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Quebec's Cinema Act:
Policy and Practical Perspectives

Katina Katadotis

A Thesis
in
The Department
of
Communication Studies

Presented in Partial Fulfilment of the Requirements
for the Degree of Master of Arts at
Concordia University
Montreal, Quebec, Canada

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Abstract

Quebec's Cinema Act: Policy and Practical Perspectives

Katina Katadotis

This thesis examines Quebec's Cinema Act, Bill 109, within the context of Canadian film policy and the global film environment. Bill 109 is of interest given that it is the only piece of legislation that was ratified in Canada; which attempted to deal with the problem of U.S. domination of Canada's distribution and exhibition sectors. The Bill illustrates the lengths to which the American Major distribution companies --the Majors--will go to protect their commanding position of the global film market. The Bill also demonstrates the importance granted to the French language in Post-Quiet Revolution Quebec. In essence, Bill 109 offers an opportunity to study issues regarding national identity, cultural imperialism, conflicting discourses and government film policy.

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INTRODUCTION

Quebec's Cinema Act, Bill 109, is the topic of this thesis. Although numerous articles, reports and studies have already been written on the Canadian film industry another look is justified. Most writing pertains to Canada and only briefly mentions the Quebec market and Bill 109. This is perplexing since Quebec has produced the only piece of legislation in Canada attempting to regulate the American presence in the Canadian film market. Bill 109 was intended to distinguish the Quebec market from the North American market and was intended to curb American domination of the distribution sector through regulation. Bill 109, therefore, acknowledges the importance of the distribution sector in terms of what films are screened in Canada.

This thesis proposes that Bill 109 can be considered part of the pattern of compromise on the part of Canadian governments regarding film industry regulation. Federal governments have backed down from film industry regulation due to their fear of American economic retaliation. For instance, U.S. threats that the Free Trade Agreement would not pass in Congress effectively killed the last federal attempt to regulate distribution in Canada in favour of Canadian-owned companies.

The first objective of this thesis is to examine the general context from which Bill 109 emerged. The goal is to encourage the notion that Bill 109 is part of a on-going policy process and should be understood and examined within the context of Canadian film policy. The Bill should not be studied as

¹ In 1937, for a MacDonald introduced An Act Respecting the Importation into Canada of Film and Related Products into the House of Commons.

an isolated piece of legislation but as a product of previous attempts to regulate our indigenous film industry. Bill 109, therefore, will be examined as part of the Canadian film policy framework. Chapter One consists of tracing the history of Canada's cultural policy regarding film.

The second objective is to trace the particular historical emergence of the legislation. The intention is to demonstrate that the necessary political will prevailed in Quebec in 1983 which facilitated the passage of Bill 109. Chapter Two fulfills this aim through a historical and textual analysis of the Bill's emergence.

The final objective is to evaluate the Bill. To determine whether or not Bill 109 has been effective at correcting the imbalances created by the American presence in the Quebec film industry. The aim is to determine if Bill 109 has made a difference. In Chapter Three the method used to determine the Bill's effectiveness will be practical field research. Interviews with key members of Quebec's film community will provide the data required to undertake the evaluation.

Generally this thesis wants to contribute to the existing body of literature on the Canadian film industry, and in so doing, begin to fill the void pertaining to the Quebec film industry and Bill 109.

CHAPTER ONE

THE EUROPEAN AND CANADIAN CONTEXTS

THE GLOBAL CONTEXT

The United States used to be the world's largest supplier of manufactured goods. Everyone owned an RCA television and drove a "Big Three" car. Today most homes are equipped with Sony televisions and have Toyota cars in the driveway. Having lost its position as the world's leading supplier of manufactured goods, the U.S. has shifted its focus to other sectors, mainly the service sector. One of the most important export commodities is the Hollywood film. Film, therefore, isn't simply entertainment. Hollywood has become the focus of an important revenue producing industry. Hollywood's large profits have come to depend on foreign markets. As declining cinema attendance have made it impossible for the U.S. theatrical market to absorb the cost of big budget films like Jurassic Park³ Foreign markets have proven necessary to generate enough revenue to put these films in the black. Last year, the American studios earned four billion dollars from European markets alone.⁴ According

³ The United States considers feature films to be part of the service sector. This sector also includes computer software and satellites. Fern Auletta reported that "Entertainment is America's second largest export (after jet engines), accounting for a positive trade surplus of four billion dollars a year..." "TV's New Gold Rush" in The New Yorker (December 13, 1993)

⁴ In 1940 one-third of the American public went to the movies once a week, by 1980 the decline had escalated to one-fifth of the public attending a film once a month. David Ellis, Split Screens (Toronto: Friends of Canadian Broadcasting, 1992), 87.

⁵ Jeffrey Goodell, "Salut, Suckers!" in Premiere (April, 1994), 132.

to Ken Auletta, "American entertainment companies dominate eighty per cent of the overseas box office and just under half of all non-news programming [for television] The bulk of this entertainment export is split by the six major Hollywood studios " .⁵ Consequently, the Hollywood Majors aggressively protect their position abroad whenever it suspects it is being undermined. David Ellis maintains that Hollywood is basically very conservative in its approach to business and is, therefore, suspicious of change.⁶

Hollywood, via its lobby, the Motion Picture Export Association of America (M.P.E.A.A.)⁷, monitors potential legislation in foreign countries that could compromise its commanding position of foreign markets. The M.P.E.A.A. has repeatedly exerted pressure on various Canadian governments to prevent the passage of legislation attempting to alter the Majors hold on the Canadian distribution and exhibition sectors. It must be noted that for all practical purposes, the American film industry does not consider Canada a foreign market but a northern extension of the American domestic market. In fact, Variety reports U.S. and Canadian box office revenues together. Its regular feature on film earnings is titled, "Weekly B O Report (U.S. - Canada)".

As stated, various Canadian governments have attempted to limit the overwhelming U.S. presence in our distribution and exhibition sectors in favour of indigenous companies. Generally, exhibition and distribution are

⁵ Auletta, 81

⁶ Ellis, 83

⁷ The MPEAA represents the following major Hollywood studios: Warner Brothers, Universal Pictures, MGM/UA, Paramount Pictures, Columbia Pictures, Twentieth Century-Fox, Orion (joined in 1983), and TriStar. *TriStar* was admitted to the association mostly because it is owned by corporate giant, Columbia Pictures, HBO and Columbia Broadcast System.

important to any country's film sector from a revenue perspective. The distribution sector functions as the link between the production and exhibition sectors. Distributors funnel a portion of the revenues they earn from the exhibition sector, in the form of rental revenues, back to the production sector. The distribution sector, therefore, is partially responsible for recapitalizing the production sector. This financial contribution grants distributors the right to apply their knowledge of the marketplace at the development stage of filmmaking to help the film's commercial viability. For the process to work, distributors must be able to secure screen time for their films. Having the exhibition sector dominated by outside interests mitigates against the functioning of the entire process. Resulting in the distribution sector being prevented from earning revenue and, therefore, recapitalizing the production sector.

Former Communications Minister Flora Macdonald once stated: "No fewer than seven ministers since World War II have attempted to reach a negotiated agreement which would assure a Canadian presence on Canadian screens. None has succeeded".¹ One piece of legislation which attempted to regulate the American presence was passed in Quebec in 1983. Bill 109 was ratified during the Parti Quebecois' term in office. A detailed discussion of the events leading up to the passage of the Bill will follow in the ensuing chapter.

Canada is not the only country which has witnessed a flooding of its screens by Hollywood. Other nations - especially European ones - are trying to find solutions to roll back the American presence. France is one

¹ For a full description of the problem - see Barantseva, "State of Things".

² The report of the Commission on Canadian Dreams and American Control of the Political Economy of the Canadian Film Industry. (Detroit: Wayne State University Press, 1989), 20.

such country. The French mounted an aggressive attack on American films in the wake of the 1993 GATT negotiations. The Americans wanted the trade barriers removed from movies and television programming. The French adamantly opposed the American position. Over the past ten years, the number of American films screened in France has doubled. American movies currently constitute sixty per cent of French admissions. The French contend that the American presence is overwhelming their national film industry and by so doing undermining their national culture. The French position is "that its films were part of its national soul and it could and would continue to use tariffs and surcharges to fight the U.S. takeover of the French Market".¹¹ Clearly France adheres to the notion that film is a powerful cultural medium which helps build and strengthen national identity. A notion that is repeated in some sectors of Canadian film community.

The French-U.S. debate during the GATT negotiations offers a clear example of the different ideologies that prevail regarding film. Both parties use different discourses which reflect their respective approaches to film. The French clearly employ a cultural discourse when discussing film.¹² Whereas the Americans discuss film in purely economic terms. This disparity is the root of the problem. As the M.P.E.A.A. refuses to acknowledge the cultural importance of national cinema and is motivated by maximizing profit through expanding foreign markets. The Hollywood

¹⁰ "The motion picture industry is the only service sector to be included within the framework of the GATT. ... The theatrical feature film is a double product: a tangible product and in part a service, and its economic value lies partly in its mere existence and partly in its earning power." (Gendreau, 12)

¹¹ Ray Conologue, "Facing a Challenge to the Commercial National Soul in Parade and Fall" (December 11, 1993)

¹² The French discourse is primarily cultural, however, economic concerns also contribute to their position.

Majors treat their movies like lumber and refuse to acknowledge that film deserves special consideration due to its cultural potential.

It is an often stated cliché that Europeans generally have a deeper understanding and appreciation for their national cultures than North Americans. It's a statement that is regularly debated and cannot be resolved within the scope of this thesis. However, European artists and intellectuals are revered to a greater extent in their countries. They are considered national resources. Let us remember that Canada has nothing equivalent to the French "agrégé"¹. Europeans seem to understand that a strong national identity is fostered by a cultural sector that, among other things, presents indigenous stories and images.

Canadians are not completely oblivious to the value of culture as a vehicle for fostering national identity. Those working within the Canadian cultural sector acknowledge the link. Edouard Lock founder and choreographer of La La La Human Steps² stated that.

[The arts] are the only way to define yourself vis à vis other countries. I think the indigenous culture of a country is an important statement as far as identity is concerned. I think the Europeans have understood this very well, and I hope we begin to here.³

¹ According to the Online Canadian Dictionary, an agrégé is defined as "a person who has passed a competitive examination by the state for higher teaching appointments" This is a simplistic explanation. It is crucial to note that only a very small number of people ever attain this level of scholarship and once they pass the difficult examinations, the French state assumes the responsibility of finding them employment and paying them a pension. An agrégé is an intellectual and the French state considers them national resources. Famous agrégés include Simone de Beauvoir and Jean-Paul Sartre.

² La La La Human Steps is an internationally acclaimed modern dance troupe from Montreal.

³ Philip Soper, "Intante'ed Out" in Hour (January 27 - February 2, 1994)

Generally, Canadians employ both discourses. Film is spoken of in economic terms and cultural ones. The government simultaneously admits that culture is important and deserves special treatment, and demands that it must function like any other industry operating within a capitalist framework. The expression, cultural industries encompasses this dual (and contradictory) approach to culture.

Telefilm Canada provides a concrete example of the existence of both approaches to culture. It operates as a company within a capitalist paradigm. It makes "investments" in film and television products and is concerned with receiving a "return" on its investment. Telefilm functions, however, in an even broader cultural framework as its entire existence is predicated on the need to provide indigenous cultural products to the Canadian public. Telefilm has both cultural and industrial objectives as the following quote from Telefilm's 1993-1994 Action Plan attests. "It is essential that the films and television programs produced by the Canadian independent industry, particularly theatrical features, reach wider audiences while continuing to reflect distinctively Canadian characteristics."¹⁶

Bill 109 was intended to ensure that indigenous films would reach their target audience. The Bill, therefore, acknowledges the symbolic value of film in a country such as Canada where images and stories of ourselves are necessary to build national identity and where we are inundated by a culture similar but not identical to our own. Mark Starowicz aptly explains the importance of having an indigenous culture. He states that:

¹⁶ Telefilm Canada, Action Plan for the Administration of Telefilm Canada, Films and Programs 1993-94 (Ottawa, 1993), p.6.

National culture is not fixed, a given, but a process, a crucible in which values are presented, tested, mixed and negotiated without end (). Films and television are potentially among the most important instruments of this process. However, the values presented on screens large or small, are inevitably those of the producing society rather than the consuming society. A country such as Canada, which imports the majority of its cultural products, is missing a 'major artery vital to the biology of a country'. We are spectators of the dynamics of another society. ¹

This notion is important to consider when examining Canada's weak sense of national identity. And as Lewis suggests, one of the reasons an independent English Canadian cinema has never flourished is because the overwhelming presence of American movies on Canadian screens has cultivated a Canadian audience for U.S. films. An appreciation for indigenous films has not been given the chance to develop. ²

THE CANADIAN CONTEXT

The problems Bill 109 attempted to address are not exclusive to Quebec, Canada is plagued with the same issues. Bill 109 is then relevant to any study relating to the Canadian film industry more generally. The legislation attempted to restructure Quebec's distribution sector by limiting the Majors activities in the province, through the implementation of distributors licenses, in favour of Quebec-owned companies. As in past attempts, the M.P.E.A.A. interceded and successfully managed to protect its

¹ Marc Starwicz, "Cultures of North America" forthcoming in *****

² Brian Lewis, Canadian Independent Film Distribution and Exhibition: The State of Things (Ottawa: Department of Communications, March 1986), 15.

interests. The Bill is similar to the federal government's attempts to rectify the structural imbalances of the film industry. The federal attempts also fell victim of M.P.E.A.A. interference. Bill 109, however, is different from federal attempts because it was ratified and did become law. No federal government has passed such legislation. To fully appreciate the ratification of the Bill, it must be viewed within a larger context. The following section provides a brief history of Canadian film policy.

The Pre-NFB Period

The official departure point for Canadian film policy would probably be identified as the establishment of the National Film Board in 1939. However, it's useful to examine the Canadian context before the advent of the N.F.B. because the problems plaguing the Canadian film industry took root in that period. As film emerged as a new medium in the early twentieth century the borders between Canada and the U.S. seemed non-existent. Already American entrepreneurs operated like Canada was an extension of their domestic market. As the federal government saw no need to regulate the burgeoning industry, Canada's film industry was wide open for films from outside countries. Pendakur observes that:

Vertical integration of the three principal sectors of the motion picture industry -- production, distribution, and exhibition -- had started in the U.S. film industry and was extended into Canada between 1920 and 1930 as if there were no borders between the two countries.¹⁹

¹⁹ Pendakur, 58

By 1925, ninety-five percent of films screened in Canada were American -- a percentage not radically different from today. Additionally, the Major distributors operating in Canada by 1930 were subsidiaries of Major American film companies

During this period, the Canadian government was only interested in producing newsreels or films advertising Canada as a tourist attraction and adopted a laissez-faire attitude towards feature films. According to Pendakur, this attitude also set the pattern for federal government intervention in the film industry.¹⁰ Lewis, following Ted Magder, suggests that the federal government's "featureless film policy" killed the possibility of having an indigenous commercially viable film industry in Canada.¹¹

Another factor that established itself in this early period was the Motion Picture Producers and Distributors Association (M.P.P.D.A.), known at the time as the Hays Organization. Which among other things lobbied the U.S. and foreign governments regarding policy affecting the industry. This early period, therefore, can be considered the beginning of the federal government's hands-off approach regarding American dominance and, as the cliché goes, bad habits are hard to break. By the 1930s, U.S. interests were firmly entrenched in Canada's film industry

A possible explanation of the government's noninterventionist attitude is that Canada still identified strongly with Great Britain. The Canadian political elite, Pendakur explains, turned to Great Britain for cultural products believing that Canada was a consumer of imperial culture rather than a producer of indigenous culture.¹² It followed, therefore, that Canadian

¹⁰ Ibid, 27

¹¹ Lewis, 'The "No Solution"', 1-4

Pendakur, 83

cultural products were not necessary for the country's national identity of Canada. Britain would supply the required products. This colonialist stance made it easy for the U.S. film companies to become entrenched. This attitude is also reflected in the 1951 Massey-Lévesque Report which made a strong distinction between high and low culture and relegated film to the latter and thus unworthy of government support.

