

rocca's big fight

The Rocca brothers built some theatres in the Maritimes, only to find their access to first-run features blocked by certain 'understandings' between the big theatre chains and major film distributors. Having proved they could attract the public with Canadian, foreign and second-run films, the Roccas decided to challenge the established distribution system in court.

by Kirwan Cox

Every decade or so the conservative and byzantine Canadian theatre business boils over into turmoil and the smooth-running machinery that gets movies from the producers to the consumers starts squeaking. Over the past year a small independent theatre chain in the Maritimes has been squeaking like mad.

Rocca Cinemas Ltd. and its president, John P. Rocca, have been saying that a conspiracy exists between the exhibitors—Famous Players and Odeon—and the major distributors to prevent independent theatre owners like himself from obtaining the top films. More than just complaining, Rocca is fighting the entire Hollywood system in Canada and says he won't stop until things are changed.

Is Rocca the First to Fight?

Of course the Davids have struck at Goliath before, but the exhibition/distribution system which emerged from the theatre-building wars of the early twenties has always remained unscathed. Those wars led to the complete dominance of the Canadian market by Nathanson's Famous Players. The result was a complaint against Famous Players by independent theatre owners, an investigation under the Combines Investigation Act, and a trial in Ontario in 1931. Famous Players and the American distributors were acquitted (see *Cinema Canada* No 22 for more information).

N.L. Nathanson was again at the centre of the next upheaval when he started a rival theatre chain while still president of Famous Players in the late thirties. This

chain began with some theatres stolen from Famous Players and became Odeon in 1941. After the war Odeon began a major building campaign which terminated with the advent of television. The only potential competitor for Famous Players' control of the Canadian box office dollar was thus unable to mount a serious challenge and accepted a minority share of the market.

After the war, the federal government's concern about the massive amounts of hard currency leaving the country via American film companies led to serious consideration of blocking that money. This disruption was avoided by the Motion Picture Association of America's "Canadian Cooperation Project" which exchanged millions of dollars for Canadian references in Hollywood scripts. C.D. Howe thought this would help the tourist trade.

Then in 1963 another investigation of the industry was started under the Combines Investigation Act. The Director of Investigation and Research, Robert J. Bertrand, explained the origin of this new complaint in a recent letter:

"The existence of an inquiry into the distribution and rental of Motion Picture Film was made public by the trade in this industry some time ago. This inquiry arose out of numerous complaints received by the Director from independent theatre operators who had been unable to obtain good first-run motion picture film for exhibition. The complainants alleged that the major chain exhibitors in Canada had control over all such film. As a consequence the complainants alleged that they had been relegated to the exhibition of second or subsequent run showings or to the exhibition of art films and lesser known foreign films."

This investigation did not warrant proceedings in the opinion of the Attorney General of Canada because the exhi-

*Kirwan Cox produced the film **Dreamland** and is co-author of **History of Canadian Film 1895-1941** with Peter Morris to be published by Gage Publishing Ltd. He has been active with the Council of Canadian Filmmakers and lectures at McGill University.*

bition of motion picture film is a service and beyond the scope of the Combines Investigation Act which allows combines to exist in "service industries."

The next group to complain about the inequities of the exhibition/distribution system in Canada were new to the game—Canadian filmmakers. As long as the filmmakers stayed in the National Film Board with its commitment to alternative and non-commercial distribution, or in the Canadian Broadcasting Corporation with its direct-audience distribution, then there was no conflict with the commercial theatrical system.

However, the Canadian Film Development Corporation Act of 1966-67 changed all that. This act committed the federal government (and the public interest) to a commercial feature film industry. The government belatedly concerned itself with the content of Canada's 1,434 commercial theatres for the first time since the early thirties when the exclusion of *British* Films from Canadian theatres was impotently and loudly lamented.

The ongoing fight of Canadian filmmakers (as represented by their unions and associations) to change the present exhibition/distribution system coincides with increasing government concern about, and regulation of, the foreign theatre interests. For example, Famous Players was forced by the CRTC to reorganize itself in 1971 and give up its foreign-controlled broadcasting interests. Its successor company—Canadian Cablesystems—has leased an option for a satellite channel to begin Pay-TV operations, but the CRTC won't approve Pay-TV. Even the Toronto "40 foot height by-law" has kept Famous Players from re-developing its University Theatre on Bloor St. into the office complex it announced years ago. Times have greatly changed since Nathanson's free booting days.

