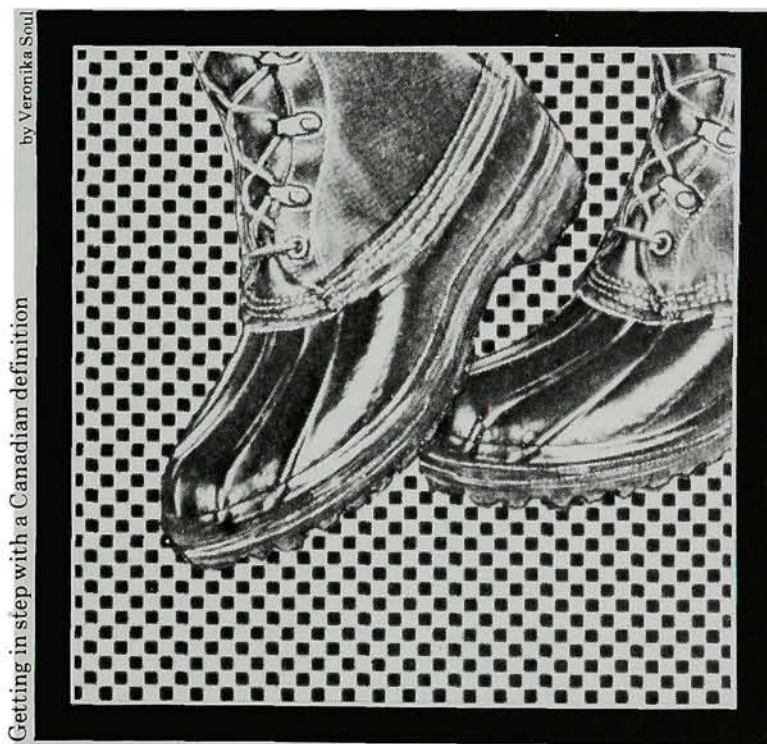


# yes.

## but is it canadian... are you canadian... are they canadian..?



So what is a Canadian film? Joan Irving asked the question officially, and got three official answers.

by Joan Irving

The three government agencies that oversee the film and communications industry in this country, the Secretary of State Department, the Canadian Radio-Television and Telecommunications Commission, and the Canadian Film Development Corporation, all provide working definitions of a "Canadian film."

**Cinema Canada** thought it might be useful to lay side by side the official versions of what constitutes a Canadian film, as it is defined for taxation purposes, for production loans or for television broadcast Canadian content regulations. Lawyers, accountants and producers involved in the film industry make it their business to be familiar with the substance of government policy, but for many involved at

other levels of the industry, sifting through official documents is not normally part of a hard day's work.

### Secretary of State

The Canadian Film Certification Office at the Secretary of State supplied us with the relevant section of the Income Tax Act when asked for its definition of a Canadian film. Officials there are quite blunt that their aim is to create a film industry through a healthy investment environment. A certified Canadian film, of course, qualifies for a 100 per cent capital cost allowance, while films that do not either seek or meet the Secretary of State's definition qualify for only a 30 per cent tax advantage.

Though the Secretary of State does not look at film content as a criterion for certification, there will probably be, through application of the tax advantage, a long-term effect on standards of quality in Canadian cinema.

From the investor's point of view, and providing no interpretive advantage is taken, the tax allowance alone might

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not be sufficient incentive to invest; most investors want a return on their money and, as the table on page 27 indicates and in case you don't already know it, profits are linked to distribution which is linked to appeal...

In order for the Secretary of State to certify a feature film or videotape as Canadian, four conditions must be met: (Taken from Canada Income Tax Regulations, amendment, November 10, 1976. For brevity's sake, certain sections are paraphrased.)

