

Changing the rules in exhibition and distribution :
the regulatory approach

Going it alone

**Quebec's Cinema Act,
André Guérin and the Régie du cinéma**

by Michael Dorland

Late in November 1974 some of Quebec's best-known filmmakers – Michel Brault, Gilles Carle, Jean-Pierre Lefebvre and Marcel Carrière among others – staged an 11-day occupation of the offices of the Bureau de surveillance du cinéma (BSC), Quebec's film classification bureau. The occupation was held to protest the Quebec government's slowness in passing long-awaited legislation to culturally decolonize Quebec cinema. The offices of the BSC were chosen for the protest because its president, André Guérin, "in his official capacity, has gained the respect and the trust of everyone in the filmmaking milieu," as Jean-Pierre Tadros wrote in *Cinéma Québec* at the time.

Just over a decade later, much – and little – has changed. Despite legislation of a disappointing 1975 *Loi-cadre*, the decolonizing law so long awaited by Quebec filmmakers would be the result of the Parti québécois government's passage of the controversial Bill 109 officially assented to by the National Assembly on June 23, 1983. One of three agencies created by the new act, the Régie du cinéma et de la vidéo is the administrative tribunal charged with the application of the Cinema Act. The Régie is presided over by André Guérin, the man who in 1974 had earned the Quebec filmmakers' unusual gesture of respect. As Guérin explains in the following interview with *Cinema Canada*, the task which has confronted the Régie in the past year and in the



months to come is as delicate as it is complex and radically innovative – for it represents the first time ever that a government in North-America has attempted to regulate exhibition and distribution in the film industry.

The spirit that animates Guérin's presidency of the Régie is perhaps best stated by a framed photographic enlargement on the wall of the antechamber of Guérin's office. It is a quotation by then Quebec premier Daniel Johnson in the National Assembly in June, 1967 at the time of the Quebec Censor Board's abolition and replacement by the BSC.

"We now introduce a measure which has long been the object of an abundant jurisprudence and is known as the rule of community standards and public order. The civil code speaks of morals, community standards and public order. We have removed the word 'morals' because we believe, and I think rightly, that it is not up to the state to judge in ethical matters. However, community standards and public order are the responsibility of the state. Must one then presume that the members of the Censor Board will be so narrowminded or so partisan that they would try to prevent a filmmaker who has produced a film from showing it in the province of Quebec because the film treats of ideas that do not conform to those that prevail in the province? If the Bureau de surveillance would display such narrowmindedness, I would not hesitate to demand a public amendment as well as the reasons motivating such an action."

photos: Lois Siegel

Cinema Canada: The passage of Bill 109 some eighteen months ago created three agencies of which the Régie du cinéma et de la vidéo is hardly the least significant. So the first question would be: what is happening with the Régie? What is its status today?

André Guérin: The Régie is, as you know, an administrative tribunal. At that level the Régie has been in existence since December 1983, when its three members were appointed; namely, Claire Bonenfant, Pierre Lamy who is very well-known in the film industry,

and myself, the president. The real work of the Régie so far has been the drafting of regulations, the Régie being the juridical arm of the Quebec state's intervention in the cinematic domain. So where the law demands regulations, we have had to first draft those regulations.

My colleagues assumed their functions in February 1984 – the nominations were in December but they did not assume their functions until February – for a very simple and prosaic reason. As you may have noticed from the large billboard outside, the building in which

we find ourselves is undergoing renovation. It is being restored, so my colleagues did not have offices. Offices had to be built and these were not readied until February 1984. As soon as the members of the Régie were able to meet in an appropriate physical locale, we got down to the task of drafting. It is a task that, seen from the outside, could appear to be without difficulties. If one is aware, however, that this is the first time that a government intervenes in such a precise manner in the North American cinema market, it is, on the

contrary, an extremely demanding task. Because, of course, in terms of the exploitation of cinema, the North American cinema industry is not used to this kind of intervention.

If one does not wish to regulate into existence a bureaucracy that runs the risk, not only of disturbing everything but also strangling it, one must draft regulations that will be faithful to the law; that is to say, that would allow the law to attain its objectives while not upsetting the film-viewing habits of people. As you know, one of the law's

objectives is to rectify what one could term a rather abnormal situation in exhibition and distribution: for instance that in Montreal, which is the cultural metropolis of French Canada, the cinematic main street does not speak French. One of the aims of the law is to correct that situation.

Furthermore, the Québécois viewing public is used to American movies; it likes American movies and would not readily accept that a law which aims to rectify an abnormal situation would deprive this public, even for a limited time, of the films it likes to see. This is only one aspect which illustrates that it is not easy to draft these regulations because we are attempting to rectify something without penalizing the Québécois public.

So the Régie in the following months prepared these regulations, which once adopted have the force of law, and so have to be approved by the legislator. Once drafted, they have to be submitted for the approval of the minister of Cultural Affairs who can – and this is perfectly within the normal course of things – make comments or return the draft saying 'Listen, I don't think this is quite government policy, or in the spirit of the law.' So there's a ping-pong game that could last a while because of this concern with proper regulation.

It is now February 1985. All of the regulations except for two have been submitted for the minister's approval and we are in the final phase of ministerial approval prior to cabinet approval, ratification in principle and publication (of the regulations) in the *Gazette officielle*. Following that, within 30-60 days there will be, if people demand them, public hearings at which all interested parties or whomever wants to can appear in public before the Régie which will sit as a commission of inquiry and they can make known their agreement or disagreement with the regulations or request changes be brought to them. Once the hearings have been held, if there are hearings...

Cinema Canada: *If there are hearings, they would be held because the film industry has asked for them?*

André Guérin: The request could come from anybody but only on the sections of the law or rather on the one section, which is a lengthy one, that allows for hearings to be held. So if there are hearings – because the law says that there will be hearings only if requested – otherwise if as a result of the consultations undertaken throughout the drafting of the regulations, the different industry milieux consider that the regulations pretty much meet the objectives that everyone was seeking, that there have been neither flagrant injustices nor aberrations, and if nobody requests hearings, there won't be any. But I would expect that someone will demand hearings.

Cinema Canada: *How concretely was the drafting process undertaken? How specifically did you go about it, from the inside, with the milieu, with other potential intervenors in drafting the regulations? How did it work?*

André Guérin: Once the Régie was set up, the three members who comprise the tribunal then sat down with the government's legal counsel – we did not ourselves at that point – have a legal advisor. That was another thing: we had to, in April, recruit a legal advisor. So with the chief legal counsel for the ministry of Cultural Affairs we reviewed

Exhibition in Quebec: steady decline

No. of screens		Year
Theatres	377	June 1980
Drive-ins	52	
Theatres	370	June 1981
Drive-ins	64	
Theatres	363	June 1982
Drive-ins	66	
Theatres	343	June 1983
Drive-ins	66	
Theatres	320	June 1984
Drive-ins	66	

Source: Gouvernement du Québec, Bureau de surveillance du cinéma.

ed the law, identified which articles required regulations. At the same time, to be as enlightened as possible through this series of meetings with the different associations and groups, we reviewed the cinematic reality in order that, once we defined the regulation, it reflected reality as much as possible. We sat down, the three of us, in working groups with the legal advisor and looked at, for instance, the theatres. What is film exhibition in Quebec? Or how can we make it possible that this very menaced exhibition – you know that theatres are shutting down one after the other – what are the reasons for all these closings? People, particularly in the regions, have a right to see films other than on videocassettes or on television.

So we found, for example, that in some regions there was competition from a cinema that would be considered 'alternative,' that there was an overlap, an invasion of so-called commercial cinema by a type of cinema that would otherwise be concerned with repertory or *art & essai* but, tempted by the success of certain other kinds of films, would program these films and so harm so-called commercial exhibition. Should one, through the mechanism of permits – because there will be permits – make it possible for the 'commercial' theatre to truly have exclusivity over the commercial product while the alternative cinema would devote its programming to repertory, to film classics? The roles have to be better and more clearly

Quebec's Cinema Act: the key sections

83. The Régie may affix its stamp only according to the following rules:

(1) if a version other than the French version is exhibited with a print having French subtitles or French dubbing, the Régie shall stamp at least as many prints with French subtitles or French dubbing as there are prints in a version other than the French version;

(2) if only one version other than the French version is exhibited and if the person applying for a stamp files a contract with the Régie for the French dubbing or subtitling of the film in Québec within a reasonable time in the judgement of the Régie and, in the case of dubbing, files proof of delivery of the elements of dubbing to the person responsible therefor, the Régie shall stamp the prints exhibited in a version other than the French version;

(3) if only one version other than the French version is exhibited and if the person applying for a stamp proves, to the satisfaction of the Régie, that there is no version with French subtitles or French dubbing available at the time the application is filed, the Régie shall affix a provisional stamp on the prints exhibited in a version other than the French version. The provisional stamp is valid until a version with French subtitles or French dubbing becomes available or for sixty days after the date of the first exhibition of the film to the public, whichever occurs first. Subsequently, unless applications are made in accordance with paragraph 1 or 2 of this section, no stamp for this film may be granted until one hundred and eighty days after the date of expiry of the provisional stamp nor for more than one copy of the original version per format. However, during the one hundred and eighty day period, the Régie may affix a provisional stamp, valid for thirty days, to the film and only for one copy of the original version per format, if the person applying for the stamp shows to the satisfaction of the Régie that the film is not intended to be exhibited to the public more than three times per seven-day period. Subsequently, such stamp may be granted again in the same manner for that film if the Régie deems it to be in the public interest.

