

THE STATUS OF STATUS

**A Neil Craig Associates Report Commissioned by the
Canadian Conference of the Arts**

**Update on initiatives to improve the socio-economic
status of Canadian artists**

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9 February 2007
(Addendum 5 April 2007)**

EXECUTIVE SUMMARY

- Status of the Artist is a term describing a category of legislation and programs intended to improve the circumstances of professional artists. Since the approval of the 1980 UNESCO *Recommendation concerning the Status of the Artist*, there have been efforts in several Canadian jurisdictions to implement such policies
- While Canadian studies in the 1980s recommended government actions on a range of policy issues, including income tax, health and safety, copyright, insurance, pensions, social benefits and others, early initiatives in Canada dealt primarily with collective bargaining. Because most artists are self-employed, collective bargaining between artists' associations and cultural producers generally fell outside labour laws. Federal legislation and Québec laws provide an equivalent statutory basis for collective bargaining efforts on behalf of artists.
- As legal jurisprudence has developed over the past fifteen years, the collective bargaining issues outside Québec have become more complex. This is the case because certain artists are now considered to be employees for income tax and other purposes, and these and other categories of artists increasingly fall under provincial labour laws.
- Québec was the first jurisdiction in Canada to develop measures specifically focused on improving the social and economic status of professional artists. Since its initial legislation was adopted in 1987, it has introduced and continually improved a wide range of measures. Québec is considered a world-leader in the field, with measures such as making certain copyright royalties tax free, annuity provisions allowing artistic income to be spread over several years, and specific measures relating to artists' health and safety.
- Federal legislation was adopted in 1992 and the Act was reviewed in 2002. The operative provisions of the legislation establish the Canadian Artists and Producers Professional Relations Tribunal to oversee collective bargaining on behalf of artists working in federal jurisdiction. No action has been taken on the recommendations arising from the 2002 review or a number of other studies the Department of Canadian Heritage commissioned in 2004.
- In the 1990s, actively encouraged by the publication and distribution of a Canadian Conference of the Arts roadmap for provincial action, committees were formed and studies undertaken in British Columbia, Saskatchewan, Manitoba, Ontario, Nova Scotia and Newfoundland and Labrador.
- In 2002, Saskatchewan adopted legislation which identified equity for artists in the workforce as a key issue. Over the past five years, there have been extensive community consultations and other work to develop practical measures to improve the situation for artists, but few new measures have been announced. After receiving the final report of a status of the artist committee, the government tabled amendments to its law in October 2006, all of which address issues of individual contracts and bargaining.
- Following its election in 2003, the Ontario government appointed an advisory committee on arts and culture, which formed a subcommittee on the status of the artist. After extensive consultations, the subcommittee reported in December 2006 and recommended a range of actions. The government tabled legislation in April 2007. Actions to date and the measures

contained in the draft legislation are, at best, modest and do not deal with collective bargaining issues, income tax or social benefits.

- In 2004, the Canadian Conference of the Arts convened a national conference on the status of the artist in Regina to promote concrete actions. One of the outcomes of the conference was the launch of an initiative to work with the federal government to achieve certainty for professional artists and arts organizations in relation to the income tax system. This work continues.
- With respect to issues other than collective bargaining, there is a broad consensus among artists and their associations that measures are needed urgently to improve the situation of professional artists in Canada.
- While there is a general consensus in the community that collective bargaining can improve substantially the economic situation of professional artists, there is considerable divergence of views among artists and their organizations about what measures should be taken, and in what cultural sectors, to encourage and support collective bargaining efforts.

SECTION 2 – BACKGROUND

Status of the Artist is a term describing a category of legislation and programs intended to improve the circumstances of professional artists. It was first used in a process launched by UNESCO that culminated in the 1980 *Recommendation concerning the Status of the Artist*¹. UN's culture agency recommends that governments enact legislation and implement policy measures to acknowledge the fundamental role which artists play in our societies, to encourage artistic expression by responding to the unique manner in which artists work, and to improve the economic, social and political status of professional artists.

Canada responded to the UNESCO *Recommendation* by creating the Siren-Gélinas Task Force on the Status of the Artist which reported in August 1986. The 37 recommendations urged action by all levels of government in Canada on taxation, copyright, collective bargaining rights, payment of professional rates by governments and their agencies, social benefits, health and safety provisions, education, training and freedom of expression. In response to the Siren-Gélinas Report², the federal government appointed an Advisory Committee on the Status of the Artist, a committee comprised of artists and officials from associations and guilds, which drafted and recommended adoption of a *Canadian Artists Code*³ in 1988.

