

**GOVERNMENT RESPONSE
TO THE REPORT OF THE
STANDING COMMITTEE ON
COMMUNICATIONS AND CULTURE
RESPECTING THE STATUS OF THE ARTIST**

MAY 1990

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Introduction

The report of the Standing Committee on Communications and Culture proposes the foundation for a bill on the status of the artist. An analysis of the socio-economic conditions of professional artists in Canada led the committee members to make many observations and propose eleven recommendations for improving the socio-economic and legal status of artists.

The committee justifiably points out the, "role that artists play in the development of our Canadian identity, culture and economy". It notes that our laws, programs and our social and administrative measures do not sufficiently reflect the specific working conditions of artists. Although the cultural sector contributes a great deal to the Canadian economy, the committee members stressed that artists do not receive their fair share of economic benefits, and consequently, few artists succeed in making a living from their art.

If the Government were to adapt laws and programs mindful of the needs of artists, the committee is of the opinion that artists would be greatly encouraged in their desire to become more self-reliant. We share this opinion. In addition, the committee proposes complementary initiatives which would contribute to the cultural environment and increase broad public interest in culture.

Finally, the Standing Committee's report proposes administrative and structural solutions, particularly with respect to labour relations, access to social programs, new fiscal measures, increasing public awareness of the arts and recognizing the professional status of artists.

The Government subscribes to the basic principles of a bill on the status of the artist, as set out by the Standing Committee. Moreover, it shares the committee's sense of urgency and plans to accord priority to the preparation of a bill on the status of the artist, consistent with the commitment made by the Prime Minister in the House of Commons on October 31, 1989:

"This Government will proceed as quickly as we can to ensure that the legitimate needs of the artistic community are met for the first time in Canada. . . With the support of all Members of this House, I am sure that, in the near future, the Canadian Government will be able to draft a bill that reflects these wishes . . . of the Canadian arts community."

It is time that we recognize, within the framework of an Act on the status of the artist, the contribution which artists make to the excellence of our social life, to our cultural identity and to the vitality of our economy.

Issues

Canadians are either employees or self-employed. However, this does not reflect the professional reality of artists, who can often exhibit characteristics of both at once. Legal recognition of the special working conditions of artists is one of the fundamental aims of the action we propose to take.

For some time, artists have grouped together in associations for the negotiation of minimum working conditions and rates. However, artists and their associations are vulnerable to investigation and prosecution under the Competition Act since only unions of employees have the right to negotiate collective agreements. Legal recognition of the right of self-employed artists to associate and to negotiate minimum employment conditions is the second objective of our initiative.

This double legal recognition has been the subject of many reports, research projects and analyses which led to many of the same recommendations: Royal Commission on National Development in the Arts, Letters and Sciences (Massey-Levesque), Canadian Advisory Committee on the Status of the Artist, Federal Cultural Policy Review Committee (Applebaum-Hébert), Disney Report (1978), Task Force on the Status of the Artist (Siren-Gélinas) and numerous reports from the Standing Committee. These documents point out that, despite a growth in the arts of which Canadians can be proud, our laws do not always adequately reflect the essential contribution which artists make to the development of our society.

In response to many of these recommendations, and cognizant of the expectations of the arts community, the Government of Canada has undertaken since 1984 many initiatives and measures in co-operation with the arts community:

- 1) Amendment of the Copyright Act to allow creators and copyright holders to strengthen protection of their moral and economic rights.
- 2) Creation of the Public Lending Right Commission to compensate Canadian authors for the public use of their works held in libraries. This program is administered in large part by artists.
- 3) Increased funding to the Canada Council.

4) Creation of the Canadian Advisory Committee on the Status of the Artist. This committee was established to follow up on one of the major recommendations of the Report on the Status of the Artist. The committee advises the Government on measures it should take to promote and improve the situation of professional artists in Canada.

5) Establishment of mechanisms, in co-operation with the Department of Employment and Immigration, to provide more resources to the cultural sector for training and integration into the labour market, as well as establishment of an interdepartmental committee with the same purpose.

