

# Europeans Should Consider Quebec

*'Quebec is your America,' writes author, and he tells why prospects are good*

BY ANDRE LAURION\*

Looking through recent number of *Les Nouvelles*, one notices very few articles about licensing opportunities with Canadian companies. If there are great advantages to be the neighbor of the U.S.A., on the other hand, there is a danger to be forgotten in the shadow of this powerful neighbor.



A. Laurion

During the last few years, I noticed, while I attended various negotiations, that Canada and its market was often considered as marginal by Europeans. Canada, the second largest country in the world after Russia, ahead of Brazil, was strictly used, during negotiations with U.S.A. firms, as an added benefit to

justify larger royalties or to clinch a contract in the face of competition.

In business, it is often an important mistake to think in terms of political entities like Canada and the United States, instead of considering economic entities like the Northeast American market or the Southwest American market.

Moreover, there exist important differences in the legislation concerning licensing in both countries, and there may be, in some cases, serious legal or economic reasons why it is more profitable to license a Canadian firm; the Canadian patent law is a mixture of British and American law, both grafted to our own system of law. Patents in Canada are less fragile than in U.S.A., and our antitrust legislation much less severe than in U.S.A.

For example, the case *Lear vs Adkins* could not have happened in Canada. This problem was settled several years ago in Canada, and the judgment confirmed recently by the Supreme Court of Canada.

We all know that the American Supreme Court is much less bound by its case law than the Canadian Supreme Court. In U.S.A. the Supreme Court can reverse today decisions taken several years ago. In Canada, this would require a new law voted by Parliament.

If there are differences in our legal systems, there are also differences in the economic life of our two countries.

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Canada was considered, until recently, as a producer of natural resources. Foreign capital and techniques were imported. Foreign companies established themselves in Canada and contributed to the development of our economy. This primary phase of our economic life has now come to an end. Of course, we will still have large development projects in Canada where foreign capital and

*From LES Benelex Meeting*

techniques will be required, but we have mastered some techniques as well, and we are in a position to export ourselves original techniques: some of our consulting engineering companies have become exporters of technology themselves.

### Needs Change

Canada's needs have changed and we are now looking for new techniques for our industries. As opposed to new techniques to develop our natural resources, we are now looking in Canada for techniques which will permit Canadians to transform their natural resources in their own country. And it is in Europe that we are concentrating most of our efforts to find this new technology.

But, why Europe? Simply because Canada needs to diversify the sources of its technology. Simply because European technology in Canada has a much larger potential for our industrialists than American technology. If we were to content ourselves with American technology, our industrialists would always be limited to the Canadian market, the original technology being already exploited south of our border. If, however, we can exploit an European technique in Canada, we are in a much better position to export the new products to our natural market, the U.S.A.

This search for diversification is so strong and our determination to develop new links with Europe is so well defined, that our Prime Minister has already made two trips in Europe during the last year, and will come back before the end of this year.

As members of the Licensing Executive Society, you will agree with me that licensing is one of the best means of developing Canadian industrial makeup; this is clearly realized in Canada and, as a result, most of our governmental aid programs have been recently redesigned to take in account this new factor.

If we have recently enacted a Foreign Investment Review Act to bring Canadian legislation in line with legislations of most industrialized countries, we do not intend to stop the flow of foreign technology to Canada. If

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5. To strengthen the bargaining power of local industries
6. To see to the development of local research and development
7. To avoid restrictive business practices

In applying these guidelines, the government will not lose sight of the need to promote the inflow of technology. The normal rate of royalty payment is based on 2 percent of net sales. A slight deviation from this normal rate is allowable, depending on the merits of each case. In addition, the government does not encourage lump-sum payments.

Licensing agreements, either for local manufacture or marketing, must be recorded with the Ministry of Trade and Industry. A licensee may sue in his own name against infringement of his rights. The government does not allow export territorial restrictions.

## Two Years With Mexican Law

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administrative, fiscal, economic, and technological efforts help generate Mexican technologies. Instruments must be adequate to the case — to the times — for the importation in selective form of processes and technologies from abroad.

There is no doubt that we have advanced in the conceptual sense of the problem, and that we in Mexico are aware that, for the purpose of maintaining and developing the technological area, we cannot prescind the importation of foreign technology. We must make efforts so that this importation be as adequate as possible and carried out in terms and conditions that permit a strong positive economic development.

Now far a few words related to the measures being taken at an international level to elaborate an international code of conduct on transfer of technology.

Mexico has supported establishment of a code of principles that may serve as a basis and guide for all countries, both developed and in process of development, in the transfer of technology.

