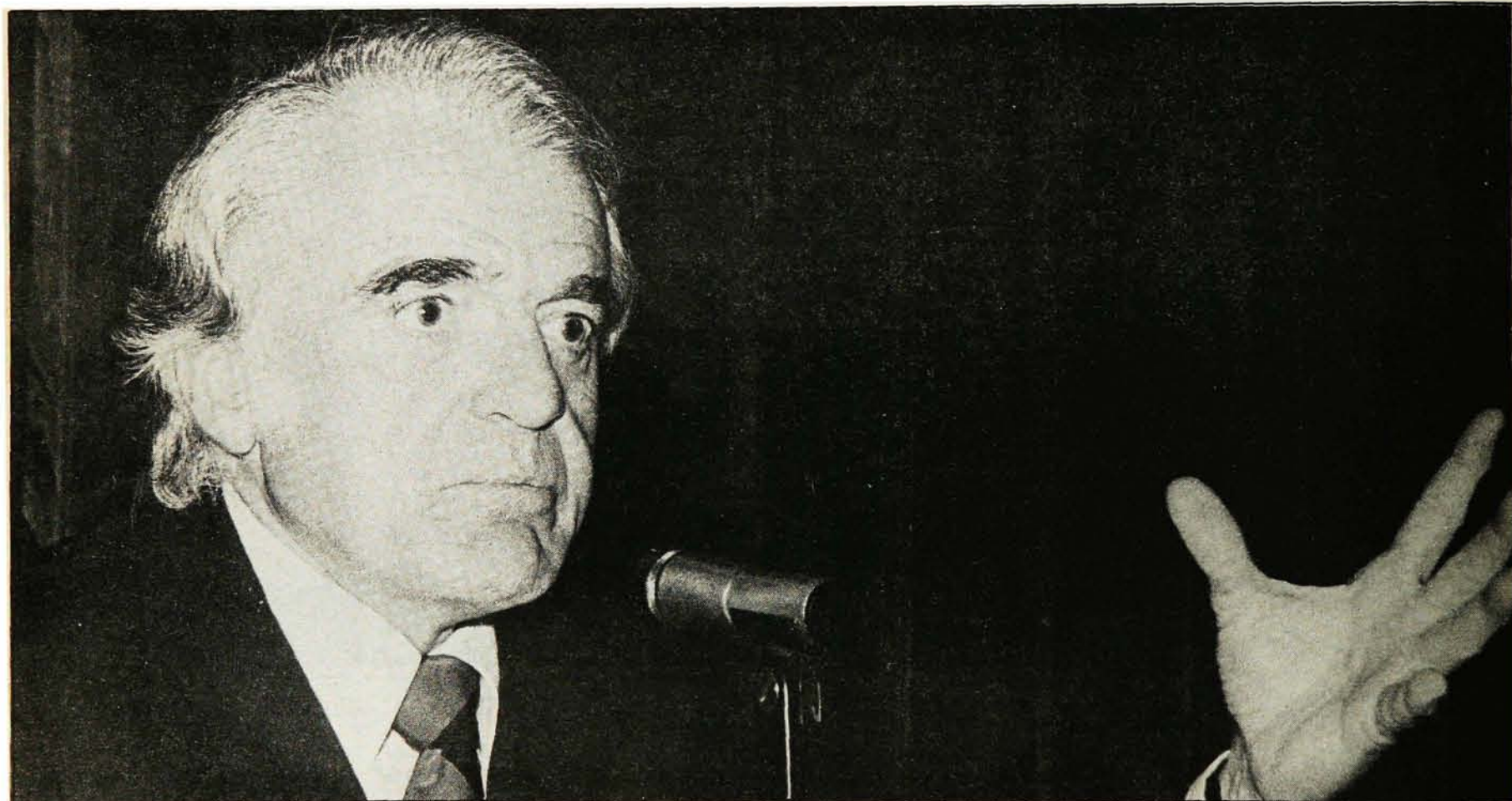


# Inside The Wagon Train: A Cautionary Tale

## US-Canada film relations 1920 - 1986

by Michael Spencer



• MPAA president Jack Valenti

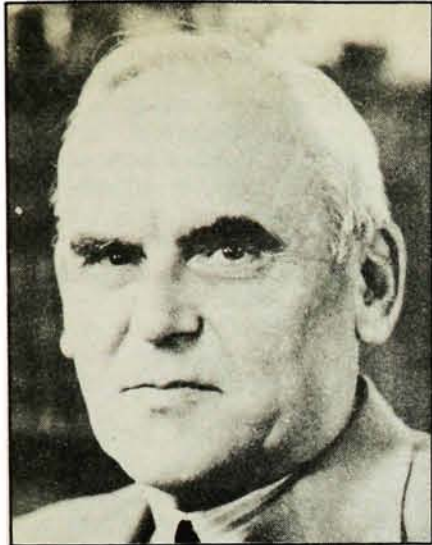
*In November, 1983, the Department of Communications asked me to write a background report on the relations between Canada and the U.S. with particular reference to the feature film. Another film policy was in the making and the officials wanted a document that would be useful in convincing the minister that he was facing a tough situation. Many previous efforts had been made to wrest back some control of the Canadian film industry from the Americans. They had all failed. As we shall see, the report was not convincing to Francis Fox, Minister of Communications at the time, but it seems to have been widely leaked and I was frequently told by people I met at parties that they had read it. In this version for the readers of Cinema Canada, the essential content remains the same - with an update to 1986. What I have done here is introduce a few personal observations and reduce some of the longer quotations from the information placed at my disposal by the department.*

*My source for most of the information for the early years is Embattled Shadows by historian Peter Morris to whom I am most grateful: anyone who wants to know about the origins of cinema in Canada must absolutely consult this book. I have drawn on it for information on the attitudes of the American film industry towards Canadians' desire to make films in their own country. I also, of course, had access to DOC documents and memoranda, but the opinions expressed here are my own.*

*I ended my report as follows: "The future of Canada as a cultural entity with its own literature, poetry, music, drama and, above all, the popular arts of film and television, must depend on two foundations of equal strength. First, the creative ability of the artists themselves and the energy of the entrepreneurs who will bring their works to public attention and, secondly, the determination of government to back their efforts with financial assistance and the regulation and legislation required to give them a share of their own market. I hope I have convinced my readers that, so far as the American motion picture industry is concerned, the latter foundation cannot be laid in the sands of good intentions and voluntary arrangements."*

*It is ineffective, in my view, to keep talking about deals and negotiations when the other side knows very well we have no real regulations or legislation to back up our negotiating position. It's a game of poker against some of the most skillful players in the world with the collective wisdom of years of experience. We, on the other hand, bring in new players every couple of years. Worse, in Quebec recently when we finally seemed to be in a strong position, we just threw in our hand. Nevertheless, as the American memorandum I quote at the end of this piece shows, if we played our cards more effectively we could get some important concessions.*

