An abstract painting with a complex, layered composition. It features bold, expressive brushstrokes in a variety of colors including red, orange, yellow, green, blue, and black. The texture is visible, suggesting the use of thick paint. The overall effect is one of dynamic energy and artistic exploration.

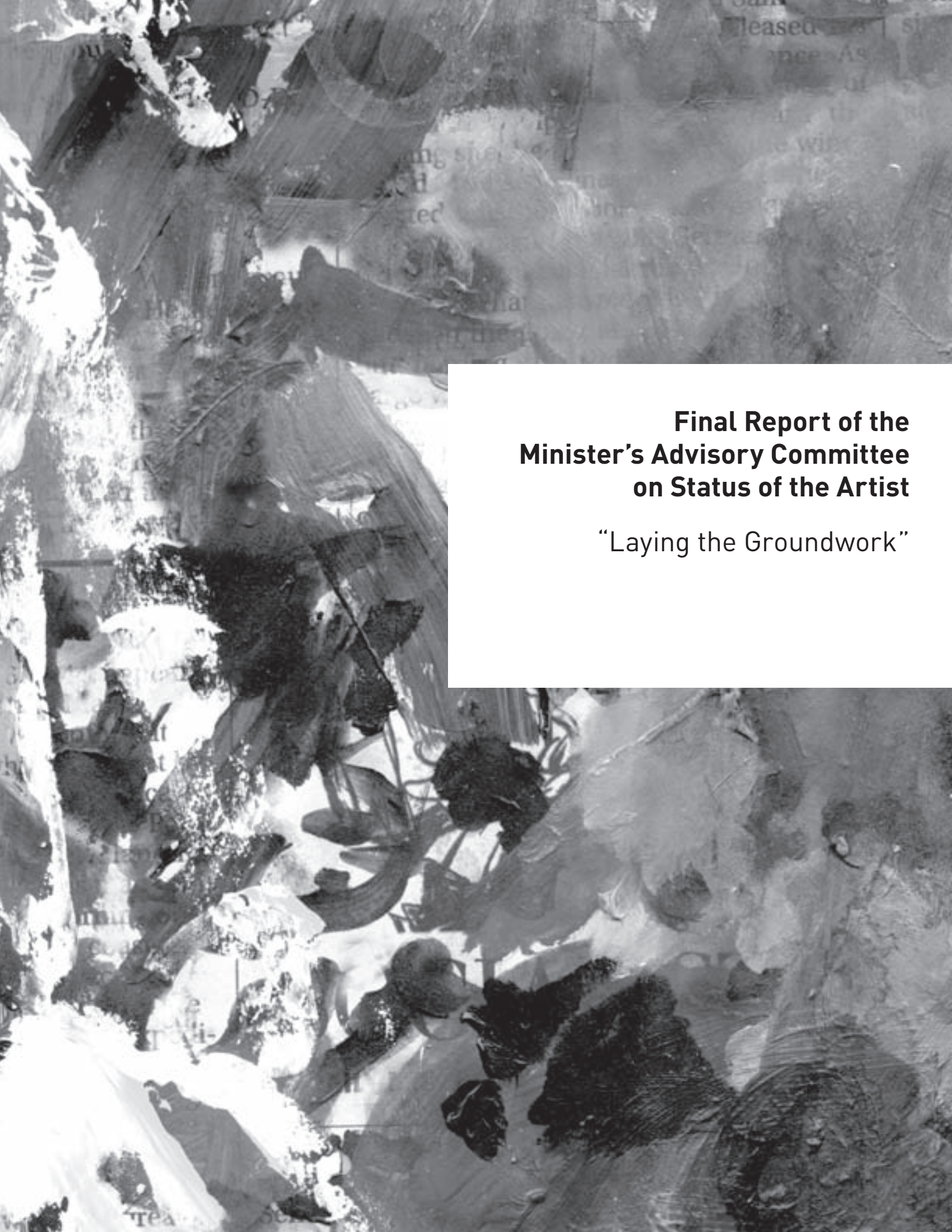
Final Report of the Minister's Advisory Committee on Status of the Artist

Presented to: The Honourable Glenn Hagel,
Minister of Culture, Youth and Recreation

July, 2006



Saskatchewan
Culture, Youth
and Recreation

The background of the entire page is a complex, abstract black and white artwork. It features a dense layering of textures, including what appears to be torn paper, ink splatters, and organic, plant-like forms. The composition is highly textured and layered, with various shades of gray and black creating a sense of depth and complexity. The overall effect is one of raw, expressive energy.

Final Report of the Minister's Advisory Committee on Status of the Artist

“Laying the Groundwork”

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Letter of Transmittal

April 24, 2006

Honourable Glenn Hagel
Minister of Culture, Youth and Recreation
Room 306, Legislative Building
Regina SK S4S 0B3

Dear Minister Hagel:

We respectfully submit the final report of the Minister's Advisory Committee on Status of the Artist (MACSA). While MACSA's primary charge was to further investigate collective bargaining rights for professional artists in Saskatchewan, during our consultations and discussions, it became clear that a number of other matters are of equal or higher priority to artists. It is for this reason that the committee chose to approach the matter of Status of the Artist by developing a comprehensive strategic plan. The recommendations in this report have been organized under three broad goals derived from the themes that emerged from our focus group consultations with artists, artists' associations and arts organizations.

We trust you will find these recommendations useful in your policy considerations. We encourage you to proceed to action as quickly as possible so that we can begin to realize the vision that was initially laid out in the far-reaching Status of the Artist Act.

We thank you for the opportunity to serve on this committee.

Respectfully submitted,



Barbara Young, Chair



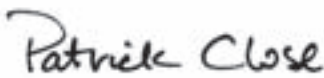
Lynn Acoose



Kent Allen



Sheldon Born



Patrick Close



Eileen Laverty



David Lawlor



Dawn Martin



Cam McConnell



Mary Ellen Wellsch

Executive Summary

In May 2005 the Minister of Culture Youth and Recreation (CYR) reappointed the Minister's Advisory Committee on Status of the Artist (MACSA) to provide advice for the development of Status of the Artist measures. Specific topics that MACSA was required to address included: collective bargaining rights for artists, the role and mandate of a permanent advisory committee, and an inventory of training opportunities for artists. In addition, the committee was directed to identify and address further issues and priorities related to Status of the Artist.

Thirteen members were appointed to MACSA in 2005. Meeting numerous times during its term, the committee reported its progress to the community on CYR's website. In preparation for its work, MACSA commissioned research on collective bargaining models, and consulted the arts community through a series of focus groups. Some very clear messages were brought forth through the focus groups, and have been incorporated into this report.

After consulting with artists and arts organizations, MACSA identified three general goals of/for artists in Saskatchewan, briefly described as:

1. Engagement in viable careers;
2. Access to thriving markets; and
3. Access to information that supports efforts to achieve viable careers.

In addition, MACSA made one final recommendation that addresses the idea of a permanent advisory council on Status of the Artist in Saskatchewan.

MACSA's recommendations support these general goals, and are discussed in full in the body of the report. For quick reference they can also be found in matrix format in Appendix I.

Supporting Goal 1, "Artists are able to engage in viable careers in Saskatchewan" are recommendations related to:

- government funding for the arts;
- establishment of production and investor's tax credits;
- items under federal jurisdiction that the Federal Provincial Territorial Working Group on Status of the Artist should address;
- extended health and pension benefits;
- occupational health and safety;
- government compliance with standards and contracts when procuring art; and
- amendments to The Status of the Artist Act, including:
 - definitions of artist, engager, professional artist;
 - requirement for use of written contracts by any engager who purchase goods, services or intellectual property; and
 - rights of self-employed professional artists to engage in enforceable collective bargaining.

Supporting Goal 2, "Artists will have access to thriving markets for their products and services" are recommendations related to:

- access to information and training to increase skill in arts business management and marketing;
- government-sponsored market research;
- restored Cultural Industries Development Funding that will support the development of arts marketing strategies;
- support for Arts Education within the school system;
- support for children's arts programming;
- support for arts touring;
- government policy to allocate one per cent of capital budgets for construction or refurbishment to the purchase of art; and
- government policy giving priority to Saskatchewan artists when government procures artistic goods and services.

Supporting Goal 3, "Artists will have access to information that will support and enhance their individual and collective efforts to achieve viable careers in Saskatchewan" are recommendations related to:

- a reference guide that would provide artists with information supporting career development;
- promotion of the reference guide;
- guidance to artists on funding application; and
- a provincial cultural organization to support Aboriginal artists.

MACSA's final recommendation proposes that the Government of Saskatchewan establish a permanent advisory council on Status of the Artist that would continue to provide information and advice with respect to measures that would improve the working conditions of artists in Saskatchewan.

Message from the Chair

This report signals the culmination of three years of work by the Minister's Advisory Committee on the Status of the Artist (MACSA). Two committees met during this time span. The first MACSA committee tabled its final report, a working document, in the Fall of 2004. The second MACSA committee, appointed by the Minister in 2005, saw many returning members and several new members appointed to this advisory committee. This report brings the work of both committees together into a strategic plan for Status of the Artist whose major goals come directly from the priorities expressed by artists/engagers and organizations during both MACSA I and II consultations with the arts community. The committee valued the advice of the government departments of Culture Youth and Recreation (CYR), Labour, Finance and Justice that provided valuable information and assessment of feasibility as we framed the strategic plan. A special thank you goes to the staff of CYR for their research, support and hours of editing as we formed our recommendations.

The strategic plan described in this final report provides a framework for action that entrenches artists as key contributing members of Saskatchewan society, both culturally and economically. The plan also recognizes and values the foundational traditions of Aboriginal, Western and culturally diverse forms of professional artistic practice through the expanded criteria that define the professional artist in legislation and through a recommendation that calls for the formation of an Aboriginal artists association to address areas of particular concern to Aboriginal artists that fall outside the scope of work currently carried out by existing artists associations.

HIGHLIGHTS OF THE REPORT ARE THE THREE PROPOSED PIECES OF LEGISLATION:

- A permanent Advisory Council to carry on the advocacy work for improving the status of artists;
- 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.

Other highlights include strong recommendations to support market research and tax incentive strategies that will provide artists with a solid base upon which to create their work.

Other important recommendations recognize that the people of Saskatchewan need to know about, care about, and participate in creating and collecting art, to enrich their own lives and to build the respect and value for all forms of art as a demonstration of our cultural and social fabric and an important part of our economic base.

The committee saw that its most important work was ensuring, to the best of its ability, that the recommendations nurture and in no way hinder the professional artist. MACSA acknowledges the differences that are found in the complexity of artists' disciplines and in their values regarding the exercise of rights. For that reason we encourage members of the arts community to take an active role in the direction that status activities will take in the future both for the arts community as a whole and for their own specific discipline.

The Saskatchewan Government and the arts community must act now to support the proposed legislative changes and the recommendations in this report in order to make this province one that is known for the way it values and respects artists as important contributors to the social, economic and cultural fabric of Saskatchewan.

As chair, my thanks goes to each member of the committee for their openness and respect for diversity, their passionate involvement in improving the lives of artists and the contribution they make to growing the culture and the economy of Saskatchewan.

Profiles of MACSA Members

BARBARA YOUNG, CHAIR

Barbara has had a long career as an educator. She holds Masters degrees in Education and Science and a Doctorate in Policy and Administration. During her career as an educator she was a classroom teacher, team leader and principal of an Arts Education demonstration school that integrated the arts with academic curriculum and provided artists in dance, drama, visual arts, music and literature as part of daily instruction. As Director of Policy, Planning and Research for Saskatchewan Education, she provided leadership for the Saskatchewan Minister's Advisory Committee that included Arts Education in the Saskatchewan Core Curriculum and as a Superintendent, was instrumental in bringing Learning Through the Arts into Regina Public Schools.

Barbara is currently a consultant for social policy development, evaluation and conflict resolution. She currently serves as the chair of the Globe Theatre Society Board of Directors. Barbara brings to MACSA her love of the arts and her commitment to improving the status of Saskatchewan artists.

LYNN ACOOSE

Lynn is a member of the Sakimay First Nation. She maintains a multidisciplinary art practice, which includes writing and video installation. Lynn is a sought after speaker, curator and artist-in-residence. She has received awards from and participated in juries for the Canada Council for the Arts and the Saskatchewan Arts Board. Lynn has worked in the cultural field as an arts administrator, consultant, programmer and curator and is a founding member of Sâkêwêwak Artists' Collective.

KENT ALLEN

In nearly 30 years as a professional actor, Kent has appeared in over 100 stage productions, and scores of film, television, and radio roles (CBC). His work ranges from sex farce to Shakespeare, and he performs across Canada, including performances in such places as Magnus Theatre (Thunder Bay), Sudbury Theatre Centre, The Globe Theatre (Regina), the Mayfield Dinner Theatre (Edmonton), Theatre New Brunswick, M.T.Y.P. (Winnipeg), the Station Arts Theatre (Rosthern), among others. Most recently, Kent has appeared at Stage West (Calgary), Centaur Theatre (Montreal), Dancing Sky Theatre (Meacham), and Persephone Theatre (Saskatoon). Kent also offers workshops in acting and stage combat. He has been a sessional lecturer at the University of Saskatchewan, and a workshop leader and co-director with Saskatchewan Native Theatre. Kent lives in Saskatoon with his wife, Kathy, and their children Lauren and Dominic.

SHELDON BORN

Sheldon is the General Manager of Persephone Theatre in Saskatoon, a position he has held since 2001. He is involved in all aspects of theatre management including collective bargaining, artist and designer contracts and working towards a new downtown facility for Persephone. He is also active on a number of committees working to enrich the culture and heritage of Saskatoon. Prior to Persephone, Sheldon worked in the craft industry in BC. Sheldon lives on an acreage near Waldheim with his wife Kathi and their two boys Matthew and Curtis.

MIKE BURNS (to September 2005)

Mike has been an active promoter in the Saskatchewan music and arts community for more than 20 years. In the 1990s, Mike began to work in the film industry as an actor; his work in this area led him to the presidency of ACTRA Saskatchewan and then to the position of the Saskatchewan branch national councilor. From 1998-2002 he was an advisor to the City of Regina Arts Commission. During this time, he was employed as program officer for the Saskatchewan Cultural Exchange Society, where he was able to contribute to that organization's support for grassroots provincial arts activity. Mike is currently the branch representative for ACTRA Saskatchewan.

PATRICK CLOSE

Patrick has been president of the Canadian Conference of the Arts, a member of the Saskatchewan Advisory Committee on the Status of the Artist (1993) and the chairperson of the Saskatchewan Arts Strategy Implementation Management Committee. He is currently executive director of CARFAC SASK, a non-profit provincial service organization for Saskatchewan visual artists. He has also been director/curator of the Photographers Gallery in Saskatoon, visual arts consultant to the Saskatchewan Arts Board, and education coordinator for the Museums Association of Saskatchewan.

He studied psychology, philosophy and art at McGill University and at the University of Saskatchewan. Patrick maintains an active art practice, and his works are included in provincial, national and international collections. He has appeared at universities, conferences and galleries across Canada as a guest artist and lecturer. He has received awards from the Canada Council for the Arts, the Saskatchewan Arts Board, and the Canadian Museums Association. Patrick was born and raised in Saskatchewan. He has lived and worked in Saskatchewan, Quebec, British Columbia and in Europe.

CHARLEY FARRERO (to June 2005)

Originally from France, Charley has worked as a ceramic artist since 1972. He has been president of the Canadian Craft Council and chairperson of the Saskatchewan Craft Council. He has served on the Saskatchewan Arts Board. He has been a juror, a curator, an invited artist, and a teacher in the ceramics field. He is also the president of Sask Terra, the provincial ceramic association. His one-of-a-kind sculptural pieces incorporate slipcast objects, hand built additions, grout, ceramic frames and shards, as well as commercial tiles and found objects. He also makes plates, platters, vases, bowls and planters. He uses all techniques and firing processes. He has had many solo exhibitions and participated in numerous group exhibitions in Canada and abroad. He lives in Meacham, Saskatchewan, where he has his studio.

DAVID LAWLOR

David's musical credits extend well beyond the borders of Saskatchewan. He spent two years as a studio musician in Montreal and acted as arranger and musical director for the Nashville recording sessions of a local Saskatchewan country artist. He was the first foreign musician invited to perform in Jilin City, Jilin province, People's Republic of China. David has performed in Belgium and Ireland and he continues to perform across Canada with the French traditional music ensemble *La Raquette à Claquettes*.

David maintains a national reputation as a talented film and television composer. He successfully uses the Internet and new technologies to work with clients from Vancouver to Montreal. He composed the music for the multimedia play *Via le Net* which was performed internationally on the Internet and his compositions for Incredible Story Studio and several Home and Garden Network productions, including its hit series *Home to Go*, are broadcast on cable networks around the world.

EILEEN LAVERTY

Eileen emigrated from Belfast, Northern Ireland to Canada with her family when she was six years old. She attended the University of Saskatchewan (BA), and received a Post-Graduate Certificate in Education from The Queen's University of Belfast. After enjoying a number of years as a high school teacher, Eileen left her full-time position in order to pursue a career in music. Her first CD, *Dancing With Angels*, won a Prairie Music Award and continues to draw praise at home and abroad. Her songs have been covered by highly-acclaimed artists, and she has been featured on radio and television programs highlighting Canadian music. Her second recording, *Ground Beneath My Feet*, will be released in March 2006. She is an avid soccer player, baker, and teller of really corny jokes. Eileen lives in Saskatoon with her husband, Greg Hargarten.

ALLEN LEFEBVRE (to February 2006)

Allen is currently the manager, finance and operations, for the MacKenzie Art Gallery in Regina, a position he has held since 1998. Raised in Humboldt, Saskatchewan, he has maintained a lifelong interest in the art and craft of photography while pursuing a career with various private companies and charitable organizations in the province. From 2000-02, Allen was the chair of the board of the Saskatchewan Arts Alliance, a time when the organization was very actively lobbying for passage of *The Status of the Artist Act*. He is a firm believer that "all boats rise with the tide," and that the entire arts sector will benefit considerably from the Status of the Artist initiatives. Allen lives in Regina with his wife and two sons, and has played volunteer leadership roles in a variety of local, provincial and national organizations, most recently as vice-chair of the National Blood Safety Council from 1997-2003.

DAWN MARTIN

Dawn is the Executive Director of the Culture and Heritage Branch of CYR. Beyond her role with government, Dawn has been an active member of the arts and cultural sector for many years. With a 25 year background in theatre, first as a stage manager and then as an administrator, Dawn has contributed to the arts community in a number of ways. As early as the late 1970s, Dawn was the Saskatchewan representative to the Canadian Actors Equity Association Council. As a theatre administrator for both Persephone Theatre and the Shakespeare on the Saskatchewan Festival, Dawn served on the executive of the Saskatchewan Arts Alliance and in 1993-94 served a term as the association president. In the early 1990s, she also participated in a number of committees associated with the cultural community, including the Ad Hoc Cultural Restructuring Committee, the Arts Strategy Task Force Implementation Management Committee, and the Minister's Advisory Committee on Tourism Partnerships. Since then, she has also served for four years on the Cultural Advisory Committee of SaskCulture.

In addition to her volunteer participation in the arts and cultural community, Dawn has also consulted extensively in the cultural and broader non-profit community, particularly in the area of board governance and strategic planning.

CAM MCCONNELL

Cam is a musician and composer who lives in Saskatoon. Cam's musical credits include composition and performance for the theatre production "Spitting Slag" by Mansel Robinson, member of the folk group Sugarbowl and band leader with the Vexations. Cam is the executive vice-president of the Saskatchewan Musicians' Association. In this role Cam negotiates on behalf of musicians with the Saskatoon Symphony Orchestra.

MARY ELLEN WELLSCH

Mary Ellen is the manager, Legal Policy and Legislation for Saskatchewan Labour. She has held various positions in the Government of Saskatchewan including Public Trustee for Saskatchewan, master of titles and general counsel for Information Services Corporation. Mary Ellen served as an elected Benchler of the Law Society of Saskatchewan from 1995 to 2000. She is currently on the Board of Directors for the Saskatchewan Legal Education Society Inc. and is a member of the Provincial Council of the Canadian Bar Association, Saskatchewan Branch. Mary Ellen was born and raised in Saskatchewan and received her Arts and Law degrees from the University of Saskatchewan.

Background

The Government of Saskatchewan has long expressed its commitment to the arts in Saskatchewan as a public good. The Saskatchewan Arts Board (SAB) was established in 1948 as the first arm's length agency of its kind in North America. Through the enactment of *The Status of the Artist Act* in 2002 (see Appendix II), the Government of Saskatchewan further recognized that, in order to ensure the citizens of the province have access to vibrant and diverse artistic experiences, it is in the public interest that artists are able to maintain a viable socio-economic status.

The Status of the Artist initiative is intended to improve the living and working conditions artists face. By helping artists to establish thriving markets for their art, gain easy access to information about building their careers, and access benefit programs such as health and life insurance, or insurance against loss of income due to disability, we can continue to provide a wide range of arts experiences to the people of Saskatchewan.

Status of the Artist issues have been discussed in the Saskatchewan arts sector for well over a decade. In 1992, the Minister responsible for Culture established an advisory committee to explore the issue. That advisory committee provided its recommendations to the Minister in 1993. Since that time, small gains have been made, but for the most part, the report and its recommendations languished.

In 2001, the Saskatchewan Arts Alliance renewed interest in Status of the Artist initiatives through an awareness campaign. The Minister for CYR responded by introducing new legislation. *The Status of the Artist Act*, which articulates government's commitment to improving the Status of Artists in the province, and enables the development of measures to do so, was passed in 2002.

In September 2002, pursuant to the newly adopted Act, the Minister appointed an advisory committee for a one-year term to explore further measures to enhance the status of Saskatchewan Artists. MACSA submitted its final report to Culture Youth and Recreation (CYR) in the fall of 2003. CYR then engaged in consultations with other affected government departments regarding the implications for government of the recommendations made by MACSA. Government reviewed MACSA's recommendations in fall 2004. Some recommendations were accepted and others were referred back to MACSA or to CYR for further research, consultation and analysis.

In January 2005, MACSA was reappointed for one year to complete a series of tasks, including the development of a final recommendation on the matter of collective bargaining rights for self-employed professional artists.

THE TASK

In early 2005, Government reappointed the Minister's Advisory Committee on Status of the Artist (MACSA) and asked it to work toward the following outcomes:

- based on consultations within the arts sector, provide the Minister with a final recommendation on a model to support collective bargaining and protection for job action for self-employed artists;
- provide the Minister with a final recommendation on the definition of *professional* and *artist*, or *professional artist*, which clarifies the scope and application of the recommendation on collective bargaining and other benefits potentially provided to artists through this initiative;
- provide the Minister with a recommendation on the role and mandate of a Permanent Advisory Committee;
- review Recommendation 15 – Inventory of Training Opportunities from the *2003 Ministerial Advisory Committee on the Status of the Artist Final Report*, clarify its intent and if appropriate, make a recommendation to the Minister on related strategies and actions; and
- identify and make recommendations on further issues and priorities related to Status of the Artist.

(Source: MACSA Terms of Reference, revised August 2005 – see Appendix III)

In addition to the topics listed above, MACSA considered a number of other issues, either further refining their recommendations from their working document of 2003 or addressing priorities that emerged through the consultations of the current process. These issues include:

- tax credits, benefits (e.g. health, pension plans), and occupational health and safety;
- guidelines for government procurement of art work/services;
- professional development and training for artists, including information about access to training in business development, marketing, and using contracts;
- market access and development (the one thing that emerged as a strong theme from the research);
- arts audience development;
- enforcement of individual engagement contracts; and
- minimum standards of engagement.

WHAT WE HEARD

MACSA's role was to collect information about Status of the Artist, consolidate and interpret their findings, and integrate these findings with other lessons learned during the entire MACSA process. Information was collected from a range of sources, using a variety of methods.

Because the issue of collective bargaining rights for artists was a priority matter in the terms of reference for the committee, an independent report, *Collective Bargaining Rights for Associations and Unions of Professional Artists in Saskatchewan*, was commissioned as a first step. This report examined a range of labour relations models across Canada and analysed the implications of each. The models examined included labour relations systems particular to artists that have been implemented by the Governments of Canada and Quebec. This report provided the basis for subsequent focus group and arts association consultations, and is included as Appendix IV of this report.

MACSA commissioned four focus groups to explore the issue of collective bargaining rights for self-employed professional artists. These focus groups took place in Regina, Saskatoon and Prince Albert in October and November 2005.

The participants of three focus groups were identified from a list of names compiled by the SAB, Saskatchewan Arts Alliance (SAA) and SaskCulture Inc. A total of 30 people from a variety of arts disciplines representing artists, engagers and arts associations participated in the first three focus groups. The majority of these participants were artists. The fourth focus group consisted of representatives from the SAB, SAA, and SaskCulture, some of whom were also artists.

Each focus group was led by a professional independent facilitator and recorded and transcribed by a professional transcription service. MACSA's chair and CYR executives observed these focus groups. Following the focus group, observers were debriefed, and the facilitator later analyzed transcripts of the focus group discussions to identify key themes. After the first three focus groups, the facilitator felt there was significant convergence on the themes and determined that no more focus groups were required. The fourth focus group was used to access the expertise of key agencies and stakeholders to assist in the interpretation of the themes that emerged.

The central topic of discussion in the focus group questioning framework was collective bargaining rights for artists. Prior to the session, focus group participants received copies of the MACSA-commissioned report on labour relations for professional artists in Saskatchewan, and during the session they viewed a slide show summarizing the report.

As reflected in Appendix V, five themes emerged from the first three focus groups:

1. Relevance of collective bargaining
Focus group participants found it hard to connect collective bargaining to their work in a meaningful way. They suggested that issues such as respect for artists, arts funding, and market development would have more direct relevance to their experiences as artists.
2. Respect for artists
Focus group participants believed that their low economic standing was underpinned by a lack of recognition and respect for artists. They suggested that an improved standard of living would follow respect, and that the concept of "respect for artists" should be the primary focus of the MACSA Committee.
3. Market development
Many participants agreed on the necessity of creating markets for artists' work, increased funding to the arts, and increased public exposure to the arts.
4. Labour relations information
Participants emphasized the need for labour relations information dealing with a range of subjects (e.g. minimum fees and working standards, model contracts, occupational health and safety). Most participants saw collective bargaining as one of a number of possible ways to disseminate this type of information. Other suggested avenues of dissemination included: artists associations, mentoring relationships, an ombudsperson, a board for the arts similar to the labour relations board, and through school curricula.
5. Saskatchewan-made, arts-based model of collective bargaining
Nearly all focus group participants appreciated the philosophical value of collective bargaining, and believed in its value under specific circumstances. If a collective approach were put forward, participants believed it should reflect the unique nature of Saskatchewan and its arts communities and have characteristics such as collegial, not adversarial, protection for independent contractors; adequate representation; protection for existing voluntary collective bargaining; and recognition that many artists are on both sides of the traditional model (artist and engager).

The fourth and final focus group made up of artists association representatives discussed the themes identified by the previous three focus groups. Although the fourth group did not entirely agree with each detail of the five themes identified, they agreed with their importance. Four general topics emerged from the discussion about these themes:

1. Legislated rights versus access to rights

Some participants believed that simply legislating artists' right to collectively bargain would lead to increased respect and status. Others believed it was insufficient to legislate the right without the ability to access it. Enforcement was seen to be a pivotal part of any collective bargaining model.

2. Roots of respect

Opinions about the roots of respect varied. Some believed that increased respect for artists would follow the right to bargain collectively, but most believed that respect follows public knowledge and experience that is created through advocacy and market opportunities.

3. Differences about collective bargaining

While some participants articulated a positive belief in the philosophy of collective bargaining, they held different opinions as to appropriate timing, form, and coverage of collective bargaining for professional artists. Some thought that collective bargaining should be incorporated into a larger strategic planning process with actions and timelines. Despite their varied opinions all agreed that it should not be the central focus with all issues funneled through it.

4. No more "layers" of organizations

Most participants agreed that regardless of MACSA's specific recommendations, existing organizations can serve artists. No new body, association or institution should be created. This echoed the sentiments of the majority of participants of focus groups one to three.

A detailed analysis of these topics and themes identified in the focus groups can be found in Appendix V.

Introduction to Framework of Report and Rationale

The arts sector encompasses diverse groups of people who work in many different ways to create their art. It takes a great deal of time and effort to develop an understanding of the unique composition and history of the Saskatchewan arts sector. MACSA felt that it should seize this opportunity to consider the broader needs of Saskatchewan artists that had become apparent through its consultations and research.

In order to address and respond to Status of the Artist issues most effectively, an integrated, “made in Saskatchewan” approach is required. While this committee was specifically established to advise the Minister, MACSA has chosen to craft recommendations that clearly have implications and reach beyond the Government of Saskatchewan. The recommendations reflect the need for integrated action by the broader arts sector and government(s).

The report has been structured as a strategic plan designed to enhance the socio-economic status of artists in Saskatchewan. The report was structured in this fashion to accommodate the wide range of priorities and issues the committee heard about through its consultations, as well as the specific direction the committee was given by Government to revisit the issue of collective bargaining for professional artists. The three broad goals used to frame this report emerged from consultation with artists, arts organizations and artists associations. Specific recommendations, accompanied by underlying rationales, are presented for each goal.

In this report, the term “artist” is used to refer to professional artists. The exclusion of amateur artists from this report is not meant to diminish their value or importance. Indeed, many of the recommendations in this report that are intended to benefit professional artists will also have positive repercussions for amateur artists. It is recognized that some amateur artists are working to become professional artists; some recommendations, particularly those designed to improve information access, are intended to assist them on that path. Recommendation 1.4(a) explores a fuller definition of professional artist for the purposes of the proposed legislative structure, which applies only to professional artists.

STRATEGIC PLAN OVERVIEW

Based on what we heard in our consultations, commissioned research and deliberations, Status of the Artist can be summarized by a single vision and three broad goals.

OVERARCHING VISION

Artists will be valued and treated equitably in consideration of the contributions they make to the social, economic, and cultural well-being of Saskatchewan.

MACSA expressed the scope of this vision in 1993 by endorsing the three principles articulated in the Canadian Artists Code that was proposed by the Canadian Advisory Committee on the Status of the Artist:

1. The treatment of the artist by society reflects its appreciation of the value of creativity, the right to self-expression, and the respect it holds for its cultural heritage and development.
2. The contribution of the artist to society is manifested in economic, labour market, social and industrial terms, true value being evidenced in the quality of life and the maturity of the nation.
3. The fundamental role of the artist as the creative force behind all cultural industries warrants that artists enjoy an equitable share of the profits and decisions in the sector.

MACSA added an additional principle to its 1993 report to complete its vision:

4. All people should have the broadest access to artists and their work through distribution, exhibition and education. In particular, we believe Saskatchewan people must have full access to Saskatchewan arts and artists, including the work of indigenous artists, whose cultural and aesthetic traditions predate European contact and must be nurtured and encouraged.

GOALS

To realize this overarching vision, MACSA identified three goals, which are consistent with the themes that emerged from the focus groups:

- Goal 1:
Artists are able to engage in viable careers in Saskatchewan.
- Goal 2:
Artists will have access to thriving markets for their products and services.
- Goal 3:
Artists will have access to information that will support and enhance their individual and collective efforts to achieve viable careers in Saskatchewan.

ACTION PLAN

It was important to place the recommendations into a broader context to ensure that the messages that emerged from consultations with artists, engagers and advocates shone through. While those who took part in the consultations came from diverse arts sub-sectors and perspectives, their priorities were very consistent and led to a convergence of themes after only three focus groups.

Perhaps the most compelling statement that was heard in consultation was from a well-known senior artist who, although he loves the province of Saskatchewan, has been unable to make a viable income from his artistic practice: he said, "Help me stay home."

At the same time as we addressed the issues that were raised in focus group consultations, MACSA remained committed to the task presented by the minister: to further investigate collective bargaining rights for Saskatchewan artists.

MACSA has recommended actions necessary to achieve each of its goals. Some of these actions were reflected in the first report, completed in November 2003 and released in 2004. The balance have emerged from the most recent process, which included extensive consultation with artists by an independent facilitator. The actions are provided in the following summary, with the background and rationale for each recommended action in the body of the report.

Overview of Recommendations

Goal 1: Artists are able to engage in viable careers in Saskatchewan

RECOMMENDATION 1.1(A): FUNDING

That adequate funding to support the development of artists, arts organizations, and audiences be maintained:

- i. Funding to the Saskatchewan Arts Board is, at minimum, indexed to inflation to preserve Saskatchewan's standing as one of the strongest funders of the arts in Canada.
- ii. Funding to the Saskatchewan Arts Board should be increased to address the following priorities:
 - a. Arts presentation and touring;
 - b. Childrens' arts program delivery.
- iii. Funding to provincial artists associations should recognize the increased and significant role identified for those associations in this report.

RECOMMENDATION 1.1(B): FUNDING

That the Saskatchewan Lotteries Trust Fund, in partnership with SaskCulture, improve its data management system in order to better track the activities of the Community Grant Program. This should be understood as a step toward the development of an accountability framework for the Community Grant Program to ensure that a reasonable proportion of the Community Grant Program be spent by municipalities on cultural activity.

RECOMMENDATION 1.2(A): TAXATION

That the Government of Saskatchewan create an investor's tax credit for the arts similar to the credit for investment in Labour-sponsored Venture Capital Corporations [section 34(1) of *The Saskatchewan Income Tax Act 2000*].

RECOMMENDATION 1.2(B): TAXATION

That the Government of Saskatchewan establish a program for book publishers and the sound recording sector that would provide refundable tax credits of 30 per cent of production and development expenses incurred in Saskatchewan to a maximum of \$10,000 per initiative.

RECOMMENDATION 1.2(C): TAXATION

That CYR work to improve income tax provisions for artists as the highest priority for the Federal- Provincial-Territorial (F-P-T) Working Group on Status of the Artist. Issues should include:

- i. Tax exemption for grant income;
- ii. Tax exemption for royalty income;
- iii. Income averaging;
- iv. Criteria for self-employment; and
- v. Eligibility of provincial arts service organizations for designation as registered charities.

RECOMMENDATION 1.3(A): EXTENDED HEALTH AND PENSION BENEFITS

That artists associations work collectively to provide artists with opportunities to participate in group Pension and Extended Health Care Plans. Such plans will be flexible enough to respond to the reality of artists' variable income and engagement in their professional activities.

RECOMMENDATION 1.3(B): SUPPORT FOR THE VULNERABLE WORKERS PROCESS

That the unique needs of artists are taken into consideration when recommendations are made by the Working Groups established by Saskatchewan Labour to consider extensions of pensions and non-wage benefits to vulnerable workers

RECOMMENDATION 1.4: AMEND THE STATUS OF THE ARTIST ACT

That the Government of Saskatchewan establish the legislative authority, programs and supports to provide artists with mechanisms to secure appropriate income.

RECOMMENDATION 1.4(A): DEFINITIONS

That the Government of Saskatchewan amend *The Status of the Artist Act* to clarify the definitions of artist, professional artist, and engager in order to define the scope and application of the proposed legislative program provisions.

RECOMMENDATION 1.4(B): INDIVIDUAL CONTRACTS

That the Government of Saskatchewan establish a statutory requirement that any engager who purchases goods, services and/or intellectual property from an artist must outline the terms of that engagement in a written contract that includes specific mandatory contract elements.

Overview of Recommendations

RECOMMENDATION 1.4(C): THE *COMPETITION ACT*

That Culture Youth and Recreation work to enhance existing systems of voluntary collective bargaining for artists by referring a request to the Federal-Provincial-Territorial (F-P-T) Working Group on the Status of the Artist to establish as a priority the exemption of artists associations from the *Competition Act*.

