

LEGAL EYE

by Michael Bergman

Securities and insecurities

The story of contemporary Canadian feature film is a tale of the quest for money. In the private market this quest has often led producers to seek out investors who, through public subscription, would purchase units in the film. At first glance it may seem that the hardest part of the process is finding an investor who actually will invest. It is probably not often realized, though, that an equally difficult element of the process is the legal requirements for simply starting the search for private funds.

The public sale or, more properly, the offering to the general public of shares, units or equity in feature films involves complicated matters of securities legislation. Securities legislation is designed to protect the general public in its dealings with stocks, bonds and other types of investments that many lay people would associate with the stock exchanges. Securities legislation is much broader than simply covering the stock market; it reaches into every transaction involving shares or equity where the sale of these securities is offered to more than a small limited number of individuals, generally no more than 25 or 50 depending on special circumstances.

One of the principal ways securities legislation protects the public is by compelling companies seeking funds to disclose all material or significant elements of the circumstances, facts and background of a project and its sponsors. This disclosure is normally made through a document called a prospectus—a detailed booklet prepared in advance of offering securities to the public, and filed with a provincial securities commission for its approval. The prospectus would normally contain detailed explanations of the object of the project, the sources of funding, the principal personnel associated with it and their backgrounds, a description of the risks involved, the means of generating revenue or income from the project and other important matters which may influence an investor in his decision. The importance of the prospectus is demonstrated by the stringent requirements for the kind of type and print used and the format of its publication: firstly a written summary, then a detailed description, and then the signed statements of auditors and directors of the company.

Failure to prepare the prospectus properly can entail important and serious consequences. The securities commission receiving an improperly prepared prospectus will

refuse to approve it, and consequently the securities intended to be sold through deficient prospectuses may not lawfully be transacted. Where it is later discovered that a company did not disclose a material fact, the company may be liable to criminal prosecution. The investors who purchased without knowledge of the undisclosed information may be able to take important civil recourse to have the purchase

cancelled and obtain damages. It may be gathered, then, that the simple preparation of a prospectus is a time-consuming, well-thought-out task.

The early uncertainties and instability of many production companies and the risks involved in film investment have led various securities commissions to issue a national policy statement on film prospectuses. The film industry is one of the few to be graced by

national policy. The national policy is indicative of the need to tighten film financial packages and offerings to the public. The policy provides for more stringent requirements than normal. It limits to some extent the means and method of producer remuneration and producer dealings with distributors and sales agents, among others.

Obtaining the approval of



National Film Board of Canada

Office national du film du Canada

NEWS

Festival of Festivals

Six National Film Board productions, including the premiere of the NFB/CBC co-production *Canada's Sweetheart: The Saga of Hal C. Banks*, will be screened at this year's Festival of Festivals in Toronto.

Directed by Don Brittain, *Canada's Sweetheart* tells the story of Harold Chamberlain Banks, a convicted felon and union strongarm who was called in to oust the Communist-controlled Canadian Seamen's Union in 1949. Combining dramatic re-enactments of the period and interviews with many of the principals, the film traces 13 years of terror on the waterfront when the careers of over 6,000 seamen were destroyed by the power of one man. *Canada's Sweetheart* will be screened Sunday, September 8 at 5:00 p.m. and Monday, September 9 at 3:00 p.m. at the Cumberland Theatre.

Other NFB productions selected for screenings are the feature films *90 Days* by Giles Walker scheduled Sunday, September 8 and Monday, September 9 at 10:00 p.m. at the Cumberland Theatre; and Roger Frappier and Jacques Leduc's *Le Dernier Glacier*, Saturday, September 7 at 5:00 p.m. and Sunday, September 8 at 3:00 p.m. at the Cumberland Theatre.

Three short films, Albert Kish's *The Age of Invention*; *Do the Crawl*, directed by Derek May; and Phillip Borsos' award-winning *Nails*, will also be screened.

DramaLab Continues

On September 3 the NFB will welcome 19 filmmakers from across the country for Phase 11 of DramaLAB '85, an



Maury Chaykin as Hal Banks with Andrée Cousineau in a scene from the NFB-CBC production *Canada's Sweetheart: The Saga of Hal Banks*.

intensive four-month course on all aspects of production and marketing of dramatic films. The group will divide into seven writer / director / producer teams and produce 15 minute dramas on film.

