ROGUES, VAGABONDS, AND ACTORS: *an essay on the status of the performing artist in British Columbia*

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ABSTRACT

This thesis seeks to develop background knowledge about actors in the Province of British Columbia. The British Columbia *Labour Relations Act* defines actors as employees. The federal *Status of the Artist Act* recognizes them as self-employed. How did this conflict arise, and how does it affect the role of actors in Canadian cultural life?

The status of actors individually and severally under the Vagrancy Acts of England from 1572 is analyzed. The censure of artists by a U.S. Congressional Committee in the twentieth century is reviewed. The international model of cultural self-determination and freedom of individual conscience as promulgated by the *Universal Declaration of Human Rights* and UNESCO *Charter* is outlined. The arms-length model suggested in the 1951 Massey *Report;* and the 1957 *Canada Council Act* is examined.

The erosion of the arms-length principle in Canadian cultural affairs is linked to the politicizing of the arts in Canada: art production coupled with social policy and political initiatives in the 1970's; the cultural industries identified as a source of economic benefits in the 1980's; and regional industrial strategy initiatives presented as cultural policy in the 1990's.

In conclusion, an assessment of current trends in cultural policy affecting actors' status, rights, professional development, and artistic freedom in British Columbia is followed by a draft Status of the Artist Act, policy recommendations in culture, and a proposal for an Actors' Development Company.

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LIST OF ACRONYMS

ACTRA	*Alliance of Canadian Television, Radio and Cinema Artists*
ASM	*Assistant Stage Manager*
BCIRC	*British Columbia Industrial Relations Council*
BCLRB	*British Columbia Labour Relations Board*
BCYJCFU	*British Columbia and Yukon Joint Council of Film Unions*
CARFAC	*Canadian Artists Representation*
CCA	*Canadian Conference of the Arts*
CRTC	*Canadian Radio and Television Commission*
CSU	*Conference of Studio Unions*
DGC	*Directors Guild of Canada, B.C. District Council*
FIA	*International Federation of Actors*
FIAV	*International Federation of Variety Artists*
FIM	*International Federation of Musicians*
FISTAV	*International Federation of Unions of Audio-Visual Workers*
FOC	*Finnish Organization of Canada*
FTA	*Canada/US Free Trade Agreement*
GATT	*General Agreement on Tariffs and Trade*
HUAC	*House Un-American Activities Committee*
IATSE	*International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada*
ICFTU	*International Confederation of Trade Unions*
ILO	*International Labour Organization*
ISETU	*International Secretariat of Entertainment Unions*
LIP	*Local Initiatives Program*
NAFTA	*North American Free Trade Agreement*
NLRB	*National Labour Relations Board (U.S.)*
OFY	*Opportunities for Youth*
SCCC	*Standing Committee on Communications and Culture*
SODRAC	*Society of Reproduction Rights of Authors, Composers and Publishers of Canada*
UBCP	*Union of British Columbia Performers*
UDHR	*Universal Declaration of Human Rights*
WIPO	*World Intellectual Property Organization*

PART ONE: Historical

Give up your dream that they will make
An exception in your case.
What your mothers told you
Binds no one.
--Bertolt Brecht, *c.1928*

1. Vagrants and Professionals.

Why have actors traditionally called their way of life a profession? In British Columbia, acting has been brought under provincial labour law (*Labour Relations Act, Employment Standards Act, Workers Compensation Act*), and designated as 'employment' rather than 'professional engagement', the traditional term used by actors. Yet, British Columbia's actor/employees are still treated like professionals by reputable producers. They still behave like independent entrepreneurs; selling a finished product when they display a performance for producers and director at an audition. These realities are noted in the Canadian *Status of the Artist Act* (1992), which defines acting as a professional activity, and actors as independent contractors, under the *Canadian Artists and Producers Professional Relations Tribunal* (CAPPRT). In practice, however, CAPPRT regulates actors just as the *Canadian Labour Relations Board* (CLRB) regulates Crown Corporation employees (SCCC 17-3-1992, 35:5). Under conflicting statutes,

the status of actors in British Columbia is problematic.

Is the term 'professional actor' simply customary, as in the case of prostitutes and hockey players; merely designating the few who are paid to do what amateurs do for free? The matter of payment to players seems not to have been sufficient to define acting as a profession in medieval England.

> At Hedon, in Yorkshire, in 1391, we find the town chamberlain making payment to Master William Reef and his companions for playing on Epiphany morning in the Chapel of St. Augustine. Probably these companions were a gild. (Chambers, 17).

These were a company of 'actors' paid for their performance, but they were not professionals; they were likely rehearsing part-time and playing for expenses, even as Fringe shows and Equity Co-ops do in Canada today. At Hedon in 1391, three elements that made up the political economy of theatre during much of the Middle Ages were in play: A local official representing the town council...making a payment to a craft guild for a performance...in a venue presided over by an international authority. The international authority of the church over the theatre was tenuous, and began to slip away as local industry developed, as demonstrated dramatically in the 'script' of the English Sword Dance Play (Gassner & Allen, 110-113), where the 'folk' triumph over the Church with local magic, in the scientific guise of a visiting quack.

By the fifteenth century, the rural economy had become

stronger as peasant farmers and lessees used technological innovation to achieve a greater surplus (Langdon, 291). The theatre had become an integral part of a growing cash economy based on the products of the manor and the peasant farmer flowing through the town market, and the goods of the town guilds and merchants flowing out to the countryside. (172-173). Under Tudor suppression, control of the performance venue had slipped from the Church. The "multiplier effect" of cultural activity was recognized by the medieval town merchants and councils, as it is by civic boosters today. F.M Salter points out that the theatre had become no less an expensive undertaking in the early sixteenth century than it is in the late twentieth century.

> ...gild members *were not* the 'simple craftsmen' continually spoken of by modern scholars as the producers of mystery plays. They were *employers*. ...a decent man could support his wife and family for a year and a half on the sum of money which the Smiths paid for building a carriage [for mystery play] in 1561. (Salter, in Gassner & Allen, 158).

The town guilds began to assert more authority over the theatrical venue, and an elaborate theatre began to move through the streets of the market towns on guild-financed wagons. Moreover, the guild members who financed the theatre, did not necessarily perform.

The actors were likely a combination of guild members, a larger number of apprentices, some family members and paid 'ringers'. Since producing theatre was such an expensive

undertaking, the producers would likely have vied for the best performers. Certain members of the community, following the pattern in traditional cultures generally (regardless of guild ties), would have been identified primarily for their skills as performers. However, local renown and rewards did not confer status.

> The legal person is a product of the contract between the person and the state. ...The legal person is only one side of the human individual, who has many other sides. He may be a friend, an unpublished poet, a private religious believer, in none of which connections does he enter into a contract of any sort. ...The legal person...is not the whole person but that side of a person which is turned toward his formal connections with society. In any such formal connection the law is involved. Not all human individuals are granted legal personalities, which are within the province of the law to bestow or withhold. (Feibleman, 154).

Neither the local recognition of actors nor the sanction of the church afforded professional status to actors, for they had no real status as persons.

Then, in her vagrancy *Act* of 1572 -- the first of the vagrancy acts that stretched back to the twelfth century to mention actors -- Elizabeth I declared

> ...all Fencers Bearewardes Comon Players in Enterludes & Minstrels, not belonging to any Baron of this realme or towards any other honorable Personage of greater

> Degree...which...shall wander abroade and have not Lycense of two Justices of the Peace"; [offender] "to bee grevouslye whipped, and burnte through the gristle of the right Eare with a hot Yron of the compasse of an Ynche about. (1572 14 Eliz., ch. 5, in Liesenfeld, 162).

The *Act* is our first record of national legislation recognizing a distinction between actors, who would be driven-off and punished; and professional actors, to be licensed and controlled. The unlicensed or non-professional actor had status, as an individual vagrant. Professional acting companies were attached to persons who afforded the company members their legal 'status'. The status of the "professional" actor was submerged in the status of his patron, while that of the unlicenced player was all his own.

Tudor cultural policy made the aristocracy responsible for the professional players. The Crown or persons of aristocratic status provided for the companies' general upkeep and raised or donated extra funds as needed, even as the Canada Council, voluntary associations, or non-profit Boards do variously for our companies today. Though many of gentry owed their position to the Crown, for greater surety it was the job of the Justices of the Peace to balance the national laws on treason and religion set out by the Crown, against the needs and opinions of the civic powerbrokers. (Gleason, 69ff.). The Justices were drawn from "transplanted courtiers, lawyers, or merchants...dignitaries and clergy." (31). Unlicensed theatre was suppressed, much as the state suppresses unlicensed

television service in Canada today. One can imagine the actors' company and the local inn-keeper arguing with the beadle or the town council, if a market town were still trying to protect its failing monopoly on cultural activity from touring companies of licensed professionals, until the J.P.s arrived to judge the validity of the company's documents. All being in order, the play or preparations could proceed, local officials and their concerns notwithstanding.

Under the Act of 1572, in standing for the company, the "honorable Personage" had to be careful that his company of players should not implicate him in any treason that might emanate from the stage. The use of the stage for any catholic or rebellious propaganda was treason. (Bellamy, 47-82). One popular Tudor method of punishment for treason was apparently modelled on what had been administered to John Oldcastle in 1417, a man we know principally as the inspiration for Shakespeare's Falstaff. Oldcastle had been

> hanged about the middle in chains of iron on a paire of gallowes alive, a great fire made under him and about him and so was burned for his said heresie and treason. (182-227).

Depending on the severity of the charge, persons of quality who allowed their acting companies to be used for propaganda could be drawn and quartered, have their parts parboiled, and their heads stuck on a gibbet; or they might be hanged until half-dead, and then be brought down and disembowelled. There were reasons for the close control of licensed, professional actors;

what they did, and what they said could leave their sponsor "a grave man." The 1572 Act recognized the actor as a legal individual who could be punished for having a proscribed status; or be licensed, sponsored, and rewarded with professional status.

The Crown's recognition of professional acting companies from 1572 not only made cultural activity easier to control, but lessened the competition for the new professional class of actors. It was an economic as well as a political device; it supported the new professional theatre.

> E.K. Chambers, from his painstaking examination of relevant documents, notes that acting was described by the Privy Council as a 'trade' in 1581 and as a 'profession' in 1582. By 1592, the Council would refer to it as a 'qualitie'. (Thomson, 62).

After 1572, national cultural policy under Elizabeth sought to mix subsidy and state control of the players with commercial and public support gained through box office receipts and touring. Their status still depended on their formal attachment to one of the traditional status groups, the aristocracy. In addition to the not un-pleasant duty of command performances, in return for the monopoly that the Crown awarded them through subsidy, the companies were permitted, so that they might support themselves when not engaged directly by their betters, to perform under license for the general public. Until Tudor times, the performance of theatre for the public had largely been governed by the civic authorities and guilds; it had been a community-

based art. Local cultural enterprise co-existed with the international cultural authority of the church; working in concert at times, and often in competition. With the opening of the New World and the sudden possibilities of the accumulation of capital from its plunder, England coalesced into a nation-state. (Morison, 470-478; Innis, 30-52; Wright, L., 12-15). To the extent that in could be, the national culture would be shaped through legislation into an instrument of national will. Public entertainment was alienated from both local custom and the internationalist bias of the church. The development of England as a nation-state meant that the profession of acting, like the profession of arms, would be conducted under license from the Crown.

Political control of the stage must involve three elements: control of the text; control of the performance space; control of the actors. Over the centuries, the examples are many and various of playwrights who eluded the power that the state held over their texts. When their plays could not be performed it was often the case, as with Gay and his *Polly*, that writers made a good deal more money through having the notorious play printed up for sale. By restricting theatrical commerce to licensed professionals closely tied to the new centres of capital growing from the plunder of the New World by English ships (Wright, L.B., 25-32), the *Act* of 1572 helped create a professional theatre under national legislation, at the expense of the Church and regional producers. The push and pull for control of the theatre since the Middle Ages has symbolized and sometimes

amplified the struggle between the centralist and decentralist political forces that are ever at work across the broad spectrum of national and (in Canada) federal governance and political economy.

The Acts passed to license the venues were also political, though they are remembered best for their moralizing. The moral guise usually called into question the type of characters represented on stage, thus resting on the authority of the *Poetics.* (Aristotle, 1456). Puritan censure of the stage echoes the Aristotelian notion of a hierarchy of "imitiation" but without his even-handedness. Even the 1642 "Order for stage-plays to cease" was crafted primarily to regulate public order and public assembly in a dangerous time, and only incidentally to suppress the unseemly production of art. The *Licensing Act* passed by the Commons, 24 June 1737 was argued back and forth on the grounds of various commercial and property rights; those who argued on the basis of artistic freedom were scarcely taken seriously. (Liesenfied, 164-180). *The Theatre Regulations Bill* of 1843 is tied intimately to the Anti-Corn Law agitation, and only slightly to the wish of the state to have more freedom of theatrical expression. A loosening of theatrical commerce (again, any loosening of theatrical expression was incidental) came somewhat with the *Playhouse Act* of 1843. The cultural legislation that brought state-regulated "free trade" to the theatre came at the height of the Anti-Corn Law demonstrations. Drury Lane and Covent Garden both had played paid host to Anti-Corn Law meetings earlier that same year (Armatige-Smith, 80-

81). It is my suspicion that Parliament was visiting the patent holders with a little "free trade" of their own with which to grapple, in response to their playing host to the enemies of the government of the day.

The legislative expression of the continuing direct relationship between the actor and the Crown, later through Parliament was maintained through the Vagrancy Acts. The unfortunate consequence of this policy was that actors not attached to theatres, the unprotected, those actors not licensed by the state, could be

> stripped naked to the waist and whipped until bloody, then sent to place of birth of last residence." (1597/98 39 Eliz., ch. 4, in Liesenfeld, 162).

By the Vagrancy Act of 1603, James I had taken the sole power to regulate and protect "common Players of Enterludes" unto himself. James eliminated the possibility of an unfriendly Baron or an independent-minded Justice of the Peace coming between a troublesome actor and his King, such that

> from henceforthe no Authoritie to be given or made by any Baron of theis Realme or any other honourable Personage of greater Degree, unto any other person or psons, shall be availeable to free and discharge the saide psons, or any of them, from the Paines and Punishments in the saide Statute mentioned... (1603/04 1Jac.I, ch. 7. in Liesenfeld, 162).

Power to regulate the players became a relationship between the player (alone or in company) and the King. The actor's status was no longer submerged in that of his patron. This unequal

intimacy devolved from the Monarch to Parliament as England became a constitutional state. It was through the Vagrancy Acts that the identity of the English-speaking actor as a particular kind of "professional" who is protected, punished, and regulated by the state was formed. Through the Vagrancy Acts, the Crown signified its affection for the un-licenced, freelance actor; its desire...

> for the more effectual punishing such rogues and vagabonds sturdy beggars and vagrants and sending them whither they ought to be sent. (1714 12 Anne 2, ch. 23, in Liesenfeld, 163).

What is historic in the Vagrancy Acts is not the base quality of the Crown's affection, but the granting of status to the individual actor. The actor's status, which may be characterized as the actor's place in the social contract, or the actors' contract with society (see Feibleman, above)--expressed in the *Acts* of 1572, 1597/98, 1603/04, 1714 and 1737--survives in Part I of the *Status of the Artist Act* (1992). The relationship between the individual artist and the Crown has improved somewhat, evolving significantly from "to bee whipped until bloody", to:

> 2. The Government of Canada hereby recognizes
>
> (a.) the importance of the contribution of artists to the cultural, social, economic and political enrichment of Canada.
>
> (b) the importance to Canadian society of conferring on artists a status that reflects their primary role

in developing an enhancing Canada's artistic and cultural life, and in sustaining Canada's quality of life;

(c) the role of the artist, in particular to express the diverse nature of the Canadian way of life and individual and collective aspirations of Canadians;

(d) that artistic creativity is the engine for the growth and prosperity of dynamic cultural industries in Canada; and

(e) the importance to artists that they be compensated for the use of their works, including the public lending right of them. (44-41 Elizabeth II, 23 June, 1992)

Yet, under the provisions of Part II of the *Status of the Artist Act*: *The Canadian Artists and Producers Professional Relations Tribunal* (CAPPRT), the true test of the professional actor is still her recognition as such by the state. How is such recognition gained via CAPPRT? In some ways, as it was under Elizabeth I. To regulate the players, Elizabeth relied on estate status (clergy, aristocracy, justices of the peace) in formulating legislation to enable the professional theatre. The status of the players, formerly residing in the Church, guilds and town councils, was merely transferred to the aristocracy, watched over by the J.P.'s. Legislation under James I essentially recognized that the actor's status had to be separated from that of the aristocratic patron if the Crown were to keep its influence over the stage as the old medieval estates

that had mediated the relationship between the state and the actor were crumbling.

In Canada today, professional recognition is contingent upon the attachment of the actor to some responsible authority. The Crown has inclined toward the national professional association as the authority for artists, and the national service organization for producers. In British Columbia, recognition by the state has been awarded to provincial trade unions, which represent employees. The definitions of the federal vs. the provincial system -- independent contractor vs. employee -- are mutually exclusive; as is the definition of what constitutes a responsible authority representing actors. In neither case, though, does the individual artist have "status". Does that individual non-status align with the artist's "primary role", defined in Part I of the *Act*? Unless she is grieving against her association or union, the individual artist is not given status at either the federal tribunal or the provincial board, both of which bind actors to collective agreements; contracts to which they are a third party.

> Maine made a true judgement when he wrote that "the movement of the progressive societies has been from status to contract. (Feibleman, 153).

In Canada, cultural policy has turned away from the Jacobean idea that the actor's status is, finally, a social contract between each actor and the Crown. We have tried to solve the issue of actors' status using a labour relations

model. As a result, we have submerged the actor's status in the association or union just as Tudor legislation had submerged the actor's status in the artistocrat's "Authoritie". Theatre societies, film producers, unions and the associations may have status as parties to a collective agreement that is certified federally or provincially. The "right of associations representing artists to be recognized in law" is established in the federal Act (3(b). The professional actor's status is still submerged in the status of the patron, provincially and federally, where the judgements of *Tribunal*, *Board*, and *Committee* answerable to Cabinet have succeeded Justices of the Peace subject to the whim of the monarch. Article 4 of the *Status of the Artist Act* provides for a *Canadian Council on the Status of the Artist*, which may, over time, address these issues.

2. The House Un-American Activities Committee.

When inquiring recently into the enforcement of immigration law and the *Employment Standards Act* in film and theatre, the response -- from an offical in the Employment Standards Branch, and from an aide to my member of Parliament -- was that no action was being taken or contemplated. Both parties said that inaction was due to the "sensitive" nature of the film business in British Columbia. They both used the same word -- "sensitive". In 1962, the folk-singing group the Weavers had an

appearance on *The Jack Paar Show* cancelled because they refused to sign a "loyalty oath." John de J. Pemberbeton Jr., Executive Director of the *American Civil Liberties Union* (ACLU) wrote to Newton Minnow, then Chair of the U.S. *Federal Communications Commission*:

> ...Public entertainment is not equivalent to 'sensitive' positions in government or defense work. It is inconceivable that a performer could threaten national security by earning his living in full hearing and view of the public on radio and television... (Gumpert, in Koenig, 250).

The U.S. Congress' *House Un-American Activities Committee* is best remembered for its wholesale sweep through the liberal wing of the film, television and radio writers' and actors community. Little is said about its efforts among stage folk and the damage it did to the American theatre is largely forgotten; so stage actors may be forgiven for thinking that the various HUAC hearings, and the blacklists that they spawned, were only a problem for movie people and is strictly a part of their past. It seems natural and right to most stage actors that they should turn away from the problems of their cinema colleagues. This is true in both the U.S. and Canada. After all, why should a struggling stage actor (is there any other kind?) be overly worried about a t.v. or movie hack who earns in one day what the true thespian makes in about six weeks? Yet, the former U.S. *House Un-American Activities Committee*, like our current federal *Standing Committee on Communications and*

Culture, and our British Columbia *Industrial Relations Council* did not feel that it had to confine itself to investigating the movies; the theatre and allied arts are fair game (see BCIRC #C13/90; BCIRC #C108/90).