# F I L M P O L I C Y



• Canada's minister of everything, C.D. Howe



• Secretary of State Maurice Lamontagne



• Secretary of State Judy LaMarsh



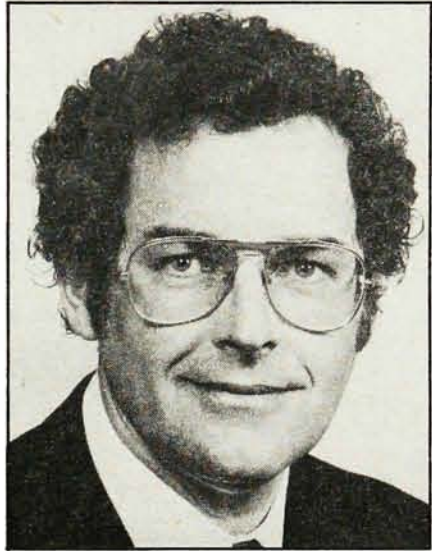
• Secretary of State Hugh Faulkner



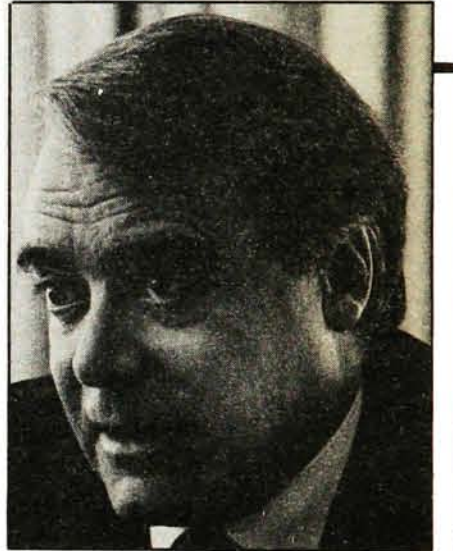
• Secretary of State John Roberts



• Minister of Communications David MacDonald



• Minister of Communications Francis Fox



• Minister of Communications Marcel Masse



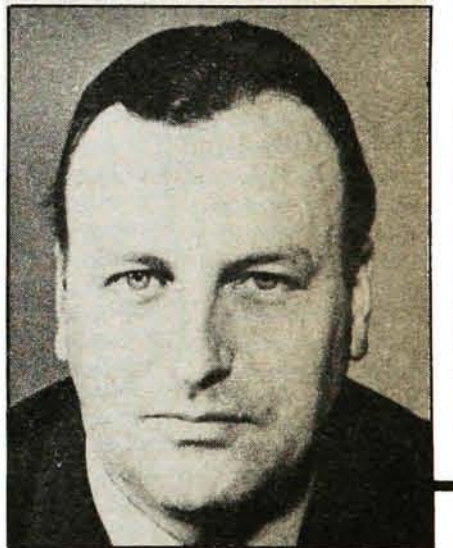
• The CMPDA's Millard Roth



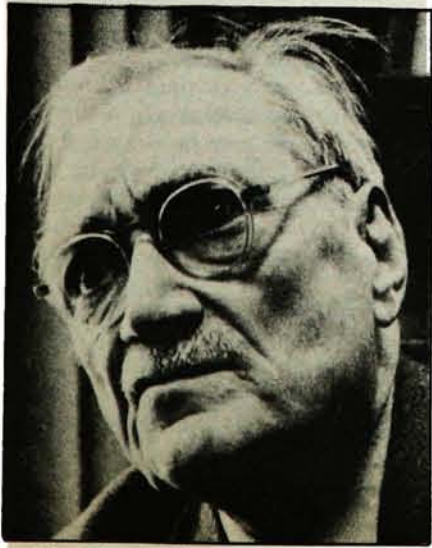
• Famous Players' J.J. Fitzgibbons



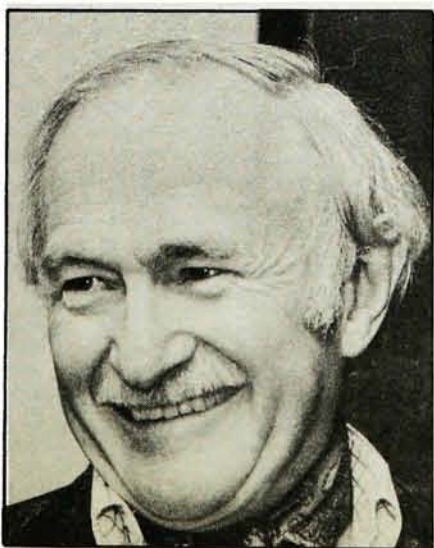
• What do we do about Canada? Paramount division managers meet in New York in 1953



• NFB's Ross McLean: not asked about the cooperation project



• John Grierson, National Film Board founder



• Michael Spencer at the CFDC



• Cineplex's Garth Drabinsky



• John F. Bassett: urging quotas

## NO FUTURE

Prior to the First World War, the historical record says little of the American interest in the Canadian movie scene. However, the Canadian landscape was an attraction for American companies producing commercial dramas, which, in those far-off, silent days, could be made on location using local actors. Few producers were active in Canada. Nevertheless, the production industry soon took its first tentative steps. A studio was built at Trenton, Ontario, and through the period from the end of the war until the coming of sound there was sporadic production of Canadian entertainment films in Canada. Some even had successful releases in the U.S. and the entrepreneurs responsible, such as Ernie Shipman from Ottawa, set up businesses and produced films with box-office potential: **Back to God's Country** could have been as popular in its day as **The Apprenticeship of Duddy Kravitz** in ours. But American movies were the dominant entertainment for Canadians, and **Famous Players** was soon on its way to becoming the largest theatre chain in Canada, under the ownership of Paramount, a U.S. exhibition, distribution and production conglomerate at the time. Canadian producers received no support from their government. There were many bankruptcies and business failures. Regular production of Canadian films for Canadian theatres seemed an unrealisable dream.

The Motion Picture Association of America, the U.S. film industry lobby which plays a large part in this story, was created in 1922. That year, one of its early members, Lewis Selznick, father of the more famous David, set the tone of its attitude to Canada: "If Canadian stories are worthwhile making into films, companies will be sent to Canada to make them." Hollywood was even then attracting the best talent from England, Germany, France and Scandinavia, countries with film industries from which people could be attracted, like Greta Garbo, Ernst Lubitsch, Ronald Colman, and so on. Canada's early film industry efforts were already in the hands of the American majors who made sure that the box-office returns made no contribution to another national film industry. So our talents – and they were considerable – followed the money, setting off for Hollywood to become rich or famous or both. Norma Shearer left Westmount and Mary Pickford left Toronto; even Louis B. Mayer left St. John, New Brunswick, to become head of MGM. It never occurred to any of them that there was a future for their talents in their native land.

The MPAA's current president, Jack Valenti, during one of his many visits to the Montreal Film Festival, once described the American reaction to the protectionism of countries wishing to establish their own film industries as being like that of the drivers of a wagon train when the Indians were preparing to attack. "We have to draw the wagons into the smallest possible circle," he said, implying an onslaught of overwhelming force. Of course, he knew

*Michael Spencer, the Canadian Film Development Corporation's first executive director, is in private industry in Montreal.*

very well that there are just as many Indians *inside* the wagon train as outside: managers who run the theatres owned by U.S. multinationals, distributors who handle American product and make money out of it and then the bureaucrats and politicians who don't want to rock the boat. All these people, whose intentions are certainly honourable, exist in every country where American films are distributed and the MPAA makes certain they are well-equipped with ammunition when the wagon train comes under attack.

Historian Peter Morris tells us about Ray Peck, head of the Canadian Government Motion Picture Bureau in the 1920s, who along with Ben Norrish, head of production at Associated Screen News (ASN), Montreal, both influential men where government policy was concerned, agreed with Lewis Selznick and did not support the idea of making features in Canada. ASN was printing release copies of American features in its laboratory and, no doubt, was subject to pressure from this quarter, while Peck wanted to attract American producers to Canada to take advantage of our scenic beauties. Perhaps he also enjoyed trips to the studios in Los Angeles where he argued strongly against any restriction of foreign film in Canada.