Collective Bargaining

It is useful at this early juncture to provide a brief background about collective bargaining in Canada. For some artists' associations, "status of the artist" has become virtually synonymous with providing a statutory regime to enable unions and associations of professional artists to

¹ The *Recommendation* can be found at www.unesco.org.

² Task Force on the Status of the Artist (Siren-Gélinas). *The Status of the Artist: Report of the Task Force*. Ottawa. August 1986.

³ Canadian Advisory Committee on the Status of the Artist. *A Proposed Act on the Professional Status of the Artist: Canadian Artists' Code*. Ottawa. 1988.

bargain collectively with those who engage artists and to regulate the bargaining process in a manner analogous to labour laws.

The first labour laws in Canada were enacted in the later part of the 19th Century and dealt primarily with the right of workers to organize free from the restraints imposed by competition laws. Previously, attempts to organize could bring charges of criminal conspiracy or of being a “combination in restraint of trade.” A 1925 court decision confirmed that legislative jurisdiction over industrial relations rests with the provinces, the only exception being for industries that are federally-regulated (broadcasting, railways, airlines, banks, etc.). In order to ensure labour market stability during World War II, the federal government enacted the law that became the model for contemporary labour relations legislation in all Canadian jurisdictions, creating a labour board and establishing rules governing certification, bargaining, dispute resolution, the rights of unions and employers and other matters.

In the cultural sector, aggressive efforts to organize artists began in the 1930s and 40s. From the early days, unions representing artists in the performing arts, television, film and radio successfully negotiated voluntary agreements. One factor is that artists in these sectors tend to work collaboratively on a project, and thus have the opportunity to act collectively. Agreements regulate fees, hours of work, working conditions, benefits payments and other similar matters.

Contemporaneous with the launch of Canadian discussions about status of the artist issues, several factors gave urgency to the need to recognize the rights of professional artists’ associations and unions.

At various times in the 1980s, the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), Union des artistes (UDA) and the American Federation of Musicians of the United States and Canada (AFM) were each being investigated by the competition bureau for activities relating to collective bargaining activities. Because these unions represented freelance artists, it was likely at the time that their agreements did not enjoy the exemption from competition laws provided to legally-recognized union agreements.

The second factor had two dimensions. A series of audits and investigations conducted by federal tax authorities was eroding the freelance tax status of some professional artists. For example, a large number of hosts, sportscasters, writer/broadcasters and others at the CBC were ruled to be employees of the Corporation. At the same time, labour relations boards in several provinces and federally were beginning to expand the scope of coverage of labour statutes by considering that “dependent contractors” were equivalent to employees for purposes of these Acts. Thus, there were active threats to the ability of the unions and associations with collective agreements to maintain the integrity of their bargaining units and ACTRA and UDA, for example, lost jurisdiction over the reclassified CBC artists.

The final factor was the emergence of independent producers in Canada’s film and television sector. Previously, virtually all programs and movies were produced directly by the broadcasters, and the National Film Board was an active film producer. However, with the emergence of the independents, production activity moved outside federal jurisdiction and into the jurisdiction of the provinces (under laws governing contracts and industrial relations). This creates a potential challenge to the integrity of nationally-negotiated agreements and makes life

difficult in a sector that is highly mobile: producers and artists often can mount a given production virtually anywhere in the country.

Finally, when you consider that artists covered by collective agreements generally receive substantially higher fees and more advantageous contractual provisions than artists not covered by such agreements, it is understandable that the first Canadian efforts to implement status of the artist measures dealt primarily with the collective bargaining issues.

As the current ACTRA strike highlights, these issues continue to affect the discussions. In moving to a strike, ACTRA followed the rules in each province (other than British Columbia, where the Union of BC Performers has a separate collective agreement with the industry) and rolled-out the strike call based on provincial labour laws and regulations. The producers have challenged ACTRA's legal authority to take strike action. In court, the Canadian Film and Television Production Association asserted that ACTRA members are not employees (or dependent contractors), that they are outside the scope of provincial labour laws and that the agreement is not a collective bargaining agreement. ACTRA has responded by arguing that its members are covered by provincial labour laws and that the agreement is a legal agreement under those laws.

