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**SUBMISSION TO FILM AND LITERATURE BOARD OF REVIEW FOR  
CONSIDERATION AT MEETING : 2 OCTOBER 2015**

**RE: INTO THE RIVER, BY TED DAWES**

**1. PEN (NZ): “A BODY LIKELY TO BE AFFECTED BY THE BOARD’S DECISION”**

I am the freedom of speech spokesperson for PEN (NZ). This is a voluntary role. PEN is a body likely to be affected by the Board’s decision. We represent writers whose work has been censored or whose rights have been curtailed.

PEN was founded in England in 1921 to represent “Poets, Essayists and Novelists.”

It was established with the following aims:

1. To promote intellectual co-operation and understanding among writers;
2. To create a world community of writers that would emphasize the central role of literature in the development of world culture; and,
3. To **defend literature against the many threats** to its survival which the modern world poses.

PEN (NZ) is therefore an interested party in the review which is to be conducted on 2<sup>nd</sup> October.

PEN is now a world-wide organization of writers. It has grown to include centres on six continents, and it represents the interests of writers. It has a special division which supports writers imprisoned for their work. PEN stands by the often quoted words of Voltaire: ‘I may not agree with what you say, but I will defend to the death

your right to say it.' That is why PEN defends poets, novelists, journalist, essayists and all writers. Even those who offend. PEN's strength is that it defends authors who have the courage to speak out about injustice. Aron Atabek, currently serving a prison term for writing *The Heart of Eurasia*, (a book that fiercely criticised President Nursultan Nazarbayev) is one such author PEN (NZ) is proud to defend.

PEN affirms that:

- Literature knows no frontiers and must remain common currency among people in spite of political or international upheavals.
- In all circumstances, and particularly in time of war, works of art, the patrimony of humanity at large, should be left untouched by national or political passion.
- Members of PEN should at all times use what influence they have in favour of good understanding and mutual respect between nations; they pledge themselves to do their utmost to dispel race, class and national hatreds, and to champion the ideal of one humanity living in peace in one world.

As spokesperson for PEN (NZ), I believe the Board cannot make a decision of this importance in isolation. There are important historical, political, and literally background facts that impact upon the decision. For this reason I set out below a number of background factors I consider pivotally important for the Board to be aware of when it considers *Into the River* on 2<sup>nd</sup> October.

## **2. ORIGIN OF UNIVERSAL DECLARATION OF HUMAN RIGHTS**

I have a Ph.D. in law from King's College (London), a significant section of which examined the Universal Declaration of Human Rights, Article 19 of which states:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

My Ph.D. examined the role of propaganda in Nazi Germany. You can't study that and not be interested in freedom of speech and freedom of expression. After all, Hitler's book, *Mein Kampf*, which he wrote while imprisoned in 1924, is pivotal to his rise to power. If you ever needed proof in the power of the written word then *Mein Kampf* would surely be it.

I give frequent talks to authors and have written in local media and *The New Zealand Author* about freedom of speech. In these talks, I explain that freedom of speech and freedom of expression are rights that are 'messy'. Most people agree with the concept of freedom of speech until they come across a viewpoint they don't agree with. But the basic premise of freedom of speech is that we can discuss things intelligently. That we do not need to censor information or ideas. Because when we begin to censor ideas we have to draw lines. And it is the drawing of lines that is difficult, and which poses serious threat to democracy and to the freedom of individuals.

If you are an advocate for freedom of speech, then you believe in it even for those views that you despise. As Salman Rushdie (past President of PEN and author of *Satanic Verses*) acknowledges: 'One of the problems with defending free speech is you often have to defend people that you find to be outrageous and unpleasant and disgusting.' But without the freedom to offend, he argues, freedom to speech ceases to exist.

One can't help thinking that if some limits were applied to freedom of speech, we would perhaps have been able to stop some of the horrors of the concentration camps, for instance. This argument suggests that if the hate propaganda against Jews were banned in Nazi Germany, perhaps the movement would not have gained so much momentum. Of course, the problem with this view is that freedom of speech *was* banned in Nazi Germany. Hitler was in favour of freedom of speech, but *only* for those views he agreed with. For those he did not he sent to camps and silenced. He knew that information was power. And that power came from

controlling access to information. I dwell on this period of history because it was as a result of the atrocities of the Second World War that the *Universal Declaration of Human Rights* was born. It is my firm belief from reviewing this period of history that more harm has been done by those limiting freedom of speech, in the mistaken belief that this is for the 'good' of society, than has been done by allowing people to access material and discuss intelligently their views.

### **3. EROSION OF RIGHTS**

The Film And Literature Board of Review is called upon to determine the fate of a highly regarded literary work, *Into the River*. In reaching his decision to grant an interim restriction order Dr D.L. Mathieson QC, President of the Film and Literature Board of Review stated one of his reasons as follows:

'The correct classification of *Into the River* under the Act will operate as a **semi-precedent**, and will exert a **significant influence** upon other decisions portraying teenage sex and drug-taking' [emphasis added]

This statement must be read against the Bill of Rights Act 1990, which states:

Freedom of expression  
Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.