Phase I of DramaLAB '85 was held last spring at the University of Alberta, and saw seven teams create half-hour dramas on video while concurrently receiving intense instruction in all phases of the dramatic production process.

DramaLAB '85 is being administered by Studio B under Executive Producer Andy Thompson. All inquiries should be directed to Program Co-ordinator Liz Hamilton at 283-9607.

PBS Launches "War"

This fall American audiences will be able to see the NFB's acclaimed series *War on Public Television*.

Billed as the centerpiece of the Fall schedule, *War: A Commentary by Gwynne Dyer* will begin Tuesday, October 1 at 9:00 p.m. This highly successful series, tracing world military history from the Napoleonic Wars to the Falkland Islands, was aired in Canada in the fall of 1983 and was consistently in the top-20 programs during its seven-week run.

In addition to the seven original hours produced by the NFB, the presenting station (KCTS/Seattle) has produced an eighth episode, "The Knife Edge of Deterrence," which presents alternate points of view on the most salient issues Dyer sets forth in the preceding weeks of commentary. This episode program will focus on the concept of deterrence from U.S. President Truman's post-World War II administration to President Reagan's Strategic Defence Initiative (SDI) or "Star Wars" plan. Edwin Newman will serve as host.

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Ontario region - Toronto (416) 369-4094

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plus offices in most major cities

Securities and insecurities

the securities commission for the prospectus is not the end of the securities surveillance regime. Public subscription to prospectuses creates an ongoing obligation to report on a very regular basis to the securities commission information about the revenue and dealings with the project once

it is completed. It follows that reporting requirements necessitates the maintenance of some staff and the continuing participation of professionals even after the project is completed.

It is axiomatic that the use of prospectuses to obtain financing is a very expensive propos-

ition. Their preparation involves detailed and costly work by lawyers, accountants and other professionals. In the '70s especially, film financing was often effected through prospectuses using stockbrokers, all of which significantly added to the cost of making a feature film, so much so that it would not be incorrect to say that the budgets of many of the middle- and late-'70s feature films financed through this

method were one-third devoted to financing and related costs. The investor paid for the cost of finding other investors so that all of them collectively could enable the producer to make the film. The result was that only 66 to 75 per cent was reflected in any kind of production value on the screen.

The decline of investor and stockbroker interest in film investments at the beginning of the '80s has correspondingly

brought a significant decline in the number of prospectus-financed, Canadian feature-films. This has not necessarily brought about a decline in the need to consider the different aspects of securities legislation in film financing. Today, those film projects seeking public subscriptions concentrate on doing so by methods that either do not require prospectuses or are exempt from most securities legislation requirements. One of the principal ways of being exempted from the necessity of a prospectus is to reduce the maximum number of investors eligible to buy into the project, normally, as mentioned earlier, 25 or 50.

The exemption process, though, may not be automatic. In many cases it must be acquired through complying with certain minimum disclosure requirements. This means preparing a brief notice or circular designed to be given to the prospectus investors in advance of their purchases and containing certain essential information. The notice or circular would be deposited with the securities commission which, depending on local requirements, would then, if satisfied, grant an exemption. Although not as costly and complicated as the prospectus, it is still a detailed process.

Most producers no longer go to the public market for private funds. They have lost interest in this approach because most private investors have lost interest in the Canadian film industry. Today, Canadian feature films, to the extent that they are privately funded, are financed by television or from principally American film companies or distributors. The prospectus method of film-financing today is rare. The use of notices or circulars to obtain exemptions under securities legislation is more frequent, although principally confined to first-time producers, smaller projects or special circumstances.

Going to the public market requires a well-thought-out position. It is a commitment to work in the interests of others and not just oneself.

In the past, financing devices subject to securities legislation were generally viewed as a means to tap tax-sheltered money. Re-thinking the aims and objectives of private financing to the public market may one day serve to reactivate this mode of financing in the Canadian feature film industry.

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Evangeline Deusse

Producer/Director Daniele Suissa

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Producer Andras Hamori



Producer Joan Schafer
Director Peter Thurling



Producer Paul Saltzman
Line Producer John Eckert



Producer Derek Lamb
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STREETWISE

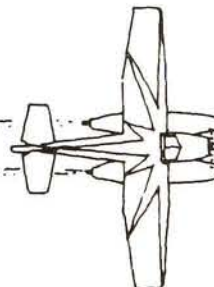
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