

Legal Protection of Art and Culture

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Culture is defined in the American College Dictionary published by Random House as "the sum total of ways of living built up by a group of human beings, which is transmitted from one generation to another". In its broadest sense it includes everything done by the individuals as part of the group experience. As each individual shares this experience, he reinforces his identity as part of the group. If the group is homogeneous and isolated this reinforcement is unaffected by outside influences. The more heterogeneous is the group and the more variations there are in its ways of living, the less there is a sense of cohesiveness among its individuals. If the group is not isolated from others it is affected by external influences.

Canada has a relatively small population distributed over more than five thousand kilometers from Newfoundland to British Columbia and the difficulty of preserving a distinctive Canadian cultural identity is apparent. We are divided into two main and many minor linguistic groups and numerous ethnic backgrounds, most of which have only been transplanted to Canada within the last five years. Canadians are more often aware of their differences than their similarities. Faced with a constant bombardment of American cultural values from across a border usually no more than one hundred and fifty kilometers distant through television, radio, film and publication industries more powerful than any other in the world, the nurturing of a distinctive Canadian culture would appear to be an impossible task. Yet Canadians remain distinct. We have a distinctive historical background, experienced by the ancestors of some, adopted by others. We have developed our own institutions and our own ways of doing things, often in response to the American challenge. We have a greater sense of community responsibility for our citizens as opposed to the American ideal of individuality. We have our social security and health programs.

Just as the act of Confederation itself was a reaction to growing American political and economic influence, to say nothing of military might, we have developed institutions in response to the geographic and linguistic realities of our country which serve to bind us together. In the nineteenth century the first consideration was physical communication, when Canada's railway and telegraph systems were created. This century, institutions were developed which enable us to communicate our thoughts and the products of our artistic endeavors. The same or other

institutions support and aid Canadians with these activities and preserve the results for later generations. These institutions, created and protected by Canadian law, are the subject of this paper. Those discussed are federal and serve all Canadians. However each of the provinces have its own institutions and reference will also be made to some of them.

I. JURISDICTION

Currently the question of federal versus provincial jurisdiction in culture is in the hands of the politicians. The *British North America Act*¹ did not directly address the question of culture except for copyrights (section 91(23)) which is assigned to the Parliament of Canada. Otherwise, the provinces could be deemed to have jurisdiction in matters of culture under section 92(13) dealing with property and civil rights, or the federal government could claim jurisdiction under the introductory paragraph to section 91 dealing with peace, order and good government (the residual powers), or under section 91(29) dealing with classes of subjects expressly excepted from those assigned to the provinces, or under section 92(10) which gives the Parliament of Canada the power to legislate in "such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces."

The federal parliament does have jurisdiction in the exportation and importation of objects of cultural value and in 1975 adopted the *Cultural Property Export and Import Act*.² Furthermore, in 1932, the Judicial Committee of the Privy Council attributed legislative jurisdiction in broadcasting exclusively to the federal parliament³ and in 1989, the Supreme Court of Canada extended this jurisdiction to the national telecommunication network. Otherwise the Government of Canada has in general left the protection and conservation of cultural property and heritage activities to the provinces. It has, however, created a number of institutions which in a massive way engage in the creation and/or support, financial and otherwise, of cultural property.

II. ROLE OF THE GOVERNMENT OF CANADA

Beginning with the adoption of *The Post Office Act*⁴ in 1875, the Government of Canada established its role of subsidizing the dissemination of culture in Canada with the granting of postal subsidies for newspapers and periodicals. With the creation of the National Gallery of Canada in 1880 the federal government established its role in the preservation and exhibition of the graphic arts.

The first radio broadcasting license in Canada was issued by the Department of the Naval Services in 1919 to radio station XWA in Montreal. The station later assumed the call-letters CFCF.

In 1914 the Canadian Government Motion Picture Bureau based in Ottawa was formed to co-ordinate the country's pioneer film-making activities.

Under the presidency of Sir John Aird, the president of The Canadian Bank of Commerce, a Royal Commission on Radio Broadcasting was created by Ottawa in 1928. At the time almost all radio programming was American, although a radio service had been established by the Canadian National Railways in 1923 for its own employees and customers using Canadian programming. The Commission recommended the establishment of a national publicly owned broadcasting system which it felt would alone possess sufficient financial resources to provide truly Canadian programming for all. The provinces were to exercise control over the program content of stations located in their respective territories while the federal government would exercise exclusive control over the physical transmission system. There was to be no advertising. The cost of the system was to be borne by annual receiving-set user fees and by the sponsorship of programs by private sources.

In 1932 the government created the Canadian Broadcast Commission and in 1936 this became the Canadian Broadcasting Corporation (CBC). By then the Privy Council in London had rendered its verdict granting the federal authorities exclusive jurisdiction in broadcasting so that Aird's recommendation of joint federal/provincial participation was not followed. In fact, foreign

programs were not excluded although the content would be principally Canadian. Programming would be broadcast over a mix of publicly owned and privately affiliated stations and would be available to all Canadians. In addition, the CBC was given the responsibility of licensing and regulating the private stations, a provision which was strongly opposed by the private station owners as constituting a conflict of interest.

