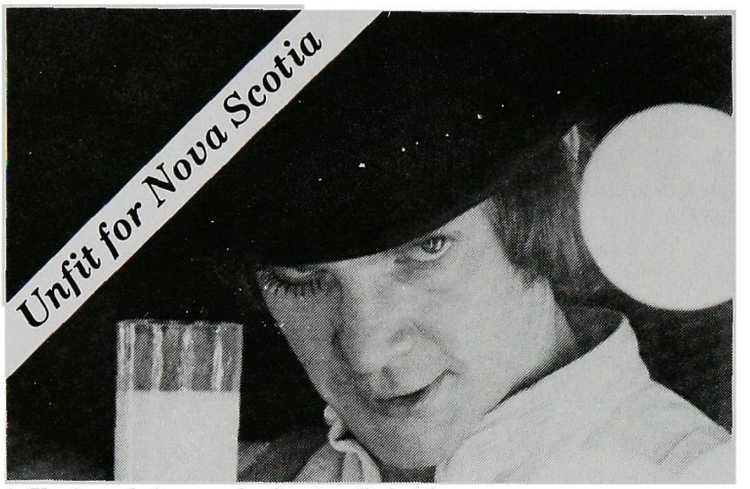
censorship or classification (3)



A Clockwork Orange by Stanley Kubrick

nova scotia
beyond censorship

A private citizen took the Nova Scotia Board of Censors to court and won his case; the repercussions are echoing through the province, and an appeal is in the works. Lon Dubinsky measures the importance of this action and introduces us to censorship in Nova Scotia in this, the third part of *Cinema Canada's* series on censorship.

by Lon Dubinsky

Over the years Nova Scotia has become known as the province that banned both **Last Tango in Paris** and **A Clockwork Orange** and as the purveyor of cut versions of films that would have mystified even the most editorially conscious of the legendary Hollywood Studio bosses. However, Nova Scotia is often a province that thrives on extremes and since February of this year, it has no censorship policy to speak of. Its Board of Censors, which had one of the most sweeping terms of reference in Canada, is now gainfully unemployed.

About two years ago, Jerry McNeil, a former newspaper editor now with the Canadian Press, questioned the censor board's decision to ban **Last Tango in Paris.** On considering legal action, he discovered that he could not directly take the censor board to court over their position. What first had to be decided was whether McNeil as a citizen had the right to take an administrative board of this kind to court. Beginning from that premise, he took his case all the way to the Supreme Court of Canada and won. During the past six months he returned to the censorship issue itself. Recently, the appeal division of the Nova Scotia Supreme Court ruled in favor of McNeil claiming that censorship is a federal matter to be dealt with under the Criminal Code and thus not subject to provincial jurisdiction.

For McNeil it has been a demanding two years that have fortunately culminated in more than a personal victory. The McNeil case not only challenged film censorship, it also questioned whether government ought to intrude into matters regarding the public's right to make direct judgments and choices.

The Nova Scotia government is most perturbed about the Supreme Court decision and the Attorney-General has announced that the Province will consider appealing the decision in the Supreme Court of Canada. The other provinces are expected to support Nova Scotia in its appeal as any ruling would affect the matter of film censorship throughout the country. The present court decision has given the government its share of sympathizers but it has also created an unusual alliance among its supporters as both civil libertarians and theatre chains have welcomed the decision.

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The tango in **The Last Tango in Paris** by Bertolucci

The appeal in the Supreme Court of Canada creates a federal-provincial conflict regarding jurisdiction and constitutionality. What the Supreme Court will actually do is difficult to predict. Here are three possible scenarios. At best we can hope for an abolition of censorship based solely on civil liberties and human rights. Second, the court may rule that censorship is under federal jurisdiction but make that claim in line with the Nova Scotia Appeal Court's reference to the Criminal Code. This careful ruling might cause Parliament to enact specific federal legislation over and above the current provisions in the Criminal Code against obscenity. The third choice would be a court decision to return censorship to provincial jurisdiction thus activating once again, at least in Nova Scotia, the archaic Board of Censors.

These possible directions indicate that the McNeil case has far-reaching implications. Whatever its outcome, the court's decision will set a legal precedent concerning not only film but censorship of other art and mass media. The Supreme Court is well aware of this prospect and judging from its rather narrow rulings on such publicly active issues as abortion, it might choose to handle the censorship case very cautiously.

Besides the court decision, film censorship has even a broader context. Not only is it a means of preventing the public from seeing certain films, it is also very much a part of the film distribution and exhibition network in Canada. Clearly the McNeil case revealed only one-tenth of this federal-provincial complexity. Hopefully the McNeil case will make it permissible to see anything, but the accompanying question will be *how* do we get to see it. The Council of Canadian Filmmakers is about to tackle, under existing federal combines laws, the matter of monopoly of film distribution and exhibition by the Famous Players and Odeon chains. However, just as censorship is a provincial nightmare, laws governing film distribution and monopoly can also be found on the provincial statute books. Let's return to the Nova Scotia experience as an example of provincial control.

The Theatres and Amusements Act contains a number of general laws covering film distribution and exhibition and they seem quite tailor-made to meet the needs of the theatre chains. There is one section in this act that is pathetically unique to Nova Scotia:

"8. (1) Every moving picture exhibitor who exhibits other than 35mm film for gain shall hold a license which is in force.

(2) The fee for such license shall be $10.00 and the license shall expire 30 days after it is issued, provided that the maximum fee shall be $60.00 in any one.

(3) ***No such exhibitor shall exhibit any motion picture film (a) in any city or town in which there is a licenced 35mm theatre,*** *or*

(b) ***in a municipal district within five miles of a licensed 35mm theatre in the same district.*** *For the purpose of this subsection, mileage shall be computed by the shortest public highways.*

(4) The provisions of this section shall not apply to the exhibition of moving picture films shown in a private home or in connection with the work of schools, colleges, churches, hospitals, naval, military or air force establishments."

Nova Scotians have come to call the underlined provision the 'Paramount Law'. It is a form of film consorship as it prohibits certain kinds of films to be shown and it favors specific forms of distribution and exhibition. It is a closely guarded provision that continues to be enforced. In fact, when you make a telephone call about the provision to the Amusement Regulations Board which administers the Theatres and Amusements Act, they become very defensive. The McNeil case certainly questions the existence of the Board of Censors but it does not have the scope to question provisions of this kind.

The McNeil case has made film censorship a national issue but in doing so it has exposed the federal and provincial entanglements that account for the sorry state of film distribution and exhibition in Canada. Those concerned with the control of distribution and exhibition should now go beyond the specific terms of reference of the McNeil case. The case, together with the Council of Canadian Filmmakers recent intentions, will hopefully precipitate this, provided that the provincial laws governing the film monopoly are confronted as well. It is about time, as recent apologies and excuses for the state of film in Canada were beginning to sound like another form of censorship. □