104. Only a natural person, a partnership of natural persons or a corporation that, for the purpose of operating a licence, possesses an enterprise having its principal establishment in Québec may hold a general distributor's licence.

For the purposes of this section, the "principal establishment" is the place which is the centre of the decision making and actual direction of the enterprise.

Failing proof to the contrary established to the satisfaction of the Régie, the principal establishment is deemed situated outside Québec.

(1) if the majority of the members of the board of directors are not domiciled in Québec, or

(2) if the corporation is controlled in fact or at law by one or several persons not domiciled in Québec or by one or several corporations whose principal establishment is situated outside Québec.

defined. Once the roles are more clearly defined, the commercial theatre would have a better chance of survival. So how do we do that; by what means?

On the other hand, in certain regions where there is no commercial theatre, people should not be cut off from current cinema because a ruling from the Régie would limit the alternative cinema solely to repertory or classics. How do you regulate, keeping all the complexities of these situations in mind?

Cinema Canada: *You had to go through each separate case and look at each town, each locality?*

André Guérin: Without going quite as far as that, we were able to sit down before a map of Québec – someone even placed little flags on this enormous map identifying every theatre in Québec. The law could have allowed the possibility of dividing all exhibition into regions; we could have said, for example, in such and such a region there won't be more than 30 cinemas. We didn't do that; we opted against an overall plan of dividing the territory into regions and deciding that in this region, because of the small population, if we wanted the few existing theatres to survive, to place a ceiling on their numbers and forbid the opening of new theatres.

Cinema Canada: *Like the Cohen Report's suggestion at the federal level to create different zones of exhibition/distribution?*

André Guérin: I don't know if you can... if you look at the law's section 168: "sixthly, divide the Québec into regions, delimit them and prescribe the maximum number of exhibition permits that the Régie can issue" and this could apply in all cases except the renewal of permits. We could have gone as far as that, but preferred not to. But this illustrates how we had to, region-by-region, almost town-by-town, keep in mind the reality of cinematographic exhibition. As one of the objectives of the law is to assist cinema and as we are still in a liberal economy, we had to privilege the private exploitation of cinema. So constantly, in the course of drafting the regulations, it was a deliberate choice on the part of the Régie to give a privileged chance to the commercial theatre owner.

Cinema Canada: *Privileged in what sense?*

André Guérin: Because he is embarked upon the adventure of capital investment, because he pays taxes, we thought he should benefit from, if you will, exclusivity in the totality of whatever comes out in cinema and so be able to program anything whatsoever. Privileged in that sense. Whereas the alternative circuit would be confined to a cinematographically educational function in repertory, in the classics of cinema or, after the manner of the French law, that it emphasize a kind of cinema not ordinarily seen in regular theatres: say, Third World cinema, young experimental cinema, etc. Now the regular theatre could do that also; it would have access to the entire range of programming. So privileged too in the sense that it would be at liberty to program whatever it wished, while the other theatres are not... The other theatres are not even theatres, but places where non-profit organizations have taken up the vocation of cinematographic education. Well, let them do that! Because this is not something you do by putting on E.T.

or *Carmen*; you can go to the regular theatres for that.

So there was this constant preoccupation, this concern with regulating with the aim of putting an end to the kind of overlapping that one can see in certain areas between commercial and alternative exhibition. I could show you as an example a newspaper clipping from Beloeil where you have *La guerre des tuques* playing commercially and at the same time in a regional high-school. If the regulations that we've made are adopted, *La guerre des tuques* could not play in a high-school as long as it was still on the commercial circuit.

Cinéma Canada: *This overview of the regions gave you a vision of what kind of cinematographic landscape?*

André Guérin: Well, one has to say that at least as far as two of our members were concerned, we've always known what the overall situation is. I've been at this job for over 20 years, through the classification of films, through regulating the theatres and locations of public projection, so it's not as if we

terms of theatrical exhibition, doesn't bring about an amelioration of the situation I rather fear that, in a few years, the only cinemas left will be limited to the later urban centres.

Cinéma Canada: *Was there a difference between making this depressing observation from outside and, through the drafting of the regulations, actually being able to affect – even rectify – the situation? Did you feel that through the regulations you would be able to rationalize the different levels of exhibition?*

André Guérin: When I say discouraging, I don't mean to say we should have told the legislators that they'd wasted their time and this law comes too late, that there is a socio-cultural change occurring within the population which means the situation is hopeless, so you might as well suspend proclamation of certain sections of the law. No, we've not reached that point.

What we are saying and what we found on the basis of the evidence is that if the mechanisms proposed by this law do not work, then it will be all over for

there will be no theatres left throughout entire regions and that becomes a social problem. For it's not because people are far away that they shouldn't be able to see films in theatres.

Cinéma Canada: *In the definition of the regulatory environment, was there a conscious decision to define a plurality of cinemas at the level of programming, to say that there are, for instance, five levels of cinema to which we can allow the public access?*

André Guérin: No, we don't get into levels of programming. What we've proposed – and it hasn't been approved yet – is that through the permit mechanism, the commercial theatre – though you can't coldly call it that; rather it's the theatre as it's generally conceived of – will have access to all types of programming. Where we do intervene on the level of programming, what we propose is on the level of alternative or parallel structures; to allow these to really play a role in popular education. That is the only level where we intervene in programming. For the remainder it's

the public, especially outside Montreal, where the theatres are so unevenly installed, where people complain about the acoustics, that the screen isn't where it should be, and so on. So we will have a regulation about technical standards.

As concerns exhibition then, the Régie has proposed, since we are still in a market economy, still within the terms of economic liberalism, that the so-called commercial theatre have the privilege of being favored since the investment is there, the taxes, then the other levels of exhibition will be clearly identified, and the parallel exhibition circuit in particular confined to respect its official vocation in terms of repertory and film classics. Whether or not the legislator will agree to this, that is what the Régie has suggested. For legal reasons the legislator can decide that our regulation is too demanding and that we should opt for some other solution; that is his right. Since the regulations have force of law, it is the legislator's right to modify them.

Cinéma Canada: *What kinds of reactions did you get from exhibitors to the proposed regulations?*

André Guérin: It's clear that for years now exhibitors have claimed that here and there alternative cinema has actually been invading so-called commercial cinema and that this is unfair competition because these competitors are often subsidized either directly or indirectly, that they haven't made any kind of investment, don't pay any taxes, and that this is intolerable. So commercial cinema must truly be given an opportunity.

