

the best film policy this country never had

by Sandra Gathercole

Privately, members of the industry recognize John Roberts' Film Policy as a non-policy. It did not meet the expectations nor justify the fears which had been voiced in so many sectors. Sandra Gathercole's analysis puts the Policy in an historical perspective.

There is a story, perhaps apocryphal, of a 1965 Canada-U.S. partnership agreement negotiated by America's Livingston Merchant and Canada's Arnold Heeney. Halfway through the numerous clauses (Heeney having conceded every one of them to the U.S.) Livingston Merchant leaned across the table and said, "You take this one for Canada, Arnold. It will look good when you get home."

Over the years, the Canadian Government's record of success in negotiations with American government and business interests has been a running joke. The Americans have come to know and love us as the country which, given an inch, will take half an inch and go away happy. Rather like the good old days when the Indians sold Manhattan Island for \$24 in trinkets. The Indians, of course, woke up long ago.

American control of Canadian cinemas has epitomized the syndrome. Canadian movie houses were built to show

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American movies and have remained a territorial monopoly for American distributors. Canada is Hollywood's number one foreign market, paying 93 percent of all theatrical film rentals to the likes of Paramount and Warner Bros. Approximately 1-1/2 percent of the massive \$240 million annual Canadian box office goes to Canadian film production which is thus limited and chronically under-financed.

For 50 years, the Canadian government has been bemoaning the situation:

"For years I have been convinced that the film situation is one of very great danger to this Dominion..."

Prime Minister R.B. Bennett

September 16, 1931

For 30 years, the government has been threatening to do something about it. In 1948 there was the Canadian Cooperation Project: Hollywood's response to pressure from MacKenzie King, C.D. Howe and Louis St. Laurent (later a member of the Board of Famous Players) to leave behind some of the millions they were extracting from the Canadian box office. This was the first "voluntary agreement" and Pierre Berton enshrined it in *Hollywood's Canada* as "what

the Americans had always wanted it and intended it to be: a public relations operation and nothing more."

Since the formation of the Canadian Film Development Corporation in 1968, successive Secretaries of State have publicly scolded Hollywood's representatives, and threatened drastic action (some form of quota protection and tax on American earnings) if the Americans didn't clean up their act.

"Secretary of State, Judy LaMarsh, yesterday served notice on Canadian cinema chains... that the Government expects them to show more Canadian-made feature films in the future. If this is not forthcoming, she indicated the Government may have to impose quotas on foreign films."

Globe and Mail, June 21, 1968

"... we are looking into quota systems... and the problem of foreign ownership of our distribution companies and film theatres."

Secretary of State Gerard Pelletier
Film Policy Speech, July, 1972

By 1973, moral suasion of this sort having failed, a new Secretary of State, Hugh Faulkner, set up a new "voluntary agreement" for the showing of Canadian films, to be replaced by a legislated quota if it did not succeed within one year. After a year it was clear that this "voluntary agreement" was not performing. The newly-formed Council of Canadian Filmmakers demanded legislative action, and CFDC Executive Director, Michael Spencer, told the *Toronto Star*, "We want a levy (box office tax). We want a quota." His Advisory Group passed a resolution backing him up.

"In July, 1973, I negotiated a voluntary quota with Famous Players and Odeon... I am not satisfied with the results of this agreement... It has been evident for some time now that a more effective system must be found."

Secretary of State Hugh Faulkner
Speech to Commons Committee
May, 1975

On August 5, the "more effective system" was announced. It amounted to a more effective voluntary agreement and Faulkner said:

"I am gratified that Famous Players and Odeon have seized the initiative and responded positively to this increased quota plan. This new agreement, much broader in every way than the earlier one, has the potential to be really effective."

The potential was not realized. The 1976-77 Annual Report of the CFDC stated:

"Tabulations for the first year's performance of Famous Players under the Quota Program show that, if the Program is to be literally interpreted, this company has not met its commitment... As for Odeon... the Program was not a success..." (Famous Players met 37 percent of its commitment; Odeon lagged behind.)

In 1976 John Roberts burst into the Secretary of State's Office like a heavy-weight Man From Glad. Roberts was informed, sympathetic, and he talked to the Americans, making it clear whose interests it was his job to protect. If the Hollywood companies were aghast, the Canadian film industry was buoyant. It had found a champion.

