-up?

A. Yes.

Q. And would you say that that...a rape scene with urination on the victim is an explicit portrayal of sexual activity, under your guidelines?

A. It depends on how explicit the rape is.

Q. Well, wasn't it pretty explicit in that film?

A. Not as I recall. It was a pretty...a pretty horrendous

A. There are certain things that would be bottom line I'm sure, for commercial distribution again.

dous impression was created, but like much of the very extreme films...in the Peckinpah era you had violent rapes and so on, but it was handled in such a way that the visual was not that...it was not that explicit.

Q. And you allowed that film to be shown...the Board did at the National Art Centre in Ottawa a couple of years ago?

A. I know that we permitted that film to be shown, yes.

Q. At the National Art Centre?

A. Well, I don't remember where, but...

Q. You are not disputing that?

A. No, I'm not.

Q. And that would accommodate a huge audience, am I right?

A. I don't...I'm not sure. I imagine...yes. I don't think there was any problem with releasing that film, was there?

Q. No, there was no problem. I just...all right. Now, one other film I wanted to touch on briefly *The Tin Drum*, and I'm not going into that whole history, but that film has a scene of a boy putting his face on a naked woman's pelvic area, putting his hand up a woman's leg and watching his father having sex with a young woman.

A. Correct.

Q. Agreed?

A. Agreed.

Q. And you saw that film?

A. Yes, I did.

Q. And the Board did?

A. Yes.

Q. And that film, did you know, was seen in Saskatchewan without any cuts whatsoever? Did you know that?

A. It's possible, yes.

Q. You aren't aware of that?

A. I probably was at the time because we were monitoring other jurisdictions.

Q. And it was approved intact without cuts in Quebec, British Columbia and Manitoba?

A. It was not approved in England where they have a concern about children.

Q. All right, but it was in this country. It was shown without cuts, and approved...Quebec, British Columbia, Alberta, Manitoba and Saskatchewan, right?

A. Umhumm.

A. You are nodding. You have to answer.