6) Tax measures: Salaried musicians are allowed to deduct capital cost allowance and expenses incurred in respect of the purchase and maintenance of their instruments;

7) Original prints are exempt from federal sales tax;

8) Recognition of artists' special working conditions in the Interpretation Bulletin 504R, published in the Canada Gazette. This Bulletin allows for more flexibility in determining eligible expenses and reasonable expectation of profit. Moreover, Interpretation Bulletin IT-311 clarifies the right of musicians and other performing arts professionals who are self-employed to deduct certain expenses related to their professional activities.

These improvements in administrative practices were made in recognition of the real working conditions of artists. However, these improvements do not always completely and equitably satisfy the basic needs of artists.

The Government therefore intends to continue to pursue this course of action. Using the Standing Committee's report as a valuable frame of reference, we plan to base our initiatives on its recommendations.

Legal recognition of artists' special working conditions and their resulting professional status will be a landmark in the relationship between the Government and the arts community in Canada. This will place Canada at the forefront of the international community in this area.

The Government proposes two series of initiatives:

- . a bill on the professional status of the artist which officially recognizes the specific working conditions of artists;
- . a series of measures in response to the recommendations which need not be dealt with through the proposed bill.

The Government of Canada is aware of the leadership role it must play in arts and culture policies, principles and programs. We strongly hope that our concerns and our initiatives will be echoed by the provinces, which, in matters under their jurisdiction, can greatly improve the situation of artists - witness the adoption of two Quebec statutes, Bill 90 and Bill 78, on the status of the artist.

Recommendations of Standing Committee

Recommendation 1: Recognition of the specific working conditions of artists

Recognizing the important role that artists play in the development of our Canadian identity, culture and economy, and the unique conditions of work affecting them, that the federal Government improve the socio-economic condition of Canadian artists by adapting legislation and programs to the real circumstances of artists, thereby enabling them to assume their full role and contribution in society.

Government response

Culture is founded on the works of our creators and performers. Artists safeguard our identity, allowing us to comprehend more deeply our heritage and revealing us to one another by expressing our perceptions, beliefs, history and values.

Without our performers and creators, our cultural industries would convey only the expression of foreign culture. Film, theatre, television, radio, literature, painting, music - none of these would express our thoughts, psychology or experiences of Canadian life.

In the post-industrial age, the vitality of our society depends more and more on intellectual activity in the scientific, economic and cultural spheres. Our cultural successes affirm our specific identity. In turn, our goods and services have become unique and, therefore, more competitive in international markets characterized by increased homogeneity. It is therefore incumbent on the

Government to create a cultural environment which specifically promotes creativity.

We must recognize, however, that although our artists are vital to our cultural identity and competitiveness, creators and performers are all too often poorly and irregularly compensated for their work. Their income does not reflect their high level of training, experience or the strict discipline they impose on themselves. Why? On the one hand, artists' working conditions do not correspond to those of most Canadians, for whom the tax laws and social programs were designed. On the other hand, these conditions are not taken sufficiently into account in the designing and application of our laws and programs.

The Government plans to table a bill on the status of the artist. By legally acknowledging the specific working conditions of artists and recognizing the right of artists to form associations and negotiate minimum conditions of work, the proposed bill will establish a place for artists in our labour relations legislation. Furthermore, legal recognition will emphasize the importance of their contribution to the development of Canadian society.

Recommendation 2: Public awareness of the arts

That, in the context of global arts policy and in consultation with the arts community, the Minister of Communications initiate and promote policies and programs to develop arts awareness in Canada.

Government response

Artists derive the major share of their artistic income from the sale of works or from performances and not from Government subsidies. The viability of a work or creation depends on the recognition of a public which appreciates art, takes an interest in innovation and participates in artistic life.

Although the size of the public interested in the arts has increased at a remarkable rate for some years, this rate has not kept pace with the explosion of artistic activities. We are working to rectify this imbalance. For example, the Cultural Initiatives Program of the Department of Communications takes into account, more than ever, the increasing need for training and financial support towards the distribution and marketing of our

cultural products.