Last November, Roberts presented Cabinet with a Memorandum on Film Policy which confronted foreign control head-

on. The document proposed a 10 percent tax on distribution revenues, with a rebate which would have functioned as a quota for Canadian films. Such measures would have doubled the funds available to the CFDC while virtually eliminating the need for the present \$4 million tax subsidy it receives.

Roberts justified his fiscal proposals this way:

"Canada is the largest foreign market in the world for American films. Despite this fact, distributors have never really contributed to the development of the Canadian industry, either by investment or by assuring effective distribution of Canadian films in Canada or abroad... Almost all other countries have already adopted equivalent measures (if not more radical ones) than those which we are recommending here... By imposing such a tax, we would not be inventing anything new but would only be adopting a practical measure utilized by other countries... They (fiscal measures) must constitute the essence of an important policy which I propose to announce in the next six weeks."

Because the measures had teeth, Roberts took the precaution of checking with a top financial house that they didn't contravene provincial, national or international tax obligations. He also warned the Cabinet that:

"Foreign distributors will violently oppose these fiscal measures and will use their influence in Washington. The American Government will likely threaten to take counter measures, for example, excluding Canadian films from the American market."

On January 30 of this year, Roberts made it clear, in the following exchange in the House with the Conservative Culture Critic, that he was still planning a strong policy:

"David MacDonald:

Mr. Speaker: Can he (Mr. Roberts) say... that it will be more than just a continuation of the present voluntary agreements which are obviously hopelessly inadequate?"

"Hon. John Roberts:

Yes, Mr. Speaker... It will be much more extensive than a continuation of the voluntary agreements..."

Last month Roberts stood before the Commons Committee on Broadcasting, Film, and Assistance to the Arts and announced a lame excuse for a film policy — a pale shadow of his original design. It was precisely what he had assured Mr. MacDonald it would not be: a continuation of the hopelessly inadequate voluntary agreements.

Somewhere along the line — in Cabinet or, more likely, in Jean Chretien's office — the film policy we were supposed to have had been sabotaged. The bold statements about the cultural *raison d'être* and the necessity of fiscal measures were gone. Roberts was now taking a "pragmatic" approach: "jigging" the present system rather than "renovating" it. And jigging it was. The only substantive moves — a marginal increase in National Film Board contracting to the private sector, a \$1 million increase to the CFDC earmarked for made-for-TV movies, and a secondary distribution network — were an attempt to make the public and private sectors compatible and reroute Canadian films away from the main arenas into church halls and TV. Other measures, such as improvement of an element of the Capital Cost Allowance for film investors, were helpful but minor.

When it came to the central problem of foreign control of the educational and theatrical markets, the policy was a

dead loss. The core of fiscal measures had been stripped out and the problem had been thrown back on the provinces (with whom the Federal Government has been playing political football on this issue for years), and onto gentlemen's agreements. Roberts repeated the diagnosis of the ailment offered in his November policy; it was the remedy which had changed:

"It is not acceptable that the present system works so overwhelmingly to present foreign films and so little to develop a market for Canadian material... I expect them (distributors) to find methods... to provide a better distribution of Canadian films... I intend to renegotiate an improved *voluntary quota* to ensure that Canadian films have better access to our cinemas." (emphasis added)

Noting that only 1-1/2 percent of the Canadian box office was going to Canadian filmmakers, Roberts said he was "hopeful" that the distributors would "take steps quickly to ensure greater investment". The people who brought us the problem were, once again, assigned to its solution. The most that distinguishes this new attempt from previous voluntary agreements is that the companies involved are, this time, under investigation by the Federal Governments in both the U.S. and Canada for monopoly practices. Two of those companies have been charged under the Canadian Combines Investigation Act.

But the difference between the two policies was the difference between a sovereign nation and a colony, and it made clear who's in charge here. The first policy told the Americans what the rules of the game were and what the cost of doing business in their richest and softest market was going to be. The second policy was a supplicant, begging concessions from the landlord, and leaving the Canadian industry to operate on sufferance in its own country.

That difference was reflected in the disparate reaction the policies drew from Canadian and American sectors. The Canadians may have liked the original policy, but their response to the final version was incredulity and sarcasm. Coming after years of concerted lobbying (briefs, telegrams, meetings, and a 1000 signature Petition to Parliament signed by people like Norman Jewison and Norman McLaren) in support of a levy, the policy was a bitter disappointment.