In its 1938 hearings, HUAC began its long life by initiating the destruction of the Federal Theatre Project, a New Deal initiative that produced nearly 1,000 plays between 1935 and 1939. The Federal Theatre was headed by Hallie Flanagan, who had been one of the principals of the Provincetown Players, and a friend and associate of Eugene O'Neill and of their mutual friends, John Reed, Louise Bryant, Max Eastman and Emma Goldman. While Flanagan shepherded the amateur Provincetown Players toward professional status (just as she had the career of Emma Goldman, as much an actress as she was revolutionary), the first genuine professional actor they engaged was Charles Gilpin, who thus became the first African American to play a lead on Broadway, in O'Neill's *The Emperor Jones*. Gilpin was replaced in that role by Paul Robeson, who went on to play the lead in *All God's Chillun Got Wings*, for which temerity both he and O'Neill received death threats. Franklin Roosevelt himself had asked Hallie Flanagan to head the Federal Theatre Project, and she brought on board such luminaries as Elmer Rice, Orson Welles, and John Houseman to participate in a number of landmark productions. In his valuable documentary record of the period, actor Robert Vaughn points out that Hallie Flanagan's company

> still remains unique in the twentieth century [as] the nation's first and only nationally subsidized Federal

Theatre (Vaughn, 39).

Theatres that could justifiably be called "communistic" were such amateur companies as the *League of Workers Theatres* and the *Labour Stage* in New York, and the *Progressive Arts Clubs* in Canada. The *Progressive Arts Club of Vancouver*, consisting mainly of kids drawn from the *Ukrainian Youth Club*, beat the "elite" *Vancouver Little Theatre* in zone competition and went on to win at the 1935 *Dominion Drama Festival* for the best play in English. The Festival that year was adjudicated by the eminent Shakespearian, Harley Granville Barker, who cared little for Canadian politics -- theatrical or otherwise -- but loved good theatre (Bray, 106-122). The Royal Canadian Mounted Police saw such activity somewhat differently, advising in a security memo on the *New Theatre Group* of Montreal that

> Under the cloak of respectability [they manage] to attract persons who ordinarily would never think of associating themselves with the open Communist movement. The membership is constantly growing. (Kealey & Whitaker, 8).

At worst the Party used the theatre as bait and propaganda, and the theatre used the Party as financiers and publicists. At best, in an era before community centres, a *Workers' Sports Association*, a *Progressive Arts Club*, or the Party itself, provided a forum for the emerging political and cultural consciousness of the largely immigrant membership. It is notable that in 1936, when the B.C. government formed PRO REC (a "New Deal" type of travelling community centre that gave sports exhibitions and taught athletics and physical culture), the

Workers' Sports Association locals donated their equipment to the new government initiative. An increasing socialism of physical culture, education and medical care were all happy compromises for the radical immigrant class. As soon as the state showed that it was willing to take up social and cultural initiatives, the immigrant radical class lost its fervor. (Soderholm, 27). As community centres were built after the war, touring organizations like PRO REC were replaced by local voluntary organizations and bureaucracies in sports, health and cultural activties. The Communist Party sponsorship of theatre and physical culture in the 1930's was short-lived; swept away by World War II.

By the time the *House Un-American Activities Committee* (HUAC) got around to those radical actors of the '30's who had been lucky enough to move their naive idealism to Hollywood, the American class struggle had given way to Pax Americana. In 1951, actor and former *Group Theatre* member John Garfield (*Golden Boy, Body and Soul*) was alleged by HUAC to have signed a 1949 petition that accused the Committee of the "use of headline scare tactics to intimidate and to induce an atmosphere of fear and repression which is repugnant to our most precious American activities..." (Vaughn 141) and called for the abolition of HUAC. Robert Vaughn has documented how the Commmitte grilled actor Garfield.

> [Rep. Jackson:] "And you contend that during the 7 1/2 years or more that you were in Hollywood and in close contact with a situation in which a number of Communist

> cells were operating on a week-to-week basis, with electricians, actors, and every class represented, that during the entire period of time you were in Hollywood you did not know of your own personal knowledge a member of the Communist Party?" Garfield said that was "absolutely correct." Garfield concluded his testimony by saying, "I am a Democrat by politics, a liberal by inclination, and a loyal citizen of this country by every act of my life." (Vaughn 141-142).

Roy M. Brewer, the Hollywood representative of the International Alliance of Theatrical Stage Employees (IATSE), had been a 'friendly witness' before HUAC in 1947. He returned to testify against Garfield.

> It was Brewer's impression the John Garfield had been aligned with Communist-front groups, and contrary to the actor's testimony, Brewer felt it was impossible for a man to be in the position the actor was and not be aware that there was a Communist movement in Hollywood (Vaughn 146).

Brewer had taken the helm of IATSE in Hollywood after his predecessors, the notorious team of Browne and Bioff, had gone to jail for accepting pay-offs from the studios in exchange for a guarantee of labour peace. When he was indicted in 1941, Bioff had asserted that the real problem was the communists, claiming

> "The unions on the West Coast are infested with communism. We expelled eighteen members during the last four years on charges that they were members of the Communist Party. We eliminate them as fast as we can." (in Moldea, 36).

One of those expelled members, instrumental in the fall of Browne and Bioff, was Jeff Kibre, a second-generation Hollywood set painter. Kibre had organized the *Conference of Studio Unions* (*Screen Cartoonists Guild, Screen Office Employees Guild, Film Technicians Local 683, Machinists Local 1185, Motion Picture Painters Local 644*) before his absolute inability to find work caused him to leave Hollywood.

Kibre "eventually became an organizer for the United Auto Workers and later helped organize the fishermen's union." (Moldea 67) In 1945, his successor as CSU leader, Herb Sorrell, led a strike as the result of a jurisdictional dispute with IATSE. The strike was broken in a bloody confrontation in October, 1945. *In Dark Victory: Ronald Reagan, MCA and the Mob*, Dan Moldea cites the autobiography *Where's The Rest of Me?*, in which Ronald Reagan quotes Roy Brewer as saying,

> "Well, there was some Teamsters thing that was questionable, but they were on our side, as far as I was concerned, I was with fellows who were trade unionists. They were our allies." (Reagan, 121 in Moldea)

In co-operation with the studios and with help from their allies, IATSE crossed the line and broke the CSU strike. In 1946, the *National Labour Relations Board* (NLRB) awarded jurisdiction to bargain for Hollywood decorators to the CSU over IATSE. Brewer charged that the NLRB "was completely under the control of the communists" and his union and the studios ignored the ruling. Reagan lets Brewer explain his position in his own words:

> "The relationship with the employers has always been a close one," Brewer said, "...the point is that we lived in an industry, and we had the industry and its welfare in common. Our leaders have always understood that if they didn't make money, we wouldn't get it. So you had to help them make money to get it." (91)

The CSU went on strike again. The Screen Actors Guild got involved and an armistice of sorts was negotiated, called "The Treaty of Beverly Hills." In Ronald Reagan's considered opinion,

> What the communists wanted to do in terms of the CSU strike was to shut down the industry... (199)

Peace did not last long; the CSU struck again in late 1946. The studios turned the strike into a lock-out, at which point the Screen Actors Guild, led by George Montgomery, George Murphy and Ronald Reagan (all 'friendly witnesses' at the HUAC hearings) crossed the picket lines. There were a few communists in the movie industry, and a few gangsters as well, but the war that played itself out in code at the HUAC hearings was fought over the single issue of who, finally, would control the tenor of U.S. cultural product...the fickle artists who made it, or the skittish capital that financed it?

Until the post-WWII era, labour union philosophy in North America had been split between two camps: the industrial, and the craft unions. The industrial camp based their economic analysis on the primacy of labour and thus saw class struggle as inevitable; until the end of the Depression, the greatest danger

to capital came from the industrial unions. The craft unions were more inclined to accept the natural role of capital as the engine of the economy, and recognize an ascending hierarchy of labour divided along craft lines, highlighting the differences between skilled and unskilled, blue-collar, white-collar, etc. The studio moguls had to contend with a plethora of unions, divided along craft lines and riddled with jurisdictional disputes, any of which could interfere with getting the product out at any stage, from conception to distribution. The task of studio labour relations was to maintain the hierarchical divisions among labour to ward off class struggle while maintaining industrial discipline by assuring that no one craft group could act on its own to stop production and endanger investments. Even Walt Disney was not immune.

> ...the shorter Disneys often preserve the tenderness of his early work, even if the surface is violent; but the induction of fear or horror has become a deliberate purpose of his major pieces. ...The shorts...did not pay well, distribution of shorts being controlled by major studios; Disney elaborated his techniques, built a huge studio, and drew in the kind of investment that finances the major companies. He was compelled to go into quantity production... (Seldes, 283-284).

The studios didn't make 'sweet-heart' deals with the craft unions directly. They made them with outside forces such as Browne and Bioff, paying them for taking, and exercising control over the unions.

The studios seemed to prefer racketeers to commies because they felt they could work with them. The Party on the other hand, was an insidious, subersive menace. Walt Disney, in his 1947 testimony before the *House Committee on Un-American Activities*

> ...said that there had been a strike at his studio, a strike that in Disney's opinion was instigated by the Communist Party. Disney identified Herbert K. Sorrell as the leader of the group initiating the alleged party takeover. MR.DISNEY: '...The thing that I resent most is that they are able to get into these unions, take them over, and represent to the world that a group of people that are in my plant [cartoonists], that I know are good, 100 per cent Americans, are trapped by this group... (Vaughn, 84).

Controlling the artists' unions was a somewhat subtle business, but the "Red scare" allowed the industry to use the power of Congress to achieve the same level of fear in the artists' unions that the racketeers had once engendered among the craft unions.

> Even if we accept that ultimately the Popular Front was a massive fraud perpetrated by the Cominintern on 'boudoir bolsheviks' who would be made to 'walk the plank in good time,' it set in motion an interactive process that was not remotely controllable on a daily basis. (Manley, 24).

By the 1950's, even the 'boudoir bolsheviks' were so few, and had so little influence, that not enough evidence of "subversion" was ever accumulated to justify anything but

government inaction following the HUAC witch-hunts. For all the blighted lives and ruined careers, as Robert Vaughn observes:

> Through thousands of investigations over a twenty-year period, in and out of the entertainment world, no law or laws remotely essential to the security of the nation ever resulted from the committee's work. (Vaughn, 237).

There were Communists and communist sympathizers in the film industry. One genuinely committed 'boudoir bolshevik', John Howard Lawson -- a screenwriter (including *Action in the North Atlantic*, starring Vincent Massey's brother, Raymond), playwright, and long-time sponsor and propagandist for left-wing causes -- was a member of the "Hollywood Ten" cited for contempt of Congress at the 1947 HUAC hearings. Lawson was also a critic, and theorist. In his introduction to 1960 reprint of the the 1949 revised edition of his book *Theory and Technique of Playwriting*, (1936) Lawson states,

> There are those who regard the culture of the thirties as dead and best forgotten. The question need not be debated here -- except insofar as this book offers testimony to the contrary. My beliefs have not changed, nor has my fervor abated. I can hope that my understanding has ripened. But I see no need to modify or revise the theory of dramatic art on which this work is based. (Lawson, vii).

Lawson's "theory," unchanged since at least the 1930's, yields such gems as, "Socialist realism is a method of historical analysis and selection, designed to gain the greatest dramatic compression and extension." (Lawson, 208) In 1960, Lawson saw

no need to revise this judgement. By 1963, even the President of the Soviet writers' union had been de-Stalinized:

> when [Khruschev] said in his memorable concluding address at the Twenty-second Congress: "It is our duty to go carefully into all aspects of all matters connected with the abuse of power. In time we must die, for we are all mortal, but as long as we go on working we can and must clarify many things and tell the truth to the Party and the people...This must be done to prevent such things from happening in the future." (Tvardovsky, fwd. to Solzhenitzyn, *One Day in the Life of Ivan Denisovich,* New York, 1963).

Lawson uses up most of his 1960 introduction in denigrating the work of other playwrights. In Arthur Miller's plays, "False concepts of mans' relation to reality inhibit theatrical inventiveness and paralyze the creative imagination." Tennessee William's work is "visceral and mindless." Samuel Beckett's art shows "indeterminacy which denies all dramatic meaning." Lawson reserves what little praise he can muster for other playwrights to the politically Marxist O'Casey and the morally ambiguous Brecht, who, he claims, "defines the kind of heroism which is new and yet as old as life..." As for the aesthetic legacy of Socialist Realism, the art of the Butcher of the Ukraine, it has amounted very nearly to nothing.

The U.S., by virtue of having an entertainment industry, had provided for the regulation of their actors under the National Labour Relations Board, a quasi-judicial body, since

1935. Actors seeking protection from political interference in their work could find it under the First Amendment (freedom of speech) and Fifth Amendment (freedom from self-incrimination) of the U.S. constitution. In the U.S., the size and strategic importance of the theatre and film industries destined actors to be professional employees rather than independent contractors, regulated by national labour law and subject to employer discipline. In Canada, government and the arts were to be kept at arms-length, which dictated that actors should be self-employed professionals. The *House Un-American Activities Committee* of the U.S. Congress presented a sobering alternative to the Massey Commission's arms-length *Council For The Arts, Letters, Humanities and Social Sciences.* The Canadian plan was a mere shift from abject neglect to benign neglect. Canadian actors conducted their affairs under common law and contract law, as independent contractors who formed voluntary associations to administer their professional ethics and bargain for them with a national, voluntary, producers organization.

A generation later, and three Acts of the Legislature and a dozen and a half Industrial Relations Council and Labour Relations Board decisions control the same actors by submerging their status in collectives governed by quasi-judicial appointed bodies that are not without their own priorities. Simply put, actors have lost the most in the bidding to attract foreign investment to B.C. A film can qualify as Canadian by engaging a total of two Canadian actors out of a cast of, say, twenty.

There is a need...because of the fundamental importance of

> foreign production in British Columbia, to ensure that every reasonable and defensible effort is made to attract as much foreign production as possible. In this areas the role of the B.C. Film Commission has been crucial, and more recently, as independent producers in the United States have begun to experience difficulty in arranging interim financing for their productions, the Export Loan Guarantee Program...(open equally to both foreign and Canadian production, though the latter would rarely qualify)...operated by the B.C. Trade Development Corporation, has begun to play a significant role in making B.C. a more attractive location. (Audley, March 1993, 72).

The Export Loan Guarantee Program, vaunted in 1993, had lost over $6 million dollars in unsecured loans by 1995. Government mistakes may be sensitive. Direct foreign investment in Hollywood North is sensitive, certainly; sensitive about immigration restrictions, employment standards, fringe benefits, taxes and residuals. In order to attract business to the province, concessions can get made, standards may not be applied, and heads may be turned.

3. Vincent Massey and the Canadian Mosaic.

Vincent Massey, then Canadian High Commissioner to the United Kingdom, noted in his diary of 19 July 1943, an after-dinner speech given by actor Adolphe Menjou in London:

> The words came in a torrent, a mixture of personal vanity, Anglo-American senitmentality and American Imperialism. (Bissell n., 335).

Adolphe Menjou, who might accurately be described as having been a "super" friendly HUAC witness, testified a few days before Walt Disney in 1947. He also identified CSU leader Herb Sorrell as a communist. Menjou was asked, "Do you have your very definite suspicions about some members of the Screen Actors Guild?" The actor replied, "I know a great many people who act an awful lot like Communists." Menjou also gave his opinion on post-war disarmament: "I belive America should arm to the teeth. I believe in universal military training." (Vaughn 81-82). Menjou's sentiments recall another Massey diary entry from 1943, noting a conversation about post-war prospects from America with historian John Wheeler-Bennett as

> a most depressing account of the American scene - anglophobia, isolationism, no passionate interest in the European war, growing reaction in domestic politics etc. etc. He said quite definitely that it was the desire of official Washington, including Americans of varied types of mind, to detach Canada from the British Commonwealth in order to make her more amenable to American influence. (Bissell n., 335).

The initial phase of an independent Canadian cultural policy had been forged in the 1920's and '30's by regulatory legislation designed to grapple with the commerce of publishing, film, and radio. The Massey *Report* of 1951 and the *Canada Council Act* of 1957 were something different.

In the English-speaking theatre, a global outlook had been lost with Elizabeth's persecution of the catholic church and local custom. Elizabeth I used the theatre as a nation-building tool at the expense of the theatre of the church and the local councils, those twin bulwarks of medieval cultural life. Persecution by the state of catholicism, and the drive to alienate power from local authorities, essentially destroyed the community-based mystery cycles in the sixteenth century. The peculiar combination of internationalism and community activism so evident in the records of the medieval stage (what we today call "thinking globally and acting locally") was, in a very real sense, the spirit that the Massey Commission was trying re-ignite in post-War Canada, four hundred years later.

The dream of an Arts Council that could provide patronage to artists without political control had captured Lord Keynes in Britain. That same dream incubated in Canada during discussions among F.R. Scott, David Lewis, Vincent Massey and others. (Horn, 15; Djwa, 149-152, 259-270). There was a determination to fill the constitutional vacuum left in the Canadian cultural identity by the *British North America Act* and the *Statute of Westminster*. Acceptance of the Republic of India broke open the husk of the British Empire in 1949, and ideals of national identity and self-determination rose from within the Commowealth to drive the United Nations agenda. For a brief period, Nehru eloquently argued from Ghandian principles of self-reliance and pluralism. (Skidelsky, 309-312). Massey's 1948 book *On Being A Canadian*, is the Nehru-like musing of a nationalist philosopher king. The

United Nations vision, expressed in the *Universal Declaration of Human Rights* and the *Charter* for UNESCO gave Massey's ideals a global forum alongside a host of other, more radical visions of national self-determination.

As the '40's turned into the '50's, Canadian culture was beginning to flourish a bit. Yet, even among the elite (as they have come to be called), Canada had made its small stab at red-hunting. Charles Norman was hounded to death. Ted Allen was fired as a CBC employee, then quietly put on contract to keep him around. Nonetheless, Andrew Allan, "conservative by nature and radical by persuasion," was in the habit of awarding CBC contracts to blacklisted U.S. writers such as Dalton Trumbo (one of the "Hollywood Ten"), and the Canadian writer Rueben Ship, who had been expelled from the U.S. for failing to co-operate with HUAC. Ship's *The Investigator* became one of the two most celebrated radio plays of all time (the other being *The War of the Worlds*). *The Investigator* was a masterful take-down of Senator Joe McCarthy, as portrayed by John Drainie, the Canadian who Orson Welles described as, "the best radio actor in the world." Brownyn Drainie relates that

> *The Investigator* was that season's [1954] cause celebre among the American intelligensia. Within two months it had sold [on disc] over 45,000 copies. ...The American Legion across the country tried to pre-empt the play of the record on local radio stations, claiming that proceeds from its sale were going directly to the Communist Party.
>
> ...Laurence Gilliam of the BBC, writing in the Radio Times,

called the play, 'one of the most brilliant pieces of production I have ever heard on radio' and [John Drainie's] peformance 'a masterpiece.' (Drainie, 235-236).

In Canada, what had been aspirations were broken down into policy in the post-war cultural development initiatives that evolved from the Massey Report. Our policies became an inspiration and sometimes a caution to other English-speaking nations like Australia, the United States, and to some African and Caribbean nations emerging from colonialism. The rest of the world has never mistaken Canada's material advancement for cultural maturity. What was important, especially to the developing nations, was that the Canada Council stood as a decent, progressive, democratic institution in a country where it seemed that promises about cultural aspirations were almost always kept. The Canada Council actually did what it said it was going to do. That meant a lot, in a world where the alternatives were a *House Un-American Activities Committee* crushing artists under one boot in the name of Liberty, or a *Russian Federation of the Writers' Unions of the USSR* crushing them under the other in the name of Patriotism.

It has been claimed by some writers in recent years that the post-war yearning for a Canadian culture was strong only among the "elite." Is this true? In a recent essay, *Made in America: The problem of Mass Culture in Canada*, Paul Rutherford maintains that

...the strategy of resistance urged by Canada's nationalists, is at bottom, another example of the highbrow

> disdain for popular culture ... the state worked to nourish a cultural elite of authors, artists, performers, producers, and the like... The greatest defenders of home-grown entertainment have always been the cultural elite... (Rutherford, in Flaherty & Manning, 274,275).

