

Canadian Conference of the Arts Conférence canadienne des arts

PROVINCIAL ROAD-MAP
FOR THE STATUS OF
THE ARTIST LEGISLATION

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of the Arts



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PROVINCIAL ROAD-MAP FOR THE STATUS OF THE ARTIST LEGISLATION

For any level of government contemplating legislation or policy on the status of the artist the process can at first seem most challenging. The expectations of the artistic profession are difficult to situate within a well defined policy or legislative framework. Add to this the task of sorting out the questions of jurisdiction (provincial or federal or shared), internal lines of responsibility and the preferred route to accomplish change (policy or legislation) and you have a rich broth of procedural questions which must be digested before any course of action presents itself.

The purpose of the road-map project for the Canadian Conference of the Arts is to help find a way around the many issues which present themselves to policy makers when the topic is the status of the artist. The intent of this document is not to answer all your questions and tell you what to do, but rather using the experience of others, prescribe a process which will assist you in the development of an approach best suited to the needs of your province. We have not attempted to identify all legislation and policy currently on the books in each province. This task is best left to the professionals - you!

We hope that you will find the "road-map" a helpful tool. If you have any questions which we have not answered and you would like our assistance, please do not hesitate to contact us. It is the strong interest of the Canadian Conference of the Arts to assist you in every way possible, so that the artistic profession in this country can benefit from legislation in every province and territory. We are here to help - please let us know how we can be of best use to you.

Keith Kelly
National Director
Canadian Conference of the Arts
March 1990

THE STATUS OF THE ARTIST IN BRIEF

When Canada signed the UNESCO sponsored Belgrade Recommendation on the Status of the Artist in 1980, the issue was brought one step closer to the kind of scrutiny it has received in recent years. It has now been ten years since that moment and volumes of material have been generated on the topic by government and the policy making apparatus, as well as by the artistic profession.

The viewpoints on this issue are as varied as Canadian culture itself. However there are certain elements common to all perspectives.

In essence, the status of the artist discussion is about making artists capable of earning a livelihood from their art. It has propelled revisions to legislation such as Copyright to include protection of choreographers' works and the public exhibition right, led to the establishment of the public lending right program at the federal level, as well as revisions to the Income Tax Act and its administration.

Legislation at the federal level is expected to be tabled during this calendar year. It is expected to include collective bargaining rights for self-employed professional artists, revisions to the Income Tax Act and the Anti-Competition Act, and to broaden the access of artists to social programs.

However, federal legislation deals with a very limited number of artists working in Canada, namely those working within the Canadian broadcasting system. The majority of artists working in theatres, art galleries, dance companies, orchestras, ateliers and design firms work within areas of provincial jurisdiction. It is therefore essential that provincial governments consider a plan of action for artists working within their jurisdiction if the status of the artist in Canada is to see any measurable improvement.

The principal objective of the status of the artist initiative is not to seek special treatment for the artistic profession but to ensure that the structures and benefits available to other occupational groups are made available to professional artists. Such measures would effectively bring an end to the marginalization of the artistic profession and would recognize its value to the labour force and the economy.

It provides a reflection of the value that Canada places on the ongoing development of our shared cultural values and heritage, its principal function within our society.

In this light, the challenges of dealing with the status of the artist can be viewed as an opportunity to strengthen the links between all Canadians and the quality of life we enjoy.

THE QUESTION OF DEFINITIONS - PICKING YOUR TARGET

An astonishing amount of energy and inspiration has been invested in the fundamental question of defining the two key terms in the status of the artist discussion.

Essentially there are two definitions you will need to establish some consensus around before you embark on a broader process of consultation and negotiations - namely status and artist.

There are several reference works appended to this document which give you a fair idea of the breadth that can be encompassed in the definition of these two terms. Without circumscribing those areas with which you wish to be most concerned, you can easily find yourself in an endless process of winnowing out those objectives which simply exceed your jurisdictional or budgetary realities.

The Belgrade Recommendation of UNESCO signed by Canada in 1980 gives one a clear indication of the broad swath that can be cut in this process. Social status, taxation status, labour relations status, training and professional development, the role of minorities and developing artists, international status, freedom of movement (in some cases the right to movement) have all been among other issues that have been lumped into the general rubric of the status of the artist.