Any arts awareness strategy must be based on an educational system that is open to the arts. In this regard, the Canadian Government encourages the provinces to adopt energetic measures which would increase the presence of the arts and artists in our schools.

The presence of the arts in broadcasting constitutes another important link in expanding the audience for the arts. To this end, we have, among other initiatives, established a committee on the arts and broadcasting which will develop the basic elements of a strategy aimed at making the arts more accessible to the public through broadcasting.

With regard to policies and programs to promote the arts, in the light of numerous consultations with the artistic community, we believe that we must first have useful data on the consumer. To this end, we are currently undertaking an exhaustive study, the Canadian Arts Consumer Profile, in co-operation with the provinces. The information it will yield on the profile of attitudes of Canadians toward the arts, including international comparisons, will be widely disseminated to arts organizations to enable them to target better their respective promotional campaigns.

In addition, the Department of Communications has committed itself, in co-operation with the artistic community and the Department of Revenue, to improve the assessment practices of tax auditors across the country with respect to the specific professional conditions of artists.

In conclusion, the Government is in favour of this recommendation and will act accordingly.

Recommendation 3: Recognition of the professional status of the artist

That legislation on the status of the artist be established to recognize the professional status of the artist and to give certified professional associations representing self-employed artists working in areas of federal jurisdiction, the right of collective bargaining as allowed under the Canada Labour Code.

Recommendation 4: Recognition of the status of self-employed professional

That the proposed legislation on the status of the artist presume that, for income tax purposes, artists who are represented by certified professional associations are self-employed and that the Income Tax Act be amended accordingly.

Government response

We have combined recommendations 3 and 4 since they are related. Creative artists are, as a rule, self-employed professionals and this deprives them of access to unemployment insurance. Moreover, most of these artists, notably self-employed, non-members of associations, do not have access to private social benefit plans either. In addition, their professional expenses are high and this situation is made worse by the irregularity of their already small incomes.

For their part, performing artists must have a variety of jobs and do not enjoy regular income. They also incur professional expenses. For this reason, they wish to benefit from a tax status which allows them to deduct some of these expenses.

Various associations representing self-employed professional artists negotiate minimum conditions and rates for their members. However, artists negotiate in a labour relations context that, strictly speaking, has never been recognized by labour legislation even though existing administrative practices increasingly reflect their specific working conditions. Moreover, these associations remain vulnerable to investigations and prosecution under the Competition Act since only unions representing employees have the right to negotiate collective agreements.

With regard to taxation, there has also been an improvement in Government administrative practices. Through its interpretation bulletins, the department of Revenue has made significant efforts to recognize in practice the specific professional conditions of artists.

However, there is still an uncertainty as to their fiscal treatment due to the lack of precise legislative measures. This reduces their capacity for long-term financial planning.

It is important to recognize officially the overall working conditions of artists.

Association membership status

The draft legislation will give an independent administrative board, the Canadian Artists' Association Certification Board, the mandate to certify associations representing self-employed professional artists to enable them to negotiate and implement work contracts setting out minimum employment conditions. The bill will ensure that artists can negotiate without fear of being prosecuted under the Competition Act. The Board will have jurisdiction over self-employed artists and not over employees as defined by the Canada Labour Code.

Tax status

The Government will also propose amendments to the Income Tax Act stipulating that employed artists will be eligible to deduct actual expenses incurred in the exercise of their artistic activity, up to a maximum of \$1,000 or 20% of their income from artistic employment.

The deductibility of expenses by an employed artist will not be tied to an artist's membership in a certified association. This represents a widening of the scope of recommendation No. 4 of the Standing Committee Report to the effect that only professional artists who are members of an accredited association be eligible for the tax status in question. If this type of relation were established, professional artists who are not members of a certified association (and there are many of them: writers, painters, sculptors, etc.) would not be able to take advantage of the provision.

Finally, an Advisory Council on the Status of the Artist will be created. It will have the mandate to advise the Minister on the professional status of the artist.