RECOMMENDATION 1.4(D): ENFORCEABLE COLLECTIVE BARGAINING

That the Government of Saskatchewan amend *The Status of the Artist Act* to provide self employed professional artists with the right to engage in enforceable collective bargaining. Such rights shall be administered and enforced by a new body, the Saskatchewan Artists and Engagers Commission (SAEC).

RECOMMENDATION 1.4(E): NATIONAL ARTISTS ASSOCIATIONS

That the Government of Saskatchewan allow national artists associations to certify as representatives of Saskatchewan artists in enforceable collective bargaining in Saskatchewan.

RECOMMENDATION 1.4(F): PRESUMPTION OF SELF-EMPLOYMENT

That The Status of the Artist Act be amended to ensure that, for the purpose of the Act, all Saskatchewan artists are presumed to be self-employed.

RECOMMENDATION 1.5: GOVERNMENT COMPLIANCE WITH STANDARDS AND CONTRACTS

That the Government of Saskatchewan provide departments, crowns and agencies with information and guidance about how to comply with minimum standards and collective agreements when procuring artists' goods and services.

RECOMMENDATION 1.6: OCCUPATIONAL HEALTH AND SAFETY

That the Government of Saskatchewan add at least one person knowledgeable about artists' occupational health and safety issues to the Occupational Health and Safety Council.

Goal 2: Artists will have access to thriving markets for their products and services

RECOMMENDATION 2.1(A): ACCESS TO INFORMATION AND TRAINING

That the Saskatchewan Arts Board work with provincial artists associations, universities and training institutions, as well as the provincial and federal governments to provide access to information and training that will help them to increase their skill in managing the business operations of their art, and in marketing their work locally, provincially, nationally and internationally.

RECOMMENDATION 2.1(B): MARKET RESEARCH

That the Government of Saskatchewan undertake market research to inform the development of strategies for marketing Saskatchewan artistic goods and services.

RECOMMENDATION 2.1(C): CULTURAL INDUSTRIES DEVELOPMENT FUND FUNDING

That the Government of Saskatchewan restore support to the Cultural Industries Development Fund to its previous level of \$450,000. This constitutes an increase of \$150,000 over the current level. This increase will be used to develop and implement the marketing strategy discussed in recommendation 2.1(d).

RECOMMENDATION 2.1(D): MARKET STRATEGY DEVELOPMENT

That the Cultural Industries Development Council, in consultation with the Saskatchewan Arts Board, provincial artists associations, and individual artists, lead the development of marketing strategies based on market research undertaken by the Government of Saskatchewan.

RECOMMENDATION 2.2(A): SUPPORT FOR ARTS EDUCATION

That Culture Youth and Recreation, the Saskatchewan Arts Board, and provincial artists associations work with Saskatchewan Learning, teachers' associations and special subject councils in arts related subject areas to ensure that teachers have the resources and support to deliver the arts education curriculum.

RECOMMENDATION 2.2(B): SUPPORT FOR CHILDREN'S ARTS PROGRAMMING

That the Government of Saskatchewan provide the Saskatchewan Arts Board with additional funding to enhance the ability of arts organizations to provide formal support for children's arts programming.

RECOMMENDATION 2.2(C): SUPPORT FOR ARTS TOURING

That the Government of Saskatchewan provide the Saskatchewan Arts Board with additional funding to facilitate exposure to Saskatchewan artists for rural residents of Saskatchewan. Consideration should be given to providing resources to arts presenters in rural communities and to artists to support their ability to tour.

RECOMMENDATION 2.3: CAPITAL CONSTRUCTION AND REFURBISHMENT

That the Government of Saskatchewan establish a policy allocating one per cent of capital budgets for building construction and refurbishment to the purchase of art, and that adherence to this policy be monitored by Culture Youth and Recreation and reported to the proposed Permanent Advisory Council on Status of the Artist.

RECOMMENDATION 2.4: SASKATCHEWAN FIRST POLICY

That the Government of Saskatchewan formalize a policy that will give priority to Saskatchewan artists when government procures artistic goods and services.

Goal 3: Artists will have access to information that will support and enhance their individual and collective efforts to achieve viable careers in Saskatchewan**RECOMMENDATION 3.1: INFORMATION FOR ARTISTS**

That the Government of Saskatchewan develop a mechanism to provide artists with career-relevant information that is accessible and easy to use, and that addresses the following topics at minimum:

- i. Negotiation and enforcement of individual engagement contracts;
- ii. Protections and supports in voluntary collective agreements;
- iii. Protections and supports in enforceable collective agreements;
- iv. Occupational health and safety;
- v. Professional development and training;
- vi. Information about self-employment.

RECOMMENDATION 3.2: PROMOTE THE REFERENCE GUIDE

That the Government of Saskatchewan and the Saskatchewan Arts Alliance develop a plan to promote the *Reference Guide* to Saskatchewan's emerging and established artists on an ongoing basis.

RECOMMENDATION 3.3: FUNDING GUIDANCE

That artists associations provide artists and arts organizations with information and guidance on how to apply for and/or access federal funding.

RECOMMENDATION 3.4: ABORIGINAL PROVINCIAL CULTURAL ORGANIZATION

That the Government of Saskatchewan, SaskCulture and Aboriginal artists in Saskatchewan explore the creation of an Aboriginal Arts Provincial Cultural Organization (PCO) to better meet the needs of Aboriginal artists in Saskatchewan.

Implementation Recommendation**RECOMMENDATION 4.1: PERMANENT ADVISORY COUNCIL**

That the Government of Saskatchewan establish a Permanent Advisory Council on Status of the Artist, as provided for in *The Status of the Artist Act*.

Goal 1: Recommendations and Rationale

ARTISTS ARE ABLE TO ENGAGE IN VIABLE CAREERS IN SASKATCHEWAN.

One of the greatest challenges faced by professional artists in Saskatchewan is their relatively low income. In 2001, the average income for artists in Saskatchewan was \$15,341¹, 40 per cent less than the average Saskatchewan income for the same year (\$25,691²). Aboriginal artists tend to earn even less than other artists, 28 per cent less than the national average³. Many artists rely on work other than production of their art for the largest part of their income, and some are subsidized by their family's financial resources.

While artists' incomes tend to be lower than average, artists are likely to hold more educational credentials than the average earner. A recent statistical profile of artists in Canada showed the percentage of artists holding a university degree, certificate or diploma to be 40 per cent⁴, compared to the provincial average of 19 per cent⁵.

Many professional artists are either self-employed or undertake temporary contract engagements that are interspersed with periods of unemployment. In Canada, the rate of self-employment is over five times higher for artists than for the overall labour force (44 per cent versus eight per cent⁶). Self-employed artists are often engaged or contracted to multiple engagers and have multiple workplaces. This type of worker has little access to the extended health and pension benefits that an employee might have. Artists are specifically excluded from Workers' Compensation benefits and the self-employed do not have access to Employment Insurance.

Considering the relatively low income, higher educational requirement, few benefits, and temporary earning periods, the viability of a career in the arts in Saskatchewan is quite low. As a result of these deficiencies, many artists whose energies are devoted to enriching the lives of others through their art can look forward to a working life and an old age marked by minimum living standards⁷.

The following recommendations address a range of actions, from government funding to production tax credits to collective bargaining rights that help to address these issues which affect career viability.

RECOMMENDATION 1.1(A): FUNDING

That adequate funding to support the development of artists, arts organizations, and audiences be maintained:

- i. Funding to the Saskatchewan Arts Board is, at minimum, indexed to inflation to preserve Saskatchewan's standing as one of the strongest funders of the arts in Canada.
- ii. Funding to the Saskatchewan Arts Board should be increased to address the following priorities:
 - a. Arts presentation and touring;
 - b. Childrens' arts program delivery.
- iii. Funding to provincial artists associations should recognize the increased and significant role identified for those associations in this report. This can be best accomplished by maintaining funding to the four major fund distribution channels for the arts in Saskatchewan.

Background

Public funding for Saskatchewan artists and arts organizations is distributed mainly through the following channels:

- i. *SAB (SAB)*: Provides grants, programs and services to individuals and organizations whose activities have an impact on the arts and the people of Saskatchewan.
- ii. *Sask Film*: Actively encourages the employment and professional development of Saskatchewan creative talent, and supports co-production and marketing initiatives.
- iii. *Cultural Industries Development Fund (CIDF)*: Helps to develop the cultural industry sector including the sound recording, book publishing and commercial visual arts and craft industries.
- iv. *Saskatchewan Lotteries*: Distributes 35 per cent of lottery proceeds to SaskCulture Inc., which supports provincial cultural organizations and non-profit, volunteer-run community organizations in their work to support the arts.

¹ Hill Strategies. October, 2004. Artists in Canada's Provinces, Territories and Metropolitan Areas: a Statistical Analysis Based on the 2001 Census. Retrieved February, 2006, from http://www.canadacouncil.ca/NR/rdonlyres/CBC5535F-9136-4A36-BCBC-72772A70EAE0/0/artists_provincial_local.pdf

² Ibid.

³ Hill Strategies. February, 2005. Diversity in Canada's Arts Labour Force: a Statistical Analysis Based on the 2001 Census. Retrieved February, 2006, from http://www.hillstrategies.com/docs/Diversity_arts.pdf

⁴ Hill Strategies. May, 2005. Key Statistics on the Arts in Canada May,

2005. Retrieved February, 2006, from http://www.hillstrategies.com/docs/Key_stats.pdf

⁵ Statistics Canada. Table 282-0004 Labour Force Survey Estimates (LFS), by educational attainment, sex and age group, annual. Retrieved February, 2006, from <http://www.statcan.ca/start.html>

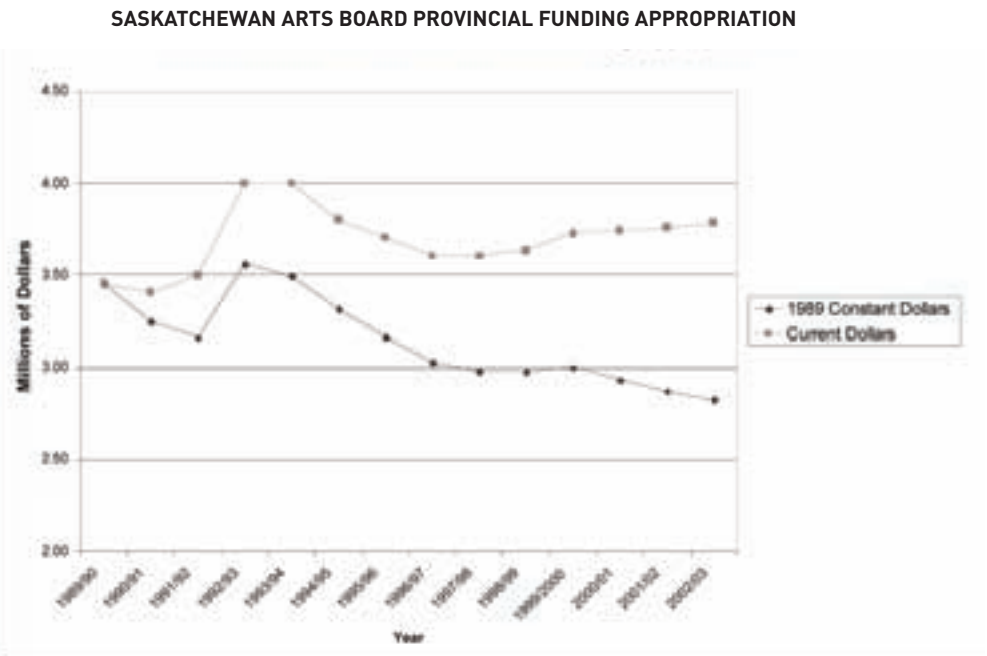
⁶ Ibid.

⁷ Minister's Advisory Committee on the Status of the Artist. September 30, 1993. The Report of the Minister's Advisory Committee on Status of the Artist.

The Government of Saskatchewan provides funding to SAB, Sask Film, and CIDE. Lottery Proceeds and the funds provided to provincial cultural organizations are, in turn, distributed to artists and arts organizations through various means. SAB, for example, uses a juried adjudication process to provide funds to individual artists and arts organizations.

In late 2003, the Government of Saskatchewan made a commitment to increase the SAB funding by \$1.5 million by 2005. The final allocation to fulfill that commitment was made in the 2005-06 budget. This additional funding brought the Arts Board back to the spending power they possessed in 1992-93, after accounting for inflation.

The following graph demonstrates SAB's loss of spending power between 1989 and 2003. Through an ongoing process of benign neglect, artists and arts organizations lost considerable ground. Much of this ground was recovered with the injection of new resources between 2003 and 2005.



With the current level of support, Saskatchewan has a right to be proud of its contribution to the arts. The Government of Saskatchewan spent \$36,200,000 in arts funding during the 2003/04 fiscal year, the last year for which comprehensive data is available, but prior to the completion of the increased commitment to SAB. Per capita arts funding by the Government of Saskatchewan \$36 in 2004. This was the second highest per capita spending among Canadian provinces after Quebec [\$50].

MACSA recognizes that many of the recommendations in this report assign responsibilities to artists associations, and that the associations may not have the capacity to respond to every one. Funding for artists associations through the channels described above (SAB, SaskFilm, CIDE, and Saskatchewan Lotteries) must be maintained in order to allow associations to tackle MACSA's recommendations.

This recommendation is presented to ensure that arts funding does not lose ground as it did in the 1990s and that Saskatchewan is able to preserve its position in Canada as a leading supporter of the arts.

A more detailed analysis of the recommendations for increased funding can be found later in this report.

Timeline: Immediately; Ongoing

Responsibility: Government of Saskatchewan

RECOMMENDATION 1.1(B): FUNDING

That the Saskatchewan Lotteries Trust Fund, in partnership with SaskCulture, improve its data management system to better track the activities of the Community Grant Program. This should be understood as a step toward the development of an accountability framework for the Community Grant Program to ensure that a reasonable proportion of the grants be spent by municipalities on cultural activity.

Overview of Recommendations

Background

While MACSA did not make a recommendation directed at municipal governments, it did recognize that considerable arts activity takes place at the municipal level. Approximately \$5 million is made available by the Saskatchewan Lotteries Trust Fund for annual distribution through the Saskatchewan Lotteries Community Grant Program, though generally not all the funds are distributed. These resources are adjudicated and administered by municipalities or other community level governments. MACSA's recommendation is intended to ensure that these key municipal level resources are effectively applied to cultural activity.

Grant amounts to communities are determined by population and controlled for geographic location. Cooperation between municipalities and pooling of funds is encouraged in order to maximize the impact of the funds distributed through the Community Grant Program. First Nations band councils, northern settlements and municipal governments of cities, towns, villages, organized hamlets and rural municipalities are eligible to apply for the Community Grant Program. Those municipal governments distribute the funds they receive to non-profit volunteer community groups to cover costs directly related to the delivery of sport, culture and recreation programs.

Municipalities have great authority over the distribution of funds from the Community Grant Program to their communities. Because the funds for the program are an allocation of lottery profits separate from the allocation to the global organizations, it is generally assumed, though not required, that municipalities will distribute them according to the same breakdown as the balance of the Lottery Fund (50 per cent to sport, 15 per cent to recreation and 35 per cent to culture).

In the 2004-05 fiscal year, most of the projects funded by the Community Grant Program involved more than one component: sport, culture or recreation. About one third of the projects had a cultural component while about half of the projects had a recreational component and 45 per cent had a sport component. The average cost for projects with a cultural component was on par with the average project cost for programs with a sport component, and was slightly higher than projects with recreational components. 53 per cent of the total community grant funds were spent on projects with a cultural component. There is no information regarding the allocation of funds to the component within the programs; the tools used to record contribution to each component have only a limited degree of accuracy.

While the data suggests that an appropriate portion of Community Grant Program resources are allocated to culture, it may be that this number is simply a reflection of the way data is collected by the lotteries system. There is considerable anecdotal evidence that indicates culture is not as well supported as either sport or recreation. MACSA is concerned that art, along with other cultural activities, is not well represented by the Community Grant Program.

As a first step to ensuring that an appropriate portion of these resources is utilized for cultural activity, MACSA recommends the following improvements to the database that tracks the Community Grant Program:

- i. Track and record the percentage component of a project (e.g. 25 per cent sport, 75 per cent recreation). This would provide a more accurate representation of the amounts spent on each: CYR. It could also provide the flexibility to separate projects focusing solely on one component from projects that combine sport culture and/or recreation;
- ii. Record the type of cultural activity undertaken (i.e., artistic, ethno-cultural or multicultural, and/or heritage).

Once accurate data is available, the lotteries system should be able to determine and monitor the Community Grant Program to ensure that an appropriate portion of resources are allocated to cultural activity.

Timeline: By fiscal year 2007-08

Responsibility: Saskatchewan Lotteries Trust Fund, SaskCulture Inc. Municipalities.

RECOMMENDATION 1.2(A): TAXATION

That the Government of Saskatchewan create an investor's tax credit for the arts similar to the credit for investment in Labour-sponsored Venture Capital Corporations [section 34(1) of *The Saskatchewan Income Tax Act 2000*].

Background

Public investment is not the only source of funding for the arts. Even "...small amounts of private investment, even as little as \$5 to \$10 thousand can often enable cultural businesses to introduce new products or undertake new initiatives"⁸ and explore new markets. Many private investors, however, do not recognize intangible assets such as copyright and intellectual property as legitimate forms of security for lending purposes. In addition, some private investors may be reluctant to invest in the cultural sector for fear of low return on investment. An investment tax credit would help potential investors recognize artistic assets as legitimate capital investments.

⁸ Cultural Industries Development Strategy Committee. June 30, 1997. Saskatchewan Cultural Industries Development Strategy. Retrieved February, 2006, from <http://www.culturalindustries.sk.ca/cids/cids.pdf>

A *Private Investor Tax Credit* would encourage individuals and private sector organizations to make equity investment in the arts. This recommendation is drawn from the 1997 *Cultural Industries Development Strategy*, which was developed by a committee composed of cultural industries representatives and the Government of Saskatchewan.

In such a private investor tax credit program, a percentage of the amount of private investment up to a set maximum (such as 20 per cent up to a maximum of \$1,000 per investor⁹) would be deducted from the taxable income of the investor.

Unlike a refundable tax credit program, an investment tax credit could apply to all sectors of the arts. By encouraging private sector investment, a private investor tax credit program would help arts sector workers to build capital necessary to increase the scope and volume of their business. Additionally, private investors' typical emphasis on economic returns may enhance the drive for market development in the arts.

With minor adjustments, the investment tax credit would fit in well with section 34(1) of *The Saskatchewan Income Tax Act 2000*, which deals with the tax credit for investment in Labour-sponsored Venture Capital Corporations. In addition, an investment tax credit would not involve government cash expenditure; it would simply reduce the amount of tax collectible from taxpayers. However, such a program would require an administrative structure to implement it. For example, an official registry for arts businesses wishing to benefit from the program would need to be established and other eligibility requirements such as residency, number of employees, and total revenue caps would need to be established and overseen.

The cost to government of a program like this would be relatively small, and depending on how much business the investments created, there may even be a net benefit. For example, assuming 200 investors invested at least \$5,000 each in any given year, the maximum cost of the program (in lost tax revenues) to the Government of Saskatchewan for that year would be \$200,000¹⁰. However, net cost would be reduced when the tax revenue from the cultural businesses receiving these investments is matched against the cost of the tax credit.

The program may provide net positive revenue to the government by helping to increase the profitability of cultural businesses. With increased volume of business, employment in the cultural sector would increase and so would the income tax derived from workers in that sector. In addition, as cultural businesses make more purchases (due to increased private investment), revenue from provincial sales tax would be enhanced. Overall, the combination of direct, indirect, and induced effects of the program may make the program a net contributor to government treasury.

Timeline: By 2007

Responsibility: Government of Saskatchewan

RECOMMENDATION 1.2(B): TAXATION

That the Government of Saskatchewan establish a program for book publishers and the sound recording sector that would provide refundable tax credits of 30 per cent of production and development expenses incurred in Saskatchewan to a maximum of \$10,000 per initiative.

Background

A strong, stable network of publishers and recording studios will aid in sustaining a viable arts community in Saskatchewan. The book publishing and recording studio communities are currently very active in Saskatchewan and a refundable production tax credit could encourage expanded local production.

Emerging artists in particular often find it difficult to access production facilities. Production tax credits would make it easier for them to produce their work in established publications and recording studios. Increased production would in turn enhance efficiency and increase economies of scale, which would enable improved marketing and networking with others in their fields.

Similar to Saskatchewan's Film Employment Tax Credit (FETC), a Saskatchewan Book Publishers' Tax Credit could be a refundable tax credit based on printing, publishing and marketing expenditures incurred by a qualifying corporation with respect to book publishing activities in Saskatchewan. Eligible companies would be required to show that their principal business is book publishing in Saskatchewan, and that they are not exempt from tax under the *Income Tax Act*.

⁹ These numbers can and should change depending on how much government intends to commit to the program. The tax credit rate may be graduated, ex.: ten per cent for the first \$5,000; 20 per cent for amounts above that up to a maximum credit of \$1,000 per investor.

¹⁰ This number is based on a 20 per cent tax credit rate for 200 investors, where each investor invested at least \$5,000.

Overview of Recommendations

Unlike the FETC, the publishing and sound recording tax credits would not be paid to a single purpose company or to a one-time project. A qualifying publisher or sound recording company must be viable and must have been in business for a specified period of time prior to qualifying for the tax credit.

Ontario calculates its present provincial book publishing tax credit at the rate of 30 per cent of eligible Ontario expenses on books by first-time Canadian authors.¹¹ The maximum credit allowable per eligible title is capped at \$10,000. In British Columbia, the maximum tax credit allowable per publisher is tied to the federal grant received by the publisher under Canadian Heritage's Book Publishing Development Incentive Program (BPDIP), and is capped at 90 per cent of the BPDIP grant.

A production tax credit, like the one that exists in Ontario, can also be designed for the sound recording sector. A Saskatchewan Sound Recording Tax Credit would be refundable, based on the eligible production and marketing costs incurred by a qualifying corporation with respect to an eligible Canadian recording (with principal activities taking place in Saskatchewan). In Ontario, the provincial sound recording tax credit is calculated at 20 per cent of qualifying expenditures. To be eligible, a company must earn 50 per cent of its taxable income in Ontario for the preceding taxation year, and at least 50 per cent of the company's business must be related to sound recording activities.

In addition to other conditions, the eligible book or sound recording must be made for commercial audience and there must be an arrangement in place for nationwide marketing of the product.

Issues for Permanent Advisory Council to Consider:

- i. *Administration:* Any form of refundable tax credit or investment tax credit will require setting up a mechanism to administer the program (e.g., SaskFilm administers the Film Employment Tax Credit; the Ontario Media Development Corporation administers all government assistance to the cultural industries in Ontario.) Such an administrative structure will entail some costs.
- ii. *Cost/Benefit Analysis:* This involves analysis of the potential social, cultural and economic impacts of government investment in any or all of these programs. An economic impact study of the Ontario book publishing sector conducted by POLLARA in 2004 shows that the sector had a direct economic impact of \$98.8 million on Ontario gross domestic product. It should however be noted that the size of the publishing sector in Ontario is much larger than in Saskatchewan. One cannot therefore assume that this level of economic impact is achievable in Saskatchewan.
- iii. Whether such a program should be applicable to crafts and visual art producers.

Timeline: By 2007

Responsibility: Government of Saskatchewan

RECOMMENDATION 1.2(C): TAXATION

That CYR work to improve income tax provisions for artists as the highest priority for the Federal- Provincial-Territorial (F-P-T) Working Group on Status of the Artist. Issues should include:

- i. Tax exemption for grant income;
- ii. Tax exemption for royalty income;
- iii. Income averaging;
- iv. Criteria for self-employment; and
- v. Eligibility of provincial arts service organizations for designation as registered charities.

Background

While provincial jurisdictions have the authority to provide tax credits against provincial income taxes, they do not have the authority to independently undertake any measures that alter the calculation of individual net income. The issue of income and taxation for artists, however, has been one that has emerged in a number of different jurisdictions. In 2002, a report on federal Status of the Artists legislation that was written for the Corporate Review Branch of Canadian Heritage suggested that although the federal act dealt with collective bargaining issues fairly extensively, other measures such as income averaging, clarification of eligible business cost deductions, and access to employment insurance and other social benefits, were also important.¹² Similarly, the Government of Ontario has identified the issue as one that deserves attention.

In September 2005, the F-P-T Ministers responsible for Culture and Heritage recommended that a F-P-T Working Group on Status of the Artist be formed to review issues relating to the socio-economic status of the artist. This is an ideal forum in which to examine income averaging and taxation, which are dealt with in both the provincial and federal jurisdictions.

¹¹ Ontario Ministry of Culture. Ontario Book Publisher Tax Credit. Retrieved January 5, 2006, from <http://www.culture.gov.on.ca/english/culdiv/cultind/bookpub.htm>

Recommendations of the FPT Working Group on Status of the Artist will be taken by the FPT Ministers of Culture to the Federal-Provincial Roundtable on Taxation, which is the forum where taxation issues are negotiated among jurisdictions in Canada.

i. Tax exemption for grant income:

Many artists subsidize their artistic activity with income from outside employment, and some receive arts grants from bodies such as the SAB and the Canada Council for the Arts. These grants allow artists to work toward the completion of specific projects without having to spend time at other employment.¹³ Because this grant income is fully taxable, however, the recipient rarely sees the total benefit of the funding. Whether the original source of the funds is the provincial or federal government, both levels of government receive tax revenue from the artist's grant income. In this case, the government gives with one hand and takes away with the other.

ii. Tax exemption on royalties:

As with tax exemptions on grant income, individual artists would benefit from provincial and federal tax exemptions on royalty income. These exemptions could be given on royalty income up to a certain amount. For example, MACSA's 2003 report recommended that income of up to \$30,000 per year derived from copyright, neighbouring rights and/or other income derived from the sale of any creative work be exempt from provincial income tax. The tax exemption on royalties would only be useful to artists whose income is above the threshold for paying income tax.

iii. Income averaging:

Depending on the nature of their commissions, engagements, and contracts, the timing and amount of artists' income tends to fluctuate through the months and even years. The 2003 MACSA report recommended that the provincial government discuss income averaging for tax purposes with the federal government. For example, new tax regulations that allow artists, whose chief source of income involves artistic endeavours, to average their income over specific blocks of time, five years for instance.¹⁴ This recommendation is echoed by the present commission.

iv. Criteria for self-employment:

Artists and their engagers stand to gain or lose a significant amount of money at income tax time. Artists who meet the Canada Revenue Agency's criteria for self-employment may deduct expenses such as training, equipment, etc., so they are required to pay significantly lower income tax than their employed counterparts. Engagers save significantly by not being required to contribute to employment insurance and the Canada Pension Plan benefits for these artists.

The four criteria of self-employment used for tax purposes are:

- a. control over hours of work and the delivery of service;
- b. ownership of any tools used;
- c. the worker's potential for profit from the enterprise; and
- d. the worker's risk of loss from the enterprise.

The Canada Revenue Agency may consider artists who work under scale agreements may be considered to be employed, as they may gain no more from the contract than any other artist in the same situation.

At the time of this report, an important precedent was set when dancers for the Royal Winnipeg Ballet were ruled by the Federal Court of Appeal to be independent contractors, not employees. The ruling could extend the same 'independent contractor' status to all other performing artists. One major factor in the ruling was that the dancers and ballet company consider themselves separate. It is possible that the decision could be appealed to a higher court amid strong opposition from artists' organizations.

v. Eligibility of provincial artists organizations for designation as registered charities:

Charitable arts institutions are the same as hospitals or other charitable institutions in what can be deducted based on donations made to them. With reference to donated artistic capital, a 100 per cent exemption already exists *if* the donated asset is a designated Canadian Cultural Property.

Timeline: By 2008

Responsibility: Minister of CYR

¹² PRA Inc. September 18, 2002. Evaluation of the Provisions and Operations of the Status of the Artist Act. Prepared for Corporate Review Branch, Canadian Heritage. Retrieved February, 2006, from http://www.pch.gc.ca/progs/em-cr/eval/2002/2002_25/6_e.cfm

¹³ Ministerial Advisory Committee on the Status of the Artist. October 2003. Final Report: A Report to the Minister of Culture, Youth and Recreation. p. 11.

¹⁴ Ministerial Advisory Committee on the Status of the Artist. October 2003. Final Report: A Report to the Minister of Culture, Youth and Recreation. p. 21.

RECOMMENDATION 1.3(A): EXTENDED HEALTH AND PENSION BENEFITS

That artists associations work collectively to provide artists with opportunities to participate in group Pension and Extended Health Care Plans. Such plans will be flexible enough to respond to the reality of artists' variable income and engagement in their professional activities.

Background

Some professional artists have access to extended health and pension benefits through membership in union-like organizations such as Canadian Actors Equity Association, and Alliance of Canadian Cinema, Television and Radio Arts (ACTRA). However, many artists as self-employed workers do not have access to traditional employer/employee pension plans or extended health care plans.

A handful of pension and health programs are available to Saskatchewan residents and therefore Saskatchewan artists:

- i. *The Saskatchewan Pension Plan*: The plan is open to use by all Saskatchewan residents and offers a degree of pension planning. It is voluntary, flexible in terms of contribution time, professionally managed, and open to people regardless of where they reside. However, its contribution limit of \$600/year is relatively low when considering rising post-retirement costs.
- ii. *Family Health Benefits*: Artists with children may be eligible for this program administered by Saskatchewan Health. Under this program, low-income working families are covered for eye exams, chiropractic services, and subsidized drugs. Children are also covered for formulary drugs, most dental services, basic eyeglasses and emergency ambulance. Eligibility is based on earnings reported on income tax returns. Families with up to three children under 18 years of age must have a combined net annual income of under \$29,291, with the earnings limit increased by \$1,392 for each additional child. Families may receive the Saskatchewan Child Benefit or the Saskatchewan Employment supplement at the same time as they receive Family Health Benefits.
- iii. *Coverage under the Workers Compensation Board (WCB)*: Self employed artists who meet the definition of "worker" as laid out in the Workers Compensation Regulations are eligible to apply for "optional personal coverage" even though artist is listed in the under "The Workers' Compensation Act Exclusion Regulations." One basic requirement for eligibility is that the artist must place him/herself on a payroll. Another requirement of an artist operating a business as a proprietorship or partnership is that he or she has done work for more than one customer within the past three years. There is a current maximum coverage of up to \$55,000 per year.¹⁵ Incorporation of an artist's business has no bearing on eligibility for WCB coverage. However, artists have not generally used this provision to opt-in. The specific reasons are unknown, but presumably the relatively low earnings of artists make this option beyond financial reach.

Past attempts to provide artists with group pension and extended health care plans have not been successful for a combination of reasons. First, because of artists' typically low incomes, there was an inability to afford even relatively low-priced plans. As with other low income groups, artists' immediate needs such as housing, food and transportation absorb most available income, leaving little room for longer-term needs such as extended health benefit or pension programs. Second, some artists who have bought into group extended health and disability insurance have had trouble getting the insurance company to honour claims, which further discouraged uptake by artists. Insurers were unable to adapt criteria and programs intended for traditional workers to the non-traditional work environment for artists. For example, what is the effect on income to a potter who is unable to work because of an injury? The impact may not be felt for some time if the potter has inventory that continues to sell while he/she is injured. There are no specific earnings directly associated with the potter's time at the wheel and potential earnings will vary depending on the type of work the potter is undertaking at any given time (e.g., one-of-a-kind pieces of art; production work; etc.) Insurers are hard-pressed to understand losses due to injury and they have generally been unable or unwilling to approve claims.

Union-like organizations such as the Canadian Actors Equity Association and some artists organizations like the Saskatchewan Writers Guild currently provide group RRSP programs to members, which provide some assistance in retirement planning. There has been at least one attempt to establish a group benefits and retirement investment program targeted at artists by a commercial investment broker, but arts organizations expressed little interest in supporting this program.

Individual artists who are self-employed have a lot at stake when it comes to extended health care benefits and retirement planning. When self-employed artists break an arm at work, they must absorb the loss of income. When their children need

glasses or dental work, they are responsible for the additional expense. In the years when they do earn enough to set some money aside, artists must create their own savings program. There is great scope for artists to work together to tailor savings and healthcare programs to their own requirements. With their special knowledge of the unique nature of the work and workplaces of artists from various sectors, and with their commitment to represent and support artists, artists associations are well-placed to explore opportunities to establish group pension and extended health care plans for artists.

Timeline: Immediately
Responsibility: Artists associations

RECOMMENDATION 1.3(B): SUPPORT FOR THE VULNERABLE WORKERS PROCESS

That the unique needs of artists are taken into consideration when recommendations are made by the Working Groups established by Saskatchewan Labour to consider extensions of pensions and non-wage benefits to vulnerable workers

Background

The Saskatchewan Commission on Improving Work Opportunities for Saskatchewan Residents was established in 2005 to review legislation and government policies related to work in Saskatchewan. In February 2006, the commission submitted its final report,¹⁶ which contained a number of recommendations that hold relevance for artists, who share many characteristics with low-income and part-time workers. One example is the defined contribution pension plan for vulnerable workers. Another example is the recommendation to establish a task force to determine the most feasible and cost-effective way of providing non-wage benefits to vulnerable workers. There is much potential overlap in actions that would provide non-wage benefits to vulnerable workers, and those that would also help Saskatchewan artists. MACSA has confidence that the work of the task force will have positive results for Saskatchewan artists.

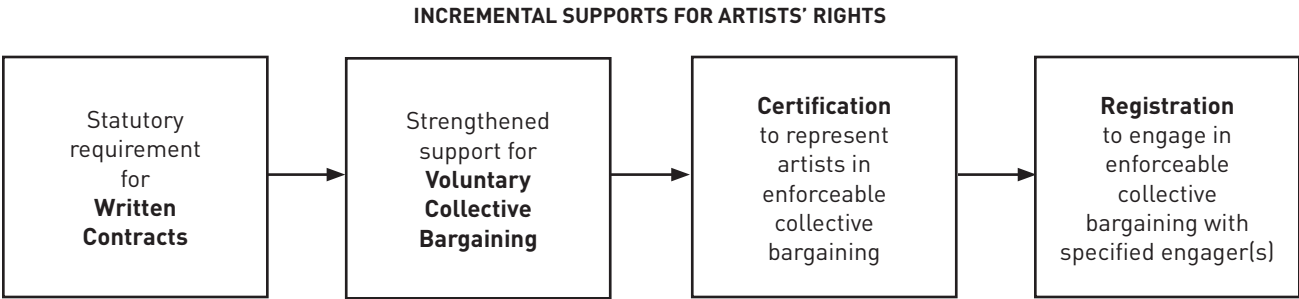
Timeline: Ongoing
Responsibility: Saskatchewan Labour

RECOMMENDATION 1.4: AMEND THE STATUS OF THE ARTIST ACT

That the Government of Saskatchewan establish the legislative authority, programs and supports to provide artists with mechanisms to secure appropriate income.

Background

In its consultations, MACSA heard a wide range of needs. In attempting to respond to this diversity, MACSA designed a process that allows artists to engage and access rights and benefits incrementally, depending upon their needs. The proposal is designed to provide artists with the highest degree of self-determination possible, while still ensuring that they have access to rights that are typically only available to the employed workforce. The incremental process offers four levels of support, as depicted in the following figure.