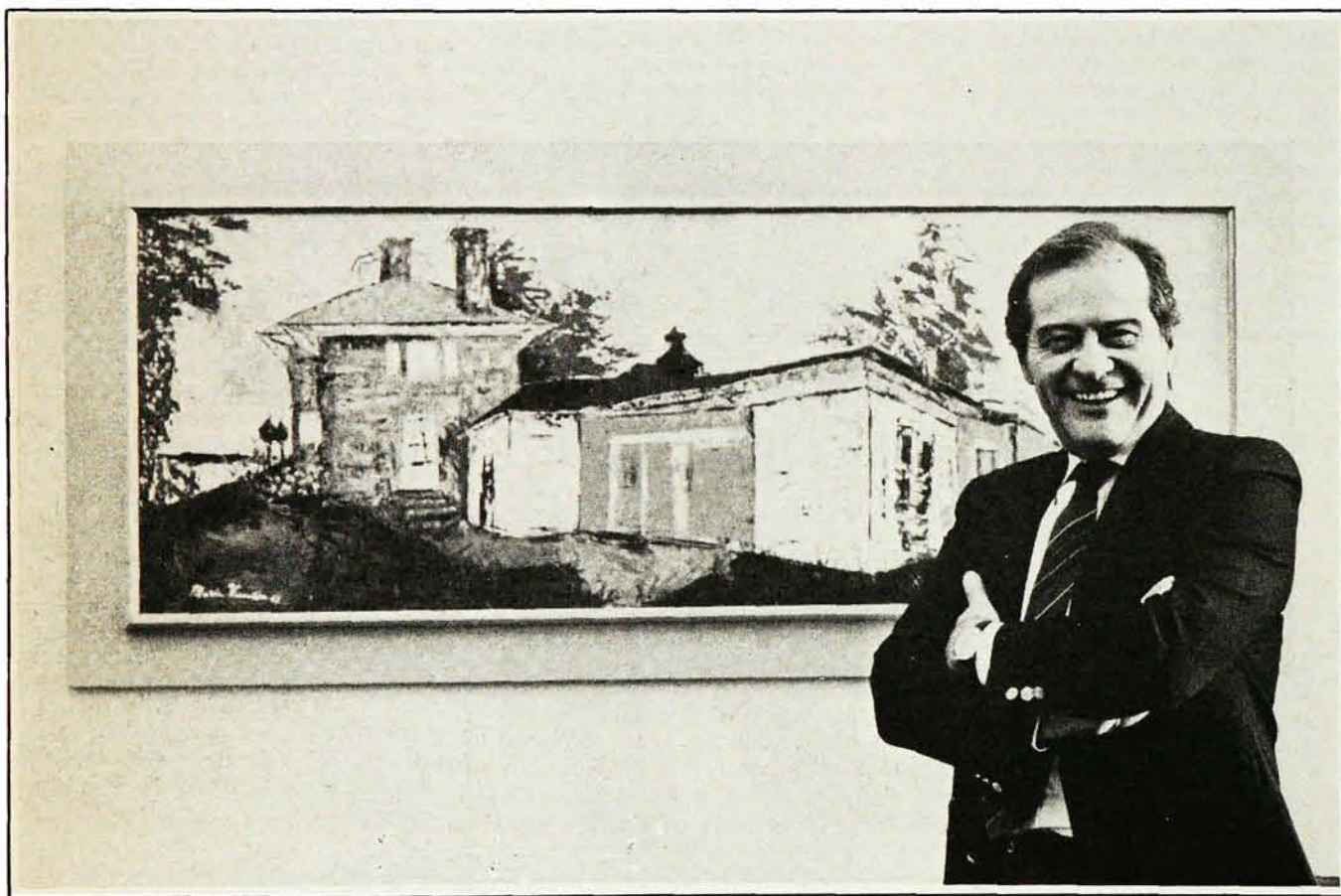
Cinéma Canada: *The regulations, except for two, have been submitted to the minister; you've touched upon what some of these regulations propose. How long could it take for the law to actually be applied?*

André Guérin: That depends on what means we'll be given. We're in the midst of a period of austerity, of \$75 million budget cuts at the CBC and the phasing out of jobs. And it's in such a context that we're attempting to create a new agency. Which is to say that the authorities are not particularly inclined towards generosity these days. The situation is one of recession. If the Treasury Board to which we have submitted our organizational plan decides that Quebec is not wealthy enough to apply these regulations rapidly; that is, won't give us the staff we've asked for or the budget we need...

Cinéma Canada: *Overall, how much is involved here?*

André Guérin: Around \$1.8 million, but there will be operations, once the Régie is operational, that will bring in money, that will generate revenue, and if we're not talking about returns or profits, at least they will offset some costs.

So the question is: what means will we be granted? And depending on these, the law can be applied either rapidly or slowly. All the research has been done, the regulations are to all extents and purposes drafted, the thinking on the administrative aspect of things has been done. As of June, 1984, we submitted our organization plan to Treasury; there were discussions with the minister's cabinet and Treasury that brought about certain modifications and now we're back before Treasury again. If they're parsimonious and feel there's no money for us, then I think that



were discovering anything we didn't already know. My colleague Pierre Lamy has been in private industry for 20 years before coming here and was, towards the end of his career in private industry, an exhibitor. He is also very familiar with the situation. Our other colleague, Mme Bonenfant, who is somewhat outside the industry though she is a cinephile, had already, as a film consumer, understood a few things.

Nevertheless what we did find was – and is – even more discouraging than what we already felt and had perceived without having done the systematic research. We felt we were looking at a situation in ruins – new viewing habits, videocassettes and so on, were causing the chain-reaction closing of theatres. The research that we undertook revealed this rather depressing conclusion: that, if you will, this new law, law 109, by the regulations we are having adopted, by the financial support of the Société générale, is truly the last chance to save what one could call classical theatrical exhibition. If this law, in

traditional theatrical exhibition outside urban centres. But it remains our conviction that if each of the parties abide by their roles, we can still maintain a theatrical space which, though it will never again be as large as it was before television, would at least, and even in the outlying regions, allow people to see theatrical cinema. But this is on the condition that the mechanisms foreseen by the law function as they should. On the part of the exhibitors themselves it calls for a new dynamism. It means moving beyond the beaten path. This would mean on the part of the Société générale a certain kind of financial assistance program for theatrical renovation because, as you know, outside the large centres, the theatres are rather outmoded. It would also mean more research in terms of theatrical programming. But this law, as far as theatrical exhibition, goes is the last chance – the rate at which theatres are vanishing is simply incredible. The problem for a country with a scattered population is that conceivably a time will come when

simply a question of clearly identifying the locale: you would have, for instance, a permit for a polyvalent theatre, which would not be a movie-house strictly speaking but something like Place des Arts, say, which is equipped for everything; one night puts on variety, on another night singers, theatre and occasionally cinema. What is important, while we're still on the topic of exhibition, is that there be a concern with protecting the consumer. For the first time there will be technical standards dealing with comfort...

Cinéma Canada: *Like seating, the kind of projection equipment...*

André Guérin: Seating, floor angles, acoustics, etc. In order to get a permit, these requirements will have to be satisfied. This has never been done before. There were safety standards, building standards, but nobody ever intervened on the level of cinematographic comfort. So that's another thrust of the law that allows the Régie to resolve that problem which has been an issue with

the law in its application will require all of 1985. In any event, for reasons of efficiency and the proper ordering of things, it has never been a question of applying the law in its totality at one stroke because it would be too disturbing; there are too many habits that have to be changed. There will be step-by-step application, but whether these stages will be close together or more spread out depends on the means Treasury will give us.

There is one thing that has priority and that we will apply as rapidly as possible as soon as we have the means, and that is the control of videocassettes so as to put a stop to the pirating that exists in this domain. The (video) classification sections that become operative in April mean, among other things, restriction to 14 years and up, the abolition of advertising control, and the general application of the sections of the law that deal with videocassettes. We have recommended a very developed system going as far as a special tax label on every videocassette in distribution through the entire territory of Quebec, certifying that the rights have been controlled, that the cassette can only be sold as a result of this control, and that the product truly belongs to the lessor. There's a total mess in this domain at the moment and everyone is complaining about it, and there are pirates everywhere. The Régie has decided, with everybody's agreement at every level, to intervene first of all in this domain. Everybody feels outraged and this is the case throughout the entire Western world, and so this is something we will put into effect very rapidly.

As for the other aspects of the law, they will be applied in stages.

Cinema Canada: *In your final quarterly report for 1983 you wrote rather enthusiastically of the creation of the Régie. Was your enthusiasm not a little premature? Do you feel that in its application this law, for various reasons, has taken longer than expected?*

André Guérin: It took longer than expected because when the law was drafted the climate of austerity was less severe than it is today. I did not think, nor could it have been predicted, that there would be so many difficulties in obtaining the means we need. The application of the law has been slower and principally because the context is one of cuts, not job-creation. Each time we propose a control, say, of videocassette, this implies an eight-person unit, this implies equipment worth \$120,000 – in a more easy climate, after verification it would have been authorized. Now there's more questioning: 'is there not some other way to go about this; why eight people, why not five?' and all this takes time.

Cinema Canada: *You've spoken several times of liberal economies. Doesn't the present economic climate in its impact on culture not contain something nefarious for state intervention and even more so in a domain where, in North America at least, the state has never dared venture? Isn't the context rather unfortunate?*

André Guérin: When the law was passed, and even more so drafted, there were none of these new religions of privatization, of deregulation, that the state should not intervene and so forth. We're conscious of the fact that this law comes in a context that has not only changed in its economic aspects – we've gone from time of a certain economic

ease to one of the severest austerity – but even more so politically. We've rapidly gone, because of the Reagan phenomenon, from a political context that was very welcoming to state intervention to a new context that preaches this new religion of the retreat of the state, that all that's healthy and dynamic lies in the private sector, and we're very conscious of that.

