

**Status of the Artist is the recognition by society, in spirit and in law, that**  
**(a) artistic creativity and cultural vitality are essential to the aesthetic,**  
**economic, spiritual and social life of our province, and**  
**(b) the value and necessity of artists to society confer rights and**  
**responsibilities on both.**

**“in spirit and in law”**

**Report of the B.C. Advisory Committee  
on the  
Status of the Artist**

**February 1994**

February 1994

The Honourable Bill Barlee, Minister  
Ministry of Small Business, Tourism and Culture  
Victoria, British Columbia

Dear Sir:

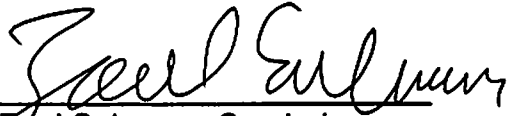
On behalf of the British Columbia Advisory Committee on the Status of the Artist, we are pleased to submit to you our report -- "in spirit and in law". This Report represents the work of the Advisory Committee which was established in February 1993 by the then Minister, The Honourable Darlene Marzari, to examine the status of British Columbia's artists and to make recommendations which would better the daily working conditions of this segment of the population.

As a part of its process in preparing this Report, the Advisory Committee has engaged in numerous consultations and meetings, requested and considered many written submissions, and prepared several working documents. The wide ranging recommendations, which touch upon issues such as collective bargaining, employment standards, art agency agreements, workers' compensation, occupational health and safety, art education and First Nations artists, represent the first thorough attempt by a committee of cultural workers to respond to the needs of British Columbia's cultural community. We believe that our document further stands as one of the most thorough efforts undertaken to date within Canada to examine the various areas of the law that make up Status of the Artist at the provincial level.

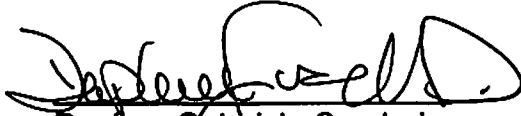
The Report raises many issues which require an immediate and decisive response. The cultural community in British Columbia is unanimous in asking for a coherent cultural policy, an artist sensitive decision-making process, and the increased funding necessary to respond to years of funding neglect. The Advisory Committee is resolute in working with the Ministry in implementing the recommendations of the Report and we have resolved to meet in one year's time in order to issue a report card on the progress made in following up on the recommendations.

We have heard the many voices of B.C.'s artistic community and attempted to reflect those voices within our work. But the Report offers more than simply a description of Status of the Artist as it is understood to exist within the province today. It also provides B.C. artists with a foundation for discussing changes to their status within British Columbia society, both in spirit and in law.

Signed,



Zool Suleman, Co-chair



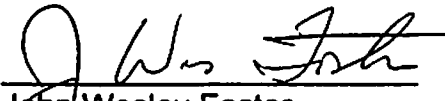
Daphne Goldrick, Co-chair



Susan Crean



David Y.H. Lui



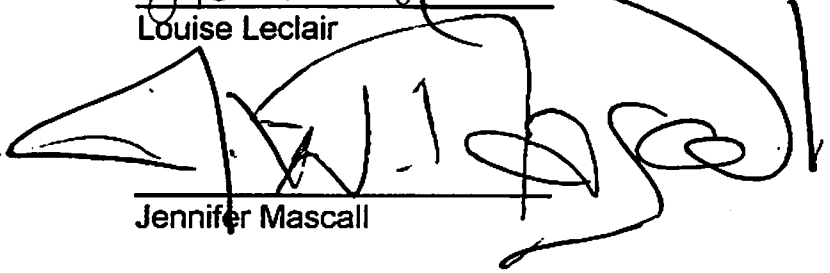
John Wesley Foster



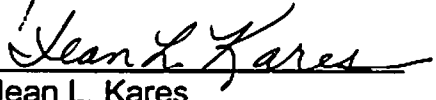
Louise Leclair



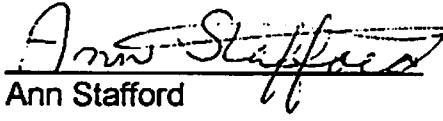
Terry Hunter



Jennifer Mascall



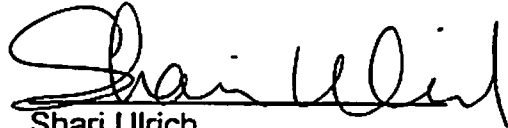
Jean L. Kares



Ann Stafford



Ken Kramer



Shari Ulrich



Edward Epp

## ADVISORY COMMITTEE MEMBERS

### **SUSAN CREAN**

Susan Crean is a writer, editor and journalist. She is the author of several books, including *Who's Afraid of Canadian Culture?* and *In the Name of the Fathers - The Story Behind Child Custody*. She is a contributing editor of *Canadian Art* and *This Magazine*, a Toronto-based publication with which she has been associated since 1979. In 1989 she was the first Maclean-Hunter Chair in Creative Non-Fiction at the University of British Columbia and in 1991/92 served as Chair of the Writers' Union of Canada. In 1992 she joined the Board of the Canadian Reprography Collective (CANCOPY) representing the Writers' Union.

### **EDWARD EPP**

Edward Epp is a painter and art instructor who currently lives in northern British Columbia. His work has been on exhibit across Canada and in Africa and he has taught art in British Columbia, Saskatchewan and Alberta as well as in Africa. He is a member of the Terrace Art Association.

### **JOHN WESLEY FOSTER**

Wesley Foster is the principal clarinetist of the Vancouver Symphony Orchestra and an adjunct professor at the University of British Columbia. He has also held principal clarinet positions with the Indianapolis Symphony, the Hamilton Philharmonic and the National Ballet Orchestra, as well as teaching positions at Northwestern University and McMaster University. In November of 1988, Yamaha Canada sponsored a two-week tour of recitals and master classes given by Foster at Acadia, Laval and McGill universities, the University of Toronto, and in Winnipeg and Regina.

### **DAPHNE GOLDRICK**

Daphne Goldrick has been a professional actor in film, television, radio and theatre for 25 years. She is also an acting teacher, dialect coach, stage director, writer and lyricist. She has been vice-president external of the Canadian Actors' Association, a member of the Canadian Actors' Equity Association's visible minority performers' committee and chaired the women's committee. She was also on the Canadian Advisory Committee on the Status of the Artist which worked on the Canadian Artists' Code and subsequently Bill C-7, the federal Status of the Artist legislation.

### **TERRY HUNTER**

Terry Hunter has been active in dance, theatre and music for over 20 years as a performer, creator and teacher. He is currently Associate Director of Vancouver Moving Theatre, the interdisciplinary performing arts company he co-founded in 1983. As senior performer with Vancouver Moving Theatre, he has toured throughout Canada, Europe, Australia and Asia. Mr. Hunter also co-founded the avant-garde Terminal City Dance, and has performed with Green Thumb Theatre, Great Britain's Welfare State International Theatre Company, Batucada BC Percussion Ensemble, and Vancouver's Universal Gospel Choir. He was selected as a musician

for the Second National Choreographic Seminar at the Banff School of Fine Arts, and has served as a curator and moderator for the Asia Pacific Festival and The Dance Centre.

### **JEAN L. KARES**

Jean L. Kares is a visual artist working in Vancouver. As an artist, she exhibits widely, leads workshops and gives public lectures. For many years she has served on various local, provincial and national cultural sector boards, and is currently the president of the Canadian Crafts Council. Reflecting her vital interest and belief in the importance of community cultural development, she acts as a facilitator and consultant to non-profit cultural organizations in the areas of board development and cultural leadership.

### **KEN KRAMER**

Actor/Director Ken Kramer co-founded the Globe Theatre of Regina in 1966 and was its artistic director until 1990. His awards include membership in the Order of Canada and an honorary degree from the University of Regina. After a 1991 sabbatical year, Ken is busy as a freelance actor in Vancouver and is President of ACTRA B.C. Performers, Local 1.