**** Detailed diagrams of the collective bargaining process can be found in Appendix IV**

Career viability for artists depends on their ability to fairly contract with engagers to sell, license, or otherwise provide the artistic goods and services, or related intellectual property. In 2003, MACSA recommended that artists could be best supported through the establishment of an Artists and Engagers Commissioner to assist in the resolution of contract disputes, the negotiation of voluntary collective bargaining agreements and the establishment of minimum standards for pay and working conditions for artists. The response of some of the arts sector to this recommendation was negative, arguing that supports for voluntary systems were insufficient.

¹⁶ Saskatchewan Labour. February, 2006. Final Report and Recommendations of the Commission on Improving Work Opportunities for Saskatchewan Residents. Retrieved March 6, 2006, from <http://www.labour.gov.sk.ca/commissionreport/improvingworkopportunities.pdf>

Overview of Recommendations

MACSA has since undertaken considerably more research and consultation and has revised its approach to these issues. During consultations, artists told MACSA that, while there was a time and place for collective bargaining, extending collective bargaining rights was not a priority for them at this time. On the other hand, when considered within a broader context, MACSA recognized that enforceable collective bargaining rights, if recommended now, would be available to artists when they are needed.

It is important to note that, while MACSA is recommending that artists have access to enforceable collective bargaining rights, the committee is not recommending that artists be obliged to access those rights.

MACSA is recommending a range of contract and informational supports for artists, some of which are linked to collective bargaining and some of which stand independent of collective bargaining.

Timeline: By Fall 2006

Responsibility: Government of Saskatchewan

RECOMMENDATION 1.4(A): DEFINITIONS

That the Government of Saskatchewan amend *The Status of the Artist Act* to clarify the definitions of artist, professional artist, and engager in order to define the scope and application of the proposed legislative program provisions.

Background

From a statutory perspective, it is important that the Act define to whom the provisions apply. Recommendations 1.4 (a) through (f) in this report require statutory changes that will apply only to those individuals who meet the following criteria for professional artists and engagers. The definition of Professional Artist states that the special rights conferred by the Act shall apply only to self-employed professional artists. These same rights are dealt with very clearly for all employees, including those artists who are employees, in other pieces of legislation.

Interpretation:

An “**Artist**” is any natural person who creates, performs or gives creative expression to, or works in any artistic field including:

- i. literary arts;
- ii. visual arts and crafts;
- iii. electronic, recording and media arts, including film and video;
- iv. performing arts, including theatre, opera, music, dance and variety entertainment; or
- v. any other field of the same / similar nature;

A “**Professional Artist**” may or may not work as an employee of an engager. Where the Act provides specific rights and benefits, these rights and benefits are limited to those professional artists who are self-employed. A professional artist is someone who meets the first of the following criteria, plus at least three others:

- i. Receives or has received compensation from her/his artistic activity including, but not limited to, sales, fees, commissions, salaries, royalties, residuals, grants and awards, any of which may reasonably be included as professional or business income, and has a record of income or loss from the history of her/his artistic activity;
- ii. Has received public or peer recognition in the form of honours, awards, professional prizes, scholarships, honourable mention, appointment to an adjudication committee or an invitation to participate in a group exhibition or performance or by publicly disseminated critical appraisal;
- iii. An artist whose artistic activity has been presented to the public by means of exhibitions, publications, performances, readings, screenings, or by any other means;
- iv. Promotes or markets her/his work, by means including, but not limited to, attending auditions, seeking sponsorship, agents, engagements, or exhibitions and similar activities appropriate to the nature of her/his work; or is represented by a dealer, publisher, agent, or similar representative appropriate to the nature of her/his artistic activity;
- v. Has received training and/or acquired traditional knowledge either in an educational institution or from a practitioner or teacher recognized within her/his profession, or within the established practice of her/his cultural traditions;
- vi. Has membership in a professional association representing her/his artistic activity whose membership or categories of membership, is or are, limited under standards established by the association, or which is a trade union or its equivalent appropriate to her/his artistic activity, or which is an Aboriginal Society; or
- vii. Holds copyright in her/his own work and has received royalty or residual payments based on that copyright.

Where additional occupational categories are prescribed by legislation, the occupations must be involved in creation, direction or design. Individuals working as technicians, managers or producers are not to be covered by the Act.

An “**Engager**” is any person, body or partnership that enters into contracts with artists as its main or secondary activity for any of the following purposes:

- i. As a presenter, exhibitor, promoter, producer or other:
 - a. to engage one or more artists in order to produce an artistic work or production;
 - b. to engage one or more artists in order to present an artistic work or production to the public; or
 - c. to operate a circulation enterprise, including the sale, lending, lease, exchange, deposit, exhibition, publishing, public presentation or any other use of the works of artists.
- ii. To do any of the above activities as a non-profit or for-profit activity.

This definition of engager is not intended to include members of the general public who purchase art in a retail situation, whether from an independent retail outlet or directly from the artist.

Timeline: By Fall 2006

Responsibility: Government of Saskatchewan

RECOMMENDATION 1.4(B): INDIVIDUAL CONTRACTS

That the Government of Saskatchewan establish a statutory requirement that any engager who purchases goods, services and/or intellectual property from an artist must outline the terms of that engagement in a written contract that includes specific mandatory contract elements.

Background

Perhaps one of the highest priorities for the advisory committee was to improve artists’ knowledge of general contracting to protect their rights, particularly their intellectual property rights, and to have access to improved contract enforcement. To that end, MACSA recommends, as the first step in its multi-level system, that government establish a statutory requirement for contracts when engagers are engaging professional artists.

Sub-Recommendations

- i. The absence of a written contract will not void any verbal contract between two parties, nor will the absence of any contract element void any contract in whole or in part. At minimum, the contract must contain reference to the following elements:
 - a. The parties’ legal names and the effective dates of the contract;
 - b. The work or works which form the object of the contract;
 - c. Any transfer of right and any grant of licence consented to by the artist, including the purposes and the term of the transfer of licence and its territorial application;
 - d. The transferability or non-transferability to third persons of a licence granted to the engager;
 - e. The financial consideration due to the artist and the terms and conditions of payment (including the date of the delivery of service and the date of the delivery of payment);
 - f. The frequency with which the engager shall report to the artist on the transactions made in respect of the work that is subject to the contract;
 - g. Limitations on the use of the artistic good, service or intellectual property (contracts with Aboriginal artists must address moral rights and protocols);
 - h. Dispute resolution mechanisms; and
 - i. The notice and/or compensation required should either party terminate the agreement.

In the absence of a contract stating otherwise, ownership of copyright shall be governed by the *Copyright Act*.

If a contract is broken by one party to the contract, the other party is within his or her rights to withdraw all services under the contract and sue to recover any financial loss caused by the broken contract.

- ii. Agreements dealing with a future work or works should be subject to the preceding general rules and, in addition, should:
 - a. Contemplate a work identified at least as to its nature;
 - b. Be revocable upon the application of the artist once a given period agreed upon by the parties has expired or after a determinate number of works specified by the contract; and
 - c. Specify a date whereby any exclusive right to a work or works will expire. At the specified date, the engager will be required to cease any circulation of the work or works, and shall not require formal notice from the artist to do so. (to *circulate* includes the sale, lending, lease, exchange, deposit, exhibition, publishing, public presentation or any other use of the works of artists).

Overview of Recommendations

- iii. Finally, while MACSA is not recommending statutory compliance with the following contract provisions, the committee does recommend that artists associations provide model contracts including:
 - a. Force majeure – to provide artists and engagers with protection when acts of God prevent the execution of the contract.
 - b. Bankruptcy protection – this is important where artists are handing a tangible object to a dealer or agent to sell on their behalf. In the event of the bankruptcy of the dealer or agent, artists who have maintained ownership of a tangible object until such time as it is sold to a third party can avoid having their works considered an asset of the dealer or agent. For a small fee, artists may register a security interest through Saskatchewan's Personal Property Registry, administered by Information Services Corporation.¹⁷ This registration helps to establish ownership of consignment property.

Timeline: By Fall 2006

Responsibility: Government of Saskatchewan, Artists associations

RECOMMENDATION 1.4(C): THE *COMPETITION ACT*

That Culture Youth and Recreation work to enhance existing systems of voluntary collective bargaining for artists by referring a request to the Federal-Provincial-Territorial (F-P-T) Working Group on the Status of the Artist to establish as a priority the exemption of artists associations from the *Competition Act*.

Background

Collective bargaining as it applies to self-employed artists means that an entity other than the artist negotiates, on behalf of a group of artists, to establish the minimum standards of engagement with an engager or group of engagers. Collective agreements constitute minimum standards only, and all artists are free to negotiate standards of engagement in excess of what is guaranteed by the collective agreement.

Across Canada, collective bargaining already takes place on a voluntary basis, particularly in the performing arts. A number of artists associations (Canadian Actors Equity Association; Alliance of Canadian Cinema, Television, and Radio Artists; etc.) have negotiated national collective agreements with producer/engager associations. Others, such as the American Federation of Musicians, have tended to negotiate voluntary agreements on a workplace by workplace basis. These voluntary agreements have worked well for the most part and have raised both the minimum rates of pay for artists covered by them and provided benefits such as pension and disability plans.

The federal *Competition Act* prohibits, with a few exceptions, arrangements that alter prices, limit production, or prevent, lessen, or otherwise restrain competition. Collective agreements accomplish any or all of these prohibited actions. Collective agreements negotiated by associations of workmen or employees are exempted from the *Competition Act*. Therefore, union activity among employees, such as is practiced in Saskatchewan under *The Trade Union Act*, where associations of employees bargain with employers to protect their professional interests, is permitted.

Artists tend to be independent contractors, and as such, generally do not belong to associations of employees. Because case law is uncertain as to whether artists associations may be considered associations of workmen, artists and their associations are not guaranteed exemption from the *Competition Act*. Independent artists and artists associations that engage in collective bargaining in the provincial jurisdiction, therefore, risk prosecution under the *Competition Act*.

Independent artists who work under collective agreements in the federal jurisdiction are protected from prosecution under the *Competition Act* because of the federal *Status of the Artist Act*. This Act, concerning enforceable collective bargaining rights for artists who are engaged by federally owned or regulated organizations, includes a presumption for the purposes of the *Competition Act* that defines artists associations as 'combinations of employees' for the purpose of protecting the professional interests of the artists they represent. This has the effect of exempting the artists associations from the restraint of trade provision in the *Competition Act*. It does not have any effect on the self-employed status of artists.

In Canada's constitutional structure, federal statutes have precedence over provincial statutes. So while the Government of Canada can establish a statute that clarifies or alters the interpretation of another federal statute, the Government of Saskatchewan cannot. Therefore, nothing in Saskatchewan's *Status of the Artist Act* regarding collective bargaining may circumvent the provisions in the *Competition Act*. Exemption from the provisions in the *Competition Act* for collective bargaining for artists in any provincial jurisdiction must be addressed through the *Competition Act* itself, either by amending the Act or interpreting existing provisions of the Act to exclude associations of artists. The appropriate

¹⁷ Saskatchewan Justice. The Personal Property Security Act, 1993. Retrieved February, 2006, from <http://www.saskjustice.gov.sk.ca/legislation/summaries/perspropsecact.shtml>

mechanism to request such an amendment is the F-P-T Working Group on the Status of the Artist, to which MACSA refers the issue.

Until such time as this issue is addressed through the *Competition Act*, those artists and artists associations that choose to access the right to collective bargaining, whether enforceable or voluntary, risk prosecution. The risk is small yet still exists and there is some history where restraint of trade claims have been made against artists under this Act. MACSA recognizes the importance of reducing or abolishing the risks to artists and their associations when engaging in collective bargaining.

Timeline: Ongoing

Responsibility: Federal-Provincial-Territorial Working Group on the Status of the Artist

RECOMMENDATION 1.4(D): ENFORCEABLE COLLECTIVE BARGAINING

That the Government of Saskatchewan amend *The Status of the Artist Act* to provide self employed professional artists with the right to engage in enforceable collective bargaining. Such rights shall be administered and enforced by a new body, the Saskatchewan Artists and Engagers Commission (SAEC).

Background

Collective bargaining on a voluntary level has been a part of the arts in Canada for years. The benefits of collective bargaining include increased minimum rates of pay, as well as the extension to artists of non-wage benefits such as disability plans. Artists who participated in MACSA's focus groups indicated that they are generally satisfied with the established voluntary collective bargaining systems.

Voluntary collective bargaining relies on good relations between parties to the collective agreement and a willingness to abide by it. When a voluntary collective agreement is not honoured, there is little recourse. In a voluntary system, the violation of a collective agreement constitutes a violation of trust. In order to restore the agreement and trust, there are few options beyond paid mediation.

While artists have indicated that voluntary collective bargaining meets their current needs, they recognize that their collective needs are evolving. While artists stated during the focus groups that enforceable collective bargaining was not currently a priority, they recognize that the need for an enforceable system may arise. MACSA proposes that a system of enforceable collective bargaining be designed now so that the supports are available when artists choose to access them.

Enforceable Collective Bargaining Rights

Every employee in Saskatchewan has the potential to access the right to enforceable collective bargaining under *The Trade Union Act*. Self-employed artists are unable to access these same rights because they tend to be independent contractors and as such, are excluded from the definition of an employee under the Act. MACSA proposes that enforceable collective bargaining rights be extended to all self-employed professional artists in Saskatchewan through amendments to *The Status of the Artist Act*.

While the current system of voluntary collective bargaining seems to suit the needs of many Saskatchewan artists, an enforceable system would confer additional advantages. These advantages include, but are not limited to:

- i. Groups of related artists would have the power to elect an association as their legal representative for collective bargaining.
- ii. In order to ensure that the association remains accountable to those artists it serves, artists would have the right to reverse their decision to elect an association to represent them.
- iii. Collective agreements in an enforceable system are legal contracts between the employer and the employee association (union) which are legally enforceable. Under voluntary collective bargaining systems, the only legally enforceable contract that exists is between the individual artist and the engager. These contracts generally reference the terms of collective agreements, but the association cannot act on behalf of the artist to protect his/her contractual rights.
- iv. Artists would have the right to compel an uncooperative engager to negotiate toward a collective agreement.

Enforceable collective bargaining does not come without risks and costs. The risks and costs inherent in the proposed system of collective bargaining may include:

- i. Monetary costs associated with the process of certification and the bargaining process, including such costs as arbitration, when necessary.

Overview of Recommendations

- ii. The potential for the Canada Revenue Agency to deem that an individual artist who is covered by a collective agreement is an employee rather than a self-employed independent contractor.
- iii. The loss of the right to sue an engager who refuses to pay the amount agreed upon in a contract. Under an enforceable collective agreement, an artist would file a grievance rather than sue for the lost money (see preceding point iii.).
- iv. The potential for artists associations to lose grant revenues; if some of the existing artists associations, which are funded for activities to foster and support the arts, were to become artists associations for the purposes of collective bargaining, some funders may be unwilling to have their resources used for such activities.

Enforceable collective bargaining rights are already available to artists working in federal jurisdiction through national agreements under the authority of federal legislation entitled *Status of the Artist Act*. There are some artists in Saskatchewan who work in federal jurisdiction (e.g., for CBC), but this is not the norm.

In order to serve Saskatchewan artists, MACSA recommends a 'home-grown' provincial system of enforceable collective bargaining. Artists in the focus groups expressed a desire for a system that is designed to keep costs at a minimum, and that was designed in Saskatchewan to meet the specific needs of Saskatchewan artists.

Similar to the federal approach to enforceable collective bargaining, MACSA considered a system that would allow artists associations to bargain on behalf of a sector or discipline. However, artists, who in many cases were ambivalent about collective bargaining, were clear that they wanted to determine when and with whom collective bargaining should occur. MACSA felt more discussion was required to devise a system that allowed for artists to proactively determine when and with whom bargaining should proceed under a sector-based approach. Issues that must be considered and resolved include:

- i. Definition of a sector is required in order to truly determine if a decision is supported by the majority of artists through a vote.
- ii. Without defining a sector, there can be no certainty that all or even the majority of artists in a sector are notified of relevant information, decisions and activity.
- iii. In order to define who belongs in each sector of artists, ongoing enumeration would be necessary; this is cost-prohibitive.

MACSA has recommended a system for membership-based collective bargaining only. The idea of sector-based bargaining in Saskatchewan has not been abandoned, but will be referred for further consideration to a committee which will be formed in order to follow up on the work of MACSA: the Permanent Advisory Council on Status of the Artist. (for more information, see Implementation Recommendations)

Actions and approaches required:

- i. Create a Saskatchewan Artists and Engagers Commission (SAEC) as an independent, quasi-judicial authority as defined by the Act. This body would be tasked with encouraging constructive professional relations between artists, engagers and certifying associations that wish to represent the collective interests of the majority of a group of artists.

To maintain its independence from any government department, the SAEC should report to the legislature at large in the form of a tabled Annual Report. Members of the SAEC would be appointed by the Lieutenant Governor in Council for terms that could range from three to five years. The SAEC would be comprised of three individuals, with the Chair of the SAEC being a lawyer in recognition of the legal nature of the material that will be brought to the Commission. The other two positions would be for representatives of artists and of engagers. To avoid potential conflict of interest, no member of the Permanent Advisory Council on Status of the Artist should be permitted to sit on the SAEC. As the SAEC would likely not have a heavy workload initially, and to minimize costs, it would operate on an ad-hoc basis and would serve in an on-call capacity.

Administrative support and costs for the work of the SAEC would be managed and assumed by CYR.

- ii. An artists association would be required to certify with the SAEC in order to be recognized as representative of its members for the purposes of enforceable collective bargaining. It would be required to certify only once; certification would remain valid until a challenge was brought forth by an authorized individual or group of individuals.

When an artists association certifies with the SAEC, it would have to demonstrate that enforceable collective bargaining is the preferred direction of its members. In order to certify, an artists association would be required to:

- a. Communicate to all association members the intention to register as a collective bargaining representative;
- b. Hold a member vote, with the majority of the membership (50 per cent plus one) supporting the association as representative in collective bargaining; and
- c. Articulate in the association's bylaws the intent to represent its members for the purpose of collective bargaining. Once this has been articulated, it will be assumed that members have read and understood the bylaws, and that new members agree to representation. This is not intended to place restrictions on who may or may not become a member of any artists association.

Artists, engagers and associations wishing to bargain collectively on a *voluntary* basis would be able to do so at any time without restriction. Voluntary collective bargaining would continue to be unregulated.

- iii. Certification would give an association the right to represent its members for the purposes of enforceable collective bargaining. It would not, however, give an association the ability to act on that right. Before commencing negotiations, a certified artists association would be required to register through the SAEC to bargain with a specified engager or group of engagers towards an enforceable collective agreement. There would be no limit to the number of engagers with which an association could register to bargain.

Each time an association registered to bargain with an engager or group of engagers, it would be required to demonstrate that its members were either habitually or currently engaged by the specified engager through:

- a. Record(s) of past engagement (i.e. payment records, tax records, etc.); or
- b. Record(s) of current engagement (i.e. a contract, written or other)

When an engager entered into a collective agreement with an artists association, it would generally be assumed that the engager would extend the same minimum standards to all comparable artists whose labour she/he contracts, whether or not those artists are members of the artists association

- iv. Once an artists association has registered successfully to bargain with an engager or group of engagers, each party would be notified by the SAEC that they are to begin bargaining. There would be no formalized process for negotiations; parties to the bargaining would be free to negotiate in any manner that is suitable to both parties. Artists indicated to MACSA that they were interested in bargaining processes that maintained the generally harmonious relations that they felt they had with engagers, which may indicate a desire to pursue interest-based bargaining approaches.
- v. Parties to bargaining would be expected to meet timelines set by the SAEC and they should have access to first agreement arbitration at the cost of the parties involved. There should be no requirement in the statute requiring the completion of a collective bargaining agreement if the artists association does not pursue bargaining.
- vi. Once parties to negotiations have been notified by the SAEC to begin bargaining, or upon expiry of a valid enforceable collective agreement, either party to the bargaining would be able to use pressure tactics to compel the other party to begin negotiations toward an agreement.

Pressure Tactics should be defined as:

- a. Withdrawal from a contract, or cessation of work, refusal to work, or slow down of work, by artists or artists associations, and/or any other common understanding regarding provision of services, done to compel an engager to negotiate terms and conditions of engagement.
- b. The closing of a place of work, a suspension of production or refusal to engage or continue to engage one or more artists, in order to compel artists or artists associations to negotiate terms or conditions of engagement.
- vii. Groups of artists who wish to withdraw from enforceable collective bargaining should have the right to revoke the artists association's certification to represent them, or to revoke its registration to bargain with an engager or group of engagers. Opportunity to challenge an association's certification or registration would occur annually, at any time during the three months preceding the anniversary date of the association's certification.

Revoking Certification:

Artists who wish to withdraw from enforceable collective bargaining *altogether* would be subject to the following:

- a. An artists association's certification to represent its members for the purposes of collective bargaining could only be challenged by its members; such a challenge would be reviewed by the SAEC and confirmed through member vote.

Overview of Recommendations

- b. Grounds for revocation of an artists association's certification to represent its members for the purposes of collective bargaining representative would be:
 - Commission of any unfair practice, and failure to rectify the situation within a time period granted by the SAEC.
 - Failure to uphold standards of fair representation.
- c. Challenges that are moot, frivolous, vexatious or in bad faith would be discarded by the SAEC.

Revoking Registration:

Artists wishing to withdraw from enforceable collective bargaining *with a specified engager or group of engagers* would be subject to the following:

- a. An artists association's registration to bargain on behalf of its members with a specified engager or group of engagers could be challenged by any interested party. A registration challenge would be reviewed by the SAEC, and would be subject to a vote by those artists who are members of the association and either habitually or currently engaged by that engager.
 - b. Application by any artists association to represent its members to an engager or group of engagers where those artists are already represented to that engager or group of engagers by another association of which they are members would be prohibited. However, artists could challenge their association's registration to represent them to that engager or group of engagers in order that a different association could register to represent them to that engager or group of engagers.
 - c. Grounds for revocation of an association's registration to represent its members to an engager or group of engagers would be:
 - Commission of any unfair practice, and failure to rectify the situation within a time period granted by the SAEC.
 - Failure to either:
 - make reasonable effort to arrange a collective agreement within one year of registration; or
 - come to an agreement with the engager or group of engagers, in the first year of registration, that no agreement is necessary.
 - Failure to uphold standards of fair representation.
 - d. Challenges that are moot, frivolous, vexatious or in bad faith would be discarded by the SAEC.
- viii. The following have been recommended to be considered as unfair practices on the part of the engager or representative of the engager:
- a. To seek to discourage an artist:
 - from activity or membership in an artists association;
 - from exercising any right bestowed on him/her by a collective agreement or this Act; or
 - from attempting to negotiate his/her individual terms of engagement that are more beneficial to the artist than the terms in the collective agreement.
 - b. To seek to encourage an artist:
 - To participate in or initiate a challenge to an association's certification; or
 - To participate in or initiate a complaint against an artists association.
 - c. To discriminate against or give unfair advantage to an artist because he/she has:
 - activity or membership in an artists association;
 - exercised any right bestowed on him/her by a collective agreement or this Act;
 - participated in or initiated a challenge to an association's certification; or
 - participated in or initiated a complaint against an artists association.
 - d. To take any action against an artist for the artist's refusal to perform any action prohibited by this Act.
 - e. To take any action against an artist for the artist's refusal to perform any of the duties of another artist who is participating in or subject to any permitted pressure tactic.
 - f. To attempt to enter into a scale agreement in respect of a group of artists and an engager or group of engagers, while those artists and engager(s) are party to a valid and current collective agreement negotiated with a different artists association.
 - g. Where a Notice to Bargain has been issued, to refuse to bargain toward a collective agreement.
 - h. To impose pressure tactics:
 - prior to the SAEC's notification to the association and engager(s) to commence negotiations;
 - when a collective agreement is in effect;
 - when negotiations are ongoing.

- i. When an artist is unable to secure membership in an association on the same grounds as other artists, to terminate a contract with that artist because she/he is not a member of the association.
- ix. The following have been recommended to be considered as unfair practices on the part of an artists association:
 - a. To institute conditions of membership that are discriminatory or arbitrary.
 - b. To discipline any artist or artists for any action permitted by this Act that is taken by the artist(s). Such actions include, but are not limited to:
 - a. initiating or participating in a challenge to an association's certification or registration.
 - b. initiating or participating in a complaint against an artists association.
 - c. To impose pressure tactics:
 - prior to the SAEC's notification to the association and engager(s) to commence negotiations;
 - when a collective agreement is in effect or negotiations ongoing; or
 - without agreement from a majority of the artists to which the collective agreement applies.
- x. Artists associations should be held to standards of fair representation. These standards are identified as follows:
 - a. A certified artists association and its representatives shall represent all of its members in relation to the rights bestowed by applicable scale agreements;
 - b. It must represent its artists in a manner that is not discriminatory, arbitrary or in bad faith; and
 - c. Artists who have not been represented according to these standards may make a formal complaint to the SAEC against the association. –

Timeline: By Fall 2006

Responsibility: Government of Saskatchewan

RECOMMENDATION 1.4(E): NATIONAL ARTISTS ASSOCIATIONS

That the Government of Saskatchewan allow national artists associations to certify as representatives of Saskatchewan artists in enforceable collective bargaining in Saskatchewan.

Background

The introduction of a provincial system of enforceable collective bargaining has the potential to undermine voluntary collective agreements that have been negotiated by national artists associations. The above recommended amendments to Saskatchewan's Status of the Artist legislation guarantee artists the freedom to associate in whatever form they choose in order to protect their professional interests. If Saskatchewan artists feel that protecting their professional interests would require the negotiation of an enforceable collective agreement where the minimum standards of engagement are lower than what is guaranteed under any applicable national collective agreement, they have the right to do so.

However, in the interest of preserving the high standards that have been negotiated on behalf of artists by national associations in national voluntary collective agreements, it is important that national associations have the right, where artists so choose, to certify to bargain on behalf of artists in Saskatchewan.

There are several examples where bargaining under provincial regimes has undermined minimum standards laid out in national collective agreements. One example occurred in British Columbia (BC). The Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) negotiates collective agreements on behalf of professional English-language performers across Canada. In BC, a group of performers organized under *The Labour Relations Code* (equivalent to *The Trade Union Act* in Saskatchewan, which deals with enforceable collective bargaining rights for employees) as the Union of BC Performers (UBCP). The UBCP negotiated collective agreements with a number of film producers in the province that had previously adhered to national voluntary agreements with ACTRA. The provincial agreements included lower minimum standards of engagement; naturally, film producers preferred the provincial collective agreement. As a result, ACTRA's relationship to the film industry in BC was undermined, actors in BC worked for far less than they would have under ACTRA agreements, and the lower standards of engagement in BC may have served as a disincentive for performers from outside the province to go work in BC. UBCP has since partnered with ACTRA to become the BC branch of ACTRA. It maintains the autonomy to negotiate collective agreements that respect the specific needs of performers in BC, while its members maintain the benefits of ACTRA membership. In BC, the national association was not recognized as a legitimate representative of BC artists.

While this recommendation will not prevent a similar situation from occurring in Saskatchewan, it will provide the opportunity for national associations to certify as the representative of its members and minimize the risk of so-called "rogue unions."

Overview of Recommendations

All regulations described in recommendation 1.4(e) above will apply to national artists associations that choose to certify to bargain collectively in Saskatchewan. No association member who is not a resident of Saskatchewan would be allowed to vote on any decision before the Saskatchewan Artists and Engagers Commission.

Timeline: By Fall 2006

Responsibility: Government of Saskatchewan

RECOMMENDATION 1.4(F): PRESUMPTION OF SELF-EMPLOYMENT

That *The Status of the Artist Act* be amended to ensure that, for the purpose of the Act, all Saskatchewan artists are presumed to be self-employed.

Background

This presumption of self-employment will have no effect on an artist's status as an employee or independent contractor for any purpose other than to guarantee all artists in Saskatchewan the right to organize for collective bargaining with all of their colleagues with whom they share professional interests.

This right will be particularly useful for artists such as musicians playing in symphonies, where a core group of musicians is employed, and per-service players are contracted as needed. Without the presumption of self-employment, the core players and the per-service players could not be part of the same enforceable collective agreement; the core players would access enforceable collective bargaining rights through *The Trade Union Act*, while the per-service players would have access through *The Status of the Artist Act*. Different collective agreements for these two groups of artists who share almost exactly the same environment could lead to unnecessary conflict, and the time spent by engagers in negotiations could effectively double.

Similar to this presumption of self-employment, the Quebec legislation that governs collective bargaining for artists in the province contains some assertion that all professional artists are self-employed. The *Act Respecting the Professional Status and Conditions of Engagement of Performing, Recording and Film Artists* affirms that an artist may be covered by the Act (i.e., be subject to collective agreements) even if she/he provides services through a corporation or "regularly binds himself to one or several producers by way of engagement contracts". Federal legislation contains no such provision, and only applies to professional artists working as independent contractors.

It is important to recognize that self-employed status is most important to artists in two areas – the ability to deduct business costs from income for the purposes of income tax and ownership of intellectual property. Both of these issues are governed by federal statutes (the *Income Tax Act* and the *Copyright Act*). Similar to the situation for recommendation 1.4(c) on the application of the *Competition Act*, simply providing that artists are self-employed in a provincial statute is unlikely to affect the interpretation of federal statutes. MACSA recognized the importance of self-employment for artists by recommending that the F-P-T Working Group on Status of the Artist address the issue (see recommendation 1.2 (c) above).

Timeline: By Fall 2006

Responsibility: Government of Saskatchewan

RECOMMENDATION 1.5: GOVERNMENT COMPLIANCE WITH STANDARDS AND CONTRACTS

That the Government of Saskatchewan provide departments, crowns and agencies with information and guidance about how to comply with minimum standards and collective agreements when procuring artists' goods and services.

Background

The enactment of *The Status of the Artist Act* has placed an increased onus on government to become aware of and respect the rights of artists when procuring goods and services from them. Section 6 of the Act articulates specific undertakings of the Government of Saskatchewan, including an obligation to promote and protect the status of artists and the obligation to abide by collective agreements and protocols when engaging artists. Engaging artists can be complex. Issues surrounding the use and replication of intellectual property, in particular, can be difficult and sometimes contentious. Indeed, with the expansion of digital technology, copyright licensing and/or copyright infringement is a growing issue about which government needs to be increasingly aware.

Government has already taken steps to ensure that artists in some circumstances are respected. In 2003, the Government of Saskatchewan agreed that when it procures communications services, particularly for film and television, the requests for proposals will require suppliers and their subcontractors to tender using cost estimates that reflect the minimum

standards outlined in the following collective agreements: Alliance of Canadian Cinema, Television, Radio Artists (ACTRA), International Alliance of Theatrical Stage Employees (IATSE), Directors Guild of Canada, and American Federation of Musicians (AF of M).

However, government departments, Crowns and agencies are often unfamiliar with the issues surrounding contracting and engaging artists and consideration of artists' concerns needs to be expanded beyond procurement for film and television commercials. Communications heads in all departments, Crowns and agencies and any others who procure artists goods and/or services need to be made aware of the implications of the undertakings in *The Status of the Artist Act* and be provided with guidance on how the rights of artists can be supported and respected.

Timeline: Information package developed and distributed by January, 2007; Advice ongoing

Responsibility: CYR, Executive Council, Communications Services

RECOMMENDATION 1.6: OCCUPATIONAL HEALTH AND SAFETY

That the Government of Saskatchewan add at least one person knowledgeable about artists' occupational health and safety issues to the Occupational Health and Safety Council.

Background

The Occupational Health and Safety Council is established under *The Occupational Health and Safety Act, 1993*, consisting of up to nine members appointed by the Lieutenant Governor in Council, with an even number of members representing workers and employers. The members are appointed from lists provided by labour organizations and employers. General practice is for the government to solicit the nomination of candidates from numerous employer associations and organized labour groups. From nominations received, the candidates are screened based on gender, skills and interest/experience. Candidates are chosen to ensure that a diverse group of interests as well as experiences are represented on the Council.

There is no assurance in this process that any person who is nominated to the council will have familiarity with artists, the working conditions of artists, the health and safety of artists, or any special considerations that may be present in the cultural sector.

The Council is an advisory group for the Minister of Labour, concerned with occupational health and safety generally and the protection of workers and self-employed persons in specific kinds of situations. The Council is required to review the adequacy of the Act and its administration at least once every five years and report to the Minister.

There are special advisory councils for the highly specialized and high-risk areas of farm health and safety and radiation health and safety, but no other group has its own council.

Many artists do not realize that the Occupational Health and Safety rules apply to self-employed persons as well as employees, and are not aware of the resources that may be available to them. Conversely, it is to be expected that many members of the Occupational Health and Safety Council do not have a full appreciation of health and safety issues in the arts. Although the Occupational Health and Safety Division of Saskatchewan Labour provides a variety of resources on health and safety topics, including several that are aimed specifically at the arts and entertainment industry, having a presence on the Council would raise the profile of health and safety issues that are particular to artists.

Timeline: At next amendment to *The Occupational Health and Safety Act, 1993*

Responsibility: Saskatchewan Labour

Goal 2 Recommendations and Rationale

ARTISTS WILL HAVE ACCESS TO THRIVING MARKETS FOR THEIR PRODUCTS AND SERVICES.

Artists in Saskatchewan have difficulty supporting themselves financially through their current levels of access to public funding and shows in public venues. In order to increase their income levels, artists must sell and/or license their work.

There is potential in Saskatchewan to develop a stronger market for local artistic products and services. In 2001, three per cent of all consumer spending in Saskatchewan was spent on cultural goods and services. This matched the national average of consumer spending on cultural goods and services in the same year. However, only a small portion of that directly benefited artists through art work purchase and event attendance. No data is available to show what proportion of that supported local artists. The balance of spending on cultural goods and services went to home entertainment, reading material, photographic equipment and services, movie theatres, and art supplies and musical instruments. Saskatchewan residents' spending on cultural goods and services is increasing. Between 1997 and 2001, consumer spending in Saskatchewan on cultural goods and services increased by 17 per cent, and consumer spending on art work and events increased by 19 per cent, while consumer spending on all goods and services increased by only 11 per cent.

Saskatchewan ranked fifth out of the ten provinces in the proportion of households that spent some money on live performing arts in 2001 (34 per cent). In Canada, the proportion of households that spent some money on performing arts in 2001 ranged from 29 per cent (New Brunswick) to 40 per cent (Alberta). While this finding is encouraging, it also suggests there is still room for growth in this area.

The Government plays a vital role in supporting the marketing of products and services of Saskatchewan artists. This support is important to ensure that the art sector is healthy and enhances the economic viability of Saskatchewan artists. There is considerable evidence to support the public benefit of art:

- i. Children who participate in the arts have been shown to possess higher level critical thinking skills and greater ability to work at a conceptual level;
- ii. Involvement in the arts helps to strengthen a person's sense of identity and self esteem, which are positively related to strong social attachment;
- iii. A strong arts sector is often based on the activities of community-based arts organizations. These organizations build a sense of community and social responsibility among residents by encouraging volunteerism; and
- iv. Locations with a strong arts sector help to improve the ability of business to recruit and retain a skilled labour force by increasing the attractiveness of a location.

Artists are an essential component in providing artistic experiences to the general public, and concern for artists' welfare will ensure that they are able to continue to play this role. By involving the general public in artistic experiences, artists may also help to develop a local market for their art. Anecdotal evidence cited by a number of artists, suggests that when the broader general public is provided with artistic experiences both in childhood in adulthood, they become more frequent and sophisticated consumers of artistic goods and services. This increase in consumption directly affects artists' income.

Therefore, it is both in the broader public interest that people participate in the arts and in the interest of artists as a mechanism for audience and market development. The recommendations below are specific areas where MACSA feels the most benefit can be derived.

