

**LEGAL EYE**

by Michael Bergman

The Australian Film Commission came out with a very interesting little book in 1986 entitled *Film Assistance: Future Options*. This publication is a review of the Australian Federal Government's film funding initiatives and recommendations for future policies. For Canadian filmmakers this publication can serve as an interesting comparison between the Australian and Canadian techniques of encouraging the film industry.

It seems that Australia has principally relied on fiscal incentives in the form of tax shelters, better known as Division 10BA which is similar to our Capital Cost Allowance (CCA) scheme. In Australia the amount of depreciation that can be taken under their CCA seems to have diminished considerably over the years and may be abolished or further reduced. In Australia it is recognized that these tax shelter devices cost the government tens of millions of dollars in taxation revenue, a problem rarely addressed in Canada.

As a substitute for the CCA system the Australian Film Commission is recommending the setting up of a kind of film investment and banking corporation. The entity would be capable of loaning filmmakers up to 100 per cent of the project's budget. These loans would carry the option in favour of this financing corporation to convert the loans into equity thereby enabling it to participate in profitable films and convert defaulted loans into equity assets. The corporation itself would be capitalized by an initial input of \$25 million by the Australian

government and would then raise other funds by selling bonds and debentures on the public market guaranteed by the government. It is expected in this manner to raise some \$120 million per annum.

The notion of an actual film financing bank is quite interesting since although it is, to some extent, relying on taxpayers' money, it is also self-financing through the bond and debenture market. This has the effect of making the bank not only more accountable to private industry but also an industry player much more separate and distinct from government policy. It also concentrates government policy into one dominant film financing tool rather than a combination of fiscal loans and subsidy incentives, all of which can be effected by changes in general government industrial, fiscal and public policy. The concept of a film financing bank is also a more mature step-ahead approach over CCA schemes which spawned film projects but not necessarily capitalized corporations nor the distribution and exhibition vehicles that would give reasonable exhibition time to indigenous products. Indeed, the Australian Film Commission's book has a very interesting and succinct analysis of the operation of a market on the role of producers, distributors and exhibitors in it, all of which, backed by a good analysis of figures, is certainly a welcome addition to film literature.

Canadian producers though seem to be quite anxious to preserve and maintain the CCA approach. This was certainly evident at the Telefilm Confer-

ence held during the weekend of April 10. CCA is still seen as the backbone of private investor incentives. In fact it seems some producers are developing new strategies to entice investors through the CCA concept, in particular the notion of buy-back. Buy-back is a concept whereby after the lapse of a certain length of time the investor has the option of either keeping his film units or selling them back to the producer at a predetermined price or according to a price set by a predetermined method of calculation. This is designed to give the investor a sort of guarantee that come what may he cannot lose money even if he will not make a profit. Another element of the buy-back scheme related to the growing concern of some producers that the CCA scheme, which necessitates selling equity in the picture, has the corresponding effect of reducing their profit if the film is successful. Buy-backs can be used as a way to ultimately diminish the number of persons entitled to participate in the profits.

Buy-backs require an analysis of an element of CCA rarely considered in film financing. Capital Cost Allowance schemes are only a means of tax deferral, not tax elimination. It permits an investor to depreciate all or part of a capital cost of an equity investment. It is designed to encourage capital investment on which revenue is earned. The tax that is deferred as a result of CCA schemes can become exigible on the sale of the capital investment. This happens roughly as follows. An investor buys a \$10,000 unit in a film and writes off the entire cost thereof in accordance with the film tax shelter CCA scheme. He has thereby depreciated

the entire capital cost of the unit. If he sells a unit at a price equal to or less than his original cost, the amount of money he received will be taxable as revenue to the extent that it equals the difference between the original cost of the unit or its sale price, whichever is lesser and any depreciation that was not taken. If the unit sells

for less than its original capital cost the difference between the original cost and the sale price can be reported as a capital loss. Consequently, the sale of a film unit has adverse tax consequences even if it is not sold at a gain. These consequences increase once the unit is sold at a capital gain, in other

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# Davies' novel adapted for screen

words, for more than the original cost of the unit.