### **LOUISE LECLAIR**

Louise Leclair is communications officer for the BC region of the Canadian Union of Public Employees (CUPE), which represents among its 52,000 members many cultural workers, particularly in municipally run theatres, museums and libraries. Prior to joining CUPE, Leclair managed her own company, was Director of Communications at the Musee du Quebec, a policy analyst with the federal Department of Communications in Ottawa, Director of the National Mobile Exhibits Program for the National Museums of Canada and Chief of Exhibits, Education, Promotion and Publicity for the Canadian Nature Museum. She is an active supporter of community arts organizations.

### **DAVID Y.H. LUI**

As an internationally recognized impresario and theatrical producer since 1970, David Y.H. Lui has presented and toured thousands of performances in Western Canada. Involved in all aspects of concert presentation and production, he is largely responsible for developing the dance audience in Vancouver. Theatrically, he has produced and toured more than 25 plays and musicals. He is the general manager pro tem of Ballet British Columbia and serves on its board as well as the boards of the Vancouver Cultural Alliance and The Dance Centre. He is on the advisory board of the Vancouver Foundation and as a consultant, develops festival, national tour, television and special event projects.

### **JENNIFER MASCALL**

As a radical independent for seven years Mascall performed solo in New York and the major European centres. For seven years she co-directed Vancouver's EDAM Company and in 1989 founded Mascall Dance. In the past 20 years she has created more than 75 works. Her choreography has been described as unexpected, innovative, and full of detail and craft. Her commissions include work for both theatre and modern dance companies and have often involved collaboration with other artists. Her work has been recognized by awards from the Canada Council, Banff Centre, Edinburgh Fringe Festival, and the Government of Canada. Mascall also published *Footnotes*, a collection of dance notes from 60 North American

choreographers. She has taught modern technique, composition and improvisation to professional dancers, actors and non-dancers since 1974.

### **ANN STAFFORD**

Ann Stafford has had a multi-faceted career in music as a performer, private music teacher and educator. Ann is a graduate of the Eastman School of Music. A well-known Vancouver freelance musician and former member of the Vancouver Symphony Orchestra, Ann has performed with most of the leading musical organizations in Vancouver including the CBC Vancouver Chamber Orchestra, the Purcell String Quartet, and the Pro Nova Ensemble. Ann has been a featured performer on the Masterpiece Chamber Music Series at the Vancouver East Cultural Centre and has recorded for the CBC with the Vancouver Symphony and with various chamber music ensembles, including Masterpiece Music. In 1992-1993 Ann developed the program and curriculum for Kwantlen College's Music Department. She is currently the Convenor of Music as well as instructor of double bass, and ensembles, Listening to Music, and The Business of Music. Ann was a member of the Executive Board of the Vancouver Musicians' Association for five years.

### **ZOOL SULEMAN**

Zool Suleman is an editor, writer, lawyer and cultural worker. He was the general manager of the first Vancouver Theatre Space Society (Fringe Festival) in 1989 and has served on the board of directors of the Rungh Cultural Society, the Vancouver Folk Music Festival Society and the Vancouver East Cultural Centre. He is the editor of *Rungh Magazine*, a South Asian journal of culture, comment and criticism.

### **SHARI ULRICH**

Originally from the San Francisco Bay area, songwriter and performer Shari Ulrich immigrated north to Canada in 1972 shortly before she began her career in music. She has performed and recorded solo and with several groups, including the Pied Pumkin String Ensemble, the Hometown Band, and Ulrich, Henderson, Forbes (UHF). She also co-hosted CBC's popular "Futurescan" series with David Suzuki and, more recently, CTV's "Inside Trax." Ulrich is a vice-president of the Songwriters Association of Canada and a member of ACTRA, SOCAN, the Vancouver Musicians' Association, and the Music Copyright Action Group.

## ACKNOWLEDGMENTS

The British Columbia Advisory Committee on the Status of the Artist would like to thank all the artists and cultural workers who made contributions to the work of the Advisory Committee. We have documented these contributions in Part III and Appendix C of the Report. Allan Krasnick, Executive Secretary to the Advisory Committee, must be thanked for assisting, counseling and facilitating the work of the Advisory Committee. We would also like to acknowledge the central role played by Burt Harris who served as a researcher, writer, confidante, and advocate for the artist in his work with the Advisory Committee. His background papers, provided in Appendix A, played a vital role in informing and guiding the Advisory Committee. Tanya Schatz, Administrative Assistant, performed under great pressure with diligence and confidence. The Advisory Committee would also like to thank Viola Thomas, for organizing and facilitating the First Nations consultation process. Susan Crean, well known for her unflagging advocacy on behalf of all cultural workers in Canada, has the gratitude of the Advisory Committee for guiding the report drafting process with wit, enthusiasm, and the occasional nudge where necessary.

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# I. INTRODUCTION

**Status of the Artist is the recognition by society, in spirit and in law, that**  
**(a) artistic creativity and cultural vitality are essential to the aesthetic,**  
**economic, spiritual and social life of our province, and**  
**(b) the value and necessity of artists to society confer rights and**  
**responsibilities on both.\***

## WHAT ART'S GOT TO DO WITH IT

Artists and the art they create have been described as the points where a community becomes articulate. This implies that art is a product of its own time, shaped by it for better or worse, but also suggests that making art is more than a job or a vocation. Indeed being an artist means having a voice in the public discourse; it means participating in a process which creates community through the circulation of ideas, stories and images, and the sharing of experience. In this sense, artists are instrumental to the community's own survival for they provide for the passing on of history and tradition. Their insights and criticism, along with their vision shapes our future.

There is, in other words, a relationship between art and society such that neither can easily get along without the other. Books, for example, can be written and printed but if they are not brought to the public -- the original meaning of the word publish -- there is no possibility of creating literature. Art has to be seen, read, listened to, discussed, criticized and gossiped about for an artistic culture to flourish; creativity needs attention as well as infrastructure (publishing houses, theatres, galleries, festivals) if the evolution of talent over a creative lifetime is to be sustained. Artists, whatever their medium, need audiences, need access to tradition and the artistic repertoire, and exposure to criticism and review. They need, in short, a culture to breath in.

By the same token, society needs artists, for they are essential to the maintenance and expression of the social imagination -- which is to say the nurturing of collective memory and myth. The state obviously has an interest in ensuring this collective imagining is possible; citizens have to be able to communicate with one another if common cultural goals and understandings are to be forged. Moreover, the right to the freedom of expression can only have meaning if that expression can be heard or seen by others beside the person expressing it. In this era of globalized culture reserving space for our own messages, images, opinions and debates in national and local networks is as crucial to the social weal as housing or health care.

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\* B.C. Advisory Committee on the Status of the Artist, September 12, 1993.

Access to one's cultural heritage and to the means of artistic expression can therefore be understood as a matter of human rights. To say this is to acknowledge the all-encompassing nature of art and its profound importance to the individual. It is also to recognize art's pervasiveness and everyday presence in our lives, in a thousand different ways and a thousand different forms; so pervasive that it is commonly taken for granted. And when art and creativity are taken for granted, so are artists.

Simply said a healthy functioning society needs healthy people, a healthy environment, a vibrant culture, quality education, fair and effective social services and a government committed to enriching the quality of life for all citizens. In that context, the status of our artists -- the dreamers, storytellers, soothsayers and image makers among us -- is one way to gauge the genius and civility of a people. How a society treats the less powerful, nurtures its children and regards its artists, how it dances, sings, imagines and plays, whose voices are heard in the public place and whose are muffled, these are all measures of a society's successes, strengths and weaknesses. By the same token, the creative mandate of any institution or industry, especially in the cultural field, can easily be ascertained by looking at the status of artists or creators (if any) within its orbit. The degree to which creation as an on-going, contemporary event is given priority and ascribed importance will be manifest in the attention given local and Canadian art, and will be visible in the incomes of living artists.