Now, Finns, Ukrainians, Japanese, and other groups excluded from the "elite," maintained vital -- sometimes politically radical -- cultural traditions that co-existed alongside their efforts to contribute to an independent and pluralist Canadian way of life. The entire membership of the *Finnish Organization of Canada* (FOC) at one time belonged to the Communist Party of Canada. Even today the FOC is listed as a Communist organization by the F.B.I., and some FOC members are still officially barred from entering the United States. The FOC staged 4,000 plays between 1913 and 1993. Their productions that were often overtly political, but not always, with titles ranging from *Expelled from America* to *Hamlet*. These were not staged in an ethnic ghetto by an underclass that was really yearning for *Boston Blackie* or *Howdy Doody*. While the vast majority of plays were staged in Finnish, Article I of the Finnish Organization constitution (1914) states that a fundamental aim of the organization is the teaching of the English language, because assimilation into Canadian society was the goal of most immigrants, regardless of their political persuasion.

Paul Litt, in his 1992 book *The Muses, The Masses and The Massey Commission* says of the Canada Council that,

> Care was taken to ensure that the government itself would

> not be able to use the council to control cultural development. Again, the cynic might think this gave the cultural elite the best of both worlds: government money without accountability. ...Suspended somewhere between government and the people and belonging wholly to neither, the arts council proposal was the bureaucratic emobodiment of the cultural elite and its liberal humanist nationalism. (Litt, 185)

The Finns appreciation of 'high' culture was perhaps more fervent than that of the "elite" that Litt and Rutherford cite so often. After their domination by the Swedish Empire for some seven hundred years, during which Finns were forbidden schooling in their own language and all state correspondence was by law enacted in Swedish, the Finns established their first educational institution in Finnish in 1858. Massey and his colleagues were yearning for a "National Theatre" in 1951 (Report, 1951, 198-199), and that goal has not yet, and may never become a reality in Canada. The Finns, on the other hand, established their National Theatre in 1872, and it has continued producing for one hundred and twenty-five years. (Olli, in Clark & Freedley, 482-485). The theatrical tradition was carried on by immigrants in North America. Matti Kirrika, one of the founders of *Sointula*, the Finnish utopian community on Malcolm Island off the coast of British Columbia, was a playwright (*The Last Struggle, Annie and Michael*). Reading the neo-conservative critics of the "elite" one might get the impression that the Finns who came to Canada were unaware of Sibelius, Kirrika, Alexis Kivi, Minna Canth. It is not so. If

a Canadian orchestra had possessed the musical wherewithal to perform the Sibelius' *Fifth Symphony*, then Finnish immigrants, and their children born in the logging camps and mining towns of Canada, would have learned of it through the network of Finn Halls and travelled many miles to attend. (Lahti, 67-73). Canada, however, did not have a level of cultural development such that it could provide those immigrants with a 'high culture' which our classless democracy had theoretically freed them to enjoy. Massey aimed to make the theory a reality after the war.

The Massey *Report* was Euro-centric, individualistic, and excellence-centered. It recognized that competition among artists quickens the pace of development, and that creative conflict was inevitable, both in the Council's governance and its administration. The Massey *Report* recommended a Canada Council

> without the restraints which normally would bind them too closely to the organization or the group which they would represent. We were confirmed in this view by our decision to recommend one body only for the various functions which we have described, functions which cannot properly be carried on by a rigidly representative body. ...We should also consider it a misfortune if this Canada Council became in any sense a department of government, but we realize that since this body will be spending public money it must be in an effective manner responsible to the Government and hence to Parliament. (Report, 1951, 377-378)

However much the Council has been politicized in the last half-century, it was envisioned to be "responsible to the Government and hence to Parliament." Responsibility for the integrity of the Council rests with the government that appoints it. The government is encouraged to be bold in its choices, as the *Report* recommends a web of checks and balances. "Without limiting its freedom to advance the arts and letters," the Royal Commission proposed that the Council spend most of its money and do most of its work through the voluntary associations that deal with artists directly. The Council's UNESCO initiatives were also thought to be at arms-length, "brought, through the Department of External Affairs, to the attention of the general conference of UNESCO." (370-382)

The Council's power to do as it pleased was proscribed. Why? Democratic institutions must be left 'weak' enough to allow for the exercise of those drives which are deemed essential for a citizen in a democracy. Democracy recognizes the free engagement of individuals with through co-operation, competition, and contention; while in the soviet or the corporation, the elimination of contention is sought and achieved through a bureaucratic hierarchy in which life is ordered under an arbitrary merit system that rewards commitment rather than creative conflict. (Wolin, 419-434). While the Canada Council presides over awards that are based on artistic merit decided by a peer review (experts, if you will), there is an open competition for for all awards. Until the demise of the Explorations Program in 1995, awards were open to all citizens,

as one might expect in a democracy. The Canada Council was an institution designed to reconcile Canadian society's need to capitalize the arts with the artists' need to be free of state control. The decision to make an arts award is the result of a competition in which each juror has an individual vote, and consensus is not required. Over a span of forty years, awards have gone to unlikely projects or artists that have come into a competition with the whole-hearted support of just one intuitive juror. They have had their merits argued and analyzed in jury sessions. Once funded, many of those unlikely projects have proved to be significant acts of cultural development. After the Council was given its endowment, the goal of working with voluntary associations in support of the arts was expanded. Awards were established that replicated a part of the market, providing venture capital to a sector of the economy that would otherwise never have access to it. Instead of soviet commissars or corporate investment bankers, juries of independent artists decide where in the art world to invest the nation's dollars. Vincent Massey seemed to cap his distinguished diplomatic career with the Royal Commission *Report*. Within a year he was the Governor General of Canada. Yet, it took a full six years from the Report's issuance until the passing of the *Canada Council Act*, and it has been noted that when the Council was finally established in 1957 it was merely a cultural smokescree in response to Walter Gordon's early alarms about the real problems besetting Canada's post-War economic sovereignty. In typically Canadian -- largely symbolic -- fashion, the *Canada Council Act* reflected an old-fashioned view of Canada as a developing

national economy, its path to maturity characterized by policies of import substitution (cultural ones in this case, and including Canadian content regulations). To some, the *Canada Council Act* seemed like pure nostalgia in the face of U.S. dominance.

> By 1957...the new colonialism had gone too far to be reversed by dancers or scribblers. The question at this late date was whether any policy could reverse it. By 1957 it was clear that the change of mother countries was complete; the brief period of autonomy between 1920 and 1940 was gone; and, for many English-speaking Canadians, it was unclear whether the road back to independence was even desirable -- assuming it was attainable. (Findlay & Sprague, 312).

4. The United Nations alternative.

The formal name of the Massey Commmission was the *Royal Commission on National Development in the Arts, Letters, and Sciences.* The *National Development* appellation suggested that Canada might wish to break free of its designation as part of the U.S. domestic market for cultural product. Indeed, it did mean something very much like that. Canada's drive for a more independent cultural policy came hard upon the Gouzenko affair and the House Un-American Activities Committee hearings and contempt charges visited upon the "Hollywood Ten", while U.S.

cultural producers had to face the end of the Empire Film policy which had allowed U.S. studios free access to the United Kingdom and Empire for U.S. films shot in Canada. The Commission Report came out strongly in support of the National Film Board of Canada, which had been investigated by Ottawa for communist influence in 1948, and reminded Canadians that the "CBC is a non-profit organization and aims at service to the nation," (Report, 1951, 456 n.) citing both as defences against the invasive sins of American mass-culture.

Not only did the Massey Report call for the development of a "National Theatre" composed of local playhouses to allow companies of Canadian actors to compete on a "level playing field" with touring U.S. and British companies (192-200); it called for national initiatives in culture across a startlingly wide spectrum; it was strongly oriented to the Commonwealth of Nations and to the greater internationalism emobodied in the United Nations through the work of UNESCO. Such a Commission might recommend closing the Canadian border to U.S. cultural product, or at least restrict its entry? Nothing in any of Vincent Massey's writing on the subject of culture had suggested that it would be otherwise.

> "Into our country there flows a perpetual stream of cultural Americana, dubious in quality and alien to the best in our own inheritance. But one must bear in mind that it is equally distasteful to thoughtful Americans." (Massey, 1963, 169)

The Massey Commission's Report was nationalist in flavour,

internationalist in outlook, and, as it has turned out, its practical achievements were usually local. The Massey Commission had the ill-luck to sport a name similar to a famous Hollywood "Communist front". The *Royal Commission on National Development in the Arts, Letters, and Sciences* sounded a lot like the *Hollywood Independent Citizens' Committee of the Arts, Sciences and Professions* (HICCASP), which was "cited as a Communist front by the *House Un-American Activities Committee* (HUAC) on September 2, 1947." (Vaughn, 303) The Canadian Commission sounded like a commie front. Its *Report* promoted the internationalist ideals of the United Nations, the *Universal Declaration of Human Rights*, and UNESCO. Even Arthur Surveyer, who wrote a minority opinion in favour of a larger role for private broadcasters, had favourably quoted Gilbert Seldes (Report, 1951, 397), identified by HUAC as a communist thinker. Communist fronts were promoting internationalism in the U.S., without much sympathy, for most of the Cold War, but the relationship between the U.S. and the U.N. has never been a particularly happy one, with or without communist meddling.

The U.S. has paid the bulk of the organization's bills, while finding itself faced with a host of pipsqueak countries demanding respect and the right of national self-determination. In no area have these demands seemed more galling (leaving aside the bloodshed of many wars of "national liberation") than in the cultural realm. Cultural differences led to the U.S. withdrawal of funding and support for UNESCO in the 1980's. The Massey Report is assertive in its support for UNESCO.

> The post-war world and its international organization would be hard to imagine without some agency specially charged with promoting and aiding intellectual and cultural exchanges of every sort. (249).

The Report described UNESCO's work as a "catholicity of enterprise," and supported the "UNESCO-sponsored *Scientific and Cultural History of Mankind* [an] inquiry concerning the fundamental concepts of liberty, democracy, law and legality and concerning the the influence on ideological controversies of different views of such concepts." (246-247). The Massey Report added to the "catholicity" of post-War internationalism something like the Canadian Methodist strain of Christian socialism shared diversely by thinkers like Bland, Woodsworth, Scott, and Frye.

> ...the kingdom, not of heaven but the kingdom of God on earth. Christianity was not a sort of immigration society to assist us from the hurlyburly of this world to heaven; it is a way to bring the spirit of heaven to earth.
>
> ...Christianity meant the triumph of public ownership. [Christ] believed in public ownership because it is an essential part of the kingdom of God on earth. It meant the substitution of co-operation for competition. (Bland, in McKillop, 82)

The *United Nations Educational Scientific and Cultural Organization* (UNESCO) became a non-secular apostle of mutual understanding, sharing, and tolerance. UNESCO was a vehicle for the inter-national exchange of culture (Office of Public Information, 502-509).

> Each Member State shall make such arrangements as suit its particular conditions for the purpose of associating its principal bodies interested in education, scientific and cultural matters with the work of the organization, preferably by the formation of a National Commission broadly representative of the government and such bodies. (VII, UNESCO Constitution)

In 1949, the Canadian Social Science Research Council told the Massey Commission,

> "Whatever the shortcomings of UNESCO may be it is already highly important as a channel of communication and has great possibilities as an instrument for promoting understanding and co-operation. Canada should implement her membership as effectively as she can." (quoted in Massey Report, 251)

The United Nations *Universal Declaration of Human Rights* (UDHR) was designed to promote and protect the intra-national aspects of culture and individual rights. (Browlie, 106-112) Like UNESCO, the *Universal Declaration of Human Rights* has been problematic for the U.S., as it impedes the penetration of U.S. cultural product around the world. It has the potential to complicate the "intellectual property rights" of U.S. cultural trans-national corporations. Article 27 of the U.N. *Universal Declaration of Human Rights* deals with cultural rights:

> 1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

> 2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. (ibid)

As Goran Melander, Director of the Raoul Wallenberg Institute, points out, Article 27, paragraph 2, of the *Universal Declaration of Human Rights*

> is in fact a declaration of copyright which has been given the rank of human right. (Melander, in Eide, 431)

This right is re-asserted in the Article 15(1c) of the 1966 *International Covenant on Economic, Social and Cultural Rights* (Brownlie, 199-210) and in regional covenants such as the *African Charter of Peoples' and Human Rights* (Article 27(2)). Melander stresses that

> this subparagraph [Article 27, paragraph 2, of the *Universal Declaration of Human Rights*]is unique also in the respect that copyright existed not only on the national level but on the international level long before the adoption of other international human rights instruments. ...this sub-paragraph prescribes for a clear individual right, and as such the paragraph is more similar to a civil and political right. This right is certainly possible to implement and it has certain similarities with property rights. It is also symptomatic that provisions prescribing for copyright can be found in Bills of Rights in constitutional law [Swedish Constitution of 1974]...such a right is equally an individual right, imposing certain restrictions on a government not to create obstacles for an

> individual. As such it bears certain similarities with the right to freedom of expression and the right to freedom of thought, conscience and religion, i.e., rights that are mostly considered civil and political rights. ...Presumably the struggle...for the international enactment and safeguarding of the 'droits intellectuels' had a part to play in so laying down the right to active culture...in the interest of securing copyright within the scope of intellectual rights." (431-432)

The 1948 *Universal Declaration of Human Rights* (UDHR) became the focus of non-secular, internationalist moral yearnings. The principle behind Article 27(2) is that the ownership of art is a human right invested in artists and their cultures, not their national governments; that art transcends the nation-state by virtue of being individual rather than corporate.

The initial preparations for the 1948 Universal Declaration were made in the *Division of Human Rights* of the U.N. Secretariat, presided over by Canadian professor of law, John Humphrey. His division's comprehensive draft was passed on to the *Commission on Human Rights*, chaired by Eleanor Roosevelt,

> ...carrying with her the Roosevelt visions of a New Deal, and the Four Freedoms. She played a leading and a mediating role in the Commission. Two competing influences were already at work within the US delegation; the liberal/social tradition of the Roosevelt period, and the conservative, isolationist tradition were struggling for influence. Thus, Eleanor Roosevelt had to mediate not only

the Commission, but also her own delegation. (in Eide, et al, 11)

The U.N.-backed *International Labour Organization* (ILO) is the co-ordinating body for the *International Federation of Actors* (FIA), the *International Federation of Musicians* (FIM), and *The International Federation of Unions of Audio-Visual Workers* (FISTAV) and other organizations that have proposed intiatives for indigenous performers' rights in their work, which would give them more control over the multinationals use of "runaway" U.S. production to achieve lower costs and labour elasticity. For example, this statement in FISTAV Bulletin #9A, July 1978, demonstrates no great affection for the imperial reach of Mickey Mouse via satellite and cable:

> Multinational companies use [the] relationship [between film and television] to increase their revenues and profits by dissemination of an international commercial culture that particularly limits the growth of national cultures and their expression through national production. (in Rowan, Pitterle and Miscimarra, 453)

The *International Confederation of Free Trade Unions* (ICFTU), a U.S.-sponsored alternative to the ILO, proposed an ideological basis for the association of artists and cultural workers, which would exclude the existing international actors' organizations, for having accepted affiliations from actors' organizations in communist countries. (ibid, 359) In contrast, the *International Federation of Unions of Audio-Visual Workers* (FISTAV) followed the U.N. model and adopted UNESCO principles.

(i) Each culture has a dignity and a value which must be respected and preserved.

(ii) Each people has the right and the duty to develop its culture.

(iii) In their rich variety and diversity and in the mutual influence which they exercise on each other, all cultures form part of the common heritage belonging to all humanity.

(FISTAV Constitution, Article I, Section 3. Rowan, Pitterle and Miscimarra, 452)

The ICFTU tried repeatedly to form an anti-communist *International Secretariat of Entertainment Unions* (ISETU) against the opposition of FIA, the FIM and the *International Federation of Variety Artists* (FIAV).

ICFTU cited FIA, FIM, and FIAV for communist influence, and suggested that they dissolve, and let their members join a new, communist-free, U.S.-backed ISETU. By 1965, the ISETU was formed against the protest of the older bodies, with 75% of its membership drawn from the United States. Both FIA and FIM, "reiterated their commitment to activity on a professional level without regard to the ideological views of member unions, a position that ISETU continued to find objectionable." (325-327) American Actors' Equity had their ISETU application tabled in 1970, because of their concurrent membership in FIA, "on the grounds that dual affiliations were unpalatable." (354) In 1980, FIM, supported by FIA and FISTAV passed a resolution in Geneva which authorized its executive

...to bring into operation -- in the event that results

> cannot be achieved either by negotiation or by legislation within a reasonable time -- a partial or total boycott of satellite transmissions. This boycott planned by FIM, FIA and FISTAV [is] to be continued until the interests of workers represented by these organizations are satisfactorily guaranteed. (354)

The policies of the U.N.-stream of international bodies have often been at odds with the un-hindered penetration of U.S. cultural product into foreign markets.

5. Wrapped in the flag.

In the 1960's, tripartite government initiatives built regional playhouses from coast to coast. Cultural policy developed inter-provincial touring and international touring, the National Theatre School and National Ballet School. The Massey Report had asserted, "we judge it possible that a company of Canadian players or a Canadian orchestra might do as much for this country as has been done for Great Britain by the Sadler's Wells Ballet Company..." (Report, 1951, 371) Voluntary organizations and non-profit societies built up local professional companies that actually created a truly national cultural infrastructure, with a growing international reputation. All this, even as the cable tv companies were building their own infrastructure, based on a state-sponsored monopoly on the importation of U.S. product. Generally, the

Canadian economy during the Massey era was not protectionist by world standards. Yet, in the face the cable t.v. pipeline of U.S. cultural product, and the ever-present U.S. scolding that we get and keep Canadian markets wide open to their products, many artists, and their supporters, came to believe that the cultural cohesion of our branch-plant way of life did rest on maintaining and celebrating a protectionist sense of identity.

In the triumphal 1970's, Canadian arts and culture were linked to social policy and national image-building as the National Arts Centre was added to the regional theatres constructed in every province save one in the '60's and early '70's. A wholesale "democratization" took place in the Canadian arts scene, fueled by *Opportunities For Youth* (OFY) and the *Local Initiatives Program* (LIP). These were not Canada Council programs; they were employment initiatives directed by the Department of Manpower, which provided subsidies to (largely) the swelling ranks of disaffected youth from the middle and upper-middle class who had the education and connections that enabled them to jump through the programs' systemic hoops. Some of those projects managed to establish themselves as legitimate theatre companies that are still producing a small body of work, such as the near-defunct Tamahnous and still-struggling Touchstone in Vancouver.

Books like *Silent Surrender* (Levitt), *Getting It Back* (Rotstein & Lax, eds.), *The Struggle for Canadian Universities* (Matthews & Steele, eds.), and *what culture? what heritage?*

(Hodgetts) were attacking U.S. domininance in our economy, values, and education. As the Vietnam war ground on, Canada accepted U.S. draft dodgers. Some of them were artists and soon became recipients of OFY, LIP and Canada Council largesse. Liberal Canadians assumed that because these young men rejected military service, they had rejected American values, political ideals and attitudes across the board. It was natural to assume they had, just as we assumed that we had, even though we consumed U.S. culture through our growing cable t.v. system and our movie theatres and record stores. Did those young U.S. citizens give up a life-time of aculturation to the American way of life simply by crossing the 49th parallel to avoid the draft? Did we even wish them to surrender those values, or did we rather think we could learn a lot about get-up-and-go and the American way of getting things done from these young men? In my mind, that is still very much an open question, worthy of a sociological study of some breadth.

Linking cultural initiatives to an anti-Vietnam War stance, nationalist sentiment, and social goals such as employment strategies increased during the 1970's, a period which also saw the rise of training programs for Canadian arts administrators at post-secondary institutions. By 1980, an unprecedented number of Canadian artists, of both the native-born and the landed-immigrant variety, had received their state recognition as Canadian artists. If not from the Canada Council, then from the Secretary of State, or the Department of Communications, or the Drug and Alcohol Commission, or the Ministry of the Attorney

General, or Education or Health... The mixing of money for the arts with money from Ministerial sources meant that some very successful 'performing arts' groups made most of their income from government patronage contracts. In Susan Crean's 1976 polemic *Who's Afraid of Canadian Culture*, undertaken for Lakehead University's program in Arts Administration, she relates how during the early 1970's, Factory Lab in Toronto had run out of money, and prevailed upon local Equity actors to work on productions of Canadian scripts at either sub-Equity rates or for nothing. Actors Equity refused to sanction this activity on the part of association members. Susan Crean (later Chair of the *Writers' Union* of Canada and member of the *B.C. Status of the Artist Advisory*) judged that this was because Actors Equity (headquartered in New York) was behaving in an imperialistic manner toward Canadian playwrights. In her view "...among artists, performers are a priviledged class..." (168-171). Hitching a theatre company to a mandate that pledged to protect our sense of identity, or spread approved social messages, was the strategy of least resistance for hundreds of publicly-supported small theatres producing the neo-nationalist Canadian social drama. The strategy lives on in fits, in the seasons of childrens' theatres today.