The NFB Period

The federal government revived the dormant Motion Picture Bureau in the late 1930s and invited John Grierson, a well-known British documentary filmmaker, to run it. The Bureau became the National Film Board in 1939 and thus, the federal government was involved in funding documentaries. The N.F.B., apart from producing world renowned documentaries, became a training ground for Canadian filmmakers. These filmmakers later pushed the regulatory boundaries of the NFB and began making feature films after office hours and called for policy regarding feature film production. The N.F.B.'s film commissioner, Guy Roberge, led the Interdepartmental Committee on the Possible Development of a Feature Film Industry in Canada (the Roberge Commission). Whose 1964 report eventually led to Bill C-204, The Canadian Film Development Corporation Act, that was passed in the House of Commons in March 1967. The federal government would henceforth be supporting the production of both documentary and feature films.

² Originally, the Motion Picture Bureau was a production unit, established in 1917, which operated under the jurisdiction of the Department of Trade and Commerce. It became the Motion Picture Bureau in 1925. Lewis, "The 75th Solution", p. 14.

The C.F.D.C. Period

The Canadian Film Development Corporation (C.F.D.C.) was originally endowed with a ten million dollar revolving fund. The C.F.D.C. administered a sum of money available for the production of feature films to Canadian filmmakers. This was important as venture capital was difficult to secure for the production of indigenous feature films. To ensure the money was supporting Canadian projects, filmmakers had to meet Canadian content requirements. The C.F.D.C. elaborated a point system to determine Canadian content. This system is still in effect although changes have been made over the years.

Furthermore, the C.F.D.C.'s mandate provides a further example of the usage of both cultural and economic discourses in matters of cultural policy. The government assigned the C.F.D.C. with the responsibility of fostering Canadian feature film for nation building purposes and with operating like an investment agency. Pendakur remarks that "It [the Act] attempted to balance the profit-making priorities of private entrepreneurs with the priorities of job creation and national expression in feature films."¹⁴

Unfortunately, The Canadian Film Development Corporation Act did not address the issue of distribution of films. The Roberge Committee was aware of the problem but chose not to recommend its inclusion in the Bill. Rather than legislating quotas to guarantee Canadian films access to screens, the Roberge Committee suggested a strategy of cooperation between Canadian filmmakers and the major U.S. distribution companies operating in Canada. A section of the Committee's final report states.

¹⁴ Pendakur, 118

The co-operation of Major distribution companies is a necessity for the development of the industry and Canadian feature films must be given fair and equitable treatment in distribution and exhibition, particularly in Canada. It is, however, difficult to prejudge the attitude which the Major distributors will take toward Canadian productions () Little or no evidence exists at the moment to show that there would be a negative attitude on the part of foreign-controlled distribution companies, (..) The Committee recommends therefore that, for the present, the Corporation's role in distribution should be to assist Canadian producers in arranging distribution through established companies in Canada and abroad. In connection with foreign distribution, the Corporation should seek the co-operation of the foreign-controlled distributors in Canada (.)

Instead of legislating quotas which would anger the American companies, the Committee selected a less confrontational policy encouraging cooperation.

The Roberge Committee decided to work around the American Majors. Its recommendations were fashioned according to the existing structure of American domination of the Canadian film industry. The Roberge Committee chose not to confront the Majors. Pendakur maintains that:

This contradictory policy, which on the one hand supported laissez-faire competition in a market dominated by a foreign film industry cartel and, on the other, recognized that Canadian

²⁵ Pendakur, 1-19

films needed special treatment by those monopoly firms, was not going to yield any benefits to the Canadian film industry.²⁶

The creation of the C.F.D.C. was a historic moment for the Canadian film industry. For the first time federal funds were being allotted on a case by case basis for the production of indigenous feature films. It also, however, illustrates the compliant attitude Canadian policymakers adopted with regards to the powerful and firmly entrenched American film companies. By sidestepping the distribution problem, the federal government refused to make a firm commitment to indigenous films.

At the beginning of the 1970s, film industry personnel began to realize that the C.F.D.C. was not going to solve Canada's film problems resulting from the controlling presence of a foreign cartel. The Majors were unwilling to yield their position to accommodate Canadian films. The C.F.D.C. ran out of funds, the original ten million dollars was supposed to be replenished with returns from its investments. However, Canadian films rarely grossed a profit and by 1974, the C.F.D.C. had recouped approximately twelve percent of its investment.²⁷ This brought Canadian production to a halt and motivated film industry workers to intensify their efforts to lobby the government to change the structure of the film industry in favour of Canadians. Pendakur maintains that both English and French Canadian film industry workers pressured provincial and federal governments to legislate quotas and a tax on American earnings.²⁸

²⁶ Pendakur, 150.

²⁷ Pendakur, 151.

²⁸ Pendakur notes: "There are basically two types of quotas: distributor quotas and exhibitor quotas. A distributor quota would require all distributors to carry a minimum number of films a year of a particular nationality in their inventory every year (). But the measure could fail, as there is no way of guaranteeing that a distributor would push those films in the market by investing further for prints and

The federal government seems to have been aware of the need for legislation as the House of Commons Standing Committee on Broadcasting, Films and Assistance to the Arts investigated the situation in May 1971. The government appeared to understand that stimulating the production sector without correcting the distribution sector was not going to work. Provincial governments, especially Ontario⁴⁹, created task forces and commissioned reports to examine the issue of quotas and taxes. Screen quotas were supported in theory. However, in practice, the provincial governments deferred to the federal government which favoured a gentler approach to the Majors. The federal government hoped the U.S. Majors would voluntarily distribute Canadian films and give them screen time in Canada's two main theatrical circuits. In the Summer of 1973, an informal agreement was concluded with Famous Players and Cineplex Odeon to reserve two weeks worth of screen time for Canadian films in Montreal, Toronto and Vancouver. A few films were shown but the agreement amounted to nothing in the end.

Again the government chose not to regulate and again it went the way of voluntary measures. The federal government was ignoring the recommendations of the Canadian film industry for legislated quotas and taxes and succumbed to the U.S. Majors and the two major theatrical circuits opposed to legislation. In 1975 the government announced that agreements had been reached with Famous Players and Cineplex Odeon to screen indigenous films for four weeks per theater per year. The agreements also included a voluntary investment in Canadian films. This agreement, like its

publicity and so on. The exhibitor quota, also called screen quota, had to include a minimum number of play dates for films of certain nationality in order to guarantee market access to them", 153-59.

⁴⁹ Ontario's Department of Industry and Tourism commissioned a task force in 1973 and sponsored the Klopchik Report in 1974. Pendaton, 166.

antecedents, failed to produce any concrete results. Once again the federal government backed down from confronting the M.P.E.A.A., and in so doing, undermined the development of the Canadian film industry. The M.P.E.A.A.'s habit of intervening in potential film policy has always worked for them. Their goal is to preserve the present structure of the Canadian film industry which benefits them. The M.P.E.A.A. maintains their advantageous position by threatening U.S. economic retaliation whenever the Canadian government debates legislating the film industry. The Americans, as we will see, used this strategy during the free trade negotiations when a distribution bill was in the works.

A Tax Policy

New means of financing indigenous film production had to be found as the C.F.D.C. ran out of funds and the voluntary measures adopted by the Majors and the two theatrical circuits did not yield results. The federal government decided to attempt to fund the production sector through a tax policy. In 1974, the government amended the amount an investor could write-off when investing in a certified Canadian film from sixty percent to a hundred percent. The government's Capital Cost Allowance Program (C.C.A.) had been in existence since 1954 and allowed investors to deduct sixty percent of their investment from their taxable income. This funding method was a move away from the direct project by project approach used by the C.F.D.C. The tax policy was also a way of finding a solution to Canada's film industry problems without confronting the Majors. Once again the federal government chose to circumvent the American companies.

To encourage the employment of Canadian workers, the C.C.A. established a point system, each creative position was assigned a certain

number of points. For a film to be certified Canadian a project had to have at least six out of ten points. To further encourage investment in indigenous productions, the government reduced the write-off to thirty percent for non-Canadian productions. The C.C.A. was successful in creating a supply of capital for film production. Individuals, mostly professionals, proceeded to invest in indigenous films for the tax benefit. The unemployed film industry workers returned to work. The C.C.A. provoked a veritable boom in film production. In 1974 three films were produced whereas in 1976, when the C.C.A. was in full swing, thirty-seven films were made. Film production peaked in 1979 when sixty-six films were produced.³⁰ Film budgets also rose during the C.C.A. period, from \$527,000 per film to \$2.6 million in 1979.³¹ The federal government, however, had two objectives for the CCA: the first was industrial, to create employment and the second was cultural, to reflect Canadian culture on screen. It succeeded in meeting the first objective but not the second.

The C.C.A. was not able to meet the government's cultural objectives because the majority of the films produced during this period were made to appeal to an international audience. Well-known actors and actresses, usually American, were hired to attract large audiences. Pendakur observes that "The old commercial strategy of using well-known star commodities to overcome barriers to entry was employed in making these films. Additionally, Canadian locations were stripped of their distinctiveness and made to look American. Generally, C.C.A. films look like inferior imitations of American films. The desire to foster a distinctively Canadian cinema based

³⁰ Canadian Film and Video Certification Office, as cited in Pendakur, 17.

³¹ Pendakur, 17.

³² Examples of such films are The Silent Partner, starring Elliott Gould, and Zelig, starring Robert Mitchum.

on Canadian themes and realities was absent from this approach to filmmaking which targeted international audiences.

However, the three highest grossing films in Canadian history were produced during this period: Porky's (\$54 million), Meatballs (\$21 million) and Porky's II (\$17 million).¹ Yet profits like those cited above were the anomaly. Most of the films generally fared poorly at the box office. Film producers, accountants and investment brokers flourished under the C.C.A., their salaries rose and accounted for the films' high budgets. In fact, this group greatly prospered during the C.C.A.. However, as investors rarely saw returns on their investments, the C.C.A. money started to diminish.

Pendakur points out how the C.C.A.'s impact in Quebec was dramatically different. The author states that.

Given the more limited market for French-language films, there was no incentive for investors to get involved in Quebec films. In 1978 and 1979, two-thirds of the films made in Quebec were produced without benefit of the tax shelter. Film directors who in the 1960s helped put Canada on the world film map -- such as Claude Jutra, Gilles Carle, Michel Brault, Denys Arcand -- were unable to get financing to make any French-language films.²

This is further evidence that the C.C.A. undermined the development of a culturally relevant film industry.

By the early 1980s, investors no longer had confidence in the C.C.A. and the money dried up. Then in 1983, the government changed the

¹ 1992 figures compiled by Telefilm Canada from various issues of Variety, as cited in Lewis, "The 7% Solution", 17.

² Pendakur, 179.

hundred percent write-off to fifty percent which sealed the C C A's fate. Having selected a tax policy instead of a more radical measure The government was faced once again with a film industry that could not maintain itself and that was in desperate need of funds. Once again, the structural problems plaguing the domestic film industry became apparent and the government responded by commissioning reports.

The Cohen Report and The National Film and Video Policy

In 1982 the Communications Minister, Francis Fox commissioned Ronald Cohen to study the distribution, exhibition and marketing of films in Canada. The goal of the commission was to come up with advice for improving the plight of indigenous films. The recommendations were to form the basis of a new national film and video policy. Cohen's report acknowledged the problems caused by American control of Canada's distribution and exhibition sectors but failed to call for a restructuring of the industry or for legislated quotas. Instead, the report suggested zoning the theatrical market to improve competition amongst distributors for the best screens.

The National Film and Video Policy was announced in 1984. Although the Policy recognized the burden the U.S. Majors placed on the Canadian film industry²¹ it decided, in traditional fashion, to do nothing

²¹ The National Film and Video Policy states: "In Canada, well over 90 per cent of theatrical distribution revenue in 1981 went to foreign-owned distributors, most of them wholly owned subsidiaries of U.S. firms, and all of which operate with major production studios in Hollywood. Of the revenue earned in 1981 in Canada by these companies - all of which are members of the Canadian Motion Picture Distributors Association (CMPDA) - less than one per cent came from distribution of Canadian features" and "On average Canadian-made features - with only 12 per cent of the screen time in Canadian cinemas, with the remaining time devoted to foreign - mainly U.S. - productions." Department of Communications, The National Film and Video Policy (Ottawa: Minister of Supply and Services, May 1983: 1).

about it. It shied away from legislating quotas because Fox stated quotas would limit what Canadians could see. The minister opted instead to negotiate with the Majors - another measure which had been attempted and had failed. It could be argued, in light of the Policy, that the federal government preserved the Majors position in Canada. In fact, one of the only lasting measures of the policy was renaming the C.F.D.C., Telefilm Canada.

The Raymond-Roth Report

The federal government commissioned another report in 1985, it was headed by Marie-Josée Raymond and Stephen Roth. The commission consisted of prominent Canadian film producers and distributors and hence the report was more aggressive than the Cohen report. The report, titled Canadian Cinema: A Solid Base, illustrated the linkages between the three sectors of the film industry. The report also identified three structural problems hindering the development of the Canadian film industry. "(1) foreign domination of film and video distribution, (2) chronic undercapitalization of production companies, and (3) concentration of theater ownership and vertical integration of distribution and exhibition."³⁷ It recommended shifting some control of distribution to Canadian-owned companies through legislation. The report did not call for a complete Canadian take-over of the domestic distribution sector, only a portion of it. Thereby shifting some distribution revenue towards Canadian companies.

³⁷ Canadian Cinema: A Solid Base, Report for the Film Industry Task Force (Ottawa: Minister of Supply and Services, November 1985), 7.

The Federal Distribution Bill

Canadian Cinema. A Solid Base became the foundation for the Minister of Communications', Flora Macdonald, proposed Distribution Bill. Macdonald announced in February 1987 that the government was going to introduce legislation that would set up a licensing system for the importation of films into Canada. Canadian-owned companies would be eligible for a general distribution license enabling them to handle any film. Whereas foreign-owned companies would be eligible for a proprietary license enabling them to import only those films for which they owned world distribution rights. This would make available independently produced American films and foreign films for Canadian distributors. An area they used to exploit but that had been taken over by the Majors' new "Classics" divisions in the early eighties.

