

STATUS OF THE ARTIST

by Garry CONWAY

Status of the Artist is a very broad concept and a somewhat confusing issue. With respect to Status of the Artist legislation, it can be more narrowly defined as increasing artists' status in professional relationships, both with users of art and the government. The recently adopted federal Bill defines it as the artist's right to collectively bargain with federal agencies. Quebec adopted legislation in 1987 which added provisions for the requirement of contracts between artists and art users.

When speaking of Status of the Artist legislation, the term "status" isn't about the public's perception of artists or artist's standing in society. "Status" delivers a legislation framework to artists (individually or through their representative organizations) to facilitate fair practices that will support the activity of producing art.

Most of the legislative measures discussed so far revolve around increasing an artist's ability to generate income and resolve disputes. This assumes that artists are engaged in activities with others that could garner income. Legislation would also enable artists to gain social benefits that are not readily available to self-employed people.

Many arguments about the methods for increasing artists' incomes relate to an inherent contradiction within the notion of artmaking as an occupation. Many artists believe that their creative pursuit must be free from the influence of the marketplace which dictates what type of art is

marketable. This is a double-edged sword, as freedom of expression may be limited by the lack of funds to purchase both materials and the time needed to produce the work.

It has often been suggested that artists should be provided with some form of guaranteed income which is based on production rather than on an evaluation of the artwork. However, many artists prefer to establish an income based on their artistic activity. They feel that artists are no more deserving of a guaranteed income than are other members of society.

There is another argument which is even more complicated to unravel. The general assumption in mainstream art is that artmaking is a distinct function in society and therefore has a specific location within our social structure. This requires art institutions with rules and regulations designed specifically for the arts sector. However, many artists believe that art is an integral part of life inseparable from any other activity. For instance, the native community merges artmaking and other life activities together.

Developing an economic structure for artists which could incorporate so many divergent concepts is challenging. It is, however, a challenge within the realm of possibility. The key to finding a solution is in the premise that all art, irrespective of form or method, has value and must be supported. Based on this principle, art support vehicles must serve the full range of artmaking possibilities.

One way of approaching the challenge is to consider the time spent on artmaking (or the time one would spend if finances allowed) and the degree of activity involved in exposing the art to the public. This begins to form a quasi equation: time spent + exposure activity = income level. There are other considerations that need to be drawn in, such as the cost of production and promotion. I am not suggesting that this equation be used

literally. Rather, I'm using it as a foundation to begin examining *where* and *what* we need as support vehicles for artists.

An artist working full-time at artmaking requires a revenue level which provides a reasonable personal income and covers artmaking costs. If the same artist's artwork has a high degree of public exposure activity then the revenue for that activity should produce the needed income level. On the other hand, if the same artist's artwork has a low level of exposure activity, income should be supplemented by another vehicle. We can not assume that the degree of exposure activity is related to the value of the artwork. There are too many variables to consider under such an assumption.

Status of the Artist legislation is by no means a cure-all for the arts, but it can potentially resolve some outstanding problems. In terms of time spent on production and exposure activity, the primary focus of such legislation would address artists who spend a large portion of their time making art and have a fair degree of exposure activity. Artists who only show occasionally would also benefit from some aspects of Status legislation, particularly those relating to business practices, such as requirements for contracts and an arbitration system.

On occasion, artists have expressed concern regarding the effect that Status of the Artist may have on the granting system. While it's impossible to predict the future with any degree of accuracy, it is my assumption that the granting system will remain intact long after the legislation becomes reality. I think it is safe to say that grants to artists do not resolve the need for a better income. At best they are one-shot deals predicated on an over-burdened financial system which, in part, turns them into a lottery. While grants to artists aren't the total solution, they are, nonetheless, an important support vehicle. The ultimate



Among those who met for the Status of the Artist Options Paper by Ontario's Ministry of Culture and Communications were ALAS lawyer Marian Hebb (left) and Penny Dickens (right), both from the Writer's Union, and Karen Haslam, Ontario's Minister of Culture and Communications (centre).