*His efforts on behalf of Hollywood were appreciated. In the spring of 1927 he was invited for a two-month stay in Hollywood to visit the major studios and confer with prominent producers regarding producing possibilities in the Dominion to meet the proposed British quota law. In other words, to find ways the Canadian government (represented by the Bureau) could assist Hollywood producers circumvent the intent of the British quota. It is not going too far to suggest that the Hollywood branch plants which sprang up in Canada in the thirties were a direct result of that visit by Peck to Hollywood in 1927. There may even have been some sort of a trade-off. Certainly Peck returned from Hollywood with advantageous contracts for American distribution of Bureau productions which it was announced would make the studio self-supporting during the coming year. (Peter Morris, **Embattled Shadows**, McGill-Queen's University Press, 1978)*

The U.K. did, in fact, create a mini-boom for Canadian production in the '20s and '30s by legislating a screen quota to guarantee the producers of British and Commonwealth films a percentage of the available screen-time in the theatres. No doubt the MPAA used all its skills to persuade the British this was a retrograde step, but to no avail: the British film industry had enough clout with its government to maintain its position. So the Americans adopted Ray Peck's idea and shot pictures in Canada with mostly American crews, claiming that they were British. The ruse did not work for long and the Americans had to adhere to the definition of a British film which gave some work to Canadian technicians and performers (films made within the British Empire counted as British). There was rarely, if ever, a Canadian contribution to the writing and directing of these pictures. On the other hand, a half-

hearted attempt was made to protect the market for British (i.e. Empire) films in Canada and legislation created a quota for them in 1931 in Ontario, in 1932 in British Columbia and in 1933 in Alberta. (I wonder if the provincial ministers and their deputies were aware of this at the March, 1986, Federal-Provincial conference on publishing and the film industry, as I'm sure that some of the people who have been lobbying the provinces to keep their hands off the industry didn't bring it up.) Anyway, orders-in-council were required before the legislation could be acted upon – and these were never passed.

1930 was the year in which the MPAA entered the historical record in Canada. The impact of American power in the Combines Investigation of 1930 provides a significant case-history. **Famous Players**, which had become the largest and most powerful chain of theatres in Canada with control of 207 theatres, was effectively squeezing the independents out. The government decided that a monopoly existed and that **Famous** was using unethical tactics against their competition. Nevertheless, the Supreme Court of Ontario decided that there was not enough evidence to convict and the case was dropped. The MPAA was active on behalf of its member company, Paramount, and it is believed that effective lobbying, by a certain Colonel Cooper representing the Association, convinced the government in Toronto that it should drop the case. Among the statements attributed to the Colonel, when it was suggested that a 25 per cent quota per applied to Ontario theatres in favour of Canadian feature films, was this: "The profits of the motion picture industry in Canada are in running theatres, not in the making and distributing of motion pictures."

Col. Cooper was still around, doing his bit for the MPAA, when John Grierson arrived on the scene in 1938. There was, of course, no production of Canadian entertainment films at the time, except for a series of shorts directed by Gordon Sparling's **Canadian Cameo** series. In any event, Grierson's interest was not in entertainment. He quickly recruited the best creative people to make documentary films for the new National Film Board and had no difficulty persuading Canadian theatres to run his monthly series, **Canada Carries On**, 20-minute shorts about the war and Canada's part in it. Grierson also wanted to penetrate the U.S. market but there already was a comparable series, **The March of Time**, in the theatres there. Grierson's challenge to **The March of Time** was **The World in Action**, which at the height of its fame ran in 7,000 theatres in the U.S. One U.S. Major distribution company, United Artists, must have felt kindly towards Canadian production, especially when one of the series, **Churchill's Island**, won an Academy Award.

## LOBBYING THE MAJORS

Right after the end of the war, I had my first personal experience with the clout of the American majors. The main players on both sides were Canadians, of course: the Hon. C.D. Howe, Canada's Minister of Everything, and J.J. Fitzgibbons, the head of **Famous**. I'm referring here to the Canadian Cooperation Project and my part was

played long after the action was over. In fact, none of us in the Film Board knew what was going on.

What happened was that the government of Canada, because of a serious dollar-shortage, decided to block the earnings of Canadian theatres. The majors were not a bit sympathetic to Canada's problem and there was consternation in New York and Los Angeles. The usually quiescent Canadians had stabbed them in the back. "Were those guys in Toronto asleep at the switch?" J.J. was upset but he swiftly got an appointment with Howe. Howe apparently did not inform the National Film Board Commissioner, Ross McLean, about the meeting with Fitzgibbons, even though McLean was the established government advisor on film matters. On the other hand, Howe was not just going to change tack without good reason. He did, at least, suggest that if the money was to continue to flow, the Americans should do something for Canada. So the boys got together and came up with the Canadian Cooperation Project. The idea was that, under the aegis of the MPAA, shorts would be produced and distributed in the U.S. to promote tourism to Canada. There would be an increase in the number of stories about Canada in the U.S. reels, but the really outstanding suggestion was that the MPAA should employ someone in Hollywood to visit the script departments of all the major studios and suggest that the names of Canadian cities and provinces be referred to as often as possible. If a script had a character who talked about Peoria or Sioux Falls or Pittsburgh, why not make that Edmonton, Toronto or Halifax? American tourists would obviously flock to these places when they heard them mentioned in Hollywood movies.

When I finally heard about this crazy proposal (I was a producer at the National Film Board by then) I was incensed – so were we all at the Film Board. It wasn't because there was a Canadian feature film industry that should have received some support if part of the money had been kept in Canada. The irritation arose from the fact that the National Film Board was already distributing its own films and newsreel stories in the U.S. very successfully. Now all this activity was to be reported back to Howe as the result of the Canadian Cooperation Project. It was humiliating to say the least, especially as I was appointed as the liaison with the information officer of the Department of Trade and Commerce – to hand over the NFB statistics to him. However, I was happy for my old friend Blake Owensmith, who had left Hollywood at the beginning of the war to join the Canadian Army where we shared the odd adventure together in the Army Film and Photo Unit. Owensmith was the one who got the script Canadianization job, and his reports are probably still in the MPAA archives.

I never heard of any results from the Cooperation Project, which was allowed to die of embarrassment. But it served its purpose for the Canadian chains – there was no interruption in the flow of money back to the U.S. The majors also learned another lesson: they made sure that their top people in Canada kept their contacts warm, as one archival document proves: "Bob



• The Americans considered Bob Winters, center, Minister of Trade and Commerce "as swell a guy as Mike Pearson," with Winters is H.J. Keenleyside, left, and Ottawa producer Budge Crawley

Winters (then the Minister of Trade and Commerce) as you very likely know is as swell a guy as Mike Pearson. We both got to know him pretty well and have sewed him up tight on the project. We will certainly have a very strong man in our corner... for any future matter which might need help and understanding from the Canadian Government." The writer is unknown but the message is clear. I often wonder what memos of the 1970s and '80s will show up in the archives of the year 2000.