The federal government hoped the licensing system would demarcate the Canadian market from the U.S. market; and create a source of revenue for the income starved Canadian-owned distribution companies without offending the Majors. The National Association of Canadian Film and Video Distributors estimated that the proposed legislation would shift seven percent of the distribution revenues to Canadian companies. Insignificant when you consider that the Majors controlled ninety-seven percent (or one hundred and fifty million dollars) of the total Canadian distribution revenues.

The proposed bill generated opposition amongst the M.P.E.A.A. companies and Canadians affiliated with the U.S. entertainment conglomerates. Such as Garth Drabinski, C.E.O. of Cineplex Odeon, who

depended on its supply of first-run American films. The proposed legislation received support from Canadian independent distributors who lobbied on the bill's behalf. Their lobbying efforts mounted to little when faced with the formidable power of the M.P.E.A.A. and its head Jack Valenti. It's no surprise that the M.P.E.A.A. launched an aggressive lobbying campaign as any proposed change to its position was considered a serious attack. Valenti met with Macdonald, the Minister stood her ground and Valenti went back to the U.S. to recruit the help of high-placed officials in Washington. Valenti believed that if the federal government succeeded in passing the distribution legislation and curbing the M.P.E.A.A.'s position other nations would follow Canada's lead.

Valenti had an advantage as the proposed distribution debate was occurring against the backdrop of the Free Trade Agreement negotiations which the Canadian Progressive Conservative government wanted ratified. Valenti used the Free Trade deal as leverage, he made the contents of the legislation known to various politicians in Washington. Valenti is even reported to have met with the President, Ronald Reagan, to discuss the Canadian legislation. Valenti's efforts produced results, fifty-four members of the U.S. Congress wrote to Prime Minister Mulroney voicing their objections to the proposed legislation. The politicians stated that they considered the legislation protectionist and, therefore, an impediment to successful free trade negotiations. The Conservative government was not willing to compromise the Free Trade talks for the sake of a film distribution bill. By the following year it was clear that the proposed distribution bill was going to remain on the shelf. The M.P.E.A.A. had successfully preserved its position within the Canadian film industry with the cooperation of the Canadian government.

Again it is important to note why the M.P.E A.A. went to such lengths to kill the proposed bill and how it was able to recruit the aid of powerful politicians. Pendakur suggests that:

The senators were attempting to protect not just the \$1 billion contributed annually by the film industry to the U.S. balance of payments but the entire trade in services globally. Given the decay of the industrial sector and lack of investment dollars to rejuvenate it, the United States has staked out the services area -- from motion pictures to computer software -- for international trade.

Thus, the American politicians by opposing the proposed distribution bill believed they were securing and protecting America's position in the global services market. Flora Macdonald's distribution bill became embroiled in the United States drive to stay on top of the global services sector.

Telefilm Canada

In 1984, as stated, the C.F.D.C.'s name was changed to Telefilm Canada. To reflect its involvement in television production which had begun in 1983 with the introduction of the Canadian Broadcast Program Development Fund. The Broadcast Fund was designed to subsidize the production of dramatic, children's and variety television programs. The Fund's original financial allotment was thirty-five million dollars to be increased to sixty million dollars²⁸ by 1988²⁹. With this budget, Telefilm

²⁸ Pendakur, 272.
²⁹ Telefilm's 1994-95 budget is \$122 million.

became an important actor in the Canadian production industry. Canadian films have trouble being seen but Canadian television programs do not due to C R T C regulations concerning Canadian content. The Broadcast Fund was to assist in the production of programming required by Canadian content regulations.¹¹ Thus, some filmmakers began to produce television programs to keep their struggling companies afloat. Magder suggests that the Broadcast Fund created "an enormous incentive for feature film producers to shift their activities to the production of television features and other forms of television programming in the drama, children's and variety categories". However, the huge incentive also detracted from the production of feature films, where the same incentive was absent. The Broadcast Fund, in combination with C.R.T.C. "screen quotas", did result in increasing the profile and quality of Canadian television programs. In fact, over the years, Canadian television programs have won many awards at international television festivals and have become sought after properties at international television markets. It can be said that Canadian television product has fared better, both domestically and globally, than film.

Telefilm's role in the Canadian film industry took on greater significance in the late 1980s as the Department of Communications charged it with two additional funds: the Feature Film Fund created in 1986 and the Feature Film Distribution Fund created in 1988. The federal government circumvented the U.S. presence by implementing policies which did not interfere with the current structure of the Canadian film

¹¹ Ted Magder, Canada's Hollywood (Toronto: Toronto University Press, 1997), 709.

¹² Canadian content requirements dictate that sixty percent of all programming and fifty percent between 7:30 p.m. and midnight be Canadian.

¹³ Magder, 709.

industry. The result being that the film industry is primarily a government sponsored construct, left to the largesse of the current party in power. If the federal government ceased its financial allocations, the Canadian film industry would most likely wither. Lewis asserts that "Ironically, then, Canada's film industry now finds itself both thoroughly colonized by foreign interests, and thoroughly regulated and subsidized by government policy"

In this time of fiscal restraint, the future of the film industry is once again in the hands of the government. The current Liberal government of Jean Chrétien has demonstrated, in the 1995 budget, its commitment to reducing the debt through a reduction of government spending. Canada's cultural agencies did not escape the wrath of fiscal restraint. Telefilm's budget was reduced by \$12.3 million dollars to \$109.7 million, The National Film Board's budget was reduced by \$4 million to \$75.8 million and the CBC's budget of \$1 billion was reduced by \$44 million.¹¹ Arts institutions in general are facing uncertain times.

¹⁰ Lewis, "The 20 Solution" 19.

¹¹ Keith Zickler, "Cultural Community to Face Budget Cuts," The Gazette (February 28, 1995).

CHAPTER TWO

BILL 109: EMERGENCE AND THEORETICAL ANALYSIS

THE EMERGENCE OF BILL 109

As previously mentioned, the government of Quebec is the only Canadian government to have passed legislation attempting to curb the American dominance of Canada's domestic distribution and exhibition sectors. This chapter's aim is twofold: to understand the factors and context which facilitated the emergence of Bill 109, and to describe and theoretically analyze the Bill. Fulfilling the first objective entails an examination of Quebec's political climate. It is important to look back to the period referred to as the Quiet Revolution because it lay the foundation for the emergence of Bill 109.

The Quiet Revolution

Coleman suggests that Quebec's Quiet Revolution was essentially a rejection of the traditional vision of Quebec as a Catholic rural province. An image perpetuated and fostered by Maurice Duplessis' National Union Party. The author describes the period as.

(...) the spirit or atmosphere in Quebec society in the early 1960s. This was a spirit of collective strength, of co-operation, of a generation willing to move forward together. It was a spirit of elation, joyful outbursts and hope. The sense that the divisions within the community that had become more and

more acute after 1945 could be breached. The belief that soon a global vision of a new society would be constructed and all would have an important role in that society.⁴⁵

In 1960 a rejuvenated Liberal Party led by Jean Lesage was elected. Lesage surrounded himself with enthusiastic and ambitious ministers⁴⁶ Who wanted to reorganize Quebec society and bring it into modern capitalist society. The Quebec Liberal party's program was designed to modernize educational institutions, help francophone entrepreneurs increase their participation in the province's economy, restructure social and medical services and emphasize the use of French as the official language of Quebec.⁴⁷ Lesage's Liberals wanted to "opt in" economically and become full participants in North America's industrial society. Their economic policy, Coleman suggests, was integrationist, whereas their political and cultural policies were isolationist and sought to "opt out" of national political and cultural affairs.

Cultural Policy

Cultural issues were accorded great importance during the 1960 election campaign. Coleman and Magder, however, concur that the Quiet Revolution's cultural policy served primarily symbolic ends. On March 2, 1961, Premier Lesage announced the establishment of the Department of Cultural Affairs whose aim would be to foster, encourage and protect the arts

⁴⁵ Coleman, William, The Independence Movement in Quebec: a study in the history of Toronto Press, 1963, p. 1.

⁴⁶ Jean Lesage's "équipe de bonnettes" included Georges-Émile Lapointe, René Lévesque, Paul Gérin-Lajoie, and later Pierre Laporte and René Lévesque's cabinet.

⁴⁷ For a complete description and analysis of the Liberal Party's policies, see still chapters 4 - 7 of Coleman.

in Quebec. The Department's initial budget was three million dollars to be allocated among its four branches: the Office de la langue Française, the Département du Canada français d'outre-frontières, the Conseil provincial des arts and the Commission des monuments historiques.⁴⁸ The new Department did not have a concrete impact on individual artists as new support programs were not introduced. Ostry also agrees with Coleman regarding the impact of the Department of Cultural Affairs. Ostry suggests the Department was ineffective because "... it suffered from penury, lack of status, and authority."⁴⁹

Importance of the French Language

The Quebec government understood that a Department of Cultural Affairs was needed to assist in defining a renewed Quebec identity during the transition period. Many of the traditional elements of Quebecois culture were being dismantled or questioned, like the Catholic religion which up until then was a crucial part of French Canadian identity. New symbols had to be identified to reflect the new Quebecois. The French language became the distinguishing characteristic of the new emancipated Quebecois. Coleman suggests that the French language was elevated to the first position in the definition of what it meant to be Quebecois. Some intellectual circles believed that unless French Canadian culture was strengthened it would be seriously threatened by anglo-americanization.⁵⁰ The tool to strengthen the culture was the French language. Additionally, Quebec also sought closer ties with France in hopes of mitigating the perceived anglo-

⁴⁸ Paquet, 115.

⁴⁹ Ostry, Bernard. The Cultural Connection (Montreal: McGill-Queen's University Press, 1973), 59.

⁵⁰ Coleman, 143.

American influences. The danger of integration was considered acute as the opinion was that the more the francophone community integrates with the North American economy, the more difficulty it will have maintaining its distinct culture. Thus, policies were adopted by the government to expand and reinforce the use of French in all sectors of life in Quebec.

The Office de la langue française embodied the important status accorded to the French language. Over the years it was seminal in helping create and enforce the language laws that legislated French as Quebec's official language of business and leisure. Perhaps the most famous policy to emerge was the Parti Québécois' Bill 101 whose goal was to guarantee French as the province's primary language. In a sense, Bill 109 followed this objective as its intended aim was the protection of the French language from the incursion of English films distributed by the major American companies.

In 1963, Quebec filmmakers grew excited by the plans of the Liberal government to implement a cinema law. The government commissioned a study to examine the situation. Its report titled Cinéma et Culture reflected the priorities of the Association professionnelle des cinéastes which supported the creation of loan funds for filmmakers, box office levies, and exhibition quotas. The report was ultimately shelved and the only change to emerge from the process was a revision of the antiquated rating system. Thus illustrating the ineffectiveness of the Liberal government with regards to legislating concrete cultural policy.

Magder's analysis of the Liberal government's lack of substantive action with regards to culture, after emphasizing its protection and development during the 1960 election campaign, follows Coleman's analysis. Coleman states that appeals to culture served mainly rhetorical

purposes to establish an ideological consensus around the social and economic reforms. Cultural rhetoric, therefore, was used to legitimize the Liberal government's social and economic program. Coleman, as cited in Magder, suggests.

... that stripped of its rhetoric the program for cultural development was principally geared toward the establishment of French as the acceptable language of business in Quebec (. . .) In cultural policy, then, the Quiet Revolution was itself a revolution of symbols. ¹¹

As stated at the beginning of this chapter, the Quiet Revolution is pertinent to the study of Bill 109 because it set in place certain factors that facilitated the emergence of the Bill. One legacy left behind by the Quiet Revolution is the following. It allowed the preservation of the French language to become a legitimate reason for formulating policy. As French became the defining feature of Quebecois culture, measures adopted to protect and preserve it are legitimate. As already noted, one of the stated aims of Bill 109 was the protection of the French language from the onslaught of American (English language) films. Although the cultural policy measures adopted during the Quiet Revolution were unsubstantial. It did introduce a cultural discourse to political life, thus legitimizing state involvement in cultural affairs. Additionally, the Quiet Revolution saw Quebec act as a sovereign nation regarding culture, as exemplified by the establishment of the Department of Cultural Affairs in 1963. The Quebec government, therefore, would not hesitate to introduce legislation that should have come from the federal level. The Quebec government was

¹¹ Magder, 11

accustomed to functioning like the national government of French Canada. In fact, some governments, like Duplessis' Union Nationale, have considered federal participation in Quebec culture to be an imposition of English Canadian culture upon the province. It is understandable that the province should take it upon itself and legislate a law curtailing American dominance of the province's film industry.

The Parti Quebecois

The election of 1981 saw the Parti Quebecois gain office. The party's platform was based on the eventual establishment of an independent Quebec. Befitting this objective, Quebec's cultural development was ranked high on the P.Q.'s agenda. As just noted, cultural objectives have, since the Quiet Revolution, been accorded priority by Quebec governments (regardless of whether the intention is purely rhetorical). René Lévesque's P.Q. government wanted to continue the policy of fostering and protecting the French language -- as it was the defining characteristic of French Canadians.

Crisis in the Film Sector

The Parti Quebecois' electoral victory coincided with a crisis in the indigenous film industry. The film industry as a whole was experiencing the consequences of the demise of the federal tax-shelter program. Which induced a veritable boom in film production in English Canada before bottoming out. The C C A. favoured the production of English language films geared for the international English-speaking market. The orientation at the

⁹² Coleman, 139

time, as expressed by Michael McCabe the head of the C.F.D.C., was that Canadian films had to move away from being culturally specific films geared for the domestic market. As these films were not generating public interest as translated by box office receipts (McCabe's analysis ignores the structural problems of the film industry) and start producing films with international appeal, which entails the use of recognizable stars and necessitates increased production budgets. The resulting product was B-grade "Hollywood" films which rarely addressed Canadian themes. French language productions fared badly under the C.C.A. induced boom, given that there was not incentives to produce films in French since they would have limited international appeal. Magder reports that only three percent of films produced during 1978-1981 were French productions.¹⁰⁰ When the P.Q. entered the scene the situation had reached a point of urgency.

Another problem, apart from the depression within the Quebec production sector, was the domination of the province's screens by the U.S. Majors. Their control was so tight that the Minister of Cultural Affairs had to appeal to Millard Roth, the head of the Canadian Motion Picture Distributors Association (C.M.P.D.A.), to intervene to get Les Misérables (a big budget, star studded film from France) released in Quebec city.¹⁰¹ Delayed release of French versions of American films annoyed the Parti Quebecois which perceived it as an attack and infringement on the French language. These three factors led the government to establish a commission in 1981 to examine the situation. The report titled Le cinéma: une question de survie et d'excellence, was published two years later and formed the basis for Bill 109. It appeared as if the P.Q. government intended to do what no

¹⁰⁰ Magder, 154.
¹⁰¹ Magder, 159.

Canadian government had been able to do. The government wanted to alter the structure of the Quebec film industry favouring domestic companies in order to create a stable, economically viable industry. The federal experience had proven that tax incentives and production funds failed to create such an industry.