## **THE STATUS OF ARTISTS IN BRITISH COLUMBIA**

The hard truth is that in this province and this country the access of local producers and creators to the main networks of cultural communication is extremely limited. This is an old dilemma which hasn't disappeared, which has, in fact, been enshrined in the Free Trade Agreement with the United States. (The Agreement grants the U.S. the right to retaliate for an "equivalent commercial effect" should their revenues be affected by Canadian cultural policy effectively guaranteeing them access to our cultural markets at the current levels.) So it is that the average American artist continues to have better access to Canadian audiences than the average B.C. artist does. A good illustration of this was "Music '91", a product of the previous government. Home-grown artists are second class citizens in the North Americanized marketplace which leaves Canada a share of between 3% (movies) and 25% (books) of her own domestic market. (For a list of statistical sources, see Appendix E.)

Having said that, however, we must note that the last couple of decades have seen the most remarkable expansion in the activity and visibility of B.C. artists. More books and plays are being written, more films produced, more music and dance created than ever before and more cultural minorities are being heard and seen in the mainstream. While we can (and do) lament the lack of Canadian television production in British Columbia, the shortage of performance spaces, the dearth of large and medium circulation magazines, the absence of serious arts journalism and the poor coverage of cultural affairs in the news media generally, we can celebrate the fact that B.C. has become a book publishing province of note, is home to fourteen highly diverse dance companies, seven (at last count) native theatre groups and the country's only First Nations arts institute established and controlled by aboriginal people, the

En'owkin Centre in Penticton. Some of the art world's best and most celebrated come from British Columbia, among them Bill Reid, Jon Kimura Parker, Ben Heppner, Paul Wong, Jane Rule, Bill Henderson, k.d. lang, Judith Forst, David Foster, Joy Coghill, and Lynn Seymore. Seven of the seventeen recipients of the Prix Saidye Bronfman Award for excellence in crafts (an annual \$20,000 award) have been from British Columbia over the years, and in 1993 alone six B.C. writers were short listed for the Governor General's awards in literature, Guillermo Verdecchia winning the drama prize for his play "Fronteras Americana".

However, artistic fame is a strange thing. Some of most acclaimed B.C. artists are frankly better known outside the country than they are here in British Columbia; many have found the reception warmer and the media more interested in their work and achievement in other parts of Canada -- even in Toronto. For emerging artists such local indifference can be paralyzing. "There's no glory, no pride, and no escape", one young dancer exclaimed. But there is also nothing preventing the provincial government from honouring artistic accomplishment (as the province of Quebec does, for example, with its Prix de Quebec) and from taking a more visible part -- and pride -- in the cultural life of the province.

The cultural expansion of the last decade has not merely been a function of population growth for the statistics on consumer spending indicate that British Columbians along with their Canadian compatriots have vastly increased their spending on culture. Between 1969 and 1990 the percentage of total family expenditures spent on culture and recreation rose from 7.2% to 9.2% which translates into an extra \$6.4 billion per year. Cultural spending alone doubled during the eighties to an estimated \$29.3 billion in 1990 which explains the spectacular growth in the cultural industries, at least at the level of infrastructure. Today the cultural or communications sector can boast of being the fifth largest workforce in Canada commanding 361,000 jobs nationally, and an estimated 43,000 in British Columbia.

The trouble is that this expansion has not significantly changed the status of artists within the artistic and cultural sector as a whole. The billions coursing through the marketplace pass through other hands and other systems, usually ending up in other countries; they are not invested back at the root source of creativity here. Funding to the arts, moreover, is directed mainly to large organizations which generally spend a great deal more on administration than on artists' fees. As a result the basic economics of art production still dictate that the further you are from the act of creation the greater the rewards. Artists exist at the bottom of the cultural food chain. An estimated .49% of total federal contributions to the arts and culture is directed to individual artists, the bulk going to arts institutions which do not necessarily support Canadian art. Consequently artists also show up at the bottom end of the income charts next to aboriginal Canadians and pensioners on fixed incomes.

Despite high levels of education and years of training, the estimated net artistic income of composers is \$7,000 a year, \$11,000 for writers and visual artists, \$13,000 for dancers, \$15,000 for actors and \$18,000 for musicians. These averages drop as much as 55% when the artists concerned are women and possibly more (there are no statistics) in the case of racial minority artists. Furthermore, about half of this income is typically spent on housing and studio or workspace. Because the majority of artists are self-employed and make such paltry incomes,

access to public and private pension plans, to unemployment and disability insurance and to workers' compensation is minimal or non-existent.

To choose to be an artist in British Columbia in the 1990s is almost inevitably to choose to live on the economic margins. There are exceptions, but this is one field where success is rarely reflected in income. As a result many artists have to subsidize their art by doing other work, sandwiching creation in between day (or night) jobs, scrimping to liberate enough "disposable" income to invest in the project. So while most British Columbians work in order to make a living, our artists usually have to make a living in order to work.

Thirty years of public policy in the arts has not affected this fundamental disparity of income and support; thirty years of public funding has benefited artists last and least. Yet it seems reasonable to expect government to take particular interest in the state of our artistic resources and our potential for creating intellectual property in the future. Why not consider artistic creation -- at the very least -- as the R&D of the cultural industries and invest in artists as effective entrepreneurs, and in the arts as sound employment policy? Yet we do have to understand and acknowledge that public involvement in the arts can never be explained or justified in social or economic terms though they may be analyzed from those perspectives. It would, for example, make perfect economic sense to concentrate all the world's film making or book publishing in the hands of one or two countries, but it would make no sense at all culturally as most nations would thus be relegated to the role of parking lot attendants and common carriers for other people's messages, a party to their own silencing. Dreaming and imagining, like physical exercise, are not things you can hire others to do for you. The reasons for funding the arts have to do, therefore, with intangibles, with benefits which cannot be measured or priced and which defy bureaucratic rationale and manipulation. When things work, money and marketing may have helped but you never know where or how exactly. Art comes from the spirit and touches the spirit; it is elusive and demanding and no policy can predict its appearance. So policies must, above all, be flexible. They have to flow from creativity and return to it.

Although Status of the Artist as a policy initiative has evolved in Canada largely in relation to the working environments of practising artists, it is obviously a much bigger issue. It is not a matter which easily submits to legislative solution or to any single response, and clearly it is also about attitude. It is about recognizing that artists are highly skilled, highly productive professionals, cultural experts who have a particular purpose and responsibility towards the community as a whole and who cannot be replaced or substituted or simulated. And it is about understanding that artists are not claiming special status when they speak of Status of the Artist, but are seeking fair and equal treatment in the work place, and asking for recognition that art production occurs in different and often difficult circumstances which have to be respected and accommodated.

In this exercise we do well to remember UNESCO's definition of "artist" which stresses self-direction and self-determination. It states, in essence, that artists are those people who create or recreate works of art, contribute to the development of art and culture, consider this activity central to their life, and in defining themselves as artists ask the rest of us to respect their endeavour. (See Appendix F)

## STARTING IN OUR OWN BACKYARD

Our report on the status of British Columbia's artists can well begin in our own backyard with the provincial government. Very little has changed in Victoria over the last three years though the change in government did bring about the appointment of this Advisory Committee. The status of arts policy on the provincial agenda is so low as to be ignominious, the government in office having made no move even to honour its commitment to bring the level of arts funding up to .5 percent of the gross provincial budget and to establish, at very long last, an independent arts council. Instead of the promised arts council we have been given the Cultural Foundation of British Columbia which expressly excludes any programmes or monies being directed to individuals (ie. artists). Instead of a well-reasoned and effective effort to deal with racial inequality in the arts and culture we have been given the *Multiculturalism Act* and an advisory committee attached to the Ministry of Multiculturalism and Human Rights. Instead of a substantial commitment of programs and dollars to support the artists and arts of the province's First Nations and aboriginal communities we have the *First People's Culture, Language and Heritage Act* and Council whose main aim is the provision of capital and operating monies to maintain buildings (community centres).

There is profound disappointment with the government's inaction and lack of stewardship in the arts. The arts community is genuinely perplexed by the blatant disregard for cultural affairs and the assumption that support for artistic creation is optional. There is concern about government's apparent refusal even to believe the economic arguments (the low cost of creating jobs in the sector, the high impact on the Gross Domestic Product (GDP) -- 2.7% or \$17.5 billion in 1989, more than double the \$7.8 billion of 1981), and its reluctance to follow through on the evidence of its own actions. (The program aimed at putting B.C. books on B.C.'s ferries was immediately successful when introduced a year ago, doubling sales, but the idea has yet to be extended to the crafts, visual arts and audio tapes sold in the same public venues.)