Marian Hebb, avocate d'ALAS (à g.), Penny Dickens (à dr.) — toutes deux de la Writer's Union of Canada — et Karen Haslam, ministre de la Culture et des Communications de l'Ontario (au centre), pendant les discussions sur le document du ministère traitant des choix sur le Statut de l'artiste.

objective would be for both grants and Status of the Artist to co-exist, each one complimenting the other in a continuum of support to artists. In some respects, Status of the Artist would augment current support vehicles (like grants), picking up where the others fall short.

Status of the Artist is designed to fix some of the outstanding problems that artists regularly encounter. For the most part it applies some methods and regulation to existing practices, thus providing protection to artists. It should not create any major changes to the arts structure; rather, it is designed to empower artists in an environment that is sometimes hostile to them.

Contract law is a case in point. If every province had legislation requiring contracts with minimum standards (such as a reasonable termination clause), artists would be in a better position to define business relationships in concrete terms. They would also have a tool to monitor each relationship or transaction. Keep in mind that the contents of a contract can be written in an almost endless variety of forms and may be adjusted at a later date if some modification is necessary. So it need not be restrictive in terms of creative options. It could, for example, be open enough to describe a transaction where an artist would be paid an amount of money for a period of time to create anything that artist determines.

Contracts are a small but important step in establishing fairer practice for artists. While having a contract doesn't stop anyone from breaking it, it does provide a foundation for ruling in a dispute.

But who would make that ruling? Currently, it would be made by the courts, assuming that the artist had enough money to pursue the issue in the legal realm and that the court knew enough about the arts to make a reasonable ruling. These are both assumptions which shouldn't be made and don't reflect the reality of most artists.

Under Status of the Artist we could go a step further. An arbitration system could be set up where the cost would be reduced to an affordable point. Individual arbitrators would be people with experience in the arts, therefore making their rulings on arts standards instead of a set of commercial arbitrary standards, which are often inappropriate.

There is still a piece missing from this scenario. Having provisions for contracts and an arbitration

system assumes that artists can negotiate a reasonable deal on their own. We know that this is not always the case, particularly regarding levels of payment. In the visual arts, most payments for artists' services can be relegated to tokenism. Arts organizations and businesses often feel justified in the payment of minimal fees to artists, claiming that their finances are very limited. In reality, many of them have already established priorities which put artists' payments low on the list.

Can artists negotiate more reasonable fee levels on their own? The standard of tokenism is so deeply entrenched that an individual artist is in a very weak position to negotiate a more reasonable fee level. Fees for lectures are a good example. The norm for these fees is in the area of \$100 to \$150 a day. If we are to assume that the fee should be a reasonable part of an artists income, then the base fee should be more in the area of \$400 to \$600 a day. This is clearly a place where current practices must be changed.

So how can this change be accomplished? Under Status of the Artist legislation an arts organization would be allowed to bargain collectively for artists. This would, in effect, help to equalize the system. Instead of an individual artist negotiating with a major institution, an artists organization would be in a position to use its clout and experience in negotiating, thus bringing to bear the combined strength and power of all artists.

Some artists have expressed concern about the potential of being regulated by an organization that could bargain collectively. I think there is justification for this concern.

I was asked once if a collective bargaining unit isn't the same as a union. In very general terms the answer may be yes, but in specific terms and within our understanding of what unions are, they need not be the same. The arts and creativity are predicated on the ability to be flexible and to be able to deal with change. In industry it may be appropriate

to have regulations stating that employees must take an hour off for lunch, must be paid time and a half for overtime, can not work on Sundays and can't do anything that is part of another trade. In the visual arts this would be deadly. Can you imagine installing an exhibition that is to open on Monday and not being able to plug in your electric gizmo because that job is

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another trade, or being unable to work until 9pm because there's no money for overtime?

