

# Mission imponderable

## The uncertain first months of Canadian pay-TV

by Lucie Hall

Billed as Canada's last chance to establish a viable production industry, Canadian pay television was launched on Feb. 1, 1983. Never in the history of Canadian broadcasting ventures has so much money, so many hours of work and so many careers rested on so many imponderables.

Until the end of May, the pay-TV operators have been functioning in a vacuum — they don't really know who their subscribers are or what kind of shows they want. The U.S. pay experience — largely seen as the model for Canadian play — has shown that subscriber "churn" begins to appear at the end of the first three months. This means that unhappy subscribers tend to move to other channels after a three-month trial period.

So all the pay services are holding their collective breaths until the end of May subscription figures reveal how the churn factor has affected them. In the meantime, subscriptions are reportedly double the projections, with the exception of C Channel. The churn factor could be so significant that some pay operators could be out of business by summer's end.

However, although independent producers would like nothing more than a wild success for Canadian pay-TV, there is no simple, easy way to read what is happening in the pay industry at this time. Each producer tells a different story, and their individual experiences vary greatly.

As pay operators become more acquainted with their audiences, programming requirements will change. It

could take up to a year before any kind of accurate subscriber reaction can be properly assessed.

Despite the excitement — and concern — that Canadian pay's launching has so far occasioned, additional clouds of uncertainty linger on the horizon. On the one hand, some producers fear the Canadian Radio-Television and Telecommunications Commission review of Canadian content criteria could, in tightening the definition of Canadian content take away future production opportunities in this country by limiting co-productions, notably those with experienced American producers who have a 10-year head-start in dealing with U.S. pay-cable. On the other hand, the department of Communications' broadcasting strategy with its "open sky" philosophy permitting U.S. satellite transmissions via cable into Canadian homes, will further increase the competition for viewers.

The recently-created Canadian Broadcast Program Development Fund, administered by the Canadian Film Development Corporation to fund the production of shows for free TV, is perceived with mixed feelings by the pay-TV industry. The federal regulatory context, having opted for the creation of a "marketplace" model of pay-TV for this country, has also substantially contributed to making competition in that marketplace as tough as possible.

These overriding uncertainties — in policy, broadcast environment and market — constitute the sizeable challenge being faced today by Canadian pay-TV. The next three months will no doubt prove decisive.

## The regulatory context

### DOUGLAS BARRETT

Toronto lawyer  
Tilley, Carson and Findlay

Barrett articulated with the Canadian Radio-television and Telecommunications Commission (CRTC) before beginning private practice six years ago. He has been involved in media-related issues ever since. He acted for Télécanada, an applicant for a pay-TV license. Recently there have been rumors that the successful pay-TV applicants have been undermining the CRTC's theoretical objectives regarding Canadian content. Barrett was retained by the Canadian Conference of the Arts, a federal lobbying organization for the arts, to see whether or not there was any substance to these rumors. Barrett began his study by interviewing a number of Canadian producers who have had dealings with the pay-TV licensees. He has now completed his study and is in the process of writing a report which will soon be submitted to the Canadian Conference of the Arts.

"My first concern is this whole question of scaffolding. To understand what scaffolding is and why it arises I must first mention that the CRTC decision and condition of license for the pay television licensees says that they must spend 45% of their subscription revenues in the investment in or the acquisition of Canadian programming. That means if they earn a million dollars in subscription revenues then they must spend \$450,000 on Cana-

dian productions. Now scaffolding is a word used to describe ways that a pay-TV licensee could structure its transactions so as to claim that it spent more for Canadian productions than it in fact paid.

"There are at least three different kinds of scaffolding. In the first kind of scaffolding an independent producer goes to a pay operator with a show that he has already pre-sold to a foreign exhibitor. Let's say that Home Box Office has agreed to spend \$300,000 for that producer's show in a pre-sale. And let's also say that the Canadian pay operator wants to license the same show for \$200,000. What happens next is that the Canadian pay operator says, 'We want you to roll that HBO pre-sale through us.' The \$300,000 HBO pre-sale is then paid to the Canadian pay operator who in turn pays \$500,000 to the Canadian producer. The pay operator's intent is to claim that it spent \$500,000 on Canadian production when in fact it has only spent \$200,000 from its subscriber revenues.

"The second kind of scaffolding occurs where the pay operator itself arranges the pre-sale to HBO on behalf of the Canadian producer. Again, the HBO pre-sale is paid to the pay operator and then paid over to the producer along with the pay operator's pre-sale. Once again, the intent is to claim the entire amount as money spent on Canadian production and not just the funds received from subscriber revenues.

Lucie Hall is an independent television producer working out of Toronto.

"Now, the third kind of scaffolding is more complex. What happens is that in certain cases the pay operator will ask independent producers for world rights to their property in perpetuity. That means that if the producer wishes to sell the program to the U.K., the U.K. must pay the money to the pay operator and if in ten years it is sold in Zambia, Zambia must pay the money to the pay operator. And then the pay operator takes all the monies from all territories and pays it to the Canadian independent producer less 5% or whatever is the administration fee. Now, a lot of people are confused as to why all these steps are taken. The only thing that I can think of is that the pay operator who has proposed them hopes that it will be able to claim all the monies received from foreign territories and paid over to the producers as expenditures on Canadian programming. If this works it means that 95% of world revenues for Canadian shows could be claimed by a pay operator as money spent on Canadian programming.

"Don MacPherson of First Choice has referred to these contractual arrangements as simple 'accounting practices.' He has also said that there is nothing wrong with these practices as such. Until the CRTC reviews the practices and determines what is in fact a proper Canadian program expenditure, he is absolutely correct. We are simply looking at these arrangements and presuming that the intent is to claim the scaffolded amounts as a Canadian expenditure. Recently, First Choice has made statements to the effect that it does not intend to claim scaffolded money as money spent for Canadian production and there seems to be an assumption that scaffolding will fade away. This misses the point. Scaffolding is a problem because the CRTC's pay decision can be interpreted in a way which might actually permit it to occur. In addition to potential legal questions of interpretation, scaffolding is very complex and until the whole area is fully understood by all parties, including the CRTC, it is simply not enough to brush off the whole issue based on informal reports that the practice is being stopped. It is still possible that some form of scaffolding may yet be claimed by First Choice or by any of the other pay operators as Canadian program expenditures.

"Nobody will know what Canadian program expenditure claims will be made by the pay operators until their financial and program reports are reviewed by the CRTC. To further complicate matters there is as yet no mechanism set in place by the CRTC to review the programming arrangements of any of the pay-TV licensees. And there is no precedent for the commission to require broadcasters or pay-TV licensees to make their financial statements public. As a result it is possible we may not know until the time of license renewal in 1987 whether the commission will allow any form of scaffolding as a Canadian content expenditure.

"What I hope is that once some of this information pertaining to scaffolding goes on the record, there will be a public and regulatory debate which will eventually resolve the whole scaffolding question. I hope that ultimately scaffolding will be viewed as an early and flawed attempt at reading the pay-TV decision in such a way that it didn't really mean what everybody thought it meant. I think that the licensees will all toe the line at the right moment.

"But the key issue, the big issue, the one that is not going to go away and the

photos: Lucie Hall



one that is absolutely critical, is the definition of what qualifies as Canadian programming. At the present time there are two sets of regulations on Canadian content. The department of Communications has one set of regulations and the CRTC has its own. Both sets of regulations have been accepted by the CRTC in its pay-TV decision.

"The department of Communications regulations are found in the Income Tax Act. The DOC administers the Income Tax Act criteria for Canadian content and issues a certificate based on a point system. Further, the DOC recognizes film co-productions arranged with countries with which Canada has co-production treaties: U.K., France, Italy, Germany and Israel. Canada has no co-production treaty with the U.S. (nor does the U.S. have any co-production treaty with any foreign country).

"The CRTC has never become involved with the DOC certification system because until recently most TV shows were produced and fully financed by licensed Canadian broadcasters and did not involve the need for any tax shelters for equity investors. In the circumstances, the CRTC felt a simpler and less specific certification system was more appropriate. Generally, in order for a show to be classified as Canadian content by the CRTC it simply had to be 100% Canadian. Once a show qualifies as 'all-Canadian' it receives a Canadian content number from the CRTC.

