INSIDE THE CRTC DECISION

Marc Gervais on the pay-TV controversy

interview by Jean-Pierre and Connie Tadros

"The CRTC really thrashed out the question of a universal system... Given the functioning of our type of economic, political system, there were lots of arguments pro and con."

Marc Gervais, longtime film professor at Loyola University in Montreal, and sometime film critic and commentator for Cinema Canada, serves on the Canadian Radio-television and Telecommunications Commission on a part time basis. At present, Gervais is the commissioner who knows the most about the film industry, and is serving on the pay-TV panel. The interview below gives some insights into the working of the CRTC, and the reasons behind its controversial decision on pay-TV.

Readers should be reminded that the CRTC awarded two national licenses (First Choice and Lively Arts Market Builders), and four regional licenses (Star Channel in Nova Scotia, Ontario Independent, Alberta Independent and a multi-lingual channel in B.C., World View). The CRTC has 9 permanent commissioners, and 8 part-time positions. To study local issues, the commissioners are divided into panels which report back to the full commission. The CRTC operates at arm's length from the department of Communications, reporting directly to the cabinet. At present, two appeals of the pay-TV decision are before the cabinet.

Cinema Canada: What kind of an experience was it, making the pay-TV decision at the CRTC? I don't mean to ask about the content of the decision, but about the process.

Marc Gervais: It's an incredible process and, when you're part of it, in the beginning it's an education on how democracy works.

Applicants send in monumental amounts of documentation, and the CRTC has staff who take care of that. The commissioners are divided into panels, say three or four people for a local panel (there were seven on the pay-TV panel because it was so important). The staff briefs the panel about

any particular problems and provides a summary book. Of course, you can always go back and read the original documentation. Then there's the hearing.

The panel's job is to question people. We have a lawyer also, helping us. You hear the various parties out, and you cross-question them. All of that, of course, is recorded.

After the hearing is over, the panel meets with staff and comes to a kind of global feeling about the matter. findings to the panel. And the panel has another meeting and, often, the panelvery carefully. Again, staff submits its finding to the panel. And the panel has another meeting and, often, the panelbecause it has other preoccupations and other priorities - will not go along with staff at all. Then, the panel presents its recommendation to the whole commission, the 17 of us. The three or four present it to the whole group. Those who weren't on the panel have to be briefed anew, if it's very complex, but if it isn't, it's presented there and the whole group comes hopefully to some kind of consensus, which generally backs the panel, but not necessarily...

Cinema Canada: Does the staff have a right to speak up, at that point, if the panel has in fact reversed a staff position?

Marc Gervais: Oh no. The panel has absolute power. But hopefully, there's a conversation going on all the time and if the panel disagrees very much with the staff, that's highlighted so that the other members know and can ask staff.

If it's an ad hoc decision, the opinion of the whole commission is noted and then the final decision comes from the executives. The executives are the full-time members who live in Ottawa, and work nine days a week. Now, if it's a question of legislation, or substance,



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that has to be made by the whole commission, including the part-time members. What generally happens is that what the panel wants is what the whole commission wants. And what the whole commission wants, the executives carry out. That's almost always what happens. Almost always...

Cinema Canada: And for pay-TV?
Marc Gervais: That was a tricky one
because certain of those things were
sprt of commission things and certain
were executive. There were decisions
as to which group or groups got the
licence; it was the executives who
decided. The executives accepted the
panel's recommendation as to the choice.
Two members of that executive "se sont
désolidarisés," you know, they wrote a
dissenting opinion.

Cinema Canada: But were the dissenting members of the executive on the pay-TV panel?

Marc Gervais: No. You see that's what happens sometimes. The executives don't have nearly the amount of information. They haven't been through the process or anything. That could be the weakness of the system, where the executive over-rules the panel. It very rarely happens, and it didn't even happen in this instance where it was only two of the executives, you see, so they were still out-voted.

So, it's a very lengthy process. And what makes it peculiarly complex, is that this is just the beginning for pay-TV, and the press hasn't caught on to that at all. They don't even seem interested in that. These decisions are not at all the final word about the pay-TV situation...

Cinema Canada: Are you talking about the universal option?