Cinema Canada: *Does this come from the government as well, from the political authority?*

André Guérin: Well, the fact remains that this law was not passed to articulate a certain message about economic philosophy. What is at the root of this law is the vital fact that culturally Quebec is threatened in its particularity. A small society must be able to protect itself, in a manner that in strict economic terms are interventionist, to prevent the further erosion of what remains of our French characteristics. That's the basic economy of this law. It didn't come about for philosophical reasons. It came about to counter a massive invasion of the Ame-

rican presence, its cultural presence. And without rejecting that presence there must still be a place for the French fact in Quebec.

Quebec consumer. So it's a demanding procedure and requires a certain time to bring it about. The section will be applied but with the concern that the spirit of the section be clearly understood and that this be done in a positive and passionless manner. Let's not delude ourselves: there's no cultural genocide in mind, as was written about in a certain press before the section became law. In the application of the section, it is our concern to see that this be done in a spirit of shared generosity. And I have to say that there are on-going discussions and I'm optimistic. It's clear that the situation we've got now has to change. It's not a question of chasing anybody away, but French must have its place in these films.

Cinema Canada: *When you speak of changing people's habits, it's not so much the public's habits that you have in mind as the habits that surround the distribution of American films, isn't it? In this process, then, you've had consultations with the Americans?*

André Guérin: That's what I was

There is also section 114 that is very important and also changes habits...

Cinema Canada: *And that's other controversial one?*

André Guérin: Yes, because it's very innovative especially in North America, and that involves the sharing of receipts between exhibitors and distributors. That is another thing that requires a good deal of thought and that we're continuing to reflect upon.

Cinema Canada: *What's in the regulation on section 83?*

André Guérin: There is no regulation on section 83. Section 83 raises the issue of the distributor's permit and the distributor's permit raises the entire question of the role of the Americans, though it doesn't say 'the Americans' but that's who is in mind. The disposition of the law, section 103 – 104 rather – states that a general distributor's permit can be issued only to a physical person or corporation which for purposes of the exploitation of its permit possesses a business whose principal establishment be situated in Quebec. And it's this



Cinema Canada: *How is that going to be applied in the regulations?*

André Guérin: Section 83 of the law, as you know, that details the requirements for the release of an English print and its French version, is related to the distributor's permit, and as we haven't yet completed our thinking on this...

Cinema Canada: *Those are the two sections that you haven't yet submitted for the minister's approval?*

André Guérin: Yes, precisely because here we're really trying to change people's habits and it's in everybody's interest that this change take place as harmoniously as possible. We have to arrive at its application smoothly, in such a way that the change occurs without problems in terms of a certain cinema to which people are habituated here, and so as not to outrage the

saying: there have been discussions between the Régie and what is called the Canadian Motion Picture Distributors' Association which, though it is called 'Canadian', represents the Majors. These conversations have been unfolding very properly, and can, in this consensual spirit, come to an application of the law without confrontation in those dispositions of the law that could be upsetting.

But the kind of climate that existed when the law was being passed, with the Americans threatening to pull out, charging that the bill was intended to drive them out, the talk of a boycott, etc., that whole style has vanished. I can say that the conversations are going on in a spirit of the greatest courtesy and there is no contestation of the law by the Americans. We're trying to reach an application of the law without shocks or confrontation. And one day you will see that films, not just American films but all foreign films, will have to have French subtitles, which seems rather normal in a city that is 80% French-speaking.

which obviously breaks certain patterns. Section 83 raises the question of section 105; that is, the definition of the special distributor's permit that foreigners which are not truly Quebec enterprises would have to obtain in order to distribute certain films. The spirit of 104 is that, for all practical purposes, only Quebecers can be distributors unless others can prove they are the film's producers or hold world-rights to the film. These are the two articles that are being examined and require a very serene reflection at the moment and subtend section 83. But section 83 by itself does not call for a regulation.

Cinema Canada: *Have the Majors, through their association, made counter-proposals on this section? Have they offered to create new companies in Quebec? What would be the impact...*

André Guérin: I can't say any more than I've said. It's obvious there's been an exchange. When we met with all the groups and associations, everybody submitted briefs and the Americans – let's



still a will to remain a distinct and particular society, it's completely normal to want to change that situation.

When I say this is happening perhaps a little too late, a couple of years ago the federal government and some of the provinces seemed to want to go in the same direction as we. Today that no longer seems to be the case. We're rather, if not completely, isolated from the present federal government. We don't feel, or I don't perceive any evidence that the federal government would like to reinforce in its jurisdiction the equivalent to the Quebec government's intervention. There's a great silence in Ottawa these days. This law is very isolated today, while a couple of years ago it seemed as if the law would be the beginning of something, that it would be followed by federal action and possibly by a province like Ontario. Today we're alone and in such a context the innovative character is of this law becomes even more significant.

This doesn't mean, though, that we're despairing. But there was a real sense a few years ago that Quebec and the federal government were at last ready to settle the contentious issue of cinema in this country. There was a real sense coming from within Canadian identity, or even the Quebec particularity, of a will to survive – and that's a discourse we no longer hear today. As for us who are responsible for the application of this law, at least in terms to the sections concerning the Régie, we're very conscious of our responsibility.

When deregulation is on everybody's lips, when there's a renewed friendship with our neighbor to the south, when there's not a peep from anyone outside Quebec validating the idea of a national cinema, it's obvious that these are factors affecting the nature of the mechanisms of intervention in the domain of cinema.

be official: the Canadian Motion Picture Distributors' Association – on two occasions submitted briefs, which we studied, and these briefs have led to discussions. And that's where we are and I'm not at liberty to reveal the object of these discussions. I can say, unlike the passage of the bill and particularly its examination before the parliamentary commission, that the climate is very different now and it's in a spirit of a felicitous application of the law that these exchanges have been taking place. Some people outside (the discussions) have claimed there's the risk of war, of conflict, that there have been threats – that's totally false. We are truly seeking application of the law such as it exists.

Cinema Canada: Do you have a feeling in going through this process that you're living a rather important moment in the history of Canadian cinema? Something of historical significance?

André Guérin: You're very generous. We're firmly convinced that something important will come of it, if it all goes well. The only thing we regret, and that is one of the caprices of history, is that this law did not come sooner. Because everything is happening today at such an accelerated pace, what with the new means of technical support and the rapidity of cultural change, that we ask ourselves – this is not pessimism, not at all – but we ask ourselves whether or not it's too late, whether the public hasn't moved on to other concerns. But it is our conviction, and that's why we've been working with such energy, that if

all the parties do their share and it doesn't drag on too long, that all this could bring about a considerable change in the desired sense. But it is a demanding law, and time is crucial, and everyone concerned has to play his part.

Cinema Canada: Can you say what kind of changes this law will bring about, a dubbing industry, for example? What will be its industrial impact?

André Guérin: At the industrial level, you see, section 109, for example, authorizes us to invest a certain percentage of the box-office receipts in Québécois cinema. So that will translate into something concrete, in terms of Québécois film production.

Cinema Canada: What would that amount to in dollars?

André Guérin: Something rather valuable. There are several scenarios depending of which mechanism is used. That said, I'm not going to put a figure on it, but it would translate into something tangible.

We're in a province, a society that is 80% French-speaking, and in the metropolis of this society, the main cinematic boulevards, to use a Parisian metaphor, do not speak French. This is not exactly normal. French does have or should at last have a place in this city, in Montreal, and that's another aspect. This rather delicate question of the relations between exhibitors and distributors is also something that has to be corrected, particularly with respect to the exhibitor. Then there's also the video jungle – section four, which addresses this topic, gives us wide means to settle once

and for all the problem of piracy. That's again another aspect.

As to the business level, which is related to the section on investment in Québécois cinema, the Quebec-based distribution sector should at last find a normal place thanks to section 104. All these measures should produce a stronger industry, a greater productive capacity for Quebec films, with better means at their disposal.

Obviously the application of these measures shouldn't take too long, because otherwise once again it will be the cultural domain that will suffer.

Cinema Canada: Do you still feel that the project of a national cinema has the same validity today as 20 years ago?

André Guérin: On the topic of national cinema, it would seem that a given population should from time-to-time be able to see itself on the screen. That just seems fundamental and not even for nationalistic reasons but because of questions of identity. Having constantly to deal with foreign models, you end up rather deeply damaged by the never-ending exposure to foreign dramatic situations. One of the functions of cinema is precisely to be able to see yourself on the screen, and that would seem to constitute a minimal definition of what a national cinema is. What is even more distressing here is that the degradation is not only at the level of the image, but of the language. In a city that contains 40% of the Québécois collectivity, the constant exposure to English-language cinema is damaging. To the extent that there is

Cinema Canada: Are we going forward in this country or backward?