RECOMMENDATION 2.1(A): ACCESS TO INFORMATION AND TRAINING

That the Saskatchewan Arts Board work with provincial artists associations, universities and training institutions, as well as the provincial and federal governments to provide access to information and training that will help them to increase their skill in managing the business operations of their art, and in marketing their work locally, provincially, nationally and internationally.

Background

For professional artists, an understanding of business operations and marketing is essential. The ability to effectively manage their finances and to market their products can increase an artist's income and the long-term viability of their business. MACSA recognizes that in many cases, it is impractical for an artist or group of artists to hire outside marketing or business support, and believes that an increase in business and marketing skills could increase the amount of money an artist would make from her/his art.

Forty-one percent of Canadian¹⁸ artists have completed a post-secondary degree, certificate or diploma program.

¹⁸ Hill Strategies. September, 2004. A Statistical Profile of Artists in Canada. [Statistics for Saskatchewan are unavailable]. Retrieved February, 2006, from http://www.hillstrategies.com/docs/Artists_in_Canada.pdf

However, post-secondary training in the Arts in Saskatchewan largely ignores professional artists' need for business skills. All three public post-secondary institutions offer degree or diploma programs. However, only the Applied Certificate in Film program at SIAST requires students to complete a freelance business skills class. Some programs provide informal arrangements between the educational institutions and the arts community in order to ensure the students learn the essential business-related skills. For example, one course in the Visual Arts program at the University of Regina offers students opportunities to learn basic business skills, but these opportunities are not comprehensive or required. The content of this course is, instead, the result of a professional relationship between the professor and the Canadian Artists' Representation/le Front des Artistes (CARFAC) Saskatchewan.

All three post-secondary institutions in Saskatchewan have business programs that could provide business training to art students. While art students could take a business course as an elective, very few choose to do so for a variety of reasons, including the additional investment of time and money. Art schools should take increased responsibility for preparing their students with the essential business and marketing skills they will need in an environment of self-employment.

MACSA recommends that the three post-secondary institutions in Saskatchewan that offer training in the arts implement a formal requirement for arts students to take courses in business and/or marketing. This could be accomplished through existing business courses or the development of new courses. MACSA members emphasized that these courses should be comprehensive and focused on the skills art students need to operate a viable art business upon graduation.

MACSA members also noted that enrollment in a post-secondary Art program is not a viable option for some artists. Therefore, other mechanisms are needed to ensure that all Saskatchewan artists have access to quality learning opportunities to improve their knowledge, skills, and abilities related to business and marketing. Recommendations 2.1(b) and 3.1 provide additional suggestions focused on improving art-related business and marketing in Saskatchewan.

Timeline: In fiscal year 2007-08

Responsibility: SAB, provincial artists associations, universities and training institutions, Government of Saskatchewan, Government of Canada

RECOMMENDATION 2.1(B): MARKET RESEARCH

That the Government of Saskatchewan undertake market research to inform the development of strategies for marketing Saskatchewan artistic goods and services.

Background

In focus group consultation, artists emphasized the importance of market development:

"We have set...the world standard for payment of artist fees, and yet that has sort of somehow crippled artists... because Canada hasn't developed a market system for arts....[I]n other countries...they sell their work in addition to showing their work....There is no way without those two systems working hand in hand for an artist to make a living."

Some Saskatchewan artists, arts organizations and their agents and dealers have developed very sophisticated marketing skills and the successes they have experienced are a testament to the fact that marketing can make a difference to the career viability of artists. However, most artists are small independent operators who struggle to find the time and resources to engage in sophisticated marketing efforts. Fundamental questions such as the following need to be answered in order to develop an effective strategy for marketing artistic goods and services:

what determines purchase decisions?
who buys artistic goods and services? and;
for what purpose?

While there is a desire among many artists to expand their market options nationally and internationally, the advisory committee members felt that the best investment of time and resources would be to focus on an expansion of local markets. The strategies and skills developed in this effort would also serve as a base for market expansion beyond the borders of Saskatchewan.

There is potential to enter into bilateral agreements with the federal government to undertake marketing research and strategic development under initiatives such as the Western Economic Partnership Agreement, which is intended to create new employment opportunities, support economic infrastructure, and promote entrepreneurship in the western provinces.¹⁹

Timeline: 2006-07

Responsibility: CYR, Cultural Industries Development Council

RECOMMENDATION 2.1(C): CULTURAL INDUSTRIES DEVELOPMENT FUND FUNDING

That the Government of Saskatchewan restore support to the Cultural Industries Development Fund to its previous level of \$450,000. This constitutes an increase of \$150,000 over the current level. This increase will be used to develop and implement the marketing strategy discussed in recommendation 2.1(d).

Background

The Saskatchewan Cultural Industries Development Fund was established in 1999-2000 in partial fulfilment of a recommendation in the Cultural Industries Development Strategy (1997), which anticipated a \$2 million development fund for the cultural industries.

The initial investment in the fund was \$250,000. In 2000-2001, government made a three-year commitment to increase the fund to \$450,000. This commitment was fulfilled by the end of fiscal year 2003-04. In 2004-05, the fund was reduced to \$300,000 as part of a government-wide fiscal restraint effort.

The Cultural Industries Development Strategy paid significant attention to marketing and training issues, with three of eight key result areas addressing domestic market development, international marketing development, and professional development and training.²⁰

The fund has never realized the ambition established in the Cultural Industries Development Strategy, in part because the investment in the fund has been much lower than recommended and in part because the circumstances had changed since the original strategy was developed in 1997.

Renewal and replenishment of the Cultural Industries Development Fund will support the implementation of the market research discussed in recommendation 2.1(b), and the development of a clear and measurable strategy to create growth in demand for the products of the cultural industries based on that research.

Timeline: In fiscal year 2006-07

Responsibility: Government of Saskatchewan

RECOMMENDATION 2.1(D): MARKET STRATEGY DEVELOPMENT

That the Cultural Industries Development Council, in consultation with the Saskatchewan Arts Board, provincial artists associations, and individual artists, lead the development of marketing strategies based on market research undertaken by the Government of Saskatchewan.

Background

The Cultural Industries Development Council (CIDC) has been charged with industrial development of cultural industries in Saskatchewan including development of marketing programs. As such, it is a suitable agency to lead the development of marketing strategies in the arts. The CIDF has been used in publishing, sound recording, and visual art and craft in a broad range of activities from artist mentoring to the creation and implementation of markets and trade shows. The CIDF is one mechanism through which artists have access to marketing training and to markets for their work.

There is considerable overlap between this recommendation and the SAB's new strategic plan, they list "formative research into the marketing, sales and distribution of artists work" as an action area for 2006.²¹ Given its current interest in, and emphasis on marketing artistic goods and services, the SAB would be able to provide valuable assistance to the CIDC in development of arts marketing strategies.

Timeline: In fiscal year 2007-08

Responsibility: Cultural Industries Development Council, SAB

RECOMMENDATION 2.2(A): SUPPORT FOR ARTS EDUCATION

That Culture Youth and Recreation, the Saskatchewan Arts Board, and provincial artists associations work with Saskatchewan Learning, teachers' associations and special subject councils in arts related subject areas to ensure that teachers have the resources and support to deliver the arts education curriculum.

¹⁹ Western Economic Diversification Canada. Western Economic Partnership Agreements: Creating Opportunities through Collaboration. Retrieved February, 2006, from http://www.wd.gc.ca/ced/wepa/default_e.asp

²⁰ Saskatchewan Cultural Industries Development Council. CIDS Summary and Status. Retrieved February, 2006, from <http://www.culturalindustries.sk.ca/cids/>

²¹ Saskatchewan Arts Board. No date. The Saskatchewan Arts Board: 2006-2009 Strategic Plan. p. 5. Retrieved February, 2006, from <http://www.artsboard.sk.ca/pdf/strategicplan06.pdf>

Background

Saskatchewan is one of the few jurisdictions in Canada where arts education is part of the core curriculum in the Kindergarten to Grade 12 education system. The Arts Education curriculum focuses on the work of Saskatchewan artists. The curriculum helps students develop an understanding of the essential role of artists and focuses on a range of artistic disciplines. A provincial curriculum evaluation has shown that the curriculum is not necessarily being taught in schools as intended and there is no mechanism to ensure that schools are accountable, even though Arts Education is a required area of study in Saskatchewan.

While the curriculum is designed to be delivered by a generalist, without formal training in the arts, many teachers are challenged to find ways to deliver the curriculum in the classroom. The recommendation is designed to support teachers by providing them with curriculum strategies that should improve the delivery of the program in the classroom.

Timeline: In fiscal year 2007-08

Responsibility: CYR, Saskatchewan Learning, SAB, provincial artists associations

RECOMMENDATION 2.2(B): SUPPORT FOR CHILDREN'S ARTS PROGRAMMING

That the Government of Saskatchewan provide the Saskatchewan Arts Board with additional funding to enhance the ability of arts organizations to provide formal support for children's arts programming.

Background

The SAB currently administers a lottery-funded artist in residence program, which places professional artists in a variety of settings. Almost invariably, these artists support curricular and extra-curricular delivery of arts programming. The SAB has also accessed independent foundation support for a national program, "ArtSmarts". This program supports innovative experiential arts programming that complements school-based learning in other subjects. The Regina Public School Board has undertaken a similar program called Learning Through The Arts. Saskatchewan Learning has also begun to provide financial support to schools that have artists in residence and at least two school divisions in the province also financially contribute to such programs.

These programs are commendable and are consistent with the goals of Status of the Artist. However, despite the most recent increase in financial support to the SAB, most of the major arts organizations in Saskatchewan are seeing a smaller and smaller portion of their budgets come from grant support. As a consequence, resources for programs designed to support children's arts experiences and arts literacy are becoming strained. There are fewer gallery educators, fewer school based programs and tours, and less outreach than there was a decade ago. If children are to develop an appreciation for the arts and benefit from arts experiences, they must have access to them from a variety of sources.

This recommendation is intended to provide support to arts organizations so that they are able to renew and/or restore their programs targeted to school children, including touring programs to schools.

Timeline: In fiscal year 2007-08

Responsibility: Government of Saskatchewan, SAB

RECOMMENDATION 2.2(C): SUPPORT FOR ARTS TOURING

That the Government of Saskatchewan provide the Saskatchewan Arts Board with additional funding to facilitate exposure to Saskatchewan artists for rural residents of Saskatchewan. Consideration should be given to providing resources to arts presenters in rural communities and to artists to support their ability to tour.

Background

Touring visual and performing arts shows is costly. Saskatchewan is one of a few provincial jurisdictions in Canada that does not provide specific funding support to enable the touring of local artists throughout the province. The Organization of Saskatchewan Arts Councils works hard to provide touring programming to communities and, in particular has had great success touring visual arts shows featuring Saskatchewan artists to regional galleries. However, Saskatchewan performing artists are hampered because they do not receive financial support to tour in the province. The Canada Council provides support to national artists to tour outside of their home province and often it is less costly for communities to host a national artist from outside the province than it is to host a Saskatchewan artist. It is important to note that the experience gained through active provincial touring is an asset when preparing a national-level tour. Therefore, those artists who receive provincial touring assistance have an advantage when planning national tours and applying for national touring grants.

Overview of Recommendations

Due to the lack of touring assistance in Saskatchewan, performing artists tend to congregate in urban centres, where the population is dense enough to provide a strong, sizeable and regular audience. This congregation of the performing arts in Saskatchewan's urban centres is problematic, both for the artists and the potential audience in rural areas. Rural communities and audiences are inaccessible to the performing artists and performing arts companies due to financial constraints that diminish their ability to tour the province. Therefore, the performing arts are inaccessible to rural residents of Saskatchewan who are not willing or able to travel in order to experience them.

In order for the province to affect an increase in the capacity of smaller communities to host touring Saskatchewan artists, a targeted increase to the SAB is required. This increase would have to be targeted in at least one of the following two ways:

- i. Funding to Saskatchewan performing artists to support their touring costs, allowing them to offer more competitive rates.
- ii. Funding to arts presenters (including arts councils and festivals) to provide more resources to pay for performances by Saskatchewan performing artists for public audiences.

Timeline: In fiscal year 2007-08

Responsibility: Government of Saskatchewan

RECOMMENDATION 2.3: CAPITAL CONSTRUCTION AND REFURBISHMENT

That the Government of Saskatchewan establish a policy allocating one per cent of capital budgets for building construction and refurbishment to the purchase of art, and that adherence to this policy be monitored by Culture Youth and Recreation and reported to the proposed Permanent Advisory Council on Status of the Artist.

Background

This recommendation is a renewal of a recommendation that was originally made in the 2003 Final Report of the Minister's Advisory Committee on the Status of the Artist.²² As described in the 2003 report, making art available to the public in government buildings helps to increase the level of public exposure and therefore engagement in the arts. A government procurement policy also provides artists with additional opportunities to market their goods and services.

Timeline: In fiscal year 2006-07

Responsibility: Government of Saskatchewan

RECOMMENDATION 2.4: SASKATCHEWAN FIRST POLICY

That the Government of Saskatchewan formalize a policy that will give priority to Saskatchewan artists when government procures artistic goods and services.

Background

Government has produced a "Draft Policy for Procurement of Artistic Services and Goods" that directs government to agencies to give priority consideration to Saskatchewan artists when it procures artistic goods and services; it is referred to as "Saskatchewan First" policy. This policy also states that "first consideration will be given to Saskatchewan artists in the procurement process where tender requirements are met. Out-of-province artists will only be considered if tender requirements cannot be met in Saskatchewan or warrant broader application." Because of the competitive nature of their businesses, the programming operations of the Saskatchewan Centre of the Arts and the Saskatchewan Gaming Corporation are exempted from this policy.

The Government of Saskatchewan and its Crowns have agreed in principle to this draft procurement policy, and it is already in place in some areas of government, (e.g. communications procurement). However, information about the new procurement policy and its implications for government departments needs to be developed and disseminated to all relevant departments, Crowns and agencies to ensure uptake.

Timeline: In fiscal year 2006-07

Responsibility: Government of Saskatchewan

Goal 3 Recommendations and Rationale

ARTISTS WILL HAVE ACCESS TO INFORMATION THAT WILL SUPPORT AND ENHANCE THEIR INDIVIDUAL AND COLLECTIVE EFFORTS TO ACHIEVE VIABLE CAREERS IN SASKATCHEWAN.

The work of an artist is often done independently, without access to a network of support and information. An artist may be an expert in his or her artistic discipline(s), but there are many essential skills needed to build a career as an independent self-employed artist other than artistic expertise. An independent self-employed artist may have to act as his or her own accountant, marketing expert, legal expert, funding procurement expert, and long-term planning expert all at the same time.

Knowledge of the tax system and financial planning; market development and research; contract negotiation including issues of intellectual property, usage and distribution rights; how to find funders; and effectively marketing oneself are all complex issues, and it may take an artist years to develop expertise or even working knowledge in just one area. As MACSA's 2003 report states, "Artists should not be expected to do the research and analysis of all these issues on their own."

Because the issues faced by artists are so complex and varied, the challenge of collecting all the information needed by an artist may be insurmountable for an individual. Thus it is important to increase the accessibility of this information through a collaborative effort by government, artists, artists associations and advocacy groups.

RECOMMENDATION 3.1: INFORMATION FOR ARTISTS

That the Government of Saskatchewan develop a mechanism to provide artists with career-relevant information that is accessible and easy to use, and that addresses the following topics at minimum:

- i. Negotiation and enforcement of individual engagement contracts;
- ii. Protections and supports in voluntary collective agreements;
- iii. Protections and supports in enforceable collective agreements;
- iv. Occupational health and safety;
- v. Professional development and training;
- vi. Information about self-employment.

Background

Government has accepted the recommendation from the 2003 MACSA report that CYR and the Saskatchewan Arts Alliance develop a *Reference Guide* for artists, which will act as a major source of information for artists seeking to build a career in Saskatchewan.²³ Artists need access to different kinds of information at different times in their careers, and sometimes they need to access it on very short notice. The format of this guide should allow for flexibility of presentation; for example, a series of fact sheets could be presented on a website, as leaflets, or collected together in a booklet. The *Reference Guide* will present clear, well-organized information that is structured so that artists can easily find the information that is relevant to their current situation.

- i. *Negotiation and enforcement of individual engagement contracts:* Artists require access to information about the negotiation and enforcement of individual engagement contracts.

Whether collective agreements exist or not, artists will negotiate individual engagement contracts. Collective agreements for artists are intended as minimum standards only; artists who wish to negotiate standards of engagement in excess of what they are entitled to by a collective agreement should have access to the information they need in order to do that. All contract elements in the discussion found in Recommendation 1.4(b) of this report should be included in the *Reference Guide*, with a discussion of the importance of each element.

As provided for in Recommendation 1.4(b), the *Reference Guide* will direct artists to artists associations where they may access model contracts.

A discussion of enforcement of individual engagement contracts must also be included in the *Reference Guide*. Currently, the most viable option for an artist whose contract has not been honoured is to sue to recover the costs associated with the broken contract. While court fees and other costs are involved in this process, those costs are minimal and in some cases may also be recovered.

²³ Ministerial Advisory Committee on the Status of the Artist. October 2003. *Final Report: A Report to the Minister of Culture, Youth and Recreation*. pp. 16-17.

Overview of Recommendations

- ii. *Protections and Supports in Voluntary Collective Agreements:* Artists require access to information about the protections and supports regarding voluntary collective agreements.

Voluntary collective agreements are negotiated or developed on behalf of artists by artists associations. In many cases, these agreements apply to all artists practicing in a certain discipline. The *Reference Guide* should include a listing of artists associations that negotiate or develop collective agreements on behalf of artists. For the most current information regarding the collective agreements, artists should contact these associations.

The *Reference Guide* should include a discussion of the relevance of voluntary collective agreements, and how artists can use such agreements to their greatest advantage. A section regarding the enforcement of minimum standards in voluntary collective agreements should also be included.

- iii. *Protections and Supports in Enforceable Collective Agreements:* Artists require information about enforceable collective agreements, as outlined in Recommendation 1.4 of this report.

Enforceable collective agreements differ from voluntary agreements mainly in that enforceable agreements are legally binding, where voluntary agreements are not. If Government accepts MACSA's current recommendations regarding enforceable collective bargaining, artists will require information about the risks and benefits involved for them and for their organizations, before they decide whether or not to engage.

Once artists have decided to engage in enforceable collective bargaining, they will need information regarding:

- a. applicability of enforceable collective agreements as provided for in Recommendations 1.4(a) and 1.4(d);
- b. the process for engaging in enforceable collective bargaining, as provided for in Recommendation 1.4(e).

This should be divided into two sections: one for artists who wish to ask an existing artists' organization to represent them for the purposes of collective bargaining, and another for artists who wish to organize themselves and form a new organization for the express purpose of engaging in enforceable collective bargaining.

- iv. *Occupational Health and Safety:* Artists require access to relevant occupational health and safety information.

Most artists rely on precise, repetitive movements of their bodies or parts of their bodies in the practice of their craft. They should have easy access to information regarding ergonomics, injury prevention, hazardous substance management (where applicable), air quality, first aid training, and violence prevention, as these issues relate to their field.

Currently available information should be included in the *Reference Guide*; new information will be provided to artists associations as it becomes available.

- v. *Professional Development and Training:* Artists require access to information about professional development and training opportunities.

Professional development and training opportunities abound. There are a number of online resources for self-directed training, and a number of organizations and institutions that offer online studies, in-person workshops, and degree, certificate and diploma programs. However, information regarding such opportunities is located in a number of different sources, and as such, can be difficult to compile.

SaskCulture, in its role as the lead of the SaskCulture Human Resource Council, attempted to compile into a database all of the professional development and training opportunities in Saskatchewan. Management of the database proved to be an unattainable goal, and the project was abandoned.

Professional development and training needs differ between the arts sectors; artists associations and artist-run centres, being familiar with the needs within their respective sectors, should be highlighted in the *Reference Guide*. The guide would be a primary resource for information about professional development opportunities relating to each sector. The *Reference Guide* should also provide a listing of the institutions that commonly provide this kind of training, and information about how to find professional development opportunities.

As recognized in Goal 2, there is a particular need for marketing skill development. In Saskatchewan, numerous programs that encourage entrepreneurship and assist small businesses are available, many of which would apply to artists establishing their own businesses. Many of these programs provide entrepreneurs with general marketing

information. Government programs of particular interest to artists may include: Small Business Loans Association programs, youth and women's entrepreneurship programs, and programs run through the Regional Enterprise and Business Development Centres located across Saskatchewan, and the Canada-Saskatchewan Business Service Centre.

- vi. *Information about Self-Employment:* Artists require access to information regarding the rights they are entitled to as self-employed people.

The distinction between a self-employed independent contractor and an employee is important for artists on two levels, both legislated federally. The first, governed by the *Income Tax Act*, affects an artist's ability to claim business expenses, and the second, governed by the *Copyright Act*, affects ownership of copyright.

Under the *Income Tax Act*, self-employed status is determined according to four criteria: (1) control over hours of work and the delivery of service, (2) ownership of any tools used, (3) the worker's potential for profit from the enterprise, and (4) the worker's risk of loss from the enterprise. In some cases, an artist's potential for profit and risk of loss has been determined according to whether a scale agreement was in place and whether the artist has negotiated terms of engagement above that agreement. An artist who negotiates above a collective agreement has a greater potential for profit and risk of loss than does one who "works for scale."

An artist must maintain self-employed status in order to retain automatic ownership of copyright over her or his work. The *Copyright Act* states that the author of any work shall be the first owner of its copyright, unless an agreement to the contrary exists. Exceptions to this rule that are particularly pertinent to artists include: (1) One who orders a photograph, portrait or engraving in exchange for payment, financial or otherwise, is the first owner of copyright over the original, (2) the author retains the right to restrict publication of any submission to a newspaper, magazine, or other periodical. These are default positions; agreements to the contrary may be agreed upon in a contract.

Timeline: Immediately

Responsibility: Government of Saskatchewan, Saskatchewan Arts Alliance

RECOMMENDATION 3.2: PROMOTE THE REFERENCE GUIDE

That the Government of Saskatchewan and the Saskatchewan Arts Alliance develop a plan to promote the *Reference Guide* to Saskatchewan's emerging and established artists on an ongoing basis.

Background

Recommendation 3.1 has identified information that is essential to the career of an artist. Indeed, this information is already available through a number of different sources. The *Reference Guide* is intended to compile this information and make it more accessible to artists.

In order for the *Reference Guide* to be an information tool that is more accessible to artists than the many information tools already in existence, a strategy to ensure that the *Reference Guide* meets artists ongoing needs must be developed. This strategy should include a plan to make artists aware of the *Reference Guide*, and to encourage them to use it. It should include plans for format of the guide – a physical booklet and/or and electronic version – and a plan to update the *Reference Guide* on a periodic basis.

Timeline: Immediately

Responsibility: Saskatchewan Arts Alliance, Government of Saskatchewan

RECOMMENDATION 3.3: FUNDING GUIDANCE

That artists associations provide artists and arts organizations with information and guidance on how to apply for and/or access federal funding.

Background

The Government of Saskatchewan spent a total of \$36.2 million in arts funding during the 2003-04 fiscal year. This is the fifth highest spending by a Canadian provincial or territorial jurisdiction during the period. Arts funding by the Government of Saskatchewan was \$36 per capita in 2004. This was the fourth highest per capita spending among Canadian provincial or territorial jurisdictions, after Northwest Territories (\$168), Yukon (\$139) and Quebec (\$50).

Government of Canada funding for the arts in Saskatchewan was \$31 million in 2003/04. This is lower than the provincial funding of \$36.2 million. In all provinces other than Saskatchewan and Alberta, arts funding by the Government of Canada was higher than provincial funding.

Overview of Recommendations

In part, the lower level of federal government funding is due to the fact that Saskatchewan artists and arts organizations apply for federal funds at a lower rate than is the case in other jurisdictions. This recommendation is intended to address this issue.

Timeline: Ongoing

Responsibility: Artists Associations

RECOMMENDATION 3.4: ABORIGINAL PROVINCIAL CULTURAL ORGANIZATION

That the Government of Saskatchewan, SaskCulture and Aboriginal artists in Saskatchewan explore the creation of an Aboriginal Arts Provincial Cultural Organization (PCO) to better meet the needs of Aboriginal artists in Saskatchewan.

Background

SaskCulture and the Government of Saskatchewan recognize 30 provincial cultural organizations (PCOs) as bodies that are eligible to receive proceeds from the Saskatchewan Lotteries Trust Fund. These organizations protect the interests of the cultural communities they represent, including arts, heritage, ethno-cultural or multi-cultural communities, and the cultural industries. Annual funding from the lotteries supports the annual operations of a PCO, providing a stable and consistent funding source. These organizations are able to plan on a long-term basis, and to direct resources that might otherwise be spent in pursuit of such funding to serving their communities.

Currently, there is no PCO that specifically serves the needs of Aboriginal artists. Circle Vision played this role for about five years in the early 1990s. Among its activities were a research initiative to record recent Aboriginal art history, a survey of 'underground' supports for Aboriginal artists and a corresponding effort to provide similar supports in a more accessible manner, and an initiative to gather Aboriginal artist input regarding their needs. One service Circle Vision provided was a referral service: a database of practicing Aboriginal artists that was accessible to engagers and other artists across the country. Unfortunately, the organization's responsibilities exceeded its capacity, and the concept was abandoned in 1996.

Since 1986, other PCOs have made considerable effort to serve the Aboriginal community through their programming and in doing so, have forged mutually beneficial bonds between mainstream artists and Saskatchewan's Aboriginal arts community. Just one example of inclusive activity was CARFAC Saskatchewan's hosting of a panel presentation on traditional knowledge and artistic practice. SaskCulture has expressed its support for these continuing efforts through its recent creation of a permanent staff position, the Coordinator of First Nations and Métis Initiatives.

While the efforts toward inclusion are valued by both Aboriginal and mainstream communities, there remain needs in the Aboriginal community that can not be addressed by organizations or individuals in the mainstream. These needs would include, for example, support for Aboriginal artistic traditions, usage protocols for natural or traditional materials, moral rights on works of art, and advocacy to First Nations and Métis governments regarding support for Aboriginal artists. It would be inappropriate for these activities to be carried out by any individual or organization from outside the Aboriginal community.

Sâkêwêwak Artists Collective, an arts service organization with a mandate to serve contemporary Aboriginal artists, has attempted to fill some of these needs, by developing programming for traditional Aboriginal artists. However, this work is outside of the organization's mandate, and is done to the detriment of the contemporary Aboriginal artists that the organization is mandated to serve. An expansion of the organization's mandate toward government advocacy would further stretch its limited resources. Sâkêwêwak does not have the capacity or the mandate to serve the needs of all Aboriginal artists since it is primarily a presenter and a production centre. A provincial cultural organization should be established with a mandate to provide advocacy, representation, data management and information services for the Aboriginal arts community.

Members of the Aboriginal arts community are already working in an ad-hoc capacity toward a strategy to form an Aboriginal arts service organization, with a long-term goal to develop the organization to the point that it be recognized as a PCO. They envision the role of this organization to:

- i. serve the needs of the Aboriginal arts community that cannot be met by the mainstream arts community, avoiding duplication of services that are already offered;
- ii. acknowledge and provide support for the continuing commitment of existing PCOs in the arts to address the needs of all artists, including Aboriginal artists;
- iii. ensure Aboriginal representation in cultural initiatives at the provincial level; and
- iv. provide First Nations government and leaders with advice about supporting Aboriginal artists.

MACSA expresses its support for the efforts of the Aboriginal arts community toward an Aboriginal arts PCO, and acknowledges that active support from SaskCulture, existing PCOs and the Government of Saskatchewan will be necessary in reaching the goal.

Timeline: Ongoing

Responsibility: Aboriginal arts community, SaskCulture Inc., Arts PCOs, Government of Saskatchewan

Implementation Recommendation

Background

The idea of a permanent or continuing advisory committee to address Status of the Artist issues has been around since the 1993 Status of the Artist Report, which recommended the establishment of a continuing Status of the Artist Advisory Commission.²⁴ The suggested mandate of this committee was sweeping, with the committee's role ranging from advising the Minister, to advocating for artists, to working for the establishment of a resource library for artists.

The 2003 MACSA Report also recommended that a permanent Ministerial advisory committee be established by amendment to *The Status of the Artist Act*, to a) advise the Minister of CYR on Status of the Artist issues, b) provide consultation with the arts community on Status of the Artist issues, and c) propose research on economic and social equity for artists.²⁵

The current MACSA committee identified ongoing needs related to the Status of the Artist that fell into one of two areas:

- i. The need to monitor the progress of the recommendations of this report to ensure that they are having the intended impact; or
- ii. The need to address a number of outstanding issues related to Status of the Artist.

In order to address these needs, MACSA makes one final recommendation – that a permanent advisory council be established, as is provided for in *The Status of the Artist Act*.

RECOMMENDATION 4.1: PERMANENT ADVISORY COUNCIL

That the Government of Saskatchewan establish a permanent advisory council on Status of the Artist, as provided for in *The Status of the Artist Act*, and follow the purpose, mandate, composition, nominations process, and meeting schedule described below:

Saskatchewan Advisory Council on Status of the Artist (SACSA)

Purpose

To propose measures to improve working conditions of artists by providing information and advice to the government and Minister responsible for the arts on issues related to Status of the Artist.

Mandate

The mandate of SACSA will be:

- i. To advise the Minister on Status of the Artist issues;
- ii. To provide consultation with the arts community on Status of the Artist issues;
- iii. To propose research on economic and social equity for artists;
- iv. To stay abreast of Federal, other Provincial and Territorial Status of the Artists issues and advise the Minister on implications for Saskatchewan;
- v. To oversee the implementation of short and long-term initiatives;
- vi. To work in consultation with the Artist and Engagers Commission(er) to develop a concerted approach to status of the artist initiatives.

Composition

The Council will be composed of ten members appointed for a two year term. Terms will overlap with five members being appointed each year. Each appointment is renewable for a second term.

²⁴ Minister's Advisory Committee on the Status of the Artist. September 30, 1993. *The Report of the Minister's Advisory Committee on Status of the Artist*. p. 15.

²⁵ Ministerial Advisory Committee on the Status of the Artist. October 2003. *Final Report: A Report to the Minister of Culture, Youth and Recreation*. p. 14.

Overview of Recommendations

Membership of the Council will reflect the following:

- i. artists and engagers, with the majority of the members artists;
- ii. a balance of artistic disciplines;
- iii. the geographic diversity of the province;
- iv. Aboriginal and culturally diverse communities of the province;
- v. a member with experience representing artists/ artists associations.

The Deputy Minister of the provincial government department responsible for the arts or his or her designate.

Other members, including government officials, invited by the Council in a non-voting capacity, as needed.

The Chair will be appointed by government from the list submitted by the Nominating Committee.

Nominations Process

The Council Chair shall convene and chair a Nomination Committee composed of one representative from each of the Saskatchewan Arts Alliance, SaskCulture Inc. and the SAB, plus one Aboriginal artist selected by the Chair.

The Nominations Committee shall solicit nominations to the Council from members of the arts sector and shall submit a short list of potential Council members, which meet the selection criteria, to the Minister. The Minister shall select the members of the Council from the proposed list.

Meetings

The Council will meet 4 – 5 times per year.

Timeline: Fall, 2006

Responsibility: Government of Saskatchewan

Conclusions

This section will reconsider the original terms of reference handed to the MACSA committee, and briefly review the recommendations in the order in which they were presented in this report. To highlight the relevance of this report, the recommendations will then be examined in terms of how they affect artists' financial situations, their rights, and their relationship with the general public.

The Government of Saskatchewan reappointed MACSA in early 2005 to make recommendations that addressed the following aspects of Status of the Artist issues:

- collective bargaining rights for artists;
- definition of artist and professional artist with respect to collective bargaining rights;
- establishment of permanent Status of the Artist Advisory Committee; and
- inventory of training opportunities for artists.

As well, the committee was directed to identify and address further issues and priorities related to Status of the Artist.

This report built on the foundations developed by the previous MACSA committees and is informed by a 2005 report on collective bargaining models and by the views of artists and arts community representatives as expressed in a series of focus groups. MACSA's community consultations and research brought to light many challenges facing artists who are building their careers in Saskatchewan. To assist all artists in meeting these challenges, MACSA has recommended a number of supports for artists, which together, make up MACSA's strategic plan to improve the socio-economic status of Saskatchewan's artists.

Three broad goals for artists in Saskatchewan emerged from focus group consultation:

1. Engagement in viable careers;
2. Access to thriving markets; and
3. Access to information that supports efforts to achieve viable careers.

These goals provide the framework for all but one of the 30 specific recommendations presented in this report. The last recommendation, which addresses the idea of a Permanent Advisory Council on Status of the Artist in Saskatchewan, is presented in a final section that deals with the long-term implementation of the previous recommendations.

GOAL 1: ARTISTS ARE ABLE TO ENGAGE IN VIABLE CAREERS IN SASKATCHEWAN

The recommendations falling under Goal 1 speak to the challenges professional artists in Saskatchewan face in earning sufficient income in a safe, sustainable manner. Recommendation 1.1 addresses Government's role in arts funding through the SAB and the Saskatchewan Lotteries Trust Fund. Recommendation 1.2 suggests the creation of provincial investors' and production tax credits that would encourage increased investment and expanded production in the arts. Recommendation 1.3 deals with the provision of opportunities to participate in extended health and pension benefits for artists, and supports the investigation of artists as vulnerable workers. Central to the recommendations collected under Goal 1 is recommendation 1.4, which lays out a model to support collective bargaining right for self-employed artists. The commitment of Government to complying with minimum standards and collective agreements when procuring artists' goods and services is dealt with in recommendation 1.5. Recommendation 1.6 requests the addition of someone knowledgeable about artists' occupational health and safety issues to the Occupational Health and Safety Council.

GOAL 2: ARTISTS WILL HAVE ACCESS TO THRIVING MARKETS FOR THEIR PRODUCTS AND SERVICES

The recommendations falling under Goal 2 focus on the challenges described by artists in marketing their artistic goods and services. Recommendation 2.1 concentrates on the issue of marketing from a number of angles including: artists' access to training in managing and marketing, the availability of market research, and the development of arts marketing strategies. Recommendation 2.2 suggests support for arts education, children's arts programming, and arts touring, to help develop the local arts market by nurturing a knowledge and appreciation of the arts. Recommendation 2.3 suggests the establishment of provincial government policy that commits one per cent of capital budgets for government building construction and refurbishment to arts expenditures. Recommendation 2.4 suggests the formalization of provincial government policy that gives priority to Saskatchewan artists when government procures artistic goods and services.

GOAL 3: ARTISTS WILL HAVE ACCESS TO INFORMATION THAT WILL SUPPORT AND ENHANCE THEIR INDIVIDUAL AND COLLECTIVE EFFORTS TO ACHIEVE VIABLE CAREERS IN SASKATCHEWAN

The recommendations made under Goal 3 all relate to artists' access to information that helps them to develop viable careers. Recommendations 3.1 and 3.2 address the development and promotion of a *Reference Guide* containing information for artists seeking to build a career in Saskatchewan. Topics such as negotiation and enforcement of individual engagement contracts, occupational health and safety could be included in such a *Guide*. Recommendation 3.3 suggests that artists associations provide artist and arts organizations with information on applying for federal funding. Recommendation 3.4, which encourages the formation of an Aboriginal Arts PCO, meets the unique needs of artists in the Aboriginal community and ensures that Aboriginal artists have access to the same supports as artists in the main stream.

