

Licensing Climate in Canada

*Government Minister responsible
for investment outlines policies,
desires, intentions*

BY THE HON. MICHEL CÔTÉ*

I know that the Licensing Executives Society plays an important role in helping business and government — in Canada and in the United States — to better understand licensing and other means of transferring technology.

The department I am responsible for — Industry and Regional Expansion — is a member of LES through the Office of Industrial Innovation, and our representatives have participated actively in the work of various LES committees. So, we are very much aware of the issues facing your organization, as we are conscious that the work of licensing professionals makes an important contribution to new economic activity in Canada.

Technology transfer has become a vital issue in today's increasingly competitive and interdependent world. We all depend, now more than ever before in history, on technological innovation. Joint ventures, licensing agreements, and other forms of industrial cooperation are becoming increasingly important to economic growth and, often, to industrial survival. Doing business in today's global economy is a little like playing bridge: To be successful, not only do you need a strong hand, you also have to have a good partner.

With almost one third of Canada's GNP dependent on international trade, the Government of Canada is well placed to understand the competitive pressures that businesses face today. Some of the major forces at play readily come to mind:

- The liberalization of world trade.
- The shorter life cycles of products and processes as a result of a faster rate of technological change.
- The increasingly important role played by innovation.
- The high costs and risks involved in research and development activities.
- The increasing rationalization of production on a global scale.

These developments also have important legal implications in the field of copyright, patents and, generally, the whole area of intellectual property.

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Canada is a country that still requires a substantial inflow of investments from abroad to ensure an adequate level of capital and technology for economic expansion. We are committed to continually improve our industrial infrastructure and we are actively looking for new knowledge-based industries that can compete with the best in the world. We know that competition for new international investments is intense and that we must provide an adequate business climate from the point of view of stability, profitability, and infrastructure.

New Policies

In this regard, our government has adopted new policies since it came to power two years ago to achieve a number of goals:

1. To encourage and facilitate investments in Canada.
2. To improve relations with our major trading partners, and especially the United States.
3. To reduce state intervention in the economy by privatizing a whole range of government-owned enterprises, by deregulating certain industries such as transportation, communications and energy, and by taking measures to control the size of the government's budget deficit.

As well, during my previous tenure at the Department of Consumer and Corporate Affairs — which incidentally has responsibilities for intellectual property matters in Canada — we completely revised the Competition Act to modernize it and, among other things, to specifically allow joint ventures and consortia when they make economic sense.

In short, the government of Canada considers that industrial innovation and economic progress are first and foremost an investment issue. And it sees the private sector as the primary driving force that will take the Canadian economy into the Twenty-First Century. Accordingly, we are adjusting our policies to foster the proper conditions for this to happen.

Allow me to elaborate for a moment on the question of intellectual property in the broader context of Canada-U.S. economic relations. With the value of our bilateral trade reaching over \$120 billion last year, Canada and the United States have the largest bilateral trade relationship in the world today.

We are your biggest customers and you are ours. We 25 million Canadians buy more American goods than do the 280 million people in the European Economic Community. The Province of Ontario alone takes more U.S. exports than Japan. You are also our largest source of foreign capital and, conversely, we are your

forth largest source of investment.

This huge volume of trade bears heavily on the nature of intellectual property activities in Canada. For example:

- More than 50% of the patents filed in Canada are of U.S. origin.
- Between 80 and 90% of the records sold in Canada come from the United States.
- Canadian royalty payments to the U.S. for patents, trademarks and copyright are valued at more than \$500 million a year. Of course, the value of goods and services associated with these royalties represent many times this amount.

Resolve Differences

Canada and the United States must strive to resolve differences in the treatment of intellectual property rights in order to effectively protect interests on both sides of the border. This does not require, however, that our systems be identical — all that is needed is a better understanding and greater harmonization. We must also resolve, in a mutually beneficial way, the challenges created by new technologies and processes, especially as they relate to biotechnology, genetic engineering, computer software and computer chip design.