Marc Gervais: Yes, and that is going to change the whole thing in terms of certain, specified, special interests concerning Canadian film and the film and television production scene.

Just how democracy functions

Cinema Canada: In the decision, there's an inherent contradiction because it says the licensees can meet the requirements set up by the CRTC, and then it goes on and says that a universal system would really meet the objectives better.

Marc Gervais: Yes, and that is what I meant when I said I learned how democracy functions. Before I arrived, there was a lengthy process and it culminated in the famous "Therrien Report." (Réal Therrien was a member of the panel.) The Therrien Report had studied the "extension of services," and they went all across Canada on that, seeing whether the CRTC should extend services up to the Northern people. It was a sociological problem. What do you present to them? Are you going to destroy their culture? How much in English, how much in French? Should the programming be Canadian, American, whatever...

The whole question that was to over-

ride the debate on pay-TV starts here with the question of discretionary services, versus universal services. I won't go into the Therrien Report, because that gets into a whole other question, but the CRTC really thrashed out the question of a universal system (a system that is on every cable and which you have to pay for whether you like it or not) versus a purely discretionary system which you take if you like, and you pay for it.

Given the functioning of our type of economic, political system, there were lots of arguments pro and con. It was decided that when the call came for pay-TV, the expression of a clear preference for the discretionary would be made, but the call would not totally exclude the universal. Now, that was the fruit of a process, an agonizing one in which the CRTC didn't have all the answers, and never claimed to. It was learning as it went along.

Representations were made by all kinds of groups including nationalists and big business groups. Well, big business is all for discretionary, and the nationalists and the Canadian content producers want universal so that everybody has to pay for a system that is going to impose a Canadian system, and generate money for Canadian production. I am oversimplifying grossly, but that tended to be the alignment: the National Film Board, the Canadian Film Development Corp., would all be on the side of universal in the early days, and the exhibitors, distributors and all would be on the side of the discretionary.

Well, given the system in Canada... When was the last time that Canada succeeded in getting the audio-visual, the movies or anything a self-taxing system to pour money back into the industry? We've never succeeded in doing it. Why? It just seems that when you get into that domain, the government doesn't want it, nobody wants it. It's just "self-serving groups," trying to push Canadian products and Canadian culture.

Cinema Canada: But why doesn't the government want such a system?

Marc Gervais: You go and ask the cabinet, go ask the M.P.s, go and ask the Canadian people. Ask anybody in the street... "Oh no, we're going to get another tax?" It's perfectly all right for a cable owner to keep pushing up his rates, or for gas prices to keep going up. That's okay. But put a tax that would go back into the Canadian film industry and the answer is, "No, no," for some reason. In the cultural field, it's always like that. So, whatever the complex reasoning was, it was felt inopportune to put all the eggs in the basket of the universal. It's not a simple question, and I've caricatured it because I'm a product of the culture side.

So, when the call was made for pay-TV, the preference for discretionary was very clearly stated to such an extent that the CBC and other interested parties said, 'Since you obviously are going for the discretionary model, we're not presenting a universal model.' And yet, it left the door open.

About 45 groups presented themselves at the hearings, not making petitions but just saying, "This is the way it should go,' please, use these principles when you're awarding the license'; it was very open. And many, many of those said, 'We still need the universal.' But the commission had already clearly favored the discretionary, so what position does that put you in?

It is calculated that millions were spent in making these applications, preparing discretionary systems under the impression that the licenses would go to discretionary. And then you're going to come across with a decision for a universal system? After all of that, it would really not be fair, and so on, And yet, what do you do? You haven't closed universal off totally in the call, and in the course of the hearings, as new kinds of findings were fit into the machine, into the CRTC which doesn't know everything and which still had a lot to learn about the film industry, it became more and more obvious..

What were the principles? What was to be achieved by pay-TV? Do we leave it wide open? Pay-TV comes, and people are going to buy what they want, and that means the American blockbusters, six months after they're shown in the theatres. Is that what we're going to do? Let the market determine the whole thing? That's one way to go: laissezfaire economics.