André Guérin: I really can't say. We're moving ahead in certain areas and going backwards in others. There's never really been a clear-cut will to resolve audiovisual policy in this country, to really assure by whatever means required that Canada or even Quebec have an authentic cultural presence. It's beyond doubt that we have an enormous neighbour, that people are profoundly scarred by American culture and these two factors have always meant that, in my opinion, even when the state, either federal or that of Quebec, has had the lucidity to know that something should be done to resolve the problem, this has also been a situation where the political will is at odds with popular mentalities. The public has never really loudly clamored that something be done about this. So you get this policy dilemma: how do you change policies without disturbing the people's habits?

We're very conscious of the fact that the population loves this product, and the nation's policies have to take this into account. This ensemble of factors means that, even when there's a will, it can only be translated into something less than perfect, with the result that if there is progress in some domains, there's retreat in others.

But I remain convinced that if there are no incidents along the way nor ill-will, and if the law as we've conceived of it is gradually applied, in a spirit of the utmost concertation, it should be able to permit us to resolve a great many problems.

Changing the rules in exhibition and distribution :
the private-sector approach

Revitalizing Canadian pay-TV

Fred Klinkhammer and the First Choice challenge

by Tom Perlmutter

Six months after its September 1984 restructuring and re-launch, Canadian pay-television is enjoying a second life. If there is wide agreement among all concerned that the pre-September '84 Canadian pay-TV experience was a disaster, are things different today? Are the different levels of pay-TV viable propositions in Canada? Have the tensions between pay-television and the cable companies – that is, between the proponents of Canadian movie channels and cable-supported, largely American specialty programming – been resolved satisfactorily? Finally, can the Canadian Radio-television and Telecommunications Commission regulate an orderly marketplace subjected to the destabilizing pressures of rapidly changing communications technology?

In the following Cinema Canada interview, First Choice Communications Corp. president and CEO Frederic Klinkhammer answers an emphatic yes to all of the above. In predicting that within the next decade First Choice could produce more Canadian production than the Canadian Broadcasting Corp. does today, Klinkhammer outlines a novel – and rather different – approach to the familiar dilemmas of Canadian independent production. The changes Klinkhammer would like to introduce are considerable; whether they would be welcomed either by the CRTC or the Canadian production community remains to be seen.

Ontario born and educated, Klinkhammer became First Choice president and CEO on March 1, 1984, and since then has proceeded to redirect, restructure and revitalize the pay network with great effectiveness. A graduate of Ryerson Polytechnical Institute in Business Administration Computer Systems, Klinkhammer has worked in the radio, television and cable industries. A former vice-president, general manager and corporate director of Toronto's Channel Seventynine Ltd., Klinkhammer was also president and CEO of Cablenet Ltd. Canada, U.S. Cablenet Inc., Cablenet Inc. and Cablenet Development Corp. in four Canadian provinces and the U.S. midwest.



Cinema Canada: Perhaps we could start with a broad outlook of the state of pay-TV now, some four months after the September relaunch.

Fred Klinkhammer: Let's go back to September 1 and follow it through. On September 1 the division of the Canadian marketplace into two distinct segments – one east and one west – was implemented with the Canadian Radio-television and Telecommunications Commission's (CRTC) blessing. Coincidental with that, in the majority of markets a different approach to the consumer was taken by the cable companies, ourselves and the specialty chan-

nels. We introduced the Satisfaction Three-Pack which consisted of the Canadian Sports Network, MuchMusic and First Choice *Superchannel. So you had a situation where the subscriber ideally was going to get the combined benefit of what had been First Choice and Superchannel from a programming point of view – although our schedules were similar there were some properties we had that they didn't and vice-versa – plus two new services. Based on any research that's ever been done about television viewing habits, movies, news, sports are the predominant things that people need and are also predominantly where viewing falls. So this package

comes together at what had been the previous retail price of \$15.95 in the vast majority of the markets in the country. There are some exceptions to that, but 80% of the cable systems are offering that package at that price. In my view, that changed the offering to the public. We billed it at the time as finally real value. I know that sounds like a cliché but I think it's proven to be the case. What's happened since then is we have experienced about 4,700 net gain per week. We were some 230,000 subscribers at the time. We are some 312,000 subscribers today (early Jan.).

Cinema Canada: You're talking about adding 350,000 subscribers in six months.

Fred Klinkhammer: We're probably talking about 350,000 before June. That's our cash break-even point. It means we then have positive cash-flow coming from the operations month-to-month without having to put cash into the operation. One caution I have to give you here is that we are talking only of the east now. First Choice operates only in the east and all numbers I give you relate only to eastern operations. Subscriber numbers for the west would have to be added to those.

Cinema Canada: Beyond break-even can you give me a sense of what kind of return on investment the company is looking at?

Fred Klinkhammer: To be honest, we've not made those determinations because there are a number of things that have to happen first. The first thing is Canadian production and therefore Canadian content must improve. The health of the Canadian production industry is in part dependent upon our health. Our health is in part dependent upon the kind of Canadian content regulations that we have.

Cinema Canada: Are you advocating changes to those regulations?

Fred Klinkhammer: Significant changes. Not significant philosophically, but significant how-to changes. Right now there is both a time and a budget quota. That might have worked had the monopoly environments proposed at the time been established. All of the applicants, some 13 for the national license, had suggested that those kinds of quotas

and regulations were possible assuming that there was only one licensee in the country and one licensee for a considerable number of years. We did not have that situation. The licensee did not have the negotiating clout south of the border and so costs were considerably higher than they otherwise would have been, and also subscriber bases had not grown because the retail prices had been too high. The biggest stumbling block to pricing at this time is our spending obligations on Canadian content.

Cinema Canada: *What changes would you like to see?*

Fred Klinkhammer: We're about to file a brief with the CRTC very shortly where we deal with the issue of Canadian content. We propose an entirely new model as to how to meet the original objectives of stimulating a Canadian production industry and insuring that there is quality in Canadian production produced in this country. We have had serious discussions with the cable community about it and with many producers. This will only work if producers, craft unions, and the cable industry all believe in it.

Cinema Canada: *What are you going to say in the brief?*

Fred Klinkhammer: I can't say. It's still in the draft stages at this point in time and we're still talking with producers about how to best achieve the end. Just to spend a couple of minutes on this: First of all, you have to decide whether those rules are designed primarily as a stimulant to the production industry or whether they are essentially cultural rules. There are some producers who believe they are essentially cultural rules, and some who believe they are essentially a way of stimulating their industry. What everybody agrees on is unless the stream of production is consistent, they can't afford as a production community to have the required overheads for an on-going production operation. Each time they've got a significant project, they've got start-up costs and therefore their overheads are high. If it can be predictable and a fairly steady stream, I think they're better off and I think we're better off and, therefore, the country's better off.

Cinema Canada: *Were these issues raised when you applied for revisions to your license last summer?*

Fred Klinkhammer: No, they were not.

Cinema Canada: *Why not? You were aware of the fact that you were going to be hurt by these continuing Canadian content regulations yet you accepted the regulatory régime.*

Fred Klinkhammer: If you go back and look at the press and various hearings that took place at the time prior to our east-west split, the Commission had made it very clear that it felt that the program supplier - us - and the cable operators had not worked together to market the product properly. They had publicly said, 'We think you've failed as marketers and until you can demonstrate to us that you can work together and properly market the product, don't talk to us about any changes. If changes are then subsequently necessary we will keep an open mind.' That was said at the Canadian Cable Television Association (CCTA) convention. It was said at any number of public hearings and any number of conversations that various members of the Commission had with

both the press and individuals.

Cinema Canada: *You now feel you've proved your marketing skills and can go back for changes?*

Fred Klinkhammer: No question about that.

Cinema Canada: *How likely is it that the CRTC will look favourably on changes and how dependent is First Choice on a favourable regulatory outcome?*

Fred Klinkhammer: I think providing that the proposal meets the requirements of the Broadcast Act and the objectives of the act, the Commission will be very flexible in its thinking. I think they see themselves as a sort of third party in this - the cable company, ourselves and the regulator - in terms of

Fred Klinkhammer: Yes, that much I'm pleased to tell you. The current Broadcast Fund is generated from a six per cent tax on cable revenues, all cable revenues - hardware, plus software, plus us. It is bizarre to say the least that we don't have access to that fund. And yet us and our partner, the cable operator, are the generators of the fund.