The Canadian flag was used as a metaphoric dust-jacket for Bernard Ostry's 1978 *The Cultural Connection*. A survey of the minutes of the *Standing Committee on Broadcasting, Films and Assistance to the Arts* from 1979 indicates -- judging from the jokes at his expense -- that as Deputy Minister for

Communications, Ostry's influence was beginning to wane even as his call to cultural arms was hitting the bookstores. In *Reading from Left to Right*, the masterful and illuminating memoir by H.S. Ferns, the author of (with Ostry) *The Age of Mackenzie King: The Rise of the Leader*, Ferns describes Ostry's book:

> The Ostry message can be simply stated. Canada, or at least the federal government of Canada, can be saved by culture. Culture has the role in present-day Canada that railways had in the nineteenth century. It can unite Canadians in achieving a new consciousness. ...There is in The Cultural Connection a truly original observation. 'Perhaps,' Bernie writes, 'only the armed forces have understood from the start the importance of developing a sense of identity and the connection of culture with morale and community relations.' When one considers the creative use of the Canadian armed forces in politics by Prime Minister Trudeau, one is prompted to ask: 'Is Bernie planning a coup d'etat?' ...Seriously, however...There is now a vast vested interest in culture in Canada. Canada has problems. Persuade the vested interests that they have the solutions of the problems and the persuader is politically home and dry. If I were a Canadian voter, I would take Bernard Ostry very seriously indeed. And don't tell me he's not in Parliament. If one is aiming for the top in Canadian politics, one should never start in Parliament. Only Diefenbaker and Clark did, and look what has happened to them!" (Ferns, 309-310)

I encountered Bernard Ostry at the 1994 "World Beyond Borders" conference sponsored by the Canadian Conference of the Arts (CCA). At one of the plenary panels, I had been trying to get a straight answer out of John Meisel (former head of the CRTC) or Philip Lind (Chair of Rogers American Cablesystems Inc.) as to the relationship between continental entertainment giants and Canadian culture? I suggested that Americans will buy genuine Canadian cultural product the way they buy maple syrup, in small packages, with the emphasis on quality. Although we have failed to protect our market, can we penetrate theirs? I have attended readings by poet Susan Musgrave free, sponsored by the Canada Council. Under Viacom's sponsorship, a Musgrave reading at the Arts Club in Vancouver featured an admission charge of $18.50. Can't Viacom sell Musgrave into the U.S. market at $18.50, and keep on seeing her in Canada for free? Ostry came up to me after, and said, "We used to have a patron for Canadian culture. It was the !@&&*%#! federal government!"

Today's young actors may be forgiven for thinking that they are paying the price for the pseudo-nationalist excesses of our (now) fifty-something generation, in whose interest

> the major thrust of fiscal, monetary, and regulatory activities has been to generate employment. Unfortunately, the price has been high: a declining resource base, evironmental degredation, foreign ownership, and massive debts. But debts have to be repaid. In this case, much of the burden will fall on future generations of Canadians, who will face triple jeopardy because they will have to do

so within the limitations imposed by declining resource rents and a threatened environment. (Wright, R., 96)

The nationalist fad in the theatre was a reflection of how the board-rooms of Canada's protected national industries and monoplies wanted to see themselves. Canadian industries and commercial empires are disappearing in the wake of Free Trade, and the artists and institutions that bouyed them with a nationalist mythology are disappearing along with them. Describing life in the Canadian theatre in the 1990's, Mima Voluvic examines the effects of unregulated competition in too small a market:

> Society places formal and systemic barriers upon an individual who wishes to enter a well-paid field, thus acknowledging craftsmanship, expertise and professional competence. But there is nothing and no one to prevent an individual to become a 'nobody' - an artist. Even an inherent mystique regarding such a choice has back-fired. It does not intimidate the ignorant; it has, in fact, become a welcome alternative: 'I am a theatre artist' connotes a better life-style than 'I am unemployed'. ...to scribble twenty minutes of self-confession, to memorize it and speak it, takes an afternoon. So naturally, the theatre has become everybody's arbitrary choice. The market has therefore, become totally saturated, which has inflicted predictable dynamics. As supply supersedes the demand, the value of labour has decreased from minimal to nothing, forcing artists to work for free. Almost all independent prodution and nearly all research and

development, in short, the vast majority of fringe theatre is based on unpaid labour. Not only do most theatre artist *agree* to work for free, but they actually agree to *pay to work*--Fringe Festivals are a case in point." (Voluvic, 33)

In this era of Fringe Festivals, which have descended in little more than a decade from Brian Paisley's original, delightful democratic enterprise in Edmonton to a string of carefully orchestrated, state-sponsored, vanity showcases, the reality behind Vulovic's complaint has become painfully evident. The flowers of the 1970's cultural nationalism and the democratization of the arts were able to set their seed, but they have germinated as the weeds of 1990's discontent.

PART TWO: Descriptive

"Wage labour brought a new kind of pain that annihilated women and men. All wage labourers suffered from the very same epidemic of disorientation, loneliness, and dependence. These feelings brought forth political interpreters and an elite of a new class. The diagnosis of the universal woe became the career field for new professions--educators, physicians, and other social engineers--which thrived on the production of policies, guidance, and therapies. The self-interest of both the revolutionary leader and the socialization merchant precluded any attempt to understand...few possessed a language suitable for translating the subtle vernacular varieties of this pain of loss."

--Ivan Illich, *Gender*

6. Who owns the performance?

A Jamaican director said to me once, "Canada... man... is the two-and-a-half world..." With our economy bouyed by European, U.S. and Asian capital--financing the exploitation of our natural resources, permitting us to buy enormous quantities of imported goods--for a long time, Canadians did not have to come to terms with vast tracts of our political and economic reality. The 1950's saw the professionalization of the arts through state recognition and public subsidy; the 1960's built a publicly-funded infrastructure of regional theatres. Our state-driven artistic growth and cultural development created the CBC, NFB, the National Ballet; we thus enhanced our standing among nations during the post-war period. The 1970's saw

the arts democratized. While the number of published writers in Canada doubled in ten years, our cultural development masked our economic dependency. The 1980's was the decade of declining subsidy and and subscription support, matched by increasing commercialization and big-ticket shows. The 1990's have been the decade of industralization. Mega-musicals cruise between cities in the Canada and the U.S. like great theatrical luxury liners, with tickets that carry the price of a hotel room.

In an industrial context, it is not surprising that state co-operation with the cultural industries has over-taken public subsidy to the arts as a government priority. During the 1980's, and into the early 1990's, the cultural nationalists continued to receive sympathetic treatment from their own constituents among the artists and the labour movement, while, at the hands of the state and out of the public eye, they were being supplanted by a new breed of cultural advocate, a breed trained in Entertainment Law, speaking in the velvet tones of corporate-speak, inculcated into the convergence of hardware and software.

> In 1980, Prime Minister Trudeau announced the transfer of the arts and culture programs, including responsibility for the cultural agencies, from the Department of the Secretary of State to the DOC [Department of Communications]. ..The transfer of cultural policy to the DOC was intended to improve the

> quality of both cultural and communications policy through interaction between the two sectors. (Anderson & Hennes, in Phillips, 213)

Through the 1980's and '90s, the marriage of communications regulation and cultural policy has been a decidely on-again, off-again affair. It is currently off-again. Culture was off the table during the Free Trade negotiations, but off the table has not meant across-the-board cultural protectionism. Essentially, it has meant is that a certain (arbitrary) level of Canadian participation must be in evidence. It was the recognition on the part of the Canadian technical elite that the demands of our erstwhile cultural elite are spurious, annoying, and inefficient in a global economy driven by a trans-national financial elite.

> Many would argue that the DOC's idea in 1990 to creat a merged technical and cultural policy-making structure was the right direction for the government to take. The subsequent 1993 reorganization is ironic in that, while other elements in society are converging to conform to anticipated technical realities, the government is seemingly diverging according to a different logic. (Anderson & Hennes, in Phillips, 223)

What is that logic? Economists and intellectual property lawyers who are actually linked to the electronic spread sheet and the burgeoning global whirl of digital money understand that "logic" and can manipulate it. The cultural commentators featured in the nationalist *Canadian Forum* and

Canadian Dimension, do not understand except intuitively, what is actually happening.

The observations of Jacques Ellul that society no longer employs technology, but rather answers the demand of technique; the musings of Marshall McLuhan on the dis-associative effects of new media on old social content; and poet Gary Snyder's question about the western forests "Who is the Senator for this?", seemed odd and even conspiratorial only a generation ago:

> Before TV, there had been much concern about why Johnny couldn't read. Since TV, Johnny has acquired an entirely new set of perceptions. ...The TV image requires each instant that we "close" the spaces in the mesh by a convulsive sensuous participation that is profoundly kinetic and tactile, because tactility is the interplay of the senses, rather than the isolated contact of skin and object. ...The spokesmen of censorious view are typical semiliterate book-oriented individuals who have no competence in the grammars of newspaper, radio, or of film, but who look askew and askance at all non-book media. ...Their current assumption that content or programming is the factor that influences outlook and action is derived from the book medium, with its sharp cleavage between form and content. (McLuhan, 273-274).

Writing just as Canada was tooling up for the politicization

of its culture, McLuhan might have been describing that transitional generation of Canadian cultural advocates, or "cultural workers" as they came to call themselves, to whom cultural development meant a subsidized *Johnny Canuck* comic-book (bad enough) as an made-in-Canada alternative to a market-driven *Captain America* (barbaric) invading from the U.S. The cultural advisors who succeeded them in the 1980's did not arise from the Writer's Union of Canada, Privy Council, or 'Waffle' wing of the NDP, as they had a generation before. They emerged from corporate law firms like Owen, Bird, and Heenan, Blaikie; entertainment lawyers who seemed to understand what McLuhan was saying about post-literate society. *Captain America* and his ilk, indeed a significant percentage of all U.S. media heroes, are drawn (or shot, or recorded) in Canada at a considerable savings to their U.S. owners, *and no-one who consumes the product knows the difference.* Cultural economics are global.

With the convergence of form and content in the digital age, coupled with the the erosion of our national and local cultures by a global economy, our perception of the actor's performance shifts. The actor's performance on the screen is no longer regarded as, or treated as, or received as, a mediated image of a live performance. We regard the actor's performance, no less than the other icons and images on our personal computer screens as being entirely at our command. We buy licensed Software, the license to do as we wish. The

actors' performance, digitally manipulated by the editor or the consumer, can be disconnected from the live human being who originates it, within the parameters laid out by the trans-national copyright holder. In 1972, Universal studios was taken to court by the widow and heirs of Bela Lugosi for unauthorized use of his image. The Lugosi estate won the original judgement.

> The court concluded its discussion of the 'Dracula' character by pointing out that Universal's copyright gave them precious little to merchanidise apart from Lugosi's specific likeness... "In licencing the use of the Count Dracula character's, *characteristics, make-up, appearance and mannerisms*, of necessity Bela Lugosi's appearance and likness in the role are the things being licenced. The horror character, Count Dracula, as taken from the films, Dracula and Dracula's Daughter, cannot be divorced from Bela Lugosi's appearance in the role." (Viera, in Gross et al, 149).

On appeal, Universal had that decision reversed (139 Cal Rptr at 38), as Lugosi was judged to have made no attempt to profit from his image (other than as actor) during his lifetime. In other words, Lugosi did not license his own face for a lunch-box; that is, he did not convert his personal right to his own likeness into a property right. Universal *did* effect that conversion after Lugosi's death. The appellate court awarded Universal the right to continue to exploit Lugosi's image. The corporation got control of

Lugosi's image and the profits therefrom; Lugosi's widow got nothing. Reversion to the public domain was not even considered.

> The court is actually saying that the copyright holder gets the rights to character expressions not specifically allocated in a contract. No mention was made of any possible public claim to the media-image it had helped create. The effect of the reversal is to give exclusive rights in the Lugosi media image to Universal at the expense of both his heirs and society. (149)

In 1979 it was noted by Throsby and Withers in *Economics and the Performing Arts* that the live theatre may be described as presenting a unique situation, in which the product is produced and consumed simultaneously: Consumption simply means watching actors work at the skilled presentation of created works of art, with the performed labour being the final product as experienced by the consumer audience. Other labour not observed by the audience may also be integral to the performance, from playwright to stagehand, but the consumed product remains the direct performing artists' presentation. (Throsby & Winters, 4-5). The performing artists' labour (performance) is the output; and the script, design, rehearsal and director's vision are in fact inputs employed by actors during the simultaneous manufacture and consumption

(audience) that is characteristic of the performing arts. I would go beyond the position of Throsby & Withers, in so far as to say that this paradigm applies to film as well as theatre.

The simultaneous manufacture and consumption goes on between actor and audience regardless of mediation. As with theatre, there is no film without the presence of an audience. When a tree falls in the forest...? In film, of course, the nature of the medium dictates a lesser degree of control over the final product by the actor. Therefore contractual obligations between film engager and actors regarding billing, residuals and additional uses of the product have been more precise than those in theatrical contracts.

> ...digital technology will transform the economics of movie-making. In two main ways, it will mean lower costs and bigger profits. ...the computer breaks the strangle-hold that the unions have over staffing on a production set. ...entire scenes can be synthesized inside a computer and then "composited" digitally with live-action shots of the actors playing their roles against a blue screen. ...leading video-game designers have started to develop "virtual actors" that have personalities and attitudes all of their own. And if virtual images of a

> herd of dinosaurs can be created inside a computer and made to stampede across a movie screen, why not synthesize the human actors digitally as well?" (*The Economist* 12/24/96, 88)

With the developments in digital manipulation, control over the final product, and the dignity of the actors' person and career choices is less and less within the actors' influence. An actors' property right in their performance would mean the performance could not be separated from the actor. The fixation on film or tape of the actor's performance would always require a release, which could stipulate future use.

Neighbouring rights -- of the sort that Bela Lugosi's widow thought her late husband possessed -- have remained a major goal of international intitiatives at the U.N., the *International Federation of Actors* (FIA) and the *World Intellectual Property Organization*. From The *Unesco Belgrade Declaration*, which translated the principles of the *Universal Declaration of Human Rights* into the cultural sphere in 1980:

> Without prejudice to the rights that should be accorded to them under copyright legislation, including resale rights (*droit de suite*) when this is not part of copyright, and under neighbouring rights legislation, artists should enjoy equitable conditions and their profession should be given the public consideration

that it merits." (Guiding Principles, 4)

In Canada, *The Status of the Artist: Report of The Task Force* (Siren-Gelinas, 1986) called for the neighbouring rights principles in the Belgrade Declaration to be implemented forthwith:

> a) Within the next parliamentary session, the Parliament of Canada should undertake passage of legislation to revise the *Copyright Act* and to enact neighbouring rights legislation for performing artists, in order to affirm the moral rights of artists to the full enjoyment of economic benefits generated by their work.
>
> b) Responsibility for the *Copyright Act* and neighbouring rights legislation should be the sole responsibility of the Department of Communications. (Report, 1986, Recommendation 17)

17 b, syntactically flawed though it may be, assumes that the watch-dogs of such rights were envisioned to be the artists' professional associations. The primacy of artists' associations in Canada had been acknowledged in the Report of the *Report of the Federal Cultural Policy Review Committee* (Report, 1982, 173-174), and thus it seemed natural that artists should be able to exercise neighbouring rights as well as negotiated residuals and royalties through associations like CARFAC, the *Performer's Rights Society* (PRS) and SODRAC. However, in 1971 the Economic Council of Canada's *Report on Intellectual and Industrial Property* had

concluded that

> a proliferation or a 'layering' of secondary performing rights would be of dubious social benefit and that a performer's control of re-use of his performance should by and large be settled by private contractual arrangements between himself and the holder or assignee of the primary rights." (Economic Council, 1971, 159)

This was re-asserted in a report prepared for Consumer and Corporate Affairs, in which

> On balance the study finds no compelling evidence of significant social benefits from implementation of a performer's right, conversely, administrative and other costs associated with implementing the right would likely be considerable. Thus the balance of the economic arguments is against instituting a performer's right. (Globerman & Rothman 1981, summary, no page#)

The tide of opinion at the Economic Council of Canada, Department of Regional & Economic Expansion, Department of Consumer Affairs and the Department of Communications was running against a performers' right for actors. Nontheless, in the literature provided to actors over the years, there is no mention of the many strong arguments that had been marshalled against a performer's right, and therefore, no reasoned discussion of what was possible could take place. Other recommendations in the 1986 Status of the Artist Task Force report and enacted in law in 1992 have served to make neighbouring rights for artists even less of a possibility.

a) Within the next Session of Parliament, legislation should be enacted to recognize organizations representing self-employed professional artists as "collective bargaining agents" as well as the "administrative mechanisms required to apply such legislation." b) The departments of Justice and Consumer Affairs should declare a moratorium on the investigation of artistic organizations involved in collective bargaining under the provisions of the Combines Investigation Act until legislation granting collective bargaining rights to such organizations is enacted. (Report, 1986, Recommendation 16)

Quebec acted quickly to establish a regime and legal framework called the "Commission de reconnaissance des associations d'artistes", allowing self-employed artists (independent contractors) and their engagers (producers) to negotiate scale agreements within provincial jurisdiction, under Bills 78 and 90 (1988). Quebec, though, has had its own legal code since 1774. Analogies between Quebec society and the rest of the country may have proven not to hold true in the area of labour law. In 1988 the Canadian Advisory Committee on Status of the Artist drafted the *Canadian Artists Code,* which recommended that the federal government follow Quebec's lead in giving status to relations between artists, producers, and distributors. Ironically, by having their associations and unions secure certification as the sole bargaining agents in their jurisdiction -- without

first sorting our the constitutional and legal conundrums inherent in the union v. professional association dilemma and the relative merits of residual rights guaranteed by statute or by collective agreement -- Canadian Actors' Equity, Union of B.C. Performers, and ACTRA members have moved farther and farther away from the possibility of neighbouring rights as a statutory right.

7. Actors and politicians.

On 19 April 1983, ACTRA President Bruce MacLeod and General Secretary Paul Siren appeared before the Standing Committee on Communications and Culture, following ACTRA's written response to the 1982 Report of the Federal Cultural Policy Review Committee.

> Mr. Gingras: ...when I read your release I must admit that several points you make are quite in agreement with the title of the release: *Anger and Indignation.* Ordinarily, when I write in the evening in a state of anger and indignation, I usually wait a few days before sending in my texts so that I can revise those points where my anger and indignation pushed me too far... There are quite a few...strong statements in your communique.
>
> Mr. MacLeod: ...You are quite right, there are some

strong statements. Unfortunately, when you are pushed against the wall you come back with some strong statements that will get your attention...

Mr. Gingras: You have got mine? (SCCC 19-04-1983)

The *Standing Committe on Communications and Culture* had replaced the *Standing Committee on Broadcasting, Films and Assistance to the Arts* on November 27, 1979. (Standing Committees are composed of members of the House of Commons from all parties, and are not arms-length bodies.) Perhaps it was because few Canadian artists had learned to sell their product and instead complained, somewhat eloquently, en masse, and at length, and hired consultants to complain for them, about the failure of government to sell their work for them...*Assistance to the Arts* was replaced by *Culture* as a government priority. During the 1980's, after Parliament submerged the *Arts* into *Culture*, policy and budget initiatives in the cultural envelope shifted from production to marketing. Marketing is selling, whether one is selling soap or soapstone carvings. Public assistance to the arts (grants, subsidized attendance) works in co-operation with private and corporate participation (sponsorship, piggy-back marketing) in cultural programming. As trans-national corporations have taken over the public function of funding the lively arts, there has naturally been less support for institutions and artists who produce a nationalist or protectionist vision of the Canadian identity. By 1993, the

federal government moved *culture* from the portfolio of the Minister of *Communications* to a new Minister of *Heritage*.

