

ADULT FILMS AND HEALTH AND SAFETY: DEBBIE DOES GOGGLES?

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Provincial and federal health and safety legislation is designed, among other things, to protect workers by promoting safety in the workplace to prevent injuries and occupational diseases. These goals have expanded in recent years to address conduct such as workplace harassment and bullying. In traditional work settings such as industrial establishments and offices, the reach of the law is clear.

From time to time, however, we are reminded that there are some less "traditional" workplaces in which the application of legislated safeguards may be less obvious.

Last month the California Occupational Health and Safety Standards Board addressed whether more stringent safety guidelines ought to be imposed on employers in the state's estimated \$13 billion porn industry. As a result of a petition filed by the AIDS Healthcare Foundation, changes to the California Code of Safety Regulations designed to reduce the risk of transmitting bloodborne pathogens such as HIV and hepatitis B and C, and sexually transmitted diseases such as herpes, gonorrhea and chlamydia, came before the Board.

Among the proposed requirements were the mandated use of condoms (which are currently required in Los Angeles County as a result of an earlier measure) and other protective equipment like eye protection and dental dams (to protect against the risk that bodily fluids would reach the face), as well as rules regarding the disinfection of sex "toys", general sanitation, the handling of contaminated waste and the ready availability of medical assistance.

As reported in the February 18, 2016 edition of The New York Times (*Actors in Pornographic Films Fight Proposal to Enforce Safety Regulations*), the film industry "turned out in force...to oppose" the regulations, arguing "that wearing goggles and other types of face protection would make their films unsellable". Four yes votes were required of the seven member Board to pass the new standards. With one position vacant and one member absent, a three to two vote in favour of the guidelines was insufficient to have them passed. The issue will come up again when the *California Safer Sex in the Adult Film Industry Act* makes its way to a state-wide ballot in November, 2016.

It is only natural that the issue of health and safety would find its way into the adult film world. While statistics

regarding the size of the adult film industry in Canada are not readily available, the fact that there is a burgeoning industry is clear. As recently as 2014 the CRTC cited the Canadian specialty cable channels AOV Adult Movie Channel and AOV Action Clips for possible non-compliance of their licences in providing less than the mandated 35% Canadian programming over the broadcast year and evening broadcast period. Canadian film producers no doubt took notice.

While the Ontario Ministry of Labour has issued safety guidelines for film and television production, those measures are clearly designed for mainstream film work. For example, it is difficult to imagine that guidelines addressing "Skydiving" or "Underwater Stunts" were intended for the adult film industry. That said, the overriding statutory duty of an employer to take every precaution reasonable in the circumstances for the protection of a worker applies equally to XXX-rated film production. Time will tell if the Canadian adult film industry manages to attract the same attention from health and safety officials as its California counterpart.

Our late Prime Minister Pierre Trudeau once famously said that the state has no business in the bedrooms of the nation. The bedrooms of the production stage may be altogether another matter.

by David Elenbaas

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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