Implementation Recommendation

MACSA's final recommendation proposes that the Government of Saskatchewan establish a permanent advisory council on Status of the Artist that would continue to provide information and advice with respect to measures that would improve the working conditions of artists in Saskatchewan.

This comprehensive strategic plan is not intended to be a "magic bullet" solution. The implementation of these recommendations will take time and considerable effort. In order to effect real change for artists in Saskatchewan, co-operation and commitment will be required on the part of artists, artists associations, arts service organizations, SaskCulture, the SAB, the Saskatchewan Arts Alliance, and all levels of government.

Status of the Artist is associated with the idea of respect for artists. Throughout the process of developing this report, one question remained constant — do the roots of respect for artists lie in money, public recognition, or rights? MACSA does not believe that there is any *single* root of respect, and has tailored its recommendations to address each of the possible 'roots of respect' identified.

Overview of Recommendations

Money

To address the issue of getting money ‘in artists’ pockets’ and keeping it there, MACSA has made a number of recommendations about grant funding and taxation. Important issues include: maintaining or increasing current levels of funding, initiating new targeted funds to support art activity in a strategic manner; introducing tax credits for investment in the arts, and ending government taxation of grant funds. These policies will help to stabilize the financial environment in which artists create and sell their work.

The recommendations regarding business training and market research will indirectly increase the amount of money an artist has the potential to earn. By honing business skills, artists can increase the efficiency of their operations. By developing effective marketing strategies, they can increase their earning potential. The business training and market research recommendations are enabling mechanisms which will empower artists.

Public Recognition

Public consumption of the arts is just one measure of public recognition. Another measure, more difficult to gauge, is the level of understanding the public has for the arts in Saskatchewan. Some people see artists as hobbyists, but those who are more familiar with the world of art see artists as entrepreneurs engaged in business.

In recognition of the relationship between public understanding of the arts and public consumption of the arts, MACSA has made recommendations that seek to increase both. In addition, it has made recommendations that highlight the ‘business of art’. An increase in artists’ business abilities will make ‘the business of art’ more visible, thereby re-focusing the public perception.

Rights

To achieve a higher status, Saskatchewan artists must be guaranteed certain rights, including access to: career-relevant information and training; benefit plans; occupational health and safety; collective bargaining rights; and supports tailored to the unique needs of Aboriginal artists.

Artists in the focus groups conducted for MACSA questioned the priority being placed on enforceable collective bargaining for artists. Some were unable to see how enforceable collective bargaining would benefit them. This is just one of the many recommendations that MACSA has made to guarantee artists’ rights. While it may not be a pressing issue for artists at the moment, these rights should be entrenched in law so that artists may access them when the need arises.

The recommendations in this report represent a balanced, holistic set of improvements for artists in this province. If implemented collectively, a strong foundation for the future of Saskatchewan artists can be established, ensuring the long-term viability of Saskatchewan artists and Saskatchewan residents’ access to a diverse, vibrant arts community. If these recommendations are implemented individually, their impact will certainly be less. The completion of this report is just one step in improving the Status of the Artist in Saskatchewan. MACSA has recommended the appointment of the permanent, Saskatchewan Advisory Council on Status of the Artist to watch over the success of the movement toward higher status for artists, and to provide additional guidance to those working toward the same goal.



APPENDICES

Appendices to the
Minister's Advisory Committee
on Status of the Artist

Appendix I: Recommendation Matrix

Goal 1: Artists are able to engage in viable careers in Saskatchewan.		
Action	Timeline	Responsibility
<p>Recommendation 1.1(a): Funding</p> <p>That adequate funding to support the development of artists, arts organizations, and audiences be maintained:</p> <ul style="list-style-type: none"> i. Funding to the Saskatchewan Arts Board is, at minimum, indexed to inflation to preserve Saskatchewan's standing as one of the strongest funders of the arts in Canada. ii. Funding to the Saskatchewan Arts Board should be increased to address the following priorities: <ul style="list-style-type: none"> a. Arts presentation and touring; b. Childrens' arts program delivery. iii. Funding to provincial artists associations should recognize the increased and significant role identified for those associations in this report. This can be best accomplished by maintaining funding to the four major fund distribution channels for the arts in Saskatchewan. 	Immediately; Ongoing	Government of Saskatchewan
<p>Recommendation 1.1(b): Funding</p> <p>That the Saskatchewan Lotteries Trust Fund, in partnership with SaskCulture, improve its data management system to better track the activities of the Community Grant Program. This should be understood as a step toward the development of an accountability framework for the Community Grant Program to ensure that a reasonable proportion of the grants be spent by municipalities on cultural activity.</p>	By fiscal year 2007-08	Saskatchewan Lotteries Trust Fund; SaskCulture Inc. Municipalities
<p>Recommendation 1.2(a): Taxation</p> <p>That the Government of Saskatchewan create an investor's tax credit for the arts similar to the credit for investment in Labour-sponsored Venture Capital Corporations [section 34(1) of The Saskatchewan Income Tax Act 2000].</p>	By 2007	Government of Saskatchewan

Action	Timeline	Responsibility
<p>Recommendation 1.2(b): Taxation</p> <p>That the Government of Saskatchewan establish a program for book publishers and the sound recording sector that would provide refundable tax credits of 30 per cent of production and development expenses incurred in Saskatchewan to a maximum of \$10,000 per initiative.</p>	By 2007	Government of Saskatchewan
<p>Recommendation 1.2(c): Taxation</p> <p>That CYR work to improve income tax provisions for artists as the highest priority for the Federal-Provincial-Territorial (F-P-T) Working Group on Status of the Artist. Issues should include:</p> <ul style="list-style-type: none"> i. Tax exemption for grant income; ii. Tax exemption for royalty income; iii. Income averaging; 	By 2008	Minister of Culture Youth and Recreation
<p>Recommendation 1.3(a): Extended Health and Pension Benefits</p> <p>That artists associations work collectively to provide artists with opportunities to participate in group Pension and Extended Health Care Plans. Such plans will be flexible enough to respond to the reality of artists' variable income and engagement in their professional activities.</p>	Immediately	Artists associations
<p>Recommendation 1.3(b): Support for Vulnerable Workers Process</p> <p>That the unique needs of artists are taken into consideration when recommendations are made by the Working Groups established by Saskatchewan Labour to consider extensions of pensions and non-wage benefits to vulnerable workers.</p>	Ongoing	Saskatchewan Labour
<p>Recommendation 1.4: Amend The Status of the Artist Act</p> <p>That the Government of Saskatchewan establish the legislative authority, programs and supports to provide artists with mechanisms to secure appropriate income.</p>	By Fall 2006	Government of Saskatchewan
<p>Recommendation 1.4(a): Definitions</p> <p>That the Government of Saskatchewan amend The Status of the Artist Act to clarify the definitions of artist, professional artist, and engager in order to define the scope and application of the proposed legislative program provisions.</p>	By Fall 2006	Government of Saskatchewan

Appendix I: Recommendation Matrix

Action	Timeline	Responsibility
<p>Recommendation 1.4(b): Individual Contracts</p> <p>That the Government of Saskatchewan establish a statutory requirement that any engager who purchases goods, services and/or intellectual property from an artist must outline the terms of that engagement in a written contract that includes specific mandatory contract elements</p>	By Fall 2006	Government of Saskatchewan
<p>Recommendation 1.4(c): the Competition Act</p> <p>That Culture Youth and Recreation work to enhance existing systems of voluntary collective bargaining for artists by referring a request to the Federal-Provincial-Territorial (F-P-T) Working Group on the Status of the Artist to establish as a priority the exemption of artists associations from the Competition Act.</p>	Ongoing	Minister of Culture Youth and Recreation
<p>Recommendation 1.4(d): Enforceable Collective Bargaining</p> <p>That the Government of Saskatchewan amend The Status of the Artist Act to provide self employed professional artists with the right to engage in enforceable collective bargaining. Such rights shall be administered and enforced by a new body, the Saskatchewan Artists and Engagers Commission (SAEC).</p> <ol style="list-style-type: none"> Create a Saskatchewan Artists and Engagers Commission (SAEC) to administer and enforce collective bargaining rights for artists. Require artists associations to certify with the SAEC to be recognized as representative of its members for enforceable collective bargaining. Before commencing negotiations toward an enforceable collective agreement, require that a certified artists association register through the SAEC to bargain with a specified engager or group of engagers. Once an artists association has registered, each party to the bargaining is notified by the SAEC. There is no formal process for negotiations. Require parties to bargain to meet timelines set by the SAEC. Parties would have access to first agreement arbitration at their own cost. There would be no requirement that an agreement be completed. Allow pressure tactics to be used by either party to compel the other to begin negotiations toward an agreement, either: once they have been notified by the SAEC to begin bargaining; or upon expiry of a valid enforceable collective agreement. 	By Fall 2006	Government of Saskatchewan

Action	Timeline	Responsibility
<ul style="list-style-type: none"> vii. Allow groups of artists to act to revoke their association's certification or registration. The opportunity to do so would occur annually, at any time during the three months preceding the anniversary date of the association's certification. viii. Unfair practices for engager(s) or representative(s) of the engager(s) are identified. ix. Unfair practices for artists association(s) or representative(s) of the association(s) are identified. x. Hold artists associations to standards of fair representation. 		
<p>Recommendation 1.4(e): National Artists Associations</p> <p>That the Government of Saskatchewan allow national artists associations to certify as representatives of Saskatchewan artists in enforceable collective bargaining in Saskatchewan.</p>	By Fall 2006	Government of Saskatchewan
<p>Recommendation 1.4(f): Presumption of Self-Employment</p> <p>That The Status of the Artist Act be amended to ensure that, for the purpose of the Act, all Saskatchewan artists are presumed to be self-employed.</p>	By Fall 2006	Government of Saskatchewan
<p>Recommendation 1.5: Government Compliance with Standards and Contracts</p> <p>That the Government of Saskatchewan provide departments, crowns and agencies with information and guidance about how to comply with minimum standards and collective agreements when procuring artists' goods and services.</p>	Information file developed and distributed by January, 2007; Advice ongoing	Culture Youth and Recreation in consultation with Executive Council
<p>Recommendation 1.6: Occupational Health and Safety</p> <p>That the Government of Saskatchewan add at least one person knowledgeable about artists' occupational health and safety issues to the Occupational Health and Safety Council.</p>	At next amendment to The Occupational Health and Safety Act, 1993 Advice	Saskatchewan Labour

Goal 2: Artists will have access to thriving markets for their products and services.		
Action	Timeline	Responsibility
Recommendation 2.1(a): Access to Information and Training That the Saskatchewan Arts Board work with provincial artists associations, universities and training institutions, as well as the provincial and federal governments to provide access to information and training that will help them to increase their skill in managing the business operations of their art, and in marketing their work locally, provincially, nationally and internationally.	In fiscal year 2007-08	Saskatchewan Arts Board, provincial artists associations, universities and training institutions, Government of Saskatchewan, Government of Canada
Recommendation 2.1(b): Market Research That the Government of Saskatchewan undertake market research to inform the development of strategies for marketing Saskatchewan artistic goods and services.	In fiscal year 2006-07	Culture Youth and Recreation in conjunction with Cultural Industries Development Council
Recommendation 2.1(c): Cultural Industries Development Fund Funding That the Government of Saskatchewan restore support to the Cultural Industries Development Fund to its previous level of \$450,000. This constitutes an increase of \$150,000 over the current level. This increase will be used to develop and implement the marketing strategy discussed in recommendation 2.1(d).	In fiscal year 2006-07	Government of Saskatchewan
Recommendation 2.1(d): Market Strategy Development That the Cultural Industries Development Council, in consultation with the Saskatchewan Arts Board, provincial artists associations, and individual artists, lead the development of marketing strategies based on market research undertaken by the Government of Saskatchewan.	In fiscal year 2007-08	Cultural Industries Development Council in consultation with the Saskatchewan Arts Board

Action	Timeline	Responsibility
<p>Recommendation 2.2(a): Support for Arts Education</p> <p>That Culture Youth and Recreation, the Saskatchewan Arts Board, and provincial artists associations work with Saskatchewan Learning, teachers' associations and special subject councils in arts related subject areas to ensure that teachers have the resources and support to deliver the arts education curriculum.</p>	In fiscal year 2007-08	Culture Youth and Recreation, Saskatchewan Learning, Saskatchewan Arts Board, provincial artists associations
<p>Recommendation 2.2(b): Support for Children's Arts Programming</p> <p>That the Government of Saskatchewan provide the Saskatchewan Arts Board with additional funding to enhance the ability of arts organizations to provide formal support for children's arts programming.</p>	In fiscal year 2007-08	Government of Saskatchewan and Saskatchewan Arts Board
<p>Recommendation 2.2(c): Support for Arts Touring</p> <p>That the Government of Saskatchewan provide the Saskatchewan Arts Board with additional funding to facilitate exposure to Saskatchewan artists for rural residents of Saskatchewan. Consideration should be given to providing resources to arts presenters in rural communities and to artists to support their ability to tour.</p>	In fiscal year 2007-08	Government of Saskatchewan
<p>Recommendation 2.3: Capital Construction and Refurbishment</p> <p>That the Government of Saskatchewan establish a policy allocating one per cent of capital budgets for building construction and refurbishment to the purchase of art, and that adherence to this policy be monitored by Culture Youth and Recreation and reported to the proposed Permanent Advisory Council on Status of the Artist.</p>	In fiscal year 2006-07	Government of Saskatchewan
<p>Recommendation 2.4: Saskatchewan First Policy</p> <p>That the Government of Saskatchewan formalize a policy that will give priority to Saskatchewan artists when government procures artistic goods and services.</p>	In fiscal year 2006-07	Government of Saskatchewan

Goal 3: Artists will have access to information that will support and enhance their individual and collective efforts to achieve viable careers in Saskatchewan.			
Action	Timeline	Responsibility	
Recommendation 3.1: Information for Artists That the Government of Saskatchewan develop a mechanism to provide artists with career-relevant information that is accessible and easy to use, and that addresses the following topics at minimum: <ol style="list-style-type: none"> Negotiation and enforcement of individual engagement contracts; Protections and supports in voluntary collective agreements; Protections and supports in enforceable collective agreements; Occupational health and safety; Professional development and training; Information about self-employment. 	Immediately	Government of Saskatchewan, Saskatchewan Arts Alliance	
Recommendation 3.2: Promote the Reference Guide That the Government of Saskatchewan and the Saskatchewan Arts Alliance develop a plan to promote the information mechanism described in recommendation 3.1 to Saskatchewan's emerging and established artists on an ongoing basis.	Immediately	Saskatchewan Arts Alliance; Government of Saskatchewan	
Recommendation 3.3: Funding Guidance That artists associations provide artists and arts organizations with information and guidance on how to apply for and/or access federal funding.	Ongoing	Artists associations	
Recommendation 3.4: Aboriginal Provincial Cultural Organization That the Government of Saskatchewan, SaskCulture and Aboriginal artists in Saskatchewan explore the creation of an Aboriginal Arts Provincial Cultural Organization (PCO) to better meet the needs of Aboriginal artists in Saskatchewan.	Ongoing	Aboriginal arts community, SaskCulture Inc., Arts PCOs, Government of Saskatchewan	

Implementation Recommendation		
Action	Timeline	Responsibility
Recommendation 4.1: Permanent Advisory Council That the Government of Saskatchewan establish a permanent advisory council on Status of the Artist, as provided for in <i>The Status of the Artist Act</i> .	Fall 2006	Government of Saskatchewan

The Status of the Artist Act

being

Chapter S-58.1 of the *Statutes of Saskatchewan, 2002*
(effective July 3, 2002).

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER S-58.1

An Act respecting Artists

Short title

1 This Act may be cited as *The Status of the Artist Act*.

Interpretation

2 In this Act:

“**artist**” means any professional creator, interpreter or performer working in any artistic field, including:

- (a) literary arts;
- (b) visual arts;
- (c) electronic and multimedia arts and Internet arts;
- (d) film and video arts;
- (e) crafts;
- (f) performing arts, including theatre, opera, music, dance and variety entertainment;
- (g) the recording of sound; and
- (h) the recording of commercial advertisements; (« *artiste* »)

“**artists’ association**” means any organization, or a branch or local of any organization, that has among its objectives the management or promotion of the professional and socio-economic interests of artists who are members of the organization, and includes a federation of artists’ associations; (« *association d’artistes* »)

“**minister**” means the member of the Executive Council to whom for the time being the administration of this Act is assigned. (« *ministre* »)

2002, c.S-58.1, s.2.

Recognition of artists

3 The following are affirmed and recognized:

- (a) the important contribution of artists to the cultural, social, economic and educational enrichment of Saskatchewan;
- (b) the value of artistic creativity in advancing Saskatchewan’s cultural, social, economic and educational life;
- (c) the valuable contribution of artists to Saskatchewan’s cultural heritage and development;
- (d) the importance to artists of being fairly compensated for the creation and use of their artistic works.

2002, c.S-58.1, s.3.

Minister's responsibility respecting artists

4 The minister is responsible for all matters not by law assigned to any other minister, department, branch or agency of the Government of Saskatchewan relating to artists, including developing and implementing the Government of Saskatchewan's policy respecting artists.

2002, c.S-58.1, s.4.

Policy respecting artists

5 The policy mentioned in section 4 is to be developed after taking into consideration the following principles:

- (a) the right of artists to free speech and freedom of artistic and cultural expression;
- (b) the right of artists to form associations to promote their professional, social and economic interests;
- (c) the right of artists to form advisory bodies in which they may express their views and advance their cause with respect to their status in society and with respect to any other questions related to their creative environment and conditions of work;
- (d) the ability of artists in all artistic fields to earn a living from the making of their art;
- (e) the right of artists to be fairly treated by government and society;
- (f) the right of artists to enjoy the same economic and social benefits that are available to other workers in Saskatchewan;
- (g) the ability of artists to obtain education, professional development and training;
- (h) the desirability of making artistic works available to the public.

2002, c.S-58.1, s.5.

Government undertaking

6 The Government of Saskatchewan undertakes, as far as it considers it reasonable and appropriate to do so, to do the following:

- (a) to promote and protect the status of the artist by considering artistic work, including innovation and research, as a public good and service to the community;
- (b) to promote within government the working conditions of artists;
- (c) to respect, honour and in good faith abide by scale agreements of relevant artists' associations representing the interests of artists engaged by the government;
- (d) to respect, honour and in good faith abide by protocols respecting working conditions that have been established by relevant artists' associations representing the interests of artists engaged by the government.

STATUS OF THE ARTIST

c. S-58.1

Advisory committee

7(1) The minister may establish one or more advisory committees to investigate and report to the minister with respect to the following matters concerning artists:

- (a) labour relations and collective bargaining rights in the arts sector;
- (b) the application of workers' compensation legislation and occupational health and safety legislation to artists;
- (c) pension plans for artists;
- (d) education, professional development and training programs for artists;
- (e) taxation of artists;
- (f) any other matters that the minister considers appropriate.

(2) The minister shall obtain the approval of the Lieutenant Governor in Council before appointing an advisory committee for a period longer than one year.

(3) An advisory committee shall report to the minister within the time that the minister may direct.

2002, c.S-58.1, s.7.

Regulations

8 The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

2002, c.S-58.1, s.8.

Coming into force

9 This Act comes into force on assent.

2002, c.S-58.1, s.9.

Appendix III: Committee Terms of Reference

Terms of Reference

1. Responsibilities

The Minister's Advisory Committee on the Status of the Artist is responsible to provide advice to the Minister on the development of Status of the Artist measures.

2. Outcomes

With the support of new research and analysis, the outcomes that will be provided by the Minister's Advisory Committee on the Status of the Artist are:

- Based on consultations within the arts sector, provide the Minister with a final recommendation on a model to support collective bargaining and protection for job action for self-employed artists.
- Provide the Minister with a final recommendation on the definition of professional and artist, or professional artist, which clarifies the scope and application of the recommendation on collective bargaining and other benefits potentially provided to artists through this initiative.
- Provide the Minister with a recommendation on the role and mandate of a Permanent Advisory Committee.
- Review Recommendation 15 – Inventory of Training Opportunities from the 2003 Ministerial Advisory Committee on the Status of the Artist Final Report, clarify its intent and if appropriate, make a recommendation to the Minister on related strategies and actions.
- Identify and make recommendations on further issues and priorities related to Status of the Artist.

3. Authority

The Minister's Advisory Committee on Status of the Artist will be appointed for one year to provide the Minister with advice and recommendations on the achievement of the objectives of the Status of the Artist Legislation. As such, subject to agreed upon work products, time-lines and budget considerations, the committee has the authority to:

- Call its own meetings
- Develop its own agenda in consultation with Culture Youth and Recreation
- Establish its own working processes to achieve the identified outcomes
- Establish its own sub-groups/committees
- Engage in its own consultations
- Make recommendations to the Minister

4. Timelines

The committee will be appointed for one year beginning January 2005. The committee's term will expire in December 2005.

5. Communications

The committee will provide the following communications:

Minutes of all meetings will be provided to Culture Youth and Recreation.

A final report of the work of the committee shall be submitted to the Minister.

Supports

The committee will be provided with the support and assistance of CYR.

Collective Bargaining Rights for Associations and Unions of Professional Artists In Saskatchewan

**A Report Prepared for Saskatchewan's
Minister's Advisory Committee on the Status of the Artist
30 June 2005**

**Garry Neil,
Neil Craig Associates**

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²⁶ UNESCO Recommendation on the Status of the Artist, available at www.unesco.org/culture

1.0 Executive Summary

The Saskatchewan Minister's Advisory Committee on the Status of the Artist is considering ways to extend collective bargaining rights to artists' associations and unions. This Report looks at alternative models and analyzes how each model would address issues of importance to Saskatchewan artists.

The income of Canadian artists is lower than average, a high proportion of artists are self-employed and their incomes can fluctuate dramatically from year to year. Extending collective bargaining rights is one way to address income and other working conditions issues.

Most artists are self-employed. Maintaining status as an independent contractor is very important as it permits the artist to deduct legitimate business expenses against earned income and secures their copyright.

Organizations representing artists in performing arts, music and sound recording, and film and television, have had some success negotiating voluntary collective agreements. These generally exist outside traditional labour laws as a consequence of the self-employed status. Organizations representing artists working in other fields have been generally unable to negotiate collective agreements.

Organizations representing creative artists (e.g., authors, visual artists and craftpersons) have had the greatest challenges negotiating agreements, primarily because these artists tend to work on their own and can create works before they have any contract. Interpretive artists are more likely to work in ensembles and are contracted to bring to life an artistic work created by another.

In looking at the various models, the following issues of importance to Saskatchewan artists are examined:

To what extent will the bargaining rights make a difference?

What are the implications of bargaining rights for the self-employed status of professional artists?

What is the impact of bargaining rights on the integrity of nationally negotiated voluntary agreements?

Is it possible to find a bargaining model that will achieve a broad acceptance in the artistic community?

How will the model affect engagers of artists, who often find themselves in a precarious economic situation?

How will the bargaining model influence the generally collegial relationships that exist in the sector?

What is the cost of the bargaining model?

To what extent will the model improve support for individual contracts?

What might be the unintended impact of bargaining rights on individual artists?

FEDERAL STATUS OF THE ARTIST ACT

The Canadian Artists and Producers Professional Relations Tribunal administers Part II of the federal *Status of the Artist Act*. This establishes a framework to regulate the relationships between artists associations and producers operating in federal jurisdiction.

The consequences of the Tribunal's operation have been the following:

Twenty associations have been certified as exclusive bargaining agents:

for the associations that already had voluntary agreements, recognition has provided a legal foundation for bargaining with engagers in federal jurisdiction and has provided them with a legal exemption from action under competition laws;

for the associations that had been unable to negotiate voluntary agreements, certification has brought little progress in the first 10 years of operation of the Tribunal.

The federal legislation is limited to "independent contractors."

National agreements negotiated under its terms are fully protected, but the scope of the legislation is national and narrow.

The law was generally welcomed by the community when it was introduced, although there is no evidence about whether all organizations supported all elements of the Act.

The Act has been neutral on private sector engagers since the few of them operating in federal jurisdiction were generally parties to voluntary agreements prior to the legislation.

The nature of the relationship with engagers has generally not changed.

The budget of the Tribunal in 2005/06 is more than \$2.2 million.

The Act has had no impact on individual contracts, except by providing exemption from potential competition action.

There does not appear to have been any unintended consequences of the Act on individual artists.

QUÉBEC ARTISTS' ACTS

The *Commission de reconnaissance des associations d'artistes et des associations de producteurs* administers two Acts.

The first covers artists working in performing arts, music and sound recording, and film and television. The second covers artists working in visual arts, crafts and literature.

Both Acts seek to encourage collective bargaining and establish a process for certifying artists' associations. The first one includes a provision for first contract negotiations, including a requirement for arbitration if the parties cannot reach agreement. The second one has provisions concerning the nature of individual contracts entered into between the artists and their engagers and promoters.

The consequences of the Commission's operation have been the following:

Fifteen associations have been certified as exclusive bargaining agents. The Acts have had a greater impact on the sector than the federal Act since the bulk of artistic activity takes place in provincial jurisdiction. Associations with existing agreement have been able to bring non-union productions under the agreements. There is a greater use of individual contracts in the visual arts, crafts and publishing, but collective agreements in these sectors generally do not exist.

The Act governing performing arts et al, confirms the self-employed status of artists represented by the certified associations. Since Québec has greater control of its income tax system than other provinces, this has secured that status, although there has not yet been a definitive case under the Act.

The Acts provide that collective agreements must be ratified by members covered by them, and associations have generally chosen to ratify national agreements on a provincial basis. A process to remove certification can be launched only by 25 percent of the artists in the sector.

The *Commission's* decisions respecting the historic and linguistic divisions between artists' associations alleviated earlier concerns.

There is anecdotal evidence that a few producers in the audiovisual field have moved production outside the province.

The nature of the relationships with engagers has generally not changed.

The budget of the *Commission* is roughly \$ 670,000.

Individual contracts in visual arts, crafts and publishing are now more common, although there is anecdotal evidence that they are not yet universal. Confirming bargaining rights may have reduced the threat of action under competition laws.

All artists in a sector are bound by any collective agreement, however, artists are not obligated to become members of the certified association and remain free to negotiate beyond the minimum standards.

SASKATCHEWAN LABOUR RELATIONS BOARD

The Saskatchewan Labour Relations Board administers the province's labour laws. For purposes of analysis, two hypothetical models of extending bargaining rights through the SLRB were examined:

Model A – would provide a process, rights and obligations for artists and their associations in all cultural sectors equivalent to other workers and their unions, including mandatory bargaining;

Model B – is similar to Québec and would provide for mandatory bargaining in the performing arts, music and sound recording, as well as film and television. There would no statutory requirement to conclude an agreement in other cultural sectors.

The consequences of these hypothetical Models would be the following:

a) Model A would make a significant difference. Associations would be able to obtain certification as the exclusive bargaining agent for a defined sector. Associations with existing agreements would be able to extend their jurisdiction to all engagers operating in the province. Associations in sectors which have been unable to conclude collective agreements would be able to compel their engagers/promoters to negotiate with them and would be able to seek the assistance of the Board to conclude agreements.

b) Model B would have an equivalent impact on associations that currently have voluntary agreements. For other associations, the impact would be far less significant, since the engagers/promoters would not be required to conclude an agreement.

While extending bargaining rights in this way may have a negative impact on the self-employed status, it may be possible to ameliorate this challenge with appropriate language in the enabling legislation.

Assuming that the enabling legislation protects nationally negotiated agreements in a manner similar to the construction industry act, the risk to them would be minimal. Providing provincial certification creates the possibility that a provincial organization may apply for recognition in a field where a national organization has operated historically, although this did not generally occur in Québec.

It appears there is not yet a consensus in Saskatchewan around any model for extending bargaining rights.

a) By extending the reach of artists' associations and requiring collective agreements in areas where they do not yet exist, Model A is likely to bring additional costs to some engagers/promoters in all sectors. In those areas where voluntary agreements already exist, this may not be a significant factor. For engagers/promoters in publishing, this is likely to be far more significant.

b) The overall impact of Model B will not be as significant. The effect would be the same as Model A in those areas where voluntary agreements already exist. However, since agreements would not be mandatory in visual arts, crafts and publishing, the impact will be reduced.

To the extent the extension of collective bargaining rights involves the intervention of the SLRB, there may be an initial legitimate concern about how the more adversarial model of traditional labour relations might impact on the sector. This concern would ease over time with training and hiring experts from the sector.

The SLRB is likely to need additional members and staff to take on the new responsibilities.

The models would have no impact on individual contracts, except they may reduce the threat of action under competition laws and would provide security for union activities.

It is assumed that enabling legislation would provide that all artists in a sector are bound by any collective agreement, however, they would not be obligated to become members of the certified association and would remain free to negotiate beyond the minimum standards.

MACSA FAIR COMPENSATION MODEL

The Ministerial Advisory Committee on the Status of the Artist has proposed a Fair Compensation Model. Through amendments to the *Status of the Artist Act* this model would i) establish a legal authority to intervene and provide dispute settlement in support of voluntary collective bargaining, and ii) provide that the authority could establish minimum industry standards that would be mandatory on the government, its agencies and those receiving government grants. The authority would also provide dispute settlement services for individual contracts.

The consequences of the Fair Compensation Model would be the following:

The ability of the Model to have an impact on bargaining in the sector would depend on the extent to which the authority's industry standards would be mandatory on all engagers receiving public funds. Most engagers in the cultural sector receive such funding. If they are covered by the standards, they would be encouraged to bargain to reach an agreement since they could exercise more control over the terms than over the authority's process. Questions about the "representativeness" of an artists' association claiming jurisdiction may be difficult to determine without a certification process.

This model carries the lowest risk to the self-employed status since it would be unique to artists.

Without a certification process and a process through which bargaining rights could be lost, there is risk that any group of artists could form an association and seek to bargain at any time. It is assumed that the authority would respect established national standards in making its decisions.

It appears there is not yet a consensus in Saskatchewan around any model for extending bargaining rights.

There would be additional costs to engagers who receive public funds but who do yet have collective agreements covering the artists they engage.

The model is attempting to respect the historic organizing and bargaining models.

It is assumed the authority would need appropriate members and staff to carry out its work. Adding appropriate resources to an existing body is likely to keep the costs lower than creating an independent agency.

Protection for job action in support of voluntary agreements would be provided. The dispute settlement for individual contracts would presumably be cheaper and more efficient than existing court procedures.

Without a certification process, there may be concerns about the lack of a mandatory requirement on artists' association to provide fair and non-discriminatory representation. Beyond that, there would appear to be little effect on any individual artist, since normal patterns of contracting are preserved.

2.1 STATUS OF THE ARTIST

The concept of the Status of the Artist was introduced in the 1970s during a process undertaken by the United Nations Educational, Scientific and Cultural Organization (UNESCO) to research and discuss the situation of the world's artists. The 1980 *Recommendation on the Status of the Artist* concluded that process. In it, UNESCO 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.

In addition to important issues around the right of artists to be compensated fairly for their work and to enjoy social benefits equivalent to other workers in the society, an important element of the discussion was ensuring that artists have the right to organize collectively to defend their common interests and to form trade unions and professional associations to help regulate their remuneration and working conditions.

Member States should ensure, through appropriate legislative means when necessary, that artists have the freedom and the right to establish trade unions and professional organizations of their choosing and to become members of such organizations, if they so wish, and should make it possible for organizations representing artists to participate in the formulation of cultural policies and employment policies, including the professional training of artists, and in the determination of artists' conditions of work²⁶.

Canada responded to the UNESCO *Recommendation* by creating the Siren-Gélinas Task Force on the Status of the Artist which reported in August 1986. Among its 37 recommendations was a call for legislation to recognize organizations representing self-employed professional artists as collective bargaining agents. While the Task Force was carrying out its work, there were several issues before the federal competition authorities concerning collective bargaining agreements entered into by associations of artists. This gave impetus to the Task Force recommendation and a companion call for a moratorium on the investigation of artists' unions and guilds under the *Combines Investigation Act* until the necessary bargaining legislation had been adopted.

The work of the Task Force was continued by the first Advisory Committee on the Status of the Artist appointed in 1987 by the Minister of Communications (now Canadian Heritage). The following year, the Committee developed draft legislation, known as the *Canadian Artists' Code*.

The government responded to these developments by developing legislation which was tabled in the House of Commons in 1990. In June 1992, the federal *Status of the Artist Act* was proclaimed into law.

Part I outlines a number of principles concerning the important contribution artists make to society and the need for society to "(confer) 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."

Part II, the operative provisions, creates a framework to regulate the relationship between associations, guilds and unions representing self-employed professional artists and producers operating in federal jurisdiction and establishes the Canadian Artists and Producers Professional Relations Tribunal (Tribunal) to oversee the system. It provides a process for the recognition of artists' associations and regulations which encourage collective bargaining and the conclusion of agreements to cover the engagement of professional artists. It applies to the departments, agencies and institutions of the federal government and to employers or engagers operating in federally-regulated industries, such as telecommunications, banking, airlines and broadcasting.

Five years before the federal legislation was proclaimed, the Government of Québec had enacted Canada's first legislation in this field, *An Act Respecting the Professional Status and Conditions of Engagement of Performing, Recording and Film Artists*. In 1988, the province enacted *An Act Respecting the Professional Status of Artists in the Visual Arts and Crafts and Literature and their Contracts with Promoters*. The primary purpose of both statutes 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 in work that takes place under provincial jurisdiction. The *Commission de reconnaissance des associations d'artistes et des associations de producteurs (Commission)* was established for the purpose of administering the Acts.

As a consequence of the discussions around the UNESCO *Recommendation*, the federal Task Force and the Advisory Committee, other provinces began to consider the issue of the status of the artist. British Columbia, Ontario and Saskatchewan all launched processes to review these issues in the early 1990s.

2.2 STATUS OF THE ARTIST IN SASKATCHEWAN

In Saskatchewan, the work was taken on by a government-appointed Advisory Committee on the Status of the Artist. In May 1993, the Committee tabled its Report which contained 115 recommendations covering the full spectrum of issues. The Committee recommended that a new Saskatchewan Artists Code should contain “a mechanism for recognition of collective cultural organizations and producer/presenter organizations for the purpose of collective bargaining.”

The work in Saskatchewan was taken up again in 2001. In June 2002, framework legislation introduced by the Minister of Culture Youth and Recreation was adopted. The *Status of the Artist Act* identified equity for artists within the workforce as a key issue and launched a process to implement practical measures to improve the situation for professional artists. 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 freedom of speech, freedom to create and freedom to form associations; the right and need for artists to earn a living from their art; and the need for appropriate education and training.

In September 2002, the Minister appointed a new Ministerial Advisory Committee on the Status of the Artist (MACSA) to study the issues and prepare recommendations for consideration by the government. The Committee’s Report was tabled with the Minister in October 2003 and released at the November 2004 conference on the status of the artist convened by the Canadian Conference of the Arts in Regina.

MACSA 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.” Three of its 17 recommendations concern these issues. The Report’s first recommendation is this:

That the Saskatchewan Government amend the *Status of the Artist Act* to establish legal authority to intervene and provide dispute resolution in support of voluntary collective bargaining between artists and engagers. These powers would include the ability to hold hearings designed to recommend minimum industry standards within the arts sector.

The other recommendations are for statutory protection for “job action by artist associations in support of voluntary collective bargaining,” and enforcement support from the Department of Labour for self-employed artists who may be involved in a contractual dispute with an engager.

2.3 OBJECTIVES OF THIS REPORT

The purpose of the present Report is to analyze various labour relations models to determine how issues of importance to artists can be addressed in a collective bargaining system in Saskatchewan.