The National Film Board was created by the passage of *The National Film Act, 1939*⁵ in May 1939 with the mandate to produce, distribute and promote the production of films in the national interest, and to interpret Canada to Canadians and other nations. In 1941 the Board absorbed the Canadian Government Motion Picture Bureau and became responsible for the production and planning of government films. Under the direction of its first president, John Grierson, the Board concentrated on making documentaries, and during the war years produced a number of films and two series dealing with Canada's war effort. These films were seen accompanying feature films in theatres across the nation and abroad. In 1941 one of these films from the "Canada Carries On" series won the first Hollywood Oscar for Canada.

Film distribution in rural areas where there were no theatres was carried on by itinerant film projectionists sent on predetermined circuits by the Board. Later industrial circuits and National Trade Union circuits were added and film libraries were established usually attached to other community institutions. The Board discontinued its itinerant circuits after the war but established a program for their continuation under local initiative.

In 1949 Vincent Massey, later to be Governor-General, was named to chair a Royal Commission to examine and report on National Development in the Arts, Letters and Sciences, thus greatly expanding federal responsibility in culture. The Commission issued its report in 1951 strongly emphasizing Canadian cultural sovereignty. The CBC was praised for its achievements and its role in broadcasting was confirmed, particularly as regards Canadian content and programming and the extension of this role to television. At the same time the recommendations of the report led to the creation of the National Library of Canada in 1953 and the Canada Council

in 1959. With the Canada Council the government established a practice of direct financial aid to private artistic production, a practice later to be expanded with the creation of the Canadian Film Development Corporation. The Council followed the principle of an arms length relationship between the government and its cultural institutions. The recipients of Canada Council grants were chosen by juries of artistic peers.

The delay in implementing the Massey report with respect to the Canada Council was due to reasons partly political and partly financial. The political cause was the threat of a separate arts council being set up in Quebec by Premier Duplessis. It was felt that this might frustrate the national efforts of the Canada Council. The financial cause was eliminated when in 1956 the government received \$100 million in death duties from the estate of Sir James Dunn and Isaak Walton Killam, \$50 million of which was used to establish the Endowment Fund for the Canada Council. It was felt that the income would be sufficient to fund Council grants. In 1965 the government appropriated additional funds and this appropriation became annual and now provides more than ninety percent of the Council's budget.

The advent of television in Canada in the 1950s created unprecedented pressure on Canadian broadcasters to produce Canadian programming in this new and very expensive medium. The attraction of a high quality and relatively inexpensive product from across the American border made it mandatory for private Canadian stations to be regulated if sufficient Canadian product was to be broadcast. For budgeting reasons even the CBC was obliged to obtain some of its programming from the U.S. and to broadcast in certain areas by means of affiliated private stations. Thus the present mixture of public and private service acting in concert was established. This system was confirmed by the recommendations of a Royal Commission on Broadcasting set up under the chairmanship of Robert Fowler in 1955. The report, tabled in 1957, led to a new *Broadcasting Act*⁶ which was adopted on September 6th, 1958. A Board of Broadcast Governors was created to assume the regulatory duties previously carried out by the CBC. This Board was to regulate the establishment and operation of networks, the activities of public and private stations

and the relationship between them. It was also to ensure a greater use of Canadian talent and programming and the maintenance of high standards.

In 1961 the Board of Broadcast Governors licensed two new private networks, CTV to broadcast in English and TéléMétropole to broadcast in French. In return for a commitment to produce certain minimums of original programming these networks, as well as individual stations receiving licenses, were given virtual monopolies. It has always been most difficult for new stations or networks to receive licenses in the same areas as the established broadcasters.

Mr. Fowler was called back in 1964 to head an advisory committee which in its report to the Government in September 1965 was critical of the private stations' record in Canadian production and recommended the replacement of the Board of Broadcast Governors and the Board of Directors of the CBC with a new more powerful regulatory body.

In the *Broadcasting Act*⁷ of 1968 the Committee's recommendations led to the creation of the Canadian Radio-Television Commission (now the Canadian Radio-television and Telecommunication Commission) or CRTC, which was to license and regulate broadcasting in Canada. The CBC, while retaining its own Board of Directors, was subject to the control of the CRTC and given the specific mandate to contribute "to the flow and exchange of cultural and regional information and entertainment".⁸ The CBC was expected to assume the main burden of Canadian content broadcasting while the private stations were permitted generous access to American programming in order to meet the requirements of economic reality. Cable transmission of programming was made subject to CRTC regulation but in fact remained free from Canadian content requirements.

The Clyne Committee appointed in 1978 under the chair of J.V. Clyne, a former justice of the British Columbia Supreme Court, stated that new technologies of tele-communication would imperil Canadian sovereignty, particularly with regard to foreign (U.S.) broadcasting.

The Massey report of 1951 was brought up to date by the Federal Cultural Policy Review Committee co-chaired by Louis Applebaum and Jacques Hébert which in 1982 reported on Cultural Services and Policies in general. The report concluded that the CBC was at the very heart of Canadian culture and the private broadcasters must take a greater contribution to new Canadian programming on English television.