Despite this climate of regulation in the "cultural industries", government has attempted to change the structure of the foreign-controlled theatre system by coercing change rather than legislating it. This position of compromise has been difficult to maintain between the apparently irreconcilable interests of two groups—a struggling and increasingly nationalistic film production industry and the entrenched and increasingly profitable branch-plant exhibition/distribution industry.

While government seems to accept the logic of the Council of Canadian Filmmakers' thesis that a successful film production industry depends in the long run on a revamping of the exhibition/distribution system, government does not accept the consequences. It is satisfied to wring small concessions from the exhibitors such as the "voluntary" quota and the \$1.7 million "levy" as the price to diffuse the CCFM pressure for legislation.

In recent years, the balance between government, filmmakers, and the foreign-controlled "system" has been tense and uneasy. Suddenly the balance is shifted by a whirlwind from the Maritimes calling for an end to the inequities of the "system". Unlike the filmmakers or government, this attack comes from an independent exhibitor who is part of that "system". Rocca's complaints are not new, but Rocca has money, determination, and time on his side—not to mention the Nova Scotia Theatres and Amusement Act.

Who is Rocca?

The Roccas are a family from southern Italy who immigrated to Saint John, New Brunswick. John Rocca's grandfather was the first to arrive, then his father and his older brother Patrick. They worked in the construction business. John Rocca arrived in 1960 as an eleven year old boy with his mother and younger brother. He stayed in school while his older brother expanded the family business into terrazzo tile and in 1968, general contracting. In 1970, the family went into real estate concentrating on shopping centres.

The success of the family and its company, The Rocca Group Limited, is documented by Peter C. Newman in his book *The Canadian Establishment*. He describes that established immigrant Patrick Rocca as running "the Rocca group of construction companies, which have become the province's largest builders of shopping centres and re-developers of Saint John's downtown core. He enjoys flying to Montreal on weekends to watch hockey games" (p. 229).

Hockey or no hockey, The Rocca Group had a problem in 1973. They had built the Parkway Mall Shopping Centre in suburban Saint John, but couldn't lease the last space because it was in an out-of-the-way corner of the complex. Retailers don't like fighting low traffic patterns.

The solution seemed obvious to one of Rocca's partners, Mort Bernstein, whose family have been in the theatre business for many years as B & L Theatres. Bernstein suggested they put a theatre in the unwanted space and attract crowds to the shopping centre with entertainment. He had experience in the field. So Patrick Rocca decided to add a new member to the Rocca Group—Parkway Twin Cinemas Ltd. which soon became Rocca Cinemas Ltd. He put his brother John in charge of the new venture.

The theatre was a great idea, but John Rocca readily admits that they probably wouldn't have gone into this new business if they had known what was in store for them. The new Parkway Twin Cinemas opened on August 15, 1973. From this start Rocca Cinemas expanded as quickly as the Rocca Group could put up shopping centres—the Riverview Twin Cinemas in Moncton, N.B.; the Bridgewater Twin Cinemas in Bridgewater, N.S.; the Spryfield Twin Cinemas in Halifax; and a new twin in Truro, N.S. With a total of ten screens in five locations, Rocca Cinemas is the largest independent in the Maritimes. In addition, the company manages three theatres for B & L in small towns in Nova Scotia and New Brunswick and books a theatre in Summerside, P.E.I.

From the beginning, these shiny new theatres had to run the films Famous Players and Odeon didn't want or couldn't handle because of a shortage of screen time in peak releasing periods. Rocca tried to make an opportunity out of necessity. He believes his theatre was the first commercial house in Saint John to run an Ingmar Bergman film. He also had to take Canadian films. In a press release, Rocca says:

"...Canadian-made films are unable to find theatres to exhibit their product. Famous Players and Odeon contend that the reason is that Canadians do not make movies that are successful at the Box Office. Yet we played many Canadian-made movies that Famous Players and Odeon rejected for 14 out of 52 weeks in our theatre in Saint John in our first year of operation, and we made money on all the films except one. In fact, the profit we made from these Canadian films was greater than the profit from most of the pictures of all the major distributors".