Recommendation 5: Legal employee status for unemployment insurance purposes

That the proposed legislation on the status of the artist give artists, represented by certified professional associations the right to be an employee for unemployment insurance purposes, on that part of the income generated from salaried employment and that the Unemployment Insurance Act be amended accordingly.

Recommendation 6: Private social benefit plans for creative artists

That the Minister of Communications explore the demand for and the viability of establishing private group benefits plans for creative artists.

Government response

The Government has closely examined these two recommendations. In

its opinion, many problems would be raised by a formal provision deeming professional artists employees for the purpose of access to public social programs.

First of all, a number of major social programs, such as workers' compensation, come under provincial jurisdiction. Consequently, it would be difficult for the Government of Canada to act.

The establishment of such a provision would also impose serious financial and administrative burdens on many producers/engagers and even on artists: mandatory deductions and contributions, administrative forms, additional expenses for those who retain the services of Canadian artists which they would not incur if they had foreign artists under contract.

In view of these considerations, the Government prefers another approach. With regard to access to private social programs, there are two groups of artists: those belonging to associations that offer private social benefit plans; and self-employed, unaffiliated artists who have access only to universal health care and pension programs.

The Government recognizes that self-employed artists ought to be able to gain access to private social benefit plans in the same manner as other Canadians in a similar situation. However, the Government recognizes that there are a certain number of self-employed artists, notably those who are not members of professional associations, that do not have access to private benefit plans because they cannot afford the required premiums. The Government accepts the recommendation of the Standing Committee on this issue and will give the Canadian Advisory Council on the Status of the Artist the mandate to propose options to solve this problem.

In addition, the Department of Communications is committed to working closely with the Department of Employment and Immigration to expand the cultural component of the Canadian Jobs Strategy (CJS) by improving access by artists to training and retraining programs associated with the CJS and the Labour Market Development Strategy. It will thus enable the artistic community to benefit further from training and retraining funds.

This will in no way affect the mandate of the working group on training that the Minister of Communications recently set up since it is broader. The working group will be kept informed regularly of developments on the issue of the access to the Canadian Jobs Strategy.

Finally, the Employment and Immigration Canada will continue to examine the eligibility criteria of the Unemployment Insurance Program with a view to expanding coverage to artists within the framework of the Unemployment Insurance Act.

Recommendation 7: Recognition of the principle of fair compensation for the public use of artists' works

That the proposed legislation on the status of the artist include a provision recognizing the principle that Canadian authors, translators and illustrators, should receive fair compensation by the Government for the free use of their works in Canadian libraries.

Government response

The Government recognizes the principle that artists should receive fair compensation for the free use of artistic work, which is a testament to its recognition of the contribution which artists make to the development of society.

Recommendation 8: Donations of works of art to charitable organizations or the Crown

That the tax system provide financial incentives for visual artists to make charitable donations of their works of art to charitable organizations or to Her Majesty.

Government response

Under the Income Tax Act, artists who make a gift of their work from their inventory to a charitable organization or the Crown may claim a tax credit. The same applies to a bequest by a deceased artist. However, because the cost of the art work may have been deducted in an earlier year, the income inclusion associated with the gift may neutralize the beneficial impact of the tax credit.

In response to the Standing Committee's recommendation on tax incentives for artists, the Government will propose amendments to the Income Tax Act stipulating that the tax credit available to artists in respect of a gift from their inventory to institutions

and public authorities designated under the Cultural Property Export and Import Act (during the lifetime of the artist, or as a bequest from his estate) will be computed based on the fair market value of the work as determined by the Canadian Cultural Property Review Board, without that value being included in income. In order to be eligible, the donation will have to be declared culturally significant by that Board.

Recommendation 9: Protection against bankruptcy

That the proposed legislation on the status of the artist provide for a bankruptcy protection program for self-employed artists.

Government Response

The Government is prepared to protect royalties flowing from the copyright of self-employed artists against bankruptcies of cultural industries with which they contract and to propose the best means to reach this objective.