"Now, what is happening in pay-TV is that independent producers are applying to get Canadian content numbers from the CRTC for 'co-production' with other countries, particularly the United States. Their programs are financed mostly by pre-sales and much of the pre-sale revenue comes from other countries, particularly the United States. Unlike the DOC, the CRTC open-endedly recognizes a co-production with anybody in the world, the United States included, so a lot of these deals are being structured as co-productions. In order to show that a production qualifies as a suitable co-production for the CRTC, the applicant need only show, and remember it is the independent producer who is applying because the pay-TV licensee makes sure that the independent producer warrants that he has obtained Canadian content status, the producer who is applying simply has to show that he's got a so-

called co-production arrangement between two producers and that 50% of the funds are going to be spent in Canada. There's no requirement that the main producer be Canadian and there isn't a point system. There is however the requirement that Canadians have a 'significant artistic involvement' but there is no definition of what 'significant artistic involvement' means but it certainly does not mean creative control. There is also no audit system to figure out whether what is being told is true. In effect, the system has no regulations at all!

"Now, the CRTC recognizes the problem and steps are being taken to rethink the process. Recently it announced that it is going to hold a workshop and that it is proposing a white paper on a new Canadian content definition which will be based on a point system similar to the DOC's. There's a time delay involved and a lot of issues will be hard fought between now and then. At the present time there is a substantial amount of Canadian programming being produced where foreign production companies and foreign producers come into Canada with scripts in hand, use Canadian facilities and actors and make arrangements to hire a Canadian producer in a line-supervision position or in a production consulting position or a production management position. This is considered 'significant artistic involvement' but all the creative decisions are foreign and the script changes are phoned in from the States. And so far, all that qualifies as Canadian content by the CRTC.

"I maintain that the regulatory objectives of the CRTC are not being met. It is not really the licensee's fault because the licensee simply says to the independent producer, 'You show us your Canadian content number from the CRTC.' The fault is with the regulator itself. You look at the copyright in the *Romance* series, the *Loving Friends* and *Perfect Couples* series, *Something's Afoot*, *Shaft of Love* and others and what you will find in those video dramas is that the copyright is owned by American production companies. The effective Canadian participation or artistic involvement is, in my view, subject to substantial dispute for all of them. These are simply situations where American producers have come in and have found out that they can get

substantially more money from Canadian pay television if their programs qualify as 'Canadian' product. One of the things that the CRTC has got to make sure of in the new definition of Canadian content is that, if we are going to do Canadian productions, then they have to be genuinely Canadian. I don't mean necessarily Canadian in theme, but at least they must be originated by Canadians. And it also effectively means that there must be Canadian writers involved as the rule rather than as the exception.

"The debate over the co-production arrangements that the CRTC will allow in the future is going to be hot and heavy. A number of independents want to ensure that the co-production arrangements that the CRTC has okayed, specifically the co-production arrangements with American producers, will be maintained because they want to continue taking advantage of these arrangements. And the problem is, of course, that if the rules stay as they are, then producers and particularly foreign producers are going to be drawn to them because they are obviously less stringent than whatever the point system is with the DOC. If everybody is drawn to them, then the theoretical regulatory objectives of the CRTC will be completely undermined because there will be little or no truly Canadian programming on pay television.

"So we'll need to look at the whole question of co-productions and ask ourselves if we should allow for any kind of co-production agreements beyond what official co-production treaties for film already provide for, or if the standard Canadian content definition should be for right across the board. I think that in the next year we are going to have a massive debate inside the industry, because it really is an inside industry question, as to what Canadian content is. And I think that there are lots of interests that would like to make sure that there are in fact no restrictions on Canadian content, especially those interests which would like to see American-style programming and American-produced programming qualify as Canadian content. But - and this is a big but - there are also lots of other producers who'd genuinely like to make sure that the restrictions are reasonably stiff so that their own creative efforts will ultimately be protected."

## The pay services

**JOAN SCHAFER**  
vice-president,  
director/programming  
First Choice Canadian

*Schafer began her 15-year career in TV by working with Hobel-Leiterman in the series, "Here Come the Seventies." From there she worked with CITY-TV and produced over 9,000 shows until she left to finance feature films. All along Schafer lobbied heavily on behalf of the independent producers and co-produced a film with CFTA called A Case for the Independents.*

"The most difficult thing for me as a programmer is that I don't have any subscriber feedback yet. I need to function with feedback from the people who are viewing the service and I don't have that right now. We don't know who they

are and what age they are and we don't know what they are like. I'm operating in a vacuum. It's a period that I knew I would go through, for a year probably. The other side of that is that there is incredible freedom. I go on my gut reaction.

"I've had nearly 1,000 proposals submitted to me since First Choice opened for business. My appointment book looks like a dentist's. At the moment I have 45 productions in process. The successful ones all have their acts together. They know what their budgets are. They've done their casting. They have good concepts, solidly formulated and in place. I have the confidence that they will not run over budget and that their shows will not require me shutting down the productions at any time.

"It does happen however that there are people who have the best product in the world and we even want to buy it,



the core companies can do the American sale for the first-time independent or the second-time independent and actually leave that producer-director free to do the product as opposed to having to sell it and interim-finance it. The nurturing, in fact, is carried on somebody else's shoulders. I'm very happy about that. And I also like that I can make five or six deals at one time with these core companies. That's much more interesting because if one movie fails and one succeeds then that's a pretty good ratio. So the rise of the core companies, the Canadian core companies, makes me very happy as well as the return of the expatriates. I get lots of calls from Los Angeles asking me 'Should I come up?' and I say 'Yeah, absolutely. But you are going to have to take your chances like everybody else!'

"It's my goal to establish a good economic base for independent producers in Canada because it wasn't there when I was making features and needed it. Jon Slan of Superchannel and I talk about this a lot. Before pay-TV both Slan and I were producers, although he was a feature film producer mostly and I was mostly involved with television product. And we ask each other 'How do you like sitting behind the desk?' And it's tough because it's an arm's-length creative relationship that I have with the independents and that's hard. It's rough: 16 hours a day minimum. I never get home at night before 12. It's a long run. And it's not going to let up for a long, long time.

"I think that pay-TV is an international business. It has to be an international business. And now what's so wonderful is that the rest of the world is opening up a lot more. So producers are coming in and saying that 'Thames TV is interested in this. I have British partners. They'll go if you go.' And this is a chicken-and-egg game if I ever saw one. Everyone is going to go if everybody else goes and I say let's get everybody in the same room at one time and we'll all say 'go' together. France is keen to buy product. The white paper is coming down soon in Britain to clear the way for pay-TV in Britain. Australia has passed pay.

"So I'm very concerned about the CRTC's somewhat arbitrary and narrowly defined Canadian content. The tide now is to try and narrow it and that will hurt the industry incredibly. I mean, I'm trying to get Peking acrobats as Canadian content. It's been done by a Canadian producer, it's been shot by Canadians and everybody doing it was Canadian except the acrobats. And the CRTC is saying that this show is a cultural exchange with China. Well, give me Canadian acrobats and I'll do it! What am I supposed to do with that? This debate over Canadian content is really going to be hot and heavy and it is really going to hurt if it is too narrowly defined. People are upset that there are no Canadian writers being developed in the *Romance* series and *The Loving Friends and Perfect Couples* series that First Choice has licensed. Now if I go through all the production lists of movies and shows that I have licensed for First Choice, there are 26 million dollars in productions... and that does not include the two series of *Romance* and *Loving Friends and Perfect Couples*. That's 26 million dollars right here and they are all Canadian writers, right? Now do you think I can get the press to talk about that? Probably not. And that happens time and time again. I wish they would give me some support because we need it. The whole industry needs it.

**JON SLAN**  
 chairman and  
 executive vice-president  
 Superchannel, Ontario

*A former university lecturer with a Ph.D. in literature, Slan began producing feature films in 1977. His most recent project was Threshold with Donald Sutherland. At present he is overseeing programming and production for the Superchannel network. He is also the second-largest shareholder of Ontario Superchannel.*

"There are always people who think that we are not moving quickly enough but there are just tremendous numbers of people coming through our doors and we have limited funds available and, unfortunately, a lot of people are disappointed. I think that the production community has got to understand that, until March 15, we never received a single cheque from the cable companies. We didn't know until then who our subscribers were, or how many of them there were. It's only now that we are beginning to get a feeling for what they want.

"Lots of things come in here for which we have little interest. We have little interest in plays. We have less interest in plays probably than First Choice. We have very little interest in variety material. We have more interest in dramatic films and especially long-form dramatic films. I think that the key for what we are looking for is quality dramatic productions.

"We are also not too interested in spending money for development. Development is always high-risk and it becomes more so as you give it to less experienced hands. Let's say that I'm giving \$25,000 in faith to a producer in the hopes that a) they can develop a property that somebody is going to want to film and b) they can finance it, and c) they can manage the production, that's a really risky thing.

"As time goes on we will be developing other things with producers but for our first few months we were mainly interested in dealing with shelf material and projects in which we are not the sole investors. Home Box Office in the States, Antenne 2, the second network in France and Radio-Canada are all partners in the Héroux-Kemeny films we're interested in.