Specifically, the one Canadian film that did not make a profit for Rocca of the seven he played that year was **Deux femmes en or**, better known in Saint John as **Two Women In Gold**. The fact that this is the top grossing Canadian film in Canada obviously made no impact on the "Loyalists". Rocca's top grossing film, Canadian or otherwise, was the Montreal sex comedy **Loving and Laughing** which played for 28 days to turnaway crowds. With one of the longest runs in Saint John, it even outdrew **Godfather Part II**. Even **Kamouraska** was a money-earner.

One reason Rocca was successful with the Canadian films was his aggressive promotion of them in all the media. Rocca runs trailers of his upcoming films at least four weeks in advance (instead of one); his newspaper ads are two or three times bigger than Famous or Odeon ads; he takes spots on both television and radio. This blitz cam-

paign is done for every film he plays. In the case of Canadian films, he sometimes has to make up the promotional material himself.

What Started Rocca's Fight

About this time Patrick Rocca began to wonder why his shiny new theatres were only playing second run, Swedish, or Canadian films. They never seemed to play the biggies like **The Sting** or **Jaws** or **American Grafitti**. Couldn't his brother pick the winners? John Rocca says,

"As soon as we had proven that we could generate more revenue than our competitors could with films of similar quality, we began to request from the major distributors a fair share of their top product. Their response was quick and to the point. Two distributors told us they had an arrangement with Famous Players Limited or with Famous and Odeon Theatres (Canada) Ltd. whereby all their films would be played by these exhibitors. Most of the other distributors told us that was the best they could do for us. It was quite obvious that none of the major distributors were prepared to give us a fair share of the top product because they might have to answer for their actions to Famous Players or Odeon."

Rocca Cinemas faced the same problem that every independent exhibitor in Canada faces and has faced for over fifty years. At first they thought business logic would persuade the distributors to give them some of the top grossing films. After all, they built the largest construction company in New Brunswick and they are confident that with all things equal they can take on anybody. All things are not equal in the theatre business and **Macon County Line** drove the point home. Their experience with that film proved to Rocca that they had to accept permanent second class status as the other independents did, or fight.

Macon County Line was a sleeper in 1974. No one thought it would amount to much. In the spring of that year John Rocca met Ron Burgess of Astral Films and signed a contract to run that film in the Parkway. However, when the film was released in the American south it began doing top dollar business. One week before the film was to open at the Parkway and well after the promotion campaign for it had already started, Burgess phoned Rocca and said Famous Players had the right of "first refusal" on all their films and Famous wanted **Macon County Line** in Saint John. He was sorry, but Astral would have to take the film back. Rocca said he had a signed contract and he would sue if he didn't get the film on schedule. He got it.

The fight had begun. John Rocca wrote a long letter on July 17, 1974, to Famous Players' President, George Destounis. In the letter, he complained about the discrimination his company faced attempting to get first run films, and added:

"This letter has been spurred by your company's recent attempt to force Astral Films Limited, distributors of **Macon County Line** to breach its contract with Rocca Cinemas Ltd. This picture has been committed in writing to Parkway Cinema in Saint John, and someone in your organization is bringing pressure to bear on Astral Films to obtain that picture for your theatre in Saint John."

George Destounis replied on July 24, 1974:

"...Let me state that our concern is very simple—we were there, we intend to expand if necessary and we will protect our position to secure the films that we have had for the past 52 years. There will be no pressure from Famous Players except to preserve its present position. ...Our position is very clear, we too have a position to protect and we intend to do just that."

Rocca's press release:

"While in New Brunswick, we have been successful in obtaining some first-run films, although not a share of the top films. In Halifax, the situation is different. All the

major distributors have refused to offer us a single first-run film, good or bad".

Though Rocca felt his Halifax theatre was being discriminated against more than any of his other theatres, there was another reason for shifting the fight to Nova Scotia and that was the Nova Scotia Theatres and Amusement Act—an Act unlike any other in Canada.