### THE CFDC AT THE CREATION

In the 1960s, the pressure to do something about producing feature films on Canadian subjects by Canadians kept building. The driving force in English Canada was N.A. Taylor in whose magazine, *The Canadian Film Weekly*, the proposition that we *could and should* produce our own films and show them in our own theatres was argued with great cogency. At the same time, the chairman of the National Film Board, Guy Roberge, was hearing from a talented group of Quebec filmmakers, including Claude Jutra and Gilles Carle, who had formed an association and begun lobbying. Roberge arranged for Taylor to meet the Board of Governors at the Film Board. Taylor was convinc-

ing as always and I was asked to draft a memo to the Minister suggesting a small agency be set up, separate from the Film Board, to make loans to the producers of Canadian features or invest in their productions. It was a short memo and came back with a minute recommending the establishment of an Inter-departmental Committee on the Possible Development of a Feature Film Industry in Canada. This committee met once a month or so for two years under Roberge's chairmanship. I was a member of it and Gordon Sheppard, who later made *Eliza's Horoscope*, was appointed secretary. The committee began by assuming that a brief report, generally backing the principles of the original memorandum, would be adequate, but we underestimated the enthusiasm for research of the Secretary of State, the Hon. Maurice Lamontagne, who was responsible for all the cultural agencies at the time. Lamontagne recommended the services of Jack Firestone, an eminent economist on the staff of the University of Ottawa. Firestone thoroughly investigated the economic background of the Canadian and American film industries and eventually produced a massive two-volume report which has since become a legend, even though very few people have read it because the Committee decided that it should be kept confiden-

tial. I managed to keep a copy for the Canadian Film Development Corporation (CFDC) when that agency was finally set up in April, 1968. It's a bit out of date now, but when the Committee finally reported to Cabinet in 1966, the report was attached to its memorandum. This caused some concern at the Privy Council Office. "You can't expect ministers to read all that stuff," one officer remarked. In fact, the final memo was not too different from the first one I had drafted three years before.

In the course of preparing the report, Firestone recommended a meeting with the majors to discuss our ideas and Taylor, who was on personal terms with most of them, arranged it. The meeting was chaired by Griffith Johnson of the MPAA (Valenti was not yet president). Unfortunately, I did not keep a list of the names of the people who attended this 1965 meeting. I remember them as colourful types and their general reaction to the proposal from Canada was exuberantly negative. They were, in fact, re-runs of Lewis Selznick and really couldn't understand our enthusiasm for Canadian production. One of them remarked that the prospect scared the hell out of him. It was difficult enough to make money with films made in the U.S., he said, what was the point of making them "up there"? In his patient way, Firestone continuously brought them

down to earth by insisting that he must have concrete recommendations to make to the Committee. Finally, they came up with some ideas. Among them were the following:

- *Make available studio and other technical facilities of the type that other foreign countries offer U.S. producers on attractive terms so as to make it possible for American firms to come to Canada rather than use their own facilities in Hollywood.*
- *Avoid discriminatory measures against American film producers and distributors, including screen and import quotas, special earmarked amusement taxes, taxation differentials, restrictions affecting the outgo of earnings by foreign film producers and distributors in Canada, artificial and non-economic regulations and barriers, "contents" requirements, etc.*

It is interesting to note that although they were asked for suggestions for Canadian producers, their replies were basically on behalf of American producers. Canadian producers are not specifically addressed at all. However, they did suggest that their Canadian subsidiaries could arrange distribution of films in Canada and act as intermediaries between Canadian producers and themselves.

Firestone also raised the possibility that a deal could be worked out with the American majors through which 10 per cent of their earnings in Canada would be invested in Canadian production. This was also discussed at the meeting and the negative reaction of the U.S. representatives was detailed in the report. For example,

- it would represent discriminatory treatment of American film producers, who would be deprived of disposing of 10 per cent of their film earnings in Canada in the manner they considered to be in the best interests of their companies;
  - it would force the production of non-economic films in Canada, which would be neither in the long-term interests of Canadian film producers nor of participating American companies;
  - it would affect adversely the creativeness and quality of films produced and Canada's international image would suffer if all that could be produced were mediocre feature films or motion pictures of even lesser quality, which are already being produced in large numbers all over the world and which in many instances lose money;
  - it would, if the conditions of Canadian Government assistance included the requirement of employing a certain number of Canadian actors, technicians and other production personnel, make it difficult for American producers to join in common ventures without being confident that Canadian stars, producers and directors could have a similar public appeal as their American counterparts and that Canadian technicians and other production personnel were as competent as American staff available in large numbers to American Major producers;
- it would establish Canadian Government interferences with U.S. private enterprise interests which have hitherto operated without such interferences in Canada and it could bring retaliatory action from the U.S. Government affecting Canadian business in the United States.

Other countries had already approached them along these lines, but the above responses were certainly designed to scare us off.

This was my first meeting with the majors as a group (indeed, the only one I ever had, as my subsequent meetings were with individual studio heads). It was a revelation. I liked them individually but could see the outlines of a battle looming on the horizon, a battle which has now been going on for more than 20 years. At that time, I was not as aware as I later became of the Indians inside the wagon train, but I would soon come to recognize them as the members of the Canadian Motion Picture Distributors Association who were not present at this historic meeting. They would make their presence felt later.

In 1965-66, the legislation to create the CFDC wound its leisurely way through the House of Commons and Senate and did not create much stir. Faced with the difficult problem of distribution, the Interdepartmental Committee

had decided to adopt a policy of "moral suasion." This phrase is defined in the Oxford English Dictionary as follows: "persuasion exerted or acting through or upon the moral nature or sense." In other words, the persuadee should accept the proposition because it is right. The committee's final report to Cabinet included the following paragraph:

*The co-operation of Major distribution companies is a necessity for the development of the industry and Canadian feature films must be given fair and equitable treatment in distribution and exhibition, particularly in Canada. It is, however, difficult to prejudge the attitude which the Major distributors will take toward Canadian productions. This can only be determined after Canadian producers have made a number of films and have established a proven record. Little or no evidence exists at the moment to show that there would be a negative attitude on the part of foreign-controlled distribution companies, and public opinion might very well have an important bearing on the matter once a few good films had been released. The Committee recommends therefore that, for the present, the Corporation's role in distribution should be to assist Canadian producers in arranging distribution through established companies in Canada and abroad. In connection with foreign distribution, the Corporation should seek the co-operation of the foreign-controlled distributors in Canada and also encourage co-production and joint production arrangements. In its Annual Report to Parliament, the Canadian Film Development Corporation should include a section dealing specifically with the distribution of films financed by the Corporation and the problems facing Canadian film producers in this field.*

*If foreign-controlled distribution companies prove reluctant to distribute Canadian films in Canada on an equitable basis, other measures may be necessary.*

In the House, Judy LaMarsh, who had taken over from Lamontagne, had this to say on the distribution question:

*Many countries, in order to encourage the distribution of their own films, have applied quotas. We have chosen, however, not to introduce this kind of restriction in the Bill at this time. Canadian films must, therefore, make it on their own merits. But in rejecting quotas we are counting on film distributors and cinema chains to give more than ordinary support to the aims of this program.*

These words were widely interpreted as a promise that real measures to protect the Canadian film industry could be contemplated and even implemented.

The CFDC began its operations in 1968 and soon had significant success with French-language films in Quebec. English production was slow to get off the ground and the U.S. distributors had little to worry about in the first three years. At least, a few films had the active support of their members (*Fortune and Men's Eyes*, MGM, *Act of the Heart*, Universal). There was little talk of quotas and, in any event, the amount

of money the CFDC had to spend was certainly not enough to put up 50 per cent of even a modestly budgeted film intended for distribution in international markets. One independent effort requires a mention. Nat Taylor was not only prepared to push for the creation of an industry on the political front, he was also keen to get into it. One of the films produced in Canada in 1969, *Explosion*, was financed by his distribution company with an investment from the CFDC. Unfortunately, it did no business at all – a salutary experience for many, including myself. You have to make a lot of films to get a good one and only rarely is the first one the winner.

As Executive Director of the Canadian Film Development Corporation, I used to get a lot of long-distance calls from American producers with scripts, who wanted to make their films in Canada, using some of our money. The majors and some of the minors had hundreds of projects on their shelves with American scripts written and American directors assigned. "Just change a word here and there, put up half the money and we're in business." "What about Canadian scripts and Canadian directors?" "We'll talk about that after we've done mine."

