Towards a new film policy for Canada

by Michael Bergman

The government is in the process of examining and re-evaluating the elements of its broadcast policy. This should not be surprising given that there is a new party and a new government in power.

Curiously the government has not yet embarked on as far-ranging a review of film policy, a review that is long overdue notwithstanding the many studies and attempted consultative processes of the past years. These reports have yielded very little in the way of results, primarily because government has been hesitant to depart from the fundamental premise of existing film policy. This hesitancy stems from two perceptions: first, that the industry is too fragile to be tampered with in any way except by increasing government funding and, second, that the problem of Canadianization of the distribution system can at best only be tackled obliquely – certainly not by coercion or active policy.

That an active policy re-evaluation is in order today is as important for the film industry as it is for the broadcast industry. The importance of this should be demonstrated amply when one considers that the film industry today is not at all the same in Canada as when the government first formulated its essential film policy in the 1970s. Although there have been many changes to the amount and means of government film funding, Canadian content rules, co-productions and other government emanating devices, the writer believes that a more careful examination would show these shifts in the course of government policy as remedial – superficial at best – and made without addressing specific objectives.

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The key to film-growth in the industry is the participation of private investors in film companies

In its origin, the film policy of the early 1970s had a single objective: the creation of a Canadian, commercial, feature-film industry. The policy was a deliberate attempt to instigate the creation of an industry whose existence previously had been nominal or negligible at best. The means to bring about this creation was also singular: making available sufficient capital to interested private individuals or budding producers. Government made this capital available through three well-known devices: tax shelters, co-production treaties and the Canadian Film Development Corp. The emphasis was not essentially on using taxpayers' money but rather on private monies raised through government incentives. As it developed, the CFDC acted as the catalyst through research and development, seed or bridge financing to assist the producer in tapping into tax-shelter funds. On the whole, the expectation was that these government incentives would not only make money available to the producer, it would develop investor-interest in the industry.

Initial government policy was concerned with finding money to actually make the film; that is, financing film budgets. The effects on the film industry may not have been fully appreciated. No doubt government had in mind the more familiar experience of assistance to other industries where paying for the set-up of a plant and equipment was essentially a once-and-for-all basis to get a factory under way. Financing film budgets is a one-by-one process. It concentrates on making a single product, the film, rather than establishing film companies on a continuing basis. But there is a significant difference between financing a company and financing a single film. A well-financed film company should be able to conduct its own research and development, provide for its own seed and bridge money, as well as at least a portion of the budget from its own internal financing, investors and the financial institutions associated with it. To view film financing on a budget-by-budget basis is to inhibit the growth of film companies able to fully accomplish the task by themselves.

Growth in the film industry will only occur once there are solidly entrenched production companies. Government funding or assistance on a budget-by-budget basis will not achieve this. To a private investor it encourages investing only in one project rather than an ongoing business.

The means of raising capital for any corporation in any industry comes from a sale of shares; the raising of money through treasury securities such as debentures; and loans or credit on security. The key to film growth in the industry is the participation of private investors in film companies. In Canada the traditional position of a private investor has been as a participant in equity, the investor generally owning a small portion of the film without any input into the production company or its management.

The failure of tax-shelter enticements at the beginning of the 1980s effectively knocked an important prop out from under government's film-financing incentives. As a remedial measure and under pressure, the government during the course of the 1980s has slowly escalated direct financing of the Canadian commercial feature film industry through government funds, reaching what might be called a crescendo with the 49 percent contribution of the broadcast funds. Just how far government policy has gone from enticing private investors to direct government involvement can be seen when it is considered that the principal active sources of money for Canadian feature film come from either the broadcast funds or the CBC, both government funded. There is an unspoken attitude now that obtaining private investment is a necessary nuisance as the first step to accessing the more important government funding; in most businesses this would operate the other way around.

Any review process must commence with complete assessments of policy objectives. Existing policy had its origins in the desire to create a commercial feature film industry, an objective that has been remarkably successful even in the face of criticism and the ups-and-downs this industry has faced. In addressing the successful, if difficult birth of the industry, present government film policy's objectives are out of date. The mechanisms and initiatives to instigate the birth of the industry are not the means to promote its continued growth.