The most recent report on broadcasting, and which led to the adoption of a new *Broadcasting Act*⁹ promulgated law on June 4th, 1991 was the Task Force on Broadcasting Policy under Gerald Caplan and Florian Sauvageau which reported in September 1986. The report concluded that American broadcasting flooding Canada through the new technology of satellite transmission should be met by increased Canadian high quality production. It also recognized the power and importance of the CRTC but stated that the government should have the power to issue directives to this body and that the CRTC should enforce the conditions of licenses it grants through economic incentives. It recommended that the French language services of CBC be allowed to develop distinctively from the English language sector, that its broadcasting services be extended to all areas of Canada and be available in aboriginal languages, that it phase out commercial American programs available on other networks, that the functions of the Chairman of the Board of Directors and of the President and chief executive officer be separated, that the former primarily be concerned with corporate policy and the latter with its implementation. It also recommended that the CRTC continue to license provincial broadcasting entities which should otherwise be subject to provincial jurisdiction and offer a more general programming as well as educational broadcasts. It proposed that the National Film Board's mandate be extended to broadcasting, that a public non-commercial satellite-to-cable television service in English and French, to be called T.V. Canada, be established with a particular concern for regional broadcasting. Furthermore, it recommended that Telefilm Canada's Broadcasting Fund be extended beyond the end of its first five year mandate in 1988 (since done) and that its mandate with respect to this fund be formalized by legislation.

The growth of the Canadian feature film industry proceeded, in its early stages, quite independently from the broadcasting sector. The latter depended on use of broadcasting frequencies which formed part of the public domain and which as a consequence came under government control from its subject to provincial jurisdiction, assumed importance at a later date. Feature film production on the other hand was viewed as a purely commercial matter and therefore left to private interests to develop. As a result by the mid-sixties, while the distribution and exhibition of feature film was a thriving business, production was virtually non-existent in English Canada which, without the protection of a CBC, was merely a minor sector of the U.S. market and was treated to an almost total diet of American product. In Quebec the situation was somewhat different. That province's unique language and culture did support a small but high quality feature film industry led by film makers such as Claude Jutra and Gilles Carle.

The initial impetus for government support for the creation of feature films originated in the National Film Board (NFB), and particularly with Guy Roberge, its President and Government Film Commissioner, and Michael Spencer, who left the Board to become the executive director of the Canadian Film Development Corporation (CFDC), now Telefilm Canada, for the first ten years of its existence. The concept was to create a vehicle, operating at arms length from the government in the same manner as the NFB, by which the government would financially support the private production of Canadian feature films through loans or direct equity investment. This entity would not compete with the National Film Board which was at that time a producer of films other than feature length. The two institutions complemented each other and the head of the NFB as Film Commissioner was, and still is, an *ex-officio* member of the CFDC Board.

Due to the personal efforts of the individuals named above and several others in the film production community the Cabinet reached a decision in 1964 and the *Canadian Film Development Corporation Act*¹⁰ was given Royal assent on March 10th, 1967.

The Corporation was provided with a fund of \$10 million which was to be renewed through the repayment of loans and the return on investment. At the time, with feature film budgets

running at an average of \$500,000, investments to a maximum of \$200,000, the initial limit which the Corporation established would enable the financing of considerable growth in the industry. However, after three years, with capital returns of only approximately \$2 million the Corporation received an additional parliamentary credit of \$10 million followed by another \$5 million in 1976-1977. After that, the Corporation started to receive an annual appropriation.

The introduction of the one hundred percent Capital Cost Allowance income tax deduction in 1974 provided additional stimulation to the growth in feature film production and in 1977 the Corporation started to make interim loans to producers requiring bridge financing until the new private money became available. In 1981 the Corporation received a reimbursable allocation of \$4 million for the purpose of making interim loans and in 1984, was relieved of the obligation to repay this sum.

While the Canadian feature film production industry was struggling to get off the ground, Canada was rapidly developing a strong technical infrastructure. Increasingly, American productions were being shot in Canada, attracted by a relatively low Canadian dollar, the beautiful and enormously varied British Columbia landscape, the urban environment of Toronto and, to a lesser extent, Montreal, which could be photographed to resemble your average American city. Additional encouragement was offered by the development of highly skilled Canadian technical crews every bit as able as their American counterparts. These crews were also available for Canadian producers who now had to compete for their services with the Americans. Particularly in English Canada, the development of quality feature film production, that is the elements of direction, script-writing and acting lagged behind development in the technical sector; not that we were short of talent but most of it was lost to the U.S. where pay and opportunity incentives were greater. In Quebec where language and culture stimulated a high demand for local production and worked to keep talent at home, the industry responded with an extremely high quality if not high volume of motion pictures. "Mon oncle Antoine" (1971), "Kamouraska" (1973), "Les Ordres" (1974) and "J.A. Martin, photographe" (1976) are fine examples of pre-1980 Quebec feature film.

The challenge of increased cost was met in two ways: through co-production with other nations and through increased public investment and other support for Canadian production. Direct public support as well as indirect support through the Capital Cost Allowance tax incentive required a certain minimum of Canadian participation in the entire project. Co-productions were joint Canadian and foreign projects with the relative proportion of participation by each country qualifying for its government's support. Each participating country provided its producer with the exclusive market for distribution of the film. Treaties between Canada and other nations established the applicable norms for such co-productions so that projects meeting the necessary criteria would automatically qualify for the benefit provided by the laws of each participating country. In 1976 the CFDC was given the responsibility of administering the various co-production treaties and to date such treaties have been signed with twenty-three countries with more under negotiation.