3.0 A Brief and Selected History of Collective Bargaining and Canada's Cultural Sector

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.” Since 1925, a court decision confirmed that legislative jurisdiction over industrial relations rested largely with the provinces. During World War II, in order to establish a stable workplace, the federal government enacted the law that became the model for labour relations legislation in all Canadian jurisdictions.

In 1944, Saskatchewan enacted *The Trade Union Act* and established the Saskatchewan Labour Relations Board (SLRB), an independent, quasi-judicial tribunal, to adjudicate disputes that arise under the *Act*.

Current labour laws in all Canadian jurisdictions typically provide:

- recognition of the fundamental right of workers to organize;
- rules and regulations governing how unions can become certified to represent a group of workers and how they can lose bargaining rights;
- obligations on the employers and the certified union to bargain “in good faith” to reach a settlement;
- requirements for certain minimum standards for collective bargaining agreements.

In return for the legal status of the bargaining regime and mandatory rules on grievances and arbitration to ensure disagreements between workers and the employer can be resolved, unions cannot strike or otherwise disrupt the workplace during the life of the agreement and the employer may not lock-out the workers.

Initially, labour laws applied only to employees. They were intended to regulate the relationships at a physical workplace, where you would find a stable group of employees working for a common employer. Thus, the rules and regulations of the labour codes were developed with an assumption of an ongoing attachment of the worker to the particular employer.

3.1 EARLY ORGANIZING IN THE CULTURAL SECTOR

The earliest organization in Canada's cultural sector was the AFM, which became the American Federation of Musicians of the United States and Canada in 1900. Organizing efforts in the sector picked up pace in the early 1940s, when the first agreements were concluded. The Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) and Union des artistes (UDA) trace their roots to the 1940s or earlier. Actors Equity Association, the U.S.-based union from which Canadian Actors Equity Association emerged in 1976, established in Canada in 1955.

From the early days, these organizations have succeeded to one degree or another in negotiating agreements with their engagers, strictly on a voluntary basis. To the extent that these associations have economic clout, it arises from Constitutional provisions common in the associations that member artists agree they will work only for engagers signed to a union collective agreement or bound by the terms of a work code implemented by the union. The Constitutions also typically provide that members will work only with others who are also working under the jurisdiction of the artists' association. The degree of economic clout is usually proportional to the degree to which professionals in a sector are members of the appropriate organization and adhere to these principles.

From the engagers' side, there was some willingness to enter into agreements because the organizations also operate as professional associations. In the early days, membership was offered only to those already established as professional artists and the Constitutions generally provide that members must adhere to basic professional standards. As an example, actors are required to be on time for rehearsals and performances, having learned their lines beforehand. If an actor fails to carry out the work in a professional manner, their union may take disciplinary action under Constitutional provisions. Thus, engagers had some assurance that artists they were hiring were qualified for the job.

Another element that has encouraged voluntary collective bargaining in the sector is the unique nature of the work of artists. While there may be some generally acknowledged and easily understood value of different forms of traditional human labour, it is difficult to quantify the economic value of the work of an artist. There may be little relationship between the physical labour the artist has put into the painting and the price that work will bring in the open market. How do you assign an economic value to the work of a singer participating in a studio session? For some engagers who bring together a group of artists to create a work, this has meant that they have been more willing to negotiate collectively, since this provides a minimum standard that will be understood by all. An example of this affect can be found in the advertising industry where the establishment of minimum standards creates a level playing field between producers competing for the same assignments; each will know the basis on which the others will be preparing their bids when they consider hiring talent to appear in a television commercial.

UDA had reached its first collective agreement in theatre in 1937. The first agreement between the CBC and the predecessor of ACTRA, covering performers working in radio, was concluded in 1942 in Toronto. Organizations emerged in other centres in Canada where radio stations existed and efforts were made in the 1950s to create the national associations that exist today. In the case of ACTRA, as the CBC established production centres across Canada, the union set up shop at the same time, often with the tacit concurrence of the CBC. The organization that would become the Directors Guild of Canada was formed in 1961 and by the middle of the 1960s all of the associations of artists working in film and television were firmly established. Performers in Saskatchewan organized an ACTRA Branch in 1967.

Union organizations in other cultural fields did not develop until the 1970s or later, primarily because the industries in which these artists work, from book and magazine publishing, to commercial galleries did not develop the level of professionalism needed as a foundation for such activities.

The Writers Union of Canada (TWUC) was established in 1973 and the Periodical Writers Association of Canada (PWAC) in 1976. Canadian Artists Representation/le Front des artistes canadiens (CARFAC) was founded in 1968 to represent visual artists.

3.2 AGREEMENTS COVERING ARTISTS

In many respects, the voluntary agreements entered into by the larger organizations of artists, such as ACTRA, DGC, CAEA and the AFM look much like union collective agreements. They provide basic standards such as rates of pay, hours of work and expenses, they regulate working conditions, and they provide for engager and artist contributions to pension and insurance programs organized by the artists' associations. They have a fixed term, provide a process to renegotiate the provisions and establish a grievance and arbitration system for settling disputes.

However, in other key respects they differ from traditional employee agreements. These unique provisions may include: the need for the particular circumstances of the engagement to be confirmed by a written contract between the artist and the producer;

- the right to negotiate a fee or compensation greater than the minimum in the agreement;
- the right to share in the economic returns generated by the production; and
- the appropriate on-screen credit to give to the writer, director or performer in an audiovisual work; or the credit to provide the artist in the publicity materials of theatre productions.

A key difference between traditional union agreements and voluntary agreements in the cultural sector is that the legal basis for the artists' agreements is contract law, rather than labour law.

Generally, an agreement entered into by a trade union is a legally binding instrument that can be enforced either by the employer or by the union. By virtue of the legal recognition as the bargaining agent, the union can become a legal party to the collective agreement and it has an obligation to administer the agreement on behalf of the individual members. Where the terms of the agreement have been breached, the aggrieved party can seek redress under its arbitration provisions and/or through a labour board. An arbitration award that is not respected can be filed in court and become a court order.

The legal situation has historically been much different in the cultural sector, although this has changed over time. Artists have created voluntary associations that are more in the nature of private clubs. When these associations negotiated agreements, they could not in the end be enforced in any court by the association acting in its own name. The engager groups that negotiated these agreements typically did not have the legal authority to act on behalf of their members in this way. As a consequence, artists' associations require individual producers to become signatory to the collective agreements to ensure their adherence to the provisions. In the 1980s, these factors came together in the decision of the associations representing the advertising industry to refuse to sign the terms of the agreement they had reached with ACTRA, since they were advised about a potential problem with competition law.

Legal enforceability of the agreements arises through the individual contracts that are entered into between artists and the engagers. These have an equivalent status to any other written contract between two parties. Generally, when an artist signs a contract to provide services to an engager, the collective agreement will provide that its terms must be incorporated by reference into the individual contract. Typically, this will be through a clause that states something to the effect that "this contract is subject to the terms and conditions of the agreement entered into between the artists association and the engager." Thus, the legal enforceability of the agreement arises from the right of the individual artists to enforce the terms under laws governing private contracts, rather than from the status of the collective agreement itself.

3.0 A Brief and Selected History of Collective Bargaining and Canada's Cultural Sector

As a concrete example of how this plays out, in the 1980s there was a serious dispute between the CBC and ACTRA. The union asked performers to withdraw from a set and this led to the cancellation of the production. Legal advice received at the time concluded that:

- any legal action taken by "ACTRA" to enforce the collective agreement could be launched only with the consent and in the name of the individual artists contracted to that production;
- any legal action against "ACTRA" would be either a series of individual (breach of contract) actions against the artists contracted on that production and/or actions individually or collectively against the elected officials and staff of ACTRA.

Outside the performing arts and film and television, artists' associations have had no success in reaching collective bargaining agreements. Some have tried to negotiate and some have implemented unilateral codes of conduct that certain engagers may adhere to, but there has been little success in efforts to negotiate collective agreements. This is primarily the case because the relationship is more typically one-on-one, rather than the ensemble that prevails in the recorded media and performing arts. Thus, in the initial stages of discussions around the potential measures to promote the economic situation of professional artists, the associations working in other cultural fields such as TWUC, PWAC and CARFAC have urged the implementation of a statutory regime of collective bargaining, perceiving this to be a concrete step that would make it possible for them to conclude collective agreements on behalf of their members.

3.3 DEVELOPMENTS AFFECTING RELATIONSHIPS IN THE CULTURAL SECTOR

In order to properly assess the potential implications of different bargaining models, it is important to understand certain significant changes in the past 15 years affecting the collective bargaining climate in the cultural sector.

3.3.1 ARTISTS AS EMPLOYEES

The Canada Revenue Agency and its predecessor Revenue Canada have begun to consider more artists to be "employees" for purposes of Employment Insurance, the Canada Pension Plan and the *Income Tax Act*. These rulings apply to many symphony orchestras and dance companies and have been applied occasionally to others contracted on a longer term basis, such as certain actors in British Columbia's film and television industry.²⁷ In June 2004, the Canadian Revenue Agency ruled that an actor/technician at a theatre company was an employee, potentially affecting all other actors in that company and the company itself.²⁸ At present, the musicians in roughly one-half of Canada's symphony orchestras are considered to have a contract of service and thus to be in an employment relationship, as are the dancers in all but one of Canada's major dance companies.²⁹

Thus, these musicians and dancers pay into and are eligible to receive employment insurance benefits and they pay only the employee share of the Canada Pension Plan. On the other hand, their eligibility to deduct legitimate expenses they incur in working as a professional artist is limited. Also, unless there is a contractual agreement to the contrary, their employer would be the owner of any neighbouring rights (copyright) they may have in a recorded work. The companies which employ them must pay EI premiums and CPP contributions.

Some of the unions involved in these situations have chosen to seek bargaining rights for employed artists through the labour boards. For example, Canadian Actors Equity Association has been certified by the Alberta Labour Relations Board to represent dancers at the Alberta Ballet. CAEA took this route because it was experiencing some difficulty obtaining a voluntary agreement with the Ballet. The dancers and musicians are considered to be employees for all legal purposes, a status that would extend to the province's workers compensation program, employment standards and common law provisions respecting termination of employment.

3.3.2 LABOUR RELATIONS BOARDS AND ARTISTS

Even before groups of artists were classified as employees, in several jurisdictions, labour relations boards have extended the scope of bargaining units to incorporate more "dependent contractors" and this has affected the cultural sector significantly. A "dependent contractor" is someone who, while they may work on a contractual basis and be considered to be self-employed for income tax purposes, is nonetheless "dependent" on one employer for their income and is considered, for labour relations purposes, to be equivalent to an employee.

The concept of the dependent contractor emerged from a series of decisions by labour boards concerning a person contracted outside the union scope, with theoretical rights to work for a variety of employers and to control the way they completed their assignments. The unions consider such situations to be contracting out of bargaining unit work through which employers were undercutting the collectively bargained rates and conditions. The boards were faced with

the choice that they could either find such a person to be covered by the union certificate and thus to be “protected” by the agreement, or to find such a person outside the union scope and thus to be on their own in negotiating terms of employment with the employer. As a consequence, boards strained to find reasons for them to be covered by the certificates and the concept of the “dependent contractor” emerged.

These developments have raised significant challenges in the sector.

For example, in a process that began in the early 1980s, decisions by the Canada Labour Relations Board found that a number of artists, including hosts, writer/ broadcasters and others contracted by the CBC were “dependent contractors,” included them into bargaining units with employees and removed them from the artists associations that had previously represented them. Similarly, the British Columbia Labour Relations Board has found that certain categories of performers, as well as many categories of artists who work in technical categories in film and television, are “dependent contractors” who can be organized under the labour laws of the province.

This development did not automatically affect the income tax status of those involved. Indeed some of the CBC “dependent contractors” continue to be considered by the Canada Revenue Agency as persons carrying on a business. On the other hand, the CRA does look at this new bargaining status as an element in its determinations.

The change in status coincided with a significant shift in film and television production. Previously, the vast bulk of work in Canada had been produced by federally-regulated broadcasters. But, with the rise of independent producers, broadcasters moved to limit their in-house production to news and current affairs. As a consequence, the production industry is now primarily within provincial rather than federal jurisdiction.

All of this combines together to create a very complicated situation with respect to the collective bargaining rights of artists’ associations.

To continue with the previous example, in 1995 ACTRA lost jurisdiction over a considerable number of members at the CBC and this resulted in the collapse of one of the three guilds that had made up the Alliance. In the late 1980s, some members of ACTRA in British Columbia established a rival trade union and began a five-year competition for jurisdiction over media performers in British Columbia. The Union of British Columbia Performers joined the Teamsters and that union began to challenge ACTRA’s jurisdiction in other provinces. While an uneasy peace was restored when the UBCP decided to become the BC branch of ACTRA in 1996, efforts to reconcile the collective agreement negotiated in British Columbia with the nationally-negotiated agreement have still not succeeded.

Some of these jurisdictional battles continue as the Teamsters pursued a claim to cover certain categories in the agreements of the Directors Guild of Canada, arguing that the persons working in these categories are “dependent contractors” and that DGC is not a “trade union” within the meaning of the labour codes.

It is important to note that the Saskatchewan Labour Relations Board has not made any rulings based on the concept of “dependent contractor.” To date, its decisions have been based on determining whether or not the worker fits into the definition of employee within the meaning of the *Act*.

To understand the issues that have an impact on the collective bargaining situation of professional artists in Canada, it is important to look briefly at how artists and those who engage their services do their work. To date, there is no comprehensive study about the patterns of work in the various artistic professions, however much of the available anecdotal evidence is relevant to the current study.

²⁷ In *Walden vs. Danger Bay*, the determination that two actors were employees was overturned by the British Columbia Court of Appeal.

²⁸ This case involved the Magnus Theatre Company in Thunder Bay. The CRA decision was appealed. On 15 June 2005, Magnus Theatre announced that it had been informed by the CRA that “actors and other cultural professionals, in providing their services to the theatre, are independent contractors rather than employees of the theatre.”

²⁹ The case of the Royal Winnipeg Ballet in which dancers were found to be employees remains under appeal. The National Ballet of Canada is the only major dance company in which dancers are considered to be self employed.

4.1 CHARACTERISTICS OF ARTISTS

In cultural occupations, an employer/employee relationship generally does not exist. The culture worker is most typically self-employed and works either on their own or for a series of producers. The visual artist and the writer may well create their works before they have any contract with a gallery or publisher. The editor may be contracted to work on a specific novel. The actor may appear for a few weeks in a stage production, the next month on a television program and two months later on a radio commercial. Each of the engagers will be different and the actor will work with different groups of performers on each.

Even for those culture workers with a more steady relationship with one employer, the engagement is typically governed by a fixed term contract, like the lighting technician in a theatre, or the dancer in the ballet. Both parties need the flexibility because of the creative nature of the work and the instability of the employers, who rely on a combination of government funding, ticket revenues and sponsorships to mount their seasons. Fees and working arrangements can vary considerably between different artists working on the same production, in recognition of the different contribution each makes to the works.

It is useful to make a distinction between creative artists (such as writers, visual artists, choreographers, composers and designers) and interpretive artists (such as actors, dancers, singers and musicians) since the artists in these categories generally have different working relationships and are engaged in different ways for purposes of earning artistic income.

Creative artists are more likely to work on their own to create their art and will often do so without a pre-existing contract. The works will be licensed (or sold) after they have been created, although some may be created under a commission. Ownership of copyright is critical to these artists, since it provides moral rights which can enable them to protect the integrity of the work and economic rights that can provide future income and royalty streams.

Interpretive artists are more likely to work in an ensemble and to be engaged by someone else for professional purposes. They are asked to bring to life and give character to an artistic work created by others. For interpretive artists, the fees for the original work tend to be more important, indeed for artists in a live performance situation, this is the only source of income from the particular work. Where the work is recorded, downstream income flows as much from collectively bargained residual fees as it does from copyright ownership. The rights of interpretive artists in Canada's *Copyright Act* are limited.

The work of artists has certain defining characteristics and some of these are relevant to the collective bargaining issues.

Experience and skills are no guarantee of marketplace success, the creative element of the work is difficult to define and perhaps impossible to teach.

Because of the creative nature of the work, artists often have an ongoing economic interest in their completed work, either through copyright law or contracts and they can receive income from it for a considerable period of time. In some cases, the future income can be far more significant than income derived from its original creation.

There are no professional standards for artists that are recognized generally by governmental authorities. Anyone can call themselves a "professional artist."

4.2 CHARACTERISTICS OF ENGAGERS/PROMOTERS/PRODUCERS

The work of engagers, promoters and producers in the cultural sector is also affected by a number of important factors:

Canada's cultural market is very small and is dominated by imported goods and services. To respond to this reality, governments at all levels have implemented a range of programs, measures and legislation to encourage the creation, production, distribution, exhibition and preservation of Canadian works in all media.

Virtually all arts and cultural activities in Canada are supported by some combination of these government initiatives. Public sector institutions, including departments of government, galleries, agencies and public service broadcasters are important engagers of artists or purchasers of artistic works. Most private sector engagers of artists, whether they operate on a for-profit or not-for-profit basis, receive direct or indirect public financial support or investment.

Despite these government programs and support measures, the sector is faced with continuing uncertainties. Sustainability is a significant challenge in the performing arts and in the film and television, new media, publishing, and the music industries.

In a number of sub-sectors, the artist is at the centre of the production activity and can become the engager of others, since there is no other way to realize the artistic vision.

In visual arts and crafts, works can be sold directly to the public, or through not-for-profit or commercial galleries.

Visual artists, composers, writers and other creative artists may license their works, rather than sell them.

In new media, Canadian firms involved in the production of creative entertainment or educational content are generally small and insecure and are only beginning to engage professional artists in the works they create.

In the performing arts, the organizations that engage professional artists are mostly established on a not-for-profit basis and most rely heavily on volunteers and government grants to survive. In 2003, government grants accounted for 30.6 percent of total revenues and private sector grants for an additional 21.3 percent. Volunteers accounted for 42 percent of the "total staff."³¹

In the book and music industries, most firms creating Canadian works are established as for-profit enterprises, but they are generally very small and financially insecure. There have been significant recent upheavals in both industries, including the disappearance of the largest Canadian-owned firms producing in the English language.

In the film and television industry, some of the players are large and stable companies that operate on a for-profit basis, such as broadcasters. But increasingly, productions are undertaken by small independent producers who establish a separate legal entity to produce each movie, program or series. This adds to the uncertainty in the sector and is one of the factors in the recent decline in the volume of English-language Canadian drama productions, which has reached crisis proportions according to a report from the Canadian Council of Audiovisual Unions.

Technological change, globalization and convergence continue to create major challenges and some opportunities for Canadian artists and those who engage them.

³⁰ This Section relies heavily on an unpublished Report prepared for the federal Department of Canadian Heritage. *Report on Improving the Socio-Economic Situation of Canadian Artists*, 31 January 2005, was written by Garry Neil.

³¹ Lavallée-Farah. Facing the challenge: Performing arts in the 1990's. Focus on Culture, Vol. 14 No. 1. Statistics Canada. Ottawa. October 2002. and The Daily. <http://www.statcan.ca/Daily/English/041215/d041215b.htm>. Statistics Canada. 15 December 2004.

5.0 Issues of Importance to Saskatchewan Artists

In evaluating the various collective bargaining models, it is essential to consider issues that are important to Saskatchewan artists. The following questions can be posed about the various models for collective bargaining that might be introduced in the province.

To what extent will the bargaining rights make a difference?

The purpose of providing rights to artists' associations is to improve the economic situation of artists. Presumably, if they are able to negotiate with engagers collectively, they will be able to negotiate higher rates, better conditions and more security. Another observation is that voluntary bargaining is working reasonably well for at least some segments of the community, particularly in performing arts and the recorded media.

Other issues that arise under this question include the process by which the recognition of bargaining representatives will be determined for artists and engagers, the mechanism that will be used to bring parties to the bargaining table and the process through which disputes arising during the life of the agreement will be resolved.

What are the implications of bargaining rights for the self-employment status of professional artists?

For most professional artists, maintaining the self-employed status is critical. Since artists can incur significant expenses in preparing to and earning their artistic income, it is critical for most that they continue to be eligible to deduct these business expenses from their income. Expenses which can be claimed by employees are limited. If they lose the ability to deduct business expenses, they will lose economic ground that would be difficult to recapture through a collective agreement.

Also, for certain categories of artists, including writers, composers and visual artists, maintaining copyright ownership is essential to ensuring future income flows from the exploitation of the work and to maintaining its integrity (moral rights). However, under Canadian law, the first owner of copyright created by an employee is the employer and not the artist, unless there is an agreement to the contrary; the reverse situation is the case for a work created by a self-employed artist. These artists cannot afford to be considered to be in an employment situation for their artistic work.

In the coming years, it is anticipated that copyright income will become an increasingly important revenue stream for actors and musicians and engender similar concerns.

What is the impact of bargaining rights on the integrity of nationally negotiated voluntary agreements?

For many years, artists' associations in the recorded media and performing arts have maintained very successful collective agreements that establish national standards and apply in every province and territory. ACTRA, Equity, the Writers Guild of Canada, DGC and others are justifiably proud of their agreements.

Artists and cultural industries are generally very mobile. For example, there is considerable competition within Canada and globally for film and television production, and actors may work on the stage anywhere in Canada or internationally.

When the British Columbia Labour Relations Board became involved in the film and television industry, the provisions of the B.C. statute brought a requirement for the agreements to be negotiated and ratified provincially and this led to the fracturing of the national agreements. While provincial laws vary, it is likely the case that ratification on a provincial basis would be necessary in most provinces. Given the mobility of artists, this can be difficult to organize. More importantly, many artists and associations fear that fracturing into provincial jurisdictions, combined with the mobility of the industries, can create pressure to reduce fees and working conditions and create a "race to the bottom."

A related element in this discussion is the fact that many Canadian provinces provide incentives for cultural producers. In the film and television industry and potentially in other sectors, there is competitive pressure between provinces, with those offering the higher incentives attracting greater volumes of production activity.

Is it possible to find a bargaining model that will achieve broad acceptance in the artistic community?

If Saskatchewan is to provide bargaining rights to artists in the province, there must be broad support in the community for the particular approach.

There are varying views between and within the organizations that have already succeeded in negotiating voluntary agreements and some of these are in conflict:

- some would like a legal underpinning to their activities enabling them to extend their jurisdiction to non-union engagers;
- some are concerned about the potential threat to the national agreements;

some are concerned that legislation risks fracturing their membership between categories which would be considered artists and those outside such a definition;
some believe legislation should only be used to confirm existing collective bargaining relationships.

There are also varying views between and within the organizations representing visual artists, craftspersons, book and magazine writers and other categories which have been unable to negotiate collective agreements:

some prefer a statutory sectoral bargaining right;
some prefer a method through which voluntary bargaining can be encouraged;
some believe any collective bargaining approach is irrelevant or counterproductive for professional artists.

How will the model affect engagers of artists, who often find themselves in a precarious economic situation?

Most artists are also concerned about the health of their engagers and do not want to impose conditions that would make it impossible for them to carry on their work. To the extent that the producers/engagers believe a collective bargaining regime is likely to increase their costs, they will be more likely to oppose it.

Many engagers of artists receive direct or indirect public financial support from one or more levels of government. Even with this support, some are in an economically unstable situation. Given that the purpose of providing bargaining rights is to improve the economic circumstances of professional artists, this would appear to create a public policy challenge.

If bargaining rights are extended to Saskatchewan artists, the engagers and artists' associations may need to collaborate to find the additional resources required to improve the economic situation of professional artists.

How will the bargaining model influence the generally collegial relationships that exist in the sector?

Bargaining in the cultural sector has generally proceeded on a more collegial basis than traditional labour relations, no doubt because of the symbiotic relationship between the artist and their engagers in these sectors. Each needs the other to succeed and both understand this reality.

While it is sometimes difficult for the worker on the assembly line to understand why he/she should be concerned about the performance of the company, most artists have a positive relationship with the engager because each side understands that the other must do well for the work to have a chance of succeeding. Creation can often be a collaborative process involving all of the partners in the enterprise, regardless of whether one of them is in the position of contracting the others.

Remember also that many artists have an ongoing economic interest in the work, arising either from copyright law or contractual provisions, thus their relationship with the engager can continue well after they have ceased providing services directly.

There are related elements to consider. For example, some of the existing collective agreements in the cultural sector cover categories which are likely to be considered as management in the traditional workplace and thus beyond the scope of bargaining rights. The Directors Guild of Canada includes categories which may have authority to hire and fire and to direct others engaged on the same production. These management functions may be found to exist with respect to other categories within the same bargaining unit.

What is the cost of the bargaining model?

It is important for the government to consider the costs of any system it might implement. This also concerns artists since resources provided to establish and maintain a bargaining system may well decrease the resources available to support the creation, production and distribution of the artistic works themselves.

To what extent will the model improve support for individual contracts?

There are several elements to this issue. The first set of issues relates to artists who are working in a field in which an association is seeking to bargain an agreement or in which the individual contract is signed under the terms of a collectively bargained agreement. The second set of issues relates to a situation in which the artist works in a field in which there are no collective agreements.

The enforcement of an individual contract signed under a collective agreement is the responsibility of the association. As explained earlier, if the union or guild does not have a legal status, it may act only in the name and with the consent of the individual and this can make enforcement of the agreement more challenging. The other issues concern the use of pressure tactics by the association to obtain a first or renewal collective agreement and the related issue of the protection of individual artists who are performing official union functions.

5.0 Issues of Importance to Saskatchewan Artists

The primary method for applying economic pressure by artists' associations has been the Constitutional requirement that members agree they will work only for an engager which has signed an agreement with the association. The unions and guilds that maintain collective agreements regularly publish a list of companies for which members may not work. In the past, concerted action to refuse to accept contracts has been examined as a possible violation of competition laws since the engager will not have access to a qualified and skilled workforce unless they agree to meet the minimum standards. However, there is no definitive Canadian jurisprudence on this question and there has been no recent challenge to any of the union "unfair engager" lists. The second situation concerns members who are contracted on a production when a collective agreement expires, or when the union or guild has a dispute with the engager. As discussed above, since the member and union officials may be individually liable under contract law for actions in this respect, this issue has not been tested and the union and guilds have found other ways to deal with the challenge.

Anecdotally, some officials with artists' associations believe that their work opportunities have been curtailed as a consequence of their involvement with the association. Typically this does not involve an action by an engager during a contract, but an alleged refusal of engagers to issue subsequent contracts.

The second set of issues relates to artists who regularly enter contracts that are not governed by a collectively bargained agreement. If they are involved in a dispute about the terms, they need access to an appropriate dispute settlement process. Even many of the artists who do not support a collective bargaining model, would like access to an improved system to assist them to resolve disagreements.

What might be the unintended impact of bargaining rights on individual artists?

It is essential that any bargaining system introduced not have an adverse affect on individual artists.

6.1 STATUS OF THE ARTIST ACT AND THE CANADIAN ARTISTS AND PRODUCERS PROFESSIONAL RELATIONS TRIBUNAL

The federal *Status of the Artist Act* was passed in 1993. Part I outlines a number of principles concerning the important contribution artists make to society and the need for society to support artists. Part II, the operative provisions, creates a framework to regulate the relationship between associations, guilds and unions representing self-employed professional artists and producers operating in federal jurisdiction and establishes the Canadian Artists and Producers Professional Relations Tribunal (Tribunal) to oversee the system.

The Tribunal was created in 1993 and began functioning when the Act came into force in May 1995.

6.1.1 THE CANADIAN ARTISTS AND PRODUCERS PROFESSIONAL RELATIONS TRIBUNAL

The Tribunal has five members, including its Chair and Vice-Chair. The functions of the Tribunal are the following: defining the sectors of cultural activity that are suitable for bargaining; certifying the artists associations to represent these sectors; hearing and deciding complaints of unfair practices filed by artists, associations or producers.

6.1.2 ARTISTS COVERED BY THE ACT

The application of Part II is limited to “independent contractors determined to be professionals.” The Act specifies that these professionals must be authors of works protected by the *Copyright Act*, directors of audiovisual works, performers, choreographers and any others who “contribute to the creation of any production in the performing arts, music, dance and variety entertainment, film, radio and television, video, sound recording, dubbing, or the recording of commercials, arts and crafts, or visual arts, and fall within a professional category prescribed by the regulations.”

The Professional Categories Regulations that came into affect in 1999 provide for additional categories eligible for coverage under the Act. Practitioners who contribute directly to the creative aspects of a production by carrying out one or more of the following activities are included:

- Category 1 – camera work, lighting and sound design
- Category 2 – costumes, coiffure and make-up design
- Category 3 – set design
- Category 4 – arranging and orchestrating
- Category 5 – research for audio-visual productions, editing and continuity.

6.1.3 REGULATING PROFESSIONAL RELATIONS

Certification by the Tribunal gives an artists’ association the exclusive right to represent self-employed artists in a specific sector with respect to collective bargaining and their relations with producers. To be eligible to apply for certification, an artists’ association must adopt by-laws that establish membership requirements for artists; give its regular members the right to take part and vote in the meetings of the association and to participate in a ratification vote on any scale agreement that affects them; and provide its members with the right of access to a copy of the association’s financial statement to the end of the previous fiscal year.

In considering the merits of an application for certification, the Tribunal must determine the scope of the sector that is suitable for collective bargaining and then it must decide whether the applicant is the organization “most representative” of artists in the sector.

The Tribunal takes into account the following factors when determining the suitability of a sector for bargaining:

- whether the independent artists in the proposed sector have common interests;
- whether there is a history of professional relations among those artists and the producers to whom they provide services;
- whether any scale agreements regarding terms of engagement already exist;
- any relevant geographic and linguistic criteria.

Once it has identified the sector that is suitable for collective bargaining, the Tribunal has broader scope than the labour board in making the determination of whether the applicant is “most representative” of the artists working in that sector. It considers the size of the sector, the size of the applicant’s membership, and whether there are any competing applicants for certification. To be granted certification, the artists’ association need not represent a majority of artists working in that sector. The Tribunal may also conduct a representation vote but to date has only done so on one occasion. Under the legislation, artists and artists’ organizations affected by the application have the right to be heard by the Tribunal on the issue of “representativeness,” but producers do not. There are rules under which the Tribunal may revoke a certificate.

The legislation also entitles producers to form associations for the purpose of bargaining and entering into scale agreements with artists' associations and outlines a relatively informal process for this purpose. In order to obtain the exclusive right to bargain on behalf of its members, an association of producers must simply file a copy of its membership list with the Tribunal, keep it up to date, and send a copy of the list to every certified artists' association from whom it has received a notice to bargain or with whom it has entered into a scale agreement.

Once certified, an artists' association is entitled to issue a notice requiring federal producers who engage artists in its sector to bargain with it. Producers are also entitled to issue a notice requiring an artists' association certified in respect of a sector to begin bargaining. The objective of these negotiations is to reach an agreement that provides for minimum terms and conditions, thus artists are free to negotiate fees and conditions more favourable to them.

The legislation requires parties to bargain in good faith to reach a settlement. However, there is no requirement for them to reach a first agreement, or any provision for arbitration if the parties fail to come to an agreement within a specified time frame.

Section 35 of the legislation imposes a duty of fair representation on certified artists' associations.

The legislation requires every agreement to contain a provision for final settlement, without pressure tactics, of all differences between the parties or among artists bound by the agreement, arising from its interpretation, application, administration, or alleged contravention. In the event that an agreement does not contain the required provision for final settlement, the difference is to be submitted to an arbitrator selected by the parties or appointed by the Minister for final settlement.

Pressure tactics are defined by the legislation to include:

a cessation of work or a refusal to work or to continue to work by artists or artists' associations...and a slowdown of work or other concerted activity....done to compel a producer to agree to terms or conditions of engagement; or the closing of a place of work, a suspension of production or a refusal to continue the engagement of one or more artists by a producer, done to compel artists....to agree to terms or conditions of engagement.

Pressure tactics may be used either beginning thirty days after a binding scale agreement expires and ending on the day that a new scale agreement is entered into; or beginning six months after the date of certification of an artists' association and ending on the day that a scale agreement is entered into, where there is no scale agreement binding the producer and the association in respect of that sector.

6.1.4 ANALYSIS

After close to 10 years operation, CAPPRT has largely accomplished its primary function of certifying associations of artists for purposes of collective bargaining and has certified the following associations as exclusive bargaining agents in defined sectors, listed in the order in which the certificate was issued:

Société des auteurs de radio, télévision et cinéma
Union des écrivaines et écrivains québécois
Canadian Actors' Equity Association
Association québécoise des auteurs dramatiques
Canadian Association of Photographers and Illustrators in Communications
Société professionnelle des auteurs et des compositeurs du Québec
Periodical Writers Association of Canada
Writers Guild of Canada
ACTRA Performers Guild (ACTRA)
Union des Artistes
Playwrights Guild of Canada
American Federation of Musicians of the United States and Canada
La Guilde des musiciens du Québec
Le Regroupement des artistes en arts visuels du Québec
Conseil des métiers d'art du Québec
Association des réalisateurs et réalisatrices du Québec
The Writers' Union of Canada
Canadian Artists' Representation / Le Front des artistes canadiens

Editors' Association of Canada / Association canadienne des réviseurs

Associated Designers of Canada

Association des professionnels des arts de la scène du Québec (APASQ-CSN)

Association des professionnelles et des professionnels de la vidéo du Québec and Syndicat des techniciens du cinéma et de la vidéo du Québec

Canadian Guild of Film Composers

Directors Guild of Canada

The Act has not significantly changed collective bargaining in the cultural sector. While the work of the established artists' associations has been given a secure legal footing, there has been only minor expansion of jurisdictions to areas that had previously operated outside a union agreement.

The certification process has not brought collective agreements in sectors in which such agreements did not exist prior to the entry into force of the Act. The Guild of Canadian Film Composers recently filed notice of its intention to bargain with the CBC. CARFAC is currently negotiating with the National Gallery of Canada on behalf of visual artists. CARFAC has also concluded a new schedule of conditions for galleries, but this is a voluntary code of appropriate fees and conditions and not a collective bargaining agreement. The code has no more force of law than any code promulgated before the enactment of the federal Act.

There are several reasons for the slow pace of extending bargaining into other cultural sectors. The bargaining process is relatively new to some of the associations, there has been no history of collective bargaining and the organizations may have difficulty in acquiring the capacity to exploit the benefits of being certified. This is the case in the visual arts field and crafts. It is also the case in those sectors that artists tend to work independently and alone and may often complete their work before they sign any contract. The final reason is the narrow scope of federal jurisdiction. Outside of the CBC, National Film Board, National Arts Centre, National Gallery and a few other agencies and selected government departments, few artists are engaged by an employer working under federal jurisdiction.

In 2003, the federal government undertook a comprehensive review of the *Status of the Artist Act*. After research and consultation with the community, the outside consultant put forward the following recommendations with respect to Part II. Presumably, the community and the outside experts felt that these areas represented weaknesses with the existing provisions:

provide for arbitrated settlement of all issues where the parties are unable to conclude a first agreement;

link the right to apply pressure tactics in first agreement situations to the date of notice to bargain, rather than to the date of certification;

consider mechanisms to increase the efficiency of the collective bargaining process. To this end, consideration should be given to establishing one bargaining authority for all federal government departments;

review the categories of cultural workers eligible for coverage under the *Status of the Artist Act*.³²

6.1.5 PROTECTION FOR JOB ACTION

As the UNESCO General Conference was meeting in Belgrade, there were significant threats arising for key unions and guilds that represent Canadian artists. The federal Competition Bureau was looking at the agreements negotiated by ACTRA, AFM and UDA in the audiovisual industry and considering whether these were "combinations in restraint of trade." Since the bargaining did not proceed under labour laws, the agreements did not benefit from the exemption provided to traditional collective agreements. All three groups had documents seized as part of these investigations and at one stage lawyers for the advertising industry recommended that their clients not execute the production agreement negotiated with ACTRA.