Bill 109

In its original form, Bill 109 was a radical departure from previous Canadian film policy. Since it intended to legally demarcate the province of Quebec as a separate territory from the rest of North America¹⁵ The Parti Québécois had the legitimacy to undertake such policy as it complied with its goal of protecting Quebec culture which had been part of its election platform. Bill 109 was tabled in the National Assembly in December 1982 and officially assented to on June 23, 1983. The general aim of the legislation was to foster the development of cinema in Quebec. Bill 109, however, was also designed to protect the Québécois culture as represented by the French language. André Guérin suggested, when head of the newly created Régie du cinéma, that

What is at the root of the 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 is the basic economy of this law. It didn't come about for philosophical reasons. It came about to counter a massive invasion of the American presence, its cultural presence. And without

¹⁵ Although not explicitly stated, the following portion of Bill 109 draws extensively from both Penzance and English:

rejecting that presence there must still be a place for the French fact in Quebec.¹¹

This view was echoed by Lise Bacon two years later during her tenure as the Minister of Cultural Affairs she maintained it was necessary to preserve a francophone cultural space to mitigate the American influence in the area of computers, records, movies and television.¹² Obviously the project to foster and entrench the French language, initiated during the Quiet Revolution, was being continued by a new generation of Quebec politicians. It remained to be seen if their verbal pronouncements would yield concrete results, or would they follow their predecessors and use culture for symbolic and rhetorical purposes to legitimize economic policies.

In its original form, the Bill was powerful and demonstrated the P.Q. government's will to make cultural policy more than an object of symbols. It appeared that the provincial government was committed to restructuring the film industry. According to Magder, the original legislation was a "bombshell with regards to distribution"¹³. At the first reading on December 17, 1982, Bill 109 stated that distribution companies operating in Quebec had to be at least eighty percent Canadian-owned (following the Broadcast Act of 1968), that all distributors and exhibitors would have to contribute a portion of their gross revenues to a provincial production fund, that French subtitled or dubbed versions of English films had to be released within sixty days of the English version and the Bill created a new institutional structure which included the Institut Québécois du cinéma, The Société générale des

¹¹ André Gosselin is quoted in an interview with Michael Borland "Being it Alone Quebec's Cinema Act, André Gosselin and the Règne du cinéma" in Cinema Canada of March, 1980.

¹² "Quebec: Together - Law" in Cinema Canada (January, 1983).

¹³ Magder, 119.

industries culturelles (S.O.G I.C.) and the Régie du Cinéma. Bill 109 dealt with the issue of U.S. ownership and domination of the distribution sector directly as it intended to restructure the industry favouring Canadian-owned companies.

The M.P.E.A.A. was outraged, its President, Jack Valenti, stated that "only Mozambique imposes stiffer controls on foreign films"⁵⁹. The M.P.E.A.A. argued its companies had been operating in the province for over sixty years and had acquired the right to continue. Pendakur suggests the Majors held the opinion that "entry into a sovereign nation was not a privilege with certain responsibilities but a right. It was a convenient argument for transnational capitalists and their cartels".⁶⁰ Canadian independent distributors generally supported the initiative. Whereas Quebec distributors and the Official Opposition (the Liberals) criticized the legislation for not adequately addressing the province's cultural concerns. By not ensuring that decisions affecting Quebec's cultural sector should be made in Quebec rather than New York, Los Angeles or Toronto. This group wanted cultural decisions made in Quebec by Quebec-based companies.⁶¹ Obviously, Quebec-based distributors felt the legislation did not explicitly favour them. The M.P.E.A.A., unhappy with the legislation, recruited the help of the American consulate and commenced exerting pressure on the P.Q. government.

Changes to Bill 109

⁵⁹ As quoted in *Budget*, p. 19.

⁶⁰ Pendakur, p. 100.

⁶¹ For a full description of Bill 109's development, see Michel Labadie's *Analyse de l'entente intervenue le 22 octobre, 1986 entre la Ministre des Affaires Culturelles, du Québec et la Motion Picture Export Association of America*. Prepared for Le Film Canada, 1987.

Changes were made at the Bill's third reading following M.P.E.A.A. pressure and criticism levelled by provincial elements. The Minister of Cultural Affairs, Clément Richard, made the following alterations to the original legislation. responding to the concerns of Quebec distributors, article 104 stated that only companies having their headquarter in Quebec would be permitted to distribute films in the province without restraint. To satisfy the Majors, article 105 stated that companies operating in the province at the time the legislation was introduced would be allowed to distribute films they produced or those for which they owned the world distribution rights. Permits would be issued on a film-by-film basis. The legislation thus set up a licensing system. The key terms "producer" and "holder of world rights" were to be defined by the Régie du cinéma, the newly formed regulatory body.

During the third reading two new articles were added to the Bill. The first, article 109 called for the reinvestment of a portion of gross distribution revenues in Quebec productions. The percentage was not to exceed ten percent. The second, article 115 attempted to break the monopoly held by the two major exhibition circuits on first-run films. The Majors were vehemently opposed to the two new sections of the Bill and threatened to boycott the Quebec market. Bill 109 was unanimously adopted, with the changes, on June 23, 1983, much to the chagrin of the M.P.E.A.A..

Drafting of Regulations

Having established a licensing system, the Régie du cinéma, one of the three organizations created by Bill 109, was charged with drafting the regulations for the necessary sections, especially articles 105 (special distributors license), 109 (reinvestment in Quebec productions) and 115

(exclusivity agreements). Additionally, it had to define the key terms "producer" and "holder of world rights" contained in article 105. The new institutional structure created by the Bill consisted of three organizations: a regulatory body, La Régie du cinéma; an advisory body, L'Institut Québécois du cinéma; and a funding body, La Société générale des industries culturelles.⁵²

It was to be a while before the Bill was implemented. As the Régie, responsible for drawing up the regulations, only held their first meeting in February, 1984. The Régie was also to hold a round of public meetings to determine the meaning of the terms "holder of world rights" and "producer". The Minister of Cultural Affairs established a committee in April, 1984. Headed by Guy Fournier and Millard Roth, to draft a memorandum of understanding between the provincial government and the Majors. The Régie's regulations were published in the *Gazette Officielle* in May, 1985, and public meetings were planned for September. The legislation still was not ready for implementation. Two years had passed since Bill 109 was adopted and it remained unratified. Many working within the film industry were growing impatient.

Ratification Process

To understand the lengthy delay an explanation of the ratification process of regulations is required. The rules were to be drafted by the newly formed Régie du cinéma which got off to a slow start as appropriate offices

⁵² The SOGIC has been replaced by the Société de développement des entreprises culturelles (SODEC). Premier Jacques Parizeau named Pierre Lampron to head the new agency. SODEC took over from the SOGIC on April 1, 1995. Zutter, Philip. "Parizeau names new head of cultural agency" in The Gazette, February 23, 1995.

had to be prepared. The members of the Régie met to determine which articles called for directives. After the sections had been identified, the Régie set to work drafting the regulations. Consultations with interested and concerned parties occurred at this stage. Once the regulations were drafted, they were sent to the Minister of Cultural Affairs for approval. Since the regulations, once adopted, have the power of law, legislative approval is required. The Minister of Cultural Affairs can suggest changes, recommendations or comments to be made to the directives. Once approved by the Minister, the regulations are submitted to the Cabinet for approval and then ratified in principle and published in the *Gazette Officielle*.

For a period of thirty to sixty days after publication, an interested party can demand public hearings on the regulations (public hearings are not automatic and occur only if requested). During public hearings the Régie sits as a commission of inquiry, individuals and groups may appear before it to voice criticism or demand changes. The implementation of the rules results from the above lengthy process.

The Fournier-Roth Memorandum of Understanding

The Fournier-Roth memorandum of understanding was submitted on September 14, 1984, and was judged unacceptable by the Régie and Quebec-based distributors. Article 105 (regarding special distributor licenses) was interpreted as.

To the term "producer" shall refer only to the producer of a film originally produced in English language and should be applied only to a person possessing a substantial or material interest in this film. Is deemed to possess such an interest a person who has invested no less than one million dollars U.S. in either of

the following manners, as payment for production costs *or* in consideration of the rights to theatrical distribution in North America. ' 1

In practical terms, this interpretation favoured the Majors as they usually spent more than a million dollars to distribute a film. The interpretation indicated, however, that the Majors were willing to stop distributing foreign-language films in Quebec - if they did not possess the world rights to the film. The Minister of Cultural Affairs and the Régie both rejected the memorandum. Quebec independent distributors criticized the deal because they felt it did not improve their position and permitted the Majors to continue dominating the market. The memorandum also called for a three year moratorium on articles 109 and 115. ' 1

Interpretation of Key Terms

The Régie's interpretation of the term "producer" was "any person holding at least 50 percent of the financial interest in a film", and that "holder of world rights" meant "any person who held the distribution rights for the film's country of origin, Canada, the United States, and the countries of Western Europe" ' 1. The Régie's interpretation was an improvement but it was not entirely satisfactory. The film's language was not stipulated and their definition of the world did not encompass most of the countries of the world. This development further angered the Majors who renewed their threat of boycott. Thus another round of discussions was launched between the Majors and the Quebec government to resolve their differences. This

⁵³ As stated in the Houle Report, 5

⁵⁴ Houle, 5

⁵⁵ Houle, 5

time Guy Fournier, President of the Institut Québécois du cinéma was selected to represent the provincial government

Public hearings on the final draft of Bill 109 commenced on September 10, 1985. Valenti and the M.P.E.A.A. argued over most of the proposals except the one pertaining to the release of the French dub version of an English film within sixty days. During the hearings the M.P.E.A.A.'s leader made it clear that boycott was a possibility if the Bill passed. The American contingent wanted the matter resolved without legislation. It wanted the P.Q. government to give in to pressure and agree to negotiate with the M.P.E.A.A. as former Canadian governments had repeatedly done in the past. The P.Q. was unlike the majority of Canadian governments and pursued the course towards ratification of the legislation.

During the hearings, Quebec distributors offered their interpretation of the key terms. Magder suggests that "Quebec distributors made the wholly rational suggestion that 'producer' be defined as that person or company that held a film's copyright on the first day of principal photography, and that world meant the world".¹¹ Much to everyone's surprise the recommendations were accepted and the draft was sent to Cabinet for approval. The negotiations with the Majors were continuing and this development infuriated them. The M.P.E.A.A.'s legal counsel demanded new public hearings on the interpretations as they were not simple modifications but completely new interpretations. Due to a cabinet shuffle on October 16, 1985, Gérald Godin replaced Claude Fournier as Minister of Cultural Affairs. Godin continued the project to get Bill 109 ratified and submitted the regulations to the Cabinet for approval. The regulations were

¹¹ Magder, 225

expected to be accepted and the Bill ratified before the December 2, 1985 provincial election.

Increasing its effort, the M.P.E.A.A.'s political manoeuvres began yielding results. As previously mentioned, the American consulate was involved in the M.P.E.A.A.'s lobbying efforts. Valenti also enlisted the help of members of the U.S. Congress. Additionally, it was reported that Valenti met with President Reagan to discuss the matter. Letters were sent to both René Lévesque and the federal government condemning the Bill's protectionist nature. Valenti feared the Bill because he maintained it would unleash a "domino effect", which would put in peril the Majors' entire overseas box office profit as other governments would legislate similar bills. Valenti, therefore, was not trying to preserve the Majors' position solely in Quebec but was fighting to retain its position in all its foreign markets. This somewhat explains why the American lobby fought the Quebec government at every step. The provincial Cabinet backed down from implementing the legislation as the M.P.E.A.A. threatened to boycott the Quebec film market. Given the P.Q.'s delicate political position, it feared the negative publicity the boycott could generate during the election campaign. The Parti Québécois lost the December 2, 1985, election to the Liberal Party.

The Liberal Party

The Quebec Liberal party won office and much to everyone's surprise announced it was planning to forge ahead with the legislation. The new government hired Francis Fox to negotiate with the Majors. The Liberals

¹² The Domino Effect refers to the Liberal Party's strategy of "domino theory". The Liberal Party's strategy required a "domino" to be placed before the Liberal Party. The Liberal Party maintained that if one country was permitted to legislate protectionist legislation, other countries would surely follow.

likely believed they would have an advantage as Fox had dealt with the Americans during his tenure in Ottawa. Fox did conclude an agreement with the Majors on the disputed articles of Bill 109. Lise Bacon, the new Minister of Cultural Affairs, and Jack Valenti signed a deal on October 22, 1986, effective January 1, 1987, for a duration of five years. The deal did little to alter the distribution sector in favour of Quebec-based companies--rather it strengthened the Majors position and legalized their presence within the province.

The Bacon-Valenti Agreement

The Bacon-Valenti deal interpreted the controversial term "producer" as a company or an individual who had invested or would be investing fifty percent of the total cost of the film or \$4.5 million Canadian. Total cost included production costs, distribution costs (includes the cost of acquiring rights for foreign markets), and costs for prints, advertising, publicity and promotion.¹³ Therefore, as Houle discerned in his report, Analyse de l'entente intervenue le 22 octobre 1986 entre la Ministre des Affaires Culturelles du Québec et la Motion Picture Export Association of America, the definition of "producer" really is a distributor. The author maintains that the interpretation would have been more effective had it been stipulated that the fifty percent investment or the \$4.5 million applied strictly to production costs.¹⁴ Most films the Majors handle are invested with significantly higher sums of money than \$4.5 million Canadian. This interpretation allowed the Majors to do business as usual in Quebec. And did little to transfer films

¹³ Pendergast, 265.

¹⁴ Houle, 15.

from the American distribution companies to independent Quebec distributors.

The agreement defined "the world" as consisting of Canada, United States, Europe, Japan, Australia and New Zealand - just like the Fournier-Roth deal - but excluded the country of origin. This change accommodated the Majors as American independent producers usually sold their domestic rights to a national distributor and then sold their foreign rights to one of the Majors. Thus enabling the Majors to qualify for a special license by virtue of being the holder of the world rights. Another section made it possible for the M.P.E.A.A. companies to handle each other's films. Decreasing the chances that a Quebec company would be granted distribution privileges for a film a studio did not want to handle. So far, the agreement was extremely favorable to the Majors and basically guaranteed the status quo.

The Bacon-Valenti agreement was contrary to certain of Bill 109's initial principles and intentions. Article 105 of the Bill recognized the Majors "acquired right" to do business in Quebec as they were eligible for special licenses. This section was clearly intended for those American companies that held a distribution license in Quebec at the time the original legislation was introduced in 1983. Article 105 was intended to apply to the following companies only: Columbia, Twentieth Century Fox, MGM-UA, Paramount, Universal and Warner Brothers. The Bacon-Valenti agreement extended the privilege to all companies member of the M.P.E.A.A. as of January 1, 1987. Therefore, Buena Vista (Disney), DeLaurentis Entertainment Group and Orion who were members of the organization were also eligible for special licences. Additionally, five other distribution companies were being considered by the M.P.E.A.A. for membership before the January 1 deadline.

