

**BILL C-18: AN ACT TO AMEND  
THE TELEFILM CANADA ACT  
AND ANOTHER ACT**

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## LEGISLATIVE HISTORY OF BILL C-18

### HOUSE OF COMMONS

Bill Stage	Date
First Reading:	1 November 2004
Referred to Committee:	15 November 2004
Committee Report:	3 December 2004
Report Stage and Second Reading:	10 December 2004
Third Reading:	13 December 2004

### SENATE

Bill Stage	Date
First Reading:	13 December 2004
Second Reading:	23 February 2005
Committee Report:	22 March 2005
Report Stage:	
Third Reading:	23 March 2005

Royal Assent: 23 March 2005

Statutes of Canada 2005, c.14

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print**.

Legislative history by Peter Niemczak

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BILL C-18: AN ACT TO AMEND  
THE TELEFILM CANADA ACT AND ANOTHER ACT\*

BACKGROUND

Bill C-18, An Act to amend the Telefilm Canada Act and another Act, was introduced in the House of Commons and given first reading on 1 November 2004. The bill was referred to the House of Commons Standing Committee on Canadian Heritage on 15 November 2004.

The *Telefilm Canada Act* established the corporate body Telefilm Canada (the “Corporation”), which is a federal cultural agency that seeks to develop and promote Canadian audio-visual industries, including film, television, new media and music.

First created as the Canadian Film Development Corporation in 1968, Telefilm Canada’s original role was to foster a feature film industry in Canada and to do so mainly by investing in films with “significant Canadian creative, artistic and technical content.”

Its stated mission now is to provide financial assistance and strategic leverage to the industry in producing high-quality works such as feature films, drama series, documentaries, children’s shows, variety/performing arts programs, and new media products that reflect Canadian society, including its linguistic duality and cultural diversity.<sup>(1)</sup>

This bill amends the *Telefilm Canada Act*, updating it so that it more accurately reflects both the industry and the practices of Telefilm Canada. For example, it updates the language used in the legislation from “feature film production” to the more expansive and flexible term “audio-visual industry,” capturing television, new media and music as well as film. In addition, it sets out a mandate for the Corporation – something that was lacking in previous versions of the legislation.

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\* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this legislative summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

(1) Telefilm Canada Web site, “Mission and Successes,” <http://www.telefilm.gc.ca/01/11.asp>.

The bill further makes a consequential amendment to the *Financial Administration Act*. (A consequential amendment in a bill amends any other acts that are affected by that bill.) In this case, Bill C-18 amends the *Financial Administration Act* to make Telefilm Canada subject to certain provisions of the Act concerning transactions requiring either parliamentary or Governor in Council authorization, notification of such a transaction, dissolution or sale of the Corporation, disposal of property and borrowing money. This change may be seen as an attempt to introduce greater accountability into the Corporation's financial transactions.

## DESCRIPTION AND ANALYSIS

Many of the amendments proposed in this bill are textual changes to the existing Act, replacing and updating older terms for language more in keeping with modern industry and practices. Some of the further changes are coordinating amendments that simply make the necessary alteration in language or section numbering so that there is consistency throughout the Act.

There are, however, two amendments of significance. The first is the creation of a mandate for the Corporation, giving it authority to pursue the development of film, television and other audio-visual productions. The *Telefilm Canada Act* currently lacks an articulated mandate of any kind, and this amendment is seen as a remedy for that particular situation.

The second significant amendment concerns provisions of the *Financial Administration Act*. Telefilm Canada is exempt from certain provisions of that legislation; while preserving this exemption, Bill C-18 states that particular sections relating to financial accountability are to apply to the Corporation. This constitutes a change from the situation as it currently exists.

### A. Amendments to the *Telefilm Canada Act*

Clause 1 repeals the definitions in the Act relating to "film." Clause 2 replaces this term with the more updated, broad and flexible term "audio-visual." This newer term is then carried throughout the rest of the bill.

The majority of the changes to the Act are found in clause 4, which replaces section 10 of the Act in its entirety. It introduces the newly created mandate for Telefilm Canada: the Corporation is to foster and promote the development of the audio-visual industry in Canada and to act in connection with agreements entered into with the Department of Canadian Heritage in the audio-visual or sound recording industries. The heading for this section is changed from “Objects, Powers and Duties” to “Mandate and Powers” in the English version; the heading stays the same in the French version: “Mission et pouvoirs” (clause 3).

In addition to using the updated term “audio-visual industry,” clause 4 empowers the Corporation to act in connection with agreements it enters into as part of its powers, and gives it the capacity, powers, rights and privileges of a natural person in order to carry out its mandate.