As a result of the recommendations contained in both the Clyne Committee and the Applebaum-Hébert reports, the Canadian Broadcast Program Development Fund was established in July 1983 as part of the government's general broadcast strategy. Because its creating legislation did not provide for this new role, the CFDC signed a Memorandum of Understanding with the Minister of Communications which in 1980 had assumed jurisdiction for the Corporation's activities. In a period of two years the annual budget of the CFDC increased ten-fold to \$50 million in the fiscal year of 1984-1985. As a result of its expanded activities the Corporation adopted the name Telefilm Canada although the old corporate name remains its legal designation, at least until the Act is amended.

In 1984 the role of Telefilm Canada was again expanded as a result of implementation of the Government of Canada's National Film and Video Policy. The operation of foreign offices in Paris, London and Los Angeles which dealt with the marketing abroad of Canadian film product was transferred to it from the National Film Board, it assumed operation from Department of Communications of the Festival Bureau which provides grants to film festivals across Canada and

it expanded its activities in the marketing of Canadian feature films at home and abroad and in script and project development.

In 1986 the government created the Feature Film and Versioning Assistance Funds increasing Telefilm Canada's annual budget by \$30 million and \$3 million respectively.

By 1987 feature film production was financed approximately one-third to one-half by direct government investment through Telefilm Canada and the provincial agencies, about one-third by private investors claiming the Capital Cost Allowance and the rest by the producers or others directly involved in the film, often by postponing a part of their fees. A step backwards in the support of Canadian film production occurred in June of that year when, in the context of fiscal reform, the federal government reduced the Capital Cost Allowance applicable to certified Canadian films from 100 percent to 30 percent, spread over two years. However, the immediate effect of this measure was mitigated by the "grandfathering" or the applicability of the old rules to production completed before a set deadline. Film production in the Province of Quebec was actually stimulated by an increase to 166 percent in the Capital Cost Allowance against Quebec income tax for Quebec certified film which of course could also qualify for the reduced federal tax benefits. Since then, however, the Province of Quebec has dropped the Capital Cost Allowance completely in favour of a direct tax credit to the producer of 18 percent of the Quebec-related expenses. A certain measure of private investment in film has now returned because of a reduction in Capital Cost Allowance permitted for other types of investments by the federal government.

In 1985 a report commissioned by the federal government on the state of feature film production was submitted by Marie-Josée Raymond and Stephen Roth. This report pin-pointed film distribution as the weak link in the industry. The Province of Quebec had already provided in its *Cinema Act*¹¹ that only Quebec-based distributors could be licensed to distribute films in that province. A similar Canadian bill became stalled in the House of Commons, possibly a victim of intense political pressure from the United States. However in September 1988 the federal

government established a Distribution Fund of \$85 million spread over five years. Telefilm Canada is responsible for the administration of this fund the object of which is to provide distributors with additional funds to enable them to purchase distribution rights from the producers of Canadian feature films.

III. ROLE OF THE PROVINCES AND MUNICIPALITIES

Traditionally the provinces have played the major role of heritage conservation through the establishment of museums, many of which date back to the nineteenth century. In addition most provinces have strong legislation for heritage preservation, for example, the Quebec *Cultural Property Act*.¹² Municipalities have concerned themselves mainly with library services although many support other cultural activities through grants to festivals, prizes and direct subsidies to performing troupes.

Provinces have also within the last two or three decades established institutions in response to federal initiatives or paralleling the support of similar federal institutions. An example of the former is the Canada-Manitoba Cultural Industry Development Office, providing support to film and television production under the Canada-Manitoba Economic Development Agreement. Examples of the latter are TV-Ontario and Radio-Québec, both essentially educational broadcasters but providing a varied programming in their respective provinces, and the Ontario Film Development Corporation (OFDC), B.C. Film, the Alberta Motion Picture Development Corporation, the Saskatchewan Film and Video Development Corporation, (SaskFILM) and the Nova Scotia Film Development Corporation as well as the film programs of the Société Générale des Industries Culturelles of Quebec, which more or less parallel the activities of Telefilm Canada with respect to motion picture development production in their respective provinces. Generally speaking federal spending on cultural initiatives slightly exceeds the combined provincial and municipal spending throughout Canada, although a far greater proportion of federal spending has been devoted to the cultural industries of broadcasting, film and video, sound recording and

publishing. Provincial and municipal spending on the other hand is primarily devoted to heritage activities and libraries.

While the mandate of Telefilm Canada makes no reference to an economic aim, the mandates of the provincial agencies are often specifically commercial as well as cultural. The article of the *Canadian Film Development Corporation Act*¹³ dealing with the object of the Corporation refers to the fostering and promoting of the feature film industry, while the mission statement of the O.F.D.C. clearly refers to an economic as well as cultural objective with return on investment being a desired goal.

IV. FEDERAL LEGISLATION

Having outlined the various federal institutions in their historical context the following is a summary of the main items of federal legislation devoted to protection of the arts and culture. Notably absent from this resumé is a reference to the *Copyright Act*.¹⁴ Unfortunately, space and time did not permit an adequate examination and analysis of this very important piece of legislation.