It must be recognized today that there exist operational Canadian film companies and sufficient personnel at all levels to maintain an output of Canadian production (which is not to say that this production always has production-value). Consequently, the objective of current government policy must be the promotion and growth of an *existing and permanent*

Canadian film industry. The means to fulfill this objective are dual. Unlike the original policy of the 1970s, it is not enough to concentrate on sources of funding; they must also be in tandem with some incentive to promote what might be termed Canadian commercial excellence.

By Canadian commercial excellence is meant production values of quality and originality that are distinctive in their creative merit yet have considerable, or mass, appeal. The continuing emphasis on copying American films rather than pursuing creative originality in all film genres must be cast aside. It is creative originality that will ultimately make Canadian films acknowledged as Canadian in a positive sense. The world will watch Canadian films without maple leafs, beavers and other indigenous flora and fauna.

Implicit in promoting the growth of an existing film industry must be the aim that the industry stand on its own two feet without direct government long-term financial intervention. The operative means of government policy in the 1970s to incite private investors to invest in a film was correct: private investment is the only way by which an industry in a capitalist country can succeed. Unfortunate as it is that government policies have subsequently lost sight of this, it is now time to return to that policy, although in a different manner.

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Promoting film companies means promoting investment in these companies. The policy of financing a film budget to established production companies should be gradually phased out, subject to certain conditions. It should be replaced by a scheme that would provide encouragement and incentive to private investors: to invest in Canadian feature films, to get to know the industry, and continue investing because of the inherent merit of commercial feature films as a business venture.

Incentives to induce private investment into film companies can be achieved by several means. First, the tax-shelter idea in itself should not be completely discarded; rather, it should be removed from the capital cost allowances approach to tax sheltering investment-money paid directly into the treasury of a company in return for shares, either common or preferred, voting or non-voting. This should assist film corporations in directly capitalising their own companies and assist in providing the private investor with the incentive to do so. In this scenario, the investor is investing in part of the film corporation itself and not a part of the master negative. To further assist capitalization, the government should institute a programme to pick up all or part of the tab of the financing costs incurred for this. There is some precedent; for example, in Quebec certain companies going public on the stock exchange can have a substantial portion of their prospective fees paid by government assistance. It would not be necessary for each film corporation to go public and sell its shares widely on any exchange. Nevertheless, the cost of raising money is significant and makes the process difficult unless sufficient initial funds are available.

In addition, the government should fund research and development, but not simply on a project-by-project basis. An established film production company should be able to apply for R & D funding on an annual basis based on reasonable projections and analyses of its R & D needs for the upcoming year. No production company can survive without constant research and development of continuing and new projects. By annual funding of R & D in an amount sufficient to reasonably cover these expenses over a 12-month period, the film production company would have sufficient flexibility and assured ongoing funds to adequately and continuously deploy some for R & D purposes. Of course, receiving only one amount per year to cover the year implies prudent allocation within the corporation's internal structure to assure that these funds are not depleted or that they are in time augmented by other sources.

Film-budget funding to establish production companies should be limited. As part of the continuing incentive to the private investor to invest directly into a film corporation, the product of the corporation should be assured. For this purpose government should fund the insurance costs of motion-picture guarantees and the actual film financing costs as the only assured costs in the budget which the government will support.

Finally, established film corporations should be able to apply for a single annual fund for promotional and marketing purposes based on reasonable projections and analyses. Similar to the R & D fund, this amount should assist the promotion and marketing of the corporation and the projects it has completed during the funding period.

The above four funding methods will be subject to three forms of "Canadian" criteria on a progressively increasing scale. The tax shelter for corporate capitalization should require mandatory Canadian manning on all film projects undertaken by the corporation within two years of the financing, according to a point system similar to the existing capital cost allowance point system. Corporations receiving R & D annual funding must observe Canadian manning requirements for two years from the time of receiving such funding on all projects where the writer, director and principal star (as well as the crew) must be Canadian. Finally, Corporations receiving guarantor – and budget – financing funds must undertake to have 100 percent Canadian manning on that particular film. Promotional funding should be not subject to manning requirements.

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The use of taxpayers' money must meet Canadian manning requirements. In particular, films will not reflect Canadian originality unless the writer and director are Canadian. There is just no way foreigners can provide the Canadian look.