British Columbia continues to distinguish itself for being one of the most inhospitable provinces for artists and their organizations to locate in. B. C., which accounts for 11.9% of Canada's population and 12.3% of Canada's GDP, accounts for less than 4.5% of the total spending by the provinces in the arts and culture. (Only film and video command a larger proportion at 8.7%.) The \$14.9 million spent by B.C. in 1990/91 would have to be more than doubled to reach the national provincial average of \$37.8 million.

At the federal level the picture is not much better. B.C. has historically received less than its fair share of federal contributions to the arts and cultural industries (5.3% in 1990/91). This has left the province's artists and arts organizations more vulnerable than they ought to be to the cuts in federal spending over the last decade -- a drastic 24 percent drop in direct and indirect contributions to the arts and culture between 1984/5 and 1991/2, -- reductions representing the slow withdrawal of federal participation and leadership in arts policy which has yet to be reversed by the new government. Specifically, it leaves B.C. artists at a disadvantage when competing with other artists and arts groups at national and international levels. By virtue of

their underfunding, both levels of government are thus guilty of offloading the financing of the arts to those least able to afford it, to people who are already shouldering the biggest proportion of subsidy to art production through their unpaid and underpaid work, artists themselves.

This situation has to be addressed and with more than rhetoric. It requires leadership, for during times like these schools terminate their fine arts coordinators, theatre companies cancel half their seasons to tend to their deficits, and everyone freezes or cuts fees to artists. The lack of opportunity and funding is already causing a talent drain. (Film production, the one area to have enjoyed a significant increase in provincial support since the late eighties, seems to be the exception, though this activity has benefited local technicians more than local artists.) This is not, in any case, any time to be closing down the arts or penalizing creation. On the contrary, and thinking especially about the anger and violence eating many of our communities and the difficulty we have as a society bridging cultural and racial difference, it is time for increased attention to the matters of the spirit. We need to think about the culture of our young people, of our inner city neighbourhoods, of rural and northern communities and reserves, of our schools and our civil service. Government needs to remember that art is one place where people come together to share difference, and to explore the dark side of the human psyche in safety; a place where the possible and positive can also be celebrated.

The Committee believes that any public policy relating to the arts and the cultural industries must first address the artist -- which is to say creation, which is to say the future. We do not accept the current economic situation as reason for perpetuating the inherited inequities or for failing to protect the cultural rights of British Columbians. We do not accept the attitude that the province is some sort of "frontier territory still working on sewers and roads" and thus not ready for art. We believe our recommendations address these issues and are practical, necessary and realizable. We believe they represent the minimum we should expect of our province. But at the same time we recognize that respect for art and artists like heaven itself cannot be legislated. It can be inspired and invoked and attended to, and legislation is certainly an important instrument, but it must always begin with passion and with spirit.

## **II. RECOMMENDATIONS**

### **A. THE FUNDAMENTALS**

The province of British Columbia and the Ministry Responsible for Culture are travelling without a map or any sense of direction when it comes to the arts and culture. What policies and programs exist have no grounding in general principle, the Ministry having so far failed to articulate a policy and vision for the province's cultural development. It should be the Ministry's responsibility to frame general cultural policy and for an independent arts council charged with the task of deploying public support to the arts to formulate arts policy.

## **RECOMMENDATIONS**

### **#1 Statement of Cultural Policy**

The Committee recommends that the Minister articulate a statement of cultural policy for the province incorporating the following principles:

- a. that the province set an example to the private sector and fulfil its obligation to the public by honouring its commitment to increase contributions to the arts;
- b. that funding policies be primarily directed to assisting creation when and where it happens -- to individual artists, artists' groups and companies;
- c. that arts and cultural policies recognize the Status of the Artist by ensuring that grants to producers (galleries, publishers, theatres etc.) require confirmation that fees and royalties are paid, and copyright, exhibition and performing rights duly respected;
- d. that provincial funding to arts or cultural institutions carry with it an obligation to invest in living B.C. artists and contemporary art;
- e. that arts and cultural policies be inclusive and accessible to all the artistic communities of the province;
- f. that arts and cultural policies incorporate strategies to mitigate regional disparity and provide for an equitable sharing of artistic resources - money and talent - across geography;



## **#2 First Nations Artists**

The Committee recommends that the province of British Columbia recognize the cultural self-determination of First Nations and aboriginal communities. We further recommend that the diversity of these cultures be acknowledged as being unique in Canada, conferring on the province special responsibility in respect to aboriginal arts and artists. The Committee endorses the recommendations contained in the enclosed report on First Nations artists. (See pages 50-54)

## **#3 Artists' Council of British Columbia**

- a. The Committee recommends that the province immediately establish an independent, arm's length arts council to administer arts funding through a system of peer jury evaluation. The Committee further recommends that the council be called the "Artists' Council of British Columbia" and be established by legislation prefaced with a statement of principle recognizing the role and importance of artists to the culture and society of the province.

The board of the Artists' Council of British Columbia must be comprised primarily of practising artists including men and women representing the various disciplines, regions and the racial/ethnic communities of the province. The Council should be empowered to hire its own executive director, to raise and borrow monies and to act as an advocate for artists' rights within government, the province and the country. It should also be required to keep administration costs to 10 percent of its budget, to limit arts officers to five year terms of employment, and, in the spirit of sharing resources with the communities they serve, to align senior staff salaries with the senior most grants to practising artists. The Committee believes that the fortunes of those administering art should be more closely tied to the fortunes of those making it.

- b. The Committee recommends that the Artists' Council of British Columbia draft policies governing the distribution of funds to the arts which will give primary place to the funding of artists, and ensure that all grants are juried.

The Council's policies and procedures must be developed in conjunction with recognized representatives of the arts communities, and artists participating in policy formulation and evaluation should be adequately and professionally paid. The relationship of First Nations and aboriginal artists to the Artists' Council must be developed on the advice of those communities combining approaches which would integrate First Nations arts into general programs and provide dedicated support at the same time.

It will obviously also be necessary for the new Council to formulate an approach to racial equity in the arts, and to develop strategies to redress imbalances and remove cultural barriers such as language. "When I write in Punjabi I do not exist as an artist in British Columbia; only

when I write in English do I exist," poet Sadhu Binning told the Committee. Again, these policies must be developed in conjunction with these communities.

The Committee notes that a total of \$419,082 was allocated by the Cultural Services Branch (CSB) to granting programs for individual artists -- writers, visual artists, film and video artists -- in 1992/93. Another \$120,500 was provided to performing arts organizations to create new works. This compares to the budgets for what is called Professional Arts Development (operating and project grants for performing arts companies, galleries and museums), Community Arts Development and Touring programs which stood at \$8.8 million, \$849,008 and \$404,638 respectively in 1992/93. Grants to individuals, thus, represented just 3.2% of CSB's total grants expenditure of \$12.7 million that year.

In setting up a new council, the province has a once-in-a-lifetime opportunity to learn from experience and to get things right from the start. Policies and programs can, and must, be artist driven; they can and must be created with inclusiveness and equity in mind.

- c. The Committee recommends that the Community Arts Development Program be transferred to the Artists' Council of British Columbia and its mandate clarified and revised accordingly. The Committee further recommends that the purpose and practice of the Community Arts Development program be formulated to develop a supportive relationship between the community at large and practising artists.

When arts programs are transferred from the Cultural Services Branch to the new Artists' Council, it will be necessary to redefine the role and responsibilities of the Community Arts Development program in relation to the arts on the one hand, and community development on the other. Community arts, if defined at all, has been defined as an alternative to professional art. The Committee is aware of criticism of arts funding thus being dedicated to amateur activity and, at the same time, of the way the designation "amateur" militates against the recognition of emerging artists, especially those from non-mainstream and regionally based communities. In truth, artistic activity exists along a continuum and the distinctions between amateur and career professional are not always clear-cut, meaningful or even useful. The Committee is of the opinion that the Community Arts Development program must align itself with the professional arts sector so as to complement that activity.