In the case of Quebec, which was the first government in Canada to actually enact status of the artist legislation, and the Government of Canada which is now in its fifth year of examining this issue, status means socio-economic status. In both cases the efforts have been focussed clearly within those areas for which the governments have some jurisdiction.

While some components of this issue which deal exclusively with the needs of the artistic profession may be addressed, it is clear that the proposed legislation/policy must be concordant with the aspirations and expectations of other groups in society.

The artistic profession in Canada appreciates that the status part of the status of the artist deals with socio-economic status and this is where the principal expectations lie.

It is suggested, unless conditions within your jurisdiction warrant a broader application, that the status aspect of the status of the artist issue be restricted to those socio-economic issues over which a government has jurisdiction.

The other key definition you will need to agree upon is artist. This seemingly simple task will immediately be complicated once you publicly embark upon a legislation/policy development exercise.

Many people consider themselves to be artists, from the Sunday painter to the amateur actor who works at the local little theatre. This difficult question is further complicated by the multicultural and indigenous elements of Canadian society. Is a folk artist the same as a ballet dancer? Is a native carver to be considered the same as a full-time sculptor? When do you become a professional artist - when you embark upon formal studies? once you graduate but are unable to earn a livelihood from your art? when you can become a member of a professional association? The answers to these and a myriad of other permutations will largely depend on the definition you offer to the artistic profession when you set out on the exercise.

Again, happily, this is not "terra incognita". These explorations run the gamut from the breathtaking scope of the Belgrade Recommendation which proposes that anyone who says he/she is an artist is an artist, to a well defined matrix of indicators approach set forth by Revenue Canada in an attempt to focus the discussion on a set of milestones of artistic practice. This document IT-504 (appended for your reference) was the product of extensive discussions between Revenue Canada and the artistic profession. It sets out the terrain in a very clear manner. The Canadian Advisory Committee on the Status of the Artist offers a more concise approach to defining an artist in the Canadian Artists' Code. (This document is also appended for your review.)

The common ground that both Revenue Canada and the Canadian Advisory Committee on the Status of the Artist find is that when we speak of artists in this policy context, we refer to professional artists only.

The promotion of the arts as a hobby or a very serious passtime or passion is not the objective of the status of the artist exercise. These individuals are a class apart, the professional artist is the target of our attentions.

It is suggested that for the purposes of a legislation/policy development exercise the definition of an artist be restricted to professional artists only. Governments are encouraged to refer to the previously mentioned documents as a basis for the development of a definition which best suits the realities of your jurisdiction.

DEFINING THE SCOPE OF THE STUDY

Once you have cleared the hurdles of defining the two key terms, and have a firm notion of who and what you wish to encompass in your terms of reference, a further stock taking is essential.

A project of such a wide nature (even the narrowest scope will draw in a variety of other departments, ministries and agencies) requires a focal point within government and a champion of the cause. This implies two strata of project leaders - one within the bureaucracy and one within the political sphere. How this is decided can only be determined from within the system, but judging from the experience of others, it is essential.

The next step is to establish some sort of interdepartmental committee to undertake an inventory of precisely what policies, pieces of legislation, funding programs and other services will likely be addressed in the process of legislation/policy development.

Given the dual nature of the status of the artist, we are drawn to those general policies which govern the economic conditions of all citizens within a jurisdiction, as well as those more deliberately crafted to address the needs of the artistic profession. The following generic inventory can be refined to meet your own needs.