In Mexico, a guide of this nature would only have a complementary function, but we are also conscious that many other countries have not yet come to understand and achieve an adequate comprehension of the complexity and implications that derive from such process.

The position of the developed countries, concretely the position of the countries in group "B" within the United Nations, in which the United States, Western Europe, and Japan participate have maintained a very strict policy in this respect. It has been argued that these type of transactions operate primordially at the level of companies and that there was no point in establishing an ordinance that in any manner interferes with the free exchange of information and commerce in technological matters.

Our point of view is that, if an International Code of Conduct is not approved, each community could independently establish the measures of an administrative or legislative type. As a result in the not-too-distant future we would be operating within a totally disarticulated system.

Without a doubt, there would be duplication of effort and inconsistency in the measures adopted.

It is because of this that we have maintained a very open position. We have tried to define and contribute to the elaboration of a code of conduct with the participation of all countries involved to develop an instrument and a guide that will permit better cooperation and understanding. This reunion has a very positive character by virtue of establishing better communications. It will give us an opportunity to better understand the problems that affect the supplier companies and the objectives and limitations of the respective governments.

(EDITOR'S NOTE: Jaime Alvarez Soberanis has been named the Director General of the National Register of Transfer of Technology, replacing Mr. Aguilar. Mr. Soberanis was assistant director in the area of legal evaluation in the Register.)

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we intend to screen more closely foreign capital in Canada, a close study of our legislation shows that the spirit of the legislators was far from attempting to close our frontiers to foreign technology.

How does the province of Quebec, which I represent in the Benelux, look for foreign technology?

Firstly, Quebec has opened five Délégations in Europe: those Délégations are supported by a licensing office in Montreal. This Montreal group is an autonomous part of the Department of Industry and Commerce of the Government of Quebec, and it is manned by professionals entirely devoted to licensing contracts. Their job consists in knowing the Canadian industrial and distribution networks, and to channel new technology opportunities brought from the various Quebec Délégations to the proper hands.

But their activity is not limited to waiting for new opportunities. The licensing group organizes tours for industrialists. Those tours may either be centered on an exposition or directed toward a geographical area. They may bring together industrialists having technology to offer as well as industrialists looking for new technology. In 1974, we prepared 14 such missions.

### Receives Industrialists

The licensing group also receives foreign industrialists and prepares for them whatever meetings may be necessary. In some cases, the Department of Industry and Commerce will even finance evaluation or feasibility studies. Two main rules of conduct are maintained: the services are free of charge, paperwork is kept to a minimum.

One could compare our work to that of a marriage counselor. I am an industrial marriage counselor. My job consists in placing people in contact with each other, but I make sure I get out of the picture before the wedding night.

I told you why we were looking for European technology, but why should you be considering giving a license to Quebecers? Some months ago, at a previous meeting, you heard about the "American not-made-here-complex",

a great difficulty for Europeans trying to license an American firm. This may be one of the main reasons why you should consider doing business with Quebec. Not only are we looking for new technology, but Quebecers are, at the crossroad of three cultures in America, and having also received a large contingent of emigrants, are well prepared to accept European technology. Quebecers do not suffer from the "not-made-here-complex". Quebec may be a natural platform for your technology in America. Quebec is your America.

## A Look at Government Patents

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of Justice participated, but did not vote for or against the report of this study group.

Their conclusions, which are recommendations to Congress for possible legislation, are documented in the "Report by Task Force #1 of Study Group #6, Commission on Government Procurement", submitted in November, 1971.<sup>23</sup> It describes a government patent policy in the public interest and I urge the patent bar to take a position on its recommendations.

Some of its highlights:

- (a) a single government-wide Patent Rights R&D contract clause
- (b) exclusive commercial rights to contractor for three years after issuance of the patent, after which the contractor may be required to grant non-exclusive licenses
- (c) royalty free license for government
- (d) a Government Patent Review Board
- (e) provision requiring "utilization" by contractor to continue exclusive commercial rights
- (f) provision for "march-in" or required licensing in event of non-utilization by contractor.

The "bonus" of such a policy as recommended above is tremendously reduced bureaucratic requirements which will be a significant savings to both our government and its contractors.

### Conclusion

A sensible government patent policy which will provide the necessary incentives to industry to bring the undeveloped research advances of government-funded research forward to the marketplace for public use and benefit is urgently needed. Such a result can only strengthen the patent system of our country, in which system each of you is involved.

<sup>1</sup> University Licensing Conference, Case Western Reserve University, Cleveland, Ohio October 15, 16, 1974.

<sup>2</sup> S. Gee "Foreign Technology and the United States Economy" *Science* 187, 622 (21 February 1975).