"Our schedule still needs refining. Our viewers are very vocal and let us know when they are not happy with something. They let us know quickly and directly. They are amazing. For example, we ran a movie called *Cheerleaders* at 11 o'clock on a Saturday night. I had come home from a dinner out and was saying my nightly good-night to Superchannel and looked at the movie and said 'Oh oh!' I had seen most movies but I am not familiar with the skin movies. And when I saw it, I knew we had made a mistake. And did our viewers ever call in and let us know that it should have been shown later at night. Others thought never.

"An area we wish to change is children's programming. We want to start in April and May various shows called 'Superchannel for Super Kids' every day from 6 to 9 a.m. It's an area that really takes time to find the quality stuff and ultimately I think we will probably have to have it produced. These are things which will evolve.

"We've decided to become the prime investor in a deal which would involve

more than 100 million dollars in film production over the next four years. We signed with producers Denis Héroux and John Kemeny of the Montreal-based International Cinema Corp. for the films *Louisiana, The Blood of Others*, and the Plouffe family sequel. These films have been in the works for years. These films have little in common other than they are all quality projects with well-written scripts by top writers and developed by what we think is a first-rate production company.

"The people in Ottawa are making it very difficult for us. It's already a tremendously competitive marketplace anyway and then they keep making it worse by allowing increases in satellite services and making huge funds available to other people and not to ourselves. They certainly aren't making our lives any easier.

"I think we are severely damaged by the new development fund set up by the CFDC and I'll tell you why. The conventional broadcasters are a must-participant in the fund and we are a may-participant. We may or may not participate. There's really very little way we have of accessing those funds even if we develop something and the producer goes to the fund. He then has to go to the free TV networks and get a network deal and they may or may not allow us a window. Also, they may have different requirements and different taste than us and they would really control the destiny of the product. Frankly, I don't see pay getting involved in that fund as it now stands.

"We are very pleased with how we are doing so far. We are ahead of our business plan. We thought that we would probably have 3% penetration by the end of February and we've got 4 1/4%. So we are doing substantially better than we thought. Obviously this is going to be an ongoing process and we can't sit and bask on one month's figures. Up to now there has been very little churn and I don't think that says a whole lot. Experience in the U.S. seems to show that you start to get churn after 90 days on the air. So we'll be watching."



but that we have a hard time seeing them. We have only been on the air a very short time and we are still out of our minds. And, really, there are only three of us who can make a decision. Riff [Markowitz] who is senior vice-president of exports, Phyllis [Switzer] who is senior vice-president-programming, and myself. I see six producers a day and I work well into the night. But sometimes it can take a person two or three weeks before I have time to see them. But if they are patient, they absolutely do see me.

"Another thing that I am struggling with is keeping creative control in Canada on projects that I'm interested in licensing. The first thing a producer does when he finds out that I am interested in licensing a show is that he goes down to New York to talk to the people at Home Box Office. And the first thing that HBO wants is world rights on a show. I keep telling producers not to dare give away those world rights and to be tough at the table. HBO wants world rights because they can turn around and sell it to Canadian pay and make huge profits. I'm afraid that the producers who don't really understand this are being muscled by HBO and the other major studios and they give away everything. It seems that they learn by making mistakes and then they come back with tales of woe about how they got sold down the river, da, da, da. The reason that I like dealing with producers like Bobby Cooper is that they really understand the marketplace and they are really tough when they go down to L.A. or New York. They keep their rights and they keep their pieces.

"There is a lot of product coming in that is very substantial and very good. First-time players are getting together with major players to produce features. For example, Harold Greenberg is backing young solo independent producers to make features, producers who up till now have been lurching from one project to the other. So Greenberg is in fact becoming a Canadian core company. We need that here because the independents need a source of funding much like the American studios do in the States, but which we've never had here.

"Young producers need to be fed in-between their projects and they need to get development money and I am totally happy to match Greenberg's money. I prefer to see if I can get somebody else taking a risk along with me. And then

## AUDREY COLE programme executive - performing arts C Channel

*Cole is responsible for the acquisition of performing arts programming and evaluation of new production proposals. She has been with C Channel since its inception and worked with Ed Cowan in building the concept and putting the application together. Prior to working with C Channel, Cole was the project director for a small publishing company, Mintmark Press, as well as program director for two years at the women's club, 21 McGill. At one time she worked on the film Inquiry, a 90-minute film that won the Canadian Film Award in 1977 as the best documentary.*



"We always assumed that we would have a very small percentage of the total market. We knew that and that was in our projections. What people are now doing is comparing our numbers with the large movie channels and they are asking how we can possibly survive with such small numbers. Well, they aren't such small numbers relative to what our projections were. Relative to our projections, we're right on. We're doing just fine.

"I get about 35 to 40 new proposals each week. And everything has to be read and looked at and considered. A great number of the proposals are not workable. Either there isn't enough experience behind the project or there isn't enough money behind the project or it's a combination of the two or it's a concept that is not appropriate to us. But in all cases you can't just say no. You have to explain to people why. You have to leave the door open for people to come back with something else. It has to be a nurturing process for both us and the independents or we've defeated our purpose. You see, we didn't consider the restrictions that were put on us by the CRTC about Canadian content in production as cumbersome. The fact is that is why C Channel exists in the first place. Lively Arts Market Builders, which is the corporate entity, was put together by a group of individuals who had been involved for years in the arts in Canada. People like Hamilton Southam, who runs the National Arts Centre, saw pay-TV as a way of being able to bring the best of Canadian talent to the rest of Canada and the world. That's why we started this whole thing.

"But there are only so many projects that we can do and we have been very cautious. Many of the proposals that

have come in have been for a series of programs on dance or a series on music or whatever. And in all cases where we have decided to go with the producer we have said that we'll do one show. And we'll see how it goes. And later if the producer is happy and if we're happy then we'll do more.

"Sometimes a young producer comes in and has an interesting concept which still needs a great deal of work. We're not at this point prepared to spend the time and energy it takes to nurture that person along. We aren't the Canada Council. We aren't a grant-giving body. We are a commercial network and what goes on that screen is going to be the most discriminating audience there is in this country and it has to be the best. People shouldn't be able to turn on C Channel and half-way through the night look at a program and say, 'Ah - this is Canadian!' The fact of the matter is that our produc-

tions match everything else that is shown on the channel. It's a quality look.

"I have often been in a situation where a producer has come in with an idea that I think is wonderful but is nowhere near ready to produce and I've put that producer together with someone I think can make it actually happen. So, in some cases, I have served as a marriage broker.

"What's been happening here since we opened is that we have been getting a great deal of support from subscribers for what's been on C Channel. There has been a tremendous number of requests from subscribers and cable operators for us to extend the number of hours that we are on the air. We are just now working out how quickly we'll extend, based on the costs and the amount of programming that we have. So we are going to be extending the hours, but I can't say when it will be."

## The CBC

### IVAN FECAN director of program development CBC Television

*This new position was created for Fecan in August, 1982. His basic mandate is to revitalize the look of the network in an era of declining funds. Among Fecan's many responsibilities is the requirement that he be involved in all discussions with independent producers who wish to discuss co-licensing arrangements between the network and pay-TV.*

"I don't think the position of the CBC has changed a lot since three months ago. We are just more consistent with our approach to pay. Our board of directors recently passed a policy that basically says that we're not going to take stuff in second position all of the time and that we have no intention of becoming a second-run network. And the flip side of that is that we will negotiate with independents and co-finance with pay systems when we can negotiate first and second windows so that we don't always get stuck in second position. And also there are just some things that we want in first position and we are prepared to pay for it. We understand that the market is changing and becoming more competitive and so we also have co-financing deals with C Channel and



Superchannel. We are talking to First Choice but we have made no overall arrangements with them. In terms of co-licensing with pay, I see ourselves more involved in single-show 'specials' and possibly some kinds of movies.

"I hope to work more with the pay systems in the future and I think that the pay system, and the free broadcasters after the first few projects, will have to assess what impact sharing will have on their audiences. And there may be a market readjustment at that point. I know one huge push that I am going to start in the next few weeks is more and more international co-productions. The

success of *Empire Inc.* around the world is helping us in seeking partners. There is a lot of interest now from around the world to help us finance our next mini-series or our next series of mini-series. I think that is very positive and one direction that we are really going to pursue. In terms of pay television co-financing, we are more interested in individual 'special' shows than we are in series. I think that we will always want to reserve the series as something that we do. For example, if we have got a series planned called 'Son of Empire Inc.', then I don't think that we are interested in sharing that with another broadcaster, free or pay, in this country. For those kinds of projects, for series that is, we are going to look for money internationally. And I know that the Australians have had a great deal of success with this and *Empire* is opening a lot of doors that have been open for the Australians in the past few years. And we're certainly going to try to capitalize on those opportunities.