Since the programming of most Canadian theatres was handled by the U.S. which was only looking for a certain kind of international product, the efforts of the CFDC to get Canadian films into Canadian theatres could only work to the extent that the subjects were de-Canadianized. Even allowing for the inexperience of Canadian producers in making well-paced entertainment features, there was genuine disinterest on the part of American distributors in Canadian productions – and the CFDC drew this to the attention of Parliament in its Annual Report. In an effort to get more Canadian projects considered by the majors, it opened an office in New York where Wolfe Cohen, a Canadian and former head of Warner Brothers International, used his contacts to get our "packages" considered by the U.S. majors. However, in almost all cases, the results were negative. It didn't look as though anything was going to happen on a voluntary basis.

## TALKING QUOTAS

Meanwhile, pressure was building for some kind of quota for Canadian features. The Toronto Filmmakers Co-Op wrote a long brief on the subject, and the government of Ontario appointed a Task Force, under John F. Bassett, which reported in January, 1973. Bassett's team supported the CFDC and the other groups that wanted to see Canadian films on Canadian screens. Bassett, a young man in a hurry at the time and the producer of a couple of early entertainment features, knew what it was to have a film rejected by a distributor. He must have been very convincing to persuade the other members of the Task Force to agree with a main recommendation worded as follows:

*It is the chairman's conclusion that a quota system combined with a bonus incentive program for Ontario theatres would develop audiences for Ontario-made*

*feature films and significantly increase the inflow of dollars into the Ontario film industry to the benefit of all associated with feature film production*

and even more to persuade them to go along with the following reason for bringing in quotas:

*to force the exhibitors to test the profitability of Canadian films in the marketplace rather than the private screening rooms where they are subject to the prejudices of too many years of experience.*

"Forcing" exhibitors was a new concept in Canada. Bassett deserves praise for bringing up the idea, although he recognised that there could be problems – for instance, cheap films made expressly for quota purposes shown in traditionally bad playing times. I don't recall that the Ontario Government ever did anything with the report but I imagine the CMPDA did their best to sink it.

1973 was a significant year. It opened with the Bassett Report; by April, the 7,000-member Council of Canadian Filmmakers (CCFM) was demanding action from the government, since, after five years, the CFDC had run out of funds and there was widespread unemployment in the industry. Among the solutions proposed by the CCFM was the imposition of a quota to improve the returns to the CFDC and other investors and make the U.S. majors take notice of Canadian pictures. Gradually the idea of quotas and levies began to take hold and the MPAA had once again to take some notice of Canada.

Tireless in pursuit of its objectives, the MPAA operates in every country of the world where American films are shown – usually through the U.S. Embassy – and if there is any discussion in the local film industry of restrictions on American films, it swings into action. Canada had been quiet for years. Now it was pushing itself into the forefront, not only in film but in other cultural areas. The federal government had decided to do something about *Time* and *Reader's Digest* which were published in Canada and received tax concessions of some significance, although only a small portion of their copy was written by Canadians. The Secretary of State responsible for the cultural portfolio was Hugh Faulkner, who espoused the cause of a genuine Canadian magazine industry with enthusiasm and, although there was some opposition in Cabinet, Bill C-58 was eventually passed and the Canadian edition of *Time* disappeared.

I was easily able to convince Hugh Faulkner that he should do something about the film industry and our first approach was to the provinces. There was a good reason for this. The provinces, early in Canadian history, had acquired jurisdiction over the theatres – their operations and construction were licensed by the provinces which also had powers to censor the product. Distribution companies also required provincial licences. If they wanted to, they could also impose quotas and levies. Faulkner assigned Peter Roberts, now director of the Canada Council, to the task and I went with Joseph Beaubien, the CFDC's lawyer. We started in Newfoundland and visited every province, except Prince Edward Island whose cultural officials came over to the mainland to see us. Overall, the results were

disappointing. Although there was support for quotas in some provinces, there was total reluctance to put an additional tax on theatre tickets, even though it would be a very small amount. Faulkner, however, did not give up. He decided to enter into voluntary quota agreements with Odeon and Famous Players, which would at least put some pressure on them to show Canadian films. These were negotiated in 1974 and signed in August, 1975. The agreements called for each theatre in the chain to run one Canadian film for one week in each quarter. The chains were to keep records and submit them to the CFDC quarterly. I thought this arrangement was better than nothing, but the left-wing element in the industry decided that it was a sellout. In hindsight, I must admit that the quotas probably did not increase the distribution of Canadian films in Canadian theatres beyond what the market would bear. It was, after all, a 'voluntary' quota. By its nature a quota cannot be voluntary: it's the compulsory aspect that makes it work.

When Faulkner was negotiating the quota, Chris Salmon was the head of Odeon and George Destounis, head of Famous. Destounis had always been supportive of the efforts of Canadian film producers to get their films run in Canadian theatres. The first time I met him in 1968, in the Château Laurier Hotel in Ottawa, I suggested he should invest in a film about a popular rock group in Quebec, **A soir on fait peur au monde**. "Couldn't miss," I said. He agreed immediately. The film bombed, but despite this early experience, George was always sympathetic and recognised the value of having some funds available for investment in Canadian films, even though he can't have made any money from them. On the other hand, Salmon only reluctantly agreed to the voluntary quota, and when the chain was purchased by a Canadian, one of the new owner's first acts was to terminate it. The chain was now owned by Canadians, he argued, and the quota was designed to put pressure on foreign chains! Here indeed was a very effective Indian inside the wagon train.

As part of its responsibilities under the CFDC Act, the Corporation consulted with the industry through its various unions and associations including, of course, the CMPDA. Being opposed to quotas, voluntary or otherwise, the association took its views, which had not been included in the report of the consultative committee, directly to the Secretary of State. Sample extracts from its brief of February 18, 1975, include such gems as:

*The absence of any meaningful influence from the ranks of experienced Canadian exhibition and distribution personnel on the decision-making activities of the CFDC has created an abyss of naiveté, incompetence, bias, and lack of judgment. CFDC-subsidized films have, in a number of cases, generated ludicrously low box office receipts. In other cases CFDC-sponsored product has been rejected by the CBC for TV on the basis of complete lack of acceptable quality. On the other hand, films like **Duddy Kravitz** and **Black Christmas** are two examples of sound commercial successes without the influence of legislation, and less than a 25 per cent financial support from the CFDC. Why did they succeed without government intervention and only minority participation by the CFDC!*

It is worth noting that the CFDC's support of the last two films was on the same basis as its decision to invest in any other film; **The Apprenticeship of Duddy Kravitz** was being distributed by Paramount in the U.S., so it had to be removed from the overall condemnation of the Corporation. The CMPDA can't have it both ways. The investment of the CFDC had made both films possible.

In its final paragraph, the brief clearly states the view of the MPAA when faced with quotas in countries around the world:

*A weak and willing government, in support of special interest groups, can install a quota system - but this government cannot and will not*

*compel the taxpayer to the box office. Quotas in most other countries have been directly related to the necessary support of specific language needs and requirements within that country.*

Canada, according to this, had no specific language needs or requirements. I read this memo long after I had left the CFDC (I was never aware of it at the time). So much venom! And I had thought CMPDA head Millard Roth such a nice gentleman.

## TAX SHELTERS AND OTHER STRATEGIES

Towards the end of Faulkner's tenure, the 100 per cent capital cost allowance was introduced and, as a result, there was a resurgence of production activity. This time, producers in Canada were able to raise money without going to the American major companies, or any distributors, for guarantees. As a result, the majors were able to tell Canadian producers that they should go ahead with their films and present them for evaluation when they were finished. This put American distributors in a 'no risk' position and though a few producers did manage to produce films which fitted the majors' release patterns, most did not, with the result that many Canadian features finished up on the shelf.