Tied to the criteria of funding must be that of Canadian commercial excellence. Longer-term funding of Canadian established film corporations must be conditional on a demonstrable commercial success. If a film company cannot show a critical or audience approval, it should not be in the business of commercial filmmaking. Consequently if, after initial funding grants of R & D and promotional and budget funding, a film corporation cannot demonstrate Canadian commercial excellence within two years of receiving funding, subsequent funding, if applied for, should be reduced.

Simply supplying money or money-gathering incentives are not enough. All businesses must be able to develop suitable managerial, marketing and development expertise. This requires the input of people with appropriate business, financing, managerial and marketing skills. For this purpose, government film funding agencies should provide a consultative assistance programme to assist film companies in developing those skills by working with them to implement the kind of corporate programmes to render film corporations as structurally sound entities.

The other side of the coin is distribution. In any business, access to the means of distribution is the benchmark for potential success. In Canada a significant portion of the distribution element of the film industry is in foreign hands. Leaving aside the issue of foreign ownership, the fact is significant not simply because of American presence, but rather because generally the American distributors are directly or indirectly part of American film producing corporations. They have less incentive to be concerned about distributing Canadian products (although it must be said in their benefit that the product is sometimes of questionable value) and, regardless of good intentions, they are unable to plow back into the Canadian industry the money and effort that an indigenous, successful distributor would be able to. The latter point has much to do with the fact that Canada is essentially viewed as part of the domestic film market of the United States and consequently whatever money and effort is put back into the Canadian film industry by American distributors is viewed as part of their principal market, the territorial U.S.

Correcting this is contentious. The Quebec government attempted to Quebecize local distributors but has lost the will to do so in the face of a massive, foreign lobby. Recommendations on the Canadianization of a distribution system in several federal reports have not been followed through with film policy. Access to the distribution system is difficult enough in terms of pure business considerations. It is made so much harder when one has to deal with foreign concerns. This is one area where the government must bite the bullet. But as it is unlikely that the current administration will be willing to forcibly Canadianize the distribution system, more indirect approaches will be necessary.

Canadian distribution companies should have the same access to tax-shelter capitalization incentives and the financing to obtain such tax-sheltered monies as is suggested above for film companies. One significant difference, though, in this kind of financing (unlike that of film producing corporations) is there should be provision for Canadian content. Distribution corporations should be able to develop on a broad-ranging international basis. The principal criteria should be that they are Canadian-based and owned, and make an effort to distribute Canadian production, though not to the exclusion of foreign product. To instigate the use of Canadian distribution companies, all Canadian film corporations funded by government funds or tax-shelters should be required to use a Canadian distributor, at least in Canada although preferably for a much wider territory. Secondly, exhibitors showing films distributed in Canada by foreign-owned distribution corporations should be subject to a tax on profits resulting from that exhibition.

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Direct government financing should not be indefinite. Film financing programmes should have a sunset clause that they come to an end within six years, subject to review. The industry has come a long way and it must realize that direct dependence on government funding is not forever. There must be the incentive to work with government programmes so that eventually film corporations will be completely independent.

In all of this the new producer, the producer of the artistic film, the smaller producer, seems forgotten. This is not a form of forgetfulness, but rather the acknowledgement that for these types of individuals different programmes are necessary. Established commercial film corporations must operate on a different basis from those making artistic or first-time films. For this category a special programme should be set up whereby the appropriate government agency would enter into a partnership with the producer or assume the production of such projects. This would give the beginner, the non-commercial or unattached filmmaker an opportunity to gain experience and establish a reputation. It would also give an opportunity to projects that would not be of interest to a commercial film corporation. These projects would be low-budget, entirely Canadian and subject to quotas as to how many times the promoting individual may request that his project be co-produced or produced by a government agency. These projects would not simply be funded by the government agency, but actually subject to direct producing by it.

No government policy is a panacea. No government policy will correct all the problems, right all the wrongs or create a flourishing business. The initiative, skill, and expertise all reside with the private sector. Commercial success is dependent on many factors, but perhaps the most difficult to assess are the intangibles — intangibles of vitality, will, originality and aggressiveness. We must throw off the attitude that our domestic market is purely secondary, small, conservative and that our product will not have broad international appeal unless it looks American.

The potential for domestic growth is increasing. The country's population is not what it was and it is growing. Technological innovation can speed up the process of industry development. Is the film community ready to take the initiative to push ahead?