The Community Arts Development program as it has evolved over twenty years is focused on the system of 95 community and regional arts councils which operate in all geographic regions of the province. This infrastructure represents a major cultural resource which has tremendous potential for bringing communities, art and artists together. Community arts councils are, in fact, ideally placed to play a significant role in advancing arts awareness and arts education, and the Committee feels they must also take a strong leadership position in regard to the recognition and promotion of local artists.

An evaluation of the program is needed, particularly in regard to its support for practising artists and the provision of professional arts resources regionally. At the moment, community arts councils provide employment to many professional artists through performing arts tours, but this touring infrastructure has largely been built by the efforts of staff who are poorly paid

(or unpaid) and untrained. In the visual arts, although some professional development opportunities are provided through exhibition programs, community arts councils have not widely or consistently been paying exhibition fees. This practice is an infringement of the spirit if not the letter of the *Copyright Act* which was revised in 1988 to include a public exhibition right; the Committee believes this can no longer be considered tenable. (We note, however, that respecting the exhibiting artist's right to be paid does cost money and that this may affect the availability of exhibition spaces. Closures would obviously penalize artists, especially those living outside the Lower Mainland where opportunities for emerging artists are limited.) Funding of community arts must be directed to ensure that all projects assume participating artists are paid professional fees.

The Committee believes that the community arts program would be greatly enhanced were a system of artists-in-residence in their own communities instituted. Not only do artists and arts educators want this to happen, but they recognize that communities need contact with living, breathing artists. Community arts councils are the ideal structure for a network of locally based artist-run workshops and productions. Residencies for touring companies could similarly be instituted.

#### **#4 Accountability and Consultation**

- a. The Committee recommends that policy development become the joint responsibility of Ministry officials and artist representatives and that formal mechanisms for consultation and accountability be established.
- b. The Committee recommends that the Minister Responsible for Culture adopt the practice of other ministers and issue a statement of goals, objectives and targets at the beginning of each year, and prior to announcing the next year's targets undertake a year end evaluation in conjunction with the arts and cultural communities affected.

At present the entire process of formulating policy, administering programmes and grants is controlled by Ministry officials who also advise the Arts Board but do so without any means of accountability to the people affected by their decisions. Because of this history the Arts Board does not enjoy the confidence of the province's artists. The Committee heard from all quarters that the Board is out of touch, out of sync, and out of communication with the artistic community.

There is also extreme frustration with the Cultural Services Branch's attitude to consultation. The common perception reported to the Committee is that the CSB does not listen, that policy consultation, when it happens, is undertaken to gain approval for what is already going on rather than to solicit real advice about what ought to be. We were also repeatedly told that the CSB shrouds itself in unnecessary secrecy. (For example, the juries and committees responsible for various granting decisions are not made public although artists -- and the public -- have a right to the information.) Some artists frankly see the relationship between CSB and its constituency as exploitative; application forms and procedures leave many convinced the true purpose is to provide jobs for bureaucrats. Committee members found a high level of

cynicism about our own consultation exercise as a result, and we were asked by many of our colleagues why they should participate in Status of the Artist deliberations when the Ministry has done so very little for artists and still promises nothing.

There is also deep disaffection with the Ministry's impolitic practice of making major policy decisions (such as the formation of a Cultural Foundation of British Columbia) without serious research or consultation. The Committee is very concerned about the policy implications of the Foundation, and the fact that it represents a completely new funding structure which could have enormous power, whose board is required neither to represent the arts community nor to be accountable to it. Apparently no consideration was given to the impact such a foundation is likely to have on fund-raising in the arts community, particularly among the smaller groups. Initiatives like the First Nations Arts Awards and the Artists and Working Life programs, though obviously timely and badly needed, were similarly launched with inadequate involvement of the communities affected, almost no publicity, and so little outreach to the artists who would presumably be interested as to be insulting.

## **#5 Cultural Industries Incentives**

- a. **Film Production:** The Committee recommends that film investment incentives be put on a sliding scale - the higher the percentage of B.C. actors (not extras), directors, musicians, composers and writers used on a project, the higher the incentive. Properly structured the cost of increased incentives will be more than offset by taxes generated by working B. C. artists.

The film business in British Columbia is booming, and the only people not cashing in on the boom are B.C. artists -- actors, composers, musicians, directors and writers. Because producers wish to retain artistic control they reserve the right to retain maximum freedom in artistic hiring. In principle this is fine, but in practice more and more actors are being cast from L.A. with a signed contract waiting for their arrival and confirmation that no one "suitable" could be found in Vancouver. A similar story can be told by studio musicians, soundtrack composers and directors wishing to work above the level of first assistant.

- b. **Sound Recording and Craft Production:** The Committee recommends that similar schemes be developed for encouraging investment in recording artists and craft production.
- c. **Publishing:** The Committee recommends that investment in B.C. publishing be immediately expanded to include magazine publishing. Support programs for publishing should be weighted to assist editorial functions as a matter of priority.

The underfunding of the visual and literary in this province is a national disgrace. The \$.78 million contributed to writing and publishing in 1992/93 represented just 6.4% of CSB grants in the area, and this in a province whose English language writing and publishing activities are second in size and renown only to Ontario's. (We note that the Ministry's budget in the literary arts would have to be quadrupled to reach Alberta's level.) British Columbia has been

particularly remiss in not funding magazine publishing over the years, and the time has come for the province to assume its responsibility in the area. The same has to be said for the long standing neglect of the visual arts, crafts, film and video artists and artist-run spaces.

**B.**  
**WORKING RELATIONS AND ENVIRONMENT**

**GENERAL RECOMMENDATIONS**

**COLLECTIVE BARGAINING -- LABOUR RELATIONS CODE**

The Committee recommends that the *Labour Relations Code* be amended to include artists as a general category and to enable the certification of artist associations as bargaining agents for the purposes of collective bargaining.

**EMPLOYMENT STANDARDS -- EMPLOYMENT STANDARDS ACT**

The Committee recommends that artists who are employees be included within the scope of the *Employment Standards Act* and *Employment Standards Act Regulation*. However, where their inclusion is not appropriate because of the nature of the artistic endeavour, artists should be excluded from those sections of the Act and Regulation.

**ART AGENCY AGREEMENT ACT**

The Committee recommends that legislation be drafted to establish minimum provisions for art agency contracts as well as to establish certain additional protections for visual artists and craftspeople who have entered into such agreements.

**WORKERS' COMPENSATION  
AND  
OCCUPATIONAL HEALTH AND SAFETY**

Both artists as well as the industries in which they work must benefit in general from their inclusion under the *Workers' Compensation Act* and related legislation and regulations. The Committee recommends that exemptions from the provincial plan be considered in light of the best interests of both artists and art production.

## **COLLECTIVE BARGAINING -- LABOUR RELATIONS CODE**

Today most artists lack the statutory right to collective bargaining enjoyed by other occupational groups in British Columbia. Under the B.C. *Labour Relations Code* only "employees" can benefit from the protections in place for collective bargaining with employers. But most artists are independent contractors not employees, consequently their associations cannot be certified to bargain on their behalf and cannot lawfully compel those who hire them to come to the bargaining table. As currently structured, the *Code* offers working artists little assistance in their relations with engagers. Most arts industry agreements are negotiated and recognized voluntarily, an arrangement which allows for, but does not necessarily ensure, balanced relations. Without the support of provincial legislation it is difficult for artists to negotiate improvement in their economic and working situations.

As for the mode of awarding statutory collective bargaining rights to artists, legislators have essentially two choices. One involves drafting an entirely new, separate statute that sets up a collective bargaining regime solely for artist communities and arts industries; the other involves amending the existing legislation covering collective bargaining to accommodate artists and their associations better. The former has been adopted in Quebec as well as in Ottawa. The latter is being recommended as the preferable approach for British Columbia.