The companies in question were. Tri-Star¹⁰, New World, Atlantic Releasing, Cannon and Lorimar. According to Valenti, the first three companies had strong chances of joining whereas the last two companies' chances were weak¹¹. The entire principle of "acquired rights" embodied in the original legislation was, therefore, rejected with the Bacon-Valenti agreement. The initial intent of Bill 109, to transfer a significant portion of distribution from the Majors to domestic distributors was also no longer respected in the agreement.

The Bacon-Valenti deal created an ironic situation whereby independent Canadian distributors not based in Quebec were shut out of Quebec's distribution market even though they had distributed films in Quebec for years. Whereas American companies who had just begun distributing films in Quebec, had guaranteed access to the province's distribution market. It is important to note that Quebec, especially Montreal, is one of the most lucrative film markets in Canada. According to Houle, the independent Canadian distributors felt they were being particularly discriminated against. Houle also points out how this arrangement let new distribution companies enter the market which ran counter to the intended aim of the legislation.

Like the Fournier-Roth agreement, the Bacon-Valenti deal distinguished between English language films and non-English language films. The Americans, since the inception of Bill 109, had made it known that they were willing to give up the distribution, in Quebec, of non-English language films. This position was unsatisfactory to the Quebec government.

¹⁰ Tri-Star is owned by Columbia Pictures, Home Box Office (which is a subsidiary of Time Warner) and Columbia Broadcast System. Pendakur, 255.

¹¹ Houle, 11.

as one of the Bill's objectives was to guarantee access to non-English language films⁷² AND American independent films. The Bacon-Valenti agreement opened two avenues for the Majors regarding the distribution of non-English language films in Quebec. The first allowed the Majors to handle non-English language films if they had invested one hundred percent of the cost of production. The second granted the Minister of Cultural Affairs the privilege to grant special permits when the Majors investment in a film is "important enough". The terms "investment" and "important" were not clearly specified. Their interpretations were left up to the discretion of the Minister at the time.

The Bacon-Valenti deal, therefore, freed up few non-English language films from American control. Quebec distributors were also deprived from handling American independent films, which had the potential to be quite lucrative. Thus Bill 109's objective of transferring non-English language films and American independent films from the Majors to Quebec distributors was not satisfied.

Clément Richard, a former Minister of Cultural Affairs under the P.Q., stated that the deal was a "complete surrender to the M.P.E.A.A.". The liberal government gave in to the M.P.E.A.A.'s demands. Thereby undermined the project to foster and develop the French language within the province's film community. The agreement also disregarded many of Bill 109's main principles and objectives, especially that of transferring foreign

⁷² The Quebec government was mainly targeting French and British films, which made up 84% of all foreign films distributed by the Majors in Quebec between 1978 and 1983. Houle, 12.

⁷³ Recent examples of independent American films that did well at the box office include Terminator 2 and The Player.

⁷⁴ Pendakur, 264.

and independent American films from the Majors to independent Quebec distributors Cinema Canada reported:

When the Quebec government signed a film distribution law with the Motion Picture Export Association of America on Oct. 22, 1986, there was widespread criticism that the deal distorted the original intent of Bill 109 as drafted in 1985 by the Parti Quebecois. The legislation failed to cut out the Majors who control 80 percent of the Quebec box office.

Magder suggests "that the deal recognized the unique status of the American Majors in Canada and that it had given that status a legislative or legal base". Many within the film industry wondered if Francis Fox was working for the Quebec government or the M.P.E.A.A.

Houle's report suggested that if the deal had been effective October 1, 1984 the number of films transferred to domestic companies would have been minimal. He suggested that the Majors would have had to transfer 3.7 percent (ten films) of the films they handled in the province to Quebec distributors. This would have represented, Houle proposed, a loss of revenue for the Majors of approximately 0.1 to 0.2 percent. Houle suggested that these numbers were further evidence that the Bacon-Valenti agreement did little to alter the structure of the distribution sector in Quebec in favour of Quebec-based distributors. The author also pointed out how the agreement did not simply maintain the status quo but opened up the Quebec market to the American Majors as the deal applied to companies who belong to the M.P.E.A.A. as of January 1, 1987. The Bacon-Valenti deal should be

"Paramount pull of rights videos in Quebec without explanation" in Cinema Canada (April 11, 1989)

31 Magder, 224

interpreted as a perversion of Bill 109 as it totally undermined the objectives of the legislation. It is further evidence of the power and determination of the Majors to protect their hold in every market.

According to Houle, Quebec-based distributors supported the watered-down Bacon-Valenti agreement even though they had rejected the Fournier-Roth deal which was, in comparison, more advantageous for them. At the time the Fournier-Roth agreement was presented Quebec distributors were confident Bill 109 would still be ratified within the parameters and objectives laid down by the provincial government. The domestic distributors did not want to settle for what they considered a "political" deal which weakened certain articles of the law. The distributors believed they could do better.

The P Q 's decision on the eve of the 1985 election to back down from ratifying the law, the long delay between the negotiations, the changing of Ministers of Cultural Affairs and negotiators, and the federal government's lack of intervention all contributed to strengthening the Majors' position regarding the negotiations. Enabling them to be more assertive during the round of negotiations led by Francis Fox. Houle proposed that Quebec distributors were weary that the legislation would never be implemented and, therefore, wanted an agreement reached with the Majors. In sum, they wanted to cut their losses as much as possible.

Houle pointed out that the desire to reach an accepted agreement at any cost could only lead to minimal gains for Quebec distributors. The author suggested that only unilateral government action could result in significant gains for indigenous distribution companies. The political will to undertake such an action was absent at the time the Bacon-Valenti

agreement was signed. Although the legislation was carried over from the previous P Q government, the aims and objectives and thus the power of Bill 109 were weakened over time, due to an absence of political will.

Houle did argue that the agreement had symbolic and preventative value. Article 105 (regarding special licenses) closed the Quebec market to European and American distribution companies not included in the deal. Houle saw this as a preventive measure as American film distribution companies, at the time of the report, were expanding rapidly and had the potential to develop into mini-majors, not to mention all the corporate takeovers that were occurring. The implementation of article 105 sealed off the Quebec distribution market to any new companies. Of course, Canadian companies that were not Quebec-based were also shut out of the market.

The advent of the Majors' Classics divisions which swallowed up Quebec distributors' supply of non-English language foreign films between 1981-82, were also prevented from re-emerging as Quebec distributors were given the prerogative in the agreement to handle non-English language films - if the Majors did not hold the world rights. Although the Majors were willing to give up the distribution of non-English language films, the agreement ensured they would not be able to change their minds.

Finally, Houle identified the most important advantage of the Bacon-Valenti agreement was the acknowledgement on the part of the M.P.E.A.A. that government action was legitimate regarding the domestic distribution sector.

Houle, 1981, p. 10

The conclusion of the Bacon-Valenti agreement marks the beginning of Bill 109's implementation. The Quebec film industry had to wait four years from the Bill's ratification to its implementation. During which the legislation experienced numerous changes and modifications. The end product greatly differed from the original legislation and diminished its clout. In the end, however, it is the only piece of legislation of its kind in Canada.

THEORETICAL ANALYSIS OF BILL 109

This section of Chapter Two focuses on specific articles of Bill 109 that are important to this study. Tangentially, it is interesting to note that the discourse of Bill 109 is similar to that of federal cultural policy. The Bill contains, as its federal counterparts do, both cultural and commercial discourses. Many have pointed to the coexistence of both discourses as the reason Canadian cultural policy has never lived up to its promise. It is suggested that legislators should select one or the other. Michael McCabe during his tenure as Executive Director of the C F D C chose to follow a commercial path. Profitability was the aim. As we saw in Chapter One this strategy produced B-grade Hollywood films which were culturally vacuous.

Institutional Structure

Institut Québécois du Cinéma

One of Bill 109's innovations was the creation of an institutional structure to guide, plan and administer the Quebec film industry. The Bill created three organizations: l'Institut Québécois du cinéma, la Société générale des industries culturelles and la Régie du cinéma. Articles 15 to

46 pertain to the organization and functions of the Institut Québécois du cinéma. This body was to be composed of twelve board members representing different aspects of the film industry and its main function was advising the Minister of Cultural Affairs on matters of film policy. Article 35 states "to advise the Minister on the devising and implementation of the policy on the cinema industry, and supervise its application". Supervision took the form of overseeing the activities of the Société générale des industries culturelles (S.O.G.I.C.). Article 36 proposes that it: "... (1) determine the objectives of the S O.G I.C. while respecting the functions conferred upon it, (2) determine the assistance plan and approve the programs of the S O G I.C in accordance with this Act". The Institut is also charged with conducting research on issues generally relating to the film industry and with cooperating with the Régie in establishing technical standards

The Institut is composed of twelve members representing different sectors of the film industry. They meet periodically to examine and discuss issues that fall under their mandate.

Société Générale des Industries Culturelles

Articles 47 to 72 govern the structure and responsibilities of The Société générale des industries culturelles. The S O.G.I.C's main duty was to distribute the funds allotted by the government for the provincial film industry. Its activities touched all aspects of the film industry: development, production, distribution, exhibition and the development of technical industries. The S.O.G.I.C.'s priority, however, was development which encompassed the acquisition of rights for books or plays and support during the draft stages of screenwriting. The S.O.G.I.C., therefore, lent financial

assistance in the goal of producing high-quality scripts with cultural relevance

As noted, the Institut Québécois du cinéma oversees many of the S.O.G.I.C.'s activities. Of particular importance is the drafting of the coming year's programs according to the needs and orientation of the industry. This activity distributes the funds amongst the various activities. The plan must be approved by the Minister of Cultural Affairs, who can make changes to it. The S.O.G.I.C. has autonomy in administering its budget and its programs once the plan is approved by the Minister. The organization receives no outside influence in the evaluation of proposals and the subsequent allocation of funds. The organization has full-time personnel that works daily administering the programs and evaluating submitted proposals. According to Nicole M-Boisvert, President and Director General of the S.O.G.I.C. in 1985, the S.O.G.I.C.'s employees develop practical expertise which complements the Institut's more global knowledge. Together the institutions are supposed to offer a well-rounded approach to the film industry.

The potential for conflict between the Institut and the S.O.G.I.C. is present. Claude Fournier, the Institut's first chairperson, says it is up to the members of the two organizations to maintain good relations to avoid possible tension. This tension could arise as the body dispensing funds usually seeks complete autonomy and could resent the Institut's supervision. Fournier suggests that one of Bill 109's aims was to have the funding body supervised by the industry (represented by the Institut) and assist them in the dispersal of money. The legislation wanted to ensure the S.O.G.I.C. was functioning in a manner acceptable to the film industry.

⁷⁸ Sequences (April, 1985), 19-15.

⁷⁹ Sequences (April, 1985), 19-15.

Régie du Cinéma

The third institution the Bill created was the Régie du cinéma. The Régie was born out of the Bureau de surveillance du cinéma which was responsible for the classification and rating of films in Quebec. The new organization's mandate went much further as it was responsible for the classification of films and trailers, the issuance of distribution and exhibition licenses (Articles 76 to 116) and the important task of drafting the regulations for the articles that required them. The first President of the Régie, André Guérin, described the Régie as an administrative tribunal charged with the application of the Cinema Act.¹¹ Its role in this endeavor would be to translate the objectives of the legislation into concrete regulations. Guérin identified the general objectives of the key articles as the following: helping domestic distribution companies (articles 104 and 105, distribution permits), the production of domestic films (article 109, reinvestment in Quebec film productions), and respect for the French language at the movies (article 83, dubbing). Guérin surmises that the Régie's activities touch all aspects of the provincial film industry.¹²

The effectiveness and success of the institutional structure will be examined in chapter 3.

Important Articles

¹¹ Per Lemel, Michel, *Le cinéma québécois* (Paris, 1975).

¹² Supra note 11, at para. 3, 1985, 53-54.

As discussed, the Régie was responsible for drafting the regulations for the articles that required them. The articles that deserve closer examination are 83, 104, 105, 109 and 114. Most have already been mentioned in the first part of this chapter but will now receive closer examination. Articles 104 and 105 pertain to distribution licenses. These are amongst the articles the American companies found so contentious because the articles affected them directly. In the sixty years the Majors had been operating in Canada, no serious opposition had hindered their activities. Of course, the American companies were able to prevent any action which could have jeopardized their position. For the first time legislation intending to curb their distribution activities was passed. Articles 104 and 105 wanted to shift the distribution of some films from American to Quebec companies in order to increase the revenue of domestic companies, and in so doing, strengthen the provincial film industry.

Problem of U.S. Domination of the Distribution and Exhibition Sectors

Bill 109's aim was to tackle the problem of U.S. domination of Quebec's distribution and exhibition sector. The structural problem was similar in the rest of Canada as well. The American Majors had been doing business in Canada for nearly sixty years and had always treated Canada as an extension of its domestic market. No formidable opposition ever presented itself. The Majors handle the distribution of their films themselves, through their Canadian subsidiaries. Canada possesses two major exhibition circuits both of which are affiliated with American capital. Famous Players is entirely owned by Paramount Pictures whereas MCA / Universal

owns a thirty percent voting share of Cineplex Odeon. Thus, Paramount and MCA / Universal operate in Canada as vertically integrated transnationals since they control the production, distribution and exhibition of their titles. This type of arrangement was forbidden in their own market by the 1948 Combines Law which judged the business practices of the studios to be monopolistic and, therefore, uncompetitive. A serious offense in a capitalist country where free enterprise and fair competition are amongst the main pillars of the system. The Canadian government allows, therefore, the American companies to operate in a manner that is prohibited in the U.S.

Paramount and Universal are not the only Hollywood studios who benefit from the exhibition situation, the other studios have strong ties with the circuits and have long standing exclusivity agreements with the exhibition outlets. This arrangement is mutually beneficial to both parties. The Majors are guaranteed screens for their films because they supply the exhibitors with the few highly lucrative blockbusters that pack their theaters. In exchange, the circuits must program the Majors' entire output -- the good, the mediocre and the bad. The major Canadian screens, therefore, are flooded with the Majors' product, as already discussed, leaving little screen time for other films.

Since the American distributors handle their own films in Canada, domestic distributors are deprived of a potentially valuable source of revenue. Canadian rental revenues head south to recapitalize the Hollywood movie machine. Canadian independent distributors had to carve out special areas for themselves in order to survive. Traditionally this area

¹ The Canadian Copyright Act of 1968 had the effect of changing the law so that the copyright in a work is now owned by the author and not the publisher. This change was made effective by the Copyright Act of 1968, which was passed by the Parliament of Canada in 1968. The new law also provided for the creation of a Copyright Board, which was established in 1969. The Copyright Act of 1968 is now the Copyright Act of 1968, R.S.C. (1985), Chapter C-42.

has been foreign and independent American films - arty films. However, in the early eighties even this area was absorbed by the American companies. In the early eighties, many of the studios established "Classics" divisions and started buying the North American rights to foreign and independent American films at international film markets. Generally, the Majors received Canada at no extra cost as they made its inclusion part of the deal. Producers could not refuse this condition as the opportunity to penetrate the lucrative American market was too appealing to turn down. This practice on the part of the Majors coincided with a decline in their in-house productions. The American companies supplemented their catalogues with the new acquisitions.