One of the principal affects of the implementation of the *Status of the Artist Act* has been that the Competition Bureau appears to have accepted that the certified associations have an equivalent status to trade unions for purposes of the *Competition Act*. All of the investigations underway in the early 1990s were halted and the ACTRA Commercial Agreement was signed by the industry. Each of these investigations involved activities taking place within provincial jurisdiction, rather than federal jurisdiction. Thus, it may be appropriate to investigate the implications of the federal statute on potential future actions of the competition authorities, but such a study is beyond the scope of this Report.

³² Prairie Research Associates. Evaluation of the Provisions and Operations of the Status of the Artist Act. Ottawa. 2003. The report and analysis can be found at www.pch.gc.ca.

6.1.6 CAPRT AND ISSUES OF IMPORTANCE TO SASKATCHEWAN ARTISTS

To what extent will the bargaining rights make a difference?

The primary effect of the federal legislation has been to confirm the existing voluntary agreements, with some ability for the more successful unions to secure their jurisdiction and bring a few additional engagers into the fold. There has been no expansion of bargaining into fields in which collective agreements did not exist prior to the legislation. The negotiations between CARFAC and the National Gallery are the first concrete effort to move into such a field.

What are the implications of bargaining rights for the self-employment status of professional artists?

The legislation is specifically limited to "independent contractors" and thus it could not contribute to eroding the self-employed income tax status of the artists represented by the certified associations. Similarly, it would be difficult for the Canada Revenue Agency to contend that a provision of a collective agreement, concluded by one of the certified associations covering work in federal jurisdiction, is evidence of employee status.

However, there is a concern that this provision may be narrow. If there is a future reclassification of artists working in federal jurisdiction as "employees" by CRA, the legislation would exclude such artists from the Act and this could splinter bargaining units or open up those units to potential raids from other unions.

What is the impact of bargaining rights on the integrity of nationally negotiated voluntary agreements?

Since this is a federal Act, nationally-negotiated voluntary agreements that fall within the parameters of the Act are fully protected. An example would be agreements entered into by SARTEC, ACTRA, UDA and AFM with the Canadian Broadcasting Corporation and Radio Canada. While these associations and others certified by the Tribunal maintain other national agreements, these have been negotiated with engagers operating within provincial jurisdiction and the federal Act would have no impact on these agreements.

Is it possible to find a bargaining model that will achieve broad acceptance in the artistic community?

There was a broad consensus supporting the legislation when it was first proposed. However, some organizations in the sector may have been primarily interested in the provisions of Part I of the Act. On the other hand, while there were many comments about Part II, no artists' association opposed the concept of bargaining rights contained in the draft.

How will the model affect engagers of artists, who often find themselves in a precarious economic situation?

Since the application of the Act is limited to federal jurisdiction and the primary affect of the legislation has been to confirm existing collective bargaining agreements, rather than to encourage new ones, the Act has been generally neutral on private sector engagers. Some government departments have been reluctant to enter an agreement with a certified association, however, financial "hardship" is generally not an issue.

How will the bargaining model influence the generally collegial relationships that exist in the sector?

The Act reflects the key needs of the sector. Historic relationships are respected and the Act protects the rights of individual artists to negotiate fees and other provisions that are in excess of the minimum standards of the association agreement. Bargaining in the sector has proceeded more or less the same as before the Act was introduced. The independent nature of the Tribunal helps to ensure that the interests and circumstances of the community are taken into account in all decisions and actions.

What is the cost of the bargaining model?

The Tribunal has five full-time members and ten full-time equivalent staff positions and its budget for the 2005/2006 fiscal year is roughly \$2,200,000.

There has been some consideration about merging the operations of the Tribunal and the Public Service Staff Relations Board with the Canada Labour Relations Board. A discussion paper in 1998 suggested this be done by having one chairperson and separate divisions to assume responsibility for each of the three Acts (*Status of the Artist Act*, *Canada Labour Relations Act* and *Public Service Staff Relations Act*). Because the Tribunal is established as a federal public sector institution, there are reporting and other statutory requirements that it must meet and this requires a certain level of staff support. The issue of housing the Tribunal continues to be under consideration as a result of the 2003 review of the Act.

When the Act was first introduced, the community advocated for an independent tribunal to be created, fearing that administration by a labour board would negatively affect the collegial bargaining relationships in the sector.

To what extent will the model improve support for individual contracts?

The Act has eliminated the threat from competition laws with respect to activities in federal jurisdiction and may have done the same with respect to identical activities in provincial jurisdiction. The Act has also confirmed the status of recognized associations for purposes of resolving disputes under the agreements.

The federal system has no effect on individual engagement agreements. Furthermore, individual arrangements entered into with federal engagers are matters of contract law and within provincial jurisdiction.

What might be the unintended impact of bargaining rights on individual artists?

The system does not appear to have had any unintended impact on individual artists, and the Prairie Research Associates' study did not reveal any concerns in this respect. Membership in artists' associations regulated by the Act must be voluntary. While they may have certain collectively bargained obligations to give preference of engagement to union members, in the end engagers in the sector may hire whomever they want, whether a union member or not. The non-member artist would be contracted under the terms of the collective bargaining agreement and the union would be obligated to provide services to that artist for the duration of the contract. In return, the non-member artist is generally required to make a payment to the union in lieu of membership dues. This situation is identical to what prevailed before the *Status of the Artist Act* came into effect.

Québec's Acts and the *Commission de reconnaissance des associations d'artistes et des associations de producteurs* (Commission)

There are two Acts in Québec that regulate the relationship between professional artists and their engagers.

The *Act Respecting the Professional Status and Conditions of Engagement of Performing, Recording and Film Artists*, which covers most interpretive artists, was adopted first.

The *Act Respecting the Professional Status of Artists in the Visual Arts and Crafts and Literature and their Contracts with Promoters* was adopted one year after the initial Act. It covers most creative artists.

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 substantial difference between them reflects the history of collective bargaining in the sector.

The key difference 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 encourages bargaining but stops short of requiring it to take place. Instead, this Act requires that individual contracts be entered into between the artists covered by the Act and those who engage them, and regulates the content of such contracts.

The *Commission de reconnaissance des associations d'artistes et des associations de producteurs* (Commission) was established for the purpose of administering the Acts. To date, they have authorized 15 associations to bargain collectively with producers, in all cultural sectors. To date, no association of producers has been certified to bargain collectively with artists' associations, although there are three applications in process. The associations certified to represent artists are the following:

Alliance québécois des techniciens de l'image et du son (AQTIS)
Canadian Actors Equity Association (CAEA)
Société des auteurs de radio, télévision et cinéma (SARTEC)
Société Professionnelle des Auteurs et Compositeurs du Québec (SPACQ)
Conseil des Métiers d'art du Québec (CMAQ)
Union des Écrivaines et Écrivains Québécois (UNEQ)
Associations Québécois des Auteurs Dramatique (AQAD)
Conseil du Québec de la Guilde Canadienne des Réalisateurs (CQGCR)
Guilde des Musiciens du Québec (GMQ)
Regroupement des artistes en arts visuels du Québec (RAAV)
Union des artistes (UDA)

Associations des professionnels des arts de la scène du Québec (APASQ-CSN)
 ACTRA Performers Guild (ACTRA)
 Writers Guild of Canada (WGC)
 Association des réalisateurs et réalisatrices du Québec (ARRQ)

6.2.1 ARTISTS COVERED BY THE ACT

Unlike the federal Act which seeks to define the artists covered under it, the Québec Acts identify the field of work. It applies to the following fields of artistic endeavour:

The stage; including the theatre, the opera, music, dance and variety entertainment, multimedia; the making of films; the recording of discs and other modes of sound recording; dubbing; and the recording of commercial advertisements.

Visual arts (painting, sculpture, engraving, drawing, illustration, photography, textile arts, installation work, performance, art video or any other forms of expression of the same nature); arts and crafts (working of wood, leather, textiles, metals, silicates or any other material); literature (creation and translation of original literary works, such as novels, short stories, dramatic works, poetry, essays or any other written works of the same nature).

The Acts then are limited, in the first case to “a creator or performer” who works in the fields and, in the other case, “every creator” in the covered fields.

ACT RESPECTING PERFORMING, RECORDING AND FILM ARTISTS

Despite its title, the Act covers all artists working in the fields of theatre, opera, dance, television and films, multimedia, the music industry and commercials. In addition to actors and other performers, this covers the scriptwriters, music composers, editors, cinematographers, directors, sound and lighting technicians, choreographers and other creative artists involved in these productions.

In its introductory clauses it specifies that an artist who provides their services through a corporation continues to be covered by the Act and that an artists who “regularly binds himself to one or several producers by way of engagement contracts ... is deemed to practice an art on his own account.” The unions in the province interpret this clause as providing certainty for the self-employed status of artists for purposes of the income tax provisions and other statutes.

As with the federal Act, the Québec law sets out conditions necessary for an association to be recognized. It must be organized for purposes of collective bargaining, it must be free from producer influence and its constitution must establish certain basic member rights.

Once an association makes an application for recognition, the *Commission* must be satisfied that the sector is appropriate for bargaining purposes and that the association represents the majority of artists in that sector. Unlike the federal law, this provision is similar to labour code requirements and the *Commission* may require a vote in order to ensure majority support. There are rules about how an association may lose the recognition. In granting recognition, the *Commission* has supported historic divisions in the sector and has acknowledged sectors based on language of production.

After the notice to bargain has been delivered, the parties are required to negotiate in good faith to reach an agreement. If they are unsuccessful in reaching a first agreement, either party may apply to the *Commission* to seek binding arbitration on the outstanding issues. For subsequent negotiations, the parties must apply jointly for binding arbitration if they are unable to reach a settlement. There are rules about when a party may use “pressure tactics” to get the other to come to an agreement. A recent change to the Act makes any bargaining agreement binding on a successor of the producer.

The Act provides that the agreement concluded by a certified artists’ association is binding on all artists in the sector. If the agreement has been concluded by a certified producers’ association, it is binding on all producers in that sector. It also provides certain minimum standards for the agreements, for example, they must contain a grievance arbitration procedure to enable disputes about interpretation to be resolved during the life of the agreement.

ACT RESPECTING ARTISTS IN VISUAL ARTS, CRAFTS AND LITERATURE

Artists’ associations may be recognized as the representative of artists in the sector. The rules regarding qualification to apply for recognition and circumstances under which the recognition can be withdrawn are identical to the other Act.

However, this Act had specified there can be only one association in each of the three fields covered by the Act: visual arts (RAAV); arts and crafts (CMAQ); literature (UNEQ).

The recognition is to be given to the association that is “the most representative of all the professional artists working in a particular field,” relying on factors such as the largest number of members, distributed throughout the artistic activities within that sector and distributed throughout the province. The most recent amendments provide authority for the *Commission* to recognize a second association in the field of literature to cover the publishing of dramatic works written for the stage. AQAD has applied to be certified as the artists’ association for this activity.

The rights of the recognized associations include the right to “draw up model contracts stipulating the minimum conditions of circulation of the works of professional artists and propose the use of such contracts to promoters.”

A key provision of the Act obligates engagers to enter into individual contracts when they engage an artist who is covered by the recognized association. These contracts must adhere to certain minimum standards, including that they:

- be executed in writing;
- specify the nature of the work;
- specify the fees to be paid and the nature of the license being provided to the engager; and
- contain minimum standards for contracts that provide exclusivity to the engager for future work from the artist.

Either party may seek arbitration of a dispute that arises under the terms of the contract. There are obligations on the engager to keep appropriate records regarding the sales of the artistic work and there is a right for the artist to audit the books. Finally, there is also a clause specifying that works on the premises of the “promoter” are there “temporarily” unless the promoter is also the owner of the work.

While the associations have the right to negotiate a collective agreement, there is no requirement on the engagers to negotiate or any provision for arbitration of a first agreement.

6.2.2 ANALYSIS

The Québec Acts have had a greater impact than the federal law. They have provided to the established unions a legal foundation for the voluntary agreements they had already been able to negotiate with producers in the province. While they have not resulted in significant new bargaining agreements in the sector, they have extended the use of individual contracts in all parts of the visual arts, crafts and literature fields.

Because there is a far larger volume of work that takes place under provincial jurisdiction, they have allowed the established associations to enforce their jurisdiction over productions that had previously taken place outside of the agreement.

A common criticism in the community is that the *Commission* is too bureaucratic and legalistic in its approach. For example, it requires associations to be represented by lawyers for most of their dealings which can be prohibitive for the smaller associations in the sector. In contrast, the federal Tribunal permits non-legal association staff to put forward the case.

There were also concerns with the length of time the *Commission* took to make some of its decisions and recent changes to the Act set a time limit. The early decisions were complicated in part by the need to draw the line between who is an artist and who is not an artist since this was not as explicit as it is in the federal Act. In the final analysis, the provincial and federal models are similar in this respect, but the *Commission* needed to conclude its analysis without the benefit of statutory guidance.

When the Québec film and television production association (APFTQ), applied for recognition as a producers’ association under the Act and therefore legally responsible to bargain on behalf of all producers working in the province, the U.S. film and television producers and distributors threatened to boycott Québec. The immediate challenge was resolved at the bargaining table, with a special status being given to the U.S. producers in the most recent bargaining with provincially-based unions and guilds. A hearing on the original application has been scheduled for fall 2005.

The Writers Guild of Canada is currently experiencing a challenge arising from the insistence of the APFTQ to negotiate a separate agreement with 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 vary from the provisions of the agreement negotiated nationally between the WGC and the Canadian Film and Television Production Association (CFTPA). The WGC and CFTPA are currently discussing whether the provincial agreement violates the “most-favoured nation” provisions of the national agreement by providing better terms to provincial producers.

6.2.3 QUÉBEC'S ACTS AND ISSUES OF IMPORTANCE TO SASKATCHEWAN ARTISTS

To what extent will the bargaining rights make a difference?

While still limited, the Québec Acts have had a greater impact on the sector than the federal Act, primarily because they cover the overwhelming bulk of activity that takes place in the sector. Associations which have had a history of successful bargaining have been able to bring non-union productions under the agreement. There is a greater use of individual contracts in the visual arts, crafts and publishing. However, artists' associations in these fields remain unable to conclude collective agreements.

What are the implications of bargaining rights for the self-employment status of professional artists?

Québec has greater control over its income tax system than any other province. Because the Act governing performing arts and film and television contains the clause deeming the artist to be "practic(ing) an art on his own account", the unions in the province believe they have halted the erosion of self-employed status. There has been no definitive ruling on this issue since the Acts were first adopted.

Theoretically, it may be possible in future to have a situation in which a professional artist in Québec is considered to be carrying on a business when their income is assessed for purposes of provincial taxes and in a contract of service when that same income is assessed for purposes of federal taxes, since an independent assessment is possible by each revenue agency. In the case of other provinces, there is agreement that the federal government is responsible for the rules governing the determination of taxable income. The provinces may establish rules relating only to how much of this income they will tax and at what rate.

What is the impact of bargaining rights on the integrity of nationally negotiated voluntary agreements?

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. Note that this is not equivalent to residence status, or to the location of the work. Any member of ACTRA may choose to join the Montréal branch and work anywhere in the country. The Directors' Guild of Canada is certified in Québec through its Conseil du Québec de la Guilde Canadienne des Réalistes.

Once an association has been certified, they become the exclusive bargaining agent for artists in that sector and can only lose the right in accordance with the provisions of the Acts. The process for removal of recognition can be launched either by an association of producers or by 25 percent of the artists in the sector. An application can only be made within the three months preceding every fifth anniversary of the date that recognition came into affect. The *Commission* is then obligated to test whether the association still represents the majority of artists in the sector. This provision has also not been tested.

Is it possible to find a bargaining model that will achieve broad acceptance in the artistic community?

There were many concerns when the legislation was first introduced, most particularly around whether the recognition process would respect the historical and linguistic divisions between the existing artists' associations. There have also been concerns about the complexity of dealing with the *Commission*, but some of these were addressed in recent amendments to the Acts.

How will the model affect engagers of artists, who often find themselves in a precarious economic situation?

There is anecdotal evidence that one of the outcomes of the first Act is that certain producers in the audiovisual field have moved production outside the province in order to escape the requirement to adhere to a union agreement. However, because new agreements are not being negotiated in areas where they had not existed previously, the overall affect is minimal.

How will the bargaining model influence the generally collegial relationships that exist in the sector?

There does not appear to have been any negative impact in this respect. The Acts address the realities of the sector and the *Commission* has respected the historic divisions among the associations.

What is the cost of the bargaining model?

The *Commission* is comprised of four members and has a staff of two persons. The President and Vice-President work full-time, the other Commissioners serve on a part-time basis. The budget for the *Commission* in the current fiscal year is roughly \$670,000.

To what extent will the model improve support for individual contracts?

The Act respecting performing artists authorizes the appropriate use of pressure tactics and its enactment may have played a part in the decision of competition authorities to wind-up investigations that had been underway.

The Act concerning visual arts, crafts and publishing has made the use of individual contracts mandatory and this has caused the use of individual contracts to become more widespread. On the other hand, there is anecdotal evidence that individual contracts are still not used in all cases, despite the legal requirement. There is no evidence that the use of arbitration to resolve disputes has been used extensively, either for these individual contracts or for the negotiation of a first collective agreement in the case of the Act covering the performing arts and media.

What might be the unintended impact of bargaining rights on individual artists?

The system provides that all artists in a sector that is represented by a recognized association are bound by any collective agreement that covers that sector. However, artists are not obligated to become members of the association and they remain free to negotiate individual conditions of engagement. There is no evidence to suggest there is any widespread unhappiness with this arrangement.

Collective Bargaining Rights and Saskatchewan Artists

PREAMBLE

Given the scope of the Report sought from the author, it is evident that some Saskatchewan artists support the recommendation of the Saskatchewan Ministerial Advisory Committee on the Status of the Artist to establish a *Fair Compensation Model*, which is analyzed in Section 6.4. Others appear to favour a model to extend collective bargaining rights to professional artists by authorizing the Saskatchewan Labour Relations Board to regulate bargaining in the cultural sector, an option that is analyzed in Section 6.3.

The author was not requested to review other possibilities. However, it is assumed that at least some Saskatchewan artists would be content with the existing legal framework for collective bargaining and the status quo is analyzed in this report only indirectly. Other Saskatchewan artists are likely to have no opinion on the issue and a few may support an alternative model that cannot be analyzed in this Report since it is not defined

SASKATCHEWAN LABOUR RELATIONS BOARD, THE TRADE UNION ACT AND THE CONSTRUCTION INDUSTRY LABOUR RELATIONS ACT.

Like other labour laws, the two relevant Acts in Saskatchewan establish a process to regulate collective bargaining activities between employers (or groups of employers) and unions representing the employees. The process, rights and obligations are straightforward:

there is a certification process for determining that a majority of employees in an appropriate bargaining unit support the trade union;

- there is a requirement for the parties to negotiate in good faith to achieve a collective agreement;
- unfair labour practices are delineated and prohibited to protect employees and the unions from any attempt by the employer to interfere with their rights and to protect the employer against unfair practices by the union;
- a union is obligated to represent fairly all workers in its bargaining unit;
- strike and lock-out activities are regulated;
- specific additional issues are addressed, including union security, technological change, voting procedures and so on; and
- remedial and enforcement mechanisms are provided.

In the Act regulating the construction industry there are special provisions that take into account the unique circumstances of that sector. These include the facts that when the legislation came into affect, workers were generally represented by craft unions, such as those that represent electricians, plumbers or carpenters, work sites may have a different group of workers represented by different unions, and companies generally require a different combination of workers for different projects.

The SLRB is established to regulate the system, including making determinations on the appropriateness of bargaining units and authorizing unions to represent such units. The SLRB has authority to assist the parties to reach an agreement, up to the right to impose a first agreement in certain cases.

The rules governing the certification and decertification process are provided exclusively in the *Trade Union Act*. Theoretically, it might be difficult to re-create the craft unions in the absence of the construction industry Act since jurisprudence in traditional labour law is based on the attachment of workers to a particular employer.

6.3.1 ANALYSIS

The Trade Union Act would likely apply to artists who are considered to be employees, such as the musicians of the Regina Symphony Orchestra. The Act would not apply to professional artists who are independent contractors for purposes of their artistic activity and the SLRB confirmed this position in a 1997 case in which the Board determined that the AFM was a union but that musicians performing at a casino were not covered by the Act. To date, the Board has not provided bargaining rights for “dependent contractors.” (See page 15.)

Thus, utilizing the SLRB to oversee collective bargaining in the entire cultural sector could be accomplished only through a legislative change. In theory, the following approaches might be considered:

- an amendment to *The Trade Union Act*;
- an amendment to *The Status of the Artist Act*;
- special legislation, perhaps modeled on *The Construction Industry Labour Relations Act*.

It is difficult to provide an authoritative analysis of the potential impact on the cultural sector of a bargaining model that is based on the use of the SLRB without definitive language for legislation that would provide this authority and therefore what follows is speculative.

Like the construction industry, where it is organized, the cultural sector has used a model based on the artistic discipline or “craft.” All scriptwriters are in one union, the film directors are in another and the musicians are in a third. Some artists are members of more than one union or guild in order to cover all elements of a multi-disciplinary practice. A different combination of artists is typically engaged for each movie. The first issue is whether any model which uses the SLRB to regulate collective bargaining in the cultural sector would accept this discipline basis for bargaining units as opposed to the workplace model more typical of traditional labour relations. There would appear to be such a precedent in Saskatchewan’s construction industry.

If the enabling legislation confirmed or authorized a workplace model rather than a discipline model, it would likely be opposed vigorously in the sector since the historical discipline ties are generally strong and have existed in Saskatchewan for many years.

Assuming the preliminary obstacles can be overcome and that a model to authorize the SLRB to oversee a system of labour relations based on artistic discipline (craft-based) could be agreed, a reasonable assumption is that it would provide certain standards for the conduct of the collective bargaining relationship and for the union’s representation of the artists in its sector. It is also assumed that it would regulate the use of pressure tactics and require a dispute resolution mechanism in the collective agreement.

The following analysis is based on two different hypothetical models:

Model A Provides a process, rights and obligations for all categories of artists in all parts of the cultural sector that are equivalent to those provided to other workers and their trade unions, including the right of the SLRB to impose a first agreement. In this model, the rights provided to stage actors and their associations would not differ from those provided to visual artists and their associations.

Model B This model assumes there will be different approaches to interpretive artists and creative artists, based on the different historical experiences and Québec’s example. The Model distinguishes between those parts of the community where voluntary agreements are common and generally work well (such as stage actors), and those parts where voluntary agreements are not currently in place (such as visual artists).

The model for interpretive artists, where voluntary bargaining has taken place more or less successfully for many years in Canada, is based on a traditional labour law approach and is identical to Model A. The model for creative artists, where no bargaining has taken place in Canada, assumes there would be no statutory requirement to conclude an agreement. It would remain voluntary, perhaps with some process to encourage bargaining.

6.3.2 SLRB AND ISSUES OF IMPORTANCE TO SASKATCHEWAN ARTISTS

1. To what extent will the bargaining rights make a difference?

Model A. If such a model were implemented based on the above assumptions, it would make a difference. It would provide a legal foundation for the collective bargaining activity that currently takes place and would enable the existing unions to secure their jurisdiction over some producers who currently produce on a non-union basis. If asked again to consider musicians working at the casino, the SLRB would be required to certify the AFM as the bargaining agent for the musicians. The Writers Guild of Canada would have legal basis for bargaining with Saskatchewan's independent film and television producers and companies would be required to deal with the WGC for scriptwriters.

With respect to the parts of the cultural sector where bargaining has not generally occurred, there would be an even greater impact. It would enable The Writers Union of Canada or the Saskatchewan Writers Guild (if they are properly constituted to bargain collectively), to require a Saskatchewan publishing house or the Saskatchewan Publishers Group to negotiate a collective agreement. It would enable CARFAC Saskatchewan to negotiate a collective agreement with individual galleries to govern their relationship with individual artists, or with a group of galleries. It would enable the Periodical Writers Association of Canada to negotiate an agreement with publishers for their acquisition of freelance pieces.

Model B. Since the provision for them would be identical, this version would have an equivalent result for the unions and guilds that have already achieved some success negotiating voluntary agreements with engagers. It would provide a legal foundation for the work and would allow them to extend their jurisdiction to all engagers operating in the province. The examples above for the AFM and WGC would have an equivalent outcome.

Depending on the nature of the rights granted, the effect on the unions which do not presently have collective agreements (such as CARFAC and TWUC) would be far less significant. The rights granted under the Québec model have not resulted in a considerable expansion of bargaining agreements. While the rights granted under federal law have also not brought an expansion of the number of collective agreements covering artists, this is not unexpected given the narrow scope of federal jurisdiction.

In the absence of a statutory requirement to conclude a collective agreement, it is unlikely that galleries and publishers will do so. To this time, where they have been approached to reach a voluntary agreement they have declined, and there would not seem to be any additional incentive for them in this scenario.

What are the implications of bargaining rights for the self-employment status of professional artists?

If the enabling legislation does not make some reference to the self-employed or independent contracting status of professional artists, there may be some risk to that status. In a 1997 case involving musicians at the Thunder Bay Symphony Orchestra, the Tax Court found that the Master Agreement between the Thunder Bay Symphony and the Thunder Bay Musicians' Association was a collective agreement and it contained "employee" benefits. This was an element in the finding that each core musician was an employee of the Thunder Bay Symphony and not an independent contractor.

On the other hand, the federal and the Québec Acts make reference to professional artists covered by the Acts as independent contractors and this seems to reinforce this status with federal and provincial tax authorities. While specific language in a Saskatchewan law could not be determinative since the issue of employee status in the province is a federal matter, given that the jurisprudence is mixed, recognition of the self-employed status in Saskatchewan law might have a positive impact. A potential risk of a provision reinforcing self-employed status is that artists could be removed from coverage by the Act if the Canada Revenue Agency rejects this status and finds that an individual has a contract of service for their artistic work and is thus employed.

Assuming that the self-employed status was confirmed in some manner in the enabling legislation, one potential benefit of having a system overseen by the SLRB is that they would be less inclined to intervene in any future circumstance in which a group of artists were reclassified as employees. Since the SLRB would have authority to oversee the bargaining of artists' associations whether it was done on behalf of employees or self-employed, there is less likelihood of having competing applications or contradictory decisions.

Model A and B

This analysis applies equally to each model. Since the risk to self-employed status rises to the extent that a collective agreement looks and feels like an "employee" agreement, there would be no risk for creative artists under Model B.

This is based on the conclusion that implementation of such a model is unlikely to result in new collective agreements covering artists in sectors where they did not exist before the legislation was adopted.

What is the impact of bargaining rights on the integrity of nationally negotiated voluntary agreements?

Providing provincial certification creates the possibility that a provincial organization may apply for recognition in a field where a national organization has operated historically. A risk might also arise from a provincially-based engager group seeking to negotiate a separate agreement. The degree of risk to, or support of, nationally negotiated voluntary agreements depends on the nature of the language used in the enabling legislation. In part, the challenge in the British Columbia cases relates to explicit language in the B.C. law which limits recognition to provincially-based trade unions and requires that negotiations occur on a provincial basis.

The Act governing the construction industry explicitly protects the national collective bargaining agreements that existed at the time the legislation came into force.

21. Nothing in this Act prevents:

(b) the operation and renegotiation of a national collective agreement that is in effect immediately prior to the coming into force of this Act.

Such a clause would likely preclude a development analogous to the situation between the Writers Guild of Canada and the APFTQ. But note as well that this clause would prohibit the implementation of a new national collective agreement, a limitation that might be problematic in the cultural sector.

Model A and B

The analysis would apply equally to each model based on the existence of a collective agreement, although the actual outcome depends entirely on the nature of the language used to provide the bargaining rights in the first instance.

Is it possible to find a bargaining model that will achieve broad acceptance in the artistic community?

It appears there is not yet a consensus in the community around any one model. However, with additional information and discussion about the different possibilities, it may be possible to achieve consensus support around one or another model.

How will the model affect engagers of artists, who often find themselves in a precarious economic situation?

Model A. By extending the reach of existing unions to work that is currently produced outside the provisions of the collective agreement, there would be some additional cost to the particular engager. Examples include dinner theatres, smaller venues which engage musicians, as well as some smaller budget audiovisual productions. The issue of whether this would constitute an undue hardship is open to debate since they are working in fields in which there are well established professional fees. To the extent that engagers involved in this expansion are not-for-profit organizations that rely on government funding and grants to survive, the challenge could be more significant.

Presumably, the objective of extending collective bargaining rights to fields in which voluntary agreements do not yet exist is to improve the economic circumstances of artists, through higher minimum rates and additional benefits. The impact increases to the extent that the collective agreements accomplish this objective for painters, sculptors, authors, editors or other artists. Thus, the extension of collective agreements to the book and magazine publishing industry and galleries would have an impact on those who acquire, license or otherwise utilize the artistic works.

Model B. As in Model A, there would be some additional costs incurred by producers who work on a non-union basis in fields in which voluntary collective bargaining currently takes place, since this model would extend the voluntary agreements. There may be some concerns about hardship to the extent that these producers are not-for-profit organizations with an insecure financial base.

There would be no additional costs incurred in the fields in which voluntary bargaining does not take place since it is unlikely this model will result in new collective agreements being negotiated.

How will the bargaining model influence the generally collegial relationships that exist in the sector?

Any statutory extension of bargaining rights to new sectors will be perceived by some as being an imposition. The resulting negotiations may be more adversarial than would otherwise be the case. However, if the parties are able to reach an agreement without outside assistance, they are likely to establish a relationship that reflects the unique circumstances of the sector and this is likely to be more collegial than in traditional industries.

To the extent that the parties to the bargaining or the collective agreement turn to the SLRB for assistance, there may be some legitimate concern, at least initially. Since the members and staff of the SLRB have come from traditional economic sectors which tend to have a more adversarial model of labour relations, their approach to the cultural sector may not be properly nuanced.

Model B, which provides different levels of rights in different fields and seeks to encourage voluntary collective bargaining rather than requiring bargaining in good faith, may be foreign to an agency and staff accustomed to stronger rules. This may have implications for engagers unwilling to negotiate.

This challenge would presumably be temporary since the SLRB would acquire the skills needed to deal with the peculiar nature of the artistic relationships. This could be accomplished through new members and staff with a background in the sector or through research, training and experience.

What is the cost of the bargaining model?

The expectation would be that the SLRB would require additional members and staff to deal with the new legislative responsibilities and would incur additional costs. However, since the Board currently has the necessary infrastructure required by any public agency, the additional costs should be lower than would be the cost of establishing an entirely new and independent tribunal modeled on the SLRB.

To what extent will the model improve support for individual contracts?

For both **Model A** and **Model B**, establishing bargaining rights would provide protection for pressure tactics or job actions launched by an artists' association, provided they fall within the legal parameters set by the Act. It is important to note there is some question about whether a provincial law could achieve the desired outcome since the threat of action arises from the federal *Competition Act*. The system would also protect individuals involved in those actions and protect against discrimination because of the individual's involvement in union activities, to the extent the individual has a contract.

Where the individual contracts are signed under the terms of a voluntary collective agreement, legal enforcement remains in the hands of the individual. The unions and guilds that are party to these voluntary agreements act under their terms to attempt to resolve any disputes that arises from the contracts. However, as explained above (page 13), if the dispute must be settled in court, the guild or union can act only with the consent and in the name of the individual. With certification and legal recognition of the collective agreements, the union or guild would be able to act in its own name and this would improve their ability to resolve disputes.

There is nothing inherent in the proposed model that would have an impact on the enforcement of individual contracts that are entered into outside the terms of a collective agreement. The SLRB and the Acts for which it is responsible specifically address collective bargaining between groups of workers and employers rather than individual contracts.

Model A and B

This analysis applies equally to each model.

What might be the unintended impact of bargaining rights on individual artists?

Existing collective agreements entered into between artists associations and engagers, whether on a voluntary or mandatory basis, generally provide that the engager makes the final decision about whom they will engage. Provisions requiring engagers to give "preference of engagement" to existing union members are common and there are specialized fields where engagers may be able to hire outside the existing membership only in exceptional circumstances. However, Canada's cultural sector has no agreement that absolutely restricts hiring to existing union members. This is the case both because the agreements have been negotiated historically on that basis and because the federal *Status of the Artist Act* would prohibit such a practice for agreements entered into under its auspices.

It is therefore reasonable to assume that any Saskatchewan system would:

- in some manner provide that all artists in a sector represented by a recognized association are bound by any collective agreement that covers that sector;
- confirm that agreements in the sector establish minimum standards; and
- prohibit an association from requiring union membership as a condition of engagement.

Thus, individuals would remain free to pursue their profession and to negotiate individual conditions of engagement.

Where there is a collective agreement, its terms would establish a floor for the individual contract. The individual working in a field where there is a collective agreement would also remain free to decide whether or not to join the union or guild

that is certified for their sector. A non-member would likely be required to make some payment to the association in return for enjoying the benefits of the collectively bargaining agreement.

Model A and B

This analysis applies equally to each model, depending entirely on the extent to which legal bargaining rights are established in law.

Fair Compensation Model Proposed by the Ministerial Advisory Committee on the Status of the Artist

MACSA has recommended a system, called the Fair Compensation Model, designed to encourage voluntary collective bargaining in the sector. The system is also designed to provide support to individual artists if they encounter a problem with respect to a contract they have entered into with an engager. The model begins with a recommendation for amendment to the *Status of the Artist Act*. There would be two elements to the amendment. It would:

- establish legal authority to intervene and provide dispute resolution in support of voluntary collective bargaining between artists and engagers; and
- the authority's powers would include the ability to hold hearings designed to recommend minimum industry standards within the arts sector.

MACSA suggests that a "quasi-judicial authority" be established to administer these powers. It would be able to "invite" parties together and through mediation attempt to have them come to an agreement for a voluntary collective agreement.

Should the parties be unable to negotiate an agreement, or should a situation exist in which "there are no appropriate means by which to bargain industry standards," the authority could "make recommendations regarding minimum industry standard working conditions." It would arrive at these "recommendations" after conducting public hearings to which all interested parties would be invited.

Finally, MACSA suggests that the recommended standards would be binding on the Saskatchewan government. The government would "articulate a similar expectation for all organizations, businesses, contractors or sub-contractors who receive public funds." The report concludes that "while the standards would not be enforceable outside the public sector and the publicly funded sector, they will ultimately have an impact on what artists are prepared to work for and gradually, working conditions for artists will improve." In the appendix summarizing the system, MACSA went one step further by suggesting that when the industry minimum standards are set, "rates are non-binding except where public funds (including grants) are involved."

As the model matures, MACSA envisions that an Artists and Producers Commission(er) would be established to continue the administration and to provide additional services to the community such as the collection of data, the establishment of group programs for pension, health benefits and workplace injury insurance, and educational programs about contracting for artists' services.

The Committee also discussed the difficulty for artists' associations taking job actions in support of efforts to conclude collective agreements. The Report suggests that artists involved in such actions may risk penalties under the *Competition Act* or individual breach of contract allegations. It recommends that, where voluntary collective bargaining agreements are in place, legislative protection be provided for any job action which "artists' associations deem necessary to protect their agreements."