<sup>3</sup> A. Ezra "Technology Utilization: Incentives and Solar Energy" *Science* 187, 707 (28 February 1975).

<sup>4</sup> Article I, Section 8. *Constitution of the United States*.

<sup>5</sup> *Annual Reports on Government Patent Policy*, Federal Council for Science and Technology, (Through 1973). Available from U.S. Government Printing Office.

<sup>6</sup> Government Patent Policy Study for the FCST Committee on Government Patent Policy by Harbridge House, Inc., Contract 7-35807, May 17, 1968.

<sup>7</sup> *Public Citizen, Inc. et al v. Arthur F. Sampson*, Acting Administrator, General Services Administration, Civil Action No. 781-73, U.S. District Court for the District of Columbia. (Public Citizen 1)

<sup>8</sup> Order and Judgement in U.S. District Court for the District of Columbia January 17, 1974 re: Civil Action 781-73.

<sup>9</sup> Department of Justice Memorandum by Assistant Attorney General Cramton, October 10, 1972 re Constitutionality of Prospective Allocation of Rights in Inventions. (This issue is treated fully in the government's brief in PC II. See BNAPTC Journal, 3/6/75, pp. 01-09.

<sup>10</sup> *Public Citizen, Inc. et al v. Arthur F. Sampson*, Administrator, General Services Administration, Civil Action No. 74-303, U.S. District Court for the District of Columbia. (Public Citizen II)

<sup>11</sup> Testimony of Thomas E. Kauper, Assistant Attorney General, Antitrust Division, U.S. Department of Justice before Subcommittee on the Environment, Committee on Interior and Insular Affairs, House of Representatives, 1 February 1974.

<sup>12</sup> It is interesting to review the arguments of Justice against the now discontinued patent pool policies of the auto industry in the well-known "smog" case (U.S. vs. Automobile Manufacturers Association, Civil No. 69-75-JWC (CD Cal 1969) and the aircraft industry in their 40-year pooling arrangement (U.S. vs. Manufacturers Aircraft Association, 5 Trade Reg. Rep. para 45,072 (S.D.N.Y. 1972) complaint). It appears required non-exclusive licensing of undeveloped technology results in a "government patent pool" with the same negative effect upon innovation.

<sup>13</sup> *National Journal Report*, pp. 1774-75, 23 November 1974

<sup>14</sup> Letter T. E. Kauper, for Department of Justice, to S. Weisbard, attorney for Salk Institute, February 10, 1975.

<sup>15</sup> *Shiley v. Weinberger, et al* C.A. No. 74-479 (25 March 1974) U.S. District Court for the District of Columbia

<sup>16</sup> Letter from Stanford to Department of the Air Force, July 13, 1971. (Stanford File Eng. 406)

<sup>17</sup> Letter from Department of Air Force to Stanford, October 6, 1971. (Stanford File Eng. 406)

<sup>18</sup> Private communication, 1974, attorney for company X to N. Reimers, Stanford University (specific citation omitted with intent).

<sup>19</sup> Private communication, 27 November 1974. T. Arnold, Arnold, White & Durkee, Houston, Texas to Congressman O. E. Teague. Re Compulsory Licensing Provisions in ERDA legislation.

<sup>20</sup> Public Communication February 1975. Ralph Nader, Public Citizen, donation solicitation. "In addition to numerous pending cases, obtained court orders through Public Citizen lawyers — preventing the General Services Administration from permitting valuable patents developed at Government expense from being given away free, on an exclusive basis, to private companies."

<sup>21</sup> Meeting of Board of Trustees at Annual Conference, Licensing Executives Society (USA), October 6, 1974.

<sup>22</sup> Los Angeles Times, March 4, 1975, part III, page 10

<sup>23</sup> Report by Task Force #1 of Study Group #6, Commission on Government Procurement. "Allocation of Rights to Inventions Made in the Performance of Government Research and Development Contracts and Grants" November 1971.

## Protecting Microbiological Inventions

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proceedings. For foreign applicants it is advisable to file the German application as soon as possible after having filed the application in the foreign country in order to lose the least possible amount of time of the eighteen-month period. By proceeding in this way, the chances increase that the first publication of the application will be the publication for opposition purposes, which imparts provisional, full patent protection.

For pending applications, it is advisable to make a declaration of release at the depository on the condition that the interested third party undertakes the obligations as mentioned above. Since a completely new legal situation results from the decision of the Federal Supreme Court, it should be possible to make the declarations of release which are lacking in pending applications at least during a transition period. Probably the examiner will request that the applicants make a declaration of release