- A. The producer must be a Canadian.
- B. The film accumulates six points for individuals who provide services in respect of the film, in the following manner:
  - (i) For the director, two units of production,
  - (ii) for the screenwriter, two units of production,
  - (iii) for the actor or actress in respect of whose services for the film or tape the highest remuneration was paid or payable, one unit of production,
  - (iv) for the actor or actress in respect of whose services for the film or tape the second-highest remuneration was paid or payable, one unit of production,
  - (v) for the art director, one unit of production,
  - (vi) for the director of photography, one unit of production,
  - (vii) for the music composer, one unit of production, and
  - (viii) for the picture editor, one unit of production shall be allotted, provided the individual in respect of such allotment was a Canadian.
- C. Not less than 75 per cent of the balance of fees paid to other crew members are paid to Canadians.
- D. Not less than 75 per cent of the cost of processing and post-production is incurred for services provided in Canada.

"Canadian" means a Canadian citizen or landed immigrant; there is no residency clause. Although during the writing of the law such a clause was considered, it was rejected due to the difficulty of defining a Canadian resident (the official government definition is 48 pages long) and so that Canadians living outside of the country would not be penalized should they wish to return to work here.

## CFDC

The CFDC has two important administrative functions in the film industry: that of making investment loans to Canadian films or to official co-productions and, since February, 1976, the administration and surveillance of the co-production treaties concluded with Italy, France and Great Britain (a fourth treaty, with Germany, is expected to be ratified this summer).

While granting Canadian producers access to public funds to make their films, the CFDC has also been concerned with the development of the industry. So though its definition of a Canadian film is based on the Secretary of State's guidelines, the CFDC emphasizes creative control. Only films written by or directed by a Canadian are eligible for loans, whereas the Secretary of State assesses creative control in terms of points, six out of 10, without stipulating how those points are accumulated.

The CFDC also assesses the *quality* of projects submitted to it for investment, while the Secretary of State certifies any film meeting the income tax act requirements, as set out in the point system.

## Co-Productions

Films that meet the provisions of a co-production treaty are recommended by the CFDC to the Secretary of State for his approval. These films are considered national films by both countries party to the treaty. Canadian investors therefore qualify for capital cost allowance benefits.

There is little doubt that the tax concessions have stimulated the current rash of feature co-productions. Five of the 16 feature films the CFDC invested in last year were co-productions.

Whether or not their provisions are now being used to the advantage of Canadians, the treaties are written so that in the long run (two or three years) an "overall balance" of contributions at the creative, technical and financial levels will be realized by the two participating national film industries. A joint commission representing the treaty signatories is delegated with the authority to effect this balance.

The three treaties are basically the same; any differences lie in the provisions for the minimum technical and artistic contribution by the minority co-producer. In each treaty, however, this is based on the proportion of the financial contributions of the two countries.

(For our purposes we will examine only the clauses concerning financial and creative involvement. The italics throughout this article are ours.)

### Canada-Italy (June, 1970)

#### Article IV

"The respective contributions of the producers of the two countries may vary from thirty (30) to seventy (70) per cent for each film, the minority participation being not less than thirty per cent of the production cost of the film..."

"The minority co-producer shall be required to make an *effective* technical and creative contribution. In principle, the contribution of the minority co-producer in creative staff, technicians and actors shall be *in proportion to his financial contribution* and in any case his creative and technical contribution shall include at least one author, one technician, one performer in a leading role and one performer in a supporting role."

"Departures of the provisions of the foregoing paragraph may be made jointly by the competent authorities of both countries, but a Canadian director or an Italian director shall be employed in any co-production."

### Canada-France (June, 1974)

#### Article IV

"The proportion of the respective contributions of the producers of the two countries may vary from twenty to eighty (20-80) per cent for each film.

"The minority co-producer shall be required to make an effective technical and creative contribution. In principle, the contribution of the minority co-producer in creative staff, technicians and actors shall be *in proportion to his investment*. In all cases, such contribution shall include the participation of one writer, one technician, one performer in a leading role and one performer in a supporting role. In exceptional circumstances, departures herefrom may be made jointly by the competent authorities of both countries."

### Canada-Great Britain (September, 1975)

#### Annex

(5) "The total production costs of a co-production film shall not be less than \$(Cdn) 350,000 or 150,000

pounds, whichever is the greater at the prevailing rate of exchange, and the share of such costs borne by the co-producer from one country shall not be less than 30 per cent.