Early Measures in Canada

Québec

In 1987, the government of Québec enacted Canada's first legislation in this field, *An Act Respecting the Professional Status and Conditions of Engagement of Performing, Recording and Film Artists*. The following year, the province enacted *An Act Respecting the Professional Status of Artists in the Visual Arts and Crafts and Literature and their Contracts with Promoters*. Both Acts have been amended subsequently. In each case, the primary purpose of the statute is to recognize the unions, guilds and professional associations representing artists and to regulate or encourage collective bargaining between them and the producers, promoters and employers who engage artists.

The key difference between the two Acts is that the one governing performing, recording and film artists, in a sector with a long established history of voluntary collective bargaining, includes a provision for first contract negotiations and an arbitration process if the parties are unable to reach agreement within a set time. The other Act has provisions concerning the nature of individual contracts entered into between the artists and their engagers and promoters and provides authority for the government to establish minimum standards for such contracts through regulation.

In Québec, the government followed its legislation with several important fiscal measures. In 1995, the government introduced a measure to provide that annual copyright income up to \$15,000 received by creators can be deducted from their taxable income for provincial income tax purposes. This measure was expanded in 2003 to include income earned by authors through the public lending right and the limits were raised to \$30,000 on a declining basis. The budget in 2004 again expanded the income that qualifies for the deduction, adding copyright income received by performing artists (neighbouring rights).

Federal Government

In June 1992, the Canadian government proclaimed into law the *Status of the Artist Act*. Part I outlines principles that provide a basis for substantive policy measures:

The Government of Canada hereby recognizes:

- a) the importance of the contribution of the 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 and 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 the individual and collective aspirations of Canadians;
- d) that artistic creativity is the engine for the growth and prosperity of dynamic cultural industries in Canada.

Part II contains the operative provisions and establishes the Canadian Artists and Producers Professional Relations Tribunal (CAPPRT) as an independent quasi-judicial body to administer the Act, to recognize artists' associations and to oversee regulations which deal with the relationship between associations, guilds and unions representing professional artists who are independent contractors and producers. It provides a process for the recognition of artists' associations and regulations that encourage collective bargaining and the conclusion of agreements to cover the engagement of professional artists. It applies only to producers operating in federal jurisdiction, including the departments, agencies and institutions of the federal government.

Section 4 (2) (d) provides for the creation of an advisory council to give ongoing advice to the government. A temporary Council, comprised exclusively of practicing artists, was appointed in 1991 with a mandate most particularly "to propose measures, based on research and studies, to improve the professional working conditions of artists ...," as provided in Part 1 of the Act. However, the Committee's appointment was never confirmed by the Governor-in-Council and it effectively ceased to function in 1996 at roughly the same time as the substantive provisions of the Act were implemented with the launch of CAPPRT.

While there has been no definitive analysis of the work of the provisional Council from 1991-96, most observers believe it lacked leadership. While well-meaning, the professional artists on the committee were either too busy to engage or lacked key knowledge about how the government works. The departmental officials assigned to the Committee had a range of responsibilities and the priority accorded to the Committee quickly diminished.

The federal government also commissioned several studies on ways to improve the status of artists, most notably a study on fiscal issues released in April 1993. Subsequently, several parliamentary committees studied aspects of these issues including the taxation issues, but no concerted policy action resulted from the studies and consultations.

Other Provinces

In 1992, British Columbia and Saskatchewan each appointed advisory committees on the status of the artist. The two committees had a slightly different composition from the federal committees, since they also contained individuals who are engagers of artists or officials from

arts councils. The committees both reported within the next two years with a range of recommendations for provincial actions to improve the economic circumstances of professional artists. No immediate action was taken on either report. In the same period the issue was studied in Ontario by the culture ministry, with community consultations. Work in Manitoba, Nova Scotia, and Newfoundland and Labrador also took place over the decade, actively encouraged by the publication and distribution of a Canadian Conference of the Arts Roadmap for provincial action. As in other provinces, these studies and processes did not bring early concrete actions.