Cinema Canada: *Do you feel that, given the CBC cutbacks and the danger they represent to the Fund, it makes it imperative for Telefilm to find other broadcast outlets such as pay-TV?*

Fred Klinkhammer: I don't think that any changes that have taken place at the CBC impact the level of draw on the Broadcast Fund one bit. I think the Broadcast Fund was originally envisaged

Cinema Canada: *Does that mean the CBC will be willing to talk to you about ties?*

Fred Klinkhammer: I never predict what somebody else is going to do. I think in some parts of the CBC there's been some movement in their attitude. I think Variety is much more flexible in their thinking than Drama is right now. I think that as time passes the orderly marketplace will indeed evolve. CTV has access to that Fund and frequently is involved in productions that we are also involved in.

Cinema Canada: *Is there a particular reason why CBC would want to isolate you?*

Fred Klinkhammer: CBC insisted on having first window. How can you be a premium service and take second window?

Cinema Canada: *Let me go back to the September relaunch. Why did you go for a split? Why didn't First Choice and Superchannel amalgamate and reap the benefits of economies of scale, elimination of duplication and so on?*

Fred Klinkhammer: I guess it was philosophically impossible. I think the principals of both companies wanted to retain their independence. I don't think there was a mutual ground to agree as to who would control. Ideally, it would have been better to amalgamate.

Cinema Canada: *Were there discussions at the time about possible amalgamation? What were some of the basic disagreements?*

Fred Klinkhammer: Sure, we had discussions. We couldn't agree on who would be the controlling circle and of how the service would be marketed and the approach to the market place.

Cinema Canada: *Presumably both companies wanted to achieve maximum penetration.*

Fred Klinkhammer: There are stylistic differences in terms of approach. Do we approach the market with a heavy image-oriented campaign or as a merchandiser/retailer with less glitz and more at the street level asking the buying question? There were also philosophical questions as to how to program. Do you use a burst model, a modified burst model or an entirely different one? We could agree on the kind of programming but not how to program it. We couldn't agree on how the product should be marketed. We couldn't agree on who should control the company. I would say there were the three stumbling blocks that prevented an amalgamation.

Cinema Canada: *What is the burst model?*

Fred Klinkhammer: If you look at a majority of the operators, say the lead operators, HBO and Showtime, they both use what is referred to as a burst model. They run 40 to 42 titles a month - we run double the number. They release all of those titles during the first calendar week of the month and repeat them throughout the month. That's a burst. Bang - here's our month. It's much the same as a commercial broadcaster bursting his new program schedule in the fall and again in the spring. We run double the number of titles and believe in our environment we're better off to release those titles progressively throughout the month so there is at least one new item on air every day.

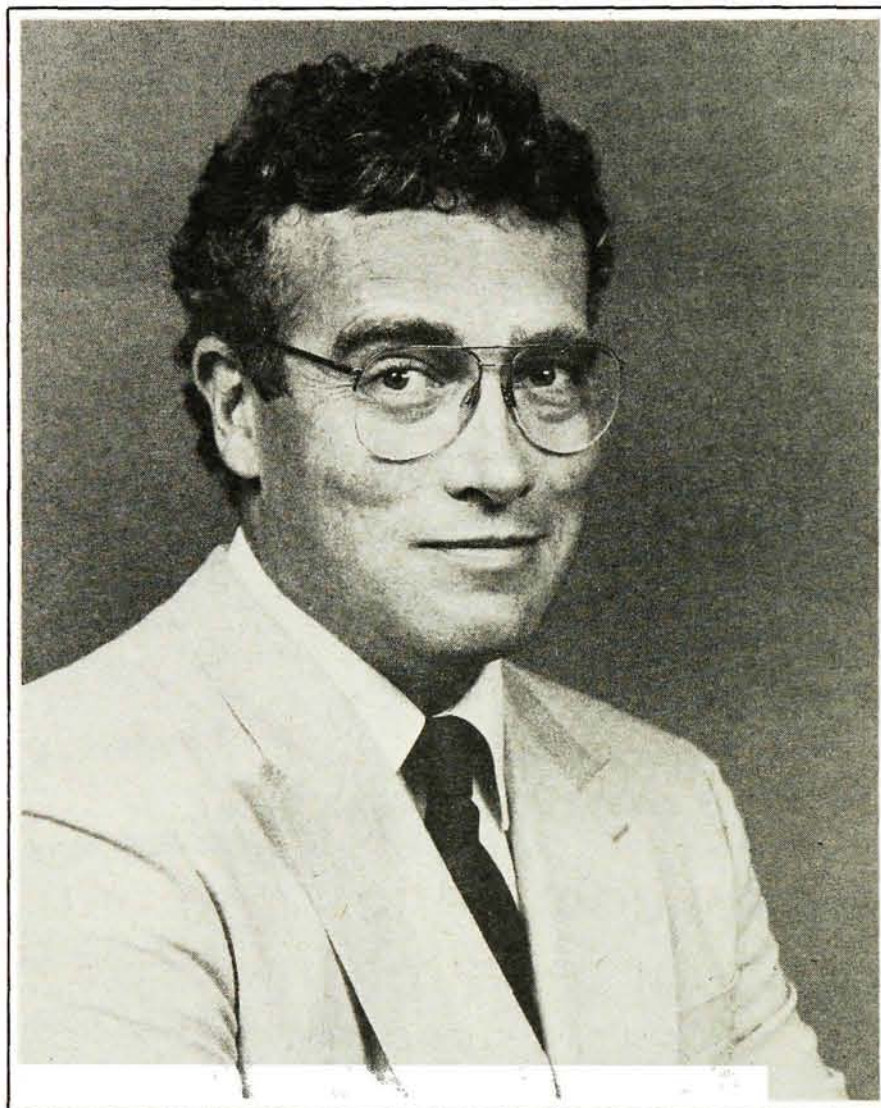


Photo: Patrick Harbron

establishing a mechanism to meet the needs of the Broadcast Act. Otherwise, why not just license HBO?

Cinema Canada: *Does First Choice have contingency plans should the CRTC uphold current Canadian content regulations?*

Fred Klinkhammer: I think the short answer to that is no. There are no contingency plans. There may well be contingency plans that the cable operator has. As chief executive officer of First Choice, I am so convinced that our proposal is rational and will appeal to the production community, the craft unions and the regulator that a significant and radical change will take place that eases the burden on us but at the same time ends up with more dollars flowing to Canadian production and a higher quality of Canadian production with international appeal.

Cinema Canada: *Would part of the proposal involve having access to the Broadcast Fund?*

as stimulating independent productions, not CBC productions. The fact that the CBC has gone through some cutbacks doesn't impact the capacity of the Fund to function.

Cinema Canada: *CBC was Telefilm's major matching partner last year.*

Fred Klinkhammer: That's not surprising because their drama department also had a rule that said they would not participate in a project if we would participate. In effect, they used their clout to isolate us from the Fund even on a shared basis. We can technically get access to the Fund providing there's a broadcaster - a subsequent window.

Cinema Canada: *You've had difficulties there which you now think will be resolved?*

Fred Klinkhammer: I predict that we will have direct access to the Fund through a producer, an independent producer, without having to have a tie to a commercial broadcaster.

Cinema Canada: You mentioned marketing differences. Can you elaborate?

Fred Klinkhammer: We changed from having spent a great number of dollars on image and identity to a marketing method that is very sales-oriented, that always asks the buying question. It is far more retail-oriented. We highlight the product itself rather than the company that offers the product. And we do a great deal of price-point advertising. If you review any of our media you'll find that there's nothing that runs that doesn't mention Three Pack. There's nothing that runs that doesn't say call your cable company now.

Cinema Canada: Given the new packaging at relaunch, why didn't you go for a completely revamped image with a new name?

Fred Klinkhammer: We intend to in the long run and it will probably change this year. The reason we didn't change it at the time is that we had a look at previous amalgamation of systems, including service operators. Most of this had taken place in the States. Companies had gotten together completely or in joint-ventures or mergers or entered into partnerships or been subject to takeover. Just about any economic model. In every case they lost a proportion of their subscriber base when they changed the name. If they didn't change the name they lost fewer subscribers. Our objective was to retain as much of the subscriber base as possible.

Cinema Canada: Weren't you afraid that First Choice had lost a lot of public

credibility the first time round?

Fred Klinkhammer: One of the things we know was that people frequently changed from First Choice to Superchannel and back. There was constant movement in the marketplace. So we felt that despite some of the negatives associated with both the names in the initial stages, the common use of both the names would provide the maximum subscriber potential. That certainly appears to be true. It doesn't appear that we've lost any subscribers.