(8) "The performing, technical and craft contributions of the Canadian and British co-producers to a co-production film shall be *in reasonable proportion* to their financial participation. Where the co-producer from one country provides less than one half of the total production costs, not less than one leading performer, one feature performer, six technical, craft or studio employees plus, if required, one writer, all of whom are nationals or residents of that country, shall be employed in the making of the film."

Though to date co-production producers have often used the vague and couching terms referring to creative input and acting talent to get away with minimum Canadian involvement there are recent indications that the CFDC is going to tighten supervision on these points.

## CRTC

The television networks in Canada are, of course, legally bound to provide a certain percentage of Canadian-content programming. When the public network (CBC-Radio Canada) produces a 'film for television', the Canadian content is usually assured. Union organization protects the rights of Canadian technicians here. The question of Canadian content does arise, however, when co-productions or joint-venture programs or series are made. The CRTC recognizes and invites co-productions with the proviso that they meet CRTC guidelines for certification.

Except in the case of films or programs dubbed in Canada in English or French, which qualify for a rating as one-quarter Canadian, programs or series of programs are ascertained to be either Canadian or not, according to the guidelines published by the CRTC in 1972.

Each application for recognition as "Canadian for broadcast purposes" is looked at in terms of the overall package, and for what might almost be called its impression of Canadianness. Unlike the Secretary of State's definition there is no point system that gives more weight to one category than another or requires that any particular function be held by a Canadian.

Canadian participation means that portion of the total cost of the co-production or joint venture spent to employ Canadian talent and utilize Canadian facilities for each of the following:

- a. artistic control
- b. principal performers
- c. administration and finance
- d. technical
- e. production
- f. post-production
- g. additional talent
- h. music.

The emphasis seems to be one of financial control – who makes the program – though there is a covering statement on creative input. It is somewhat vaguely worded; i.e., that there be "...a significant involvement by Canadians in the artistic control of the co-production and among its principal performers."

Though there are no co-production treaties *per se*, a distinction is made between Commonwealth and francophone countries and those which are not.

Co-productions among Canadian producers and producers in Commonwealth or French-speaking countries can be credited (as special category programs) if 30 per cent or

more of the total cost of the program is spent on Canadian participation, with allowances for series in which not every program meets the requirements.

Co-productions with other-language countries are recognized as Canadian if 50 per cent of the total cost of the program is spent *in Canada* on Canadian participation.

## Revenue Canada

Revenue Canada does not have a distinct definition of "a Canadian film". For purposes of the 100 per cent capital cost allowance, Canadian films – in principal – are certified by the Secretary of State Department. Those co-productions approved by the Secretary of State are also entitled to the tax write-off.

Nevertheless, the decision about what is acceptable for tax purposes is made at the local level when a producer's tax returns are verified. At this time, Revenue has access to financial information which goes beyond the simple packaging of the co-production, or the isolated investment in a Canadian film. Revenue examines factors not included in the Secretary of State's definition; for instance, copyrights, film ownership, distribution agreements, and other contracts and legal documents. It also applies criteria like "risk" and "accountability." This additional information may cause Revenue to rule that the 100 per cent capital cost allowance can not be claimed on a film otherwise certified by the Secretary of State.

Recently, the tax inspectors have stepped up activity, and in some cases, are reassessing producers' tax returns for the last several years. The present uncertainty caused by this action has left Canadian producers in limbo as to just what kind of deals they can make with their investors.

For the moment, the tax man is the final arbiter when it comes to tax write-offs. Since the government has clearly stated that investors in Canadian films should benefit from a 100 per cent capital cost allowance, Revenue has also become the body which decides which films are Canadian. Certainly, a global government film policy would go a long way to clarify the present situation and to create a healthier climate for investment in our feature films. □



by Veronika Soul

DINO DE LAURENTIIS  
is pleased to announce  
that production  
will begin July 11.