In collective bargaining, what is being negotiated can be very specific. In the example above it would make sense for an arts organization to establish a reasonable fee for you when installing the show which, depending on the circumstances could be a daily rate or a flat fee. The objective here is to attain a better fee level for your work and time and to be in a position of non-interference in the way you go about installing the show.

In collective bargaining the operative word is "collective". It assumes that an organization is bargaining for its (collective) members with an employer or a group of employers. In the visual arts a number of modifications to this concept would have to be made. First, most artists work as self-employed people and a standard employee/ employer relationship is inappropriate. Then there's a large number of variables to be considered which most trade unions don't have to deal with. The form of collective bargaining used would have to reflect working methods in the arts.

Two examples of collective bargaining are currently operating in the arts. The Alliance of Canadian Cinema, Television and Radio Arts (ACTRA) collectively bargains for its members, though this work is not supported by appropriate legislation. Copyright Collectives also bargain collectively, having gained a legal basis for their work with the adoption of amendments to the Copyright Act in 1988. For Copyright Collectives the legal basis is somewhat restrictive. It applies to copyright only. Other areas for collective bargaining are not able to use the copyright act as a foundation for their work.

A collective is predicated on the idea that a representative group can bargain with its respondent group. ACTRA, for example, bargains for its members with the CBC. An agreement reached with the CBC then stands for all ACTRA members. In the visual arts, in order to reflect the current arts structure, negotiations would have to be more individualized. The CARFAC Copyright Collective recognized this fact when it was established. The Collective negotiates each transaction individually. The down side is, individual negotiations are more time consuming, therefore more costly. However, the Collective has been able to streamline its procedures to effect a very cost-efficient process capable of maintaining the individual requirements of its members. To my knowledge the CARFAC Copyright Collective is the most highly individualized Copyright Collective in the world and, just as important, it works.

I have noted a reluctance by many visual artists to join organizations. This reluctance informs those responsible for setting up a new service for artists that it must be highly individualized. Then membership ensures that the service reflects the individualistic nature of visual artists. However, if this hesitation is so deeply entrenched that it prevents artists from taking advantage of new services, then artists' ability to grow and prosper will be severely limited.

The Ontario Status of the Artist Coalition Common Principles

That distinct legislation be enacted to recognize the vital role that each artist contributes to society and the unique status of the artistic profession.

1. That a permanent advisory committee comprised of working artists or their representatives be recognized to work directly with ministries, agencies and institutions to assist in the development and implementation of the legislation and its resultant programs. Its mandate would include a responsibility to increase public awareness of the arts and to achieve programs which will improve the province's arts education; recognizing the diversity of artistic expression.
2. That the legislation would recognize the rights of artists to bargain collectively, would recognize existing bargaining agents and collective agreements and allow for certification of artists' groups. That the legislation would enable existing and new mechanisms to assist in the exercise of those rights and agreements. That the legislation create a tribunal for artists' and producers' professional relationships which include appointed councillors with demonstrated arts and labour experience.
3. That the legislation would enable the development of, or access to, plans which provide social benefits to the artist and establish the means whereby the plans can be realized.
4. That it establish and assist professional development and retraining programs for the artist.
5. That the legislation institute appropriate mechanisms for the self-regulation of artists' working conditions by providing the means to set up regulating bodies. These groups shall be made up of artists or their representatives and those who engage their services or market their products, for the purpose of ensuring that reasonable standards of health and safety prevail.
6. That the legislation require that the government purchase artistic works and services for its public buildings and programs from professional artists.
7. That the legislation address taxation matters affecting the artist such as insolvency, the application of the health services tax, business tax on studios and income tax practices.
8. That the legislation should lay the foundation for affordable living and work space for artists in Ontario.
9. That the legislation enable the advisory committee to examine other relevant legislation which affects the status of artists and recommend amendments, on a continuing basis.

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