LEGAL EYE

by Michael Bergman

Taking Roth and Raymond to task

Task forces, commissions and like bodies are judged by the significance of their reports. Significance is a matter of physics. The gravity of the recommendations should overcome initial inertia, be propelled at an increasing speed to a velocity which is unaffected by resistance or drag, and strike the object of the problem in such a way as to suitably rearrange its molecules. The Film Task Force's report, Canadian Cinema: A Solid Base, can only be understood by evaluating its significance.

As government commissioned or sponsored reports go, the Task Force's is unusual. It had sixty days to submit what developed into three policy conclusions. These conclusions are neither the result of original research, study, survey, submission nor the other common paraphernalia usually proffered up to support the reasons for the results. The report may have a bibliography but is hardly the synthesis of any previous research in any scholarly sense of the word. Its pages are more the result of the personal experiences and observations of its authors.

The report's recommendations, although three in number, focus on a singular problem: financing Canadian feature films. Cultural considerations *per se,* although alluded to, are not the report's concern. By confining themselves to the problems of removing impediments to accessing funds for Canadian filmmaking, and creating sources of these funds, the authors have ignored larger cultural issues the detailed analysis of which would have helped to justify the funding difficulties complained of.

The solutions advanced are well-known and have already been advocated by many with varying degrees of intensity in other studies and commissions, in the lobbying of Canadian filmmakers, and even in the observations of the present writer in earlier articles in this very publication. The call for the total Canadianization of the film distribution system, the creation of a feature film fund, the re-orientation of tax incentives for film investment and the elimination of vertically integrated distribution and exhibition companies is hardly new. What should have been new or at least updated is the attendant reasoning in support of the report's position, for which the thoughtful reader will find the arguments given not only inadequate but with a distressing tendency to negate the recommendations. It would do well to consider why this is so by examining each recommendation. separately.

The authors of the report provide such a simple and superficial explanation of the interface between film production and film distribution, that the uninitiated will wonder what the problem is unless it is a simple fear or abhorrence of foreigners. Relying on pitifully few statistics, without any true market analysis, the text consists of simple bald assumptions that native distributors are sure to invest in indigenous films and provide fatherly guidance to boot. This rather weak demonstration of why Canadianization of the distribution system is necessary is unfortunate. There are many detailed, logical and compelling arguments for immediate Canadianization. The influence of these better arguments might have helped to improve the political action or perhaps reduce the inaction that may follow. Nevertheless, it is hoped that the minister of Communications or at least his advisors are thoroughly versed in the ins-and-outs of film distribution and convinced of the desirability of Canadianization, even if they are not sure if they can do anything about it. The real weakness of the report's Canadianization recommendation is the absence of any suggestion as to how to implement it. This is the hardest, most politicized, element of the problem; it gives meaning to the recommendation and some indication of what the Task Force thinks the film community wants. There are many routes to Canadianization, from outright expropriation at one end to financial assistance to independent Canadian distributors at the other. All the report can suggest is the intervention of Investment Canada (the agency which reviews acquisitions by foreigners) to review all future acquisitions of Canadian distribu-

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tion companies by foreigners. Clearly the problem is not future acquisitions but *existing* foreign domination.

Perhaps the authors hesitated to provide this detail for fear that any specified scheme would scare the government away. These anxieties are clear in two comments that appear periodically in the report. The authors are keenly aware that their recommendation flies in the face of the current free-trade talks with the U.S. In this they voice a legitimate concern that Canadianization by any degree of compulsion is doomed while free-trade theories are ascendant. Less warranted is their tendency to shy away from calling Canadianization what it could be: the direct or indirect expropriation of foreign interests. The authors argue disingenuously that since distributors do not have any physical assets or equipment as such, Canadianization would not constitute expropriation but simply the transfer of competition from foreigners to Canadians. This ignores the fact that intangible rights can be just as, if not more, valuable than physical assets. Certainly the termination of the right of foreigners to own or control the means of distribution of films in Canada has the same effect as a local municipality expropriating a piece of real estate. It would have been far preferable for the report to meet the issue head-on rather than let the politicians pursue a weak policy which tries not to offend.