The next Secretary of State responsible for culture was the Hon. John Roberts. Roberts felt that quotas were not the answer. While it was possible that the federal government could impose them, the negative results of Faulkner's discussions with the provinces did not give Roberts much hope. Furthermore, theatre-owners were writing letters to their MPs pointing out that levies at the box-office would have a serious negative effect on their business. Roberts proposed to tackle the problem through a change in the Excise Tax Act. The Canadian industry was optimistic that Roberts, who was known to have a personal interest in culture, might be the minister who could finally align

Canana with the other countries with financial and legislative controls on foreign cinema. In announcing his new policy in the spring of 1978, Roberts justified his approach in the following terms, making one of the strongest statements made by any minister in support of the industry:

- *The feature film industry is young. It is seriously under-financed and regarded as high-risk by investors, banks and other lending institutions. This remains true of the whole industry even if the investment picture is brighter today than, say, two years ago. It is struggling to cope with foreign domination and to compete with a heavy volume of imported products laid down in Canada at prices which the Canadian filmmaker has difficulty matching. It has not yet acquired the business acumen and management expertise of its foreign competitors. It has trouble producing scripts that offer reasonable assurance of box-office success. It has the task of trying to instill a Canadian spirit or character into its films without, at the same time, risking their universal appeal and acceptance in markets outside Canada.*
- *It is trying to counterbalance a deeply ingrained preference of Canadians for American or other foreign films.*
- *The Major foreign-owned distributors, have not so far invested in Canadian pictures. Nor have their parent houses in the U.S. decided to leave some funds in Canada and invest them in whatever parts of the Canadian feature film industry seem most promising to them. It would be so easy for them, by such an act of confidence, to assure themselves a real place in the life of this country, and in the future of our film industry.*
- *I have raised with my colleagues in government the possibility, if all else fails, of placing a special excise tax on the profits of distributors. I have also discussed the matter with the distributors themselves and with*

• Famous' George Destounis, seated center: always a supporter of Canadian film



**Jack Valenti. If the Major distributors decline my invitation to participate voluntarily in the development of our industry, I shall press ahead with the special excise tax. My instructions are that the door remains open. Obviously we would rather not use it.**

Roberts should have had his Excise Tax Act change in place before he spoke; he could have removed it if the majors agreed to cooperate. This way, though, it didn't work. The Department of Finance did not agree with the proposal and Roberts was left with the old position of moral suasion.

So he met with Jack Valenti of the MPAA to ask for cooperation in getting more distribution. He also made a trip to Los Angeles where he impressed upon the studio heads his interest in increasing U.S. distribution of Canadian films. Although sympathetic toward Canadian concerns, no commitments were made. The results were predictable and the late George Heiber, then president of the CMPDA, summed it up:

*I am pleased at this moment with the film policy statement. I think it is very fair. There were no limitations put on it. We're not putting any on the Government and they're not putting any on us.*

Notwithstanding Roberts' failure to carry his own colleagues in defence of the film industry (perhaps they were a bit gun-shy from the results of the *Time* and *Reader's Digest* affair), there was some fallout from his initiatives. A year later, two officials from the U.S. Embassy in Ottawa called on External Affairs' Bureau of U.S. Affairs to find out what was being considered in the way of taxes to protect the Canadian feature film industry. They stated that Jack Valenti of the MPAA was aware of Canada's interest in developing its feature film industry, had been in Ottawa and in contact with the Secretary of State, and was prepared to make an informal undertaking to find means of increasing the distribution of Canadian films in the U.S. and elsewhere in order to obviate the need for taxing feature films coming into Canada. Valenti had pointed out that the gains in dollars to the Canadian film industry by increased distribution in the United States alone would be much greater than any dollar gains which might accrue through an excise tax.

There is no record of any follow-up to this meeting because, by that time, External was able to tell the officials that there would be no excise tax. Valenti was, of course, prepared to make the informal undertaking only in the face of the threat of an excise tax. If the threat no longer existed, the offer did not have to be made.

## CONCILIATION

Now the CMPDA decided on a policy of conciliation. It opened discussions with the Secretary of State's officials. On July 21, 1977, the Association proposed a 10-point policy of support of Canadian feature film productions. Among the points were that the CMPDA would encourage participation by member companies in appropriate Canadian film projects; encourage the evaluation of film projects by their

members; do market research, provide support for film festivals, etc. This CMPDA document eventually became a five-year program (running from 1978 to 1983) that included an annual progress report to the Secretary of State. Its title states that it was "approved by its Board of Directors and concurred in by Mr. Jack Valenti, President of the Motion Picture Association of America, Inc." So far as I am aware, no significant action resulted from the reports. They are languishing on ministerial bookshelves. On the other hand, the CMPDA would have reported success to its parent in Washington; maintaining the status quo was its objective.

The election of 1979 brought a Conservative government to power and the next Secretary of State was the Hon. David MacDonald, whose immediate concern in the cultural sector was to raise the subject of Canada's cultural industries and how to help them. He did not get around to considering the problem of the U.S. majors, but did set up a committee under Louis Applebaum to review all the cultural sectors, including film, and hold public hearings across the country.

When the Clark government was defeated, the Liberals decided to go ahead with the committee, adding Jacques Hébert (now Senator) as co-chairman and several other members: I was appointed film adviser to the Committee which was active in 1979 and 1980 and reported in 1981. Producer Denis Héroux was also a member.

The question of quotas and levies came up at meetings of Applebaum-Hébert, since several industry groups had suggested them. However, the consensus of the Committee, as I recall, was against protectionist measures. Quotas and levies were, and are, a hard-sell. They seem to fly in the face of the dearly-held Canadian principle — that no one is going to tell us what films to see — and even though quotas and levies do not interfere with that right, the words give that impression and the CMPDA strives mightily to spread it as far as possible. A Gallup Poll of the 1970s, referred to in a CFDC Annual Report, showed that Canadians were in favour of a Canadian film industry by a large majority, but to the question "Would you go to see the films made by the industry?", the answer was a qualified yes, with hardly a majority at all. As I interpret these figures, Canadians are willing to pay taxes to support the film industry only if they don't have to go to see the product.

One of the advantages of the Applebaum-Hébert Committee was that I was able to compare the record industry and the film industry — both into entertainment, both generating millions of dollars and both with Canadian creators and entrepreneurs using our technical facilities and marketing outlets (record stores and theatres). Since neither have any government protection for their markets (though film had the CFDC), there was a tendency for the record industry to wonder why the film industry needed it. Sam Sniderman, also a member of the Committee, had created a string of record stores in Canada. He was reputed to own more than one Rolls Royce. Denis Héroux and I couldn't think of anyone who had been that successful in the Canadian film industry.

The Applebaum-Hébert Report was useful in other ways. It brought the CMPDA to a public hearing in Toronto, where Heiber, who reminded me very much of the representatives of the majors I had met in New York in 1966, said:

*Exhibitors are peculiar people. They are sentimental about money. They run their theatres for profit and he went on to point out that that is the reason why many Canadian films do not get shown on Canadian screens.*

As mentioned in the introduction, I was hired by the Department of Communications to write on American influences on the Canadian film industry. My report was intended to convince the minister that some form of regulation had to be in place before negotiating with the American majors. Now that you, dear reader, have read most of what was in that original paper (whether or not I have convinced you), I certainly failed to convince Francis Fox. His policy response, issued in May, 1984, beautifully printed and bound in Liberal scarlet, stated under the heading "Access to Screens — The Last Hurdle."