A. Broadcasting Act¹⁵

The new *Broadcasting Act*,¹⁶ which received Royal Sanction on February 1st, 1991 and came into force on June 4th, 1991 replaced the *Broadcasting Act* of 1968.¹⁷

The previous Act defined broadcasting as a radiocommunication intended for reception by the general public, and it defined a radiocommunication as a transmission of electromagnetic waves of frequencies lower than 3000GHz. It did not therefore specially include cable transmission. The new Act however also applies to means of telecommunication other than radio waves and includes "wires, visual or other electromagnetic system or any optical or technical system".¹⁸ It therefore includes cable transmission.

The new Act provides that the Canadian Broadcasting System is to operate primarily in English and French and may also operate in other languages including native languages. The previous Act referred only to service in English and French.

In the new Act the Broadcasting System is described as being a mixed public and private system which must provide "a public service essential to the maintenance and enhancement of a national identity and cultural sovereignty".¹⁹

A section of the new Act deals with the Canadian Radio-Television and Telecommunication Commission which is to regulate and supervise the broadcasting system with a view to implementing broadcasting policy,²⁰ which it can formulate.²¹ The Governor in Council may issue to the Commission directions of general application on broad policy matters,²² but subject to parliamentary scrutiny.²³ The CRTC is given power to establish classes of licenses, to issue licenses for up to seven years and to revoke licenses.²⁴ It can make regulations regarding Canadian content and program standards of licensees,²⁵ with the exception of the CBC and any licensee carrying programming for a province.²⁶ It must hold public hearings on the issuing and revoking of licenses and the issuing of orders²⁷ but must consult with the CBC in connection with the renewal of the latter's license. The CBC has a right of referral of a ruling to the Minister (of Communications).²⁸ The previous Act, while adhering to the principle of public license hearings, permitted the CRTC to dispense with them when it was satisfied they were not required.

The section in the new Act dealing with the Governor in Council²⁹ provides that the latter can issue directives to the Commission reflecting the maximum number of channels or frequencies to be used in any area, the reservation of those for the use of the CBC, the classes of applicants to whom licenses may not be granted or the circumstances in which licenses may be issued to agents of provinces or to those otherwise ineligible to receive them.³⁰ The Governor in Council may also order the carrying of a particular program of urgent importance to Canadians by licensees in general or in a particular area.³¹ Under the previous Act, the Executive Committee of the CRTC, which is abolished in the new Act, was the authority which required the Corporation to

broadcast such a program, either on its own initiative or under a directive from the Governor in Council.³² Thus government control over the activity of the CBC is now more direct. Under the new Act, the Governor in Council may, after consultation with the CRTC, override a license decision of the latter,³³ subject to the right of appeal to the Federal Court.³⁴

In dealing with the CBC, the new Act makes several reference to its freedom of expression and journalistic, creative and programming independence.³⁵ It provides for a Board of fifteen directors each appointed for five years³⁶ including a full time Chairperson³⁷ and a President who is the chief executive officer.³⁸ No director may be engaged in broadcasting including the production or distribution of broadcasting material nor may he have any pecuniary interest therein.³⁹ The previous Act provided only for a President who was also the chief executive officer.

Under the new Act there is a standing committee of directors for each of English language and of French language broadcasting. The Chairperson and President sit on each committee. This is in keeping with section 3(1)(c) which provides that "English and French language broadcasts, while sharing common aspects, operate under different conditions and may have different requirements." No such statement appeared in the previous Act nor did it formalize the separation of English language and French language broadcasting.

The Corporation must under the new Act provide an international service⁴⁰ and may act as an agent of Canada or of a province in respect of any broadcasting operations it may be directed to carry out by the Governor in Council.⁴¹ The previous Act did not require but stipulated that the CBC may provide an international service.

The Corporation must submit annually to the Minister of Communications a Corporate plan including its capital and operating budgets and its five year objective.⁴² In the previous Act, the Corporation was only required to submit an annual report concerning the completed year's operations in such form as the Minister directed.

B. Canada Council Act⁴³

The Act sets up a Corporation called the Canada Council, consisting of a Chairman and a Vice-Chairman, both named for terms of up to five years, and not more than nineteen other members named for three years. The appointments are made by the Governor in Council.⁴⁴

The objects of the Corporation as set out in section 8 are to foster and promote the study and enjoyment of, and the production of works in, the arts, including:

1. aiding organizations with similar objectives;
2. providing grants, scholarships or loans for study and research;
3. making awards for accomplishments;
4. arranging and sponsoring exhibitions, performances and publications;
5. making grants to institutions of higher education for capital building construction;
6. exchanging knowledge respecting the arts with other countries or organizations; and
7. representing and interpreting Canadian arts abroad.

Section 16 provides for the establishment of an Investment Committee consisting of the Chairman, one of its members designated by the Council and three other persons appointed by the Governor in Council. The Committee aids and advises the Council in the administration of its investments.

Section 13 provides for an Endowment Fund originally in the amount of \$50 million and section 14 provides that the expenditures for the purposes of the Act be paid out of the return of investment of the Endowment Fund as well as out of other assets received by the Council by gift or otherwise.

Section 15 establishes the University Capital Grants Fund, also in the amount \$50 million to be used for the purposes of section 8(e) mentioned above.