Although the approach suggested here differs from those taken in Quebec and Ottawa, the intent of the Committee's recommendation is generally the same. B.C. artists would be part of the national movement towards statutory recognition of artists' collective bargaining rights. Along with their counterparts in Quebec and those engaged by federally regulated bodies, B.C. artists would be contributing to and benefiting from a growing body of Canadian law on Status of the Artist.

### **GENERAL RECOMMENDATION**

The Committee recommends that the *Labour Relations Code* be amended to include artists as a general category and to enable the certification of artist associations as bargaining agents for the purposes of collective bargaining.

The Committee proposes that the scope of statutory collective bargaining be broadened to cover artistic production and performance in the province. Our intent is to give all working artists access to the *Code*, not simply those who happen to meet the traditional tests of employee status because of the nature of their particular field of artistic endeavour. It is intended to give many artists and artist associations statutory rights and legal options which they do not currently enjoy.

This recommendation is not designed to impose the *Code* on artists, their communities or their industries. As is currently the case, there would be no legislated requirement that artists join associations or that artist associations be certified as bargaining agents. Voluntary relationships and negotiations could continue as they now exist. Statutory collective bargaining would simply

be an option. But that is a decision made by artists as members of associations. The decision to join together and bargain collectively is a decision made by the artists involved. Equally, the decision as to whether those negotiations take place in a voluntary setting or under a statutory framework should be made by the artists involved. The Code does not make either decision for them. The objective of the following proposed amendments is to open up for all a door which is closed for many. Those doors already open for everyone are left alone. Artists, and only artists, should be empowered to decide which open door they want to walk through.

## **SPECIFIC RECOMMENDATIONS**

### **#1 Code Review Committee**

The Committee recommends that the issue of collective bargaining in B.C.'s arts industries be added to the agenda of the Code Review Committee. With respect to any recommendations for bringing artists and their associations within the scope of the Code, the Code Review Committee must consult those artist organizations and employers which are likely to be directly affected.

Some artists are concerned about the inclusion of artists under a statute which was initially drafted for more traditional industries and workplace relations, a system which was not originally designed with either artists or fields of artistic endeavour in mind. There are others who are skeptical about any government regulation or bureaucratic involvement with respect to the arts. That concern and that skepticism must not be taken lightly or ignored. Before any amendments are made to the Code which would make specific references to artists or artist associations, further analysis of collective bargaining in the artist community and arts industries must be undertaken by the Ministry of Labour. There is a mechanism for such analysis within the Code. Under section 3:

*The minister may appoint a committee of special advisors to undertake a continuing review of this Code and labour management relations and, without limitation, to ...*

- (b) make recommendations concerning the need for amendments to the legislation, and*
- (c) make recommendations on any specific matter referred to the committee by the minister.*

### **#2 Definitions -- "Artist" and "Artist Association"**

The Committee recommends that the interpretation section of the Code be amended to include artists and artist associations in its language and application.

- a. The definition of "dependent contractor" should be expanded to include "artist".

For example, the definition of "dependent contractor" could be amended to read:  
*"dependent contractor" means a person, whether or not employed by a contract of employment or furnishing his or her own tools, vehicles, equipment, machinery, material or any other thing, who performs work or services for another person for compensation or reward on such terms and conditions that he or she is in relation to that person in a position of economic*



*dependence on, and under an obligation to perform duties for, that person more closely resembling the relationship of an employee than that of an independent contractor, and includes an artist;\**

The definition of "dependent contractor" forms part of the definition of "employee". That mechanism brings those independent contractors who have certain "employee-like" characteristics within the scope of the *Code*. But their inclusion must be viewed as an expansion of the legislation, not a change in their self-employed status. The statute's application has simply been extended beyond traditional employment situations. After all, working environments and working relations are not static. As industries and businesses adjust to new economies and technologies, job descriptions and contracts can change. It is no surprise that at times it may also be necessary to amend the legislation to accommodate these new realities. Recognition of "dependent contractors" within the *Code* provides artists with a "window of opportunity", an opportunity they certainly did not have under the province's original labour relations legislation as it was drafted some forty-odd years ago.

Some artists have expressed concern that inclusion within a labour code definition would affect their self-employed status elsewhere, particularly with respect to federal laws and programs. But it is important to note that dependent contractors exist only within labour relations legislation and scholarly writings. The term has no legal application outside of statutory collective bargaining. It is not recognized as a category by the federal government when determining an individual's status for the purposes of income tax or other statutory assessments.

Quebec's Bills 90 and 78 apply to both artists who are employees and artists who are independent contractors. In contrast, the federal *Status of the Artist Act* applies only to those who are independent contractors; artists who are employees continue to fall under the *Canada Labour Code*. By amending the B.C. *Code* definition of "dependent contractor" to include artists, and thereby bringing those artists who are independent contractors alongside those who are employees, the B.C. legislature would achieve within an existing statute what Quebec passed two additional statutes to achieve and what the federal government also achieves only through two separate statutes.

b. For the purposes of the *Code*, "artist" should be defined as follows:

**"artist" means a person who is a creator or performer in any field of artistic endeavour and who**

**(a) receives remuneration for artistic works or services and is recognized as an artist by other artists,**

**(b) is in the process of becoming an artist according to the practice of the artistic community, or**

**(c) is a member of an artist association.**

As already noted, the Committee endorses UNESCO's global definition of "artist". But the UNESCO definition is offered for society in general and contemplates the full spectrum of

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\* Note: The statute's existing language is in *italics*; the proposed additions are in bold.

artistic activity, from the professional to the amateur, from the paid to the volunteered, from the established to the emerging, from the individual to the communal. This definition has a narrower application in mind; it is offered for the purposes of the Code only and it does not include either the amateur or the volunteer within its scope. The exclusion of such artists is not intended as a statement of any kind about the value of their art or their place within our society. It simply acknowledges that the Code plays no part within the realm of their activity. After all, amateurs and volunteers do not enter into contracts to produce or perform art for remuneration. They may form groups, but they do not engage in collective bargaining and, thus, do not fit within the proposed definition of "artist association" (see below). Consequently, the Code is of little use or benefit to them. Any use of this definition for applications other than statutory collective bargaining is outside the Committee's intention.

Most artists can recognize themselves fitting quite easily within the above definition -- which is the point. The definition is designed to be broad in scope; its wording is intended to establish a neutral test, or at least one geared to objectivity. To limit its application in any further way or to add potentially subjective elements would be inconsistent with the Committee's aspirations in proposing the amendment -- to remove definitional barriers to artists. Also, the definition itself makes no judgment as to the mode of training. An artist's education can be formal or informal, whichever is the customary practice for the particular discipline. Of course, there can still be admission standards for artist associations. But it must be stressed again that artists, not the Code, make those decisions. Only artists should set the criteria for entry into their associations.

There is some concern as to whether certain artists would be excluded from the definition because they are not specifically referred to and have historically struggled to be either recognized as artists or included within the discourse surrounding artists. Two discipline groups have expressed the concern, namely, craftspeople (ie. those artists traditionally associated with "arts and crafts") and interdisciplinary artists (ie. those artists who cross and mix various disciplines and mediums). Even stronger concern, however, has been expressed by First Nations artists and artists of colour. Again, the broadest possible application is desired. A conscious attempt has been made to recognize and include those artists within the conceptual framework and consultative process that formed the foundation for these recommendations.

Finally, the elements of the above proposed definition are drawn largely from two sources: Quebec's Bill 90 and the federal *Status of the Artist Act*. Under those statutes a body of jurisprudence will develop on the definitions and their elements. The definition of "artist" is intended to be part of that body of law.

- c. The definition of "trade union" should be expanded to include "artist association".