ACTRA – whose position on voluntary agreements has always been that they are about as effective as voluntary income tax – called the policy a failure and said they would continue to work for a real policy.

The Canadian Film and Television Association's President, Fin Quinn, termed it "the proverbial elephant giving birth to a mouse", and asked what, given the past record of voluntary agreements, made the Minister "think there will be an improvement now?"

Director Peter Pearson observed that the Minister "went into Cabinet with a lion of a film policy and came out with kitty litter."

Kirwan Cox, Chairman of the 14,000 member Council of Canadian Filmmakers, told the *Toronto Star*:

"The Government is under the delusion that you can support Canadian culture without interfering with American control of the marketplace... Without some form of levy, the film policy is irrelevant."

The CFDC's Michael Spencer was quoted in the *Star* as saying:

"I thought there should have been a box-office levy,

5 cents on every ticket price, and that would have made the difference between profit and loss."

The Canadian public, according to a February CROP poll, agrees. That survey reported that a majority of Canadians would require all movie theatres to show Canadian films at least 10 percent of the time, and almost half would agree to pay an extra 35 cents on every ticket to support Canadian movies.

But the Liberal Cabinet wasn't listening to Canadians – the public, the industry, the CFDC, or even the Secretary of State – when they nixed the original film policy. They were responding instead to the American threats, real or perceived, which Roberts had predicted. The Americans acknowledge their intervention but disclaim anything more than a gentle nudge in the right direction. An official of the U.S. State Department was quoted in the April 17 issue of *Macleans* magazine as saying that his office had assumed the 10 percent tax wouldn't be approved "so we only had a junior officer call the (Canadian) Embassy to tell them we wouldn't much like it." To add insult to injury, Finance Minister Jean Chrétien cavalierly told the same magazine that the tax had been chucked out because no one in the Canadian film community had made a case for it.

The Americans were as pleased with the final result as the Canadians were outraged. The ironically-named Canadian Motion Picture Distributors Association (which is as Canadian as its members, among which are Paramount, Columbia, Universal, United Artists, Warner Bros., 20th Century Fox), gave it rave reviews. Executive Director Millard Roth said the film policy was "rather consistent with a lot of the views which we presented." George Heiber, CMPDA President, and Canadian General Manager for United Artists, said:

"I'm 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."

Perhaps the most pernicious aspect of the policy was its capacity for extending the branch plant control of Heiber's member companies from distribution and exhibition into production. For example: a voluntary investment program, as opposed to a levy, leaves the control of the funds, and therefore control of what films are made, in their hands. The American companies have also made an agreement with Mr. Roberts to read and assess Canadian scripts but the exploitative proviso is that the writer sign an unconditional waiver releasing those companies from any claim in the off chance that they produce a film which is "identical or similar" to the script submitted.

It may, therefore, not be a great loss if this latest incarnation goes the way of its predecessors and becomes merely another postponement of what everyone knows must eventually be done. Certainly Roberts himself has no real expectation that his agreement will amount to anything more. In response to press scepticism of the policy, he said:

"I don't think I ever said that I had faith that they would respond. I said that I was hopeful... If we are going to take another approach... we must provide no excuse whatsoever for the argument that... they haven't been given a chance to show what they can do."

Short of a sign from God, the evidence of what they can do would seem to be in. Roberts came closer to the real reason for not proceeding with legislation in the following press comment:

"The chief factor hampering my policy formation was the economic reality... We can't support an industry without access to the international market. And it's very difficult to get the co-operation we need from foreign distributors if we're clobbering them here. That's the key conundrum."

Last November — before he was spooked by the Americans or the Cabinet or both — Roberts didn't see it as a conundrum. Then he was prepared to call the Americans' bluff. When he warned the Cabinet of American threats of reprisal, he also advised them that "it is unlikely that the Motion Picture Association of America, or the American Government, would want to risk the loss of the extremely profitable Canadian market." Precisely. If it comes down to a game of brinkmanship, Canada is holding all the cards. Our market is worth \$60 million to the Americans but it's doubtful we earn 1 percent of that in theirs. The \$6 million gain from the proposed levy would, at any rate, more than compensate us for the losses in the American market, were it ever totally withdrawn.

