

## THE SENSE AND NONSENSE OF APPLEBERT & FOURNIER

### Part II: Distribution The push for Canadian content

by John Roston

**Author's note:** The first part of this article, published in the last issue of *Cinema Canada*, examined the logic behind government aid to production as recommended by the Federal Cultural Policy Review Committee (Applebert) and Quebec's *Commission d'étude sur le cinéma et l'audiovisuel* (Fournier). Shortly after *Cinema Canada* went to press, Quebec's Minister of Cultural Affairs tabled Bill 109, the proposed cinema and video law. The bill is based on the Fournier report, but with several major changes.

Part I of this article took Fournier to task for "recommending such extensive and complex government intervention in the film industry that it creates as many problems as it solves." Bill 109 performs radical surgery on Fournier's recommendations. Fournier's complicated maze of new governmental film organizations has been reduced to one new agency and modifications to existing agencies.

The new *Société générale du cinéma et de la vidéo* is a Quebec version of the Canadian Film Development Corp., with a similar mandate to promote films and provide financial assistance to the film industry. Although far more efficient than the system recommended by Fournier, the new agency still suffers from some of the ills of committee decision-making described in Part I of this article. (Fournier's statutory system of "automatic" aid to producers, directors, screenwriters and others, also criticized in Part I, has been dropped.)

The existing *Bureau de surveillance du cinéma* is transformed into *La Régie du cinéma et de la vidéo*. In addition to classifying films for exhibition, it administers the new system of permits in a manner very close to that recommended by Fournier. Producers working "on a professional basis" in Quebec will be required to obtain a special permit, as will non-Canadian professionals wishing to shoot material in Quebec. These unwarranted intrusions by the state on individual rights and freedoms, as stated in Part I, "are well-intentioned, but they create a bureaucratic nightmare, a sort of film police."

Although Bill 109 is a major improvement on the Fournier proposals, it fails to set up a system which will maximize the production of creative and innovative films.

Applebert and Fournier are most convincing when they suggest that the primary objective of government intervention should be the production of creative and innovative films and television programs. They are less convincing when they suggest that this objective can best be achieved by the private sector. Whether high-quality films are produced by the public sector or the private sector, they must be given the widest possible audience. Reaching that audience is the task of the distribution process. This part of the article will examine the logic behind the distribution mechanisms recommended by Applebert and Fournier, modified in the latter case by the manner in which its recommendations are implemented by Bill 109.

#### Continuity of product

Applebert states that, "one of the chief goals of cultural policy must be to establish strong and stable lines of commu-

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nication between artists of all kinds and those who will see, read or hear their messages." If strength and stability of communication between artist and audience are to be our chief goals then there must be predictability in the method of distribution so that consumers can easily find the high-quality productions and enjoy them. (In the past our high-quality films have been distributed on an erratic basis. They may appear first in major theatres, small local theatres, on the CBC, private networks or educational television. Word about them tends to spread slowly. Consumers who have been disappointed by the poor quality of previous Canadian productions react skeptically at first. By the time they decide to have a look at a film, it has moved on, to pop up at random somewhere else months later.)

The Hollywood Majors promote a film on the basis of key ingredients - the stars. The stars have already been heavily promoted over a long period of time and that gives the films in which they appear a head start. Applebert comments that they "economize on information by a reliance on 'stars.'" In the absence of anything else to go by, they are willing to believe that the star is the key ingredient which guarantees the quality of the product.

The challenge for the distribution process is to minimize risk by creating convenient places where the consumer will have the best chance to see quality films and television programs on a regular basis. If the product itself is hard to identify, at least the consumer will know the best places to look for it. To maintain consumer confidence in such places, every effort must be made to keep inferior products out of them. Applebert sums up the principle neatly: "Promotion implies selection." Unfortunately, Applebert and Fournier tend to confuse high-quality programming with Canadian content.

#### Taxation and the distribution system

If the consumer is given a quality product, she or he should expect to pay for it. Both Applebert and Fournier seek the ideal means to channel funds collected in the distribution process back into production. Fournier is very specific, calling for a production fund, or "fonds de soutien du cinéma," which in addition to a statutory allocation, receives income from several taxation measures:

- a 10% tax on cinema admissions;
- a 50% increase in the sales tax on television commercials;
- a 10% increase in the sales tax on basic cable services;
- a \$2 increase in the sales tax on each blank small format videocassette.

As Bill 109 is not taxation legislation, none of the above provisions have been implemented and are still under study.

Applebert rejects the idea that cultural needs should be financed by the yield

from special taxes. "Initially there may be a correlation between the need and the yield, but with the passage of time that correlation may diminish rapidly." It therefore recommends that, "Public funds for the support of cultural activity should as a general rule be financed from general revenues," a point of view that makes sense over the long term, though it avoids the problem that production funding must be increased dramatically in the short term.