For example, the definition of "trade union" could be amended to read as follows:  
*"trade union" means a local or Provincial organization or association of employees, or local or Provincial branch of a national or international organization or association of employees in British Columbia, that has as one of its purposes the regulation in British Columbia of relations between employers and employees through collective bargaining, and includes an artist*

*association and an association or council of trade unions, but not an organization or association of employees that is dominated or influenced by an employer;*

- d. For the purposes of the *Code*, "artist association" should be defined as follows:  
**"artist association" means an organization of artists whose membership includes British Columbia artists and which has as one of its purposes the regulation of relations between artists and their employers through collective bargaining.**

The above definition of "trade union" without the recommended amendment contains two key elements: collective bargaining with a significant provincial character; and non-affiliation with employers. Some artist associations have little difficulty meeting those tests; but others clearly do not fit within the model. The primary reason is that their presence in British Columbia is administrative in nature. They are offices for national associations. They are parties to agreements that are nation-wide. They are not interested in re-structuring either their operations or their agreements to meet the requirements of the *Code*. An attempt has therefore been made to accommodate those organizations. The definition of "artist association", like the definition of "artist", is deliberately broad. No reference is made with respect to the provincial character of an association's operation. The only requirements are that the association's membership include B.C. artists and that its mandate include engaging in collective bargaining on behalf of its members, neither of which appears unreasonable within a collective bargaining statute for British Columbia.

The Committee notes that according to the *Code* employee groups seeking its benefits and protections must not be "dominated or influenced by an employer". The same would also be the case for artist groups. At first glance, that condition may appear to be a major roadblock to some artist associations. Their memberships include artists who at times are also engagers or also involved in the management of a production. For instance, the dancer who dances for one company could be the choreographer/administrator for another. Or the actor who acts in one play could be the producer/engager for another. Some artists simply take on diverse roles, artistic as well as administrative, within their communities and industries. But the meaning of the phrase "dominated or influenced by" should not be interpreted as including simple "membership" in an employee association. Employer involvement within such an association is problematic primarily with respect to its formation, administration and management, the setting of its policies and the negotiation of its collective agreements. Simple membership does not in itself create a problem. Nor is it recognized as sufficient reason for denying certification to employee associations in other industries. The "sometime employee/sometime employer or manager" syndrome, moreover, is not unique to the arts. In the construction industry, for example, a labourer on one site might be the superintendent on another; his or her membership in an employee association does not in itself jeopardize an application for certification, nor does it by itself taint any collective agreement negotiated by the association as being employer influenced or dominated.

As with the definition of "artist", the definition of "artist association" is for the purposes of the *Code* only. The Committee emphasizes that both definitions are designed for statutory collective bargaining and should not be used for other policy or legislative applications.

### #3 Labour Relations Board -- "Artist Vice Chair"

The Committee recommends that artists be involved in the decision-making process with respect to applications for certification by artist associations and to the adjudication of disputes involving artists or their associations. Where relevant, the working conditions and practices of particular fields of artistic endeavour must be considered.

One area of concern surrounding the inclusion of artists within the Code pertains to the decision-making process as well as to the decision-makers themselves. Artists are determined that any decision directly affecting artists must include artists in that process. To date, they have been given little reason to expect that their unique working and living circumstances will be understood or respected by those outside their communities and industries. Artists do not enjoy a happy history with Canada's legal and political systems. Laws and policies have rarely been framed or even adjusted to accommodate the artist. The struggle to be heard and addressed directly by legislators and policy makers has been long and hard.

In Quebec and at the federal level, the choice has been made to establish a separate commission or tribunal to administer labour relations within the arts industries. The Committee feels the appropriate choice in B.C. is to "piggyback" onto the existing system, and not to create a separate bureaucracy. An institution is already in place to deal with collective bargaining in British Columbia. The personnel and paper processes are in place; bargaining agents are being certified; collective agreements are being negotiated; and disputes are being heard and resolved. The concern over the ability of non-artists to sit in judgment over artists is certainly reason to modify the process, as the Committee recommends, but it is not sufficient justification for setting up yet another office and funding yet another tribunal. In our case, we feel there is little good argument for setting up the administrative machinery necessary to provide one occupational group with a formalized system of collective bargaining that is similar to, but separate from, the system already in place for all others. Duplication of services is not an easy thing to justify in the eyes of either the government or the public.

The stipulation that artists be involved in the decision-making process is central to the Committee's recommendation, and we submit the following amendments to the Code for consideration as a workable mechanism to achieve it.

- a. The following definition of "artist vice chair" would be included:  
**"artist vice chair" means a person who is an artist and who is appointed as a vice chair to the board by the Lieutenant Governor in Council.**
- b. The section establishing the panels of the Board [s.117] would be amended to include:  
**(6) On matters relating to artists and artist associations, a panel of the board shall include one or more artist vice chairs.**

- c. The section setting out the jurisdiction of the Board [s.139] would be amended to read as follows:

*The board has exclusive jurisdiction to decide a question arising under this Code and on application by any person or on its own motion may decide for all purposes of this Code any question, including, without restriction, any question as to whether ... but only a panel which includes one or more artist vice chairs may decide questions as to whether*

- (a) a person is an artist,
- (b) works or services are within a field of artistic endeavour,
- (c) an organization is an artist association, and
- (d) an artist or a group of artists is a unit appropriate for collective bargaining.

These proposed amendments do not include a definition of "field of artistic endeavour". Unlike other artist rights legislation (Quebec's Bills 78 and 90 and Ottawa's *Status of the Artist Act* and *Copyright Act*), there would be no listing of the various fields recognized as artistic endeavours. Artists have generally expressed little desire for placing statutory limitations on what can and what can not be recognized as "art". Such legislated definitions, even in combination, must be seen as comprising a "short list", not the complete list. However, they should still be available to artist vice chairs as tools for interpretation. As noted above, these amendments to the *Code* are intended to be part of a growing body of Canadian law on artist rights. Furthermore, for those artists involved in activities where there is some disagreement, even within the artist community, as to whether they fit within a particular artistic discipline, precedents found elsewhere in Canadian legislation should help to remove such debates here. For instance, crafts and video art share a problem, in that, they are not always viewed as being within the visual arts. However, both are clearly within the scope of Quebec's Bill 78. No less than their compatriots in Quebec, B.C.'s craftspeople and media artists must be viewed and treated as artists in their province's collective bargaining legislation.

#### **#4 Certification and Voting Procedures**

The Committee recommends that the Labour Relations Regulation be amended with respect to the certification process to include application and voting requirements which fit the business practices and production circumstances of the arts industries, and are specifically applicable to the various artistic disciplines.

There are several procedural hurdles facing an application for certification. Some of these are unrealistic within the world of artistic performance and production. For instance, it is common in the film and television industry for a production company to exist for the sole purpose and duration of a single project. Thus, with respect to talent, there is an immediacy to the compelling forces of demand and supply. Between the moment a production is announced and the date of its completion, there is not always enough time for associations to follow the required steps for certification. Those which are currently attempting to access the *Code* are repeatedly frustrated by the rules and procedures. Although they would prefer to be certified as bargaining agents, they can do little else but approach producers for voluntary recognition.

As currently drafted, the rules are of little assistance to artists or their associations, and actually operate more to reinforce the power imbalance between artists and producers in negotiations.

The Lieutenant Governor in Council is empowered to make regulations with respect to applications for certification and voting under the *Code* [s.159(2)]. Thus, the mechanism for drafting special rules and procedures for the arts industries is already in place.

## EMPLOYMENT STANDARDS -- EMPLOYMENT STANDARDS ACT

Not all artists are independent contractors. Some are clearly employees. But unlike most other employees in British Columbia, these artists cannot presume the protection of the *Employment Standards Act* and *Employment Standards Act Regulation*. The Act covers wage protection, hours of work and overtime, annual vacation and vacation pay, special apparel, termination of employment, employee protection, maternity and parental leave, child employment and employment agencies. The Regulation covers minimum wages and general holidays. Artists, however, are specifically excluded from all areas but two -- wage protection (ie. the right to be paid their wages within a specified period) and special apparel. Artists who are employees cannot therefore demand that the other terms of their employment be within statutory standards, or that their wages be at or above statutory minimums. And since artists are excluded from provisions governing child employment and employment agencies, they cannot expect the statute's regulatory body to concern itself with such matters within the arts industries.

### GENERAL RECOMMENDATION

The Committee recommends that artists who are employees be included within the scope of the *Employment Standards Act* and *Employment Standards Act Regulation*. However, where their inclusion is not appropriate because of the nature of the artistic endeavour, artists should be excluded from those sections of the Act and Regulation.