Saskatchewan

In 2002, Saskatchewan adopted legislation which identified equity for artists in the workforce as a key issue. It also launched a process to implement “practical measures” to improve the situation for professional artists in that province. The Saskatchewan Act is broad in its scope and touches on most of the issues addressed in the UNESCO *Recommendation*, including:

- the important contribution artists make to society;
- the right of artists to free speech, freedom to create and freedom to form associations;
- the right and need for artists to earn a living from their art;
- education and training.⁴

When the enabling legislation was adopted, the government appointed a Ministerial Advisory Committee, which further studied the issues and prepared detailed recommendations for consideration by the government. The report, tabled in 2003, was released officially at a November 2004 conference on the status of the artist convened by the Canadian Conference of the Arts in Regina. Three of its 17 recommendations concerned collective bargaining issues and the Committee considered “the establishment of mechanisms that would ensure appropriate and fair compensation for artistic work and services” to be “the most effective approach to improving the status of Saskatchewan artists”. In speaking to the conference, the Minister and Deputy Minister provided the initial response of the Saskatchewan government to the recommendations of the Advisory Committee. They committed to implementing certain of the measures proposed, suggested they had no ability to implement the taxation measures and agreed to study other recommendations put forward by the Advisory Committee. They also launched a new Minister’s Advisory Committee on the Status of the Artist (MACSA).

SECTION 3 – CONTEMPORARY FEDERAL DEVELOPMENTS

As required by the Act, the federal government undertook a review of the legislation in 2002. Prairie Research Associates, an independent firm, interviewed key informants, surveyed artists and offered several recommendations, including:

- While the Act serves a useful purpose, “the Department of Canadian Heritage may wish to explore other policies and programs to improve the socio-economic circumstances of self-employed artists.” The authors noted that in the perception of most artists and arts administrators, a perception which appears to be confirmed by the available data, the Act has not improved the economic status of professional Canadian artists.

⁴ The Saskatchewan Act is available through www.publications.gov.sk.ca

- Since other organizations funded by the government provide advice on behalf of artists, there may be no role for a Council.
- A series of comments on CAPPRT relating to its procedures, a recommendation for additional authority in the case of first agreements and an analysis of the continuing independence of the Tribunal.⁵

One of the observations emerging from the report was that, after close to 10 years operation, CAPPRT had largely accomplished its primary function of certifying associations of artists for purposes of collective bargaining. It has certified 24 associations as exclusive bargaining agents in defined sectors. A corollary of the fact that most activity involving artists is now in provincial jurisdiction, the continuing and future role of CAPPRT is somewhat unclear. This issue is also related to consideration of the Act's requirement for the government to establish an advisory committee because some believe it could play this role.

In the view of many informants to the review process, the body that could more properly perform the role of the advisory committee is the Canadian Conference of the Arts, since it is an umbrella organization that brings together all of the major arts and cultural organizations, in addition to many individual artists.

There has been no official response to the review. However, the report did seem to trigger a renewed interest in the topic among officials in the Department of Canadian Heritage who commissioned several new studies. One of these reviewed Québec's copyright income exemption and estimated the cost of this measure to the provincial treasury. Another of the studies was commissioned from Neil Craig Associates, which in January 2005 tabled a *Report on Improving the Socio-Economic Situation of Canadian Artists*, as an update of the 1993 fiscal issues report. To date, these reports have not been released publicly.

In 2004, the Canadian Conference of the Arts convened a national policy conference on status of the artist in Regina. In a series of presentations and workshops, delegates reviewed developments in Canada and internationally. The Saskatchewan government officially released the MACSA Report and the Deputy Minister provided the first response on behalf of the government. Delegates resolved to step-up efforts to achieve real progress for professional artists everywhere in Canada.

The other outcome of the 2004 conference was the launch of the Regina Manifesto. Almost 70 organizations in Canada's arts and cultural community, representing tens of thousands of professional artists and many of those who engage their services, have signed it. With the Manifesto, the Canadian Conference of the Arts is working with the government to achieve certainty for professional artists and arts organizations in relation to the income tax system through the following objectives:

⁵ Prairie Research Associates. *Evaluation of the Provisions and Operations of the Status of the Artist Act*. Ottawa. July 2002. Report is available at www.pch.gc.ca

1. To establish a policy that all professional artists will be deemed to be carrying on a business for purposes of their artistic income (independent contractor status) unless;
 - in the case where there is no collective bargaining relationship, an engager and the artist enter into a contract of service (employer-employee relationship) that is explicit and unambiguous, or
 - an engager and an association representing a group of artists negotiate a provision that artists governed by a collective agreement are in a contract of service relationship.
2. To have a community-agreed test of “professionalism” replace the “reasonable expectation of profit” test now used by the Canada Revenue Agency.