Economic Status:

- Income tax provisions within provincial control
- Sales tax provisions within provincial control
- Collective bargaining provisions for self-employed individuals *
- Current structures governing collective bargaining for employees
- Provincial anti-competition laws which may affect collective bargaining by self-employed individuals
- Minimum or guaranteed income provisions for citizens of the jurisdiction (if any)
- Property or business tax and its application to professional artists or arts organizations
- Programs which provide grants or contributions to professional artists or other categories of professionals or their organizations
- Provincial regulation of pension plans operated by unions or professional organizations
- Employment/retraining programs within provincial control
- Financial assistance for advanced studies within any area
- Occupational health and safety programs offered to workers within the province
- Marketing assistance or support available to other sectors in the economy
- Research and development support available to other sectors in the economy

- Policies or programs which deal with special interests, multiculturalism, official language minorities, affirmative action, aboriginal peoples, the disabled and other special interest groups. (Of particular importance will be those policies or legislation which enjoin all other policy or legislative developments to reflect their objectives or principals across the broad spectrum of provincial legislation or policy.)
- International or intergovernmental agreements which determine the provision of services, exchanges or cost-sharing which may affect the artistic profession. These may include coproduction agreements, touring programs and promotion of the province outside the geographic confines of the province.

* It is important to note that the artistic profession has strongly expressed its desire to have any collective bargaining right for self-employed artists to be administered by a Commission formed expressly for the cultural sector. The desire is to have the administration of the right placed outside of any labour relations board or commission which deals with employees in other sectors of the labour market.

You will want to know if these are governed by legislation or policy and if so what legislation programmes or policy governs these areas, and who has the lead responsibility for their revision or refinement. You will also want to ensure that you have the parameters of the current programmes, policy or legislation, as well as their principal criteria, the approximate budget, the decision making apparatus and the initial policy/legislation rationale. For your future reference an index of such documents will be invaluable to have on hand.

Professional Status:

This is a much simpler exercise as most jurisdictions have a limited number of departments or agencies responsible for dealing with the artistic profession. Using the definition which you have developed as the first phase of the operation it will be relatively simple to secure the concurrence of these bodies for the terms of reference you have proposed for professional status. These same bodies should obviously be active participants in the assembly of the inventory of Economic Status.

Up to this point of the exercise the operation should generally be an internal one. You should find that once you decide to expand the range of your consultations these steps will assist in the expeditious treatment of the topic for all concerned.

Certain research consultants often use "focus groups" to gain a greater insight into the probable reaction to certain propositions before they are released to the general public. The "focus group" may be seen to be overly

cautious; however it can be useful, especially if you are not certain of the expectations of the artistic profession when you embark on this process.

In summary:

- 1) Identify a project leader within the political ranks and one within the bureaucracy;**
- 2) Conduct an inventory of policies, programs and legislation within the provincial government that affect the economic well being of the citizens of the province, especially professional artists - develop an index of these for future reference;**
- 3) Maintain the exercise internally at this point. The above described work is most effective if done BEFORE consultations with the artistic profession and the general public. Focus groups can provide you with some reaction to the direction your work is taking in the preliminary phase.**

RESEARCH AND CONSULTATION - TAKING THE PULSE OF THE PROFESSION

You are now ready to bring the issue to those whom it concerns most - the professional artist community.

At this point your advance work will have served you well. You have made known your terms of reference for this exercise and have thereby eliminated (or greatly reduced) the participation of those who believe that their stature as art lovers or hobbyists is at stake in this investigation.

You may now wish to undertake simultaneously a program of empirical research which will give you a sharper portrait of the professional artist within your jurisdiction. There are a number of choices available to you should you embark on this route.

a) **Seek pertinent data from Statistics Canada on the professional artist within your jurisdiction** (Warning: Statistics Canada produces data of exceptional quality; however you may find that no data exists for a recent time-period as, in general, data released by Statistics Canada is several years old). You may wish to have this data further analyzed by your own research staff who may be more sensitive to your precise requirements.

b) **Commission research either from within the government or through an independent research consultant.** The latter solution should be undertaken only if you provide sufficient time and information support to the research consultant. It is important to recognize from the offset the difficulty of constructing a reliable sample for the artistic profession. Unrealistic deadlines will force the research consultant to employ less reliable sampling methods which may seriously affect the reliability of the data. It is advisable to assemble a small advisory group to assist the researchers. Participants in such an advisory body should be fully familiar with the realities of the cultural sector in general and the artistic profession in particular.

c) **Review research conducted into other sectors of the labour market on similar issues in order to establish a relative frame of reference for the work you will undertake on this issue.** In particular you may wish to seek research on other professions which are characterized by the self-employment of their practitioners such as farmers, fishermen, architects and doctors. This information will be most useful later in the exercise when you are ready to formulate recommendations to government on policy/legislative revisions.