"And finally I think that Canadian producers, aside from the Héroux-Kemenys, the Acombas, Dick Nielsen-Pat Ferns, are going to have to learn very quickly what other producers elsewhere in the world have had to learn and that is how to structure deals and how to finance projects. I know that they all know basically how to do it, but as the environment becomes more complex they will have to do more complex deals. I don't think that anyone is particularly naive right now but all of us have to be ready to become more creative and more adaptable and more smart about how we structure deals. That is common for everybody, for the networks as well as for independent producers."

## The deal-makers

### GEORGE FLAK lawyer Bell, Flak Barristers and Solicitors

*Having worked for CBC as legal counsel and later as Don MacPherson's executive assistant until 1975, Flak set up in private practice in Toronto. In recent years he has acted for an impressive number of independent producers including Insight Productions, Nemesis Productions and Bob Clark. Recently he acted as TV sales agent for the motion picture The Grey Fox that won seven Genies at the 1983 Awards. Prior to the sale of Grey Fox to the CBC, Flak was in touch with all the pay-TV channels. Here is his story.*

"My negotiations with Canadian pay-TV began about four months ago and lasted up to very recently on *Grey Fox*. My first impression regarding pay-TV was that Superchannel is very easy to deal with. They were easy to phone and set up an appointment with. They are a very streamlined organization and were very frank and forthright in what they could and couldn't do. Their assessment of the film was that they liked it very much but that they would be in the position to give us an offer on the film once it had shown its theatrical legs. I could understand their position. They were a little hesitant about committing hundreds of thousands of dollars to a film without knowing how it would do.

"I didn't take the film to C Channel

because we thought that if it was going to go to pay, it should go to a channel with a lot of subscribers. We were looking for a substantial amount of money.

"Then I started trying to deal with First Choice. I had a hell of a time trying to make contact at First Choice - not withstanding that Don MacPherson was once my boss. I don't know if that was a reflection on me but I wrote Don as soon as I got the film to rep. I wrote him that I had *Grey Fox* and that I would like to show it to him. And I didn't get any response from him. No acknowledgement, nothing. No phone call. After four or five phone calls from me to them, I was then put on to a Lola something or other who said she'd like to see a cassette of it. And I said that our plan was that we were not going to show the film that way because it is a theatrical feature and we wanted them to see it in full scope. And I also knew that Lola wasn't really the person that could make the decision to buy the film or not. We tried to get one of her supervisors; we would have preferred to have Don MacPherson see it but, of course, he's so busy. And Joan Schafer was unavailable. It's not as if it was a film that had never been heard of. I mean this was a film that had already got good word of mouth and was one of the few films around that people had some respect for. I was frankly a little shattered when I couldn't get the right people to see it - which is the exact opposite of what happened at the CBC. I got in touch with Roman Melynk and all I can say is that we had



an offer for the film that day. They said, 'We'll buy it.'

"Now eventually Lola of First Choice came down and looked at the film and went ecstatic over it. And I said, 'Okay, you love it. We have an offer from the CBC. Please get back to me and see what you can do.' She said fine and one week rolled by; two weeks rolled by, three weeks rolled by and nothing! Finally I contacted Lola and she said she could offer us 35¢ per subscriber over two years. That didn't exactly impress me because we needed cash and when you are offered a deal contingent on the number of subscribers, well, who really knows what numbers of subscribers there are and who's going to audit the number of subscribers they have. Boy, I'll say, it's a non-bankable contract! Anyway, I said it was not acceptable.

"Next came the Genie nominations and Grey Fox was nominated for 13 awards. The day after the nominations I get a call from First Choice. The first call I ever had! And a couple of days later I talked to them and they said, 'We'd be interested in talking to you about Grey Fox, and I said, 'That's nice.' Then they said, 'We can now give you a price and we can give you 10% down and the balance over the time period that we're going to run it' and so I said 'That's nice. What's your price?' So they gave me a price that was lower than the CBC price but they wanted first window. They wanted an exclusive first-run before it would go to theatrical and commercial television. Anyway, I went back to CBC and I asked them if they would allow First Choice to get a window before they run it commercially. After thinking for a while they said that they were prepared to let it run once and then give it to First Choice for a year's window and they could run it 86,000 times and then the CBC would run it again after that. Now I thought that was big of CBC because although the legal papers weren't signed, Roman Melnyk and I had already agreed on a deal and my word and Roman's word were there and CBC had the right with that verbal deal to show Grey Fox three times in three years.

"Well, I went back to First Choice and basically their attitude was that they couldn't agree to that because it was their policy never to show a film that had shown on commercial television. And with that I fell out of my chair! I went back to Roman and asked 'Is this possible?' and he said 'No, because First Choice are dealing with CBC a lot these days, buying product that CBC has already shown.'

"So now I think what we'll do is that,

given CBC will allow pay to have a window, which makes a lot of sense, we'll probably go back to Superchannel and talk to them or C Channel or the regionals.

"Do you want to know frankly what I think of First Choice? I think that if you are somebody new or unknown to them, if you are not Robert Cooper or somebody that has made a lot of pictures, then they don't recognize you. You are not, quote, on their 'lists.' It's a very clubby, in-house thing. I get the feeling that you have to have somebody 'in' with the pay-TV crowd at First Choice. The other thing I feel is a bit of arrogance on the part of First Choice in the sense that they actually feel that they are going to destroy CBC in terms of viewership... not destroy it as a network but that they are going to get all the audience. They feel that in two years they are going to have all the money to buy all product and that CBC will be in trouble trying to keep up. As somebody who has been around town for some time, I bet on the CBC as opposed to the pay services, not only as to product but for helping independent producers."

## MAX ENGEL

president  
Televentures Program  
Management Inc.  
(formerly Media Lab  
Television Inc., Toronto)

*Televentures is this country's largest distributor of Canadian shows abroad. As well, Televentures "packages" shows; that is, Max Engel secures financing for Canadian producers by negotiating co-production agreements with other countries.*

"The market has improved tremendously and First Choice and C Channel have certainly become very strong customers for Canadian programming, even though it does demand the ability for Canadian producers to work with foreign partners in order to cover the cost of production.

"What Televentures does is, in essence, take Canadian show ideas and sell them to the rest of the world. It's a mixture of pretty extensive market intelligence and knowing what's being made where, how good it is or isn't and keeping in touch with your buyers and keeping a look at their schedules to see what they need. And then beyond all that there's a certain amount of what you'd call a 'hunch.' I travel a lot, a lot, a lot, probably 35% of the year on a good year and on a bad year it's nearer 60%.

"No one really pre-sells properties any more. Basically, what you do is co-produce which is a polite euphemism for selling. You call it co-production and this way everybody has input. But you get a better dollar. You're far better if you have a really strong property to do it as a co-production with another party because you're going to get more money from them. Because it will come out of their production budget as distinct from their buying budget. And you may sometimes in many countries work with an independent producer there because, just like broadcasters and pay people here have a commitment to the independents, they do over there as well. And very often this system works better and you'll get more money.

"At present I am quite concerned about the review of the Canadian content regulations by the CRTC. If in future



these regulations get too tight they will prevent producers from being able to make co-production deals with other countries. And foreign partners are necessary. Our domestic market can't support the total monies needed to make world-class shows.

"Another problem area that I see at the present time involves the lack of an industry infra-structure. Because we haven't really had a viable production industry in this country until recently, we've never really developed an infra-structure to service the independent

producers. There are no agents: no William Morris's, no Cy Fishers, those being the American examples. I mean, up to this moment, the independent in this country has been somewhat forced to be everything from his own developer, script writer, to money raiser, financial wizard and marketer and deal-maker. And nobody's good at all that. I mean, the last thing he gets to do is become the creative producer which is exactly what you need him to do. That situation is changing, but slowly.

"Besides one or two lawyers in town and myself, there are no people around who can help the independents make deals. And deals up to now for the most part reflect a certain amateurism as a result. The problem is, and any pay operator or broadcaster who is honest will tell you, that if they're dealing with an independent producer they have a psychological edge in their negotiation because it's the producer's goal to make a show and he will often give away all kinds of things in order to get the money he needs to make the show. Too many producers, in order to make their shows, defer their fees. Now that is silly. Because if it's for First Choice or CTV or CBC, the delivery system is getting what they want. They're getting a show when it's made for the money they wanted to pay, which is great. The producer is getting a show, and if it sells elsewhere he may eventually get his fee. If it doesn't, he didn't get anything. Now that is silly."

## The producers

JOHN BRUNTON  
president, and  
IAIN PATERSON  
producer  
Insight Productions

*These two up-and-coming producers have over the past five years sold scores of shows around the world, especially to the American pay services HBO and Showtime, as well as to the major American networks. Recently they were in Toronto shooting a black musical cabaret special entitled Indigo.*

"I have grave apprehensions about the pay-TV industry here as a whole. I think that the pay people have made big miscalculations. Basically Superchannel and First Choice are trying to knock each other off with volumes of movies.