As previously stated, having a revenue-deprived distribution sector does not bode well for the rest of the Canadian film industry as it serves as the link between the production and exhibition sectors. Distributors funnel a portion of the revenues they earn from the exhibition sector, in the form of rental revenues, to the production sector. The distributor is, therefore, partially responsible for recapitalizing the production sector. This investment activity grants distributors the right to apply their knowledge of the marketplace to the development of films in order to increase their commercial viability. To accomplish this task, distributors must be able to secure screen time for their films. This task is not simple, given the market structure.

The market structure of Canada's film industry relegates domestic distributors to the margins of their distribution sector and prevents them from becoming full and active members in the production of Canadian films. Bill 109 implemented a licensing system for the distribution of films. It was

intended to alter the market structure in favour of Quebec-based companies.

Distribution Licenses: Articles 104 and 105

The aim of articles 104 and 105 is to transfer the distribution of films from the Majors to Quebec-based companies. Article 104 pertains to general distribution licenses. "Only a person, a partnership of natural persons or a corporation that, for the purposes of operating a licence, possesses an enterprise having its principal establishment in Quebec may hold a general distributor's licence". A general distributor's license permits its holder to operate without restraint and is eligible to Quebec-based distributors. Article 105 applies to non-Quebec based companies:

A special distributor's licence may be issued only to a person who, in accordance with regulations of the Régie, is the producer of the film or the holder of the world rights to the film, and who on 17 December 1982 held a licence issued under section 30 of the Licences Act (R.S.Q., chapter L-3).¹⁴

A special distributor's license is valid on a film by film basis only. The key terms of article 105, as noted previously, are "producer" and "holder of world rights" and have been subject of much contention and negotiation. Had the terms been interpreted in a stricter manner¹⁵ than that laid out in the Bacon-Valenti agreement. Quebec-based distributors would probably

¹⁴ Quebec Cinema Act, Bill 109 (27 June 1985)

¹⁵ Bill 109

¹⁶ Had the term 'producer' been defined as the holder of the film's copyright on the first day of shooting and had 'world rights' been interpreted as the world, the articles would have been far more effective than the Bacon-Valenti interpretations

have seen a significant portion of films transferred to them from the American companies. The articles, therefore, could have fulfilled their objectives.

As stated above, the Bacon-Valenti agreement gave the M P E A A companies the upper hand and undermined the intent of the article as "producer" came to mean anyone or company who invested the equivalent of \$4.5 million dollars Canadian at any stage of the film's existence. Since the Majors routinely spend, according to Magder, anywhere between \$3-\$10 million per film on duplication, advertising and promotion for their domestic market alone, the interpretation was powerless in upsetting the status quo. The Bacon-Valenti agreement thus made it possible to interpret the term "producer" to mean a distributor, and in so doing, it preserved the status quo with regards to the Majors. However, Canadian independent distributors not based in Quebec were barred from the province's distribution sector.

Reinvestment in Quebec films: Article 109

One of Bill 109's aims included the development of all aspects of the Quebec film industry. Article 109 addressed the production issue it stated

The holder of a distributor's licence shall, within the time limits and on the conditions determined by regulation of the Régie, invest in the production of Quebec films, within the meaning of the standards provided for in section 39, a percentage of the total gross distribution revenue it realizes annually in Quebec.

27 Magder, 276
28 Bill 109

This article was a serious point of contention with the Majors who felt it was unjust for them to have to contribute to the production of Quebec films. Films which could potentially offer competition to theirs. Of course, the Americans did not believe it was unjust to treat a separate and sovereign nation as an extension of their own country. Nor did they believe it was unjust that revenue earned from the Canadian box office was used to capitalize the Hollywood production machine. But it was unfair to ask that a portion of the profits reaped in Quebec should be returned to the province's production sector. Article 109 was never implemented as Lise Bacon decided in her capacity as the Minister of Cultural Affairs to suspend it until a later date. The article, however, is still on the books.

Exclusivity Agreements: Article 115

It was common practice that the Majors divided their product between the two national exhibition circuits. This practice ensured that the circuits would receive the big budget blockbusters that generated profit yet it also entailed that the circuits had to screen the studios entire line-up -- regardless of its quality. The circuits' screens were booked far in advance. This arrangement affected the independent distributors because they had a difficult time securing screen time for their films. The most lucrative periods were simply unavailable. The arrangement also affected independent exhibitors because they were deprived of the first-run blockbusters and suffered financially as a result. When the independent exhibitor received a blockbuster it was usually as a second-run. And its earning potential was weakened because either everyone had already seen it or the film was released on video. Article 115 addressed this problem:

If a film has already been exhibited to the public in Quebec for not less than seven days, the distributor of the film shall not refuse to lease an available print of the film to the holder of a licence to operate commercial moving picture theaters as defined by regulation of the Régie or outdoor theaters, if the holder offers him conditions that are at least equivalent to those offered by a holder of a licence to operate commercial moving picture theaters, as defined by regulation of the Régie, or outdoor theaters who has already exhibited the film to the public.

Article 115 was never given a chance to rectify the problem as Minister Bacon also suspended its implementation until an unspecified date

Dubbing: Article 83

Article 83 was attempting to address the language issue which was one of the main reasons the Bill was conceived. As noted, Bill 109 was compatible with cultural policy implemented by previous Quebec governments. The policy emphasized French as the defining characteristic of Quebecois identity and aimed at developing and protecting the French language within the province. Article 83's specific intent was to increase the number of films in French screened in Quebec, particularly Montreal. Article 83 reads.

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

²² Bill 109

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 (), 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 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 a one hundred and eighty days after the 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 (..).

André Guérin, in his position as head of the Régie, explained that the article pertains to visas rather than screens. The bureaucrat suggested that the first paragraph speaks of equality and simultaneity of French and English versions of films. The second paragraph of obtaining a visa for the non-French version of a film if a dubbing contract is filled with a Quebec-based

company. And the third paragraph deals with the ways to have a non-French version of a film authorized for screening. As seen above, article 83 specifies that subtitled or dubbed versions of English films must be released sixty days after the release of the English-language version. This sixty day period allowed distributors to determine whether they wanted to dub the film in French or withdraw the non-French version. Guérin maintains the government wanted to give the distributors some latitude to avoid throwing the industry into turmoil. The government wanted the industry to habituate themselves to the legislation and conform to it slowly. However, this latitude led to abuses and it became difficult to force those who were unwilling to comply with the article to do so. Abuses included having a French version available but not screening it or having a subtitled print available with the sole intention of extending the run of the English-language version. These abuses were possible because distributors were not obligated by law to screen the French version.

Since the distributors were not legally bound to screen the French versions, a number of them did not. Therefore, the number of French films screened in the province did not rise and the article's objective of fostering a greater respect for French in a society where French is the language of the majority was not satisfied. This led to the decision by the government to tighten up the legislation with the francophone viewer in mind.

On December 17, 1987, the Quebec National Assembly assented to Bill 59: An Act to amend the Cinema Act and the Act Respecting the Société

⁹⁹ Racine, André. "Le Français a-t-il un droit de regard sur le spectacle de cinéma?" in 24 Images. Québec, 1982, # 57, 33.

¹⁰⁰ Quebec Rights in Law. in Cinema Canada (January 1987)

de développement des industries de la culture et des communications.

Section 19 of Bill 59 pertains to Article 83:

Section 83 of the said Act is replaced by the following section:
'83 The Régie may affix its stamp according to the following rules:

(1) if a version other than the French version is exhibited with a print having French dubbing, the Régie shall stamp at least as many prints with French dubbing as there are prints with in a version other than the French version; except in the cases and on the conditions determined by regulation of the government, a person applying for a stamp shall make an undertaking to the Régie to exhibit the prints dubbed in French simultaneously;

(2) if only one version other than the French version exists and the person applying for a stamp files a contract with the Régie for the French dubbing of the film in Quebec and proof of delivery of the elements of dubbing to the person responsible therefore, the Régie shall affix a provisional stamp to the number of prints, for the term and on the other conditions prescribed by regulation of the government,

(3) if the person applying for a stamp proves that only one version other than the French version exists, a provisional stamp shall be affixed by the Régie to one copy only for the term and on the conditions prescribed by regulation of the government.¹⁴

The amendment to article 83 guaranteed that distributors would provide French dubbed versions of English-language films more quickly. In order to secure a distribution visa from the Régie, the amendment stipulated that all English-language films released in Quebec had to be dubbed in

¹⁴ Quebec Bill 59, An Act to Amend the Cinema Act and the Act Respecting The Société de développement des industries de la culture et des communications (December 17, 1987).

French. The new legislation specified dubbed versions over subtitled ones as the audience overwhelming preferred the former. Guérin explains, having a subtitled version of a film available did not really serve the francophone public because the subtitled film would still be in its original language -- English. By imposing dubbed versions on distributors, the francophone public would be better served.²⁷ The amendment also limited the number of English language prints to one if a French version was not in circulation. The original article did not limit the number of English-language films in circulation. The amendment also called for the filing of a dubbing contract with a Quebec-based company and the simultaneous release of an equal number of copies of French and English versions of a film.

As expected the changes drew criticism. Some distributors opposed the changes to article 83. Harold Greenberg, chairman of Astral Bellevue Pathé, was particularly vocal regarding his criticism and wrote to Premier Robert Bourassa and to the Minister of Cultural Affairs Lise Bacon condemning the changes. In his letter, Greenberg states that "Less films, not more films, will be available to the public in Quebec under this legislation whether they be French or English-speaking" and the legislation could "banish [Montreal and its filmgoers] to the backwaters of the world"²⁸ Astral was handling, it is important to note, the distribution of Twentieth Century Fox's product in Canada. Greenberg was, therefore, aligning himself with American capital. Arguing the Majors' position and protecting Astral's financial interests rather than caring whether or not the francophone public was indeed better served.

²⁷ Radio-Canada, 4 Images, (Spring, 1982), 4-5.

²⁸ Fear of Major Repetition: We should opt for a better film industry (Radio-Canada, 1988).

Another concern that was voiced by those opposed to the legislation was that the American distributors would not delay the national release of their films in New York, Los Angeles or the rest of Canada to wait for dubbing in Quebec. The Majors' national releases were accompanied with important advertising and marketing campaigns which increased a film's profile in the marketplace. It was suggested that distributors in Quebec would not be able to benefit from the promotional campaigns if films were not released in Quebec simultaneously. It is important to note that the films in question here are the ones handled by the Majors. Since the Majors handle their own distribution in Quebec (and the rest of Canada) independent Quebec distribution companies are not the ones affected or concerned by a delayed release date. Therefore, this argument is another example of the Majors trying to protect their financial interests and treating Canada like an extension of their domestic market. Threats and dire predictions have always been a M.P.E.A.A. strategy and this case is no different. Roland Smith, the Vice-President of Famous Players' Quebec branch, echoed Greenberg's concerns: "If the Quebec government is not careful, the Majors will treat us like a colony and we will get first-run English films six to eight months late".¹¹ Of course, Smith is reiterating Paramount's opinion, since Famous Players belongs to Paramount.

More criticism came from Millard Roth the President of the Canadian Motion Picture Distributors Association which represents the Majors in Canada. Roth also employed threats to condemn the amendment. Roth argued the Majors only consider fifty percent of their movies suitable for French language markets. The other fifty percent are rejected because they

¹¹ Cinema Canada (March, 1988)

do not have a strong enough earning potential and are unsuitable for dubbing because the cost is too high for a film with weak revenue potential

⁴⁶ All the criticism leveled at the amendment comes either from Canadians affiliated to American capital or from American parties trying to protect their financial interests.

The amendment did not only generate opposition, it also found allies. The Association of Cinema Owners in Quebec (A.C.O.Q.), representing over two hundred screens in Quebec, was strongly in favour of the changes to article 83. Because the changes will accelerate and guarantee the release of French dubbed versions of English-language films. The Institut Québécois du cinéma commissioned a study which proved that dubbing English-language films would prove profitable for distributors, particularly the Majors who opposed the amendment. The research showed that in 1987 eighty-one percent of tickets sold on the association's theatrical circuit--which includes Cineplex Odeon's ninety-one screens in Quebec--were purchased by francophones, that sixty-two percent of this audience saw French versions of American films and thirty-eight percent in the original English version. The A.C.O.Q. supplied box office results to confirm the statistics that francophone Quebecers prefer seeing French dubbed versions of American films. The Last Emperor made \$150 000 in English and \$244 000 in French and Inner Space made \$400 000 and \$700 000 in the respective languages. These figures coupled with the statistics illustrate, the A.C.O.Q. maintains, that the majority of Quebec filmgoers would rather see a film in their maternal language than in English. ⁴⁷ The organization

⁴⁶ Cinema Canada (11 Feb., 1983)

⁴⁷ "Theater owners support law" in Cinema Canada (7 Apr., 1983)

predicted the American distributors would gain and not lose from the changes to article 83.

This Chapter has discussed how the political ground was prepared for Bill 109 during the Quiet Revolution when cultural policies designed to foster and entrench the French language were put in place, and when the provincial government acted as a sovereign nation with regards to cultural policy. It has also shown how the stated objectives of Bill 109 were eroded as a result of lengthy negotiations with the M.P.E.A.A. and its intense lobbying efforts. Certain seminal sections of the legislation were described and the meagre gains made by independent Quebec distributors were discussed. Ultimately, the Bill resulted in the legalization of the Majors' position in the province and the status quo was preserved.

CHAPTER 3

A PRACTICAL ANALYSIS OF BILL 109

The preceding chapter examined Bill 109 from a textual and political perspective. This Chapter adopts a more empirical approach to analyzing the Bill. The data for this section was gathered through interviews with key individuals working in the provincial film industry.

Individuals were drawn from the following distribution companies, reflecting a cross-section of possible opinion regarding the Bill

- **Alliance Releasing** is Canada's largest distributor which handles American and domestic films. (Victor Loewy and Pierre Brousseau)
- **Max Films** is a medium-sized distribution company specializing in quality films. (Pierre Latour)
- **Distribution La Fête** is a medium-sized distribution company specializing in family films. (Kevin Tierney)
- **Cinéma Libre** is a small distribution company dedicated to distributing independent and experimental films (Claude Forget)

Victor Loewy is President of Alliance Releasing, the distribution division of Alliance Communications Corporation, Canada's largest film and television company. Alliance Releasing has sub-distribution contracts with Fine Line / New Line and with Miramax which, therefore, guarantees them access to American films. Some of the American films Alliance Releasing

distributed this year include The Mask, Dumb and Dumber, Pulp Fiction and Prêt-à-Porter

Pierre Brousseau is Vice-President of marketing and development at Alliance Communications. His main responsibilities at Alliance are overseeing the marketing of films distributed in Quebec and developing Quebec-made films. Prior to his work at Alliance, Brousseau ran his own film marketing company specializing in Quebec films. Twenty years working within the provincial film industry has given Brousseau a profound understanding of the business.

Pierre Latour is President of Max Film's distribution division which distributes the films they produce, which has included Jésus de Montréal and Ding et Dong. Max Film also distributes independently produced Canadian films such as Thirty-Two Short Films on Glenn Gould.