On Tuesday, November 7, 1989, at nine minutes after 9 A.M., Minister of Communications, Hon. Marcel Masse appeared before the *Standing Committee of Communications and Culture* (SCCC) as the first witness in the hearings that would eventually lead to passage of Bill C-7, "An Act respecting the status of the artist and professional relations between artists and producers in Canada" The Minister began by asserting that,

> Regardless of their courageous individualism, artists should not be condemned to live on the economic margins of society. (SCCC 2:6, 27-11-1989)

He asked

> why artists who express our identity and who contribute immeasurably to respect for Canada internationally should not be eligible for the benefits available in the standard employment package of almost all Canadian workers: unemployment insurance, disability insurance, pension plans, and so on. (2:8)

He went on to adumbrate tax laws and social programs in Ireland, France, Italy, Sweden, Australia, Netherlands, and Belgium, and to laud the provisions of the UNESCO *Recommendation Concerning Status of the Artist*, adopted unanimously at the 1980 Belgrade conference. He then posed another question:

> How do our laws recognize the artist? Simply put, they do not. ...In the field of art, self-employed artists often feel that labour relations legislation puts them at a disadvantage. National and provincial labour codes which recognize the rights of employees to bargain collectively with their employers, do benefit salaried artists and there is no necessity to re-examine this regime. But the negotiation of minimum working conditions by organizations representing non-salaried artists is not recognized by law. ...According to the legislation now in place, self-employed artists have no choice but to resort to collective bargaining for minimum working conditions outside the authority of existing labour codes. (2:10, 2:11)

Strictly speaking, because they had been operating outside the provisions of federal and provincial codes, the actors' associations Equity and ACTRA had never engaged in "collective bargaining." Collective bargaining, under the Codes, takes place between an employer and a union. The employee is not part of the contract. The associations representing Canadian actors had been executing "voluntary scale agreements," such as the *Canadian Theatre Agreement* (CTA) between Equity and the *Professional Association of Canadian Theatres* (PACT) in theatre, and the *Independent Production Agreement* (IPA) between ACTRA and the *Canadian*

Film and Television Producers Association (CFTPA) in film and television production. These agreements were vulnerable to attacks by producers who did not wish to join PACT or the CFTPA, and who demanded special or concessionary agreements outside of the the CTA or the IPA. On one occasion at least in the late '80's, this wrinkle had resulted in the seizure of ACTRA records during an investigation under the Competition Act which, though essentially toothless when compared to U.S. anti-trust legislation, is designed to prevent combinations in restraint of trade. Though the producers' charge was eventually dismissed, the threat was still there. Minister Masse asserted that,

> We must clarify the legislation covering this collective bargaining, in the light of the Competition Act and the Labour Codes, and do so in full consideration of the needs of artists.

He rejected the notion of "employee" status for artists as simplistic.

> At present, legal recognition of the right of artists to bargain collectively might call into question their status as entrepreneurs under the Income Tax Act. If considered a paid employee, the non-salaried artist would not be able to claim legitimate business expenses. The loss of self-employed status would certainly have far greater costs for artists than any short- or medium-term gains they might obtain from official recognition of the right to collective

bargaining.

Minister Masse spoke further on tax and social/economic issues, including, "additional measures available as a matter of course to other groups: insurance of artists' earnings against bankruptcies, as when a producer or distributor fails to pay them." (2:12) He concluded his prepared remarks by reminding the Committee,

> it is important that there be no misunderstanding regarding the significance and impact of the recognition of the status of the artist. Artists only wish to have their working conditions understood. ...let us all recognize that resolution of the questions related to the status of the artist is fundamental to our country's future, for a society without artists has no identity. (2:13).

Sheila Finestone, later Minister responsible for Multiculturalism under the Liberals, began the questioning, and came quickly to the nub of the problem:

> Even though...you have looked at the key role the artists in all their creative endeavours play for Canada, which becomes even more important as we move into their new free trade environment, what is the potential for realization? ...and I would like to know what you really expect and whether artists are being led around and not in the end get anything real. (2:14)

In 1994, two years after Bill C-7, Status of the Artist had been given royal assent, and after he had left the government, Masse gave a speech sprinkled with regrets, and full of questions. Perhaps Mrs. Finestone's question was still rolling around in his mind... Hadn't artists been led around, and in the end not gotten anything real?

> With the profusion of technologies bringing a relentless flow of information from every corner of the globe into our living rooms, can we still foster and protect cultural sovereignty? Are protectionism and regulation reliable strategies or should we yield to the pressures of an open market and the disappearance of cultural differences? ...The new technologies will probably result in the integration of the production and distribution processes. As things are going now, it is not at all sure that the system that emerges will not correspond to the ideal of Time-Warner. What is really at issue is not the question of yielding to the pressures of an open market -- we did that long ago. It is not...just an issue of whether we are able to protect our small share of the domestic market, but whether we are willing to do so. (Canadian Conference of the Arts: World Beyond Borders Contributors statements, 1994, 18-19)

The generational nationalism that bred the docu-drama heroes of Rick Salutin's *1837, The Farmers' Revolt* are now regarded much like the "commercialized feudalism" that 1837 rebels

fought against. They lose one battle after another for the hearts and minds of post-Free Trade Canada. They are regarded as the landed gentry of the cultural scene, and they provide an easier target than the rising bourgeoisie of the film industry. Perhaps it is a function of how the respective Canadian Content regulations worked, but as a generation of Canadian country music singers takes America by storm, the nationalist theatre's "bourgeois revolution" of the 1970's is a fading memory.

At about 6 P.M. on the evening of October 2, 1991, Canadian Actors' Equity Association, in the persons of Christopher Marston, Executive Director and Jeff Braunstein, President, appeared before the Standing Committee during the hearings *Pursuant to Standing Order 108(2), a study of the implications of communications and culture for Canadian unity.* Early in the session, the discontinuity between labour law and artists' professional associations was raised by the Committee. In reference to what became clauses 22 and 51 of the *Status of the Artist Act*, Mr. Marston was asked

> ...How do you feel about the union's right to a closed shop?
>
> Mr. Marston: ...We are concerned about the issue of the closed shop because artists' associations exist as collectives. They exist for the collective action of their members. But artists also operate on the basis

> of individual contracts. ...Our concern is that if that particular element in the legislation [i.e., closed shop forbidden] were to have the force of law and be inititated by the various provincial jurisdictions where it would, of course, have the most effect, then we would be in a situation where we would be unable to control our members, because that legislation allows the access of anybody into the collective agreement, if you like, whether or not they are members. (2-10-1991, 1:40)

Representatives of the *American Federation of Musicians* and the *Canadian Writers' Union* later testified to the Committee on the lack of a provision for a "closed shop" in the proposed *Status of the Artist Act*. Peggy Dickens, Executive Director of the Writers' Union, explained that the the *Canadian Artists and Producers Professional Relations Tribunal* and (say) the B.C. *Labour Relations Board* regulations against "closed shop" agreements did not apply to them, as

> The Writer's Union is an organization of individual creators and we would not bargain collectively for [our members]. They are self-employed individuals. ...this is an area that is much more sensitive to organizations such as ACTRA...it is not of prime concern to writers because they are self-employed. (31-10-1991, 13:39)

The Writers' Union may call itself a union, but it cannot be

certified as one until it is responsible for "relations between employers and employees through collective bargaining" (B.C. *Labour Relations Code*, Definitions), which, as Ms. Dickens testified, her Union is not, as its members are self-employed. Meanwhile, the Executive Director of ACTRA -- a professional association, an alliance of closed-shop guilds -- does no better, testifying that "we are essentially a trade union."

The American Federation of Musicians did not seem quite so conflicted about its identity. Their brief stated,

> ...we feel that the general intent of the Bill merits our support. However, we cannot support a Bill that legislates away an artist-producer relationship that has been universally beneficial for many decades. (SCCC 25-3-1992, 37:7)

and went on to explain that in the AFM system, the engager deals with the leader of the group, and the leader engages the musicians, all of whom must be AFM members according to AFM constitution. Therefore, a closed shop was essential, except in the case of solo artists. As it turned out, when Bill C-7 was passed into law, clauses 22 and/or 51 did not specifically prohibit a "closed shop" of the sort artists have traditionally used to regulate their membership. It did, however, preclude some of the methods (threat of expulsion, for example) by which they have enforced their will upon members, for all practical purposes limiting the

reasons for expulsion to non-payment of membership dues, as is the case in labour law. In the definitions of *independent contractor* and *artist*, the traditional engagement practices of the AFM where musicians are not engaged individually but as a group through a leader who executes an agreement with an engager, was not accomdated in the *Act* as eventually passed. This likely contributed to the AFM opposing provincial legislation in British Columbia that might replicate the federal Act in 1993.

Later on during their evening session of 2 October 1991, which was, after all, about national unity, the Committe Chairman asked Equity President Jeff Braunstein, about his views on the relationship between the "two solitudes".

> ...do you see a blending in any way of the French Canadian and Anglo-Saxon cultures? ...It seems to me you might have a view on this perspective.
>
> Mr. Braunstein: I really see the two cultures as separate. I really do -- just historically, where they have come from. There may be a meld somewhere down the line, and that's the hope of everybody, I think. I guess that was the hope in forcing bilingualism on the country, that it would in fact take place. I think it has done just the opposite. It has polarized people.
>
> The Chairman: I'm not sure that was the aim of bilingualism, frankly. I thought the aim of

bilingualism was to let both exist and be served by their governments. But you think it will move, in an evolution sense?

Mr. Braunstein: No.

The Chairman: Do you think it will remain polarized?

Mr. Braunstein: Yes.

Mrs. Finestone: I don't think "polarized" is the right word.

The Chairman: Separate identities.

Mr. Braunstein: Separate identities. (4:42-43)

When asked what the theatre could contribute to national unity, Equity President Braunstein had explained,

Mr. Braunstein: The theatre is a very regional thing. It is community. It is cities. It truly is. ...Those are the markets we have to work in. They are small markets, so what does make us national? Television will make us national. (2-10-1991 4:35)

On November 28, 1991, ACTRA (Bruce MacLeod, Garry Neil, Cam Cathcart, Sonya Smits, and Catherine Allman) appeared before the Standing Committee. They, too, were questioned on the same issue...Quebec. The ACTRA representatives seemed to express an attitude that did not sit well with some honourable members. The discussion devolved to this:

Mr. Neil: ...we fundamentally believe the artists in Quebec and the people of Quebec will make that decision. So we make no comment about the possibility

of the negotiating of an agreement with Quebec. The comments we make, therefore, are related to other provinces. We are extraordinarily concerned about any suggestion --

Mrs. Finestone: You know, Garry, you have to stop there. I have to tell you, as an English-speaking Quebecker, I have a great deal of concern. I want to make very sure that I understand; you're going to participate in discussions that will include those artistic expressions in languages other than French. Is that what you were saying?

Mr. Neil: Our position is very clear. I thought I made it quite clear. We acknowledge the right of Quebec artists to freedom of expression. We acknowledge the desires of the Quebec government to negotiate more control over the province's culture and communications area. We will particiapte in that debate as residents and artists in the province of Quebec, where we work only in the English language. ACTRA does not participate. Our members obviously work in both English and French, but ACTRA itself, the jurisdiction of ACTRA, is related to the English language. So our comments with respect ot that process will relate to our jurisdiction.

Mr. Hogue (Outremont): I totally disagree. Je suis totalement en dessaccord. C'est tres important.

The Chairman: Order.

Mrs. Finestone: Garry, I find what you have just said a little hard to understand. ...Are you telling me that you're not prepared, as a national organization -- and I still believe Quebec is a part of Canada, I didn't know that it had left without my knowledge or my participation -- to talk for the artists of Quebec... I would be very cross if I thought that ACTRA had abdicated its responsibility to speak for the artists of Quebec of the language of the other official group, the official English-speaking minority of Quebec, which happens to be very heterogeneous, very diverse, as is the French population.

Mr. Neil: We are not abdicating our responsibility. We share your concerns.

Mrs. Finestone: Well, not the way you're stating it.

Mr Neil: The members --

The Chairman: Order. Could we give this witness a chance to answer this question. Dr. Hogue, you are going to have your opportunity to question. This is a very important issue and I'd like to hear your reply.

Mr. Hogue: J'invoque le Reglement, monsieur le president. Je ne veux pas parler. Je veux seulement savoir si j'ai ma place ici. [trans. *On a point of order, Mr. Chairman, I don't want to speak. I only want to know if I belong here.*] That's my concern. I don't know if I belong here.

The Chairman: You belong here.

Mr. Hogue: I know where I stand, and I know that I belong here. C'est un rappel au Reglement. S'il faut prendre a la lettre ce que j'entends, je n'ai plus rien a faire ici. Je vais laisser cela aux anglophones et je vais parler a M. Turgeon [President, Union des Artistes], my friend. [trans. *This is a point of order. If I am to take literally what I have heard, I do not belong here. I'll let my English-speaking colleagues deal with this and I'll speak to Mr. Turgeon...*]

The Chairman: You do belong here. Order, please.

Mrs. Finestone: Restez ici.

The Chairman: Order. This is a free country and this is a free forum. (28-11-1991, 25:11-25:13)

Mr. de Jong of the NDP waded in, and tried to repair some of the damage with an artful set of leading questions designed to clarify the issue, as it were, but the damage was done.

The above is a typical of the fall-out from the erosion of the arms-length model established by the Massey Report. In the dialogue above, the Committee were administering veiled 'loyalty oaths', and, in contrast to the famous HUAC confrontation with wily Bert Brecht, the Hon. Members were neither satisfied, nor out-smarted. Actors who wouldn't wave the Maple Leaf over Quebec for *Standing Order 108(2), a study of the implications of communications and culture for Canadian unity* gained scant sympathy among federal politicians charged with the responsibilty of holding the

country together in the face of a powerful seperatist party in the House of Commons and in Quebec. It is arguable that one reason for the devolution of cultural policy to the provinces encountering less political resistance than we might have expected at the federal level is that artists and their representatives, after identifying themselves with the survival of the Canadian identity, have failed to play the national unity game with much aplomb. A recent volume on Canadian culture recommends that we continue along the path of politicization, calling for a Ministry of Culture...fewer responsibilities for the Canada Council...and yet another plan to "decentralize cultural funding and administration." (Henigan, 90-107) Is this wise? As more of our cultural policy responsibilities have shifted to the Ministerial realm and away from the Canada Council, more of our discussions about artists and their work have been conducted in political terms. As more of our discussions are conducted on political terms, more of our cultural policy has followed our industrial policy to provincial jurisdiction. Standing Committees, whether located in Ottawa or provincial capitals, grill artists and their representatives on their political opinions (when one might expect they'd be talking about cultural development). Is this more effective and/or more democratic than the arms-length model, with its public hearings conducted across the country and open to all through a Royal Commission or Task Force?

Under the arms-length system it was to be the Canada Council that was accountable to Parliament, not the artists themselves. The arms that hold artists and the state apart must be real arms, and have hands to grip, and to hold if they are to be more than agents of Orwellian double-speak. The arms-length relationship is an eternal stand-off between propriety and prosperity, between art and economics, between Artist and State. Actors are engaged in commerce, using the human capital that lies within them, what Yeats called "an activity of the souls of the characters, it is an energy, an eddy of life purified from everything but itself." In terms of status, what makes actors and dancers unique as artists and citizens is not their training, talent or accomplishment. Their uniqueness lies in the fact that their art is located, not in an object -- their score, their manuscript, their painting -- but in their bodies, and their personhood. Paintings are art made by people. Actors are people re-made by art. While a painting does not have human rights, the painter does. Both the actor and performance must, for they cannot be separated. I contend that the single, seminal, and still the most useful, post-war cultural document addressing status of the artist is the U.N. *Universal Declaration of Human Rights*, in which freedom of expression and freedom to exploit one's talents are upheld as a human right, an idea developed in the 1980 U.N. *Begrade Recommendation concerning Status of the Artist*, and

the Canadian *Status of the Artist Act*, Part I.

8. Canadian devolution and the status of the actor.

Before the Vagrancy Laws took hold of the localized medieval theatre and shook it to death, the theatre's international consciousness resided in the church. For the last five hundred years, local culture has been separated from international authority by the assertions of the nation state. Recently, the tradition of asserting national identity through cultural policy has been under pressure, both internationally and in Canada. Trade liberalization demands from trans-national entertainment corporations have cut deeply into the Canadian cultural market in the last ten years. The national spirit had been weakened by fruitless federal-provincial constitutional power-struggles. Regionalization at the CBC was abandoned. The 1980's ended with more cuts in federal support for Canadian culture; the arrival of Free Trade; and the rise of the continentalist "cultural industries" concept. Institutions from the Canadian Council to Telefilm to ACTRA failed variously to address the explosion of media production in the West.

ACTRA and Canadian Actors' Equity were engaged with the federal government over a *Status of the Artist Act* that

would give self-employed artists the right to certify their scale agreements and protect them from the Competition Act. They also sought an improvement in actors' tax status with continued access to self-employed tax deductions. They were concerned with the progress of Canadian Copyright revisions. They hoped that revisions could enhance artists' ability to protect the integrity and residual value of their performances. They wanted legislative mechanisms that could maintain artistic freedom and enhance artists' abilities to manage their own careers, as the product they make is re-sold, re-arranged, re-mounted, and re-packaged using analog and digital technology.

ACTRA in the late 1980's, however, was in steep decline. The major cause of ACTRA's troubles as a national professional association may have been the retirement of Paul Siren after 22 years at the helm as its Executive Director. Siren had an early background in social activism and the labour movement (UAW, CAW). He had led Canada's delegation to Belgrade in 1980 (*Belgrade Recommendation*), co-chaired the Status of the Artist Task Force (Siren-Gelinas *Report*), and overseen the drafting of the *Canadian Artists' Code*. Under Siren, ACTRA had spear-headed national and international (*International Federation of Actors*) cultural initiatives for professionals in film, radio, and television. Without Siren, ACTRA began to flounder. ACTRA was a troubled organization, reacting to change with

confusion. It had a proud history but by the end of the 1980's, it was a debt-ridden, squabbling mess. ACTRA reflected the state of its major employer, the CBC. Generally, an ACTRA branch had been set up where the CBC maintained a significant presence, in order to service CBC employees and contract players. The decline of the CBC as a national institution, and the rise of foreign production, could not help but affect ACTRA. ACTRA members' revenues from Vancouver had increased some 1000 per cent during the 1980's. Meanwhile, ACTRA had gone into deficit. It supported a bulkly 60 member National Council, yet seemed unresponsive to regional conditions. The organization painfully restructed itself as an alliance of occupational guilds rather than a single guild that represented different occupations. It was still a national body, and as such, its greatest threat came from the intensity of regional aspirations.

The ACTRA Performers' Guild is no longer a presence in British Columbia. It has been supplanted, after a long and bitter struggle, by the provincial Union of B.C. Performers. By the end of the 1980's, various ACTRA components such as the writers' unit were in the process of negotiating their independence. ACTRA asserted writers' copyright and performers' claims to neighbouring rights at the national level, while in B.C., writers seeking work in episodic television agreed to give up their copyright. This was a

move that ACTRA, as a longtime supporter of strong copyright for both Canadian writers and performers, had resisted. Through 1989, the communication from B.C. -- in this case from the President of the B.C. Performers Council regarding the chair of ACTRA Writer's Council, Drama Committee -- became increasingly hostile:

> Mr. [Jack] Gray's extraordinarily controversial and immodestly self-serving article was intended to sabotage our relationship with Cannell and Parmount. We're not surprised by this attitude from him: after all, as an individual who doesn't work in the jurisdiction, Mr. Gray has absolutely no personal stake in this relationship. But we will not sit quietly and allow this kind of misleading nonsense to be put forward and not answered. And we also will not permit our association with American producers to be jeopardized in any manner by the ravings of this non-working member. (Wilson, in Writers Guild Toronto *News*, Vol 1 #1)

By January of 1990, under a new Branch Rep., ACTRA in Vancover had joined with the *Directors' Guild of Canada, B.C. District Council* (DGC), *Teamsters* Local 155; and the *International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada* (IATSE) locals 667 and 891 to form the *B.C. and Yukon Joint Council of Film Unions* (BCYJCFU), The BCYJCFU advertised, "Producers can now look forward to joint

bargaining; standardized contract language, terms and conditions for all unions..." (BCYJCFU brochure, 1990) By agreeing to go farther than simply aligning terms and condititions, and agreeing to bargain in concert with employee organizations on a production-by-production basis, ACTRA in Vancouver joined its fortunes to the provincially based, industry-wide, collective-bargaining regime that binds most employees and employers in Canada. Doing so, it began to abandon the national professional association model, which administers voluntary minimum scale agreements for self-employed professionals.