Capital gains are subject to the ordinary capital gain tax rules, that is, one-half of any capital gain is taxable at the taxpayer's normal income tax rate. The consequence of all this is that selling a tax-sheltered film unit investment can undo the tax savings that were the original reason for this investment. For this reason, even if there were a market for trading in film units, there is probably nothing to be gained by an

investor selling his unit. This deficiency in the CCA concept justifies its re-evaluation in a film industry where profit is now very possible and expected.

In this context the Australian alternatives being examined in that country appear attractive.

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effect" on movie distribution around the globe.

"I think he is very concerned that it sets a terrible precedent," Dixon explained.

André Link, president of the Association Québécoise des distributeurs et exportateurs de films de TV et de vidéo, says the contagion effect - or fear of setting a world-wide precedent - is "no argument at all".

"I recognize Valenti has a job to do but that is a strange argument to make," said Link, who describes the distribution proposal as "fair and equitable."

Link says the contagion effect is Valenti's problem and that the fact that this was the thrust of Valenti's argument is testimony to the validity of the proposed licensing legislation.

As for any sort of reprisal from the MPAA, Link says Canada is too lucrative a market for the U.S. majors to threaten a boycott as was the case when Quebec attempted to implement restrictive legislation.

"You can be sure that they will fight this tooth and nail but it is more the independents than the majors who will be hurt," said Link.

system would allow Canadian companies a better chance at domestic distribution rights for some foreign-made movies.

Under the terms of the anticipated licensing legislation, foreign distributors will be able to distribute films which they have produced or to which they hold world sales rights. All other films must be distributed by a Canadian distribution company.

MacDonald said it is an attempt to stimulate both Canadian movie distribution and production and will not mean a decrease in the number of foreign movies which enter Canada.

But Dixon said the proposed system is too harsh.

"Canada is the only nation in the free world that has that kind of a system and it would not be acceptable to our member companies and to American film producers to work within that system."

In a Canadian Press story after his meeting with MacDonald, Valenti was quoted as saying that the proposed system could have a "contagion

TORONTO - The work of Canadian literary giant Robertson Davies will at last be recreated for the camera under a plan to produce a major television mini-series.

Two Toronto companies, Primedia Productions and John McGreevy Productions, have acquired the option to Robertson Davies' *What's Bred in the Bone*.

It will be the first time one of Davies novels has been made into a television show. Rights to one of Davies' earlier novels, *Fifth Business*, is in the hands of a Hollywood producer and the story is to be made into a television show.

During a recent press conference in the book-lined walls of his University of Toronto office Davies said he is glad the series will be made by Canadians.

"I was delighted about this because I have a very strong feeling that there is in the Canadian landscape and Canadian architecture and Canadian sur-

roundings marvellous backgrounds for fascinating filming," Davies said.

Canada should be able to make more lasting movies than Hollywood, such as quality European or Australian films, he added.

"We could do the same sort of thing and it would be great because there is a great thrill about this northern country."

*What's Bred in the Bone* is the second volume of the current trilogy being completed by Davies. The agreement reached by the two companies also includes right of first refusal on *The Rebel Angels*. The third novel is not yet complete.

The television mini-series has a budget of between \$6 million and \$10 million and initial support from the CBC, Telefilm Canada and the BBC. The series is expected to air in 1989.

"It is incredibly important to finally get Robertson Davies on the national screen," John Ken-

nedy, head of CBC drama, said. Kennedy said he is delighted that barrier is at last broken.

Davies said Hollywood is too conventional.

"The Hollywood people have got to be after the last dollar and that is death to doing anything properly," Davies said. "If that is your main object you're sunk."

He said of the Canadian producers, "They will do it their own way and they will see things that Hollywood doesn't see because they haven't got a gigantic industry standing on their backs."

Co-producer John McGreevy said, "We've satisfied ourselves that there is a strong market for this...and we're quite confident that we'll be able to make this one happen - in contrast to the fantasies of Hollywood."

Davies isn't going to get involved in the creation of the television series because, he said, it is an area he isn't familiar with.



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Vita and inquiries should be addressed to Associate Professor André Herman, Head of Film Production, Department of Cinema, CONCORDIA UNIVERSITY, 1455 de Maisonneuve Blvd. West, VA-259, Montreal, Quebec, H3G 1M8. The deadline is May 1st, 1987 or until the position is filled.