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**THE STATUS OF THE ARTIST
SASKATCHEWAN**

Submission to:

The Minister's Advisory Committee
on
Status of the Artist

by

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Chairman of the Canadian Film and Television
Production Association (CFTPA)

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a division of Regina Motion Picture, Video & Sound Ltd.

THE STATUS OF THE ARTIST SASKATCHEWAN

I submit this document as a Regina based Producer of film and television programming - President of Minds Eye Pictures, and as Chairman of the Canadian Film and Television Production Association (CFTPA). I've reflected most of my comments as they impact on the film and video industry.

The Canadian Film and Television Production Association (CFTPA), is a national association representing the interests of entrepreneurial independent Canadian film and television producers across the country, as well as industry related companies.

CFTPA's members are the companies which develop the projects, engage performers, writers, directors, and technical personnel, put together the financing, negotiate with exhibitors, distributors and broadcasters, and create the jobs by taking the inherent risks.

We represent the "management" in our sector, and are proud of our history of labour relations. Although the film and television sectors are, at the very least national in scope, the majority of production in Canada is undertaken in the private "independent" sector. Both the Canada Labour Relations Board and the Supreme Court of Canada have ruled that the vast majority of television and film production fall under provincial jurisdiction.

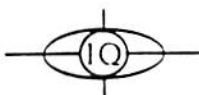
Our members work with several guilds/unions on any number of projects, engaging from a few to several hundred people, on projects that may last from a few days to a few months. The "artists" we engage are directors, performers, musicians, writers, and of course numerous categories of "technicians". Most belong to existing guilds and unions with whom we have had a long working relationship, having developed mechanisms or bargaining, which have largely evolved outside of any legislative framework.

For the last thirty-five years, we have negotiated agreements with ACTRA and the WGC which although national in scope, have been ratified in the Province of Saskatchewan. In all cases the terms and conditions have always been more favourable than the minimums contained in Employment Standards legislation, and have included provisions for insurance and retirement benefits paid by the engager.

Given the nature of the film and television industry, where members of these guilds and unions work on a project by a project basis, for any number of engagers in a variety of locales, nationally and internationally, the traditional employee/employer relationship does not exist for the majority of people engaged on a television or film project.

We must also deal with the ongoing, unresolved issue of "who is an employee", and the debate over dependent versus independent contractor status in a medium where our "collective agreements" as well as our "voluntary agreements" do not distinguish between employees and contractors.

CANADIAN MEMBER



INTERNATIONAL QUORUM OF
FILM & VIDEO PRODUCERS

We cannot make light of the fact that a strong and viable entertainment industry demands a stable labour relations environment, but we are convinced in a view of jurisdictional problems and the nature of the industry, that a careful study of the industry as it operates presently, must first be undertaken.

We may find that a legislated labour relations framework, which could impose rigid structures is not suited to this industry. Nor does anyone, I am sure, want to create a situation whereby the working environment could be so altered as to encourage the transfer of production to other provinces, or countries. This would be true of Canadian as well as American production upon which the guilds, unions and producers depend for their livelihood.

We note that you make a reference to the legislation passed in the Province of Quebec (Bill 90). It is important to note, however, that the legislative and civil code back drop for the legislation in Quebec is very different from the similar background in the rest of Canada.

Under the Quebec Labour Code, "voluntary recognition" is not permitted and no collective agreements are therefore possible within the meaning of the Quebec Code without "certification". To my knowledge, Quebec is unique in the country in this respect.

In the rest of Canada, "voluntary recognition" agreements are common, and the norm in the film and television industry. And, although their status may be unclear at times, it is very important that the Committee recognize the existence of these agreements and the fact that whatever their status may be, both producers and persons engaged by producers have considered themselves bound by the terms of these agreements for many years.

In respect to Bill C-7, the federal Status of the Artist legislation, which has now been partially proclaimed, applies only to the CBC or other federal undertakings when these entitles directly engaged in production. It is also important to note that virtually all persons engaged by the CBC on "television productions", are covered by one of the many guild of union contracts at the CBC, and fall under the jurisdiction of the CLRB.

This is so, notwithstanding the fact that for tax and other purposes many of the persons engaged are "freelancers". In a series of cases conducted by the Canada Labour Relations Board, these persons have been found to be employees within the meaning of the Canada Code notwithstanding the fact that they are treated as independent contractors for the purposes of tax and other matters.

In conclusion, the entertainment industry as a whole is a unique industry. This has long been recognized by the federal and provincial governments, in their many efforts to foster and encourage production in Canada, through various incentive programs.

In Saskatchewan the film and television industry has been evolving, and we feel very proud of the fact that this is a non-polluting, environmentally friendly and job intensive sector. We employ thousands of men and women, and remain in the process of building a viable industrial base. Despite the impact of Free Trade, the Goods and Services Tax, the recession, and rapidly changing technology, we are keeping our heads above water.