*On behalf of the Government of Canada, I have been authorized by Cabinet to negotiate with foreign-owned distributors operating in Canada — the member companies of the Canadian Motion Picture Distributors Association (CMPDA) with a view to assuring:*

- greater access by Canadian productions to Canadian audiences through their domestic distribution systems,
- greater access by Canadian productions to the American market and other foreign markets through the worldwide distribution systems of these firms' parent companies,
- a greater proportion of the revenues from the Canadian theatrical market for Canadian-owned and controlled film production and distribution companies, and
- quicker access by Canadian francophone audiences to dubbed or sub-titled versions of newly released TV programs produced through the parent companies of CMPDA members.

*I shall be reporting back to Cabinet in six months on the progress of these negotiations. We are hopeful that a mutually satisfactory resolution can be reached. If not, the alternative approaches adopted in other jurisdictions will represent the only way out of the present unacceptable situation.\**

However, on another front Francis Fox made a very important contribution to the development of the Canadian industry — the Broadcast Fund. The idea of allowing the CFDC to invest in short films actually reached Cabinet Committee discussion in 1972 or 1973. It was the first week of Peter Roberts' appointment as Assistant Undersecretary of State. I had written a memorandum suggesting that the word "feature" should be removed from the Act wherever it appeared, thus allowing us to invest in shorts, and I particularly cited

the revenue potential of television and the fact that a portion of our market in this medium was reserved to us under the Broadcasting Act. Unlike the theatres, TV had to use some Canadian programming. Much to my surprise, a Cabinet committee under the chairmanship of Gérard Pelletier decided to hear the case and Peter Roberts and I duly appeared before it. While some members of the committee were somewhat in favour, the chairman felt that the CFDC was very successful as it was — true enough in Quebec at the time — and there was no reason to change the Act. Thus the idea lay dormant, despite the fact that I kept pushing it, until 1983 when Fox and André Lamy, CFDC executive director, finally got it going. The success of the Broadcast Fund could be duplicated in the theatres — if there was some significant control on behalf of Canadian productions in that marketplace.

When the government changed again in 1984, the Broadcast Fund was just taking off and broadcasters had not yet grasped the significance of it. Producers were able to convince them to support a number of feature films so the feature industry did quite well in that year and in 1985. But it very soon became clear that the broadcasters' view of their audiences was different from that of the theatre-owners. The former are most anxious to maintain their audiences and advertisers by producing series which come back week after week and year after year. Of course, they are not against the odd special, but the real bread-and-butter is series. Thus, going into 1986, it became clear that the Broadcast Fund would primarily give a boost to series production. There would be no money for features as Telefilm's funds for features had not really been increased in a significant way since the CFDC was launched in 1968 with a \$10 million appropriation. This single amount was re-voted in 1972 and 1975 and finally became an annual \$34 million.

While I was writing the original report, the Government of Quebec introduced new cinema legislation (Bill 109), based on the recommendations of the Fournier Commission Report. For the first time, a government in Canada was going to follow a course which it seemed to me would have a chance of succeeding — put the controls in place first and then negotiate. I was present at some of the public hearings at various stages of the parliamentary process. The Indians within the wagon train were much in evidence in the form of some of the best lawyers in Quebec as they argued forcefully against the idea and its implementation. They did not succeed until the very last minute when the Johnson Cabinet refused to pass the necessary orders-in-council. One thing is sure: the negotiations which the new government is now thinking of undertaking will lead nowhere since the majors have found out once again how weak we are when it comes to the crunch.

## TODAY AND TOMORROW

At the federal level we now have the Hon. Marcel Masse, the eighth minister responsible for culture since I got involved in film politics in

\* At the federal level nothing resulted from the negotiations. Meanwhile, Fox has just been appointed by the Quebec government to "explain" matters to the Majors on behalf of the province — ed.

1965. I am encouraged that he seems to be following a different pattern. He got the industry to put its ideas on distribution into a Task Force Report; *Canadian Cinema - A Solid Base*, bound in grey instead of blue. And Masse can clearly distance himself from it if he wants to. Indeed, its public acceptance has not been unanimous: Michael Bergman in this publication and the Toronto *Globe & Mail* have already attacked it. Masse has also decided to get the provinces on-side. Nothing can really be achieved without their support and I hope he'll have more luck than Faulkner.

Hopefully, Masse is working quietly under cover to get regulations and legislation organised on the Canadian side, after which we can deal with the Americans from a position of strength. Meanwhile, he is to be congratulated on the \$33 million which is now available for feature film production. However, this should not be used like the old CFDC money to prime the pump. Instead it should be used in conjunction with the regulations which the minister is hopefully working on. The 1970s gave ample proof we could produce features that would be popular and make money. We don't have to start all over again. The Americans would love us to blow the new fund on a string of box-office failures. Let's use our experience and the developing knowhow of our Canadian distributors to make sure this doesn't happen.

The MPAA has not gone away, however. It remains an extremely knowledgeable and experienced organiza-

tion. Jack Valenti is now in his 20th year as president of the Association. He's been there longer than any of the heads of the major studios have been in their jobs and certainly longer than any minister or even deputy minister of Communications in Canada. Valenti is tough and he knows what goes on in the Indian, Australian, French and other national film industries. His intelligence system is excellent - as befits a former air force pilot. But he is perhaps a little more sensitive to our concerns than we think. When I was working at the Department of Communications, I discovered that the DOC also have good intelligence - and from time to time internal MPAA documents find their way to the Department. One of these, an overview of the U.S. - Canada situation, written sometime in 1982, included the following:

*My staff and I are watching with much interest and planning ahead to try to extract ourselves from any acrimonious quarrel with the Government of Canada. We will need the cooperation of you and all those in your company who are active in the Canadian marketplace...*

*Canadian public opinion views the majors as non-supportive. Many Canadian officials believe that apart from some 'pick up' deals, there is no direct investment on the part of majors in Canadian production; that the majors' representatives in Canada have no serious concern for the aspirations of the production community, and that there continues to be a significant*

*imbalance in the balance of payments related to feature films.*

*It should be noted that in certain other "cultural industries" (records and publishing) some of our companies have established a certain level of "made-in-Canada" activity and, in fact, have a level of investment in plant and equipment.*

*The politics of the issues are such, in broad terms, that regardless of the Minister or his political affiliations there will be continuous efforts to:*

*A. Reduce the amount of U.S. content viewed on all Canadian screens (theatrical and TV).*

*B. Increase the funding available to support Canadian product.*

*C. Increase the retention of a greater percentage of U.S. company earnings in Canada.*

*Over the past eight years Canadian government officials have become much more knowledgeable about the industry in Canada and elsewhere. They are convinced that Canada represents an attractive marketplace to U.S. interests in terms of:*

- 1. Size*
- 2. Ease of entry; and*
- 3. Lower cost of doing business.*

*There is considered however to be a serious lack of support from major exhibitors and distributors.*

*The areas in which trade-offs may be possible appear to be very limited.*

*One possible area which perhaps some time in the future may have a*

*limited appeal to the Canadian government is industry support for a box-office tax, the proceeds of which would be earmarked for production.*

*Two practical objections to this may be that the Canadian Department of Finance does not like earmarked taxes and that, traditionally, taxes at the retail level have tended to be regarded as the responsibility of the provinces rather than the federal government.*