What Roberts appears to have forgotten, in the interim, is that his original levy proposal is a universal remedy which most countries have applied against the Americans. Because the Americans' commercial success is achieved at the expense of everyone else's (there is no commercially viable film industry, in an unprotected market, outside the U.S.), levy has become the norm, rather than the exception, for the world's film industries. To it we owe Bergman, Truffaut, Fellini, Bunuel and most of our non-American film experience.

The countries applying this sanction have no less access to the American market than Canada. Our fear is based on a myth which other countries have discarded: the myth that somehow, if we are a good branch plant and forfeit control of our own market, the Americans will allow us into theirs where we will have a shot at the pot of gold at the end of the rainbow. The fact of the matter is that there is no entry to the American market — on a large scale — and there is little hope of realizing profits from films which do gain entry.

America is a media imperialist. It invented the concept of the free flow of information to justify its own unilateral penetration of foreign markets. The country which controls the world's film markets has not neglected to control its own. In fact, America is the world's most xenophobic and protectionist media market. It shares with Red China the distinction of having less (2 percent) of its television time devoted to foreign programming than any other nation (Russia imports 5 percent). The last time UNESCO checked, the U.S. stood alone as the world's most protected movie market: 95 percent of all movies are domestic.

As for the pot of gold beyond the magic door... it doesn't exist for independent producers be they Canadian, Timbuctuans, or even Americans. The list of independents who made a million in the American market fits on a postage stamp. The list of those who were ripped off is long and international. CFDC Director, Michael Spencer, commented in the April issue of *Trade News North*:

"We've been in bed with the major companies from the very beginning... There was *Fortune and Men's Eyes*; we never got any money back on that. You know, *Act of the Heart*, *Fan's Notes*... We never got any money back on any of these pictures... We gave up on the U.S. major companies sometime around about **Duddy Kravitz**.

Peter Guber, producer of *The Deep*, which made over \$100 million at the box office, told the Los Angeles Filmex symposium that he had not seen a penny of profit. Al Ruddy, producer of *The Longest Yard*, made a similar charge at a Canadian seminar in January.

Just as the world will get solar energy, in a serious way, when and if Exxon figures out how to claim ownership of the sun, Canada will get their features into the American market if and when the American majors (which are themselves owned by massive multinationals like Gulf & Western and Trans-America), gain financial and creative control over our production. That is a possibility which suits too many of our pseudo-producers too well. Being agents for the Americans is personally profitable for them and many have made a life's work of compradorship. It also interests Hollywood: Universal Studios have already set up a Canadian production arm.

But personal profits for the American majors and a handful of Canadian businessmen is a very different thing from the potential social and cultural benefits for Canada in having a production industry of our own. A film industry designed to serve their limited commercial imperatives will be a branch plant, and branch plants have no potential to serve a nation's larger goals in any industry, particularly not in the communications industry.

Despite the recent bonanza of truly excellent, and truly Canadian, features like *Why Shoot the Teacher*, *Outrageous*, *Who Has Seen the Wind*, *One Man*, and *J.A. Martin photographe*, the Canadian industry is hovering on the edge of becoming such a branch plant. The majority of funds invested — and movies made — have nothing to do with this country. Films which disguise their Canadian location by replacing Canadian flags and license plates with American; films which defy the fundamental truth of all great art — that it is uncompromisingly set in its own specific physical and social milieu. Such films amount to international nonsense and receive neither the critical nor the commercial success of the best of our indigenous products. Britain, having suffered this bitter lesson of concessions to internationalism, is not attempting to recover and is dedicated to making unashamedly British films.

If the Canadian industry is permitted to further drift in the American-controlled market system it was born into, its purpose will be perverted beyond redemption. Commercial logic will have triumphed over social logic once again in this country and the government will be hard pressed to explain what its multi-million dollar investment has been all about.

Unfortunately, the final film policy has encouraged, rather than retarded that drift. If we are not going to be America's number one communications colony forever, the government is going to have to accept the world's wisdom and intervene in its own market, as John Roberts originally proposed. That's going to require making the essential distinction between good neighborliness and selling out.

In the meantime, policies such as the Liberals have just delivered for film, are compromising the country's needs. They mean the export of talent, jobs, and millions of dollars, which Canada has been doing since days of Mary Pickford. They put another generation of talent on hold. They postpone our development and blunt our sense of self. Ultimately, they are going to cost us our political and economic independence. They simply don't make sense. □