They are not concerning themselves with quality, only volume of movies. The thought is always numbers, volume and who's got the most movies. Not who's got the best movies. And there is not much difference between the two pay services.

"I think that there is a real miscalculation in the sense that they really base their vision of Canadian pay-TV on the American experience. Unlike the Americans, however, we were late in getting pay-cable up here in Canada. Most of my friends have got Beta machines or VCR's and find it much more convenient to go to their corner video stores. When you go to L.A. and New York where cable has done really well, there are no corner video stores. Unfortunately we were so late in getting pay-TV that everybody got video recorders instead.

"Pay here is not offering things that are new and exclusive. That's going to



create big problems and people aren't going to go for it. They've got to develop programming that's unique, different; that you cannot find on standard TV or your corner video store.

"I guess that we are now a little glum because we now have opportunities, but most of those opportunities are outside this country. And it's kind of weird that with the pay-TV experience happening and everybody having waited so long and being so excited about pay, even Francis Fox is going to give another 60 million dollars to independent producers. And with all those things happening you would think that we'd be jumping for joy and doing somersaults, but we're not. If we were to make the same kinds of shows that we have historically made over the last ten years, there would be plenty of opportunity for us here. We have unmet music concert opportunities that we could do here, but after doing it for so long already it kind of feels ridiculous to continue doing them. We've outgrown the idea of Canadian content.

"In order for us to continue growing and developing as producers, we have to look at creating innovative partnerships with other broadcasters and investors from other countries and maintain the Canadian content which is important. That is the biggest change of heart or change in philosophy that we've had since pay-TV started. There is no question in our minds that we're going to pursue these international partnerships with other broadcasters. And I think that if the pay-TV operators are going to make pay-TV go in this country, they also have to be actively soliciting relationships with other countries like Australia or Britain, or Germany or France. There has to be much more of an effort to secure product from Canada and then create relationships with the rest of the world to make it happen. You know, you just can't expect that the Canadian broadcasting people are going to come up with all the dough. They just can't do it and survive. And if pay is going to survive, the only way it can survive is to make unique partnerships with other countries and try to maintain the Canadian content and maintain the Canadian approach and employ Canadians doing it and develop the industry here.

"But if they can build up a subscriber base and if the reality of the promise can come true, I think that it is a tremendous incentive to people to do programming. But if you look around and see what kinds of deals people are making and what shows are being created in Canada for the pay-TV market, there is not very much that is of great interest to me for the most part. They've got to start looking at shows which will be of a great deal more interest, and doing them exclusively."

## JACK McANDREW

Jack McAndrew Productions

McAndrew is an independent television producer who specializes in productions for the international market. Before forming his own company two years ago, he was head of CBC Variety which under his supervision scored unprecedented successes both nationally and internationally. Recently he worked as the supervising producer for the shooting of *Romance and Something's Afoot*. These shows were originated by American producers who came

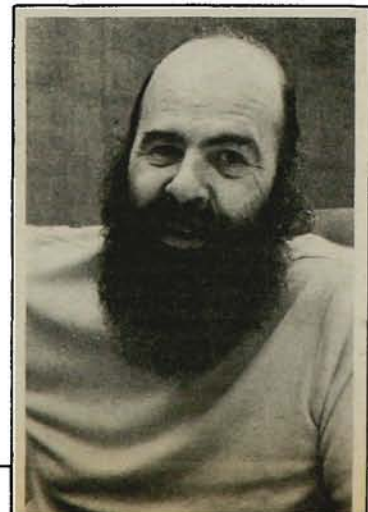
to Canada with 80% of their financing in place from commitments they made with the U.S. pay-cable networks and then made deals with First Choice based on the fact that they would qualify as Canadian content.

"I always felt like a whore acting as a supervising producer on *Romance and Something's Afoot*. I have since decided that I would no longer work as a producer on these types of productions because it is too demeaning to be used that way. It's demeaning for the same reason that whoring is considered a necessary service in some quarters but is ultimately demeaning to the participants. And I did it for all the rationalizations that one makes to oneself, like wanting to pay the rent. But I've discovered that when you allow yourself to be a whore then you can expect to be treated like one. And I also feel that when you participate in these exercises you are cutting your own throat. It's all very self-defeating and demeaning and I don't like being treated as a serf on my own turf. So I'd rather be out of the business, teaching or running a hardware store if that's what it means to be an independent producer.

"Now, I have submitted over 30 proposals to First Choice in the past. And I couldn't go any further with them because I couldn't bank their per subscriber contracts. Recently they have gone to a flat-rate system of financing and that seems like a significant change.

"I have a deal memo now with First Choice to do a fight card out of Montreal with an option for them to pick up a half-dozen more. There are three young boxers in Montreal named the Hiltons. They are 17, 18 and 19; clean-cut, faces like babies and eyes like killers, and they are being groomed as an attraction called the 'Fighting Hiltons'. It's a great story. Their father is an ex-Canadian featherweight champ who has had a heart attack and is not allowed to go and see them fight. Anyway, we are doing a boxing card in April and then we'll see what happens. But I'm skeptical with First Choice. I've been burned enough now.

"I have a bunch of projects submitted to both Superchannel West and Superchannel Ontario. Now at various times Superchannel West has expressed interest in some projects. And that is a terrible word: 'Interest.' It can mean anything from they let me into the office to they mail me a letter. But they have expressed 'interest' in several projects and they have agreed in principle to the supply of development money and I have sent them development budgets - and then nothing happened. I mean, this morning I have a sports concept



which Superchannel West has said they like and Superchannel East has said yes, they like it and a letter from Star Channel saying yes, they like it and I've discussed it with TVEC and they said yes, they like it. And I said fine. Now, to bring this project to this point requires a fair degree of organization and several weeks' work. And I said that 'If you all like it, then I think that a modest development fund is necessary and available' because I do believe that Abe Lincoln was right when he freed the slaves. A modest five or ten grand should come my way so that I could hire a researcher for a couple of weeks and do the necessary backup and give them the whole production package. As of this morning I haven't received any development money from anybody and so I made yet another phone call. Well, how many phone calls do you make? Just to say 'Anything new yet?'. You get to be a bloody nuisance and you get to feel like a beggar.

"I have just completed shooting *The Passion According to St. John* by J.S. Bach in Notre Dame Cathedral in Montreal. It was sung in the style of the 17th century, using 17th-century musical instruments. It was made as an Easter Special for C Channel. I can't really talk about the details of the contract but suffice it to say that myself and some of the other participants agreed to defer our fees so that the production could take place. There were two reasons, I suppose. One, I had told C Channel that I would be able to pull it off for their investment. So I had given my word and they had scheduled it and I would rather be doing that even with the expectation that I may never make any money than be doing nothing. And, second, because they are nice people at C Channel. They are straight. They give you a contract and they write you a cheque. No fuss, no muss, no hassle. I think that there is a fairly unanimous opinion among the community of independent producers that among the three existing pay channels, they come out on top in terms of their dealings with producers.

"So frankly, for the moment, I am more interested in exploring the possibilities right now of the new Francis Fox fund than pursuing pay-TV. It doesn't upset me that the funds cannot be used in projects for pay-TV. Pay-TV can be used in combination with a conventional broadcaster, but the fund is specifically designed to knock American production out of prime-time on conventional broadcasting. That doesn't mean that the program could not first be exposed on pay television and secondly exposed on conventional broadcast or vice-versa."

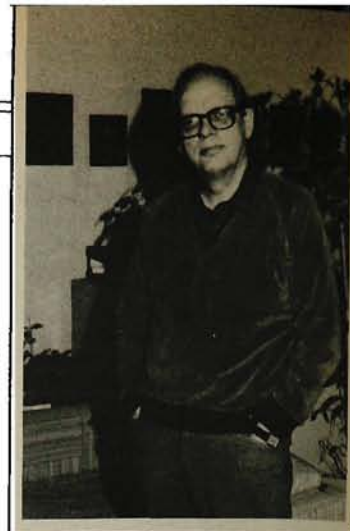
## RICHARD NIELSEN

chairman

Primedia Productions Limited

Nielsen is recognized internationally for the quality and success of his programs. Over the past ten years they have included *The Newcomers*, *The Third Testament* and the feature film *The Wars*. Prior to working as an independent, Nielsen was the executive producer of what were then the CBC's two flagship public affairs shows, *Weekend* and *Midweek*.

"In terms of what I think is possible with pay-TV, which was not possible before, I have written a 90-minute drama specifically with pay-TV in mind. My objective



was to raise all the money one needs to make it in Canada, thereby retaining the producer control.

