



May 18, 1990

STATUS OF THE ARTIST
*An analysis of the Government Response
to the Standing Committee Report on the Status of the Artist
by the Canadian Conference of the Arts*

Background:

In 1980, Canada signed the Unesco Recommendation on the Status of the Artist (the Belgrade Recommendation). This document recommended that signatory states consider the implementation of a broad range of policies to recognize and encourage the development of the role of the professional artist within society, including funding, training, professional status for artists, and access to social programs such as health care, pensions and unemployment insurance (income protection or guarantees).

The signing of this document led Canadian artists' organizations such as ACTRA, Union des artistes, and Canadian Actors' Equity to develop recommendations to the government of Canada as to how to implement the spirit of this Recommendation in the Canadian context. In 1986 the Honourable Marcel Masse, Minister of Communications, commissioned Gratien Gélinas and Paul Siren to consult with Canadian artists and recommend measures to government on an "urgent" basis. The Siren-Gélinas Task Force on the Status of the Artist made 41 recommendations which addressed the concerns of the artistic profession in Canada.

The recommendations dealt largely with those measures which fall under the jurisdiction of the federal government in the domain of labour relations. This means, for the most part, broadcasting. The majority of artists in Canada work in areas which fall under provincial labour jurisdiction. The Task Force did direct some of its recommendations at other levels of government; however, the call for federal government action recognized the division of jurisdiction in the labour-relations area.

The first recommendation which the government acted upon was the creation of the Canadian Advisory Committee on the Status of the Artist (CACSA). The Committee, under the co-chairmanship of Paul Siren and Henri Dominique Paratte, included representation from every major discipline in the arts, in the person of practising artists and arts administrators. CACSA developed draft legislation, referred to as the Canadian Artists' Code, which formed the basis for continuing negotiations with the Department of Communications and other departments of the federal government.

The passage of status of the artist legislation in the Province of Quebec in 1987 gave fresh impetus for action at the federal level. The legislation was in the form of two bills. Bill 90, dealing with stage, film, television and sound recording artists, and Bill 78, dealing with writers, visual artists and craftspeople, were enacted in 1987 and 1988 respectively. The enactment of the legislation was the culmination of a major lobby effort by Quebec artists led by Union des artistes and other arts organizations. The bills recognize artists as self-employed professionals with certain rights and privileges in their working relationships.

In November 1989 the Honourable Marcel Masse made a presentation on the policy options of the government of Canada regarding this issue to the Standing Committee on Communications and Culture. In December the Standing Committee issued its report which included eleven recommendations to the government of Canada. The government was required to issue a response to the Standing Committee report on May 18, 1990 indicating the policy direction that the government was prepared to take on this question.

The Government Response:

On May 16, 1990, the Honourable Marcel Masse tabled in the House of Commons the long-awaited response of the government to the Report of the Standing Committee. The Response addressed several areas.

LABOUR RELATIONS:

Self-employed artists will be allowed to bargain collectively through their organizations. In order to receive recognition for the purposes of collective bargaining, organizations will seek certification from an independent commission charged with the regulation of the collective bargaining process for self-employed artists. The creation of this independent commission to regulate the negotiations of self-employed artists is an important development which recognizes the unique circumstances of the cultural labour market. The commission will enjoy judicial status and will be composed of individuals knowledgeable of the cultural sector.

Artists who are employees will continue to have the collective bargaining right regulated by the Canadian Labour Relations Board.

It is important to repeat that the federally regulated sector of the cultural labour market is largely confined to the broadcasting industry.

RECOGNITION OF ARTISTIC ACTIVITY WITHIN THE INCOME TAX ACT:

A major breakthrough of the Response is the commitment to include a definition of artistic activity within the Income Tax Act. This measure has been sought by the artistic profession since 1978. The importance of this provision is that it will preclude many of the disputes that artists have faced in the past over their tax status. It will legally recognize the artistic profession and will allow specific tax measures, which address the needs of artists, to be incorporated within the tax system.

One such specific measure included in the Response is the decision to allow artists who are employees to deduct a portion of their employment expenses from their income. The Response gives no firm figure; however, this is an extraordinary measure which has not been sought by the artistic community in their discussions on this issue. For musicians who are employed, the deduction will be in addition to the capital cost allowance for the purchase and maintenance of their musical instruments.

The Response allows self-employed artists to retain their status despite the presence of a collective agreement. This had been seen as the most potentially problematic issue in the extension of collective bargaining rights to self-employed artists.

Visual artists or their estates will be allowed to make tax-deductible donations of works of importance from their inventory to recognized collections or institutions. The Canadian Cultural Property Export Review Board will be charged with the determination of the importance of the work which is being donated. This measure is a direct response to the Standing Committee recommendation. It allows artists to enjoy the same tax benefits which are currently enjoyed by collectors.