Another way is to ban American blockbusters to make a totally Canadian system. Just try and do that! Nothing else will cause a revolution in Canada but

"Another way is to ban American blockbusters to make a totally Canadian system. Just try and do that! Nothing else will cause a revolution in Canada, but that will."

that will. Just as if you try and stop the American channels from coming up here. So is that going to be the way? Set up the walls? The Department of Communications, and the Minister Francis Fox, make it clear that the wall system cannot work. If we don't allow American stuff up here through Canadian channels, people are going to take it straight from the States – and just try and stop them...

Laissez-faire is out, the walls concept is out, so what are we going to do?

We are going to give the people a chance to get what they want through programming and advertising, but to use that thing to create funds for Canadian production. Fox has stated that's the DOC's general game plan in this whole, incredible, expanding communications thing now, of which pay-TV is only one aspect. So, the CRTC, which is an independent body, but which nonetheless can be over-ruled by the Cabinet, said in its call: we're going to try and achieve three things. We obviously have "un certain soucis" for quality, but that's not really what we're there to legislate. We're going to give the people what they want, a new kind of outlet like what Home Box Office is giving in the States; but we're going to try and find the means to create a solid base for the production of Canadian products, Canadian content, Canadian movies, movies for TV, TV serials, programs for TV, dramatic programs for TV. Canada is very good in public affairs and documentaries, in news, in sports, quiz shows... things like that. But it's very weak in dramatic production. That we take wholly from Hollywood. That's what we're going to use pay-TV for. We're going to set it up in such a way that people who get the licenses are going to pour the money into Canadian production: buy things off the shelf, yes, but much more than that. It's money which will go right into production. The licensees actually become co-producers or interim financiers or whatever... How do you achieve

The various discretionary models come along and the different players suggested different things and they were quite close to each other. First Choice was quite "generous" about what it poured back into Canadian things. The CRTC now has imposed a rule which is very smart : of the money that the licensee is spending in programming, 60% must go into Canadian programs or (whichever is the greater amount) 35% of total revenue. So, this is the way that money is going to go back to production. Then, such a percent of time, including peak time, must be given to the showing of Canadian programs. So we get them both, but we get them on the financing which is the real important one, because we know the games that can be played with time. People are going to get Superman III not terribly long after it goes into the movie theatres, but the licensee can't spend all his money getting Superman III. They've got to work it out so that 35% of their gross revenue goes to Canadian programs or that 60% of the programming is Canadian.

Now, that was fine but as we got the figures in from different people, it became quite obvious that if you had a discretionary system, nobody knew how many people were going to use it. There are optimistic scenarios and pessimistic scenarios. Taking those figures, and using an optimistic scenario, it would mean that you might get something like \$300 million over a fiveyear period poured into Canadian production. Very good! Now, there was a huge question of whether pay-TV should be national or be regional as well. We won't go into all of that but again, we live in this country, Canada. So, let's say, a political reality made the CRTC go into the area of regional systems.

Now, if we went the universal route, there's no guessing. You know the number of people who have cable in Canada, and we get \$600 million in a five-year period.

People who buy the present licensed services will pay between \$12 and \$15 a month for each channel. So if you are in an area where you have three channels. you'll be spending around \$45, which doesn't hurt you if you're a Bronfman. but if you aren't living at that degree of great affluence, \$45 a month is a lot. But as it's conceived now the universal could be something like \$2.50, that's all: not \$12 to \$15 but \$2.50. It would be run by some kind of public group, not a profit organization; everything that goes in pays the salaries and the offices, whatever. Everything else goes into Canadian production. See the difference?

Not only that but, this group, whatever name it has, would be in a position, of course, to invest and it'll be doing some equity financing. It'll have shares in some of the things it's funding and, if

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there's any talent in Canada, surely some of these productions are going to make money. They are not only going to be shown on this universal channel, in English or French, but they are also going to be sold to American pay-TV. Some of them will be shown in the cinemas and so on. And you reach a point in economics where more and more of these things are out on the market. They are being bought by Australia, New Zealand, Singapore, Hong Kong, maybe England, maybe Germany, maybe Japan, maybe in the States, and over the years you're getting an awful lot of money back and that is going into production. So it's not \$600 million; it's \$600 million plus. So, it is a base. It gives a sort of a super-Canadian dispenser of production funds that we've never had, and it's a self-financing thing. You don't ask the government for anything. It is the users who are paying for that service and paying a very small amount.