Driven by Ontario and Saskatchewan, where the most activity is currently taking place on these files, the issue of status of the artist was on the agenda of the meeting of federal, provincial and territorial culture ministers held 28-29 September 2006 in Ontario.

While originally intended as an “action item”, discussions before the meeting turned the topic into an “information item” on the final agenda. During the preparatory period, federal officials made it clear that status of the artist is not considered to be a priority matter for the current government. They indicated that it is unlikely the government would introduce taxation or other measures that provincial representatives were seeking.

SECTION 4 – CONTEMPORARY SASKATCHEWAN DEVELOPMENTS

In May 2005, MACSA was reappointed. Over the next 14 months, it commissioned further studies, reviewed all of the issues and undertook additional community consultations. In July 2006, the Committee released its final report.⁶

The 123-page report entitled, *Laying the Groundwork*, outlines three goals of and for Saskatchewan professional arts: engagement in viable careers; access to thriving markets and; access to information that supports efforts to achieve viable careers. The report’s 30 recommendations cover the full range of issues. The Chair suggests the highlight is the proposal for three pieces of legislation:

- establish a permanent advisory committee to carry on the advocacy work;
- provide a set of criteria that defines the independent professional artist and;
- an incremental process to establish artists’ rights and an opportunity to exercise those rights through written contracts, voluntary collective bargaining and enforceable collective bargaining when artists believe the time is right to do so.

The government responded to this report by tabling Bill 40⁷ in late October 2006. The bill proposes a new definition of professional artist, which is similar to the wording of the 1988

⁶ *Laying the Groundwork*, Final Report of MACSA, Regina, 2006 is found at www.publications.gov.sk.ca

⁷ Bill 40 is available at www.publications.gov.sk.ca

Canadian Artists Code, a definition of engager, makes the Act binding on the Crown and provides a requirement for written contracts between engagers and artists. An enabling provision permits the government to implement regulations relating to such contracts.

The issue of collective bargaining was immediately referred by the government to a standing committee of the legislature which was requested to consider three issues: how can collective bargaining be introduced successfully; how can national agreements be protected and; what measures are needed to implement a collective bargaining system?

SECTION 5 – CONTEMPORARY ONTARIO DEVELOPMENTS

In the 2003 provincial election, the platform of Ontario's governing party made a commitment to create a Minister's Advisory Council for Arts and Culture. The platform stated that this Council will be requested to produce, within two years, "a Report on the Status of the Artist in Ontario in the 21st Century, to be used to develop Status of the Artist legislation for our artists [...]. It will recognize the importance of Ontario's artists and represent a new respect for their social and economic contribution." In June 2004 the government appointed a Minister's Advisory Council for Arts and Culture and this Council appointed a Sub-Committee on the Status of the Artist in September.

The Sub-Committee engaged in an extensive consultation process, involving meetings, briefs, focus groups and an on-line survey between May and July 2005. There were more than 3,600 respondents to the survey. Given the high response rate and the fact its distribution seems to reflect accurately the demographics in the community by artistic category and age, this data may have substantial and ongoing value if it is made available. For example, of the more than 3,300 individual artists who participated, it was reported that 67 percent had to work outside of their artistic activity to survive economically. On average, the respondents spent 67.2 percent of their time on their artistic activity.

The Sub-Committee's Report⁸, dated October 2006 and quietly released on-line days before Christmas, contains 23 recommendations, including new funding for the arts council, new programs and funds for training and business development, housing initiatives that benefit artists, and actions on health care, marketing and promotion, and arts infrastructure development. The Sub-Committee recommends that legislation be introduced that would include, among others things, tax measures such as a provincial tax credit based on a range of eligible expenses, and measures to provide standard protection for children working in the performing arts. On the issue of collective bargaining, the Sub-Committee recommends a time-limited process to review collective bargaining issues and to seek a consensus among all stakeholders.

The government has not yet formally responded to the recommendations, however, the Minister continues to state publicly her intention to table Status of the Artist legislation. As well, work in the department and government is underway on other of the recommendations that may be leading to the 2007 provincial budget.