Cinema Canada: Do you keep tabs on your subscribers: who they are, what they like to see, and so on?

Fred Klinkhammer: One of the beauties we have is that we get constant feedback from the cable companies who are constantly in touch with their subscriber base. We also have a phone room for subscribers and we document every call. We also use Primetime, our viewing guide mailed to all subscribers, as a survey vehicle. We do four surveys a year. We just got the results of one two weeks ago. We asked the people a little bit about themselves demographically. We asked a great deal about what they watch in our survey, how they watch it, when they watch it. We ask them to rate us on a satisfaction level and to make suggestions as to what they'd like to see - from specific title suggestions to types of programming. One of the startling things about the survey is that these people are having to go out and buy stamps, sit down and spend one half-hour to fill out the form and go and mail it. I think we got some 4500 responses to the last one. The next one will go out in March or April.

Cinema Canada: What were the results of this survey? What kind of conclusions can you draw from it?

Fred Klinkhammer: A great deal of it we've been told before. I guess some of the new information that we learned is that our average subscriber has now been with us much longer than he used to be. That's not surprising based on the cable companies' reporting reduced churn. Over half our subscriber base has now been with us a year without a change.

Cinema Canada: What is the demographic profile?

Fred Klinkhammer: For a long time it appeared to skew towards blue collar, towards people with middle levels of education, mid-economic strata, quite young in age - early 20s. We've now found that more and more of our subscribers are typical family households: 3.2 children, own their homes, better than high-school education, university or college, in the 25-49 age-bracket. The new subscriber base we acquired this fall is skewing toward more white-collar, more family units than individuals living alone.

Cinema Canada: What's the churn rate at the moment?

Fred Klinkhammer: That's the one answer I can't give you. I can tell you what I'm told it is. Cable operators tell us that it's running at about five to six percent which is about the same level as it runs on HBO in the States. Keep in mind that we have two to three percent for a gas company or for hydro because

of move rates which are particularly high in urban centres. The cable operators only report their weekly net gain so we don't know how many connections and disconnects they have. There are also a large number of cable operators who can't tell you whether or not they have churn because what they count as a connection is any change to service to a house. They might have added a second outlet, e.g. Arts & Entertainment, to the package and they show that as a disconnect and a churn. But those that can report and are actually able to track (did I lose the subscriber? did I gain the subscriber?) claim that it's a five to six percent. We would expect it would run on average just over six percent. That's our target.

Cinema Canada: What do you see as your total potential market? What kind of penetration levels can you expect? Will it go as high as 50 or 60 percent?

Fred Klinkhammer: There are 3.2 million raw cable homes in eastern Canada. The reason I say 'raw' is that a large portion of those speak only in French, particularly in the province of Quebec, and therefore are not our target. They are our sister operation's, SuperEcran's, target. Our base is probably 2.5 million. I don't think you'll ever see 50 or 60 percent penetration. We're talking about a premium service that is not for everyone. I think that it's been reasonably demonstrated that any cable operator offering the Three Pack at this time, who is also actively merchandising with us, can get 20% of his market. That's immediate. He can be there today. Some get there quicker, some get there slower. I think that, overall, there's a potential to

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get 40 percent of the overall cabled homes.

Cinema Canada: *Over what time-period?*

Fred Klinkhammer: That's the interesting question. Over about four additional years. Four years from today we should be about 40%. I want you to understand that that's contingent upon some assumptions. It's contingent upon the fact that there is no competing service licensed or allowed to be imported. It's contingent upon the fact that we are committed to spend substantial dollars on individual Canadian productions so the quality of the Canadian product comes first.

Cinema Canada: *Let's turn to some of the competing services. There has been some speculation that direct broadcast satellites, where the consumer will receive signals directly via a miniaturized dish, pose a threat to pay-TV. There has been concern expressed about pay-per-view, superstations and home video. Can you comment? Let's start with direct broadcast satellites (DBS).*

Fred Klinkhammer: The few DBS experiments that have been conducted have failed because you're back to some form of antenna installed in the subscribers' homes and which has to be maintained. You're involved with a high capital cost. You're also involved with reduced availability of channel selection in almost all cases. Because Canada is so heavily cabled and because we've been importing signals not only from south of the border but east and west in this country for a long time, our selection level is higher. A typical DBS system is only capable of carrying four or five channels. It's unlikely that DBS represents a new threat to us. On the contrary, in the long term it presents a new market for us which is the non-cabled rural home.

Cinema Canada: *What happens if the CRTC approves distant stations?*

Fred Klinkhammer: All of those stations are buying programming coincidental with one of the Toronto operators. So all it is is another viewing opportunity for the same program list.

Cinema Canada: *Home video is presumably much more of a threat.*

Fred Klinkhammer: Home video did a lot of damage to us initially because it was just coming into its maximum growth period at the same time that we were beginning to market our product. It is now beginning to mature as an industry. It had a big growth last year. It's going to have tremendous growth this year. And it's starting to adopt a very complementary pattern to us. One of the things that our research shows - a piece of research that HBO did - is that if you first acquire your VCR machine you are unlikely to become a premium subscriber in the six-month period following purchase. After that you're highly likely to, because we represent an opportunity for you to create your own library and to time-shift programs so that you can watch them at more convenient times. Statistically if you look at VCR penetration in the country, you are twice as likely to be a subscriber of ours if you have a VCR machine than if you don't because the two are directly complementary. That's the pattern that's now starting to appear in the States. So during the initial period of VCR ownership, home video represents a threat.

After the six-month period it doubles the chances, the probability that you'll become a premium TV subscriber.

Cinema Canada: *You're saying VCRs are going to boost premium TV?*

Fred Klinkhammer: We, in fact, have a promotion with one of the large VCR manufacturers, which I can't name at this point in time, where their product and ours will be promoted in a complementary and common way very shortly. Next fall.

Cinema Canada: *Are you going to run into problems with the people you're purchasing programs from if you do this promotion?*

Fred Klinkhammer: We cannot and will not encourage people to record programs.

Cinema Canada: *But implicitly you are.*

Fred Klinkhammer: No, we're not. In the States there's been a copyright rule that you are free to record a program for your own use. Our copyright provisions have recently been tabled in the House of Commons. We'll see some clarification.

Cinema Canada: *Isn't the likelihood of copying going to lead to higher prices for First Choice for programs? And won't there be competition for programs with video?*

Fred Klinkhammer: There will always be some form of video marketplace. There's an orderly market: theatres, home video and us. It's controlled by the studios. The pattern is almost 100 percent predictable. It goes to the theatres. After the theatrical release; in fact towards the end of the theatrical release, it goes to home video. Six months following that it comes to pay-TV. There are always exceptions to this. The odd exception will be where - *Raiders* is a good example - a film does not go to video or pay because the intention is to re-release it. *Raiders* was re-released this past summer, then it went to home video and three months later it came to us.

Cinema Canada: *Have you been able to renegotiate for better prices for programs since the split into regional monopolies? Are you being squeezed on pricing?*

Fred Klinkhammer: We haven't had an impact there yet because most of the contracts we and Superchannel had were offered separately and competitively. They were five-year deals with all of the studios. The split will have an impact when renewal time comes along because First Choice and Superchannel will be able to negotiate together. For the core of our product, ourselves and Superchannel, we have an output deal with each of the major studios for virtually all of their product.

Cinema Canada: *Is that onerous given the fact that the contracts were negotiated on a competitive basis?*

Fred Klinkhammer: They are onerous in terms of cost, not in terms of product. They give us a guaranteed stream of top-quality product.

Cinema Canada: *How heavy a burden are those costs for First Choice?*

Fred Klinkhammer: Virtually all ongoing costs are a product of the negotiations that occurred in the early days

of the competitive model and are higher than they otherwise would be and they're higher than they will be in the future. Perhaps it's not onerous, but it's an unnecessary burden. It means that our costs today are higher than they will be in the future.

Cinema Canada: *Let me raise the question of relations with the cable companies. In the past we've had a lot of quarrelling between pay-TV and the cable operators. Is the tension still there?*

Fred Klinkhammer: I don't think there's the acrimony there may have been at one time. I still don't feel that the relationship is as close as it could be. I see it as a partnership relationship with them being the merchandiser and us the promoter of the product. I think there are still a number of individuals in the cable community that see the program-supply business and therefore the licensing of a premium service in this country as rightfully their domain. Only time will cause that to change.