In 1985 the White Paper tabled in Parliament entitled 'A Bill of Rights for New Zealand', expressly states:

'No Government and no Parliament we are likely to have in New Zealand in the foreseeable future are going to attempt to sweep away basic rights...What is in point is the continual danger- the constant temptation for a zealous Executive- of making **small erosions of these rights**. In some instances there may be a plausible argument based on expediency. **But each small step makes the next small step easier and more seductive.**' [emphasis added]

In granting an interim ban for publication in relation to *Into the River*, Dr D.L. Mathieson QC was not only in potential breach of his obligations under the Bill of

Rights, but in reaching his decision did so with a view that it was drawing a 'line in the sand' (as it were), that would become a benchmark of sorts for decisions to follow.

This makes the decision more worrying. In reaching his decision Dr D.L. Mathieson QC, appeared to be attempting to establish firm boundaries. He sought to send signals of the sort of material that should be published and distributed in New Zealand. The right to freedom of expression, and its ancillary right to freedom of speech, is one of the most sacrosanct rights that citizens of a country enjoy. In considering freedom of expression for the purposes of the Canadian Charter of Rights and Freedoms, Justice Cory opined:

'It is difficult to imagine a guaranteed right more important to a democratic society.'  
[Edmonton Journal v Alberta Attorney General [1989] 2 S.C.R. 1326, 1336]

This sentiment is echoed in the White Paper, 'A Bill of Rights for New Zealand', which states (p 79): 'This provision [Freedom of Expression] is of central importance in a democratic state'.

We cannot set aside the right to freedom of expression merely because we find a particular view offensive.

While the Bill of Rights was meant to act as a safeguard against the erosion of rights, it would appear that in his ruling to impose an interim ban on *Into the River*, the President of the Film and Literature Board of Review was not only comfortable with unilaterally imposing restrictions on freedom of expression in this country, but *sought* to do so in a way that would see his ruling would operate as a 'semi-precedent' (to quote his words).

For the purposes of the meeting of the Film and Literature Board of Review, I believe that any decision to restrict access to *Into the River* must be considered only

after a robust consideration of the Board's obligations under the Bill of Rights. It is helpful to consider the following factors during this meeting:

- i) The threat of small erosion of rights (as warned against in the White Paper), and
- ii) Freedom of expression is a fundamental and pivotal right of central importance to a democratic society.

Any restriction on publication should not be made lightly.

#### **4. GLOBAL EROSION OF FREEDOM OF SPEECH / FREEDOM OF EXPRESSION**

It may also be helpful for the Board to consider any decision they make in a wider global context.

The beginning of the year was heralded with the deaths of 12 people following a bloody attack on the offices of the French satirical magazine Charlie Hedbo. The editors and employees of Charlie Hedbo were not freelance journalists in war-torn countries. They were people sitting at computer desks near the tourist mecca of Paris's Bastille monument.

Their deaths remind us we should never take the right to freedom of speech for granted.

Erosion of freedom of speech globally is a worrying trend. The *Reporters Without Borders World Press Freedom Index* ranks the performance of 180 countries according to a range of criteria that include media pluralism and independence, respect for the safety and freedom of journalists, and the legislative, institutional and infrastructural environment in which the media operate. NZ is currently in currently ranked 6<sup>th</sup> in the world. The 2015 world Press freedom index indicates a ***worldwide deterioration*** in freedom of information. This is true across all five

continents. The drastic decline in freedom of information shows that two-thirds of all countries performed less well than the previous year.

According to Reporters Without Borders, a total of 720 journalists have been killed since 2005. Last year alone saw 66 killed, 178 imprisoned, and 119 kidnapped. One need look no further for visual reminders that the written word is still powerful than the beheadings by ISIS of freelance journalists James Foley, Steven Sotloff, and Japan's Kenji Goto.

Severe restrictions placed on *Into the River* would suggest that the deterioration of right to freedom of expression, information, and speech, is now spreading across all literary genres, whether it be nonfiction, journalism, or fiction.

To continue in this trend sets a **more dangerous precedent** than allowing a book, that some find offensive, to be available for public consumption.

## **5. CONCLUSION**

For one person *Into the River* is offensive, for another, passages of the Bible might be deemed highly offensive for references to incest, infanticide, murder, and rape. We are at a turning point, not just in New Zealand, but worldwide, and freedom of expression/ freedom of speech is far too important a right to be swept away because someone finds a work 'offensive'.

It strikes me that the words of writer and activist Enoh Meyomesse, recently released from Kondengui Prison in Cameroon, apply equally to the work of Ted Dawe, as they do to imprisoned writers around the world:

Why Do You Treat Me Like This

why do you treat me like this

simply because I don't

see things your way

have you not freed words  
have you not freed spirits  
have you not freed souls  
have you not freed tongues

oh leaders of this regime  
custodians of my people's destiny  
why do you treat me like this  
simply because I don't  
see things your way

Dr Dana Wensley

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