

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Tuesday, 27 September 1983

LAW REFORM BILL (NO. 2)

Proposed Amendments

Mr O'FLYNN, in Committee, to move the following amendments:

Clause 3 (1): To omit from the definition of "Document" in line 18 the word "film,".

To insert the word ", film," in the said definition after the word "paper" in line 20.

To omit paragraph (a) of the definition of "Document" (lines 24-26), and substitute the following paragraph:

"(a) Any cinematograph film within the meaning of the Cinematograph Films Act 1976 in the form in which it is approved by the Chief Censor for exhibition under that Act; or

To omit from the definition of "film" the word "A" where it appears in lines 31 and 32.

Clause 4 (1): To omit paragraphs (b) and (ba) and substitute the following paragraphs:

"(b) Prints or otherwise reproduces or makes copies of any indecent document; or

"(ba) Publishes or distributes any indecent document or sound recording; or"

EXPLANATORY NOTE

It may appear that the first two proposed amendments to *clause 3* do no more than move the word "film" from one place in the definition of "Document" to another. In fact they effect a significant change. Their purpose is to eliminate the ambiguity presented by the fact that the word "film" can be used as meaning *unexposed* film, or exposed film on which photographs have been taken. The word was clearly used in each of those senses in different places in the clause as originally drafted. Obviously it is exposed film carrying photos that is to be included in the definition of "document" and these amendments make that clear. The word "film" will form part of a phrase reading:

"... any paper, *film*, or other thing which has printed or impressed upon it or otherwise shown thereon any word, statement, sign, picture, or representation;"

The third amendment to *clause 3* makes it quite clear that a cinematograph film is excluded from the definition of "document" (and therefore cannot be held indecent) only in the form in which it has been approved by the censor for exhibition. The clause in the Bill left room for doubt whether the exemption could apply to part only of a film approved by the film censor or only to the whole film. In the former case it would not be unlawful to make a copy of the salacious parts of such a film, removed from the context which had enabled the censor to find that the artistic merit in the whole film justified their inclusion, and exhibit that, though it was plainly indecent. The amendment removes that possibility. Only the *whole* film is protected and a part may be found to be an indecent document despite the censor's approval of the whole.

The fourth amendment to *clause 3* which omits the indefinite article "a" before the words "film" and "videotape" in the definition of "film" is necessary grammatically if those words are to mean any *part* of a film or videotape and not a complete film or videotape only.

The purpose of the first amendment to *clause 4* is to make it an offence in itself to make a copy or reproduction of a film or videotape, just as it is at present an offence in itself to print any other indecent document. The Bill proposed to make it an offence to make copies of a film or videotape only if it was done "for the purposes of sale or distribution to the *public*" though it would have remained an offence simply to "print" any other indecent document.

The amendment removes the distinction between films and videotapes on the one hand and all other documents on the other.

The second amendment to *clause 4* makes it an offence to publish or distribute *any* indecent document or sound recording. Without this provision making copies would be an offence but publishing or distributing, even by sale, might not be.