In general, the earlier you have access to this research, the better. It is an enormous asset in promoting the idea politically and you will find that you will have ready access to information which will be sought from colleagues in other departments and agencies, in the support of eventual policy/legislative recommendations.

Once you are satisfied that the state of your research has further assisted you in the identification of your target population, you can begin to design the broader consultation part of the exercise. Those who have gone before you have opted for a number of consultative mechanisms. The ultimate choice will largely depend on the scope that you wish the consultations to encompass as well as the time-frame in which you choose to operate. Among the choices available to you are the following:

a) A formal artistic advisory committee composed of a representative cross-section of the artistic community you are most interested in consulting. The benefits of this approach are the relatively localized deliberations within the advisory body and their access to policy makers within the government. This procedure can be somewhat ponderous, and some staff will be required to ensure that the necessary research and support functions are provided to the advisory committee.

Another approach may be to seek the cooperation of a provincial arts council to coordinate the formation and operation of such an advisory committee. It would be important to offer clearly worded terms of reference to ensure that the areas which the Committee would explore are consistent with the limitations of jurisdiction and the realities of the province.

b) A Task Force which is charged with a specific mandate within a specific time-frame. Task Forces have varied in their size from two persons to twenty-five. The costs have ranged from \$65,000 to \$2,000,000.

c) Formal hearings by the Legislative Assembly, a Committee thereof, or formal departmental or agency hearings. The most frequent difficulty that this approach encounters is the charge that the process is almost entirely political.

An important first step if you select this route, will be the preparation of a discussion paper which outlines the proposed areas of government action on the status of the artist. This document will focus the hearings and the representations of the artistic profession and arts organizations at the hearings. Without such a focal point, you may find the representations to be wider ranging than the field of action which is either possible or within the jurisdiction of the provincial government.

Whichever option one elects, it is imperative that the consultative body maintain contact with the leadership of the project at both the political and bureaucratic levels. This contact can greatly expedite the process of policy/legislation development and can allow the project managers to revise their internal strategies accordingly. It is essential that the artistic profession within a jurisdiction feels that they have been adequately consulted on this issue.

The ultimate success of a review of the status of the artist depends on the quality of empirical research available on the sector, as well as the quality of the consultation which is undertaken directly with the artistic profession. Whichever consultative route you elect, it is necessary to ensure that those responsible have access to the research which has been conducted as well as the index of legislation and policies which may be the topic of some deliberations when recommendations are crafted.

The utility of this measure will become evident when the report and its recommendations are delivered to Government for action. This will represent a major economy of effort when the recommendations are assessed for legislative/policy changes, as it should render a clearer more focussed plan for action.

CRAFTING A SOLUTION - DEVELOPING A GOVERNMENT POSITION

Once the task force or advisory body has delivered its recommendations to Government for action and officials have had an opportunity to review the statistical evidence, the onus is then on the government to prescribe solutions or responses to the findings on the status of the artist.

Generally, the solutions can be found in three forms:

- 1) policy statements or positions
- 2) legislation, (special legislation or a plan of many amendments to existing legislation)
- 3) programs of financial assistance

The relative merits of each form of reply are well appreciated by the artistic profession. In general, the policy and program options are not seen as enduring solutions to a problem. Policy can be revised internally, programs down-sized, eliminated or refocussed with little consultation or appeal.

The legislative approach represents for the artistic profession a strong affirmation of the importance a government places on their sector. It affords to the artistic community a rare presence on the legislative agenda and delivers to them the tools which the profession requires in order to conduct its own affairs on the same footing as other occupational groups.

The election of a legislative solution does not preclude a revision of funding programs or the development of policies in those areas which are outside the legislative program. Those areas which are most often targets for legislative action are:

- 1) collective bargaining provisions for self-employed artists, including an administrative structure or Commission to recognize arts organizations which represent professional artists in the collective bargaining process and in the delivery of social programs to the artistic profession, notably the direct administration of pension plans;
- 2) the extension of workers compensation programs to self-employed artists;
- 3) provincial tax measures which affect the artistic profession such as the application of business occupancy taxes to studios and artistic facilities and other non-profit cultural institutions.