C. Canadian Radio-television and Telecommunication Commission Act⁴⁵

The Act establishes the CRTC consisting of not more than nine full-time and ten part-time members (amended in the new *Broadcasting Act* to thirteen and six members respectively) appointed by the Governor in Council.⁴⁶ Members may not be engaged in a telecommunication undertaking or have any pecuniary interest therein.⁴⁷ A Chairman as chief executive officer and two Vice-Chairmen are appointed by the Governor in Council from the full-time members.⁴⁸

The objects and powers of the Commission are as set out in the *Broadcasting Act*.

D. Cultural Property Export and Import Act⁴⁹

Adopted in 1975, the Act provides that the Governor in Council, on the advice of the Minister, presently the Minister of Communications, may establish a Canadian Cultural Property Export Control List setting out specific objects or classes of objects which, regardless of their place of origin, are deemed necessary to preserve the national heritage in Canada. This list may include objects of archaeological, pre-historical, historical, artistic or scientific interest recovered from the soil, the territorial sea or the inland waters of Canada, aboriginal objects having a value of at least \$500, certain objects of decorative arts over one hundred years old, books, records, documents, photos and collections worth over \$500, drawings, engravings, original prints and water colours worth over \$1,000 and any other objects worth over \$2,000. No object may be less than fifty years old nor be made by a living person.⁵⁰ Employees of the Customs and Excise Branch Revenue Canada may be designated as Permit Officers by the Minister to issue export licenses on application from Canadian residents.⁵¹ An Officer must issue a permit for any object imported into Canada within the previous thirty-five years and not previously exported from Canada or for an object lent by non-residents to a Canadian institution or a public authority or for

an object to be removed from Canada for a purpose and for a period of time prescribed by regulation.⁵² Other than above, unless the export of the object was refused in the two previous years, the Permit Officer determines whether or not it is on the list.⁵³ If not, he issues a permit; if so, he refers it to an Expert Examiner appointed under the Act.⁵⁴ If the Examiner determines the object is not on the list he advises the Permit Officer to issue a permit.⁵⁵ If he also determines it to be on the list he advises the Permit Officer not to issue the permit. In both cases the Examiner advises the Review Board set up under the Act.⁵⁶ The Minister is given the authority to amend, suspend, cancel or reinstate any export permit other than one issued on the direction of the Review Board⁵⁷ and has the power to issue general permits for objects on the List.⁵⁸

The Review Board, known as the Canadian Cultural Property Export Review Board consists of a Chairman and from six to twelve other members appointed by the Governor in Council. Other than the Chairman and two members who are chosen generally from among residents of Canada, the other members are chosen from persons active in museums or similar institutions or from private art dealers or collectors.⁵⁹ The Board considers appeals from persons whose applications to export have been refused. If the refusal is upheld the Board fixes a delay from two to six months during which the Minister, who has been advised, advises such institutions and public authorities in Canada as he sees fit of the delay and the object in question.⁶⁰ Any such institutions or authorities may offer to purchase the object and, if such offer is refused by the exporter, may apply to the Board to establish the object's fair value. Alternately, the applicant for the permit may apply to the Board to establish a fair value.⁶¹ Should no such offer to purchase be made or should one be made and the buyer not be willing to pay the value established by the Board, the latter shall direct a Permit Officer to issue the permit requested.⁶²

The Minister may make grants and loans to institutions and public authorities in Canada to purchase objects for which permits have been refused.⁶³ Such grants and loans shall be from monies appropriated by Parliament for that purpose⁶⁴ or from the Canadian Heritage Preservation Endowment Fund Account, made up gifts and bequests to Her Majesty for that purpose.⁶⁵

The Act also provides for reciprocal agreements to be signed with foreign states respecting the illegal trade in cultural property so designated by the signatory states and stipulating that any illegally imported property shall be returned subject to the payment of compensation by the reciprocating nation to a purchaser in good faith.⁶⁶

E. Historic Sites and Monuments Act⁶⁷

This Act provides for the creation of the Historic Sites and Monuments Board of Canada consisting of seventeen members and composed of the Dominion Archivist appointed under the *Public Archives Act*,⁶⁸ an officer of the National Museum of Canada, an officer of the Department of the Environment, two representatives for each of the Provinces of Quebec and Ontario and one representative for each of the other provinces, the Yukon Territory and the Northwest Territories, which representatives are appointed by the Governor in Council.⁶⁹

The Board receives and considers recommendations to the Minister of the Environment who may mark or commemorate historic places and establish historic museums and who administers, preserves and maintains such historical places and museums.⁷⁰ The Minister may, for the above purposes, purchase, lease or otherwise acquire such historic places or lands for historic museums.⁷¹

F. National Arts Center Act⁷²

The National Arts Centre Corporation is created consisting of a Board of Trustees composed of a Chairman, a Vice-Chairman, the Mayors of the cities of Ottawa and Hull, the Director of the Canada Council, the President of the CBC, the Government Film Commissioner and nine other members appointed by the Governor in Council.⁷³ The Board appoints a Director who is the chief executive officer.⁷⁴

The objects of the Corporation are to operate and maintain the Centre located in Ottawa, to develop the performing arts in the National Capital Region and to assist the Canada Council in the development of the performing arts elsewhere in Canada.⁷⁵

G. National Film Act⁷⁶

The Act creates the National Film Board consisting of the Government Film Commissioner as Chairman and the Chief Executive Officer⁷⁷ plus eight other members appointed by the Governor in Council, of which three are from the public service of Canada or the Canadian Forces and five from outside these sectors.⁷⁸ No member can have a pecuniary interest in commercial film activity.