Recommendation 10: Artists' accounts

That the proposed legislation on the status of the artist give self-employed artists the right to stabilize their income by setting aside a part of their artistic income in an "Artist Account" on which tax liability would be deferred, and that the Income Tax Act be amended accordingly.

Government Response

The Government recognizes that one of the most acute problems for artists has been the fluctuation in their income from year to year.

However, since the publication of the Siren-Gélinas report on the Status of the Artist, the Government has introduced important amendments to the Income Tax Act. For example, income tax reform,

including the lowering of marginal tax rates and the decrease in the number of tax brackets from ten to three, can significantly reduce the adverse consequences of fluctuations in income which artists may experience. Moreover, pension reform has introduced a mechanism by which artists can average their incomes for retirement purposes by reducing their tax burdens in peak income years.

These changes have improved the fiscal status of artists, which is why the Government questions the necessity of artists' accounts at this time. In light of this, the Departments of Communications and Finance will review the beneficial impacts of income tax reform and pension reform on the tax situation of artists in order to determine the need for specific income averaging for artists.

Recommendation 11: Priority of the proposed legislation

That the Minister of Communications give the highest priority to the drafting and tabling of legislation on the status of the artist and to the other associated measures which are either recommended in this report or which were referred to in the Minister's statement before the Standing Committee on Communications and Culture.

Government Response

The Government is in agreement with the Standing Committee. In recognition of the contribution of artists to the economic, social, cultural and political development of our society, and to ensure that our legislation better reflects the specific conditions artists' working lives, the Government will table a bill on the professional status of the artist in the near future.

Conclusion

We believe that these legislative and administrative measures will not only improve the social and economic conditions of artists but will also provide artists with the means to help themselves and to earn a better living from their art.

The Government, which has been guided by the Canadian Artists' Code in developing its initiatives, intends to confer legal recognition on the professional status of the artist, a recognition that reflects the essential contribution of our creators and performing
~~arts to the development of our society.~~



MAY 16, 1990

FOR IMMEDIATE RELEASE

Marcel Masse announces the Government Response on
the Status of the Artist

OTTAWA -- Communications Minister Marcel Masse today made public the Government's response to the Report on the Status of the Artist published last December by the Standing Committee on Communications and Culture. The Government intends to recognize in law the professional status of Canadian performing artists and creative artists.

To this end, the Government will mandate an independent administrative agency, the Canadian Artists' Association Certification Board.

As well, following the Standing Committee's recommendations on self-administered social benefits programs, a Canadian Advisory Council on the Status of the Artist will be created and asked to propose options for artists represented by a certified professional association to enjoy the status of employees, for unemployment insurance purposes, and which would recognize the viability of private group social benefits plans.



"It is now more than 40 years since the Massey-Lévesque Commission on the Advancement of Arts, Letters and Sciences recommended judicial and legislative recognition of artists' professional status. This recognition has since been the subject of many reports," said Mr. Masse. "It is therefore time that our tax laws and social programs respond to the specific working conditions of self-employed, professional performing artists and creative artists in Canada."

The legislation which Government expects to bring forward will have two objectives: recognition of self-employed professional artists' rights in labour relations and an overhaul of their tax status.

This double legal recognition gives them the right to negotiate minimum wages and working conditions without fear or being subject to prosecution for these activities in respect to the Competition Act. At present, only unionized workers may negotiate collective agreements which shelter them under this law. This new legislation will permit employed professional artists to deduct expenses incurred in the pursuit of their artistic activities, up to \$1,000 or 20 per cent of their annual earnings coming from this source.

The minister pointed out that, in addition to government legislative steps, complementary measures would be added, such as a greater access by professional artists to funds for training and re-training, and tax incentives to encourage artists to give their artworks to the Crown or to recognized public institutions.

The Minister pointed out that the Department of Communications and that of Finance have agreed, in the context of tax reform and of pension savings plans, to review the needs of artists to spread out their earnings. He indicated furthermore that the government recognizes the principle of granting a fair remuneration to artists for the free use of their work.

"It is imperative that we recognize the importance of artists to the social, economic and cultural development of our society," he said.

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