It had long been the opinion of the B.C. government that the cultural industries fell within its juridiction. While Ottawa controls communications policy, the provinces regulate the employment of the people who make what goes on the airwaves and movie screens, and most of the policy affecting the producers who employ them. In 1981, through the B.C. *Industrial Relations Council*, IATSE took some jurisdiction from the Directors' Guild by replacing them as the bargaining unit for a number of DGC members who were judged to be "employees" (BCIRC #66/81). In its argument, IATSE claimed that the DGC was not a provincial employees' organization, was making untimely raids, and was not applying for an appropriate bargaining unit. Only the issue of provincial status was considered. The DGC was judged not to be a provincial union, and thus it could not

represent employees for the purposes of collective bargaining.

> "...It is the essence of the Guild that it is its intention to reach a state where all work of Directors in Canada shall be established upon equal minimum terms and conditions of employment." (DGC constitution (4.21(g))

Therefore, a IATSE, a union with a provincial local, was awarded jurisdiction over a number of 'employees' formerly represented by the DGC. The judgement in the IATSE v. DGC case turned on a 1954 revision of the (then) British Columbia *Labour Relations Act,* which stipulated that (1) all collective agreements had to be enacted by a labour body which represented employees through an office in British Columbia, and (2) all collective agreements had to be ratified in British Columbia. This revision had been influenced by an injunction against the *American Federation of Musicians* (AFM) by the New Palomar Supper Club. Like the Directors' Guild, the AFM ratified its contracts outside B.C., in California; precluding the organization from representing employees in B.C., and establishing that the organization was not provincial in nature (Carrothers, 189-190).

In 1988, perhaps as the result of a particularly difficult experience with its production of *We're No Angels*, Paramount sought to re-negotiate with ACTRA for their

projects in B.C. Cannell Films felt that they should be able to negotiate their agreements locally, as well. Cannell Films was the flagship operation at the North Shore Studios, and a key supplier of product to MCA (later bought by Seagram) Television. The North Shore Studios were owned by the Bronfman (Seagrams) family holdings through Comweb, which also owned William F. White and Canadian Prolite, located at the North Shore Studios and controlling 90% of the lighting and grip rental revenues in Vancouver (Holborn, 149). While both Paramount and Cannell were able to gain concessions through the Vancouver Branch Rep. of the day, they were then told by the ACTRA national executive that the Vancouver Branch Rep did not have the authority to make separate agreements for B.C. ACTRA expected the producers to sign the IPA or face withdrawl of services from ACTRA members. Paramount and Cannell Films refused to sign the national ACTRA *Independent Production Agreement*(IPA). Karen Austin, an ACTRA National Director at the time, described the situation from her perspective:

> I learned [that Cannell would not sign the ACTRA IPA] at a meeting of the B.C. Film Liason Committee--an informal group of union and government people. On November 21, 1988, months after the IPA had been ratified and five weeks after its effective starting date, I attended a meeting ostensibly called to discuss labour discord in the industry. In fact, the meeting was to discuss the new IPA. Representatives

> from both Cannell and Paramount were there. IATSE's business agent chaired the meeting while the companies' executives explained their displeasure about the agreement...the IATSE rep asked what help Cannell needed to "kill" the IPA. During the meeting, I was alone, facing hostility from two producers - both of whom were former and future employers - and from the other unions.
>
> (Karen Austin, National Director, B.C. Performers, *Actrascope*, Fall 1989, 19,25)

That winter, memos from The ACTRA B.C. Council and Branch Representative went further, warning that ACTRA contracts were not recognized by B.C. law, and that

> The refusal of members under contract to perform for Cannell would have constituted an illegal strike... ACTRA members not under contract to Cannell would not be liable under labour legislation, but they might be subject to action under Combines legislation or a common law action for conspiracy in restraint of trade.
>
> (B.C. Performers Guild Memorandum, February 21, 1990)

Actors were not advised, as they might have been, that --

> where an *interlocutory* injunction is sought on notice to proscribe further acts of the defendant, with a view to preserving the *status quo* until the action may be heard at trial... The plaintiff must show a strong *prima facie* case of pending irreperable injury

> and give through counsel an undertaking in damages for the protection of the defendant in case it should turn out at the hearing that the plaintiff is in the wrong (Carrothers, 6)

The raucous meetings and the dire warnings confused and upset the members to the extent that, in February 1990, a "dissident group" (BCIRC #C70/91) of ACTRA members in Vancouver was able to form a trade union for the purposes of executing a provincial collective agreement through the *Industrial Relations Council*, the *British Columbia Production Agreement* (BCPA), which granted concessions to the master collective agreement on a production-by-production basis, and yielded .5% administration fee on a given collective agreement to the *B.C. and Yukon Joint Council of Film Unions*.

Ironically, one of the first concessionary agreements was granted to a show contracted to the CBC, ACTRA's forty-year counterpart in voluntary scale agreements. The new B.C. union borrowed the ACTRA name and modified the ACTRA *Independent Producltion Agreement* just enought to change it from a scale agreement to a collective agreement. The letter of adherence to the *Canadian Film and Television Producers Association* was dropped, eliminating the injunction against undercutting other member producers. Grievance arbitration was removed from the actor/producer joint standing committee specified in the IPA, and given it

over to the provincial Arbitration Board. The constitutional membership requirements were changed to reflect that actors would be "employees" under provincial legislation. It was important for the dissident group to be able to certify collective agreements for actors under provincial law as an employee's union. Any agreements that could be certified in B.C. could be put off-limits to ACTRA, which was a national professional association and not mandated to represent "employees in B.C.". The new requirement that a member qualify as an employee is in the B.C. Performers' Guild Constitution of 1990; and the half-dozen UBCP Constitutions struck between 1990 and 1995. The requirement that a member be an employee is also contained in the 1992 "Galiano Accord", which was to have assigned successor rights for ACTRA's B.C. jurisdiction to the UBCP. The "Galiano Accord" failed (much like the "Treaty of Beverly Hills" had in 1946). The idea that actors are employees has not. (BCIRC #C77/91: #C90/91).

Shortly after the local Council declared ACTRA in B.C. to be an autonomous union in 1990, the Branch Rep took the ACTRA staff out on strike while they were negotiating a first collective agreement in which the Teamsters would represent ACTRA staff in Vancouver. At issue was whether the Branch Rep. should be part of the employee bargaining unit. The *Industrial Relations Council* found that the Branch Rep. was not management personnel, despite having a

separate contract of employment (BCIRC #C94/90). IRC Vice-Chair Richard Longpre wrote, "Nothing in the evidence, however, suggests Krasnick was part of the senior management team." (#C94/90, 7). Eventually, ACTRA fired the Vancouver Branch Rep. The Vancouver ACTRA Council resigned and formed a new union, called the *Union of B.C. Performers*, setting up shop down the hall (literally) from the ACTRA office. They were supported by local producers (who donated office space, computer equipment, and paid working dues for performers under the BCPA), the Directors' Guild (cash loan) and the Teamsters (cash loan). They hired the former ACTRA Branch Rep. as their Director of Collective Bargaining.

In September, 1991, plans to shape Status of the Artist policy in B.C. were distributed in a memo to the UBCP Executive by the UBCP Director of Collective Bargaining (formerly the ACTRA Vancouver Branch Rep., see BCIRC #C/90). In a presentation to the Honourable Darlene Marzari, Minister with responsibility for Culture in January, 1992 by the UBCP Director of Collective Bargaining (who later became her advisor) the new union's goals were outlined to the Minister, a full year before she announced the Status of the Artist initiative and eighteen months before PACT, CAEA, and ACTRA were given the opportunity to appear:

> ...the Union sought a package of legislative and government actions [in a 90 minute presentation to Darlene Marzari by the B.C. & Yukon Council of Film

> Unions]... In Quebec and in Ottawa, legislation to recognize professional actors organizaions and special status for artists has included the establishment of artists' tribunals... From the perspective of the Union of B.C.Performers, the rights of B.C. actors would be served better by a more relevant Industrial Relations Act and Council, incorporating a wider definition of employee and carefully customizing provisions of provincial labour legislation. From an industrial perspective, the connections between the Union and the other member organizations of the B.C. and Yukon Council of Film Unions have been far more important to the earning of a livelilhood than the legislative framework for the employer-employee relationship... (Krasnick, UBCP Sides, Feb. 1992)

In their brief to Darlene Marzari, a Union that had been in existence for one year -- "dissident employees in the Province of British Columbia" (BCIRC #C77/91) as one judge described them -- laid out the principles and objectives that were *adopted and expanded* two years later by the B.C. *Status of the Artist Advisory Committee* in their recommendations.

> As always, we will continue to promote that flexibility required to encourage producers to shoot on the West Coast, tailoring agreements to production needs and showing our willingness to bend as part of the Council of Film Unions. In no other spot in North America can

> a producer meet with all the major film unions, describe his project, and leave with a deal. (Krasnick, UBCP NEWSLETTER, May 1991).

A February, 1992, brief from the B.C. Motion Picture Association to Darlene Marzari had recommended that B.C. be made a "free trade zone" for US film, with no PST, GST, and no income tax for key US personnel. The brief also recommended a Film Investment Program, more ambitious than Ontario's, and geared to gross employment and export dollar earnings. The UBCP Director of Collective Bargaining accompanied Marzari to L.A. (for the second time), and she returned the favour by speaking to the UBCP AGM and to the Government-Industry *Motion Picture Round Table*:

> The working assumption here is that international and south of the border film-making is trade whereas the development and support of indigenous B.C. talent is culture. My experience over the last four months belies this working assumption. It no longer holds true. (ibid)

In March, 1993, Marzari finally announced the Status of the Artist initiative to the artists and the public; hired the (by-now) ex-UBCP Director of Collective Bargaining as chief of staff; and appointed a *Status of the Artist Advisory Committee*, which requested briefs from the arts community.

The B.C. Status of the Artist Advisory Committee's

recommendations for Collective Bargaining and Employment Standards (14-29) reflected the 1991 UBCP report and 1992 brief to Marzari. They were in opposition to the 1993 briefs presented by CAEA, PACT, ACTRA, and the CCA. The B.C. Status of the Artist Advisory rejected the long-standing position of the actors and producers' associations--that the actor was a self-employed professional--and recommended inclusion in the *Labour Relations Act*. Not to have done so would have been tantamount to saying that the unions, ACTRA B.C. and the UBCP, were both freaks. In 1982, Mark Thompson, B.C. Commissioner of Employment Standards (*Thompson Report, 1994*) laid out the rationale:

> Many professionals supported [public service] bargaining because they believed (accurately) that a political decision favouring bargaining had been made, and groups choosing to remain a part of the old system of consultation would be at a disadvantage in the distribution of resources and other decisions. (Thompson in Anderson & Gunderson, 382)

Tracing it back to the decision in the DGC/IATSE case at the BCLRB in 1981, the promotion and promulgation of provincial labour legislation for artists seems to have been founded on something like Mark Thompson's sentiment that

> The past fifteen years have demonstrated that professionals will embrace collective bargaining, reluctantly at first, but permanently. (395).

What has been visited upon artists in this province may be

in the best traditions of post-war industrial unionism and founded in the mainstream of labour relations theory. Has it met the historical demands upon the artistic calling and professions?

The Advisory Committee wrote of "the value and necessity of artists to society confer rights and responsibilities on both." This coupling of "rights and responsibilities" echoes the title of a B.C. Ministry of Labour publication issued a week earlier. In *Rights and Responsibilities in a Changing Workplace: A Review of Employment Standards in British Columbia*, by Commissioner Mark Thompson,

> The Commission recommends complete coverage of actors, performers and musicians by the [B.C. *Employment Standards*] *Act*. (Thompson, 66)

On February, 9, 1994, the B.C. Advisory Committee on the Status of the Artist issued its final report, *in spirit and in law*. With the release of the Thompson report by Labour on February 3, 1994, *in spirit and law* had become irrelevant a week before it was published. A question that was presented as open on February 9 in a Ministry of Culture document, was already closed in a February 3 document from the Ministry of Labour.

Of compelling interest to artists in B.C. is the Thompson *Review's* assertion that, If artists or other

workers meet the traditional tests of employee status, although they are engaged as "contractors," the *Act* should protect them. By protecting "artists or other workers" under the *Act*, the government accepts that artists can "meet the traditional tests of employee status". Thompson was already citing *in spirit and in law* as an authority representing the consensus of artists, and recommended complete cover under the provincial jurisdiction of the *Employment Standards Act*. Published by Labour on February 3, the Thompson report was already recommending complete coverage of actors under the *Act*. Published by Culture on February 9, a week later, *in spirit and in law* was cautioning that if artists do not meet the tests of employee status, then artists should not be included in the *Employment Standards Act*. The arts community (Equity, PACT, VPTA, etc.)were aware of the Culture document - scores of requests were made for copies that were not forthcoming - but they were not aware of Labour's Thompson report and all its implications. ACTRA BC requested an Industrial Relations Inquiry in June, 1994, to look into the unionization of film actors. The Minister of Labour has refused the request from three different associations. Revenue Canada will arrive at some sort of an opinion, eventually, about the tax status of actor-employees. ACTRA BC can be credited with establishing a "no-concession", industry-wide contract. In 1996, ACTRA B.C. was folded into the provincial UBCP (Stephen Kelleher letter, January, 1996).

The union consistently receives 80% of its income from non-member sources, by "toll-gating" the fees of U.S. performers. Today--after years of "war of attrition" union politics, too many harsh encounters, most of the actors simply avoid union affairs. In British Columbia, the over-riding principle of *in spirit and in law* was expressed succinctly in the Report by Status of the Artist' Committee staff and AFM Board member, Burt Harris:

> The Code was not written to cover defined industries or crafts; instead, it was intended to permit a contractual relationship in which individual contracts are replaced by collective bargaining. The group can substitue its overall demands for those of the individual; a contractual breach is one between a union and an employer, not an individual; and the property of a grievance - the right to dispute and infraction - rests with the bargaining agent, not the employee. (Report, 1994, 59-60)

The B.C. Status of the Artist recommendations in the areas of Collective Bargaining can be boiled down to the remarks above. The regime describes a jurisdiction where actors have no status claim to moral, intellectual and legal rights to their work beyond the provisions of a collective agreement. Grievances arising from residuals, buyouts and billing rest, in Mr. Harris' words "with the bargaining agent, not the employee." What of actors' self-employed tax

deductions? Will they be replaced by employee investment plans? The Ministry of Small Business Tourism and Culture, having abandoned Status of the Artist legislation for the self-employed, now administers the EVCC program for artists who are employees. If film actors were deemed self-employed, deductions from their fees would not be available for the government's new Employee Venture Capital Corporations (EVCC) mandated to invest in film as well as other industries.

Resolutions put forward by the ACTRA Performers' Guild -- calling for provincial governments, and B.C. in particular, to empower the Canadian Artists and Producers Professional Relations Tribunal (CAPPRT) to empanel provincially -- passed unanimously at the 1993 *B.C. Federation of Labour* convention and at the 1994 *Canadian Labour Congress* convention. Federal legislation allowed actors self-employed status at least, and offered protection from the *Competition Act*. Employment law submerges the individual actor in the collective bargaining unit. Actors "status" would establish the relationship of the individual artist to the Crown. As it is, the state need take little or no notice of the individual artist "dependent contractor" in the cultural industries (BCIRC #C117/91; BCIRC #C60/92). Imposing the *B.C. Employment Standards Act* and *Labour Relations Act* with generous exemptions for employers is political control applied to the actors for economic ends.

The Canadian *Status of the Artist Act*, Part II, which established the *Canadian Artists and Producers Professional Relations Tribunal*, is limited to the CBC, the National Arts Centre, and federally regulated broadcasters. Those limitations notwithstanding, it does recognize artists as independent contractors, thus providing an alternative to labour law, which only governs employees. Part I of the *Act* may assume a greater importance in coming years, if artists should choose to bring challenges to provincial labour law under the *Charter of Rights and Freedoms*. The imposition of the *Employment Standards Act* caused a profound shift in artist-engager relations from the *consentual* to the *coercive*.

> When...the prostitute Jenny Diver of John Gay's Beggars' Opera (1728) strips Macheath of his pistols, she does so in the service of the entrepreneurial Mr. Peachum: the prostitute is no longer self-employed, but an employee. (Eric Nicholson, in Davis and Farge, 301.)

The employee-actor enshrines the cultural industries claim that any neighbouring right not ceded to the artist remains with the engager. Despite history, tradition, and national legislation all pointing in the other direction, the government of B.C. put its stamp on artists, as employees. Actors' collectivization is integral to an industrial strategy luring the entertainment trans-nationals to B.C..

PART THREE: Prescriptive

"Throb, baffled and curious brain! throw out questions and answers!
Suspend here and everywhere, eternal float of solution!
Gaze, loving and thirsting eyes, in the house or street or
public assembly!
Sound out, voices of young men! loudly and musically call me
by my nighest name!
Live, old life! play the part that looks back on the actor
or actress!
Play the old role, the role that is great or small according
as one makes it!
Consider, you who peruse me, whether I may not in unknown ways
be looking upon you."

--Walt Whitman, *Crossing Brooklyn Ferry*

9. The industrialization of Canadian cultural policy

The cultural industries are subject to an industrial strategy designed to welcome entertainment giants like Seagrams/MCA, Viacom, and Time-Warner into Canadian regional production as global producers and local sponsors. The trans-nationals have already assumed a senior relationship with a variety of regional and national producers in Hollywood North. These conglomerates are technology-driven, export-driven, and debt-driven; and in return for their promise of jobs and export earnings, they demand a legislative atmosphere willing to accommodate those qualities. In the 1990's, most Canadian cultural legislation, policy, regulations, and practice is shifting to accommodate and exploit the new "cultural industries" along the lines laid out by FTA, NAFTA, and GATT. Actors have become employees in B.C., without "recognition of the liberties

and rights, including moral, economic and social rights, with particular reference to income and social security, which artists should enjoy." (Belgrade Declaration, Definitions, 2). A Hollywood North bit-player (who may be a stage actor as well) is saddled with all the responsibilities of employee status, and precious few of the benefits.

Disney now makes a substantial amount of its product in Canada -- film, television, publishing, software, licencing, recording, distribution, broadcasting...and now, commercial theatre. In Canada, Viacom produces (through Paramount), distributes (through Viacom) and exhibits (through Famous Players). Canadian players, like Rogers and Western International Communications, are similarly structured. Canadian "cultural industries" policies -- federally and provincially -- are dominated by these conglomerates and their subsidiaries, servants, and allies. Hollywood North has visited upon Canadian actors the disequilibrium of rapid colonization: breakdown of their social and political structure, distortion of their local economy; with the best jobs reserved for citizens of the colonizing power.

"Cultural" funding in the multiple millions subsidizes U.S. films and television productions made here by Canadians for distribution by U.S. majors to both the domestic (i.e. U.S. and Canada) and foreign markets. Canadians pay more in ticket prices, copyright, subsidy and intellectual property costs than we accrue in export earnings. We are still proud to think of the

production service film boom as a sunrise industry 'stolen' from the U.S.A. Under Annex 2106 of the FTA, the U.S. government may invoke a countervail on any cultural funding or cultural legislation in Canada that may harm the interests of U.S. cultural producers whose commerce is regulated by the FTA. Why would they? Hollywood North is an invention of the major studios and local suppliers who service them and governments that tax them. Film is shot in Canada for the same reasons that Volkswagen makes product in Mexican maquilladoras: elasticity in the supply and cost of labour and material. It is doubtful that the U.S. had ambitions to gain control of Canadian Culture through the FTA. Certainly, they have used Canadian cultural protectionism as a "hot button". The *quid pro quo* for the dubious protection of Canadian "off the table" indigenous culture under the FTA has been the statutory encouragement of low-cost production of *U.S. culture* by U.S. trans-nationals in Canada.