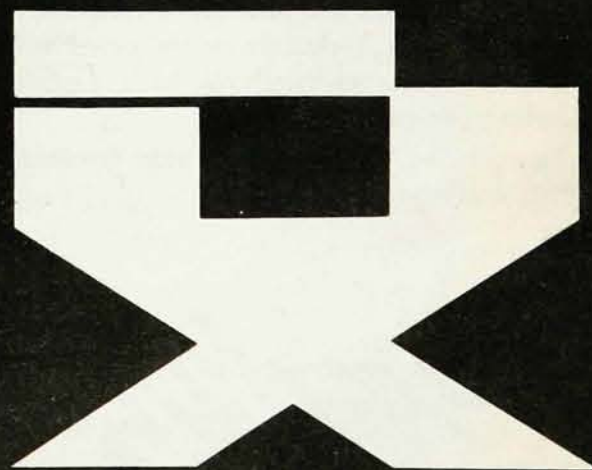
*While the matter has not been studied, it is believed, however, that the federal government has the constitutional power to impose such taxes.*

*Another area of possible trade-off may be assurances that the U.S. majors will assist in distribution of Canadian pictures provided, of course, that in each instance the "business judgment test" is passed.*

*This is a complex subject which, if it is felt to be of interest, should be fully discussed.*

We don't know what discussions this document gave rise to but it does show that the MPAA is well-briefed and alert to any move Canada may make. As we must realize from the experience I have tried to distill in this article, this time the Government of Canada must show that it is serious. For there are always Indians within and without the wagon train, and it isn't moral suasion that will return to us control of our own distribution and exhibition of feature films. I contend that it takes the argument of regulations or legislation in place to make any change in the old patterns. ●

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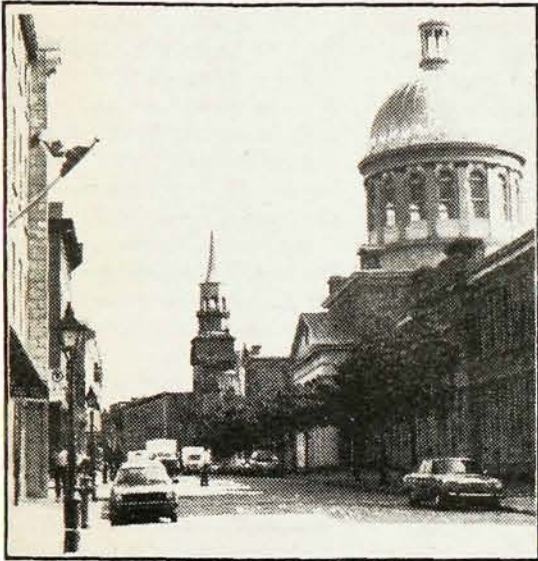
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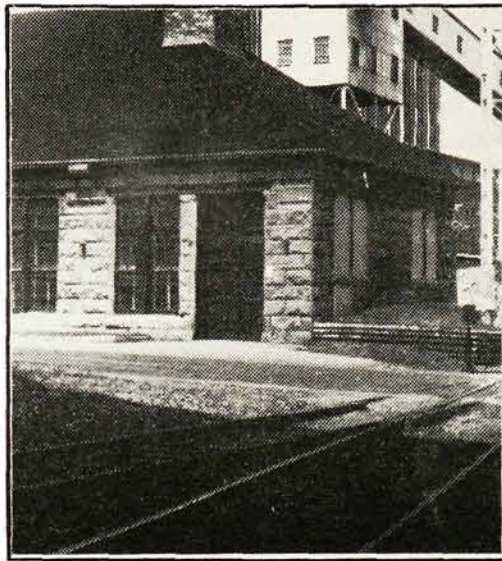
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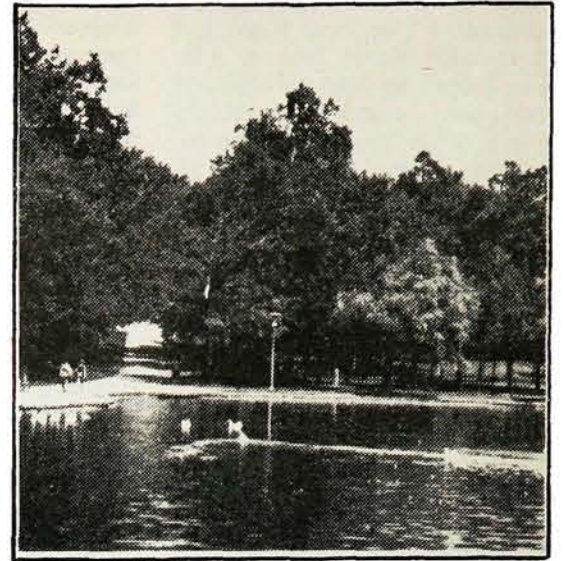
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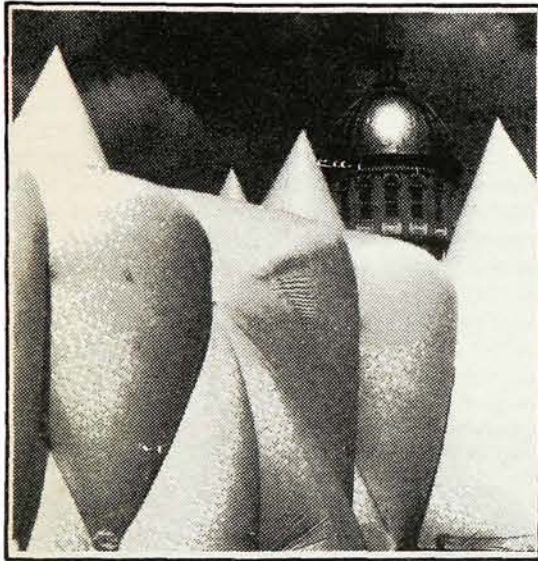
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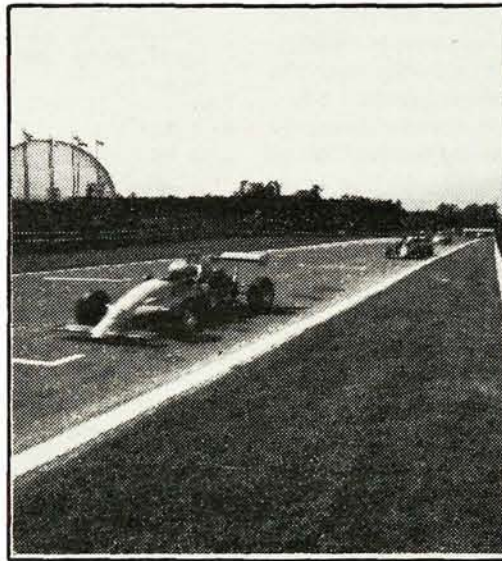
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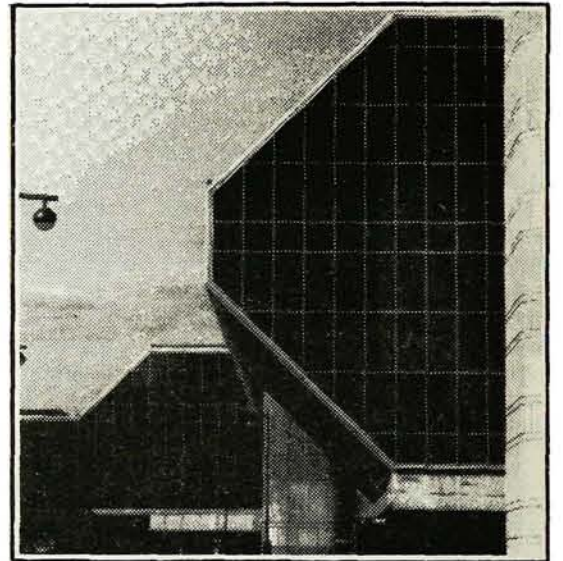
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