Kevin Tierney is President of Distribution La Fête, the distribution division of Les Productions La Fête, Rock Demers' company which specializes in family films. Before entering the provincial film industry, Mr. Tierney taught Canadian Film in CEGEP and worked in advertising.

Claude Forget is the Director of Cinéma Libre which is a non-profit organization dedicated to independent and experimental film. Most of Cinéma Libre's films are screened at the Cinéma Parallèle, an independent theater specializing in art films. Claude Forget also sits on the Parallel's programming committee.

Given the differences among the interviewees, it was surprising to discover that they shared many opinions on the state of the Quebec distribution sector. If their conclusions were quite similar, however, their reasonings differed.

My methodology consisted of a standard oral questionnaire focusing on Bill 109's impact on their distribution activities. The questions were sufficiently general to permit the interview candidates to put forth their own analysis and interpretation of the Quebec distribution sector and of distribution practices worldwide. I found the interviewees extremely forthcoming, enthusiastic to share their ideas and generous with their time.

The questions proved to be catalysts that led to discussions pertaining to the distribution sector in Quebec but went beyond it to include topics regarding Canadian culture, television's role in cultural education, Hollywood's monetary power and the globalization of the film industry. The discussions help illuminate both Bill 109 and the context in which it operates. Ultimately, this chapter attempts to determine whether or not the Bill has had an impact on film distribution in Quebec and the Quebec distribution sector generally, be it positive or negative.

At the outset, one thing all of those interviewed agreed upon was that Bill 109 did not accomplish what it set out to do, it did not improve the position of domestic distributors within the province.

Institutional Structures

The **S.O.G.I.C.** was criticized for being underfunded and out of touch with the realities of the film industry. A minute budget of approximately ten million dollars allocated for feature films, the fact that its activities include other forms of cultural expression besides film, and an absence of qualified personnel were cited as some reasons for its shortcomings.

In his work at Alliance, Pierre Brousseau stated that he rarely works with the institution. Victor Loewy concurred and characterized Alliance's

relationship with the S.O.G.I.C. as minimal given the small impact the agency has on the industry. Claude Forget also maintained that Cinéma Libre's relationship with the S.O.G.I.C. was limited for the same reasons. All parties cited Telefilm Canada as the agency with which they have the most contact. It appears that Bill 109's aim of ensuring the S.O.G.I.C. functioned in a manner acceptable to the film industry has failed. The S.O.G.I.C. is largely irrelevant.

However, Brousseau believes that the S.O.G.I.C. has a purpose which is to represent small film companies abroad at festivals and markets. He asserts that the organization provides a valuable service in representing companies who cannot afford to attend. Additionally, Brousseau finds that the tax credits that the S.O.G.I.C. confers are useful and benefits the provincial film industry.⁹³

Regarding the **Institut Québécois du cinéma** many questioned whether or not the industry really needed such an organization given that the film industry had "come of age". Brousseau criticized the Institut for supporting the legislation that called for the dubbing of American films and for failing to foresee the problems this would incur. He did acknowledge, however, that the organization could be useful as a vehicle for opposing further detrimental legislation. Loewy stated that as an advisory body the Institut was totally useless and he had very little to do with it.

⁹³The SOGIC handed out \$3.3 million in tax credits last year. See Authier, Philip "Parti earns names head of new cultural agency" in The Gazette (February 23, 1995).

The provincial institutions, in sum, are not highly valued. Telefilm Canada was cited as the agency which affected the distributors' activities the most, and with which the distributors had the most contact

The Quebec Market

A primary objective of the interviews was to determine whether or not the Quebec film market was distinct from the rest of Canada. Given the notion that indigenous films were popular and enjoyed box office success and that foreign films, mostly European, were marketable. Brousseau acknowledged that before the implementation of the amended dubbing regulations, Quebec's film market was indeed different than the rest of Canada: Quebecers supported local films and were more open to original films, making the market "more varied" compared to the rest of Canada. However, he places this firmly in the past tense and credits the onslaught of American dubbed films opening day and date⁹⁴ with their English counterparts as being responsible for the homogenization of the market. The homogenization of the market has homogenized tastes and has, therefore, destroyed the demand for Quebec and foreign features.

Brousseau explained that a core audience for Quebec films once existed but fears that audience is lost forever. He supports his position by citing recent box office figures for Quebecois films. Prior to the saturation of both language markets with American films, the core audience guaranteed these films a quarter of a million dollars at the box office. Recent releases, however, such as Chili avait les blues made \$35 000, Le secret de Jérôme, after winning international prizes and recognition, made \$4 000 and

⁹⁴ Opening a film day and date refers to opening the French dubbed version at the same time as the original English version.

Micheline Lanctôt's latest film made \$5 000 at the box office. Brousseau says this marks the disappearance of the core audience. Broad-based comedies like La Florida and Louis 19, le roi des ondes used to yield \$2.5 to \$3 million at the box office now these films are making one half a million dollars and are barely breaking even. Brousseau states "it is basically not worth producing these films if you are only breaking even on the big films and losing your shirt on the others". He further predicts that Quebec will eventually only produce either the prestige film from a well-known director, like Jean-Claude Lauzon or Denys Arcand, or the occasional broad-based comedy. These will be "event films" according to Brousseau. It should be noted that Brousseau does not solely blame the public for failing to support indigenous films, he lays some blame with filmmakers relying on tired ideas regarding Quebec identity and poor scriptwriting, which he claims "is a constant problem in Quebec".

Victor Loewy agreed with Brousseau regarding the disappearance of the core audience, but his interpretation of the reasons for its demise differ. According to Loewy, local distributors are circulating a theory that holds Bill 109 responsible for their poor box office showing. The theory, explains Loewy, is that Bill 109 is responsible for the flooding of provincial screen--both English and French--with American films by forcing the Majors to dub their films in French and release them day and date which leaves little screen time for local distributors. Loewy suggests that this analysis is wrong. The reason indigenous and foreign films are performing poorly at the box office is due to the fact that Quebec has followed the rest of the world; and the fashion in the rest of the world is American movies. This is why films other than American ones are not popular at the box office, according to the President of Alliance Releasing.

As a result of this shift in taste, Alliance Releasing has changed its strategy from one relying heavily on European films to one distributing more and more American films because, as Loewy explained, "American films work in both Quebec and English-speaking Canada" Alliance Releasing, following this strategy, has sub-distribution deals with Fine Line / New Line and Miramax which supplies them with a steady flow of American movies Alliance's motto has been, if you can't beat them then join them. Before the interview, I assumed Alliance's sub-distribution deals with the two American companies were a result of the limits put in place by Bill 109 Loewy stated, however, that Fine Line / New Line and Miramax have traditionally gone through Canadian distributors and their last concern was Quebec Ultimately, Loewy believes demand is driving the market and what the public wants, and this is a worldwide phenomena, is American movies

Max Film's Pierre Latour's analysis is a little different He agrees that American films are the most popular but he suggests that this popularity cannot simply be attributable to demand. Latour maintains that Hollywood has aggressively built and protects its commanding position of the global film market. Latour's analysis is predicated on the "globalization of culture"

Globalization

Latour suggests that the American Majors, via twenty-five to thirty blockbuster films a year, manage to dominate the world film market and collect fifty to sixty percent of the world box office receipts He emphasizes that Quebec's situation is not unique and should be contextualized rather than analyzed in isolation. Since it is a worldwide phenomena and attributable to the globalization of culture Latour points to France and Italy where once strong national cinemas are floundering under the

overwhelming presence of American movies. And remarks that at least Canadian films manage to maintain approximately five percent of their domestic market. Latour mourns the cultural loss that globalization entails.

Latour agrees with Loewy that American films work better than any others and says that if French or Italian films were screened no one would go see them--the public for foreign films has disappeared. Even big films like La Reine Margot (starring Isabelle Adjani) only work in Montreal and Quebec City, the rest of the province wants films that are more accessible and more middle-of-the-road. Latour explains the large number of American films on Quebec screens is part of the globalization of culture and says that local distributors who blame Bill 109 for their problems, especially article 83 which forced the Majors to release their French versions day and date, are not being honest. Their argument, Latour claims, is not based on fact but on personal financial interest. Additionally these same domestic distributors are inconsistent given that many distribute French versions of American films on videocassette. Latour points out that with the globalization of culture, American penetration is inevitable and, therefore, the problem is a false one. The claims that Bill 109 is responsible are incorrect. Some local distributors, he says, are calling for reforms to the law that are very protectionist and would set Quebec back twenty-five years.

It must also be acknowledged, according to Latour, that the twenty-five to thirty American films that do dominate the global film market are highly worked and refined products. In 1993, both Jurassic Park and Schindler's List were released and were in the top ten box office earners for that year, Latour argues that these films did well for a reason--they provided excellent

entertainment.¹⁰⁰ Hollywood has a gigantic production capacity and an unmatched marketing force to support it that can penetrate the international market. No other film industry possesses this monetary power. This is due, according to Latour, to the fact that American capital is now concentrated in the communication industries.

Latour offers an interesting and helpful analysis pertaining to the movement of capital in the U.S. from the manufacturing sector to the communication sector. In the 1950s and 1960s the important capital in the U.S. was centered around Detroit, in the car industry. American auto companies essentially controlled the world car market, much like the Majors do today in the global film market. Latour suggests that Americans were the first to realize that it was more profitable to sell communication "goods" rather than manufactured goods. Especially since the Japanese proved to be very efficient manufacturers. Thus, capital started to shift to the communication industries and gave rise to the Ted Turners and David Geffens who are now corporate leaders in the U.S. In fact, Latour proposes, the corporate leaders of the 1990s will mostly emerge from the communications sector, whereas twenty or thirty years ago the corporate leaders were centered around Detroit and automobiles.

Latour points out that the Majors are securing their position in the global film market in much the same manner the car companies did years before. He cites as an example, Warner Brothers recent agreement with France Télévision pertaining to coproduction, buying of rights and the

¹⁰⁰ 1991's top ten box office earners were The Lion King - \$199,677,011, Forrest Gump - \$195,096,620, Trueman - \$193,960,992, The Santa Clause - \$154,560,221, The Flintstone - \$130,527,921, Clear and Present Danger - \$121,715,122, Speed - \$121,243,145, The Edge - \$113,644,731, The Doubtfire - \$107,430,221, Haven't - \$101,651,272. Last year's top 10 movies, according to the box office, in The Gazette, February 13, 1992.

possible launch of new cable and or satellite channels. Additionally, France Télévision has priority over Warner's films, television and animation programs. Thus, Warner Brothers has secured an exhibition outlet for its product in France. Gaumont recently concluded a deal with Disney, and UGC with Twentieth Century Fox. These are telling agreements because both Gaumont and UGC are important French distribution companies who also own exhibition theaters. Therefore, when either of the American companies launches a new film in France it will have theaters already secured. With agreements like these the Majors are ensuring their position in foreign markets. The Majors are following the same strategy as the car companies did years before.

New distribution patterns

There are distributors who blame Bill 109 for their films' poor box office performance. Kevin Tierney of Les Distribution La Fête has seen his box office revenue decline in the wake of Bill 109's dubbing requirements. Tierney's situation is particular since his company distributes family films and is, therefore, in direct competition with Disney films. To complicate matters, the Majors have increased their production of family features. Given that Les Productions La Fête produces their films in both English and French, Tierney's distribution practice was to release both versions simultaneously. In order to reach both language markets at the same time. Since Tierney's films are aimed at children aged six to twelve and their parents, the films had to be released at certain times of the year. Namely Christmas and summer when children are out of school, parents have more time and theaters are open all day.

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Prior to the dubbing requirement, Tierney would release the English and French versions simultaneously. Whereas Disney would release its film in English first and if the film proved successful, it would release its French version two or three weeks later. Tierney says that his films had the French market all to themselves for however long it took his competition to release their French version. The little corridor was enough for his films to build word of mouth and build its audience so it could compete with its bigger budget American competition. Tierney credits the corridor for the success of his films. Tierney maintains that the corridor provided him with the advantage he needed to be able to compete with Disney. For when Disney opens a film in Canada it spends six hundred thousand to one million dollars to launch it, excluding the spillover publicity from the U.S.

After Bill 109's dubbing requirements went into effect, Tierney says his films lost "the one advantage they had and their box office performance declined." His films were forced to compete on an unlevel playing field, given that the Majors possess far more capital for production, distribution and promotion. The only thing that is equal, according to Tierney, is that both films have to perform at the box office the weekend they open.

Tierney also points out how the Majors' distribution patterns have changed. Which helps to understand why they open their films with so many prints. The Majors' traditional distribution pattern consisted of launching a film and gradually building its audience week after week until it plateaued, and then its audience would start declining. This practice allowed word of mouth to build up and made it possible to secure screens for smaller films. Hollywood's new strategy is to mount an aggressive marketing campaign and open big with lots of prints. In order to bring as many people into the theaters as possible in the first week. Therefore, after the first week box

office figures decline Tierney suggests that this strategy is especially used with films, such as The Last Action Hero, that have tested badly, have to open big and make as much revenue as possible in the shortest period possible because word of mouth will kill the film.

Add Hollywood's new distribution practices to Bill 109's dubbing requirements and it becomes clear why the Majors open with twenty prints per film and try and book as many theaters as possible.

Creation of a dubbing industry

One subject that was exclusively raised by Tierney was how Bill 109 also had an industrial imperative since it gave birth to an entire dubbing industry. As seen in Chapter Two, prior to the Bill Quebec's film industry was in dire straits. Few films were being made so few jobs were available. Creating a dubbing industry created stable employment for a portion of the film sector. Dubbing was the one area that the government could provide work for actresses, actors and dubbing agencies. Before Bill 109, films were dubbed in France. This was problematic since the films were dubbed according to the European launch circuit which differs from North America's. Therefore, the original English versions were launched according to the American launch circuit and the French dubs were released later because they were on another launch schedule. Since the law, according to Tierney, everything is dubbed in Quebec including the Majors' films. Given that the Majors spend money dubbing their films, they will not be satisfied with releasing just a few prints. The Majors, Tierney notes, do not mind spending money to make money.

Article 105 - licensing system

One of the stated aims of the Bill was to limit the number of films the American Majors distributed in Quebec in order to increase the supply of films available to domestic distributors. Article 105 limited non-Quebec based distributors from handling films others than those they produced or owned the world rights to. As seen in Chapter Two, this article and its key terms, "producer" and "holder of world rights", were interpreted in a manner that benefited the Majors. A "producer" was defined as someone investing the equivalent of \$4.5 million Canadian in a film and this amount included distribution and marketing costs. This interpretation permitted distributors to be defined as producers.

Loewy confirmed that the law's intent to "keep out" [prevent the Majors from distributing] certain films failed because the \$4.5 million included promotion and advertising costs. Given that the Majors spend considerable sums of money marketing their films, the \$4.5 million cap was powerless in keeping films out of Quebec. Loewy said: "the \$4.5 million threshold means nothing today since it includes P & A [promotion and advertising] and no studio has films at that level". The few films that did fall under the \$4.5 million threshold still entered the Quebec market, according to Loewy, via local distributors. Who signed deals with the Majors at low fees and were given the theatrical rights while the Majors retained the right to exploit the films on video and television. Thus, to circumvent the Bill, the American distributors cheated by recruiting the help of local distributors.¹⁰¹ What this illustrates, says Loewy, is that the law has no teeth and it offers local distributors no protection from the Majors. This also gives credence to the

¹⁰¹ Loewy cited the case of *Winnipeg Star v. Manitoba*, [1985] 1 S.C.R. 181, where the Supreme Court accepted to distribute theatrically in Quebec on behalf of one of the Majors for a small fee.

argument that local distributors complaining about the Bill are doing so out of financial self-interest.