Well, this became clear, and this is something we did not know before.

Cinema Canada: Before what? Marc Gervais: Before the hearings. Before the calls. But when that became known, when you hear all these groups on this specific question, suddenly you're there, 'My God, and here we've been talking for years to get a base for Canadian production.' And this is not punishing anybody. It's giving the private sector, the discretionary sector, a head start. It's giving them the big box-office hits that everybody wants to see and so on, whereas the universal system is not going to go into that league. It is not going to be selling Superman ... It's going to be doing Canadian programming. Its Canadian content is going to be almost

Cinema Canada: But in the original proposal by the universal network it wanted to have big-budget movies as well.

Marc Gervais: TeleCanada? Yes, but we're not talking about TeleCanada now. Maybe everybody should go and burn little lights in front of a TeleCanada shrine because they brought forward a bunch of new insights, or brought back to life certain things that had been said before, in a different context, and that hadn't convinced anybody. But in the present hearings, when we were really looking seriously at this production base, TeleCanada presented all of these facts.

Now, there are enormous problems contained by the thought of a universal system, and one of them is, where do you put it in the box? It brings in a whole huge problem of tiering, and that's going to be subject of the hearings around October, November. There's also the question of who's going to run it.

Universal: just a tease?

Cinema Canada: Is it certain that there will be a universal application

Marc Gervais: It is not certain. The

question is still open, but it's right there in the decision that this is now where the CRTC is heading. For that to be achieved, the CRTC has to solve all these problems of tiering on the TV box, which is a very complex thing. It has to link the cost associated with tiering, the problem of how much the cable companies would get out of this, if anything. It's soliciting different groups around the country to come forward with suggestions, including the CBC, including TeleCanada, if they wish to come again. This time the groups will have had the time and thought it out. They will be very solid in both languages.

Cinema Canada: In reading the document, one feels that not all the commissioners share your enthusiasm; that not all were ready to say that they simply didn't understand the ramifications of the universal system before making the call. What sort of in-fighting went on to come to the decision as it stands?

Marc Gervais: It was the thing that made me understand this crazy, self-contradictory phenomenon that is Canada, and that makes Canada pathetic in so many ways and yet, perhaps the best country in the world to live in in some other ways. It's the constant compromise.

You had on the one hand, the national, and on the other hand you had the regionals, you had on the one hand free enterprise, discretionary, and on the other hand you had Canadian culture, a universal system. And the commissioners came into it, and as the discussions progressed we're still espousing certain causes but gradually you begin to understand. The decision is a compromise document. It is a document that says, Okay, the free enterprise sector. We give you the head start, a year's head start. We honor our call in the spirit of the call. You have a chance, and if the Canadian people really want it and you give them the service they want, they'll stay with it. If they don't, they won't. But we were very serious about this Canadian production and we have a way, now, that has become clear to us, that vas not clear before, and we're backing it up with that thing which is the universal. And of course, that will be subject to review every number of years. So of course, it's a compromise between the two; and yes, we'll give the regionals a chance too, those who are organized and whom we think are viable opera-

We don't know what's going to happen. Maybe in some places the regionals will kill the national, maybe the national will kill the regionals everywhere. Maybe a francophone regional is simply impractical because who's going to pay \$15 to see what? Dubbed films? It is conceivable that the only system that's going to give the francophone a production base, make it a vigourous thing financially, is the universal, strange as it may seem...

Cinema Canada: So it was not an assumption on the part of the CRTC that giving 6 licenses meant that all 6 were viable, that all the birds would fly...

Marc Gervais: There were certain regional licenses that were not granted; there, the judgment was that this thing will not fly. But the one in the Maritimes, the one in Ontario, the one in Albertathose are the three regionals along with the major national bilingual (First Choice) which were thought to be viable. Then there is LAMB; it's a non-competitive one. The people who buy LAMB

would either buy it anyway and are not interested in the others, or they'll buy two. They can afford it. They can afford the Sunday Times. Then the multilingual in B.C. That's a very specific thing; we'll see if that works.