In the past, independent exhibitors who wanted to fight the "system" had to rely on the unwieldy and nearly unenforceable Combines Investigation Act. Because he has theatres in Nova Scotia, Rocca is able to fight through Sections 17-20 of the Nova Scotia Act. These sections date back to 1939, but were never used until Rocca dusted them off. This Act, alone in Canada, makes it illegal for a distributor to discriminate against an exhibitor unfairly or give an exhibitor unfair advantage.

Section 17

Unjust discrimination by film exchanges in respect of the selling, leasing, renting, exchanging or distribution of films is hereby prohibited and declared unlawful.

Section 18

If any film exchange shall knowingly or wilfully make or give any undue or unreasonable preference or unfair advantage to any theatre owner or shall subject any theatre owner to any undue or unreasonable prejudice or unfair disadvantage in any respect whatsoever, such film exchange shall be deemed guilty of unjust discrimination.

Section 19

(1) No theatre owner shall, without the consent of the Board, be deprived of such number of films as the Board deems necessary to operate his theatre.

(2) No theatre owner shall contract for more films than are, in the opinion of the Board, reasonably required for the operation of his theatre for a period of one year.

Section 20

(1) Where the Board is satisfied after due inquiry that any film exchange or theatre owner has violated this Act or any regulations made hereunder the Board may:

(a) revoke or cancel any license of such film exchange, or

(b) revoke or cancel any license of such theatre owner, or

(c) attach to any such licenses such terms, conditions or restrictions as it deems advisable.

(2) The Board may act upon the report of any of its officers and any inquiry which it shall be deemed necessary to make may be made by any member of the Board or by an officer of the Board or some other person appointed by it to make the inquiry."

The powers under this Act are very similar to the CRTC powers to regulate broadcasting through the ability to cancel, grant, or attach conditions to licensees. If Pierre Ju-neau had been running the Nova Scotia Board...

On February 24, 1975, John Rocca and his solicitor, Peter G. Green, filed the first complaint with the Nova Scotia Amusements Regulation Board (better known as the Censor Board) charging the major distributors with discrimination in violation of Section 17 of the Act. Rocca was requesting an investigation and hearing on his complaint under Section 20. He wanted the distributors' licenses revoked if they didn't give him an "equitable share of the available first-run films".

For a neophyte in the theatre business, Rocca was surprisingly well aware of the issue at stake and his goals were

anything but modest that day. In his press release (which only the *Toronto Globe and Mail* business section and *Box-office* bothered to report), he said:

"Our objective is more far reaching than simply obtaining a fair and equitable share of the product in Halifax. Our objective is to obtain a fair and equitable share of the product for all our existing theatres and all our future theatres, wherever they may be built in this country. We have served notice on Famous Players and Odeon Theatres that the filing of the complaint is a first in a number of legal actions aimed at breaking their monopolistic control of the motion picture industry...

"We are today taking the first step to break the monopolistic practices existing in the motion picture business in the Maritime Provinces and the rest of Canada."

His complaints against United Artists Corp., Paramount Pictures Corp. (Canada) Ltd., Astral Films Ltd., Warner Brothers Distribution Ltd., Universal Films (Canada) Ltd., Bellevue Film Distributors Ltd. and Twentieth-Century Fox Film Corp., filed on February 24th, covered all of the Hollywood majors. Astral distributes Columbia and Bellevue handles Fox, Avco-Embassy, Disney, and whatever MGM puts out these days.

On May 13th the Censor Board appointed a lawyer to hear the case—Reginald B. Kimball. Naturally the distributors retained the cream of the Halifax bar. Only Fox's lawyer didn't have a Q.C. after his name. The summer was spent demanding particulars and jockeying for position. The distributors challenged the constitutionality of the Act and Kimball agreed to postpone the hearing until the Supreme Court settles the McNeil case. Rocca lost round one.