⁸ *Report on the Socio-Economic Status of the Artist in Ontario in the 21st Century*, Status of the Artist Sub-Committee, Toronto, 2006 is available at www.macac.on.ca

Ontario Government Tables Draft Legislation 5 April 2007

On 22 March, the Ontario government tabled its Budget and Bill 187, *An Act respecting Budget measures, interim appropriations and other matters*. The Bill includes a proposal for the *Status of Ontario's Artists Act, 2007*. The purpose of the Act is to "recognize that artists make contributions to Ontario's economy and quality of life."

The operative provisions of the Act are modest. The first assigns responsibility to the Minister to develop "a strategy on arts and culture to guide the development of policies as they relate to artists" and authorizes the appointment of a committee to advise the minister on these issues. The second announces that the first weekend every June will be Celebrate the Artist Weekend. A final section provides that the Government will undertake to do certain things, such as implement marketing strategies, facilitate training programs, promote health and safety, etc., "as far as it considers it reasonable and appropriate to do so." The only reference to collective bargaining is indirect; the Government undertakes to "strengthen the ability of arts and culture organizations to provide support to artists."

When the recent process began in Ontario, there was considerable enthusiasm among Ontario artists. Thousands of artists and their organizations participated in the public consultation process, and the report of the Advisory Committee was greeted warmly. However, the fact the report was released surreptitiously may have hinted at coming disappointments. The mood shifted dramatically with the tabling of the legislation.

At best, the Ontario government actions are seen as being far too modest. There is yet no concrete action that will improve the daily working lives of Ontario artists or to assist them to make a living as professionals. The Premier's Award announced last year is given for the "arts", not for an artist. The proposal for a Celebrate the Artist Weekend is seen as a "take a starving artist to lunch" initiative.

Others in the community believe that government actions reveal a serious misunderstanding about the very purpose of a status of the artist project. An early statement in the proposed legislation is "artists make contributions ...by strengthening and invigorating our arts and culture sector." They point out that artists don't "make contributions (to the) sector," they are the heart of the sector. Artists are the ones who give expression to culture. The proposal to develop an arts and culture policy is seen as missing the point. While artists would welcome a coherent policy, status of the artist is about acknowledging and improving the situation of individual professional artists.

The Ontario government did increase the budget of the Ontario Arts Council as recommended by the Advisory Committee. Some note that 75 percent of OAC resources are granted to arts organizations and only 15 percent flow to individual artists. Obviously, some organizational grants are used to employ artists. However, as the only funding measure adopted from the Advisory Committee report, it seems to reinforce a producer-driven view of arts and culture, rather than the artist-centred approach implied by status of the artist.

SECTION 6 – CONTEMPORARY NEWFOUNDLAND AND LABRADOR DEVELOPMENTS

In March 2006, the government released *Creative Newfoundland and Labrador: The Blueprint for Development and Investment in Culture*⁹. In its schematic outlining The Culture System, the report places the artist at the very centre, and developing and nurturing creative talent is seen as a fundamental requirement for developing the creative economy. Among the ten aims of the strategy are to; “support excellence in artistic endeavour,” and “improve the conditions under which professional artists and other cultural workers create and produce.”

Strategic Direction One is to recognize and support professional artists. It acknowledges that many professional artists live a “fragile existence with low incomes and a general lack of employment benefits full-time workers take for granted.” Among other measures, the government commits to recognize the special place of professional artists in the creative economy and to improve their living and working conditions. It pledges to accomplish this “by exploring the feasibility of Status of the Artist legislation and a Newfoundland and Labrador Artists’ Code. Topics to be looked at include labour relations and collective bargaining rights in the arts sector; possible improvements through taxation measures; pension plans; and professional development and training.”

The strategy is to be implemented by a Culture Committee composed of the deputy ministers of the relevant departments. The Committee will be advised by a sector steering committee and informed by annual roundtables of interested parties.

SECTION 7 – CONTEMPORARY QUÉBEC DEVELOPMENTS

Québec continues to be the leading jurisdiction in the world with respect to promoting the status of the artist and implementing the provisions of the UNESCO *Recommendation*. The measure in Ireland which provides tax free status for the first €250,000 of income earned by creative artists (this is limited to authors, visual artists, composers and other creators, and does not apply to the earnings of interpretative artists or those involved in production categories) is the perhaps the most lucrative and famous benefit enjoyed by artists. Artists in Scandinavian countries enjoy substantial benefits, but these are generally part of the public benefits systems. However, the fact is that Québec was the first jurisdiction in the world to implement special legislation on Status of the Artist and it has the broadest range of programs and measures that address explicitly the particular circumstances of individual artists.