The Board is to initiate and promote the production and distribution of film in the national interest⁷⁹ and in particular:

1. to produce films designed to interpret Canada to Canadians;
2. to represent the Government of Canada in its relations with those engaged in motion picture film activity for the government;
3. for research in film activity; and
4. to advise the government.

H. National Library Act⁸⁰

The Act provides for the continuation of the National Library,⁸¹ managed and directed by the National Librarian,⁸² assisted by the Associate National Librarian.⁸³ The National Librarian is responsible for the collection by purchase or otherwise of books for the Library, the compiling and maintenance of a national union catalogue of the contents of the principal library collections in Canada and a national bibliography of books produced in Canada, written or prepared by Canadians or of special interest or significance to Canada, the lending or disposing of National

Library books and the making of exchange agreement with institutions in and outside Canada.⁸⁴ The National Librarian also coordinates the library services of departments, boards and agencies of the Government of Canada.⁸⁵

The word "Book" by definition includes any document, paper, record, tape or other thing published or on or in which information is written, recorded, stored or reproduced.⁸⁶

The National Librarian is advised and assisted by the National Library Advisor Board consisting of the National Librarian, the Parliamentary Librarian and the Dominion Archivist, four other persons representing each of the Canada Council, the Social Science and Humanities Research Council, the Association of Universities and Colleges of Canada and the National Research Council of Canada, and eleven other persons, at least half of whom shall be professional librarians and all appointed by the Governor in Council.⁸⁷

Two copies of each book published in Canada or one copy if its retail value exceeds fifty dollars, shall be sent to the National Librarian within one week of publication and at the publisher's expense.⁸⁸

I. National Museums Act⁸⁹

The National Museums of Canada is set up as a corporation with its Head Office at Ottawa⁹⁰ consisting of a Board of Trustees composed of a Chairman, a Vice-Chairman, the Director of the Canada Council, the President of the National Research Council of Canada and ten other members all appointed by the Governor in Council.⁹¹

The purposes of the corporation are to demonstrate the products of nature and the works of man with special but not exclusive reference to Canada.⁹²

The Corporation comprises the National Museum of Canada, museums of human history, natural history, science and technology and such other museums as the Board may establish with the approval of the Governor in Council.⁹³

A Director is appointed to each museum by the Governor in Council on the recommendation of the Board.⁹⁴

The Corporation is administered by a Secretary-General named by the Governor in Council.

J. Public Archives Act⁹⁵

The Governor in Council may appoint the Dominion Archivist who shall take charge of the Public Archives.⁹⁶ The Public Archives consist of all public records, documents and other historical material.⁹⁷

K. Department of State Act⁹⁸

A department of the government of Canada called the Department of the Secretary of State of Canada is established⁹⁹ under the direction of the Secretary of State, who is appointed by commission.¹⁰⁰

The Department's powers, duties and functions extend to and include all matters over which Parliament has jurisdiction and not otherwise assigned by the Government of Canada, including the encouraging of the arts, learning and cultural activities and libraries, archives, historical resources, museums, galleries, theatres, film and broadcasting.¹⁰¹

In fact many of these functions relating to the arts have been reassigned to the Department of Communications which now also functions as a department of culture.

L. Canadian Film Development Corporation Act¹⁰²

The Act sets up the Canadian Film Development Corporation consisting of six members appointed by the Governor in Council and the Government Film Commissioner as an *ex-officio* member.¹⁰³ One member is designated Chairman by the Governor in Council.¹⁰⁴

No member may directly or indirectly have any pecuniary interest in commercial film activity.¹⁰⁵

The objectives of the Corporation¹⁰⁶ are to foster and promote the development of a feature film industry in Canada and it may:

1. invest in individual feature films in return for a share in the proceeds thereof;
2. make loans to producers of individual feature films and charge interest;
3. make awards;
4. make grants to film-makers and technicians; and advise and assist producers.

An executive director of the corporation as chief executive officer may be named by the Governor in Council on the recommendation of the Corporation.¹⁰⁷

The Minister (now Minister of Communications) may on recommendation of the Corporation appoint an Advisory Group made up representatives from the industry.¹⁰⁸

As stated above, the responsibilities and activities of the corporation, now called Telefilm Canada, have been greatly expanded.

CONCLUSION

While the present paper has been national and federal in focus, each province and indeed many areas within our provinces and territories possess their own cultural distinctiveness. As indicated above, the provinces have actively pursued the preservation by legislative means of their own cultural distinctiveness and each has designated a minister or ministers of its government to be responsible for the development and preservation of cultural assets within its jurisdiction. A description and analysis of the relevant legislation and indeed, of legislation and institutions on a municipal or local level, would serve to complete the present work and to reflect all that is being accomplished in Canada in this respect.

Cultural legislation has increased enormously in Canada within the last two decades. It must continue to do so if we are to retain our sense of distinctiveness, for the world is in the throes of a revolution in the means of communication and the dissemination of information, more significant perhaps than the industrial revolution of the last century. It is a challenge that we must meet. I believe that Canadians are equal to the task.