**YETI**  
(SNOWMAN)

Producer:

LUCIANO VINCENZONI

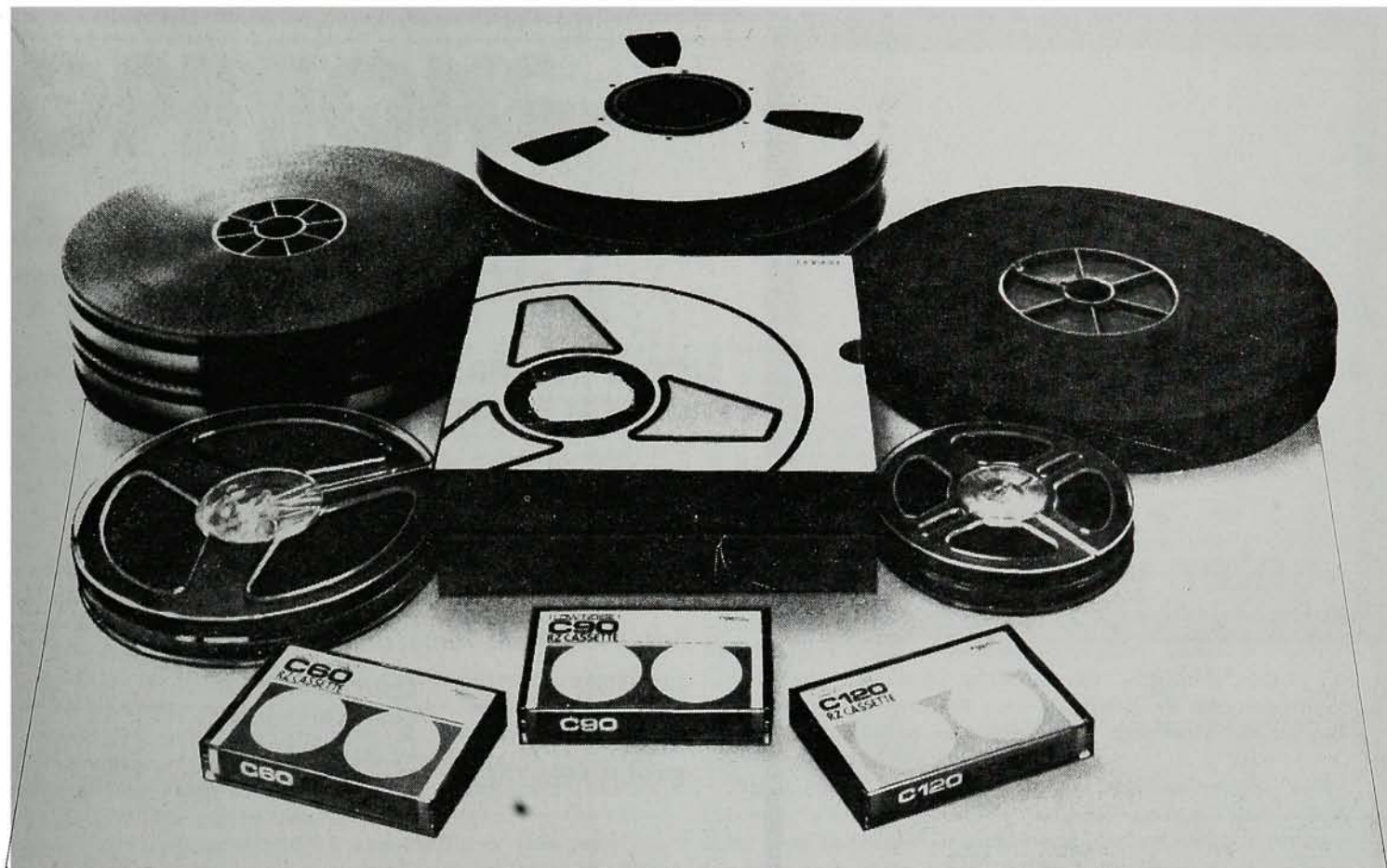
Writer:

DAVID GOODMAN

Location:

THE HIMALAYAS

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  - BEST SCORE
  - BEST EDITING

All films should be submitted by August 12, 1977.

Any additional information along with admission forms may be obtained from the following address:

Ninth Canadian Student Film Festival  
Conservatory of Cinematographic Art  
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Montreal, H3G 1M8  
Quebec, Canada

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