Beginning with the process launched in 2001, the province created a division within the culture ministry which works exclusively on issues concerning the status of the artist. An advisory committee of artists and association officials has been appointed to advise this division. This process has resulted in the various income tax and social benefit changes implemented over the past five years. For example, the 2004 budget provided for a limited system of income averaging for artists with wildly fluctuating income through the purchase of a qualifying annuity.

⁹ *Creative Newfoundland and Labrador*, St. John's, 2006 is available at www.tcr.gov.nl.ca/tcr/publications/2006/culturalplan2006.pdf?

The province also has creative measures such as the coverage for workers compensation purposes of dancers and musicians when they are rehearsing between contracts.

The committee and the department continue to drive the ongoing agenda, and are focusing next on social benefits and income security issues.

SECTION 8 – POSITION OF ARTISTS’ ORGANIZATIONS ON STATUS OF THE ARTIST ISSUES

At the risk of over-simplifying positions that can be complex and nuanced, and at the further risk of being criticized for misrepresenting positions, it is instructive to summarize community views about contemporary status of the artist issues.

General Issues Affecting Artists

With respect to issues other than collective bargaining, there is a broad consensus among artists and their associations that measures are needed to improve the situation of professional artists in Canada. Organizations of engagers often support such initiatives. While Canadian artists are highly educated, professionally trained and perform a valuable and necessary role in our society, the facts are that:

- artists’ earnings remain low
- a high proportion of artists are self-employed
- artists’ incomes fluctuate dramatically creating an additional tax burden
- most artists do not qualify for employment insurance, are required to pay both the employer and employee share of the Canada (Québec) Pension Plan, and often fall outside provincial workers compensation schemes
- the circumstances of senior artists can be particularly challenging given low lifetime income.

While priorities for action may vary between organizations, and some of engager groups may have a legitimate concern about how expanding social benefits may create an additional financial burden on them, most would welcome government policies and programs that would improve the economic circumstances. Some of these issues include:

- deducting artistic expenses against income
- preserving the freelance status of artists for purposes of income tax and copyright
- responding to fluctuating income levels
- providing tax exemption for all artistic income or for royalties
- providing tax exempt status for artistic grants
- access to employment insurance, if only for the social benefits
- ensuring appropriate pensions for artists
- bankruptcy protection
- health and safety
- appropriate and affordable living and work spaces
- providing appropriate professional development and training opportunities.

It is important to note there are some nuanced differences. For examples, the AFM is content with a situation in which many of its members working in orchestras are considered to be employees, and thus are fully covered for purposes of EI and other benefits. The AFM is also concerned about maintaining the integrity of its pension plan, which covers all members regardless of whether they are freelance or employees. If an artists' association were to try today to register a similar pension plan, it would likely be rejected by tax authorities because of the involvement of independent contractors.

Collective Bargaining Issues

With respect to collective bargaining, the situation is far more complicated. In Saskatchewan's review of collective bargaining issues, it identified these issues as being of concern to the province's professional artists. However, the questions also hint at the broad range of positions that exist in the arts community both in Saskatchewan and elsewhere.

1. To what extent will the bargaining rights make a difference?
2. What are the implications of bargaining rights for the self-employed status of professional artists?
3. What is the impact of bargaining rights on the integrity of nationally negotiated voluntary agreements?
4. Is it possible to find a bargaining model that will achieve a broad acceptance in the artistic community?
5. How will the model affect engagers of artists, who often find themselves in a precarious economic situation?
6. How will the bargaining model influence the generally collegial relationships that exist in the sector?
7. What is the cost of the bargaining model?
8. To what extent will the model improve support for individual contracts?
9. What might be the unintended impact of bargaining rights on individual artists?

Positions on Québec's Collective Bargaining System

Since the Québec model is the only provincially-based bargaining model in the country, it is useful to review the positions of artists' association about that system.