BANKRUPTCY PROTECTION PROGRAM:

The government Response also provides protection for artists whose copyrighted material was used by a "producer or engager" who claims bankruptcy. The proposed program would be an insurance policy providing artists with the income that was defaulted upon at the time of the bankruptcy.

PAYMENT FOR PUBLIC USE OF ART WORK:

The principle of payment for public use of art work is affirmed by the government in this Response. This is good news for the many authors who have benefitted from the Public Lending Right Program. The affirmation of this principle may broaden the field of financial compensation programs such as the PLR to cover the public use of artists' works.

SOCIAL PROGRAMS FOR CANADIAN ARTISTS:

Access to social programs such as income protection (UIC), pension, and supplemental health care have been sought by Canadian artists for many years. The Response promises a solution to this problem; however, the details of the approach are not clear. The Canadian Conference of the Arts has long believed that the most efficient approach would be through self-directed social programs administered by artists' organizations. Close examination of the proposed solution to this problem will be required to ensure that the legitimate needs of the artistic profession are met by any government approach. The problems are complex and the design of a delivery mechanism to ensure equitable access to these benefits will be a great challenge to both the government and the artistic profession.

The Response also indicates that the Department of Employment and Immigration will review the eligibility rules for the Unemployment Insurance Program to determine if it can accommodate artists.

PUBLIC AWARENESS PROGRAMS:

The artistic profession has long advocated the development of public awareness programs modelled after the successful "Participaction" program for fitness and amateur sports. The Canadian Conference of the Arts also contends that the most successful public awareness programs are arts education initiatives. While the Response mentions these elements, it gives no clear sense of the direction that will ultimately be taken. The commitment for action, however, is a development which the artistic profession is happy to see included in these initiatives.

EXPANSION OF THE CULTURAL TRAINING FUNDS WITHIN THE CANADA JOBS STRATEGY AND THE LABOUR MARKET DEVELOPMENT PROGRAM:

The Response undertakes to expand the current level of investment made by the Department of Employment and Immigration in the cultural field, especially in the area of training and professional development.

THE CREATION OF A PERMANENT ADVISORY COUNCIL ON THE STATUS OF THE ARTIST:

The government has undertaken to create a permanent Advisory Council on the Status of the Artist to continue the study and direction previously provided by the Canadian Advisory Committee on the Status of the Artist. The creation of the Council is an important measure, ensuring that those most directly affected by government policy in this area -- i.e., artists -- are involved in the process of implementation and further change. The Council will be asked to look at the problems of social programs and income averaging as its first priorities.

Summary:

The Response provides a commitment to introduce legislation regarding the status of the artist in Canada, and to amend other pieces of legislation which affect the artistic profession. When such legislation is enacted, Canada will be the first country in the world to pass comprehensive legislation on the status of the artist. The measures proposed in the Response largely recognize the aspirations of the artistic profession, and in some

cases exceed the recommendations to government.

The substance of the Response indicates that the sustained efforts of the artistic community have contributed to an excellent appreciation by the federal government of the needs of the professional artist in Canada. The attention of the artistic profession will be required to ensure that the legislation and the programs continue to reflect this awareness.

The Process to Legislation:

While the government Response is a commitment to policy change and legislation, it is important to note that it is a statement of intent and does not enact the changes proposed in the document. Before an actual law appears on the books, several additional steps are required.

- drafting of the legislation by the Department of Justice
- tabling the Bill in the House of Commons and passage of first reading
- referral to a legislative committee, where the proposed legislation will be given in-depth study. The chair and the committee may, at their discretion, elect to hold hearings on the proposed Bill. If hearings are held, those who support or oppose the Bill will be allowed to make their case before the committee. It is in this context that revisions to the proposed legislation can be put forward for the consideration of the legislative committee. Once the study of the Bill is completed it is referred back to the House for second and third readings.
- the Bill is then referred to the Senate, where it will be brought to a vote, either with or without additional public hearings.
- it is then referred to the Governor General who gives Royal Assent. The Bill is then proclaimed. It becomes law at this point.

Likely Timeframe:

It is assumed that the Bill will be tabled during the fall 1990 session of Parliament. It is difficult to predict the length of time that the legislative committee will take to study the Bill. However, it is reasonable to assume that the Bill will not pass all the hurdles until the spring of 1991. If there is previous all-party consent and the Senate has no objections to the legislation a speedier passage is remotely possible.

Recommended Action:

The artistic profession is well known for its rapid and vocal reaction to government policy which harms the arts in Canada. This initiative of the government of Canada is an important watershed in our dealings with the government.

The Canadian Conference of the Arts urges Canadian artists and arts organizations to express our satisfaction and delight with this bold initiative. Please write or Fax your congratulations to the Minister of Communications, the Prime Minister, and the Standing Committee on Communications and Culture. It is important for those responsible to appreciate the enthusiasm with which the artistic profession receives this news. Please do it today!

The Canadian Conference of the Arts will keep you informed of the developments concerning this initiative through the various steps on the road to legislation.