It is at this stage that the interdepartmental consultations you have conducted earlier in the process will pay dividends. It is apparent that recommended changes to legislation in the areas of labour laws and social

benefits will rely heavily on the quality of cooperation you have established with your counterparts in other departments which have the responsibility for those areas of government policy.

The support of both the political and bureaucratic leadership in these other areas is vital to the eventual success of the legislative and policy initiatives. The use of the empirical evidence as a "sales aid" for this phase of the operation should strengthen your ability to make your case. It is never too early to begin developing this support, so that when a programme of action begins to emerge your allies are already in place.

Questions concerning funding programs, arts and education, marketing and audience development support, cultural statistics, and professional development and job creation can be accommodated through policy and funding programs. These initiatives will also depend on close consultation and cooperation with your colleagues in other departments, especially if there are financial implications to the measures prescribed.

Ultimately the status of the artist issue concerns all of government and therefore depends on the productive and complementary action of a wide range of responsibility centres. This is the critical moment where much of the advance work with which you were involved will prove to be most effective.

In summary:

- 1) Government action on the status of the artist can usually be accomplished in three forms: legislation (omnibus or a series of revisions to existing legislation), policy positions and funding programs. Recommendations can be divided into those which require legislation and those which can be implemented through policy or program measures.**
- 2) Consultations with officials from other departments responsible for legislation and policy in non-cultural areas will be required to arrive at a solution to the status of the artist. The use of the consultative structure recommended earlier is advisable.**
- 3) Once legislation or policy is developed there should be a follow-up mechanism established to deal expeditiously with any problems in the enactment and application of the provisions of the legislation/policy.**

INTERGOVERNMENTAL COOPERATION - FOLLOW-UP MEASURES

The implementation of provincial policy and legislation is an important first step to the resolution of the problems of the status of the artist issue. However, in the first years of the life of the legislation and policy there will be areas where the challenge of improving the status of the artist will depend on ongoing consultation and cooperation between the federal and provincial governments.

Using the existing committees of cultural ministers and officials may not yield the desired solution as many questions are outside the control of these departments. It may be advisable to seek the creation of a broadly based intergovernmental working group which would meet on a regular basis or as required to seek solutions in those areas of shared jurisdiction or where unilateral action by provincial or federal governments would be ineffective.

Similarly, there will be areas where the recommendations are more directly in the jurisdiction of municipal governments. It would be useful to consult those municipalities in which there are the greatest concentration of artists as a part of the consultations leading up to the formulation of an action plan. In the past years there have been cultural policies developed and adopted by municipal governments, sometimes complemented by funding programs. In order to avoid duplication and to seek a greater coherence of policies between these two levels of government, their involvement in the process is recommended.

The status of the artist is a multi-faceted issue which often crosses the lines of jurisdiction and responsibility demarcated by the various strata of government in Canada. The establishment of structures which encourage and facilitate the free flow of information amongst them will be positively received by the artistic profession and will prove to be of considerable utility to the policy makers and legislators.

CONCLUSION

It is important to keep in mind that the resolution of the difficulties and challenges of the artistic profession will not be accomplished by a simple enactment of legislation, policy, programs or intergovernmental committees. The commitment which is made by a government to act on this issue is a long-term one for which considerable patience and good humour are required.

The rewards for the efforts which you invest in this process considerably outweigh the challenges inherent in the issue. As the artistic profession will be greatly strengthened in its ability to realize economic benefits from the practice of the profession, we can reasonably expect a stronger and more vital cultural life in this country from which we all benefit.

The Canadian Conference of the Arts is available to provide whatever additional information you may require in the design, implementation and consultation stages of your work on the status of the artist. This road-map is not a definitive document. If in the process of your work on this issue you should happen upon a more effective manner of tackling the question, we would be pleased to hear about it. In this way we can improve on the quality of support that we are often asked to provide to governments of this nature.