Once you get a universal in, then it's the market that will determine more and more the discretionary side, and if the market wanted 80 channels, and could survive at that level, well, who knows what the future will bring? But you would still have the solid production base. If Canadian product in the dramatic areas, movies, television programs, serials, can compete, it'll have the money now to compete. Surely when you start off with that kind of base and add to that the private investments outside the pay-TV area, we're going to finally be in a strong position. If we're not good enough, well, then let's all close shop and quit. We will have had the chance, it's up to us to do good programming, we're also going to end up doing good, cultural, artistic programming. Artists come to the top, inevitably. We can't protect program production anymore than that. That's been the decision. We are going to try to make sure

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the carriers are Canadians. We are going to try and make sure the carriers are not the owners, that they are not the producers and the exhibitors. We are trying to keep those units as separate as possible though it's impossible to do it totally.

So, my enthusiasm is for a position which I endorse now, but did not at the beginning. I was made to see other realities which Canada always drags in and which, to me, are realities that emasculate us whenever it comes to a big decision. Whenever you have a big law to put through in the culture area, the conflicting provincial-federal jurisdictions always complicate things. The North American bent for private enterprise versus government encouragement of the arts and the media is another thing that is always inhibiting in our system.

Cinema Canada: But it's always been the government who has been the primary producer of films, and the keeper of the faith in cultural production...

Marc Gervais: That's right, but it's also the government that, through legislations or rules of the game, made possible Hollywood's total domination of Canada in cinema. We have a whole history of that...

Cinema Canada: So the plan is to let

the discretionary system run, and see what the people want. Then, if thereappears to still be a market, to see just how far one can go with universal.

how far one can go with universal.

Marc Gervais: No. The discretionary systems will probably go into effect around January 1st. But before that, number two wave is coming. It was announced in the decision that we would examine universal as soon as possible, So, that would hopefully be before the end of the year. It takes so long to implement all those things that even if we find the way to get a universal going, that's not going to come in January. It takes another year, almost a year or six months or whatever. So, the other will get a headstart but it's not what the other does that's going to determine whether or not the second step takes place. That discussion is coming hopefully a couple of months before the first discretionary is launched.

How, the future... We'll have to wait a number of years to find out if First Choice succeeds, or if the groups in Alberta and the Maritimes succeed, and so on and so forth. We'll have to see, too, if a group comes forward from Quebec or New Brunswick and Ontario, for the francophone regions...

It's almost impossible to set up really clear legislation in these areas now because they are expanding and changing so much. And when Anik B is launched again, that's going to change the game radically once more. We're also going to be faced with the questions, is there an open air? What about the dishes? Can you imagine if we reach the point where it was total open air and everybody could have their dish for \$500 or \$600 and grab any number of signals? There are questions here of scrambling and unscrambling devices, and international legislation. These are huge, huge things that could change this whole context... If Sony had ready for the market now big home screens that you could plug into your pre-existing stereo so that the image you see is better than 70mm in the cinemas... Who's going to want pay-TV if he has so many other options ?

By the time these options become marketable, it has to be at least five years. Maybe we only have that five or ten-year chance, at least at the financial level, to give the Canadians a base, so we'd better grab it now. In that context, it makes the solid production base more desperately important now than ever. Because once you get into the cassette thing, and into a master computer that you can phone for a cassette any time you want, are you going to be able to say: 60% Canadian?

The old tug-of-war

Cinema Canada: But then why did the CRTC make its decision to license a discretionary system first, dividing up the market that way? No one knows what the public's reaction will be or how much it will be willing to pay. The CRTC's decision, which has been criticized by everyone, will drive up the prices. Then, to think of increasing the competition still further compounds the complications. How do we know how the public in the regions, where there is a choice, will behave?

Marc Gervais: There, we have the profoundist reflection of this reality that is Canada. And this tug-of-war always between the national and the regional...

If you abstract from wave two, which is what we've been talking about - this

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universal coming – then your point is very crucial. But if you look at the intention of the CRTC on pp. 17, 18 or 19 of the decision, if they are intending to follow it up with the second wave, it changes the ball-game radically in terms of Canadian production. Even if wave one is somewhat weakened, wave two is so gigantic and safe – it's fool-proof. People are not going to stop getting cable.