We appreciate your concerns about counterfeit trademark goods, copyright piracy and patent protection of newly developed technology. The adoption of the Semiconductor Chip Protection Act of 1984 is clear evidence of your government's interest in this issue. We fully share these concerns and we are interested in jointly developing effective bilateral and multilateral protective systems.

The Government of Canada considers protection of intellectual property rights to be a priority in its efforts to make Canada one of the most favorable business environments in the world. That is why we have taken initiatives in the following areas:

- Copyright protection of computer programs.
- Protection of semiconductor chip design along lines that are similar to the system introduced in the U.S.
- Much tougher penalties aimed at curbing piracy of copyrighted works, including the illegal reproduction of films, sound and video recordings, computer software and other proprietary works.
- Amendments to the Canadian Patent Act designed to harmonize our procedures with those of other countries, and to enable Canada to ratify the Patent Cooperation Treaty.
- Other changes to the Patent Act to modernize and computerize the registry and access systems — to facilitate dissemination of scientific and technical information.
- The development of legislation to protect the rights of inventors in biotechnology and in the creation of new plant varieties.

The economic policy initiatives that the Canadian Government has taken in the past two years are beginning to have a positive impact on how Canada is perceived as a place to invest and to do business. For example, in an economic review of Canada released last summer, the OECD underlined the fact that

Canada's rate of growth over the past 18 months had been among the highest in the industrialized world, exceeding the predictions of even the most optimistic forecasters.

Another group — the European Management Forum — also released a report last summer that confirmed Canada's new economic strength. It ranked Canada sixth out of the 22 member countries of the OECD in terms of international competitiveness. Canada outperformed the United Kingdom, France, Italy and three other major OECD countries on all 10 criteria used by that organization to measure international competitiveness — criteria such as market dynamics, natural endowments, innovativeness, financial dynamism, and outward orientation.

Investors Vote

You may say that such positive reports by international organizations are fine, but that what really counts is what investors are doing. Investment is a very potent way for international capital markets to register their vote for or against a country's economic policies. Well, I am glad to say that international business is voting for Canada. In the first quarter of this year, we had a net inflow of \$1.1 billion of direct foreign investments — the largest net inflow of capital ever for a single quarter. If the trend continues, we will exceed our previous annual record.

Another indication of an economy's health is GNP growth. Last year, our gross national product increased at a rate that was second only to Japan's. According to the latest OECD predictions, we should be at the top of the list this year. One of the important reasons for this improved performance is Canada's new investment policy — the cornerstone of which is the Investment Canada Act adopted at the end of June 1985. The premise of the Investment Canada Act is that investment is beneficial to Canada and therefore should be encouraged.

We want to build bridges — not barriers — to new economic opportunities. That is why we eliminated the overly restrictive Foreign Investment Review Agency to replace it with Investment Canada. This new agency, for which I am responsible, has a three-fold mandate:

- First, to encourage and facilitate investment by both Canadians and non-Canadians.
- Second, to advise the government on all issues that are likely to affect the investment climate in Canada.
- Third, to review certain types of large investments by non-Canadians to ensure that Canada derives net benefits from them.

Investment Canada promotes investment by means of information seminars and investment prospecting missions. It also facilitates investments by offering expert advice and information on investment opportunities in Canada, and it provides other related services to Canadian and non-Canadian businesses. One of the ways this agency is encouraging investment activities, is by emphasizing industrial cooperation between Canadian and non-Canadian firms — including, of course, joint ventures and licensing agreements.

We view these cooperative arrangements as highly beneficial because they allow Canadian businesses to gain access to new technologies and new markets. And they help them improve their productivity, their profitability, and their competitiveness at the international level.

More generally, let me say that it is a priority for Canada to develop a strong research and development sector. We want to facilitate technology transfers, encourage applications and build upon them, and we want the resulting products to be marketed successfully. Such activity is vital to our ability to maintain and improve our competitive position in the world markets. International investment capital and linkages with international business — by means of joint ventures or licensing agreements — are key instruments to reach this objective.