Access to screens/ exclusivity agreements

Access to local screens has long been a concern of local distributors. Since the advent of the amended dubbing requirements, local distributors have stated that it is more difficult to secure screen time for their films in both English and French language theaters since dubbed Hollywood films are flooding both language markets. The long standing exclusivity agreements between Famous Players and Cineplex Odeon and the American studios, Claude Forget says limits the availability of screens. Forget also maintains that the concentration in the exhibition sector leads to a lack of competition which results in laziness and dull programming and which ultimately penalizes the consumer.

Distributing independent and experimental film has never been easy according to Forget. However, it was easier to secure screen time for his films before the Bill than it is now. Although Cinéma Libre has unlimited access to the Cinéma Parallèle, the theater cannot accommodate success given that it seats fifty and is programmed up to six months in advance. When one of his films proved successful in the past, Forget would book screens in the smaller cinemas owned by the two exhibition companies--like the Centre-ville--in order to reach a wider audience besides the art circuit public. Now, Forget claims, it is virtually impossible to secure screens in the smaller cinemas given that the larger cinemas, like Le Berri, send their French versions of American films to the smaller cinemas.¹⁰²

¹⁰² The following film were showing at the Centreville for the week of March 3-10, 1995: La Roche et Le Bat (French version), À l'Ombre de Shawshank (TV),

Victor Loewy, on the other hand, reports that Alliance Releasing is getting unparalleled treatment from Cineplex Odeon. For the first time in Canadian film history an independent Canadian distributor is being treated the same way as the Majors by an exhibitor. This means that Alliance is able to secure screen time for its films at periods of the year usually reserved for the Majors. Alliance played films, like The Mask in the summer of 1994 in hundreds of cinemas. Which is quite an accomplishment given that summers are usually reserved for the Majors. Christmas is also another period traditionally allocated to the Majors but Alliance had many films, like Dumb and Dumber, Pulp Fiction, Prêt-à-Porter, and Exotica, showing across Canada in hundreds of copies. Loewy emphasized that "this is completely new for any exhibition chain to accept independent product on such a broad basis".

Although Alliance Releasing works mostly with Cineplex Odeon, it also screens films at Famous Players because, as Loewy explained, Alliance distributes so many films and because they represent two large American film companies they are obliged to screen films at both theater chains. Alliance's position in the Canadian market, it should be emphasized, is unique. No other Canadian distributor enjoys the exhibition privileges that are extended to Alliance Releasing and it is directly related to the fact that Alliance has sub-distribution deals with two important American film companies that produce lucrative and popular films. In a very real way, Alliance is becoming Canada's Major, due in part to its supply of American

Immortal Beloved, Tom and Viv, Hearts Are Treason, Bill / Margie,
(1994), Les Beaux Jours, (1994), Le grand Alibi, (1994), Highlander 2 (1994), Les Beaux Jours, (1994), The Untouchables,
(1994)

films Loewy emphasized that Bill 109 was not responsible for Alliance's success but rather sound business decisions.

Quebec's micro-culture

It is easier to market a local film in Quebec than in the rest of Canada, according to Kevin Tierney, because "the province has all the accoutrements of a viable culture" Namely four daily newspapers, French talk shows, French magazines--all vehicles that permit the promotion of films and their actresses, actors, directors and writers. This structure is absent in the rest of English Canada, Toronto may have three daily newspapers but its does not produce local talk shows or magazines pertaining to Canadian culture Tierney suggests this is the reason English Canada has not produced a truly recognizable star. Additionally, lots of English Canadian talent leaves for Hollywood In Quebec there is a mini-star system that exists and uses the available tools The situation in Quebec, however, is not ideal. The province is small and insular and, therefore, there is only so much work a star or filmmaker can do "Take Remy Girard", Tierney says, "can he be in every picture and then take a television series like Scoop ? He makes Depardieu look retired !"

Quebecois talent soon starts looking elsewhere for work: The director Yves Simoneau decided to leave the province for Hollywood, Denys Arcand did an English film Love and Human Remains and Roy Dupuis is looking for work in English, says Tierney. There are limitations to working in Quebec. But the challenge is even greater in the rest of Canada where there's still a stigma attached to indigenous culture Canada is not very good at celebrating itself, Tierney suggests, "the situation is exacerbated by the fact that we share a border with a culture that is the best in the world at

celebrating itself for being itself. No other country does it better and we all tune in and watch."

International popularity

Canadian television programs have long been very popular abroad. E.N.G., Les filles de Caleb and Bordertown were sold to broadcasters all over the world. The distributors claim film is also finding receptive audiences abroad. Pierre Latour optimistically states that Canadian films, even though they do not have immediate access to indigenous screens, are being exported and are carving a market for themselves.¹⁰³ Tierney, Latour and Forget all point out that even if Canadian films are struggling in their own country, ironically, they are doing well internationally. Thus, Canadians may not appreciate their national cinema but others do.

The current success of Atom Egoyan's Exotica demonstrates this point. To date the Canadian film has generated \$6 million in box office revenue globally. The film grossed \$100 000 in the U.S. in its first seven days.¹⁰⁴

Popularity of foreign films in the US

Tierney points to the irony when American film is doing so well all over the world and simultaneously foreign films have never been more popular in the U.S.; citing Like Water for Chocolate (Mexico), The Adventures of Priscilla, Queen of the Desert (Australia), and Heavenly

¹⁰³ Latour cites the following as recent examples of Canadian films that have been exported: Exotica, Love and Human Remains, Jours de Montreal and Hardly Ever Shot: Films on Glenn Gould. Claude Forget reported that Harriet starring Corinne Cléry, Heavenly, Chomsky and the Media is enjoying a very long run in Paris.

¹⁰⁴ Exotica sales in the foot in The Gazette (March 10, 1997).

Creatures (New Zealand) as recent cases. As a result American distributors, like Miramax, Fine Line / New Line and Sony Classics are buying foreign product. Tierney reported that Miramax announced it was starting to invest in French films. Miramax planned to platform their releases in major urban centers with subtitled prints and dubbed versions in wider release. Tierney thinks this is an interesting turn of events and muses that American distributors might be initiating a reinstatement of foreign films to the popularity they once enjoyed.

Impact of Bill 109

In the final analysis the distributors were asked if Bill 109 had any impact on their operations. Victor Loewy stated that:

The law had zero impact on us. We are dubbing everything into French and releasing at the same time as the English versions. We have always done it for business reasons. It has nothing to do with the law and everything to do with the realities of the box office and our desire to make money.

Kevin Tierney, on the other hand, has seen his companies' box office receipts decline after the Bill forced the Majors to release their films in dubbed French versions and open day and date. This destroyed the one advantage his films had. Tierney no longer has a two to three week period where his French versions have no competition.

Claude Forget proposes that the law has made it more difficult for him to secure screens for his films. Given that his films have a narrower appeal, he requires smaller screens. Those small screens are now booked with

dubbed American films that are moved from the larger theaters to make room for the new releases.

Pierre Brousseau states that Bill 109 contributed to the disintegration of Quebec's diverse film public by homogenizing the supply of films which caused tastes (demand) to change. He grieves at the loss of this market which was very open and supportive of local, foreign, and art films.

Pierre Latour negates the claim that the law made it harder for distributors to secure screens. He attributes the plethora of American films to the globalization of the film industry. In his opinion, American penetration was inevitable.

Therefore, the following has been proffered to explain the dominance of American films on Quebec screens:

- * The public, world wide, prefers American movies to any others.
- * It is part of the globalization of culture.
- * The Majors' new distribution strategies include opening with as many prints in as many theaters as possible.

The objective of this chapter was to determine if Bill 109 had an impact on Quebec's film industry. The results of the interviews have demonstrated that Bill 109 was unable to live up to its goal of correcting the imbalances created by the presence of the American Majors in Quebec's film sector. The Bill did not facilitate the transfer of films from the American distributors to domestic ones. If the legislation had an impact on companies, it was negative. For instance, the Bill made it more difficult for smaller distribution companies like Cinéma Libre and Distribution La Fête to survive. The interviews have, therefore, illustrated that the aim to curb the American

presence in Quebec's distribution sector through regulation failed. As seen in Chapter Two, this failure was also a result of the Bacon-Valenti agreement which interpreted key terms in a manner that favoured the M.P.E.A.A. companies.

One of the primary objectives in undertaking this thesis was to examine Quebec's film market in order to ascertain whether or not it was different than English-Canada's. The interviews showed that Quebec's film market was different than English-Canada's: it supported indigenous films to a greater degree, it appreciated foreign and art films, and it was more open to "difficult" or marginal films. The interviews also demonstrated that this is no longer the case. indigenous films are faring poorly at the box office and foreign and art films no longer draw audiences. Hollywood's films are presently Quebec's box office winners. It appears that Bill 109 has changed little except to encourage the Majors to flood our market with their French dubbed films. At least Article 83's objective of providing French dubs of Hollywood films for the French speaking audience has been fulfilled. Whether this has resulted in better serving the French public in Quebec is questionable. Given that indigenous films are struggling at the box office and films in French aside from Hollywood's and a few high-profile films from France are the only films in French available.

CONCLUSION

The practical data collected during the interviews clearly showed that for the larger distribution companies, like Alliance Releasing, the Bill had no impact. The smaller companies, like Distribution La Fête and Cinéma Libre, were adversely affected by the legislation. The overall evaluation, therefore, was negative. At this point, it is important to examine what went wrong. The first mistake was the Bacon-Valenti agreement. Which legalized the Majors status in Quebec and interpreted key terms in a manner favorable to the Majors. In essence the Bacon-Valenti deal preserved the status quo. Also, Article 83, in its revamped version, backfired. The intent behind the article was to better serve the francophone public by requiring that films be dubbed in French and released at the same time as the English versions. The outcome was a homogenization of the exhibition market. Whereby Hollywood complied with the law and dubbed its films and released them in as many theaters on as many screens possible. It was shown that the number of films has not increased but the number of copies has. Therefore, more copies of the same films are shown and more theaters are screening films in French. Article 83 made it even more difficult for smaller domestic distribution companies to secure screens for their films. The plight of these companies has not been improved by Bill 109.

It is also important to look beyond Quebec for the Bill's failure to restructure the film market in favour of Quebec-based distributors. The federal government's film policy initiatives were powerless in curbing the American presence. The government repeatedly opted to circumvent the Majors rather than confront them. Thus, Canada has gone the way of

subsidies to the film industry via Telefilm Canada and provincial film agencies. The federal government succumbed to M.P.E.A.A. pressure and promises of financial retribution by the U.S. rather than restructure the film industry favouring Canadian-owned companies. American penetration occurred in the early twenties and has remained entrenched. The Canadian federal government made the mistake of not dealing with it and has been making mistakes ever since. The national context was also responsible for the Bill's failure.

Other countries--like France, Italy and Germany--do not have laws like Bill 109 but do find their screens dominated by Hollywood's product. The phenomena is, therefore, global. The Hollywood movie is the second revenue producing export commodity in the U.S., and as such is aggressively marketed around the world. It can be stated, therefore, that not only was Bill 109 improperly conceived. It also exists in a context which makes its existence meaningless.

The blame for the Bill's failure is the provincial government, the federal government and the global film context which is characterized by Hollywood's aggressive pursuit of international markets. Canada's position is, however, unique since Canadians consume American films--and other cultural products--at levels second only Americans themselves. Magder maintains that "Hollywood's reach is global, but outside the U.S. its market grip is nowhere more firm than in Canada."¹⁰⁵

Conducting the interviews was a sobering experience since most of the distributors spoke mostly of profit, access to screens, foreign markets and

¹⁰⁵ Magder, 252

box office figures. There was very little discussion pertaining to film as a vehicle for nation building. Victor Loewy did believe Alliance Releasing does "a good job -- no a great job -- promoting Canadian and Quebecois films" and was proud of the fact that Alliance Communications had produced Exotica, the best Canadian film to date, according to Loewy. However, the film's excellence was not measured in terms of the cultural symbols the film encompassed. But in terms of its global box office success

An absence of cultural discourse does not discount the sense of pride most distributors have in Canadian films. Distribution is not an easy task to undertake in Quebec, or the rest of Canada, given the American presence in both the distribution and exhibition sectors. Distributors are in the business, first, because they love movies and second, because they believe in Canadian films and in their ability to reach an audience. However, reaching an indigenous public is difficult and seems to be getting more so if the declining popularity of Quebec-made films is any indication.

English-Canadian films have traditionally performed poorly at the domestic box office. This performance has contributed to the reputation Canadian films have for being of inferior quality. Chapter Three showed how Canadian films are carving out a market for themselves in foreign markets. It is ironic that foreign audiences appear to appreciate Canadian cinema to a greater extent than its domestic audience. It is ironic, yet, it is characteristic of a country which has difficulty celebrating itself.

Tierney believes that Canada can do what countries like Ireland, New Zealand, Australia and Great Britain are doing. These countries are

producing their own films and their domestic audiences are loving them.¹⁰⁶ He states that Canada has yet to produce its The Piano, The Crying Game or Once Were Warriors. Tierney maintains that with our country's subsidies and resources there is no reason in the world that we could not produce films of the same caliber. The distributor recalls a visit to Sydney in the fall of 1994 where two Australian productions, The Adventures of Priscilla, Queen of the Desert and Muriel's Wedding, were in the top ten box office earners. An envious accomplishment from a Canadian perspective.

Before this country can produce a film with huge domestic appeal, the bad rap Canadian films receive must be tackled. At least popular film reviewers are no longer assuming if a film is Canadian it must be bad.¹⁰⁷ The Canadian movie-going public must be sensitized to the virtues of Canadian film and appreciate it for its own merits rather than comparing it to Hollywood films. Perhaps the first step is increasing its visibility. Tierney proposes creating a hip mainstream television show akin to Entertainment Tonight, devoted to promoting the Canadian entertainment industry. And herein lies the problem, according to Tierney. Canadians do not think of Canadian films as entertainment. Canadian films are culture rather than entertainment and this perception has proved to be a big deterrent for the domestic public. The public perception must change before Canadian films start doing well at the box office. Both Canadian music and literature have subverted their bad reputations as the success of The Tragically Hip, Celine

¹⁰⁶ Tierney also remarked that Once Were Warriors outgrossed Jurassic Park in New Zealand. It is a difficult and challenging piece of film making. "You can measure the kind of appeal it has."

¹⁰⁷ Montreal film critic Bill Brown recently listed the Canadian movie Amilla in his top ten films of 1994. "Last year's top 10 movies, according to critics and box office" in The Gazette (February 11, 1995).

Dion and Margaret Atwood attest. Canadian film still has not come into its own as a form of entertainment

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