"The play is called *Quebec Canada 1995*. The premise of the play is that Quebec has separated from Canada and, ten years later, there are still situations which lead to a great deal of aggravation. You see, in real life, Canadians, both French and English, have never said in public what they all say and hear in private. In my play, however, they finally get to say all these things to one another and I try to have them say it with a bit of wit.

"*Quebec Canada 1995* is going into production in May. It is only a two-week shoot, all shot at one location, the King Edward Hotel in Toronto. It will be shot with video, using only one camera. The budget is in the neighbourhood of \$400,000. I have paid for it with a \$250,000 contract from First Choice, with \$50,000 from the CFDC and \$100,000 from CTV. It will be shown first on pay and then CTV. The way the show is financed it won't need to be sold anywhere else to break even.

"I have found dealing with First Choice excellent. I think that the situation with them has improved enormously since they got on the air. Contracts have become shorter term. They are not spreading them out as long as they were. Meaning that if First Choice puts up \$250,000 that you have a chance of getting that money within a year. Before you would have gotten it in two years. Similarly the banks' attitudes are slowly altering towards those contracts. Suppliers' attitudes are changing and we are finding the beginnings of an ability to operate in this climate. Furthermore, the new CFDC fund is going to substantially alter the conditions in which we operate. In terms of Canadian programs, Canadian pay is learning quickly now to cause Canadian programming to happen. Our networks haven't learned it yet.

"So I have found, if anything, that First Choice is perhaps too accommodating in what it considers and takes from the independent producers. First Choice has been commissioning one of everything, hoping to find out what their subscribers like. And I suspect that they haven't been very receptive to the second or third of the same thing. Not until they get on the air longer and find out what works.

"I think that we are going to move into an era, a year hence, when we are going to have a clearer sense of direction in terms of what pay wants. As producers we've never before had very clear direction from the Canadian marketplace and what it wanted. And I also feel optimistic that with free TV cooperating with pay and the CFDC, it is possible for the first time to aspire to a viable television industry. And I don't think that we should only aspire to a viable industry. We should insist on it."

## REBECCA YATES and GLEN SALZMAN independent producers Cinefilms Ltd.

Yates and Salzman have been producing award-winning, family-oriented dramas for the past six years. All of their films have been sold to the CBC and have had extensive sales in the United States and Europe. They are now ready to make the jump into feature film production.

"We haven't taken any of our previous films to pay yet. We've wanted to sell them something that is new. Last June we sent First Choice a feature script which was still in the rough draft stage. We got instant no's. We don't know why it was rejected. Maybe our timing was too early. Maybe the project was not the kind of thing they were looking for. We just don't know.

"We also talked to Superchannel and they said that our project was not suitable for them. We then asked them if they had found any suitable projects and they said no. Okay, maybe our script doesn't appeal to them, but at the same time, I think that if nothing appeals to them then there's something unusual. And I think that this is mostly due to cash flow. They don't want to spend large amounts of money when it is a lot easier to buy off the shelf. It's not risky and they can see what they are going to get. In terms of our films that are on the shelf, so to speak, they are still tied up with the CBC and are not available for Canadian pay sales. We really only have one film that is available to them right now, and First Choice is interested in buying it.

"I don't think that the Canadian pay services know what kind of programming is going to go for them in terms of Canadian content. I do feel, though, that the production community has placed unreal expectations on the fact that pay would get off the ground, in terms of production, a lot quicker than they have. In comparison, HBO didn't do a lot of production in its early years. It's been only in the last year or two that they have started making their own pay-TV movies. At first, they were acquiring everything that was on the shelf. I'm not trying to be lenient on the Canadian pay-TV systems but I think that we all have to be more patient with them while they're still teething."

## JEFF SILVERMAN independent producer

Two and a half years ago Silverman had never been inside a television studio in his life. He ran the 99¢ Roxy movie theatre before opening another theatre and adapting the stage so that music groups could perform. But he found being an impresario for punk groups like the Ramones too harrowing and decided to try his hand at television. He proposed doing an all-night television program for Toronto's multilingual TV station which accepted the idea and for one year Silverman produced over 1000 hours of live television from 1-5 a.m. seven nights a week. The show was an unexpected success but Silverman decided to leave when budgets were slashed in an austerity move. He then turned his energies to trying to break into pay-television production.

"When pay started happening, I went to a conference at the Plaza II in Toronto and spoke to anybody who had anything to do with pay. I asked them what they thought of me doing short pieces, filler. And nobody was interested in filler material. They said, 'Shorts? We're not interested in shorts because that's when people go to the bathroom. You've got to let people go to the bathroom!' Well, I couldn't argue with that. But now they are in the position that myself and a lot of other people were in running movie theatres. You realize that when you have people coming in the door, you have to start to entertain them and you don't stop until they leave.

"What's happening to pay now? They all ran out and bought every short in town and they all have their own shorts now and you'll see them a billion times over and over and over again as filler. If the station is on for eight hours a day they'll need 96 minutes of filler because if you show a program for an hour, that program will come slotted for regular TV, which means for every hour they deliver only 48 minutes. So that's 12 minutes an hour they need filler.

"Pay-TV should consider filler as important as anything else they show. When you watch television you watch television. You don't say in your mind, 'Oh this is the filler. It doesn't matter that it stinks!' And the whole idea of pay is that you have to give them something more than they can get on regular TV.

"So I started going around to the pays and the first people who thought it was a good idea and that it was something that they wanted to try producing was C Channel. And they said, 'We have a market. We have children's programming. What can you do for kids?' Then it was a matter of going home and thinking that it should last anywhere from 10 seconds to three minutes and something that I should tailor to be shown a million times without getting boring. And C Channel didn't fully understand at first that it's just as important to have 10-second bits as it is to have three-minute bits. Well, I came up with all kinds of ideas. Once I knew my audience the ideas came like water.

"One idea I had involved magic. I myself always wanted to know how to do magic tricks. Did you ever try and talk to a magician? They never tell you their secrets! Well, I had a magician who performs a trick and then shows you how to do it so the kids can do it themselves. I called these shorts Magic Moments. Another idea evolved because



I wanted something light and so I got a stand-up comic to research a million jokes. Then I dressed him up as a jester and I had a puppet made up to look exactly like him. At the opening of the short there is a puppet on a stage and the king comes out and sits on his throne and claps his hands and the puppet comes out on the other side of the stage, bows and I then take a close-up of the puppet but it is no longer the puppet. It's this guy who looks exactly like the puppet, strings and everything. He tells three jokes and after each joke goes "da daaaa" and at the third joke somebody pulls a lever and he goes down the trap-door because the jokes are so bad. But he plays on the fact that they are so bad and they are jokes that kids love. I called these shorts Jester of the King's Court.

"Another idea was I had a friend explain in 2 1/2 minutes how things worked. Like how the stripes get in toothpaste. That short is called How. Anyway, I had lots of different kinds of series of shorts and C Channel loved them all. C Channel collectively called them Kid Bits and commissioned me to do 10 hours' worth of Kid Bits between Feb. 26 and Apr. 1 of this year. And the deal that I have made with C Channel is that because they commissioned it and paid for it 100%, it's theirs and because I produced it we have a percentage of it if it is sold anywhere else. But basically they own it.

"Recently I have been in discussion with First Choice. They say that they want to look different and they want to have some stuff for their audience and I'm saying, 'Yeah, why not? You tell me the kind of audience that you want us to go for and I can do anything and I can do it cheaper than the stuff you are buying and you'll own it! And you can run it a million times and forever and you can sell it!' The stuff I produce is made to be watched a lot."

## STUART GILLARD independent producer Clear Vision Pictures Inc.

Gillard is best known for his performance in *Why Rock the Boat* for which he won a Genie award for best actor. He has also acted in *Threshold*, *The Neptune Factor*, *The Rowdyman*, *F.I.S.T.*, and *CTV's Excuse My French*. *Living in Los Angeles* for the past seven years, Gillard has written for such top shows as *Mork and Mindy*, *Sonny and Cher* and *Donny and Marie*. As a writer-producer, he has recently completed a

pilot sitcom entitled *Honeymoon Haven*. *First Choice* has now commissioned the series.

"*Honeymoon Haven* is a new program form which I hope works well for pay. It's basically a situation comedy but it has music in it as well. In that sense, it has some variety elements. So you might say it's a sitvar. There is a lot of freedom in pay in terms of what you can do with content, but there are a lot of restrictions with budgets. They cannot afford to pay very much.

"This is certainly, in an artistic sense, the best show that I have ever done, and it is the best show that I have ever written bar none. I had for once absolute control. First Choice gave us the artistic freedom. They gave me the right of casting. In our agreement, they had approval on script and casting and they never exercised any judgment or made changes to what I wanted. And I had final cut which is unusual. So if this show fails I'll have no one to blame but myself. At the same time how much can you go into debt as a producer? It's a tough question. How much risk do you want to take with your own money or someone else's money? How much deficit financing are you prepared to do? You have to balance out the two and



think of the market and where your product is going to go and where it can be sold.