After some initial instability (a higher dollar), the FTA secured a low Canadian dollar, replacing inflation with deflation *as well as* removing the tariffs on goods and services. Quite naturally, in a deflationary climate, U.S. studios *wanted* to make product in Canada. Canadian tax shelters, subsidy, infrastructure and training support accrues, finally, to the majors. In Hollywood North, even as Southlands Corporation (7-11) has been franchising Canadian retailers, Disney is franchising Canadian film producers. Ambitious Canadian production service companies may yearn to become "an innovative subsidiary" rather than "a rationalized production subsidiary". The difference

being "attributable to the source of key decisions relating to the subsidiary's activities: Is the parent or the subsidiary the decision maker?" (Wex, 27). In post-FTA Canada, it has begun to seem natural to us that U.S. entertainment product should be assembled in a Canadian cultural export processing zone, using Canadian labour and Canadian artists, usually (but not always) under U.S. direction and control; and emerge virtually indistinguishable from its more expensive counterpart south of the 49th parallel.

Hollywood North is a blend of the studio B-lot of the '40's and the location boom of the '60's, organized according to Japanese principles. Some economists have used "disorganized capitalism" to describe the fluid yet still-accumulative nature of todays' corporate relations. Hollywood North means off-shore labour costs for L.A.-quality crews, low dollar, government subsidy and tax-breaks, English language ("hosers" who can play "crackers"), American-style locations, Pacific Time Zone. Hollywood North is supported with friendly legislation, infrastructure, export development, and training subsidies. The U.S. majors have lawyers working for them in B.C. to incorporate one off-the-shelf "Canadian film company" after another. While there are Canadian partners signatory to the incorporation, control of the purse is held by the general partner who has a fiduciary relationship with the U.S. studio back in L.A.. The film, therefore, remains under the financial control of the U.S. major who has contracted with the U.S. producer. It is a Canadian company for copyright, subsidy, and international co-

production purposes. If the Canadian Production Manager is given Producer status, and is signatory to the incorporation, then the Producer is also the Production Manager (a member of the Directors Guild or the Teamsters, which are members of the Joint Council of Film Unions), and the film thus has a Canadian Producer with a vote in the corporation but no real financial control, who acts as the employer of record on the collective agreement.

August 1993 saw the collapse of the indigenous *British Columbia Motion Picture Association* after 30 years of life. This was followed by an announcement in November 1993 that a group of producers led by Pacific Motion Pictures, and including other players who service the U.S. giants, were forming a new B.C.-based producers' organization. Wayne Sterloff of B.C. Film and Grant Allan of the Beacon group of investments funds were quoted as supporters of this new body. Allan said, "...our industry associations have [had] a tendency to dwell only on the cultural and creative concerns of the industry." By December of '93, Matthew O'Connor of PMP is quoted in the trades as saying, "Krasnick is just working closely with us on a number of different issues including labour and government relations." (Playback 11/93) The new producers' group became the autonomous B.C. branch of the Canadian Film and Television Producers Association (CFTPA), mimicking the structure of the Directors' Guild of Canada and the Union of B.C. Performers, and, as of this writing, the BCMPA has collapsed again. The 'middle ground' of Canadian cultural product that the BCMPA producer/members

originally represented is disappearing, no less than the mid-sized Canadian theatre companies. In the theatre there has been less and less produced between the mega-musical and the Fringe. We have seen an expansion of television channels, but instead of original Canadian programing, the new channels run foreign films and ten to fifteen year old re-runs of series owned by Canada's largest media giants. The middle ground is slipping away. The Canada Council - Social Sciences and Humanities Research Council (SHRC) shotgun wedding and annulment during the early '90s weakened both. The elimination of professional development grants for individual artists as a separate program, and the concurrent "career intervention" sectoral training initiatives developed managed by Human Resources have shifted the emphasis from support for artists to job creation. The Canada Council re-structured and renewed its priorities in 1995, and is doing so *again* in 1996, trying to do the same with less. These and other changes are not a result of the philosophy or principles of the party in power; the economics of the "cultural industries" compell them.

> What is 'new' today is the attempt to recreate the old insecurity and competition between workers in spite of the existence of unions. This has been done by shifting the focus from individual job loss to the possibilities of entire facilities - involving the entire workforce - being closed." (Bob White, Pres. CAW, in Marchak 1993, p 8)

A Hollywood North actor spends 85% of the time making product locally that is distributed internationally. Actors are now in a "collective bargaining" situation under provincial law which ties

them to continental film industry. The province and nation enact measures to attract this globally-marketed industry, and to keep it growing. Have actors been afforded the same consideration as other "workers" in legislation, job creation and regional investment schemes? Cultural policy measures must be enacted to allow actors to receive some of the same benefits that other workers do from their employee status.

Canadian Content regulations (governing Telefilm and some provincial funding) are governed by cultural aims, to ensure that key creative roles go to Canadians. Most film production decisions, though, are made for profit. Canadian cultural policy also has its industrial and economic aims; attracting direct foreign investment; achieving gross employment growth. When government loan guarantees and investments in film production stipulate that 90% of the employment on a film has to be from B.C., then the remaining 10% of the film's employees are likely the predominantly U.S. cast. This is detrimental to Canadian actors. Under the Canadian Content 'points system', the Lead and second Lead must be Canadian, but that does little for the employment prospects of the average actor. A "born-in-Canada" Lead and second Lead is usually brought up from L.A., along with most of the feature players. Canadian actors would be better served by Canadian Content regulations that ignored the Lead and second Lead, and stipulated instead that 90% of the "below the line" talent were Canadian. On many films, this would double the number of Canadian actors. The traditional beneficiaries of our trickle-down approach to Canadian Content policy are in the "key"

creative positions. For working Canadian actors, this is not a logical policy. Actors who choose to stay and work in their home province are, effectively, never offered leads in films in order to satisfy Canadian Content regulations. In this continental film economy, Hollywood North actors would be helped by incentives that will kick in if a certain *percentage* of cast is local, not the Leads.

The commercial dominance of U.S. culture among consumers is an alternative that continues to erode the idependence of Canadian cultural policy with economies of scale. Over the past two decades, global trends have splintered Canada into a federation of regional powers within a continental economy, each competing with each other for export dollars and foreign investment. Our philosophy of cultural development has been reduced to virtually a single focus: job creation. Job creation is the end result of the politicization of the arts in Canada. Job creation prefers the four-figure person-days-worked, ballooning a once-a-year Festivals, to the steady stability of five small theatre companies with legitimate seasons. The effect of today's trans-national alternative is to erode any other alternative. The drive for domination of supply and market is to the global corporations what the slow progress toward a climax forest is to the Douglas Fir. The model of the global corporation's drive for dominance plays itself out, replicates itself at the local level, and even among public funding bodies. The 1982 Applebaum-Herbert commission affirmed the arms-length relationship, and recommended that such agencies should be

"protected against deparmental encroachment", along with the the resources to do their work; and not be diverted, "to other channels more susceptible to political direction and control." (Report, 1982, 37-41).

The industrial dominance of U.S. commercial values in Hollywood North, while privileging producers, has eroded the position of Canadian actors. In film, to compete with U.S. service production, cultural policy has inclined toward inducing a Canadian "star system" among young film-makers. Public funding bodies turn away from cultural development and spend scarce public dollars on one or two projects with commercial potential outside the domestic market. Rather than than support for a spectrum of indigenous artists, here is a privileging of cultural producers who show export potential. For example, through a funding program designed for emerging film-makers, one film with commercial potential was recently financed in British Columbia by B.C. Film, the Canada Council, Telefilm, National Film Board, and B.C.'s Ministry of Multi-culturalism, to a total of $885,000.00. No private financing was raised. Though this commercial film was funded 100% with public money, there was no requirement that a completion bond be in place, nor a broadcast licence, nor a distribution deal or any kind. In terms of policy, this was to ensure that young film-makers would not have to compromise their vision to the demands of private investors. In reality, to be given an *unsecured* $885,000, as first-time feature producers, is to be privileged.

The film eventually cost the taxpayers over a million dollars. Yet, the actors worked for $177 per twelve-hour day, no over-time, no buy-out and no residuals. And no deferrals. ACTRA granted a waiver to a single member to appear in a non-signatory film, and she was paid at above mimimum rate, and the organization was not aware that other members were appearing in the film. IATSE and DGC are listed in the credits, but ACTRA is not; nor is The Union of B.C. Performers, though a number of the performers belonged to the UBCP. The privileging of producers over actors is a function of Canadian cultural development intitiatives directed toward the continental film industry. Because they were publicly financed, the producers in this case walk away utterly unencumbered with cash investors or artists' deferrals, and distribution open. The actors received nothing from the film's theatrical release and its subsequent release on video; nor will receive anything for its eventual broadcast on television. The privileging of producers over artists by Canadian cultural policy follows in the wake of a similar drift in the software industry, which also maintains a growing presence in British Columbia. As early as 1985, Gary Little, legal counsel for the *Vancouver ad hoc Committee on Computer Related Problems*, along with David Austin, counsel for B.C. Hydro, appeared before the Standing Committee on Communications and Culture to argue that the creators of software programs should be denied a proprietary right in its exploitation:

> Gary Little: Who should own the work created by employees in the course of their employment? We feel strongly it should be the employer. It is the employer who is fronting

> the risk. He puts up all the money, presumably does the market research before hiring the employee to do the coding and, therefore, the employer should benefit. (SCCC 17-6-1985 16:34)

Acting out this philosophy in today's continental economy under the pressure of justifying themselves against the withering competition of U.S. distributors, Canadian cultural agencies will now spend, in concert, over a million dollars on a three-person production company that has never produced a feature before, while remaining comfortably ignorant of the exploitation of Canadian actors. The principles of Canadian cultural development have been skewed by competition from the Canadian film community that services U.S. runaway production, and now competes for the same government dollars. Funding bodies no longer try to achieve the greatest good for the greatest number of worthy Canadian artists. They back *winners*.

In the case of this film, actors now regulated by labour law British Columbia were the losers, because their unions have status in provincial labour law; the actors do not. In the unequal struggle between global industry and local unions, the workers are most at risk:

> That there was not a word abour the fundamental rights of workers in the thousands of pages of rules [in NAFTA and the Dunkel Round of GATT] reflects the priorities of those doing the negotiating, rather than any principled opposition to trade regulation. (Collingsworth, Gould, Harvey, 10)

The two dozen actors in this film were not treated in the spirit of Article 27(2) of the *Universal Delclaration of Human Rights.* The *Belgrade Recommendation concerning Status of the Artist* meant to address just such cases, so that the economic and moral rights of artists to the fruits of their work should be recognized. If the funding bodies and the Canadian people believe that they are in competition with the Americans for financing commercial product, then they did not make a wrong decision.

> In the case of cultural goals, among others, economic analysis can be of great help in bringing about a clearer identification of the goals in the first place. ...In an increasingly service-oriented and knowledge-based society, cultural matters in the broadest sense are to a growing extent what economic life is all about. (Economic Council, 1971, 139-140)

What is problematic is that variously-mandated, publicly-funded, arms-length and non-arms-length institutions -- B.C. Film, the Canada Council, Telefilm, National Film Board, B.C.'s Ministry of Multi-culturalism -- should blend together *as if* they were a film studio, and decide in concert to back a single film. Funding by one body may form part of the criteria for funding by another. If funding bodies are now expected to pool not only their funds, but their judgement, the essential fairness and plurality of the arms-length mechanism is eroded from within. The Applebaum-Hebert *Report* said of cultural agencies,

> Without these [arm's-length] mechanisms, we would put at risk not only the diversity of cultural expression, but also

the fragile and unpredictable creative process itself. (Report, 1982, 5).

In British Columbia, the community of actors has already been re-made in the image of the Canada-U.S. Free Trade Agreement (FTA). This may be part of the cost that Canada has paid for acquiring a "world product mandate" in the manufacture of U.S. cultural product. By bringing actors under B.C. labour law and de-professionalizing film actors through provincial legislation, the B.C. government has indeed achieved a "productivity" gain for all the other players in Hollywood North, and made British Columbia more attractive to 'runaway' U.S. production and the Canadians in partnership with them.

> Improving our productivity is our best assurance of achieving the objectives we all think worthwhile: economic growth and employment; different outlets for people's differing skills and interests; higher living standards. (Wex, 3).

This utilitarianism was echoed recently by the British Columbia *Labour Relations Board* in a controversial judgement awarding exclusive jurisdition to selected unions in feature films, as well as television movies and one-hour productions made in British Columbia for the U.S. networks NBC, ABC and CBS:

> In determining that the [British Columbia and Yukon] Council [of Film Unions]and its bargaining unit is appropriate, the object was to secure industrial peace and to promote collective bargaining settlements in the film industry. ...Our decision is in the best interests of the various

parties in the industry itself and the economy of the Province of British Columbia. (BCLRB #448/95 p.16)

10. Political control of the actor in British Columbia.

The B.C. Motion Picture Joint Adjustment Committee Report, **So you want to be in pictures? Employment and Education in B.C. Motion Picture Industry,** (August, 1989)... contains not a single recommendation with reference to actors.

Opportunities For Financing of the British Columbia Motion Picture industry. Project Report, Asia Pacific Advisory Committee Export Services: Film Subcommittee, Vancouver B.C. (Peat Marwick Thorne Chartered Accountants, May 31, 1990)... contains not a single recommendation with reference to actors.

Policy Recommendations for the Development of British Columbia's Motion Picture Industry presented to The Government of British Columbia by the British Columbia Motion Picure Association (February 19, 1992)... contains not a single recommendation with reference to actors.

A Cost Benefit Analysis of B.C. Film, 1987-88 to 1991-92 prepared for the FDBC Fim Development Society (November, 1992)... contains not a single recommendation with reference to actors.

***A Framework for the Development of Cultural Industries Policies For British Columbia* prepared for the Ministry of Tourism and Ministry Responsible for Culture** (February, 1993)... contains not a single recommendation with reference to actors.

A Review and Recommendations Concerning the Policies and Programs of B.C. Film pepared for the Ministry of Tourism and Ministry Responsible for Culture (February, 1993)... contains not a single recommendation with reference to actors.

Policy Recommendations for the Future Development of the Film Industry in British Columbia pepared for the Ministry of Tourism and Ministry Responsible for Culture (March, 1993)... contains not a single recommendation with reference to actors.

On November 10, 1995, the B.C. government announced their plans for 22 apprenticeship programs in the "film and theatrical industry", bearing the same occupational titles as they do in the B.C. and Yukon Joint Council of Film Unions rate sheets. Of the 22, *none* are directed toward artists. After five years of employee status, film actors have little access to the standard employee benefits under the Employment Standards Act, the Workers Compensation Act and the Labour Relations Act, or to UI, challenge grants, or top-ups, or anything much of what most Canadians can expect. The announcement of these apprenticeships perhaps serves notice on our post-secondary institutions. Can they re-position themselves? Not only do post-secondary performing arts programs face greater competition from (sometimes better capitalized) private schools, more than half of the new apprenticeship programs will be in skills components already offered (though not in a job-specific modules) in technical programs at Douglas College, UBC, Malaspina, Langara. De-professionalization in the arts is paralleling the devolution of cultural jurisdiction to the provinces. With falling transfer

payments, will degree programs that overlap apprenticeable trades in the performing arts be targeted as a redundancy? In the technical arts, will the post-secondary institutions have to wrest control of training back from the unions and private schools, or reposition their technical degrees and diplomas in the remaining professional/management areas, such as designers, stage managers, cultural (multi-use) facilities managers, and technical directors? Will they be able to operate in the future as they have in the past? Appropriate cooperative initiatives among educational institutions, engagers, artists' associations, and unions for re-training modules can *supplement* degrees, diplomas, and certificates. Among Canada's post-war achievements was discipline-driven artist' education maintained at arms' length through a variety of public, post-secondary institutions. To best serve both the discipline and the industry, formal training can only be a benchmark. The widest range of training and experience serves in the development of artists.

British Columbia and Vancouver have given the new Ford Centre for the Performing Arts a variety of zoning variances; a $5 million loan guarantee; exemptions from provincial labour law; and awarded an honourary doctorate from UBC to the president of Live Entertainment, the Ford Centre's parent company. Certainly, many of the apprenticeships recently announced by the province are designed to train the technical workforce employed by the Ford Center, and film production. But where are the programmes for the actors, the singers, dancers, musicians, conductors, choreographers, and directors at the Ford Centre? The network of

amateur, and semi-professional, and educational musical productions in Vancouver during the 1960's and '70's that nurtured stars like Jeff Hyslop (Phantom of the Opera) and Brent Carver (Kiss of The Spider Woman) and directors like Richard Ouzounian (Unforgettable) between their youthful prodigy and their adult careers, has disappeared. After high-school, many of our best young performers move away. Last summer the provincial government announced that $54 million "cultural" dollars earmarked for *capital* costs. Announcement was also made of $4 million in programs to support the "arts and cultural sector". (BC CultureWorks, July 1995) Will the artists-in-training and the artist-employees who can't get apprenticeship money have access to cultural programmes from that $4 million? Will those programmes be designed to supply skills-specific training B.C. artists can't get now?

In 1996, a new B.C. Arts Council arrived as part of a legislative package that included the revisions to the *Employment Standards Act*, the *Workers' Compensation Act* and the *Labour Relations Code*. The *Arts Council Act* is legislation designed to split the province's cultural commitment between an "arts sector" and the "cultural industries". From the B.C. Arts Council Act:

"Establishment and purpose

The British Columbia Arts Council is established for the purpose of

(a) providing support for arts and culture in British Columbia,

(b) providing persons and organizations with the opportunity to participate in the arts and culture in British Columbia, and

(c) providing and open, accountable and neutrally administered process for managing funds for British Columbia arts and culture."

The Arts Council will have no staff of its own, and will have to use the existing Ministry bureaucracy. If all current promises are kept, it will oversee some $16million. On the other hand, all three levels of government have promised $53million in arts and arts-related construction spending under *InfrastructureWorks* and another $5 million at least to the cultural industries under the Canada-B.C. Cultural Agreement, added to the millions already committed through existing programs. A telephone call to a provincial information officer confirms that none of that cultural industries money, nor the provincial allocation of arts and arts-related construction money, will get any scrutiny from the Arts Council.

In B.C., culture is a billion-dollar word. There was a "cultural" rationale behind the B.C. Trade Commission loan guarantees to *Red Scorpion 2* and other films. It was justified on the basis of gross employment figures, and projected local expenditures of U.S. money on the part of the film production. Canada protects the film and recording industries (often exporting product assembled in Canada from U.S. r&d) by disbursing their subsidies under the cultural umbrella, a feature keeping "culture" off the Free Trade agenda. The B.C. Arts

Council Act effectively means that the arts sector is now officially hived-off as domestic and not-for-profit. In the arts sector, local institutions and artists are subsidized to supply the local market. It is within the domestic arts sector--a service sector--that the B.C. Arts Council will be permitted to encourage and oversee cultural activity. On the face of it, even The Fraser Institute would cede significantly more power to the B.C. Arts Council than the government has. "Grants for films, cultural activities, and heritage projects should be submitted to a public bidding process decided by a panel of appointed representatives of the cultural community." (*A Policy Standard for British Columbia.* April, 1996). Should the B.C. Arts Council not only oversee the arts sector, but the cultural industries as well? Arts Council oversight might have prevented the loss of millions in loan guarantees made by B.C. Trade to defaulting U.S. films in 1993 and '94. We will never know. The 1982 Federal Cultural Review *Report's* conviction that, "those cultural activities most vulnerable to the intrusion of noncultural objectives be confided to boards of trustees insulated from political direction and entrusted with the full care and management of operations," (Report, 1982, 33) is plainly no longer operable in B.C. The billion-dollar cultural industries, despite being the "most vulnerable to the intrusion of noncultural objectives", will be insulated--not from politics--but from the prying eyes of the artists emeriti on the B.C. Arts Council. There is far too much leveraged money involved now to shackle the bulk of it with an arms-length review process.

As the result of combined union, industry, and government initiative, investment money can proceed through the certified investment pools to the off-the-shelf provincial 'virtual' corporations that make movies under a provincial joint film council agreement and Canadian Copyright registration, and pay local employees, who return a portion to the government in taxes and now through the Employee Capital Corporation regulated by the Ministry of Small Business, Tourism, and Culture. The B.C. government subsidy helps local assemblers of global media product to maintain stability in their relationships with multi-national corporations in the cultural industries. As a consequence, cultural policy in British Columbia has become increasingly authoritarian, employing the coercive powers of provincial labour legislation. Whatever the Arts Council chooses to do with its powers, a trained labour force in the cultural industries attracts more foreign investment to B.C. Therefore, despite fondest hopes and dogged devotion to the cause, the Arts Sector will not be the tail that wags the Cultural Industries' dog.