Cinema Canada: But this is what seems so incoherent in the document... Marc Gervais: In all fairness to the players, the CRTC was very keen on naming some people [awarding licenses], and it's not secret that you could have taken maybe four or five of the best applications and give good reasons why this one should be named over that one. It's not a question that First Choice was infinitely superior to anybody else. It was a difficult decision.

But supposing now, you go to Ontario. Supposing you have Ontario Independent cutting into First Choice, and taking away 2/5 of First Choice's audience. That means it will take 2/5 of its total revenue away from First Choice. Well, First Choice still has to give 35% of its gross revenue (or of that 3/5) to Canadian production and Ontario Independent has to give 35% of its total revenue, so it still comes to the same amount. It has even been calculated that if you have the two competitors, you'll probably have a greater penetration rate than if you just have the one. Therefore, 35% of total revenue is going to be a little bit more, so in terms of the production side it helps. In terms of the competitors, it doesn't help. They're not happy. Because each have their overhead and all that and they still have to give that 35%...

Cinema Canada: There's a lot of skepticism. Many think that the licensees are not going to be able to get the prices they want on American product, and that they will be back in a few years to say they can not honor parts of their commitment. Competition is healthy when the market is healthy, but when it's not, two hungry competitors can just as well kill each other.

Marc Gervais: The onus now is placed on the winning licensees. They have to spend 35% of their gross revenue on Canadian production, so it's their problem. They have to get together and work out the ground rules among themselves. They are not out to gouge at each other but to protect their investments.

Now, that doesn't work on the francophone side, because the francophones have only the national. They don't have their own regional. If they did, we would be back to the same phenomenon. Some say there's a francophone group really getting together but we will have to wait and see. If there isn't any regional channel, obviously, the national cut for the francophone side is going to be a bit smaller. That's why the universal then becomes the absolute savior for the francophone side.

The third point was about monopolies. What is the healthier situation? A total monopoly for pay-TV in Canada?

At least at the start? Or, some kind of controlled competition at the start? The whole monopoly looks very simple and all that, boy, you are giving one group power. That's something that made people hesitate. In some areas, certain groups have a total monopoly and they can practically do what they want to. So, right from the beginning, the CRTC introduced the notion, 'boy, you're not going to have it all your own way.'

Cinema Canada: The Canadian distributors had hoped that there would be some regulation that would oblige the licensees to buy from them as opposed to buying directly from the Americans. They argued that if the licensees were allowed to buy directly from Americans, there would simply be no Canadian distributors left. And others have said that as a result of the decision, pay-TV has just been given on a platter to HBO. That, because the amount of money per hour that First Choice is going to be able to spend (down from \$350,000 to \$175,000) has fallen, that will lead increasingly into co-productions with the Americans for pay-TV both in the States and in Canada - that the CRTC has engineered the integration of the Canadian production community with the Americans...

Marc Gervais: I'm appalled to say that I hadn't even thought about that one myself. I don't know. And if I don't know, what does that mean in terms of the other commissioners, who haven't been spending their lives more or less in film?

Interested people should raise that point, prepare a well-articulated case, and send that to the Commission because that's a crucial, crucial point. I remember the issue being raised vaguely but in the avalanche we were struggling to survive, what were we going to do?

During the hearings the CRTC came across as: 'Look, we're in this game too, boys. We don't know what the whole solution is... we're just starting.' So, I think that a thing like this is crucial. This whole question of the control, the automatic control, via Home Box Office or anybody else, as the distributor in Canada, is crucial. The CRTC is asking for input, is asking for points, for valid arguments. Everyone must realize that this is new and that we need input. There can be by-laws, there can be things like that at anytime.

Cinema Canada: You make a big point about 35% of revenues returning to Canadian production but, as we've seen with the tax incentive, revenues are not necessarily used to make Canadian films. Are there any measures the CRTC can take to see that the money goes into Canadian films?

Marc Gervais: There was another hearing on Canadian content in television. I was on that panel too. There were the same players again, and the emotions and the passions had just happened a month before. So, when we had the week on Canadian content, we were all tired; the people giving the papers were tired, the people listening to them were tired, so there were no sparks, but hopefully a few ideas came across.