The McNeil Case

Gerald McNeil is a former Canadian Press correspondent and editor of a Dartmouth Nova Scotia newspaper who took mighty offense that the Censor Board had banned **Last Tango In Paris**. He read in *Time*, like everybody else, that Pauline Kael thought it was the most significant event in western culture since Duchamp's *Nude Descending the Staircase* at the Armory show in 1913. McNeil then fought one of the great Canadian civil liberties cases to the Supreme Court just for the right to challenge the provincial censorship law—the very same law that gave Rocca the power to fight the distributors.

McNeil won the right to challenge the constitutionality of provincial film censorship. If he wins that challenge, Rocca will not have a law to stand on. If McNeil loses, the Rocca hearing will proceed immediately.

Does Rocca have a case?

Among the particulars that Rocca's lawyer demanded, he asked for copies of any distribution agreements between the distributors and Famous or Odeon. Six distributors stated that no such documents exist. Most agreed with United Artists that,

"This Respondent has no written agreements or correspondence by which it allocated first run films to particular theatre owners in the Cities of Halifax and Dartmouth".

However, Universal apparently has *something* written down:

"Universal is not prepared to produce any written agreements or correspondence relating to the allocation of various first run films as requested as to do so could be highly prejudicial to Universal's business interests."

The fact agreements between the American distributors and the major theatre chains exist is not a secret. On a number of occasions Famous Players President George Destounis has discussed them. Most recently in a CBC in-

terview for the Culture series to be televised March 17, 1976:

"Well it's been an historical fact that prior to independents, that the major distributors aligned themselves with either one circuit or the other. People like Paramount and Warners and United Artists will play 100 percent Famous and people like Columbia and two thirds Universal and one third Fox would play Odeon. You must bear in mind that in the original setup there were companies like RKO [and] MGM as we knew it and it was agreed I understand early [in the forties] how the breakdown [worked] when Odeon was first formed."

Bellevue's Herb Mathers was discussing the same arrangement when he wrote to John Rocca on January 21, 1974: "We release six or seven pictures a year and we have a customer who plays one hundred per cent of our products across Canada." He wrote to Rocca on July 11, 1974:

"I know and have heard you are contemplating building a circuit of cinemas throughout the Maritimes and we would be only too pleased to supply each of your cinemas providing it did not interfere with our regular customers."

If his regular customers have 100% then that would not seem to leave much for Rocca.

If the Halifax case goes against Rocca, he plans to continue the fight. He has already decided to file a civil suit in Saint John charging the majors with a "conspiracy to restrain trade". The present Combines Act has not proven itself a very effective tool for people like Rocca, but the new Competition Bill (C-227) which has passed Second Reading would change everything. This bill extends the Combines Investigation Act to include services and service industries, and that opens up the relationship between distributors and exhibitors for the first time. Bill C-227 will allow independent exhibitors across the country to proceed as though they lived in Nova Scotia.

What does the Rocca Case mean?

Though Rocca is complaining about the distributors' practices in Halifax, the destruction of the present system will not make much difference to them. They still have the films and it might make bookkeeping more complex if they have to deal with all the Rocca Cinemas in Canada, but they have the films and they will collect the money. The exhibitors, Famous Players and Odeon, would suffer the most—but the system would probably remain basically intact just as it has in the United States.

The Five Majors were forced to sell their theatres after the 1948 anti-trust decision (U.S. vs Paramount Pictures, 334 U.S. 131) and a bidding system exists now with each of the 12,000 American theatres. In 1948 there were 20,000 U.S. theatres and Loew's, 20th Century-Fox, Paramount, RKO, and Warner Brothers owned 3,000 of them or 15%. However, these 3,000 theatres accounted for 45% of Hollywood film rentals (the Five Majors and Columbia, Universal and United Artists). This 45% was considered enough to "control" the market according to the U.S. Justice Department.

Of course, the American decision didn't affect Canadian theatres which remain vertically integrated with distributor/producers. Famous Players and Odeon control approximately 527 screens today which is well under 30% of the total. However, those screens account for 63% of the Canadian market—Famous Players took in 44% in 1973 (\$66.2 million for the year ended June 30th) and Odeon accounted for 19% (\$28.1 million for the year ended October 31) of that year's \$150.6 million box office.