Within the broad devolution of Post-War federal powers to the richer provinces (which is in some measure a response to the pressures for a continental economy), the B.C. government has constructed a legislative wall between the arts sector and the cultural industries, while retaining their titular relationship. In B.C., while the arts sector will be subject to peer-review, subsidy to the cultural industries sector (film, commercial theatre, recording) will continue to be alloted politically and bureaucratically through ministerial agencies. These subsidies

are usually applied on a commercial rather than a cultural basis; as industrial strategy disguised as cultural policy. It is within that frame that we can understand that the protest-be-damned employee-ization of artists by the B.C. Status of the Artist Advisory Committee in 1993-94.

It is to acknowledge the obvious to say that the Canadian arts community perceives itself to be under attack. A "you snooze--you lose" atmosphere, which some blame on globalization and continentalism, has taken its toll among the traditional Canadian arts and humanities sector. They are post-NAFTA traumatic shock victims; artistic directors and general managers who can only do their best and hope that their particular subsidy will survive the next round of cuts, eliminations, and 'devolution'. While the institutions certainly have their problems, actors have undergone a sea change of de-professionalization in the shift of cultural corporatism from the federal government to the provinces. In the rise of a truly continental film and theatre industry, B.C. actors have been designated without reservation as employees in the film industry. Actors currently retain their status as self-employed professionals, or independant contractors, for their work in the live theatre in B.C. The provincial government has reserved the right to change that at such time as actors (or dancers, or directors, or choreographers) may be "deemed to be employees" (Thompson Report, Feb. 1994).

Since March 1, 1995, all actors in B.C. have fallen under the regulations of the B.C. *Employment Standards Act*, and the *Workers' Compensation Act*. The *Labour Relations Act* currently affects only the actors who are employees in the film industry. However, as Canadian Actors' Equity is a national association with no status in B.C., there is no bar to stage actors or their engagers from seeking a provincial collective agreement under the *Act*. The way is clear for any union that can show support among a cast to certify any stage production in B.C. Presumably, IATSE could be awarded bargaining unit jurisdiction over Assistant Stage Managers (ASM's, now with Equity), in rulings along the lines of its aforementioned 1981 victory over the Directors' Guild (BCIRC 66/81) or the 1990 judgement that certified an IATSE bargaining unit to "set up, run, and take down theatrical and/or stage productions" at the Cowichan Regional Theatre (BCIRC #C108/90). ASM's "run...theatrical and/or stage productions". Just as non-members now have to pay a $175 permit fee to work one day on a film with a UBCP collective agreement, will Equity ASMs someday have to pay permit fees in theatres across B.C. that are in IATSE's jurisdiction? Will they decide to join IATSE instead? Recent Candian Theatre agreements (CTA) between PACT and Equity reflect a trend toward employer-employee thinking. The creation of a labour relations regime for artists and the arts in Canada in fraught with unknowns.

Institutions created in the 1940's and traditions stretching back to Shakespeare's day have resisted the fundamental realignment of Canadian cultural policy that flows from Free

Trade. The imposition of labour law on actors is another measure that fits Canadian cultural life into the U.S. economic and labour model that governs our continental economy. Squaring the circle is always problematic, but it can and has been done. As Michael Ames points out

> Our Canadian system of welfare capitalism, which makes public resources available for private profit while cloaking the arrangement within the popular imagery of individual achivement...continues to flourish. The organization of Expo '86 was a national celebration of this activity. ...Expo '86 was as American as an apple pie baked in Canada and shared with the world. (Ames, in Flaherty and Manning, 246)

Canada is now the second largest exporter of cultural product, after the U.S. In the next decade, wise policy will be policy designed to reorganize and not merely re-capitalize our cultural policies. Infrastructure funding for arts and culture-related projects may create work in the building trades or achieve economic goals, but we must achieve the optimum cultural goals as well. In the longer term--especially with respect to the issue of neighbouring rights for performing artists--the jurisdictional questions facing Canadian culture and artists will need to be addressed and regularized constitutionally, I think. To what extent this working out continues to be undertaken by labour lawyers on a fee basis, or whether it will be taken over by constitutional lawyers, and/or academics, or producer groups, or artists, or a combination, or not at all, will determine the nature of the outcome.

Restoration of the Aid to Artists and Explorations programs would serve to bring the moderating influence of federal support back to communities and regions. The professional development money that has been shifted to Human Resources Canada has been poured into programs that are designed to intervene in artists' lives *at the exactly the same points in their careers* as the now-dismantled Canada Council grants (arms-length) program once did. Such actions represent ideological choices on the part of government. Actors, and I daresay other artists, need a more balanced approach. "Cultural industries" subsidy seems to have proved successful when tied to provincially-directed economic and job development initiatives, which impact on employees. On the other hand, the success of funding to artists has been enhanced when tied to goals set by artists. The prudent course would be to accept the virtues of provincial initiatives that encourage investment, while acknowledging the long history of support among artists for federal legislation that can sustain the professional and commercial status of the performing artist as trans-provincial in nature and self-employed of necessity. Habermas says, "With the growth of a market economy arose the sphere of the "social"...In the measure to which it was linked to market exchange, production disengaged from its connection with functions of public authority." (Habermas, 24) The Canadian arms-length model of cultural development, with Parliamentary appropriation and peer review in the arts, allows subsidy to replicate the market, while securing a public good. This may involve increasing consumption in some cases, and ensuring

production in others. Ensuring continuing production in the arts is necessary, as the transmission of skills and practices is primarily mimetic and oral and non-linear, and must be on-going. The actor, a malleable and replicable digital commodity, has little control over or profit from the fate of her image or any manipulation of her performance that is within the range of an expanding global technology.

We can re-mould a few broad Canadian principles of cultural development within the global context. What is the new link between education and the arts? What mechanisms are needed today to sustain the arms' length principle? Traditionally, Canadian artists great and small be-stride the gulf between their communities' for-profit, and non-profit activities. Aesthetically, ethically, economically, we need to develop simple, contractual mechanisms, defined by federal or federal/provincial legislation, that can ensure the economic and moral integrity of the artist across the entire spectrum of her career, within Canada at least, if not abroad. The Massey Era is over, and the implications are enormous and manifold. Artists and arts organizations can expect devolution, de-profressionalizing, and indeed, in some cases, a reversion to amateur status. The dismemberment of the national film actors' and producers' associations through wars with local employers and provincial unions has been facilitated by provincial agencies and secured by custom-crafted legislation designed to attract foreign investment.

> The most serious cost for Canada resulting from foreign ownership is the intrusion of American law and policy into Canada. For Canada, the essential feature of the problem is not the economic cost, but the loss of control over an important segment of Canadian economic life. While there are no easy solutions to extraterritoriality, Canadian national policy should be directed toward strengthening Canadian law and administrative machinery to countervail extraterritorial operations of American law and administrative machinery. (Watkins, 345)

The gravest long-term danger to Canadian artists from the imposition of provincial legislation designed to accomodate "American law and adminstrative machinery" lies in the realm of artistic conscience. The *Labour Relations Board* and the *Employment Standards Branch*, unlike the Canada Council or the CBC, are under direct ministerial control. In the case of the *Labour Relations Board*, its appointments are often patronage appointments made by the political party in power. The *Labour Relations Board* is not merely subject to political influence, it is a political weapon. In the struggle between labour and capital, BCLRB decisions (which are not *bound* by precedent) have swung radically from left to right over the years, depending on the party in power. The government of B.C. exercises a level of direct ministerial control over the arts that is unprecedented in the history of Canada. Politically volatile theatres can now be closed under the guise of labour and safety legislation applicable to artists. A future government (or the current one,

for that matter) could shut down the *Women in View Festival*, the *Fringe Festival*, all of the Equity Co-ops, and most of the small theatres in British Columbia as it chose, without having to actually censor them. Labour law has been used to shut down theatres for political reasons, as we have seen in Germany, Poland, and Czechoslovakia, et al, in the recent past. How will artists and arts institutions respond should some future government choose to use the power it has over art and artists? Artists are not journalists, freedom of artistic conscience is individual, not professional; a subtle freedom, that can be maintained in the ebb and flow of history by individual artists themselves and artistic institutions committed to the freedom of their expression. Patterns repeat...

> ...the principal obstructions [in Newfoundland]...are entirely owing to the project of carrying on the said trade by a colony of fishermen in opposition to the fishing ships belong to the adventurers...the most effective method to remove all the aforementioned obstructions and to restrain the irregularities and disorders of the fishermen as well as to encourage the adventurers to return to their employement would be to remove the inhabitants... ([House of] *Lords Commissioners for Trade and Plantations*, report, Dec. 1718; in Innis, 157)

11. Recommendations

Recommendation 1.

The British Columbia government abandoned Status of the Artist legislation in 1994. Using the *Universal Declaration of Human Rights*, U.N. *Belgrade Recommendation*, the Siren-Gelinas report, the *Status of the Artist Act*, CCA "Roadmap to Status of the Artist"; Artists' Equity Assn. guidelines; Recommendations of the B.C. Status of the Artist Advisory; American Assn. of University Professors ethical guidelines, I have cobbled together an Act for B.C., to indicate that a it can be done.

STATUS OF THE ARTIST ACT (DRAFT)

1. PURPOSE.

Artistic creativity and cultural vitality is sustained by the people of British Columbia and freely expressed through the work of artists in British Columbia. The work of artists makes a fundamental contribution to the educational, economic, spiritual, and social life of British Columbia.

It is the legal, intellectual, and moral right, and responsibility, of each artist to control the creation and disposition of his or her work(s). The professional is required to have a deep knowlege of specialized techniques, developed

through training and experience; is expected to have a personal involvement that includes a sense of obligation to the standards and traditions of the profession; recognizes a responsibility to uphold the reputation of the profession; maintains a personal reputation through service, and is rewarded accordingly.

The undertaking of agreements for the creation or disposition of his/her work(s) is at the absolute discretion of the artist. The representation, use, paid use, sale, or funding of artists' work(s) are administered by agreements for transfer of ownership, or services.

2. DEFINITIONS

Artist Any person who creates objects, texts, or performances in the visual, literary, performing arts, mixed media, or a craft; who considers his/her creation to be an essential part of his/her life; whether or not she/he is bound by any relations of employment or association.

Association: Artists organization. May be constituted for service, informational, social, promotional, pension, or collective bargaining purposes. The artists organization is involved in representation of the artist(s) and the artist(s) work.

Engager: A society, company, or person who contracts with the artist or the artist's representative for the purchase

or paid use of artists' creative product. Engager includes "employers".

Agent: Receives a percentage commission of artists' fees for representation of the artist with the engager, negotiating contracts and fees.

Funding Body: A public institutution, private foundation, individual(s), private company or society that has as one of its aims the funding of art and artists.

Agreement: Any contract or letter or agreement undertaken between artist and association, engager, agent, or funding body for the representation, use, paid use, sale, or funding of the artist's work(s) or services.

3. RIGHTS

The artist retains all legal, moral and intellectual rights to his/her work in the absence of a written agreement for the representation, use, paid use, sale, or funding of their work(s).

Any contract or letter or agreement undertaken by an artist or artists collectively for the representation, use, paid use, sale, or funding of the artist's work(s) must establish minimum provisions and reflect the additional provisions arising from prior agreements between the artist(s) and associations, engagers, agents, and funding bodies.

Requirements for artists' agreements should include:

1. the nature of the agreement;
2. the services or work(s) which form the object of the agreement;
3. the value of the work(s) and the minimum price or fee for sale, use, or funding;
4. the scope of the services and consideration provided by the parties to the agreement;
5. the amount of commission charged by an agent;
6. the terms of payment and deductions permitted when money is received by an agent;
7. the frequency with which an agent, an association, funding body, or an engager shall report to the artist on transactions concerning the artist's services or work(s);
8. any restriction or condition on any transfer of rights or any grant of licence contained therein;
9. any restriction or condition or any reservation of future services or work(s) contained therein;
10. the resolultion of disputes.

4. RESPONSIBILITIES

The following duties and responsibilities of engagers, agents, associations or funding bodies entering into agreements with artists individually or collectively must be reflected in the contract.

1. The association, the engager, the agent, and the funding body are variously trustees for the benefit of the artist in relation to both the services or work(s) and the proceeds from its sale or use.
2. The association, engager, agent, or funding body must keep a separate accounting for the services or works(s) which is subject to the agreement.
3. If given reasonable notice, the association, engager, agent or funding body must permit the artist to examine accounting entries relating to the sale or use of the artist's services or work(s).
4. Associations, agents, engagers, or funding bodies are liable for the work, or proceeds due the artist from the sale or use of the services or work(s), while it is in their possession.

Should any dealer, exhibitor, or distributor of the works of visual artists or craftspeople become insolvent or bankrupt; the artist's work shall be returned to the artist immediately, and any contract or agreement for sale or use shall be terminated. Funds owed the artist proceeding from the sale or use of the work(s) shall be the first priority in any recovery.

Recommendation 2.

With the Status of the Artist Act above in mind, I have drafted some provincial policy recommendations, addressing the needs of amateur and professional artists in British Columbia.

PROVINCIAL CULTURAL POLICY GOALS

a. Cultural Policy:

1. Re-commit to the goal of .5% of the gross provincial budget to arts funding.
2. Provide subsidy to all arts activity through an arm's length formula.
3. Identify the financial and personnel resources needed to craft a Cultural Policy that delienates policy priorities and mechanisms for funding the arts and subsidizing the cultural industries.
4. Establish a Provincial Arts Policy Council for a period of one year; to hold public meetings bi-monthly for the purpose of animating discussion and documents among artists, arts institutions, community members, academics, and politicians; to channel individual and collective aims toward an evolving Cultural policy; to address multi-cultural, multi-lingual, multi-textual issues.
5. Publish a summary of discussions from the Provincial Arts Policy Council, identifying expressed policy, funding,

venue and facility needs of artists throughout the province. Generate, and call for, studies on select policy issues.

6. Provide funds for a Status of The Artist liason officer to the Provincial Arts Policy Council for six months to co-ordinate Status of The Artist legislation with existing legislation. Present Status of The Artist legislation, regulating artistic professionals. Commit to fund professionals under the provisions of the Status of the Artist Act.
7. Provincial Arts Policy Council brief on Cultural Policy Issues for the guidance of the (professional and amateur) arts community and government will only seek further amendment of existing legislation or policy after consultation with artists and/or organizations directly affected.

b. Taxation.

1. Provincial initiative on a 110% deduction for investment in the work(s) of artists, to be shared by federal, provincial, and municipal tax credits.
2. Provincial initiative on a 125% deduction for donations to arists or cultural institutions, enacted through a shared federal, provincial, and municipal tax credit.
3. A working group to be established to secure better access to pensions and fair taxation for artists.

c. Collective Bargaining.

1. Recognize the right of the self-employed, professional artist to make an agreement to employe a professional association and/or a personal agent for representation under Status of the Artist legislation.
2. Collectively bargained agreements should meet or exceed the standards under Status of the Artist legislation.
3. Recognition of artist associations' history of voluntary scale agreements in place.

d. Employment standards.

1. Where their engager is deemed an employer for any purpose the artist shall not lose their "independent contractor" status.
2. The legal, moral, and intellectual rights to artistic product can only be addressed through a contract between an individual artist and an association, engager, agent, or funding body.

e. Workers' Compensation and Occupational Health and Safety

Permit self-employed, professional artists to pay the employers premium to receive W.C.B. coverage.

f. Education.

1. Pursue B.C. Status of Artist Advisory 1994 recommendations for amendments to include a mandate for Arts in the *Education Act*.
2. Pursue legislative or policy change such that artists should be deemed to have met the qualifications for the B.C. Teaching Certificate, restricted to subjects within their professional discipline, after 200 classroom hours of coursework in pedagogy in a full or part-time program approved by the Ministry of Education.
3. Annual per student funding should be increased 3/10ths of 1%: 1/10th of 1% of per student funding to fund visual and literary arts events;1/10th of 1% of per student funding to tickets for performing arts events;1/10th of 1% of per student funding to fund music and media/computer arts.
4. Re-establish arts courses and programs at post-secondary institutions throughout B.C.

Recommendation 3.

As subsidy to the arts continues to shrink, theatres cut their seasons down and try to rely on co-productions and corporate "sponsorship". While some theatres have adjusted better than others to to the current state of affairs, in the long term, there will be less work for actors. Because they are non-profit societies, the subsidy to theatres has traditionally formed the "venture capital" component of their financing. (Subsidy is, after all, borrowed capital that doesn't have to be paid back to the investors - the public). The box-office is expected to keep the cash-flow in the black once the subsidy for each show of the season is used up. However, with less money for the arts, that "venture capital" is often not available to the exent that it was. The funding formula below (or something like it), would substite actors' "sweat equity" for subsidy. If the formula were administered by a joint standing committee of the *Professsional Association of Canadian Theatres* and *Canadian Actors' Equity Association*, the ACTORS' DEVELOPMENT COMPANY could add one production a season for any PACT company that used it, and provide for a *real* entrepreneurial stake in their work for the actors.

***ACTORS' DEVELOPMENT COMPANY* (ADC)**

Purpose

1. The ACTORS' DEVELOPMENT COMPANY (ADC) provids a new source of "venture capital" to the theatres.
2. The ADC provides the members with a reasonable expectation of profit from their investment.

Structure

- CAEA members would form an ADC as voting co-venturers.
- CAEA member actors, stage managers, and directors would be permitted as voting members.
- PACT theatres would be permitted by CAEA to *invest* in a production undertaken by the company, on a non-voting share-holder basis. No bond would be posted.
- The development company (CAEA members) would act as general contractor, and the theatre (PACT member) as sub-contractor during the rehearsal period. At tech. weekend, this relationship reverses. During the run, and subsequently, the PACT theatre would be deemed to have a sub-contract with the ADC for the performance, tours and remounts.
- Both the ADC and the theatre would expect to return their investment through box-office.

Investment

- Rehearsal fees represent each member of the ADC's *investment*, which they make because they have ane expectation of *profit*.
- The ADC contracts with the Theatre for supply of such production services and facilities as they require. These

services and facilities represent the investment of the Theatre, and may include fees and royalties for rights to produce to the development company.

- There is no bar to having other sources of investment, argreeable to the ADC and the Theatre.
- The services and facilities to be supplied by the Theatre, or sub-contracted (in the case of posters, say) by the Theatre to the specifications of the ADC, in accordance with C.T.A. standards. This arrangement would lessen the ADC's liability for losses, damage, injury etc., for any service or facility or thing that was contracted to be supplied by the Theatre.

Revenue

- The ADC calculates the artists' fees, representing each member's investment in the production; and collectively, the company's investment. The rehearsal portion of this investment to be re-paid *first* from the box-office money.
- The Theatre's investment, to a maximum of an amount equivalent to the ADC's rehearsal fees, to be re-paid *second* from the box-office.
- The performance portion the artists' collective fees, and the remainder of the Theatre's investment to be paid *pari-passu* from the box-office, until the performance portion the ADC's collective fees has been paid from box-office.
- the remainder of the Theatre's investment (if any) will be paid-out with the artists' profit percentages *according to a*

proportional agreement negotiated between the ADC and the Theatre.

- When the remainder of the Theatre's investment has been returned from box-office, the Theatre's profit percentage will be paid out with the artists' profit percentage *according to a proportional agreement negotiated between the ADC and the Theatre.*

Subsequent Production

- All goods supplied by the Theatre to the ADC prior to tech. weekend (sets, props, costumes not from stock, publicity materials etc.), to remain the property of the ADC, to be disposed of as they see fit.
- Upon payment of a $..... retainer to the ADC, the Theatre shall hold the option for a re-mount or tour with the same company under a standard C.T.A. contract, with an additional payment of a ...% royalty on gross box office to the ADC as a development fee. Should the Theatre be unable or un-willing to exercise this option, the ADC is free to negotiate a re-mount with another Theatre without penalty.
- The Theatre shall hold the option to re-mount with a different cast within one year, provided that the 3% gross box-office royalty is paid to the ADC (to be pro-rated depending on how many company members are replaced at the discretion of the Theatre).
- The Theatre shall hold the option (where the ADC does not hold the copyright or performance rights) to mount an entirely new

production (new sets, costume, props, etc.) at its own expense at any time.

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