#### U.S. domination of the theatrical market

Fournier condemns the existing theatrical distribution system in which several major Hollywood studios dominate the world market. They are, "so powerful that almost no Occidental country succeeds in escaping from their hegemony." Applebert explains how the system works: "The theatrical market is highly integrated with the United States market; both Canadian and U.S. theatres are supplied chiefly by distribution companies which are integrated with the major Hollywood studios... These studios have the greatest control over what theatres exhibit because they control the 'blockbuster' Hollywood releases, which are what the theatres want." In other words, Canadian theatres must exhibit their quota of mediocre Hollywood product if they want to be given the heavily promoted expensive productions which rake in most of the profits.

The two major Canadian theatre chains, Famous Players and Odeon, have done little to improve the situation. Famous Players is owned by Gulf & Western, the same U.S. conglomerate which owns one of the major Hollywood studios. Yet Applebert is more irritated by Odeon which stopped exhibiting a voluntary quota of Canadian films shortly before it was acquired by Canadian interests: "The problem we are describing cannot be resolved by a policy requiring Canadian ownership of theatres." As Fournier puts it, "Everyone knows that the large Canadian theatre chains benefit from privileged agreements with the Majors which make their productions available to them on a priority basis." To Fournier, "Reappropriating control of the national marketplace constitutes, therefore, in the eyes of the Commission, one of the prime objectives on which the State must concentrate when intervening in film distribution and exhibition."

Unfortunately, beyond such generalities, Applebert and Fournier are not of much concrete help.

#### Increasing Canadian content

When it comes to solving the problems they have articulated so clearly, both Applebert and Fournier miss the target by a wide margin. Applebert is vague: "The federal government should provide the Canadian-controlled film distribu-

tion industry with the economic strength to market Canadian films successfully to Canadian and foreign audiences through all channels of exhibition and sales." It suggests that subsidies and loans could be made to Canadian-owned film distributors for distributing Canadian films - throw money at the problem and maybe it will go away.

Fournier's recommendations have been simplified by Bill 109 which provides that:

- all film distributors doing business in Quebec must be 80% Canadian-owned and obtain a permit from the *Régie du cinéma et de la vidéo*;
- the *Régie du cinéma et de la vidéo* sets the minimum percentage of box office gross receipts which must be received by each party as part of the agreement between film distributor and film exhibitor.

Unfortunately, transferring power away from the Majors to Canadian distributors is not that easy. Fournier recognizes that the Majors may simply make a sweetheart deal with a Canadian-owned distributor willing to do what it is told in return for cash. The permit system is apparently to be used to prevent such a deal. Bill 109's new *Régie du cinéma et de la vidéo* can set regulations for the procedure to be followed in the issuance of permits, but the bill does not clarify exactly how far the *Régie* may go. Fournier intends it to go far indeed: the *Régie* should "ensure that the grants of distribution rights to Canadian enterprises are genuine. In particular, it will be able to require that the distribution rights for a film are granted for a period of at least two years. It will also be able to require that the distributor's commission, established by contract, be not less than 20% of distribution revenues. The issuance of permits can be based on all other conditions, established by regulation, which the *Régie* judges necessary to attain the objectives which govern the recommendation." In other words, the *Régie* can bend the regulations to ensure that the Canadians receiving distribution permits haven't sold out to the Majors.

There is no way of knowing all the criteria on the basis of which the *Régie* will issue permits. If the regulations are straightforward, they will not prove to be much of an obstacle for the Majors who can make their contracts of convenience with little to fear. They will see the system as complex nonsense that benefits some private sector opportunists. On the other hand, if the *Régie* adheres to the policy suggested by Fournier, it risks becoming a force with frightening powers.

#### Solving the theatrical puzzle

The objectives which Applebert and Fournier fail to achieve in the theatrical market can be summarized briefly:

- a method of distribution which provides a continuous flow of high-quality product and thereby gains consumer confidence and loyalty;
- a priority in this distribution method for Canadian productions whenever these are available;
- a meshing of this system with the distribution of expensive and heavily promoted Hollywood productions which provide a solid financial base for film exhibition.

The solution to this puzzle may require the active involvement of the public sector, but both Applebert and Fournier reject this option, the former because "governments and government agencies are not the best promoters," and the

latter on the basis that governments should "foster the development of independent and responsible Quebec enterprises." However neither report proposes a mechanism whereby the private sector can do the job required.