The associations representing the French-language artists are more satisfied than those representing English-language artists. In the fields where collective bargaining has been the norm (theatre, film and television) Union des artistes and la Guilde des Musiciens du Québec have been successful in expanding their jurisdiction to producers that previously had operated outside union jurisdiction. In the fields where collective bargaining has not been the norm (visual arts, crafts and publishing), individual contracts are now generally entered into, although there is anecdotal evidence that they are not universal despite the provisions of the Act. While associations have had some success establishing their codes as standards, unhappiness remains, since artists' associations in these fields are still unable to conclude collective agreements. There is also some concern about the administrative burden imposed by the *Commission de reconnaissance des associations d'artistes et des associations de producteurs* which administers the Acts, despite several recent changes.

On the English side, there have been significant problems in the film and television sector. For the Directors Guild of Canada, the certification process has brought a division of the bargaining

unit between categories that are considered artists (directors, assistant directors, production designers, etc.) and those that are not considered artists. The DGC is seeking in collective bargaining to negotiate on behalf of all of its members, whether covered by the certification or not, although the process with the Québec film and television production association (APFTQ) has not yet been concluded despite a decade of negotiations and many years of mediation/arbitration through the Commission.

The Writers Guild of Canada experienced a challenge arising from the insistence of the APFTQ to negotiate a separate agreement to cover the province's English-language scriptwriters. After several years of bargaining and discussion by the producers' association of seeking arbitration of a "first agreement" through the Commission, the parties reached a settlement in 2004. Some of the provisions of the agreement varied from the provisions of the agreement negotiated nationally between the WGC and the CFTPA and the producers alleged this was in violation of the "most-favoured nation" provisions of the national agreement by providing better terms to provincial producers. The most recent agreement reached between WGC and CFTPA appears to have resolved this dispute.

There are no requirements in the Acts for provincially-based bargaining, however, the Act does require that the agreement be ratified by "the members included under a draft group agreement." The extent of this requirement has not been tested although the difficulties experienced by the Writers Guild of Canada have raised concerns among the unions. ACTRA now collects the results of its ratification votes on a provincial basis based upon the membership of its branch. The Directors' Guild of Canada is certified in Québec through a provincially established body.

Positions of Selected Artists' Associations on Bargaining Rights in Other Provinces

The Writers Union of Canada: TWUC advocates forcefully for mandatory provincial bargaining systems. It sees this as a means of compelling the book publishers to negotiate an agreement with the union. The publishers have resisted union efforts to enter bargaining for many years.

Periodical Writers Association of Canada: For the same reason as their colleagues in the book industry, PWAC favours mandatory provincial bargaining.

Canadian Artists Representation/Front des artistes canadiens: CARFAC is presently attempting to negotiate an agreement with the National Gallery of Canada under the federal act. While it favours mandatory provincial collective bargaining, it may not have as much to gain as others, since the relationship between visual artists and their agents and galleries is different from the relationship that other artists have with their engagers.

American Federation of Musicians: The AFM is another strong advocate of mandatory provincial collective bargaining. In the Ontario consultations, the union discussed only this issue. For AFM, mandatory bargaining is seen as a way to enforce its jurisdiction in clubs and venues that to date refuse to negotiate. It favours grandfathering national agreements but has little direct interest in the issue since its national agreement with the CBC falls under the federal Act.

Canadian Actors' Equity Association: Equity also favours mandatory provincial collective bargaining and believes that national voluntary collective bargaining agreements (including its theatre agreement which covers work in provincial jurisdiction) can be protected. As with the

AFM, Equity sees mandatory bargaining as a means to secure its jurisdiction and compel non-union producers to the bargaining table.

Alliance of Canadian Cinema, Television and Radio Artists: ACTRA National has been reluctant to embrace provincial collective bargaining, primarily from a concern this could fracture its national jurisdiction and challenge its successful national agreements for independent producers and producers of commercials. Already, members in British Columbia are members of a recognized provincial trade union that negotiates a separate agreement with independent producers. In representations to Ontario's Sub-Committee, ACTRA Toronto stated that the first principle for any system should be "first, do no harm." As with AFM and Equity, ACTRA would stand to gain from mandatory bargaining by being able to compel non-union producers to come to the bargaining table.

Writers Guild of Canada: Both because of its experiences in Québec and because scriptwriters work is completely unconnected to the physical location of production, WGC is leery about provincially-based collective bargaining systems.

Directors Guild of Canada: DGC has the most concern about provincial collective bargaining systems. In addition to concerns about national agreements it combines in its membership some categories that are artists and some categories that may not be considered to be "artists." Since the federal Act permits additional categories to be added by regulation (Québec's Acts define artists covered), DGC has a broad federal certificate.