FOOTNOTES

1. *Constitution Act*, 1867 (U.K.), 30 & 31 Vict., c. 3.
2. *Cultural Property Export and Import Act*, R.S.C. 1985, c. C-51.
3. *In Re Regulation and Control of Radio Communication in Canada*, [1932] A.C. 304.
4. *The Post Office Act*, S.C. 1875, c. 7.
5. *The National Film Act*, 1939, S.C. 1939, c. 20.
6. *Broadcasting Act*, S.C. 1958, c. 22.
7. *Broadcasting Act*, S.C. 1968, c. 25; R.S.C. 1985, c. B-9.
8. *Broadcasting Act*, R.S.C. 1970, c. B-11, s. 3(g)(iii).
9. *Broadcasting Act*, S.C. 1991, c. 11.
10. *Canadian Film Development Corporation Act*, S.C. 1966-67, c. 78.
11. *Cinema Act*, R.S.Q. c. C-18.1.
12. *Cultural Property Act*, R.S.Q., c. B-4.
13. *Canadian Film Development Corporation Act*, R.S.C. 1985, c. C-16, s. 10.
14. *Copyright Act*, R.S.C. 1985, c. C-42.
15. *Supra* note 9.
16. *Ibid.*
17. *Supra* note 7.
18. *Supra* note 9 at s. 2(2).
19. *Ibid.* at s. 3(1)(b).
20. *Ibid.* at s. 5.

21. *Ibid.* at s. 6.
22. *Ibid.* at s. 7(1).
23. *Ibid.* at s. 8.
24. *Ibid.* at s. 9.
25. *Ibid.* at s. 10.
26. *Ibid.* at s. 11.
27. *Ibid.* at s. 18.
28. *Ibid.* at s. 23(2).
29. *Ibid.* at s. 26 and following.
30. *Ibid.* at s. 26(1).
31. *Ibid.* at s. 26(2).
32. *Ibid.* at s. 9 (2).
33. *Ibid.* at s. 28.
34. *Ibid.* at s. 31.
35. *Ibid.* at s. 35(2), 46(5) and 52.
36. *Ibid.* at s. 36.
37. *Ibid.* at s. 41.
38. *Ibid.* at s. 42.
39. *Ibid.* at s. 38.
40. *Ibid.* at s. 46(2).
41. *Ibid.*
42. *Ibid.* at s. 54.
43. *Canada Council Act*, R.S.C. 1985, c. C-2.
44. *Ibid.* at s. 4.

45. *Canadian Radio-television and Telecommunication Commission Act*, R.S.C. 1985, c. C-22.
46. *Ibid.* at s. 3.
47. *Ibid.* at s. 5.
48. *Ibid.* at s. 6.
49. *Cultural Property Export and Import Act*, R.S.C. 1985, c. C-51.
50. *Ibid.* at s. 4.
51. *Ibid.* at s. 5.
52. *Ibid.* at s. 7.
53. *Ibid.* at s. 8.
54. *Ibid.* at s. 6.
55. *Ibid.* at s. 10.
56. *Ibid.* at s. 18.
57. *Ibid.* at s. 15.
58. *Ibid.* at s. 17.
59. *Ibid.* at s. 18.
60. *Ibid.* at s. 29.
61. *Ibid.* at s. 30.
62. *Ibid.* at s. 30(5).
63. *Ibid.* at s. 35.
64. *Ibid.*
65. *Ibid.* at s. 36.
66. *Ibid.* at s. 37.
67. *Historic Sites and Monuments Act*, R.S.C. 1985, c. H-4.

68. *Public Archives Act*, *infra* note 95.
69. *Supra* note 67 at s. 4.
70. *Ibid.* at ss. 7 and 3.
71. *Ibid.* at s. 3(d).
72. *National Arts Center Act*, R.S.C. 1985, c. N-3.
73. *Ibid.* at s. 3.
74. *Ibid.* at s. 6.
75. *Ibid.* at s. 9.
76. *National Film Act*, R.S.C. 1985, c. N-8.
77. *Ibid.* at s. 15.
78. *Ibid.* at s. 4.
79. *Ibid.* at s. 9.
80. *National Library Act*, R.S.C. 1985, c. N-12.
81. *Ibid.* at s. 3.
82. *Ibid.* at s. 4.
83. *Ibid.* at s. 6.
84. *Ibid.* at s. 7(1).
85. *Ibid.* at s. 7(2).
86. *Ibid.* at s. 2.
87. *Ibid.* at s. 9.
88. *Ibid.* at s. 13.
89. *National Museums Act*, R.S.C. 1985, c. N-13.
90. *Ibid.* at s. 14.
91. *Ibid.* at s. 3.

92. *Ibid.* at s. 5.
93. *Ibid.* at s. 6.
94. *Ibid.* at s. 7.
95. *Public Archives Act*, R.S.C. 1985, c. P-27.
96. *Ibid.* at s. 3.
97. *Ibid.* at s. 6.
98. *Department of State Act*, R.S.C. 1985, c. S-17.
99. *Ibid.* at s. 1.
100. *Ibid.* at s. 2.
101. *Ibid.* at s. 5.
102. *Supra* note 13.
103. *Ibid.* at s. 3.
104. *Ibid.* at s. 4.
105. *Ibid.* at s. 5.
106. *Ibid.* at s. 10.
107. *Ibid.* at s. 12.
108. *Ibid.* at s. 14.