

**Notice of Appeal Under Section 116 of the
Provincial Offences Act**
Courts of Justice Act

1. Superior Court of Justice at 361 University Avenue, Toronto, Ontario, M5G 1T5.
2. Appellant is Defendant.
3. Name of Appellant: Glad Day Bookshop Inc. Address for service: c/o Frank Addario, Sack Goldblatt Mitchell, 20 Dundas Street West, Suite 1130, Toronto, Ontario, M5G 2G8.
4. Counsel for Appellant: Frank Addario
Address for service: Frank Addario, Sack Goldblatt Mitchell, 20 Dundas Street West, Suite 1130, Toronto, Ontario, M5G 2G8.
5. Name of the Respondent: Her Majesty the Queen
6. Counsel for the Respondent: Crown Law Office - Constitutional, Ministry of the Attorney General, 720 Bay Street, 8th Floor.
7. Decision of Ontario Court Justice Bruce Young.
8. Date of Decision: January 21, 2002.
9. The Appellant appeals against its conviction by the Ontario Court of Justice at 60 Queen Street West, Toronto, Ontario, M5H 2M4.
10. N/A
11. Description of Offence: Distributing or Offering to Distribute a Film Not approved by the Ontario Film Review Board.
12. (1) Statute: *Theatres Act*;
(2) Section: s. 58.
13. Date of Offence: April 2000.
14. Plea at Trial: Not Guilty.
15. The grounds for Appeal are:
 1. The trial judge erred in concluding that ss. 33,37 and 38 of the *Theatres Act* are not *ultra vires* the province by virtue of s. 91(27) of the *Constitution Act*, 1867.

2. The trial judge erred in not finding that ss. 3(7)(a) and (b), 33, 36,37, 38, and 58 of the *Theatres Act* and ss. 14(2), and paras. 12, 13 and 14 of s.38 of Regulation 1031 under the Act violate s. 2(b) of the *Canadian Charter of Rights and Freedoms* in a manner that is unjustifiable under s. 1; and therefore he erred in finding that s.37(1) of the Act could be constitutionally applied to the Appellant.
 3. The trial judge erred in concluding that s. 36 of the *Theatres Act* and paragraphs 12 to 14 of s.38 of Regulation 1031 under the Act are not *ultra vires* the jurisdiction of the province by virtue of s. 91(2) of the *Constitution Act, 1867*.
16. In support of this appeal, the Appellant relies upon the following:
1. The transcript of proceedings; and
 2. The Notices of Constitutional Question, dated November 22, 2000 and May 14, 2001.
17. The relief sought is:
1. An acquittal for the defendant/Appellant; and
 2. A declaration of invalidity in accordance with the terms of the Notices of Constitutional Question dated November 22, 2000 and May 14, 2001.
- *Note: because the Court of Justice is not a superior court, the Appellant could not seek declaratory relief under s.52 of the Constitution Act, 1982. The Appellant now seeks that relief from this Honourable Court. The challenge to the constitutionality of the *Theatres Act* and the regulations thereunder on this appeal is framed in exactly the same terms as in the court below, except for the remedy sought.
18. The Appellant intends to be present by counsel and to present the issues and arguments orally.
 19. The Appellant does not intend to make a motion for an order that the Appeal be heard by way of a new trial in the appeal court.

20. Date: February 19, 2002.

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To: Crown Law Office (Constitutional)
Department of Justice
Alvin Torbin, Ministry of Consumer and Business services

Registrar of the Court