## Language

The Majors have usually been slow to introduce French versions of their big hits in the Quebec market. Bill 109 requires the Régie du cinéma et de la vidéo to limit distribution of films for which there is neither a French version nor a contract to make such a version. The restrictions only take effect 60 days after the first public showing of the film in Quebec. After that the film may not be shown publicly for a period of 180 days. Following this blackout period, only one copy of the film in each format can be distributed for public exhibition. These provisions are reasonable. In fact, it is difficult to believe that the federal government has done all that it could to see that high-quality Canadian films and television programs are made available in both languages as quickly as possible. Applebert comments that, "federal cultural policy should be shaped by the fact that we have two official languages, but it should not partition Canadians into two linguistic compartments."

## U.S. domination of the television market

Both Applebert and Fournier are very concerned about U.S. domination of Canadian television. According to Fournier, "Almost a million Quebec homes now subscribe to cable and thus receive an abundance of programs, mostly American." Not only do the majority of Canadian homes receive American stations, but Canadian stations purchase as much U.S. programming as they can. Applebert explains that, "the problem of Canadian content stems from two facts: first, it is much cheaper to acquire a foreign program than to produce a domestic one of equivalent quality; and second, foreign, especially U.S., comedy and drama tend to attract larger audiences than Canadian equivalents because they can be more heavily promoted and because the larger market to which they are sold makes it possible to invest larger sums in their production, thus often enhancing their appeal." What irritates Applebert even more is that the Canadian networks bid against each other for U.S. programs: "Competition between the CBC, CTV and Global networks and some independent broadcasters for American programs means that Canada pays considerably more for those American shows than does the United Kingdom, for example, with a market nearly three times the size of Canada's." Although Canadian-produced light comedy and drama suffer from this U.S. competition, there are profitable television markets for Canadian-produced sports and variety programs. Applebert is disturbed by CBC purchases of U.S. programs and finds the root of this evil to be the acceptance of advertising by the CBC. "The need for advertising revenue exerts a profound pressure on CBC programming to fill prime time with U.S. programs." To solve the problem of U.S. domination, Applebert recommends that, "CBC television should discontinue selling air time for commercial advertising." Since CBC affiliates also want U.S. programs, "CBC television should discontinue its affiliation agreements with private television stations."

Applebert confuses the problems of

Canadian content with those of revenue-producing potential. In the early part of its report, Applebert makes a "functional analysis" of cultural activities in general. "There is clearly a very large sector of activity of which the primary function is to satisfy varying demands for entertainment and recreation, transmitting little from the past, leaving little residue in the form of future heritage and showing little conscious concern with the interpretation of society of itself... From government it demands courses of action that involve at least as much industrial (or, more broadly, economic) policy as cultural policy..." Although this may suggest some disdain on Applebert's part for activities which consist mainly of simple entertainment, Applebert later asserts that "the programming policies of the CBC must encompass not only the arts and specialized programs but also popular and mass entertainment." To accept that assertion at face value, one would have to conclude that the CBC should run sports and variety programs. Perhaps the objective should be to reduce purchases of U.S. programs without adversely affecting the revenue generated by Canadian mass-appeal programs.

## Specialized programming

Applebert attaches considerable importance to the rapidly expanding number of available channels and programs: "To an extent, the control over programming is passing from the hands of broadcasters to viewers and listeners." This transfer of control becomes more pronounced with pay-television. The viewer purchases what he or she wishes to see: "Television broadcasters will probably become more specialized in the production of programs, provided they have a market large enough to yield a profit." That profitability proviso is crucial: it may be technically simple to pump one hundred television channels into homes, but who on earth is going to pay for the programming which runs on them?

Applebert is correct in recognizing that conditions will favour specialization. If a viewer is in the mood for sports, drama, variety, public affairs or soft-core pornography, she or he is likely to turn first to a channel which either specializes in that type of programming or runs it frequently at that time of day. Those who run such programming on an erratic basis, no matter how high the quality, may keep missing their audience. In trying to be all things to all people, the CBC will find itself at a serious disadvantage.

## Public-sector distribution objectives

A natural question arises as to just what the difference is between the production objectives of the CBC and those of the NFB. In recent years, there have been quite a number of CBC-NFB co-productions which in itself indicates that there is quite an overlap of the two agencies. Applebert goes so far as to make the extraordinary statement that, "the NFB's mandate 'to interpret Canada to Canadians and to other nations' has been increasingly assumed by the CBC's news and public affairs programming." The marvellous thing about "interpreting Canada to Canadians" is that no one knows what it means exactly, but everyone wants to do it.