If Canadianization is the toughest recommendation, the next – a $60 million annual film fund and capital-cost allowance tax-advantages for investors who invest in production companies – should be the easiest, assuming the government wants to spend the money. Again, a conceivably sensible recommendation, it is not argued with the wealth of information or detail surely availible. Again, there is no suggestion of mechanics of implementation. All this has the effect of making the two parts of the recommendation cancel each other out. Consider the situation. If tax incentives are necessary to promote the financing of production companies, the product of this incentive should be used to finance the object of the company, film production. By calling for a $60 million annual film fund to supplement this (on a project-by-project basis), the authors are saying that film production companies can never finance themselves. The authors are really asking for a permanent government subsidy. This leaves one with the circular problem of the government supporting companies which will not become self-financing and then encouraging this deficiency further by providing additional funds on a per project basis which, the report claims, is the source of the original problem to begin with. And the scheme makes even less sense in the face of proposed Canadianization of distributors, which is to have them invest in feature film.

The report's insistence on continuing, if not growing, government participation in the private-sector film-industry calls into question the private sector's reason for existence. It is precisely here that reference to cultural and public-sector filmmaking and their relation to the private sector would have avoided this dead-end. These factors point to the development of a distinct Canadian film industry by dif-

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ferent means from those of the American experience. This has broad implications which the report ignores or does not foresee, perhaps because the report does not consider that the Canadian feature film industry can be viable without the U.S. market.

Beyond what the report doesn't mention, slightly mentions or half mentions, it is possible to see the outline of the need for an industrial strategy in film. Developing such a strategy means assessing long-term objectives, the means to obtain them, the role of government on an ongoing basis, if any, and what the producers will do with all this to help themselves. I tis not enough to simply say that producers need more money to make more films.

If the report's first and second recommendations range from hardest to easiest, then the last recommendation is the most complex, breaking down the use and control of the distribution-exhibition ownership of principally two vertically integrated distribution-exhibition companies. Since theatrical distribution and exhibition is not subject to any regulatory body, dismantling arrangements offensive to competition becomes a matter of anti-combines legislation. In this field, the minister of Communications is, at best, an indirect influence; the more so with the recent introduction of long-awaited anti-competition legislation by the minister of Consumer and Corporate Affairs. Vertical integration will have to be unraveled by anti-combines law operating in the film context and is sure to be cumbersome. This pot of problems can only be made even more murky by the fact that at least one of the vertically integrated distribution-exhibition companies is foreign-owned and presumably would be Canadianized if the Task Force's first recommendation is carried out.

Another ingredient should be added to the stew. If Canadianized distribution is a source of investment funds, it would seem only logical for Canadian film producers to ally themselves closely with Canadian distributors. It is only one step further to foresee the ultimate integration of film production and distribution companies creating another form of vertical integration. This, in turn, raises the argument that if it's sauce for the goose, why isn't it sauce for the gander?

By failing to provide detail the Task Force has not addressed the fundamental issue of this third recommendation: what is the extent of competition to be allowed either between foreigners and Canadians or Canadians and Canadians even if foreigners are excluded?

So, with all these limitations, what is the significance of a report produced in a scant 60 days during which for most of the time the minister who ordered it was in purgatory?

The Task Force report is only significant as a statement by the Canadian producer of the plight of Canadian commercial feature film. Government policy in the 1980s has opted out of the direct development of Canadian feature film; instead it has gone in for the seemingly easier areas of TV programs, pay-television and the like. Despite under-capitalization, government inaction, foreign control and producer mistakes, the Canadian commercial feature film industry is a fact of life, a permanent and growing entertainment and cultural vehicle. If Canadian feature film is to reach its commercial, cultural and national potential, immediate reorganization of government policy is necessary.

Each of the Task Force's recommendations, however imperfectly advocated and described, represent real and legitimate concerns for the Canadian feature-film producer. The authors of the report insist that all the recommendations must be taken as one and implemented together. Whether or not this is realistic politically, the all or nothing approach is at least demanding that the government show the same political courage as the producers have shown commercial bravery.

Next month I'll look at some solutions the Task Force could have considered, but didn't.

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