If there are changes in the status quo, brought about by well intentioned efforts to empower unaffiliated "artists", these changes will bring about uncertainty and confusion. It is essential that our sector be distinguished from other disciplines, such as visual arts, whose needs and requirements are very different.

Many of the recommendations outlined in your discussion paper such as benefits, taxation, copyright and health and safety, I have already responded to in the "inquiry to presenters, engagers, publishers and producers", but welcome an opportunity to discuss these areas in greater depth.

My company and association remain committed to assisting artists in Saskatchewan, and the rest of Canada. The viability of our industry demands it.

I thank you for the opportunity to make this submission, and would be pleased to take a more active role in the process now under way.

Respectfully submitted,



Kevin DeWalt
President

KD/krf

STATUS OF THE ARTIST - SASKATCHEWAN PROJECT

INQUIRY TO PRESENTERS, ENGAGERS, PUBLISHERS AND PRODUCERS

A. NAME:

**Kevin DeWalt, President
Minds Eye Pictures (Regina)
Chairman of the Canadian Film and Television Production Association**

B. "Status of the Artists" concerns professional artists in all disciplines, literary, visual, performing and media arts.

HOW DO YOU EMPLOY/CONTRACT PROFESSIONAL ARTISTS

Type of engagement/contract: Film and Video

Employment: 6 full time

Employment seasonal: Difficult to assess as Producers of Film, Television and Video Programming work on several projects at the same time, some of which would not reach the screen. Each project requires the engagement of different people with different circumstances/schedules.

Contract for service: 30 - 40

Contract for product: 0

Contract for exhibition fees: Through a use fee/royalty system (performers)

Commission: 0

Copyright license/royalty fees: Writers

1. INDUSTRY STANDARD RATES

Producers have been negotiating rates and conditions of employment, through a negotiating process, with ACTRA (performers) and the WGC (writers) for the last 40 years.

Rates and conditions are in excess of those stipulated in the Employment Standards Act, and reflect minimums only.

2. PAYMENT GUARANTEES

There are very few mistakes, in our industry, where default occurs. This is primarily due to: a) a grievance mechanism* in the negotiated agreements which make default a cause for declaring an engager "unfair" and thus unable to avail him/herself with performers or writer b) default of a writer's fee would engender cause for reversion of copyright to the wrier who licenses his/her work c) ACTRA has a collection mechanism through the Performers Rights Society.

*process: a) grievance meeting
 b) Government Standing Committee (Industry Panel) - usually stops here
 c) Arbitration

3. CONTRACTS

Bill 78 - visual & literary

Bill 90 - Film, Television, Video, Commercial

It is important for us to bear in mind that Bill 78 and 90 were introduced in Quebec (1987), because under the Quebec Labour Code "voluntary recognition" is not permitted and, therefore, no collective agreements are possible without certification.

Quebec operates under the Napoleonic Civil Code as opposed to the rest of Canada which operates under the Common Law Code.

4. TAXATION

PROVINCIAL TAXATION

Good recommendations - would need support of treasurer/revenue department

GOODS AND SERVICES TAX (GST)

Most "artists" are freelancers (independent contractors) and many would probably wish to continue paying GST so that they can claim.

Suggest that they be able to opt in or out from year to year, or create ceiling at which point they do not have to report.

MUNICIPAL TAXATION

Difficult to police. How would you distinguish between who is an artist and who is not? Waiving amusement tax has potential.

5. PENSIONS

This already exists for the film industry within the ACTRA and WGC Agreements, through ACTRA Fraternal Benefit, with engagers contributing 9% of gross fees towards a comprehensive insurance and retirement package.

6. DEVELOPMENT

Most of this already exists for film and T.V.

7. COPYRIGHT

It is important to keep in mind that Film and Television programming operates in a global market, with countless elements including distribution, co-venture and co-production. To this end it is a priority for producers to retain many of the inherent rights, to enable the marketing/sale/broadcast/distribution of programming.

There are existing mechanisms in place through the copyright act and several changes have been tabled through phase II of the program.

8. LABOUR ISSUES

Mechanisms for collective bargaining already exist between producers, performers/writers. These have been in force for the last 40 years.

You are dealing with a very diverse group, who may be seen depending on their function/role to be (a) employees, (b) dependent contracts, (c) independent contractors or (d) a combination.

HEALTH AND SAFETY

Ontario has had a very successful labour/management advisory committee for the last five years, which has developed a health and safety guideline for the film, television, video and performing art sectors.

WORKERS' COMPENSATION

I believe this exists in other provinces.

9. EDUCATION/TRAINING

National and provincial sectoral committees have been set up. There is presently in existence a National Sectoral Council for Culture (NSCC) sponsored by EIC and an Ontario Sectoral Council for Culture. Monies have been available for both training and retraining. This is a good idea for Saskatchewan.

10. VISIBILITY AND ACCESS TO ART

Yes to all three!