The NFB distributes both general interest material (produced by itself and by the CBC) and special interest material (produced by itself and by the private

sector for individual government departments). These materials are made available on a free-loan basis. The private sector distributes its own general interest and special interest material (produced in the hope that it can be sold and rented profitably) as well as productions from other countries. With so many overlapping paths, it's not surprising that the NFB and the private sector keep treading on each other's toes. According to Fournier, the NFB's free-loan service "creates consumer habits which are injurious to those who rely on a market which is already restricted and difficult." Why should consumers rent films from a private sector distributor when the NFB loans them out for free?

On the other hand, Applebert suggests that the CBC should take over responsibility for all NFB distribution. "We would like to see our hundreds of public and school libraries become more effective distributors of audio and video productions than the 27 NFB offices have been in recent times." In fact, public and school libraries do help to distribute NFB productions, but when budgets are under pressure, audiovisual activities are often the first to be restricted. Applebert observes that the free loan of NFB productions should eventually be restricted to non-professional videocassettes.

## The international market

Bill 109 specifically provides that one function of the new Société générale du cinéma et de la vidéo is to provide financial and other assistance for Quebec films "in festivals and other cinematographic exhibitions." Applebert proposes a new "Film Canada" agency to be supervised by the CFDC. "The new organization would assume most, if not all, of the functions now performed by the NFB, the Department of External Affairs, the Department of Communications and the CFDC itself for promotion, sales assistance and exhibition of Canadian films outside Canada." While such an enterprise remains a future possibility, the extant Film Canada has been shelved due to private-public sector friction.

## The new technologies

Fournier believes that the effects of the electronic revolution will be profound: "The coming technological upheavals are undoubtedly going to involve changes in the economics of the audiovisual field and encourage the emergence of new styles, new formats and a new aesthetic." Applebert agrees: "As always, such changes bring with them opportunities and dangers." Applebert and Fournier discuss how three of the new technologies affect the distribution process:

- videocassettes;
- pay-television;
- direct broadcast satellites.

## Videocassettes

The problem with videocassettes is that they remove the economic base for non-theatrical distribution. Some of the Hollywood Majors are battling Sony in the U.S. Supreme Court in an attempt to obtain compensation for the erosion of this market. One might as easily try to restrict the use of Xerox machines.

Fournier is particularly concerned about the video pirates who sell illegal copies of movies to retail stores. Bill 109 requires all commercial distributors of videocassettes to register each title with the Régie du cinéma et de la vidéo. As part of the registration procedure, a copy of the distributor's agreement with

the rights holder must be deposited. The Régie issues a registration certificate for each title, a copy of which must be given to the retail store.

Both Fournier and Applebert mention the idea of a special tax on non-professional format videocassettes. Fournier recommends the \$2 tax per videocassette which was mentioned earlier as part of its proposal for taxation measures to support production. Applebert's suggestion is more interesting: "The federal government should empower a non-government, Canadian cultural products marketing organization to administer a discount voucher scheme, based on a levy on sales of blank audiotapes and videocassettes, to stimulate the sale and production of Canadian sound recordings and film and video productions." The buyer would pay a fixed levy on the blank videocassette. "In return, the buyer would receive a voucher, redeemable at the value of the levy (or a multiple thereof) towards the purchase price of a 'Canadian recording,' with that category of products being fully defined and identified."

## Pay-television

Another overrated bonanza is the large portion of pay-television fees which the CRTC believes will be allocated for Canadian program production. Applebert and Fournier have no argument with this view.

## Direct broadcast satellites

Direct broadcast satellites will have signals of sufficient strength for consumers to capture them with a device the size of an umbrella. This will give consumers the opportunity to receive U.S. and Canadian networks cheaply without cable. Applebert comments that, "it is sobering to contemplate what the impact will be when a host of U.S. services can be received via satellite anywhere in Canada." This cannot be prevented, but Applebert realizes that there is also a positive side to the coin. "This new technology provides unprecedented opportunities for us to increase the distribution of new Canadian programs and services, not only domestically but internationally."

It is not a time for timidity. As our direct broadcast satellites expand their coverage into our north, their footprints extend south into the U.S. If Applebert and Fournier are correct in stating that a large Canadian audience is watching U.S. border stations, what better place to promote Canadian programming?

## Conclusion

Applebert and Fournier have taken an honest look at film and broadcasting in Canada. They recognize clearly the mistakes of the past and make a sincere effort to formulate policies which will improve the situation. In general these policies look to the private sector for solutions to the existing problems. Bribes and threats are frequently used to convince the private sector that it should pursue culture instead of profit. Applebert and Fournier keep trying to pound square sticks into round holes. Neither public nor private sector can do everything well. Government policy must find and support the strength of each sector and set clear goals which can be evaluated afterwards. This has not been done. The challenge now is to build on Applebert and Fournier to arrive at a film and broadcasting policy which unlocks creative potential and establishes meaningful communication between artists and audience.