There's an interesting shift going on in the CRTC, trying to get a more supple and more meaningful definition which is not like the present one. It's different in certain areas, and I can't mention it now because that still has to be approved by the whole commission. Furthermore, there's going to be another hearing on it

because it's such a crucial question.

But there is the second aspect. You can't possibly make an absolute legislation where you're going to say that Ingmar Bergman cannot direct a film in Canada... that's stupid. You have to make rules that are supple. At the same time, you get into that area of financing. Now, it seems to me that we've been through the process, through everything that was negative about it as well as some good things about it. The industry itself, from its own perception, must know that if you make junk, it's not going to pay off in the long run... If the licensees give pay-TV away to groups that are simply going to be Hollywood North, I think that the whole community has to rise up and say: 'listen, this is a farce!' But we can't legislate. The CRTC can't say, 'you can't make films that look like Hollywood movies...

Cinema Canada: Why not take that 35% and give it to an agency which will disburse funds for Canadian produc-

Marc Gervais: That's what would happen with a second wave, that's what

"It's not secret that you could have taken four or five of the best applications and give good reasons why this one should be named over that one."

would happen with the universal. But with the discretionary, we are going along the way of private enterprise and these groups have made their pledges.

Bilingual channel misunderstood

Cinema Canada: How did you arrive at the decision to license First Choice? Especially when you had to suggest that they revamp their French service?

Marc Gervais: Oh, that was such a minor, minor change. Nobody understood. First Choice killed itself working out a system which would not give the advantage to the English side in the context, say, of Montreal. They came up with this idea for one bilingual channel. Well, most of the commission said : 'Nice try, but that's too complicated. Give people the choice, for Pete's sake ... ' So then the papers said First Choice didn't care about the francophones. they were only giving a diluted French service. It wasn't diluted at all. It just meant that 24 hours a day, instead of having repetition of six-hour chunks four times, they'd only have repetition twice in French and twice in English. As it is now, we're going to have the benefit of 25 hours, six units, four times on one channel, four times on the other. So they

were criticized because of conclusions that were the exact opposite of what their intentions were. Their intentions were to favor the French market but the CRTC, I think rightfully, said, 'no, let the people decide on that question...'

Cinema Canada: How did the CRTC counter the charge that, in fact, it has not let free competition play from the moment that it said, 'we'll take First Choice, but you apply somebody else's French channel idea'?

Marc Gervais: The only group that tried this refinement was First Choice. Every other group had two systems, so that wasn't really an essential change. No matter what group came forward, there would have had to be changes, perhaps in other areas: percentage in programming. Canadian content, ownership, etc.

Cinema Canada: But why First

Marc Gervais: Difficult, I don't think I could answer that. At the end, First Choice seemed to emerge pretty clearly... As far as the CRTC is concerned, it was a no-win situation. It didn't matter who was picked, you're going to really disappoint some people and some put so much work into it and everything... But there I'm really not answering because I think it's going to be contentious and so on and so forth...

Cinema Canada: One of the criticisms leveled at the process was that it was very difficult to compare the various applications. Each used different measures and different base figures. How did the CRTC resolve these problems?

Marc Gervais: That was our major problem. The call was made extremely open. Why? Because it was our first. We didn't have experience, clear-cut laws, norms and categories and all that. The competitors themselves would help create the norms and see how imperfect the process is. The situation requires common sense and hopefully great motivation and a lot of knowledge, but there is an element of the lottery in it too.

The only experience one had is from the United States where it's a totally different situation, where pay-TV itself was used to create the cable system. In Canada, it already existed so, the whole thing is radically different. And then in the States you don't have the necessary obsession for American programming that we have here for Canadian programming.

Cinema Canada: Were you surprised that, even given that no-win situation, the CRTC managed to disappoint just about everyone?

Marc Gervais: No. The only thing that surprised me was the lack of interest in finding out what the game plan was, the whole game plan. That scandalized me a bit. Nobody picked up on the overall plan, which is quite interesting.

Cinema Canada: Because, in your understanding of it, the very most important thing is a promise of a second wave...

Marc Gervais: Well, it's the whole package. Now, somebody who is a cultural nationalist will say the second wave is what's the most important. Somebody who's a champion of free enterprise and says 'give the Canadians what they want, which is American films,' will say: it's the first wave...