Cinema Canada: *My sense is that there is a certain ambiguity on the part of the cable companies with respect to the movie channel. There's talk about the possibility that the specialty channels forming part of the basic cable package. That would threaten the whole basis of your present marketing of pay-TV.*

Fred Klinkhammer: The cable community has made itself very clear at any number of public hearings that it sees the specialty channels supporting and supplementary to the movie channel. They've made specific on-the-record commitments to use the importation of the American specialty channels as value-enhancement to the Canadian specialties and the Canadian movie service. I spent a long time with the cable industry and leaders in the industry have made some very specific commitments. I never found them to be people who don't keep their commitments.

Cinema Canada: *Cable is also looking into the possibility of introducing pay-per-view which they say should be controlled by them. A pay-per-view service would have access to movies simultaneously with theatrical release. It will also broadcast special sporting and other events. This seems to pose a direct threat to the movie channel.*

Fred Klinkhammer: Pay-per-view is an area where the cable operators and ourselves have to agree to disagree. Our view is going to be that pay-per-view rightfully falls into our domain, not theirs. They are the carriers, not the originators of the product. The fact of the matter is that pay-per-view is an impractical event in this country. It makes it virtually impossible for the government to use broadcast licensing as a cultural tool because it's like a theatre. How do you have Canadian content rules on pay-per-view? In addition to that, the technology is so complex. Ted Rogers leads the way. He will tell you that he has a pay-per-view capable box and it is, to a degree. I've had first-hand experience with it in Chicago. But it's not pay-per-view the way it needs to be done. This one needs a phone conversation or at least a phone-call to be made to initiate computer contact with the box. Any pay-per-view experiment that's been done shows over 50 percent of orders are placed within the last two hours before the pay-per-view event. Over 90 percent are placed within the last four days. Until

the order mechanism can be done on a real-time basis without human interference by touching a key pad on the box, you don't have a viable pay-per-view system. The capital cost of that key pad-or-extra-box is so prohibitively high that, although you can demonstrate pay-per-view here and do it for very special items that are planned well in advance, you can't do it as an ongoing, day-to-day business. The easiest interim step would be to do it from a telephone touch-tone which will drive the box.

Cinema Canada: *Given technological advances and the probability of significant reductions in capital cost, it will be up to the CRTC to decide who will actually control it.*

Fred Klinkhammer: I'm sure that we will compete for that license aggressively and I'm sure that the cable operator will compete for that license aggressively. Maybe by the time the technological advances come along to make it realistically possible, relationships between the cable companies and ourselves will be so good that we'll be able to do it as a partnership, a true partnership.

Cinema Canada: *Are there any difficulties with the cable companies over revenue split?*

Fred Klinkhammer: At the moment we get about 55 percent of the retail price and 45 percent for the cable operator. In the States the split is about 50-50. I don't believe it should be a split in revenue expressed as a percentage. I think the cable company has certain costs involved in providing service and they should be compensated for their costs plus a reasonable return on investment. They are the retailers of the product.

Cinema Canada: *Are you saying that they should be operating on a cost-plus basis?*

Fred Klinkhammer: I'm saying that their portion of the revenue should be fixed by the marketplace in terms of what the retailer's prepared to pay and that they should be chasing aggregate income from subscriptions rather than per subscriber income. My whole argument to them is that they have to think of themselves as a retailer and that therefore they have to think in terms of volume. They can't think in terms of, say, at 10 percent penetration I should be making a significant sum of money. They should be saying at 40 percent I could be making a lot of money.

Cinema Canada: *Where's the difference between your thinking and theirs?*

Fred Klinkhammer: I think that because most of the cable operators in Canada have had experience in the States, they are not aware there is a third partner, the third partner being the Canadian people. Most HBO contracts say we are entitled to such-and-such a rate or 50% of your retail price, whichever is greater. That's a typical arrangement in the States which generally works out to about a 50/50 split. In Canada there's a third party, the Canadian public as represented by the CRTC, that says a portion of the gross subscriber fee must be reinvested in the Canadian production industry. I think the cable industry and ourselves should share on about a 50/50 basis after the third partner has had his.

Cinema Canada: *The CRTC requires you to pay for programming that you*

may not want, but a portion of that programming you would have purchased anyways and is part of your ordinary cost of operations. Aren't you in effect suggesting that the cable companies carry the burden of some of your operating costs?

Fred Klinkhammer: No, I'm not. In the States when he has a deal with HBO, he's getting roughly 42 movies a month. Canada is getting 83. Before we even introduce Canadian programs on our schedule, we carry more than HBO and Showtime combined. Canadian product is introduced on top of that. That makes for a higher wholesale cost to us and therefore a higher wholesale cost from us to the cable operators and a higher retail price to the end-consumer, because there is a third party.

Cinema Canada: Are you suggesting that, without the third party, you wouldn't be carrying Canadian programming because you'd have your schedules filled with the 82/83 shows you mentioned?

Fred Klinkhammer: Well, I wouldn't personally because I'm an intense nationalist. But I would say that if there had been no regulation you probably would have ended up with an HBO model in this country and that kind of pricing, \$10.95 retail.

Cinema Canada: Why are you carrying double the product of the American pay networks?

Fred Klinkhammer: The market place in Canada is different. We've always had more choice and more programs available in Canada than they have south of the border.

Cinema Canada: So without the 80-odd shows you wouldn't achieve your targeted penetration?

Fred Klinkhammer: That's right. Also you must remember that cable and premium services were sold coincidentally and in the States the multi-pay home is very high. A subscriber will frequently have HBO and Showtime. We provide those two services as a single service. That's what it amounts to.

Cinema Canada: The cable companies don't accept your notion of the third party and the way revenues should be split. What does that do for your relationship?

Fred Klinkhammer: The relationship was very difficult at the beginning because the cable operator had been a competitive bidder for a license. It then became even more difficult as time passed because there were obviously acrimonious negotiations that took place where the cable operator was the only source of outlet for the product and he could play one of the premium service-suppliers against the other. That aggravated the situation. Then when things did not turn out as everyone had anticipated, blame had to be attributed. It's the natural environment. And everybody tends to blame the other guy. What's changing is that we now have a successful product on the market place and so we're sharing with the cable operators the laurels that come with that success. That has brought us closer together.

Cinema Canada: Is the revenue question going to be a continuing source of contention?

Fred Klinkhammer: No, because I think it has been essentially resolved at this point. We're at 54/46. That's close to 50/50. I don't think it's so far away that they're particularly distressed about it.

Cinema Canada: But you still would like them to see things in a different way?

Fred Klinkhammer: I think I'd like them to have, and I really think the onus falls on us to demonstrate this to them, an understanding that they are the only broadcast licensee in the country that does not have direct obligations to Canadian culture and Canadian identity—direct economic obligations.

Cinema Canada: There is the six percent levy.

Fred Klinkhammer: That levy is not on them. That levy is on the subscribers. That's not an indirect tax. That's a direct tax that's added onto the bill after their fee. That levy is on the Canadian public. It's not on us and it's not on them.

Cinema Canada: So you're saying they have no direct economic burden and you have which you would like them to share?

Fred Klinkhammer: I think I may have gotten you a little confused here. As a cable operator, a Canadian cable operator, which I was, you look and you say, gee, if I could sell this product at \$10.95 which I can sell HBO and if I imported it into this country, I'd have 30% penetration. Why can't your price be that? That's how I would think when I was a cable operator. That's how the majority of my friends and colleagues in

the business think because they don't understand the impact of the spending rules. They don't understand that there really is a third party involved here. There is someone else taking a piece of the action.

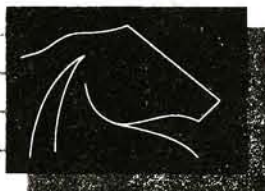
Cinema Canada: Will you become involved in production?

Fred Klinkhammer: We will not be involved in the licensing of new production until we have positive cash-flow and we cannot be involved until it can be placed properly. We don't want to be involved in low-budget efforts. There is a change in the whole environment. Imagine a producer comes to us with a project we're excited about. It's a higher level of product. We can come to the table as an investor, as accessor to the Broadcast Fund, and, because of our clout south of the border, can bring HBO to the table. The whole way productions take place in this country will change in less than two years.

Cinema Canada: What are your goals for the company?

Fred Klinkhammer: We all want to make a lot of money. I also want to make a Canadian contribution. I left a multinational specifically to go to a Canadian company. The day will come when First Choice is a larger contributor to Canadian production than the CBC. The day will come when it will be recognized that Canadian production must have international appeal. If we have steady production, then the cultural mandate automatically follows. It's going to take 10 years. The coming 10 years are going to be very dramatic. I'm very excited about it.

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