Analysis

6.4.1 LEGAL AUTHORITY TO INTERVENE

Establish legal authority to intervene and provide dispute resolution in support of voluntary collective bargaining between artists and engagers

This part of the proposal would establish mediation services in support of voluntary collective bargaining between artists and engagers with authority vested either in an existing government department or agency or in a new structure established by the legislation.

At the present time, parties to a voluntary collective agreement can and do regularly seek outside support to assist them to renew the terms of an existing agreement. It is not uncommon for artists' associations and their engagers to seek the services of a mediator they select themselves, or for one party or the other to apply to a department of labour for appointment of a mediator. Thus, for artists' associations with existing agreements, the authority to intervene would seem to bring little added value.

The second element of the authority appears to be designed for situations in which artists' associations are attempting to negotiate agreements with engagers for the first time. Presently, artists' associations are free to attempt to negotiate agreements with engagers; as an example, TWUC and PWAC have launched such efforts in the past. To date, they have not convinced publishers to bargain with them and they have been unable to mobilize the economic pressure necessary to achieve this objective. This is primarily because of the insecure circumstances of the artists they represent. First time authors have little clout and publishers frequently have many alternatives available to them. Established authors have only the security of the existing contract, there is no guarantee of future contracts, and they are in any case more likely to be able to negotiate fees and conditions more advantageous than the minimum standards which would be contained in a collective agreement.

The ability of the authority to intervene at the request of only one party to the talks may be of benefit to an association of artists that has not yet reached a first agreement, since the authority may through moral suasion be able to convince a reluctant engager to conclude an agreement. For most artists associations, the principal challenge is to convince the engager to begin the bargaining process in the first instance and authority intervention at this preliminary stage could be valuable since most engagers in the sector, who rely on government financial support or other measures, would be reluctant to turn down an official request to meet and talk.

6.4.2 LEGAL AUTHORITY TO RECOMMEND INDUSTRY STANDARDS

The authority's powers would include the ability to hold hearings designed to recommend minimum industry standards within the arts sector.

An association of artists that has been unable to negotiate a collective agreement could ask the authority to consider this issue and the authority would be empowered to conduct Public Hearings and establish industry standards that would apply to the government and its agencies. Through this process, the government would become a model engager and this could have an influence on others.

However, it appears the intention is for the standards established as a result of this process to be also binding on those who receive government grants. Assuming that this is the case, most engagers would be encouraged to participate in the bargaining process and to work to reach an agreement, since this will provide them with more control than they would have over standards set by a public authority through public hearings. If the standards are not binding on them, it becomes merely a question of whether the moral suasion of the government agency will be sufficient to convince them to bargain or to accept the industry standards.

The authority's power to hold hearings designed to set industry standards may raise interesting questions for some guilds and unions which have collective agreements and are looking to secure their jurisdiction over engagers who presently operate outside those agreements. An engager may look to the authority to establish industry standards that vary from the existing agreements. Presumably, it will be incumbent on the guild or unions to demonstrate why an existing agreement should be endorsed as the industry standard. Similarly, the terms of a Code that has been implemented unilaterally by a guild or union may also be scrutinized through this process.

If the standards are mandatory on anyone receiving government support and thus act to encourage collective bargaining, there is an important related issue. An engager may legitimately ask questions about the association with which they are expected to bargain. Does this association have the authority to speak on behalf of the artists used by that publishing house? What if the five authors whose works are to be published in the next few months are not members of the writers' group that is seeking to bargain with it? Could those five writers form an association and seek to bargain with the publisher even if the authority has previously published its minimum industry standards? The MACSA model does not appear to provide guidance about how these questions would be resolved.

6.4.3 FAIR COMPENSATION MODEL AND ISSUES OF IMPORTANCE TO SASKATCHEWAN ARTISTS

1. To what extent will the bargaining rights make a difference?

In the absence of specific language that would establish the system, it is difficult to be conclusive. There would appear to be no challenge to the continuation of existing voluntary agreements arising from the proposed model. The authority would also provide a stamp of approval for existing agreements and this would give them a legitimacy they do not currently possess in the province.

As a model engager, the government would provide leadership to encourage reluctant players to abide by the rates and conditions established by the authority.

Assuming the standards are obligatory on the government and its agencies and on those receiving public funding, the power of the authority to establish minimum industry standards would make a significant difference. Effectively, it would enable the authority to establish standards that would cover a good deal of the activity involving professional artists in the province. Engagers would have an incentive to bargain directly with the union or guild in order to exercise more control over the final terms of an agreement.

Excluded from this scope would be commercial galleries, dinner theatres, the casino, bars with live music and a few other engagers in film and television, performing arts, book and magazine publishing, music and sound recording industry and new media which do not receive any public funding.

But, if the system is effectively mandatory for publicly funded operations, this may raise questions about how to determine the representativeness of certain associations and how to circumvent or resolve competing claims.

What are the implications of bargaining rights for the self-employment status of professional artists?

While there is a risk that any collective agreement could be considered as an indication of employee status, this model carries the lowest risk since it would be different from other models and unique to artists. In any case, the presumption is that the enabling legislation would explicitly provide acknowledgement of the self-employed status.

What is the impact of bargaining rights on the integrity of nationally negotiated voluntary agreements?

Because the bargaining model does not start with certification of a bargaining agent to represent a defined unit, there is a risk that any group of artists could form an association, seek to bargain with an engager and seek to have the authority establish minimum industry standards. This could create a potential challenge for an existing voluntary agreement and the authority may have no legislative authority to resolve it.

It is assumed that the authority would respect established national standards in making its decisions.

Is it possible to find a bargaining model that will achieve broad acceptance in the artistic community?

It appears there is not yet a consensus in the community around any one model. However, with additional information and discussion about the different possibilities, it may be possible to achieve consensus support around one or another model.

How will the model affect engagers of artists, who often find themselves in a precarious economic situation?

If all engagers receiving public funds are obligated to abide by the industry standards established by the authority, they could be faced with additional costs to the extent to which the legislation achieves the objective of improving the economic circumstances of professional artists. As with any of the models that succeed in improving the conditions of engagement or artists, this success could affect the flow of work opportunities.

How will the bargaining model influence the generally collegial relationships that exist in the sector?

Aside from the potential, but probably low, risk of competing claims to represent a similar group of artists, the model is attempting to respect fully the historic organizing and bargaining models in the cultural sector.

What is the cost of the bargaining model?

This is difficult to assess because the nature of the authority is unclear. However, it would appear that the intention is to start small and this would limit the cost of implementation. If the authority is established as part of an existing agency the costs will be lower and if it is established as an independent authority, the costs will be higher.

To what extent will the model improve support for individual contracts?

Statutory protection for individuals against a breach of contract action if their union or guild has instituted pressure tactics would be beneficial, as would protection for union activities. While the protection for the individual would be difficult to implement beyond the term of an existing contract, which are often of short duration, it would remove a threat to the individual, and would give broader scope for associations to apply economic pressure on reluctant engagers. It is important to note there is some question about whether a provincial law could achieve the desired outcome since the threat of action arises from the federal *Competition Act*.

The existence of individual contracts in the cultural sector at the present time is uneven. In some cases, contracts are part of the normal business practice, in other cases they are rare. However, where they exist, all contracts entered into by any two parties are legally enforceable. If there is a dispute about the terms of a contract, this can be resolved through direct discussion, mutual agreement to mediation or arbitration, or ultimately by either party through the courts.

If the new authority is given the power to assist the parties to resolve disputes, this would create an alternative that is presumably less expensive and more efficient. It should be noted that, without a specific legislative change, there is nothing that would prevent either party from taking action in court even if the new authority exists.

What might be the unintended impact of bargaining rights on individual artists?

If the minimum industry standards process is affectively a mandatory system, there may be issues of concern. Since the model does not start with a certification process, there would be no requirements on the associations to represent artists fairly and thus discriminatory treatment may not be prohibited. Beyond that potential, there would appear to be little impact on any individual artist except that they might have access to a dispute resolution system that is less expensive and more efficient in case they should have a dispute arising from a contract.

Ministerial Advisory Committee on the Status of the Artist

Focus Group Consultation on Collective Bargaining Rights for Self-Employed Artist

Summary

Prepared by Susan Nurse, Facilitator
November 18, 2005

INTRODUCTION

In October and November 2005, the Saskatchewan Ministerial Advisory Committee on the Status of the Artist, otherwise known as MACSA, undertook four focus groups as part of its mandate to make a recommendation to the Minister of Culture Youth and Recreation regarding collective bargaining rights for self-employed professional artists. MACSA members wanted their recommendation to be grounded in the experiences and feedback of those impacted.

MACSA desired an informal dialogue in which no consensus was specifically sought. However, in the themes presented below, an estimate of agreement or disagreement is noted where possible. Such notations are based on transcript analysis and facilitator/observer debriefings.

The purpose of the consultations was:

- To provide MACSA with advice from artists, engagers, and associations and other stakeholders on what the acceptable trade-offs and risks are related to collective bargaining
- To get a sense of how important collective bargaining rights are to artists, in terms of the trade-offs and in general
- To help participants to understand the complexity of the issues related to collective bargaining for self-employed artists
- The fourth group had the additional purpose of soliciting feedback from Saskatchewan Arts Board (SAB), Saskatchewan Arts Alliance (SAA) and SaskCulture Inc. (SC) on the themes that emerged from the first three groups and the potential implications for their organizations

The expected outcome of the consultations included:

- MACSA's recommendation on collective bargaining is informed by the advice of the stakeholders
- There is improved knowledge within the arts sector about the issue of collective bargaining

METHODOLOGY

Focus groups are consistent with the purpose and desired outcome of MACSA's consultation process. In particular, they are an effective way to target people or organizations that have specific interests or concerns but who might otherwise be under represented in or excluded from larger group processes. Focus groups allow all participants to engage in in-depth discussions of complex topics. Discussion emerges based on participants' interests; the interactive dialogue is the data. In May 2005, prior to the focus groups, the consultation process was reviewed with representatives of the SAA, SAB and SC.

Focus Groups One, Two and Three took place in Regina, Saskatoon, and Prince Albert respectively. Group Four occurred in Regina.

Each focus group had the following structure:

- The facilitator welcomed participants and explained:
 - roles of facilitator, observers* and participants
 - purpose of the session
 - conduct guidelines
 - session was confidential, would be audio taped and transcribed

*Observers in Groups One to Three included: Barbara Young (Chair, MACSA), Barbara MacLean (Deputy Minister, CYR), and Andrea Wagner (Senior Policy Analyst, Culture and Heritage Branch, CYR). These same observers attended Group Four with the addition of Dawn Martin (Executive Director, Culture and Heritage Branch, CYR)

- In a power point presentation, Andrea Wagner summarized research MACSA commissioned Garry Neil to complete. His report was sent to participants prior to the focus groups
- Following a 15 minute break, the facilitator reminded participants of the purpose and began discussions using a question guide (see Appendix A). In Group One participants struggled with the first question of the guide and discussion centered around the relevance of collective bargaining and preferred areas of focus for the Committee. Therefore, the question guide was revised and successfully used in the second and third groups as follows:
 1. What are your thoughts on collective bargaining – what is the impact on you and your work?
 2. What potential do you see?
 3. What concerns you most?

Appendix V: Focus Group Summary

Final Round: If you had two minutes with the Minister of CYR, what would you tell her?

- In the Fourth Group following the information presentation, the facilitator presented the themes that emerged from Groups One to Three, which was the focus of the discussion. The following question guide was used in the Fourth Group:

1. How will the five themes impact your organization?
2. What did you hear that you didn't already know or expect to hear?

Final Round: MACSA has asked you to write its recommendation to the Minister on collective bargaining given what you learned this afternoon. What does your recommendation look like – what two points would you focus on in your recommendation?

SAMPLE

Groups One to Three

From a list of names put forward for consideration by SAB, SAA and SC, 36 people were invited to participate in one of the first three groups. Participants were chosen primarily for their background and experience. They were from all disciplines in the arts and included artists (both senior and emerging) engagers, and representatives of artist associations. The majority of those consulted were artists. Participants were paid an honorarium and their travel expenses were reimbursed.

Group Four

For the fourth group, SAB, SAA, and SC were asked to invite four representatives from their organization. Some of these participants were practicing artists as well.

Feedback Results: Focus Groups One to Three

The following themes emerged from the first three focus groups:

1. Relevance of Collective Bargaining
2. Respect for Artists
3. Market Development
4. Labour Relations Information
5. Saskatchewan-made, Arts-based Model

1. Relevance of Collective Bargaining

Most artists had difficulty connecting with and finding meaning in collective bargaining. They struggled to understand how collective bargaining would impact their work in a meaningful way.

"I don't even know how -- how -- where to start--"

"--I don't know too many artists who sit around and talk about their collective bargaining rights."

"[T]his is least relevant to visual artists or craft artists or this may not apply...it's very difficult for me to get a grip on...to imagine collective bargaining making much of a difference in my life...."

Participants' confusion was not about the topic itself – understanding what collective bargaining is and its many characteristics and formats. Their confusion was about the Committee's focus on collective bargaining in the context of Status of the Artist.

"[F]or me there's a huge gap between status of the artist and then talking about collective bargaining as a dancer...it's just so hard for me to wrap my head around."

There was near unanimous agreement that respect for artists and funding for the arts, combined with market development, were needed prior to collective bargaining.

"Unless there is a larger pool [of money] than we have existing now, no amount of flexibility in collective bargaining is going to do any good at all....How do you instill the respect for the arts that demands higher funding, which allows us to collectively bargain for a share of that?"

2. Respect for Artists

Participants overwhelmingly believed a lack of respect for artists and their contribution to Saskatchewan's culture and its economy is at the root of their low standard of living.

"I [have] worked 30 years as a professional artist...I always lived below the poverty line, I can't buy RRSP's, I can't afford a dental plan. If my wife didn't work for the government, my teeth would fall out...[and] I would underline the point that I am better off than most visual artists that I know."

"I think we need to have a stronger recognition of the economic impact of the arts in the province...they just don't recognize how much we contribute to tourism and to the economic growth and stability of the province as a whole."

Participants maintained that respect for artists is fundamental and should be the primary focus of the Committee; money and an improved standard of living will follow respect. Artists and others believe they will be properly remunerated, including pensions and benefits, when they are properly recognized for their contributions. Engagers and artists both talked about how Alberta and Quebec value their artists.

"...reading this whole thing I was just bombarded...the whole status of the artist in this province is sort of -- we still don't have a status. When you go to another province even like Alberta, I mean, artists are -- artists. They're revered...."

"I spent four years in Quebec working...and...I learned...political clout in Quebec came from cultural identity, not the other way around....the fact that they recognized and valued their artists gave the artists the power to have a better income, have dental care...they went about it in really creative ways because you can't legislate respect.... Quebec people know their artists, they recognize them. They see their work, and that's how that kind of respect, that power and then financial return...happen[s]--"

"--like we know our hockey players."

"Yeah."

3. Market Development

Most participants agreed that creating markets for artists' work and increased funding to and exposure of the arts was necessary and more relevant to artists than collective bargaining.

"We should start talking about what status of the artist means and that collective bargaining is really putting the wrong emphasis on [it]...where I do believe the most important issues are -- more enabling conditions and I like the idea...of programs for benefits, creating information that will lead to standards, mentoring, enabling more production and I think collective bargaining is the wrong place. We shouldn't be spending any more time on collective bargaining."

"We have set...the world standard for payment of artist fees, and yet that has sort of somehow crippled artists...because Canada hasn't developed a market system for arts....[I]n other countries...they sell their work in addition to showing their work....There is no way without those two systems working hand in hand for an artist to make a living."

Market development and arts funding topics for the Committee's consideration included:

- Audience development
- Production opportunities
- Funding for engagers
- Project money
- Opportunities for young and/or emerging artists, i.e. mentorships
- Taxation issues and implications
- Income Averaging

4. Labour Relations Information

Personal stories emphasized artists' need for labour relations information, for example, regarding minimum fees and working standards, model contracts, occupational health and safety, etc.

"I had no idea what to expect in terms of payment...not a clue that they were grossly underpaying."

"...you're not actually going to do a nude scene with the director only in the room are you? They're not Equity members, so they don't know that that is not only against Equity, but if you're sexually assaulted you've got nowhere to go, baby, you're in such risk...you shouldn't have to be a member of a union in order to be mentored and cared for and to ensure you're protected and cared for."

Appendix V: Focus Group Summary

Most participants saw collective bargaining as only one way to achieve the need for information, and suggestions were offered for other ways of meeting this need including, associations, mentorships, an ombudsperson, a labour relations type board solely for the arts, and school/education curriculum. Some suggestions involved existing entities and others involved new structures.

"In the arts community it's not as black and white as employer/employee...if we had an ombudsman for the artists to be able to call and say, this is what's happening and do I have"

"--like a baseball commission."

"Yeah, some means for me to access some sort of support to help me with this negotiation process or is this an unsafe workplace and can I do something, you know."

5. Saskatchewan-made, Arts-based Model of Collective Bargaining

Participants shared stories of positive experiences with collective bargaining. They and others shared a belief in the philosophy and value of collective action.

"So amongst all of us here,...somehow collectively, it would be artists groups collectively, seeing how we can improve it for everyone, not just our own little sector....is there an organization, is there a body, in Saskatchewan that represents all of this as the umbrella group?"

"I don't want to sound overly optimistic, but it does seem like the opportunity exists through these sorts of meetings...[to] work from where things are strong in terms of, you know, building the collective power...."

If a collective approach were to be put forward, participants believed it should reflect the uniqueness of Saskatchewan and the nature of arts communities.

"I think Saskatchewan is a unique place...and [it] really needs--something that responds to its own needs."

"...we find ourselves constantly using language from other sectors. I actually hate the 'cultural industry'. I have more in common with a priest than I do have with a banker...I would start thinking about the language we use, that's what concerns me about collective bargaining. It's not Daddy Warbucks and the poor repressed workers.... I think we need to blow the walls down and think sideways about it rather than is the Quebec model better, is the bankers' model better, is the union model better. I think we...would be more productive to start at zero."

"I think rather than picture collective bargaining in a tired, old...union model, from the early 20th century, I think collective bargaining is still very important, but you have to re-envision what it might mean for working artists and writers and musicians, etc. because it's kind of a different arrangement now."

Participants suggested the following factors and characteristics when articulating a Saskatchewan-made/Arts-based approach:

- Voluntary bargaining – majority did not like the idea of mandatory bargaining and/or upsetting existing voluntary negotiation relationships that are working
- Flexibility – acknowledge diversity and uniqueness among and within sectors – there's no 'one size fits all' model
- Recognize many artists are on "both sides" of a traditional negotiation model
- Incorporate and reflect the uniqueness of Saskatchewan arts, culture and geography, not a traditional trade union approach
- Collegial, not adversarial in terms of approach and dispute resolution processes – successful experiences were due to good relationships
- Recognize engagers must have adequate funding or artists are negatively impacted (i.e. fewer opportunities, "tier systems" develop)
- Reliable enforcement mechanisms
- Artists considered independent contractors
- Protect artists, not create bureaucracy (not an increase in government jobs or organization and agency staffing)
- Adequate representation – some organizations were seen to be too trade union oriented and in addition, there was some concern regarding the capacity of existing organizations to represent artists in terms of power imbalances and staffing expertise and ability; some participants challenged this concern regarding capacity and were confident existing organizations could adequately represent artists.

Summary

Participants loved Saskatchewan and they were passionate about being involved in the Saskatchewan arts community as artists, engagers, and members of organizations that support the arts.

"I still want to be here because I still think this is the best place on the planet to live....I don't want to go anywhere. I want to live here....so, if I'm looking for help, its help me stay home...."

"I met a young former student of my husband's... she told us that if she didn't write every day, she would die. And the passion that she felt for the work, she wasn't worried about collective bargaining, she wasn't worried about getting her books published or anything else, it was just this existence of living.... Saskatchewan is made up of those very kind of people, that's the passion and the heart that they have...without these fabulous, amazing artists in this province, there would be no reason to be here...."

Taken together, participants' comments challenge MACSA to put forward a meaningful recommendation to the Minister of CYR. Collective bargaining is not the first choice of most participants. Market development and increased arts funding is their desired focus, both of which in their view would demonstrate and help foster respect. While participants were able to recognize the philosophical value of collective bargaining, they believed it was premature to focus on collective bargaining at this time. When there is increased funding combined with market opportunities, collective bargaining may be more relevant.

"How do you take all this effort and -- transform it into places where it is most useful to the practicing artist and that has to do with the social safety net, taxation issues, education around basic rights and privileges and then put real effort into more of the enabling factors like more dollars into creation and production and things like that."

FEEDBACK RESULTS: FOCUS GROUP FOUR

The five themes that emerged from the first three focus groups resonated with the participants in Group Four. They were not surprised by any of the themes. Indeed, the themes captured many of the goals these organizations strive to fulfill. To the group's credit, they overwhelmingly accepted the themes, even when they did not agree with their content. In only a couple of instances did a participant take issue with a point summarized under a theme, and in each case, another participant reminded the group this was "how that person felt," to which the group acquiesced and moved on.

Highlights of discussion

1. Legislated rights versus access to rights
2. Roots of respect
3. Differences re: collective bargaining
4. No more "layers" of organizations

1. Legislated rights versus access to rights

Some participants believed simply legislating artists' right to collectively bargain would lead to increased respect and status.

"...status is about rights...give them the right to possess the rights that other workers have...I thought that was the simplest thing you could do."

Others believed it was insufficient to legislate the right without the ability to meaningfully access it (i.e. through institutions and/or with enforcement mechanisms). In other words participants qualified a difference between operationalizing the right to collectively bargain and merely having the right to do so – a means versus an end.

"...artists deserve rights and respect as other workers do...in the province...and that begins with the government taking a leadership role and it's not just in passing laws to put processes in place, but also supporting those processes to actually happen."

Similar to Groups One to Three, most participants cited enforcement as a pivotal part of any collective bargaining process.

"...as someone who has negotiated agreements and lived under them as a performing artist...the biggest issue right now...is enforcement. Having the right to agree, to enter into an agreement is good, but you know it's—I know one colleague who filed 230 grievances in a 12-month period strictly to prove the point about non-compliance."

Appendix V: Focus Group Summary

2. Roots of respect

The group was divided regarding the roots of respect. A minority believed one way to raise the status of artists and encourage respect for them is to legislate their right to collectively bargain.

"...if you give a right to artists...it's just one step, but it is a big step....And if you can do that you will have other things, that we'll be able to say we have this right and we can get other--rights...which is acknowledging artists' role, and turning it into something concrete."

Most participants, however, believed respect follows public knowledge and experience created through advocacy and market opportunities. This was similar to the majority of participant views in Groups One to Three.

"I think respect comes from exposure, comes from intimacy, comes from knowledge and enjoyment....I think that's where, for example, we must start which then prompts much stronger cultural industry programs...and support for audience development."

3. Differences re: collective bargaining

Like a number of participants in Groups One to Three, most participants in Group Four articulated a positive belief in the philosophy of collective bargaining. However, there were differences in terms of when it should be established, what form it should take and if it makes sense at all for artists.

Recognizing the themes, some participants envisioned collective bargaining occurring once an environment of market opportunities and increased funding to the arts exists. To accomplish this, they thought collective bargaining should be incorporated into a larger strategic planning process with actions and timelines.

"I'd recommend that...collective bargaining action not be abandoned, but that it--be re-situated within a strategic implementation of a broader status of the artist interests and objectives."

"...the danger for this process is that [like] almost every kind of major strategic effort we've undertaken in this sector [we] debate, debate and then [there is] an inability to move forward with things that start to look like results...can we do this incrementally, but deliberately."

Other participants, in contradiction to the general sentiment of Groups One to Three, felt a system consistent with federal legislation and the CAPPRT model should be recommended now.

"I would recommend...they consider the federal legislation that's going to be happening across all the provinces, consider that it be similar to that so there is uniform legislation. I don't agree with 'Made in Saskatchewan'."

"...the Saskatchewan-made/Arts-based model, I have no faith that we would want to go in that direction because I think that just becomes another--it becomes another process that's all consuming...."

Still others remained unclear about how collective bargaining fit within the working life and careers of artists. They did not agree with references to artists as "workers." Like Groups One to Three, they did not like "borrowing" language from traditional collective bargaining, since it did not express or represent their experience.

"...as a writer the whole thing just confuses me about whether I'm even a worker. In the sense of worker, I don't work for anybody, I don't want to work for anybody so who do I bargain with?"

"...when I keep hearing worker, worker--the performers consider they're artists first, they're professionals."

In the end, all agreed collective bargaining should cease to be the focus of Status of the Artist initiatives. This was similar to the views of participants in Groups One to Three.

"Let us not have one issue dominate so much that the whole agenda is funneled through that issue."

4. No more “layers” of organizations

Most participants agreed with the majority of participants in Groups One to Three in saying regardless of whatever recommendation MACSA makes, it should not involve the creation of another body, association or institution. Existing organizations can serve artists.

“I just really encourage the committee...not to create another body. We have enough bodies and competing interests.”

“[D]on’t make a recommendation that would duplicate what is already available to people.”

Conclusion

Overall the focus group consultations achieved the purposes and outcomes outlined by MACSA. The Feedback Results provide MACSA with information to inform its recommendation to the Minister of CYR. Although the Results do not provide MACSA with detailed information regarding the trade offs and risks associated with collective bargaining, they suggest collective bargaining is not that important to artists. Indeed, it is because the majority of participants could not see the relevance of collective bargaining that the discussion did not flow to identifying trade offs and risks.

One of the unique features of focus groups is that the discussion emerges and is directed by the interests of participants. Participants helped each other to explore and learn about collective bargaining by asking questions and sharing personal stories. Hence, participants understood the complexity of the issues related to collective bargaining in a meaningful way. Participants articulated an appreciation for the opportunity to come together from different disciplines and learn about policy implications directly from one another’s personal stories and experiences.

To summarize, nearly all of the participants in Groups One to Four appreciated the philosophical value of collective bargaining, but the majority were not convinced it should be a current priority for raising the status of the artist. Most participants saw more relevant ways to achieve this goal, such as market development and increased arts funding. These two action areas were considered pivotal to keeping artists in Saskatchewan, which was important to almost all participants. In the end, participants would not abandon collective bargaining but perhaps would find it more relevant to discuss when artists feel more respected and their economic conditions improve.

Focus Group Summary

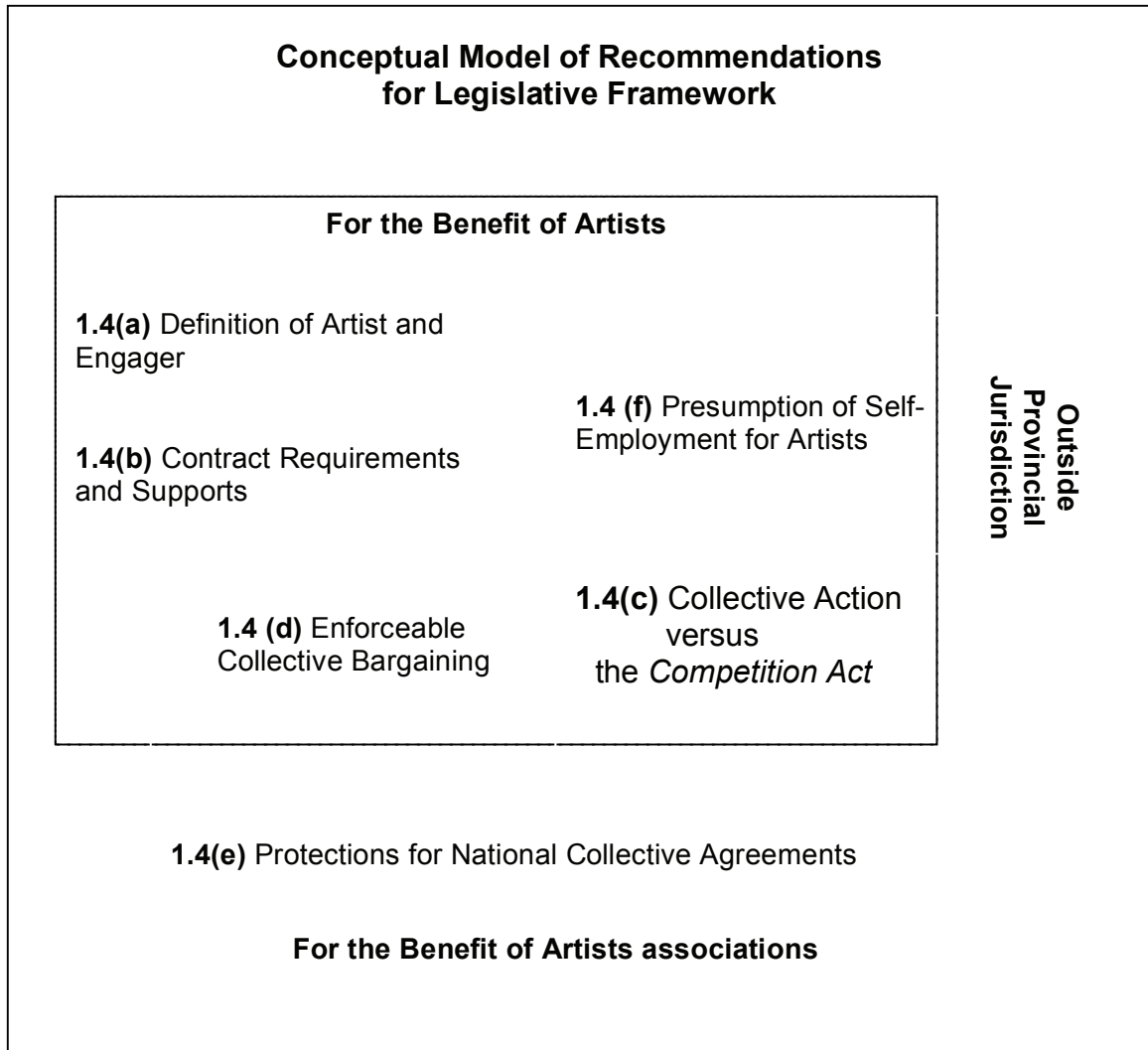
GROUP ONE QUESTION GUIDE

1. How would you rank issues/questions 1-9 in terms of importance to you...what is the most important issue/question to you? the least important?
2. What other issues/questions do you have regarding collective bargaining rights and/or the models? (Participants may have other issues or concerns not captured in issues/questions 1-9)
3. What potential do you see in entrenching collective bargaining rights for artists?
4. What concerns you most about collective bargaining rights for artists? What do you fear might happen?
5. What is the most confusing part about collective bargaining rights for artists?

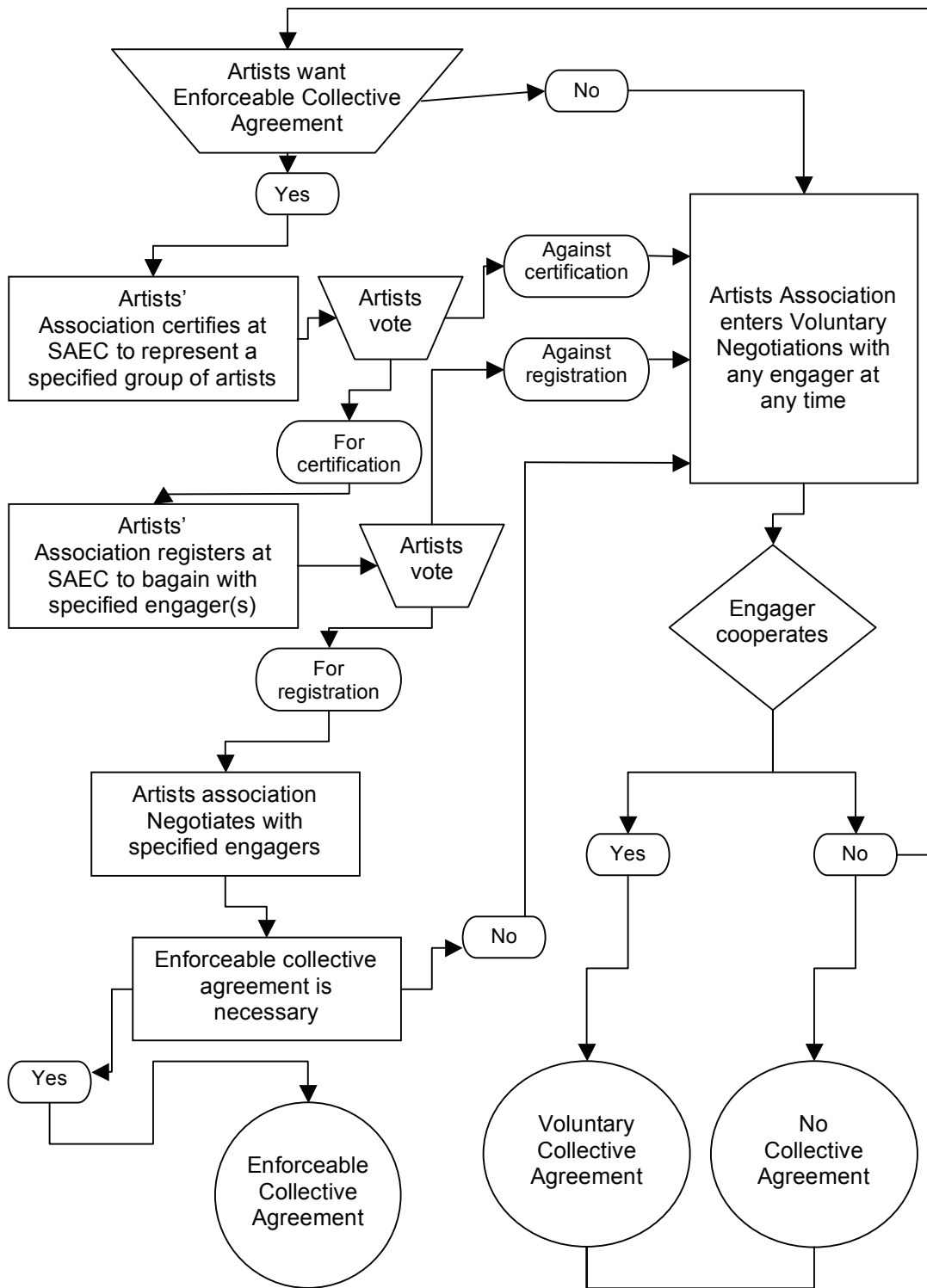
Final Round: If you could talk with the Minister of CYR for two minutes about collective bargaining rights for artists, what would you tell her?

Appendix VI: Visual Accompaniments to Recommendation 1.4

This figure outlines the relationships between all recommendations made in 1.4 and the stakeholders involved.



Collective Bargaining for Artists in Saskatchewan



Appendix VII: Acronyms Used in Report

ACTRA	Alliance of Canadian Cinema, Television, Radio Artists
AFofM	American Federation of Musicians
CARFAC	Canadian Artists' Representation/le Front des Artistes
CIDC	Cultural Industries Development Council
CIDF	Cultural Industries Development Fund
CRA	Canada Revenue Agency
CYR	Saskatchewan Culture Youth and Recreation
FETC	Film Employment Tax Credit
FPT	Federal Provincial Territorial
IATSE	International Alliance of Theatrical Stage Employees
MACSA	Minister's Advisory Committee on Status of the Artist
MTYP	Manitoba Theatre for Young People
PCO	provincial cultural organization
PST	provincial sales tax
RRSP	Registered Retirement Savings Plan
SAA	Saskatchewan Arts Alliance
SAB	Saskatchewan Arts Board
SACSA	Saskatchewan Advisory Council on Status of the Artist
SAEC	Saskatchewan Artists and Engagers Commission
SIAST	Saskatchewan Institute of Applied Science and Technology
UBCP	Union of British Columbia Performers
WCB	Workers Compensation Board

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