"I already have a couple of major U.S. distributors who are very hot to see the pilot. They know the concept and are interested in seeing it. I'm also going to the pay networks separately. I have contacted Showtime and HBO and they are also very much aware of the project. The best of everything would be to have a choice to go on pay first and then syndication afterwards. Then the show would really be in good shape.

"*Honeymoon Haven* is a show that is also technically first-rate. The technicians are really experienced now. When we go into full production, we are going to be needing a staff of writers and it certainly would be a chance for Canadian writers to work on an on-going basis as opposed to that one script a year for the CBC.

"I hope we don't goof up the pay-TV scene here in Canada like we goofed up the Canadian feature film industry. I hope something more permanent will come out of the pay structure."



## MICHAEL LEBOWITZ

independent producer

Lebowitz has been in the business for seven years and was involved in the feature film industry during its boom in the late '70s. Working under David Perlmutter of Quadrant Films, he produced two features, one directed by David Cronenberg called *Fast Company*; the other, originally entitled *Misdeal*, has yet to be released because of financial problems. He has just completed twenty-one 20-minute exercise shows for First Choice entitled *In Motion*.

"In consultation with Joan Schafer, I developed an exercise program and format suitable for First Choice's primary programming needs which were in two parts. One: a show that could be used to fill a larger time slot and function like a typical half-hour exercise show. Secondly, it had to be a show that could be divided into smaller parts of five to 10 minutes with no loss of impact to provide filler programming or what is called 'interstitial programming' to take up some of the spaces between regularly scheduled movies. Also, the amount of money involved is not terribly large. It was a flat rate. Nevertheless, it did require certain kinds of guarantees so it could be interim-financed by me.

"I am aware that all the pay networks have a somewhat more cautious approach to developing programming at this point than they did prior to going on the air. It's a pause and a good one and I would suggest a very appropriate response to a very risky new venture. They have reached plateau number two and I think that it is good corporate management to stop and look around and see what the audience really wants.

"Pay-TV is something paid for by the consumer. It's either accepted or rejected by consumers on a one-to-one basis. If they don't like what they are getting they will simply refuse to pay the next month's subscription. You can't have a clearer audience response than that. So I think that the pay services are absolutely correct in taking some time to evaluate what their audiences want. I actually applaud the intelligence of the action.

"The fact of the matter is, from my point of view as an independent, I am very well served by an accident of fortune to have produced a show for pay-TV in its infancy. I hope to do more."

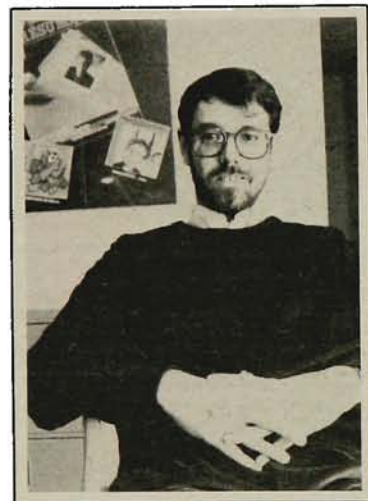


## BILL HOUSE

independent producer  
Extra Modern Productions

Extra Modern Productions was founded in 1979 to do two things. One, to produce a theatrical production of the *Cliches* in a show called *Half Human, Half Heartache*, which was mounted in Toronto and toured Canada. The second reason was to make a promotional film for the *Toronto Sun* called *The Little Paper That Grew* which won a *Bijou Award* in '81. Before that House ran an alternative theatre and worked as production manager at the *Toronto Film Festival*.

"We sold *Rumors of Glory: Bruce Cockburn Live to First Choice* in February '83. All along when we planned the film we had envisioned that pay-TV was going to be a strong market for this film because Bruce had never been seen on film before - and because it was Canadian and because the production values were very high. Our plan worked. First Choice paid an extremely high price for the film which is remarkable. Let's say that the price was so good that with an additional sale to Premier Choix we are



close to recouping all of our investment in those two sales. Not all, but very close. First Choice has a two-year window. We hope that with repeat sales we will be able to not only recover our costs but also make a profit in Canada alone. We've just begun to peddle it to foreign markets. I think that the whole project will turn out very well.

"The reason that First Choice paid a hefty price for this product is not only that they like Bruce but that they wanted to differentiate themselves from their competitors and one of the ways that they have done so is to buy this product exclusively. Now that serves both of us well. It gives me more money from the sale and secondly they've got something that nobody else does for two years. I hope that it is going to sell some subscribers for them.

"They are treating this film as a very high profile piece for the month of May when it has its premier on First Choice. All kinds of things are in the works for promotion across the country. Things like record tie-ins, and a significant amount of print advertising promotion. And I'm delighted. It also looks like *Rumors of Glory* will be simulcast locally, regionally and perhaps nationally in FM stereo during its May premier.

"All in all, this is a very very nice deal and this is very very nice for the film."



## BARBARA TRANTER

independent producer

Tranter did graduate work in film production at U.C.L.A. and returned to Canada in 1979 when everyone told her the "boom" was on. She immediately started working as an assistant art director on a string of features including, *Happy Birthday Gemini*, *Love, Circle of Two* and *Porky's*. She then decided to produce her own show with the intention of selling it eventually to pay-TV. In '81, before anyone had even been granted pay-TV licenses, she raised money from investors and began plans to shoot on spec a one-hour comedy pilot entitled *Hello Goodbye*. Her gamble is beginning to pay off. First Choice has just licensed the show for an exclusive two-year window in Canada.

"Initially, when we were putting the *Hello Goodbye* package together and tried to get the financing in place, we went to the traditional sources of financing such as the CBC and the CFDC. I saw the CBC role in a pre-license situation rather than just purchasing the films. However, they didn't want to take risks on first-time producers. I found it very difficult to put together a substantial base which would make investors confident about investing in my project without the CBC or somebody having any interest in it. And I was constantly told not to go ahead with the project unless I did have a pre-license in place from somebody. Yet, in my situation, it was a Catch-22 situation: if I had listened to that advice I would never have made the film.

"It was a risk project but, at that point, I felt that the script was good and we were ready to go ahead regardless. And as it was, we did start shooting with only half of our budget in place so it was constant money-raising throughout the whole process of production and even into post-production.

"First Choice licensed *Hello Goodbye* for 50% of our budget. The pay-back that was originally outlined was for a two-year window with installments every six months. Through a revision of the contract they are now going to pay for this show by the fall of 1983. That's good for us because it allows us to pay back the majority of private investor money in the film.

"Right now I am looking for an agent to sell it in the States, as I don't have the expertise at the moment to do that. And the paying cable market is so complex there in terms of releasing it - because

there are so many different regions and one sale can negate a whole other group of stations. So it is inevitable to have to go through a sub-agent when dealing in the States, I think. Also First Choice is willing to set up appointments for me by calling people and telling them that I am coming to see them. That kind of thing is really helpful.

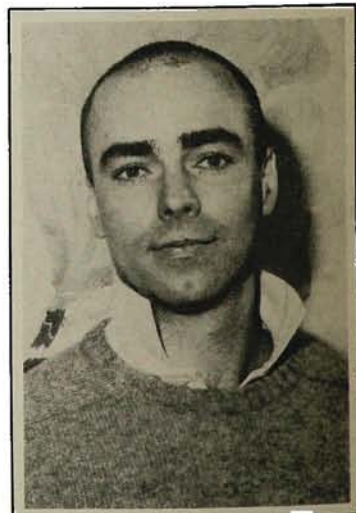
"I think that by the end of '83, we'll be breaking even with the U.S. sales. Comedy is a good seller and one of the agents that I talked to said that although a lot of people are trying comedy, there are not that many who ultimately do succeed.

"So, in the end, investors are pleased with us and they are pretty well assured of all their money and more. They are even eager to reinvest in another property."

## DAMIEN LEE

president  
Rose and Ruby Productions Inc.

Lee's company, founded in 1977, has produced over 200 sports items for such programs as CTV's *Wide World of Sports* and for the CTV Network's *CFL* half-time shows. In 1982, Lee began to diversify into feature film production. His first film, *Copper Mountain*, which has been sold to First Choice, was shot at Club Med's resort in Colorado. His second feature, in the completion stage, is presently in negotiations, and was shot in Mexico at Club Med's *Ixtapa* resort. Both films were financed through unit offerings and a deal with Club Med in New York City. Lee has just completed a pre-sale agreement with First Choice for his third feature, *Reno* and the Doc.