Unlike the U.S., we earn most of our foreign exchange by selling raw materials, energy and agricultural products. We are a net importer of technology. And this is the reason why acquisition of new technology and innovation rates high on our list of priorities.

I shall add that our job of promoting investment is made easier by the significant advantages that Canada has to offer. We are a politically stable, resource-rich, and technologically-advanced country. We speak the same language, business-wise. We speak the same language and share the same values. We have low-cost energy and competitive wage levels. And we have a highly skilled workforce. We offer other significant advantages to firms contemplating licensing or franchising agreements.

For example, licensing is not regulated in Canada. There are no requirements for registration or public disclosure — as is the case in some countries. Canada has no formal restrictions on exclusive licenses. Instead, Canadian law deals with this practice in the broader context of market restrictions and tied selling, which are reviewable trade practices in specific circumstances. Canada imposes no exchange controls or other restrictions on the payment of royalties. In addition, licensing agreements are protected by the basic principle of freedom of contract in common law. They are simply considered as one variety of commercial agreements.

It has become obvious, over the past decade or so, that a country must have an advanced technological infrastructure if it is to successfully attract international capital and technology. Canada has such an infrastructure — and, I might add, an excellent one.

On a per-capita basis, we have one of the highest ratios of scientists, engineers and technical manpower among all of the OECD countries. Canadians have always been on the leading edge of technology in telecommunications with state-of-the-art satellites, microwave networks, laser, videotex, and fibre optics technology. Speaking of fibre optics, let me mention that we currently have the world's longest commercial fibre optics network. It stretches more than 2,000 miles and connects 52 communities. Our high-caliber

universities and government-sponsored laboratories work hand-in-hand with industry to carry out advanced research and technological development.

The Government of Canada's most important research organization—the National Research Council—is placing greater emphasis on joint projects with industry. For example, it has a subsidiary involved in applied research into construction materials, with a board of directors coming mainly from the private sector.

The National Research Council is also giving high priority to space-related research and biotechnology. One example of its work in this area is the Space Vision System, a computerized system to evaluate distance. It will be used in conjunction with the Canadarm in NASA's space shuttle program. This system is already being used by Diffracto, a company based in Windsor (Ontario), to identify parts on conveyor belts and transmit the information to robots in automated assembly lines. The Canadian Government has also announced the creation of a space agency which, among others, will serve to coordinate our efforts in this area. This agency will certainly open new opportunities for joint ventures in many high-technology sectors.

I invite you to consider Canada and Canadians as business partners for your next venture abroad — be it a joint venture or a licensing agreement. As I said, in addition to all the advantages Canada has to offer, Canadians and Americans have a lot in common — not only from a business perspective but in most aspects of life. The meeting here today is certainly evidence of this! Canada has the marketing, design and engineering resources — as well as the infrastructure — required for just about any type of business venture. To give a few examples, a number of companies based here in California have already discovered the benefits of joint ventures or licensing agreements with Canadian firms:

- Micro Tempus of Montreal and Informatics of Woodland Hills are jointly developing a micro-to-mainframe computer link, called Alpha/Link, which will be sold around the world by Informatics.

- Northern Telecom is licensing the Gem Operating System from Digital Research of Monterey, California.

- Another Canadian firm, Infomart, has formed a joint venture with the Times Mirror of Los Angeles to provide data services on crops, weather and markets.

New realities call for new strategies. Canada has accepted the challenges of today's highly competitive and technology-driven international economy. For our government, investment means much more than investment in the traditional sense of the world. It means seeking new alliances, strategic partnerships, licensing and franchising agreements, and joint ventures that will benefit both Canadians and foreign investors.

Experience has shown that Canadians are good business partners — and this is especially true for Americans. So I invite you to consider our country for your business expansion projects.