In Ontario, their position is stronger still. In 1972, five out of seven Ontarians lived in towns over 35,000 and Fa-

mous and Odeon together controlled 78.3% of the screens in those profitable centers. For the entire province, they controlled 62.3% of the indoor screens. These figures are much higher than they were for 1963 when the two chains controlled 44% of the indoor screens in Ontario. The independents are being squeezed between television on the one hand and Famous and Odeon on the other. Rocca is attempting to reverse that trend.

Ironically, Rocca would seem to have more in common with Canadian producers than he does with the major exhibitors. He alleges that the Hollywood "system" is a conspiracy which discriminates against all independents whether independent producers, independent distributors, or independent exhibitors like him (read Canadian for independent). He believes that if the "system" is broken then all of the independent or Canadian elements will benefit.

He suggests that a competitive exhibition/distribution system will attract Canadian businessmen who will be willing to invest in film production to protect themselves and assure product for their screens. He points to his own experience. His theatres gross approximately \$700,000 and he has already invested \$25,000 in a film. This investment is the equivalent of a \$3 million investment from Famous Players.

Of course, we may see all the Canadian theatre chains investing directly in American productions instead of Canadian—but then, indirectly, that has been the case for the last 70 years. Rocca feels the distribution agreements protect the major chains from legitimate business competition—competition which could help Canadian producers with investment money. One can only speculate whether the Roccas in the Maritimes, the Michael Customs in Quebec, the Canadian Theatre Group in Ontario, or the Hector Ross out west will invest to the tune Famous and Odeon are now doing.

Even if the system is broken up by the Halifax hearing or the new Competition Bill, Famous Players' position is so commanding that they could survive without distribution agreements. After all, they have more theatres than anybody else and distributors will still take their movies to them first. Odeon is vulnerable to local competition. If Odeon has to compete with Famous for everything on the one hand and the newly aggressive regional independents on the other, they may not survive as a national chain. They may become a sign company (they already own Steel Art Ltd. and Neon Sign and Service Ltd.).

The breakup of the present system may result in vertical integration as the best insurance of survival. That process developed the Hollywood studios in the twenties. Harold Greenberg is moving obviously in that direction—from laboratory to production to assure revenue for his lab and into distribution to assure revenue for his films. He says he would buy Famous Players if Gulf and Western ever got tired of it—and its real estate holdings and European theatres.

The mind boggles at the possibilities, but one thing seems sure. If Rocca's fight leads to the destruction of the present non-competitive exhibition/distribution system—as it very possibly might—we cannot be any worse off than we have been for the past fifty years. It will be a time to change the mistakes we made in the early twenties when we sold our market, and with it our ability to produce films. Maybe we will take advantage of the opportunity to regain control of our theatres and distributors. We may look back on the Rocca case and wonder who was the David and who was the Goliath. □

(Sources—Odeon and Canadian Cable system's annual reports; 1972/3 Canadian Film Digest Year book; Statistics Canada 63-207; Intercorporate Ownership Index; 1971 census; The Anti-trust Bulletin, Spring 1975.)

**cinema
canada**
21 \$1.25



Reactions to Faulkner's *Pale*
The Saltzman's go to India &
Leonard Yakir's "The Mourning Suit"

**cinema
canada**
22



The Parasite Murders
and David Cronenberg
Lies My Father Told Me
and Harry Gulkin
Robert Fothergill's Preface
OECA

**cinema
canada**
23 \$1



Canadian Film Awards Stratford
Jutra "The Far Shore" Vancouver Shorts
Seventh Student Film Festival

number 21

Paul and Deepa Saltzman
Investment and Short Films
The Mourning Suit and Leonard Yakir
John Kemeny Produces
The Development of Camera Movements

number 22

Hollywood's Empire in Canada
The Parasite Murders
and David Cronenberg
Lies My Father Told Me
and Harry Gulkin
Robert Fothergill's Preface
OECA

number 23

The Canadian Film Awards
Claudia Jutra: Interviews
Student Film Festival
The Far Shore
Stratford
Vancouver Shorts

... with film reviews, and news,
in every issue.

Subscription

normal	\$ 8.00
student	7.00
foreign	10.00
institution	15.00

Box 398
Outremont Station
Montreal, P.Q.
H2V 4N3