Clause 4 also modifies section 10 of the Act by adding a new subsection (4), which restricts the ability of the Corporation to borrow money within the meaning of Part X of the *Financial Administration Act* otherwise than from the Crown. This restriction does not impede the ability of Telefilm Canada to guarantee loans for audio-visual productions and their distribution.

The information concerning Canadian content and ownership in section 10(2) of the Act is updated to reflect the more modern language of audio-visual production.

Clause 4 further amends section 10 of the Act by giving Telefilm Canada the authority to act in the sound recording industry under agreements made with the Department of Canadian Heritage.

Modifying current section 10(4), clause 4 states that the Corporation shall carry out its mandate in the broader context of the policies of the Government of Canada with respect to culture, and consult and cooperate with any government board or agency that has a mandate related to that of Telefilm Canada.

Clause 7 of the bill states that certain sections of the *Financial Administration Act* apply, with any necessary modifications, to Telefilm Canada. These provisions relate to transactions requiring either parliamentary or Governor in Council authorization, notification of such a transaction, dissolution or sale of the Corporation, disposal of property and borrowing money.

## B. Consequential Amendment to the *Financial Administration Act*

Clause 8 amends section 85(1) of the *Financial Administration Act* by deleting Telefilm Canada from the list of Crown corporations exempted from Divisions I to IV of that Act; this exemption is immediately restored in the newly created section 85(1.1).

The exemption, however, is notably subject to the application of those sections of the *Financial Administration Act* related to transactions requiring either parliamentary or Governor in Council authorization, notification of such a transaction, dissolution or sale of the Corporation, disposal of property and borrowing money.

This amendment appears to be an attempt to make the Corporation's financial transactions more accountable and transparent.

## C. Transitional Provision

Transitional provisions are used in bills and legislation to provide for the process of change from an earlier act to the one that replaces it, or to phase in how a new or an amending act applies to persons affected by it.

Clause 9 in Bill C-18 is a transitional provision stating that everything done by Telefilm before the coming into force of this bill is deemed to be valid to the same extent as it would have been were it done after this bill comes into force. This is to ensure that actions that might have been performed in the absence of a clear mandate to do so are not void because of that lack of mandate.

## COMMENTARY

The lack of a mandate in Telefilm Canada's legislation was noted in *Making our Voices Heard: Canadian Broadcasting and Film for the 21<sup>st</sup> Century*, the 1996 Mandate Review of the Canadian Broadcasting Corporation, the National Film Board and Telefilm Canada.<sup>(2)</sup>

The Mandate Review Committee suggested that Telefilm's basic mandate be defined through legislation and recommended that the Corporation "be given a mandate to pursue the cultural objectives of the Government of Canada in film, broadcasting and new

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(2) The Mandate Review Committee, *Making our Voices Heard: Canadian Broadcasting and Film for the 21<sup>st</sup> Century*, Minister of Supply and Services Canada, Ottawa, 1996.

media.”<sup>(3)</sup> This recommendation recognized both the lack of a mandate in the legislation, and the changing nature of the industry and of the Corporation’s involvement in it, expanding from feature films to a wider range of audio-visual activity.

*Our Cultural Sovereignty: The Second Century of Canadian Broadcasting*, the 2003 report of the Standing Committee on Canadian Heritage,<sup>(4)</sup> made a similar recommendation that the mandate of Telefilm Canada be reviewed.

The amendments in Bill C-18 would address both these concerns regarding mandate and industry changes.

In *Our Cultural Sovereignty*, the Standing Committee on Canadian Heritage noted that Telefilm Canada does not produce reports that meet the criteria and principles of the Auditor General or the Treasury Board. This makes the accountability process more burdensome and less transparent than might be otherwise. The Committee therefore recommended that a renewed broadcasting policy – which would include Telefilm Canada – include clear, measurable goals and objectives as well as a process for evaluation and accountability.<sup>(5)</sup>

The amendments in Bill C-18 relating to the *Financial Administration Act* may be viewed as addressing this concern about accountability for the use of public funds.

No media attention has focused on Bill C-18 to date.

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(3) *Ibid.*, p. 6.2.

(4) Standing Committee on Canadian Heritage, *Our Cultural Sovereignty: The Second Century of Canadian Broadcasting*, House of Commons, Ottawa, 2003. See, especially, chapters 5 and 19 and Recommendations 5.7 and 19.4.

(5) *Ibid.*, chapter 19, Recommendation 19.13.