"First Choice was instrumental in setting up a portion of the funding to come from the States as well as a portion of the funding coming from themselves. They've been very good in setting that up. I couldn't have done that by myself.

"I've never made a sale in the U.S. I've been to see people at NBC and CBS three or four times a year for the past several years and I've never made a sale. So I know how hard it is to make a sale in the States. When someone like Joan Schafer of First Choice sets up a deal for our shows to be pre-sold in terms of raising the necessary money for the product, that's great and I'm going to knock myself out to deliver the best product I can for the money they've given me. I've been knocking on doors for years and no



one's really opened it until now.

"First Choice is helping us get to a certain base and as far as I'm concerned you really have to respect that and give them their just due. So if you're not selling a program to somebody, either your sales method is wrong, your pricing is wrong or you have no credibility. It's that simple."



**KEVIN SULLIVAN**  
independent producer-director  
Huntingwood Films Limited

Sullivan has made several half-hour and hour-long dramas over the past four years. These films have been sold to CBC, HBO and in several European countries. The Wild Pony, set at the turn of the century, is Sullivan's first feature-length film. It is also the first feature film licensed by First Choice. It has been scheduled for a May broadcast.

"It's difficult dealing with a lot of people within the pay-TV corporations and the investment community especially when you are an independent producer, because the first wave of independent producers in this country, who were producing feature films, were, for the most part, crooks. And they since have gone out the windows and the second wave of independent producers are people like myself, or Cineflics, or Atlantis Films: people who are producing for television, who are seriously committed to film and who suddenly have a new marketplace which is pay-TV.

"In terms of getting my film made for pay, I think that I was very fortunate to have the right elements together at the right time. I think that's the key in terms of trying to make any deal, whether it's with pay or with CBC or with Nickelodeon, PBS, HBO or anybody. You have got to have the right project that suits their needs with the right elements in place. Now it just so happened that First Choice was looking for family entertainment and *The Wild Pony* was in the position of meeting those criteria. So, in a matter of a week, the whole project came together.

"Now we have European distribution lined up and we have had really strong interest from the U.S. But, we are restricted in what we can do because of our First Choice sale. We can't sell to a U.S. network that has penetration into Canada, so we can only go to pay-TV there. We are also thinking of a theatrical release in order to get a better price in the U.S., because films that have gone that route could generate a better sale. There are so many different ways of working things out that it makes my head spin."

**WYNDHAM P. WISE and  
TERRENCE JACQUES**  
independent producers  
Pierrot Productions

Pierrot Productions was the first independent to make an equity partnership deal with C Channel for their one-hour production of *Liona Boyd - First Lady of the Guitar*. At the moment, they are also developing several features, one of which, tentatively entitled *Christie*, is in negotiation with First Choice.

"The market has turned nuts with pay-TV and there is a huge demand for concepts that are viable and entertaining. The trick is financial, of course. For us, like many producers, it has been fairly easy to get a deal going with pay-TV. In the last six months we've been in the position to sign six deals with pay, most of them in the musical variety area. They could have been in place instantly with C Channel, Superchannel and First Choice but we chose not to do them because there was a trap. They had no potential for sales after being licensed on pay-TV. They were not marketable beyond pay-TV. And the trap is that unless the show has a life after pay you are not going to cover your costs. I know of a lot of producers who fell into the trap of signing deals with pay-TV on properties that will have no after-pay-TV marketability. I don't know how they are planning to cover the costs of their shows.

"There are feature film deals going through with pay-TV and they either involve actors who have 'star status' or a story that is a really hot property like the Terry Fox film. When we started to talk to First Choice about our feature film script *Christie*, they told us they wanted it and really liked the story but that they weren't going to touch it unless we had a U.S. pre-sale with an exhibitor like HBO. You see, First Choice is prepared to pay up to one-third of your production budget in a license fee but they will not do so unless you have got the other two-thirds secured with a U.S. pre-sale. Quite honestly I think that they are trying to protect the financial interests of the Canadian producers.

"So on *Christie* I think that we are going to have to change what we were going to do. We had intended to use Al Waxman and R.H. Thompson in the lead roles but in terms of a sale to the U.S. market, who the hell has heard of Al Waxman and R.H. Tompson? Nobody! So the pressure is on us to introduce star value into our film and this of course will throw our budget way out of whack! Instead of a one-million dollar budget, we've got a two- to three-million dollar budget. But if that's what it takes to get a U.S. pre-sale, then we are prepared to do it.

"And that's why we are in business. To produce something people will buy, right?"



**KIT HOOD and  
LINDA SCHUYLER**  
independent producers  
Playing With Time Inc.

In business for seven years, Hood and Schuyler are presently completing a 13-part series of half-hour dramas for children entitled, *The Kids of Degraffi Street*. To date, these films have been licensed to CBC, HBO, Showtime and Learning Corporation of America. Plans are underway to have the series distributed in Europe. However, none of the films have been licensed by any of the Canadian pay services.

"We've tried selling to pay-TV here like everybody else in town. We tried with our series, *The Kids of Degraffi Street*. We got really fantastic responses from both C Channel and First Choice. However, they both insisted on having first window. We knew we had a sale for sure from CBC and we were just trying to get a higher sale price by going to the pay channels.

"When we told C Channel that we were getting 30% of our budget from the CBC they said 'Look, we can't even begin to match that.' I know from distributors that C Channel is picking up their material very cheaply.

"First Choice were willing to come to at least 50% of our budget. But, when we started analyzing their deal, we became aware that we weren't going to see any money from it for at least a minimum of 18 months with how they structured their payments. With CBC contracts we negotiate, so we get so much on signing, so much on script approval and so on. And also, over the years, we have developed a really nice working relationship with them.

"I understand what they say about this business of wanting first window, but I disagree with them, particularly in the area of children's programs. And when you try to point out to them the logic of having a second window, they can't see it. Yet they'll pick up a *Star Wars* as a big blockbuster. It certainly isn't a world premiere and certainly not a first window. They're counting on the fact that people have seen it and want to see it again. And I think that applies to kid's films. But they don't see that and that is what is so frustrating. My argument with them is that what free TV is going to do is build their audience for them. Because kids are going to say 'I've seen that at so-and-so's birthday party' and kids like to hear and see things over and over again. Like a story in a book, they like to read it over and over again. And I find nothing wrong with that. I've pointed out to the pay-TV people that they can cash in on CBC's publicity. People are going to know about these shows and the audience is just going to get stronger. But that argument goes nowhere.

"I think that both the CBC and the pay channels have got to lose this sort of pompous attitude that 'we will only be the ones with a first window' because they can't afford to fracture the market or the producers that much."

**RICK BUTLER**  
president  
Tapestry Productions Inc.

Butler has had a diversified career as an academic at several universities; as a writer of three books: "*Quebec: The People Speak*," "*The Trudeau Decade*," and "*Vanishing Canada*"; as a documentary producer for CBC, TVOntario and the NFB; and as a producer of 12 record albums. In May 1982 Tapestry Productions concluded a deal with Standard Broadcasting Ltd. to develop Canadian stage plays for television.

"Balconville" was the breakthrough show initiating co-operation between C Channel and CBC. It's first going to be shown on C Channel which has an initial six-month window on the show. Then it goes to CBC for a one-year window and then it goes back to C Channel for a 24-month window after that.

"Recently, Tapestry Productions has concluded an agreement with First Choice on *Maggie and Pierre*, with Linda Griffiths starring. *Maggie and Pierre* is going to First Choice exclusively for an initial two-year window. Then other broadcasters could come in and buy windows in the third year, but this is still to be negotiated. In years four and five *Maggie and Pierre* goes back to First Choice. It is scheduled to go into production in July and we'll be delivering it in the fall.

"In my contract with First Choice, I have a very interesting agreement as far as video-cassette rights are concerned. First Choice has the show totally and exclusively for the first six months. Then it is possible after six months that video-cassette distribution could take place. I'm going to use *Maggie and Pierre* as an experiment in video-cassette marketing. I'm looking into video-cassette sales because there are a lot of people who have home recorders, but who do not subscribe as of yet to pay-TV. In some countries like Scandinavia and Spain I have heard that the video-cassette rights to a show are worth more than the television rights.

"I have found First Choice extremely co-operative and helpful to deal with. From the first meeting everything came together very quickly and I find that they seem to know, at least in terms of *Maggie and Pierre*, that they wanted this show. They were very quick in their decision-making, very straight-forward to deal with.

"I see that the pay networks have had criticism for being slow to produce Canadian dramas. I think that it has taken them a while to get on their feet to establish their priorities, but I see real signs now that they are serious about Canadian drama. I've sold two shows to them in the last eight weeks, and I think that their presence is going to make a real difference for producers and writers and directors. I really do. And I've got more shows in mind."