Some artists have expressed concern that the removal of the general exclusion of artists from provincial employment standards will somehow lead to a lowering of standards for artists. Those artists tend to be members of large artist associations and are very aware that their existing collective agreements and standard form contracts contain higher rates and conditions than those set out in the Act. Two points need to be stressed in response: first, that the Act is for the benefit of employees only; and, second, it is always possible for employees, either individually or collectively, to negotiate above legislated employment standards. The statute establishes a starting point for negotiations. It sets out the minimum conditions for employment which are considered allowable within our society. It sets down rules for situations where one party benefits from the labours of another, rules designed to balance the scales somewhat, to bring the employer and employee to a certain level of understanding as to the nature of their relationship, and the obligations each has to the other. The provisions are of particular assistance to those individuals or groups who, without such legislated standards, would be certain to get lower pay and fewer protections. Traditionally, artists have empowered themselves in their contractual negotiations either by forming associations and acting collectively or by achieving commercial success and thus individual clout. But others have not been so empowered. They produce and perform outside of collective agreements and without individual contracts. They may not know whether they are in an employment situation or not, but should they prove to be employees, then, like most others, they should be entitled to the full range of benefits and protections offered by the Act. These artists should not be denied

provincial employment standards simply because other artists have already achieved higher standards.

The Committee reiterates its concern that any changes in the legislation make sense within those fields of artistic endeavour which are directly affected. It is not in anyone's interest to frustrate art or hinder its development and expression. Therefore, we have sought balance and flexibility within our recommendations. An attempt has been made to find ways within the legislation to empower artists without jeopardizing artistic production or performance.

## **SPECIFIC RECOMMENDATIONS**

### **#1 Application to Artists**

The Committee recommends that the general exclusion of artists be removed and replaced with a set of provisions designed to exclude artists only from those sections where strict enforcement could affect artistic production or performance negatively. Provisions should be drafted with the following in mind:

- a. The original owner of an artistic work is not an employee in relation to the production of that work. Thus, an artist who owns the work she or he produces should not be considered to be under any type of employment contract and should not be brought within the scope of the Act.

For example, section 8 of the Regulation could be amended to read:

*(2) Parts 3 to 9 of the Act and sections 3 and 4 of this regulation do not apply to*

- (a) an artist who produces work(s) which he or she owns originally and has the right to negotiate its sale and subsequent use ....\***

Some artists do not deal in services, but in works. In practical terms they can be described as "producing artists" and include visual artists, craftspeople (those artists traditionally associated with "arts and crafts"), designers, literary artists, choreographers, composers, record producers and film and video makers. Unlike performing artists, they do not offer their time plus talent for hire, they offer the culmination or "end-product" of their time plus talent, ie. their artistic works, for sale or hire. But sometimes producing artists engage other producing artists to assist them in production. Where do these relationships fit into provincial employment standards? Actually, the lines can be drawn quite easily. The best reference point is the work itself and the key questions involve original ownership and copyright. The artist who initially owns the work produced or holds the copyright in that work is in a position to benefit directly from its sale or subsequent use. That artist should remain outside the scope of the Act. But the artist who produces works or assists in the production of works which she or he does not at least share in either the ownership or the copyright does not stand to benefit directly from sales or subsequent uses. They should be brought within the protections of the Act.

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\* Note: The statute's existing language is in *italics*, the proposed additions are in bold.



- b. Performing artists should be free to negotiate with employers on either an individual or collective basis with respect to hours of work, overtime, general holidays and maternity and parental leave.

For example, section 8 of the Regulation could be amended to read:

- (3) Part 3, other than section 35.1, and Part 7 of the Act and section 4 of this regulation do not apply to a performing artist engaged under a written contract which, within its provisions, specifically addresses hours of work, overtime, general holidays and maternity and parental leave.**

Some of the provisions of the Act set up conditions which are inappropriate for certain fields of artistic endeavour, in particular, those commonly viewed as comprising the performing arts. With respect to hours of work, overtime and general holidays, performing artists require great flexibility. Ensemble rehearsing, like solo practising, cannot be discussed within any single framework. The development of a group production, like an individual's creative process, cannot be set within a structured time-frame. Many artists feel that imposing the legal standards and minimums for hours and holidays upon live art and entertainment would jeopardize productions and engagements. Eight hour days and forty hour weeks are generally inappropriate frames of reference for most productions or engagements. In some instances they would be definitely too short; in others they would be far too long. Concerns about the cost of overtime could hinder the free development of a production in both its rehearsal and performance stages. Many artists, like many producers, are willing to put in the time and do whatever it takes to raise the production to its highest possible artistic level. Neither wants to be watching the clock or thinking about budget limitations while creating or assisting in the creation of an artistic work. And it certainly makes little sense for artists and productions which are wholly dependent upon seated audiences to even consider a weekend off, let alone a long weekend. Performing artists must work when others are not. That's the nature of the live engagement. Consequently, the Committee suggests a different approach: if the artist and engager wish to make other arrangements concerning hours of work, overtime and general holidays, they must do so within the terms of a written contract or collective agreement. By allowing performing artists and engagers to negotiate their own terms, either individually or collectively, while at the same time requiring them to put these terms in writing, the Act would permit flexibility as well as ensure that, if the legislated standards are not workable or reasonable, the two parties at least address the issues and establish their own minimum conditions.

Maternity leave is another matter which should be addressed on an individual basis. At the moment, an employer is not permitted to terminate an employee because of her pregnancy. The employee can go on maternity leave without pay for up to 11 weeks prior to the anticipated birth and for a maximum period of 18 weeks. Furthermore, at the end of the maternity leave the employee can expect an orderly return to her previous position. All of this, however, makes little sense in the world of the performing arts. With the dancer, for example, the physical nature of performance is self-evident, as is the dance company's expectation that the dancer will turn in consistent and high level performances. Both during and following pregnancy, the dancer may be unable to do so. The dance company needs some flexibility,

particularly with respect to the termination of a dancer's employment because of a pregnancy and her reinstatement following a leave of absence. The seasonal and project nature of dance productions (anywhere from 1 week to 10 months) adds to the awkwardness of legislated time frames. From the perspective of both dancer and dance company, the freedom to negotiate reasonable terms with respect to maternity leave is obviously necessary.

As for parental leave, the primary concern is the length of leave that is permitted under the Act -- up to 12 weeks. Unless engagers are allowed to make other arrangements, the possibility exists that a performer's leave of absence would be longer than the run of the production itself. The matter should be worked out by the artist and the engager in advance. If it is not, then the provisions of the Act should apply.

The Committee further notes that the section governing special apparel may be inappropriate for some engagement situations. Under the Act, if an employer requires an employee to wear special apparel, then it must be furnished and maintained by the employer. However, there is a mechanism for exceptions to that general requirement where its application is unsuitable in the circumstances. For instance, a dance company along with its dancers could make an application to the Director of Employment Standards for a variation of the provision.

- c. Engagers for live performances and producers of live theatre, dance, music or variety entertainment should be required to give artists at least one week's notice for termination of employment.

For example, section 42 of the Act could be amended to read:

- (1) *An employer shall not terminate an employee without giving the employee, in writing, at least*
  - (a) *2 weeks' notice where the employee has completed a period of employment of at least 6 consecutive months, or 1 week's notice where the employee is an artist and the employer is an engager or producer of live theatre, dance, music or variety entertainment, and*
  - (b) *after the completion of a period of employment of 3 consecutive years, one additional week's notice ....*

This amendment would give performing artists a higher statutory standard than other occupational groups, at least for the first 6 months of an engagement. As the provision currently reads, an employee can expect 2 weeks' notice of termination or 2 weeks' wages in lieu of notice only after 6 months of employment. Up to that point, the Act is silent. Without an agreement to the contrary, even one day's notice with no severance pay is permissible. But as a minimum, one day's notice is unacceptable to most people. Artists are no exception. Arts industry standards place the minimum at 2 weeks. Some artist associations have also established a 2 week minimum within their collective agreements as well as within their standard form contracts. But without a signed contract, the artist has very little to guarantee any period of notice.

Much of the theatre and dance in British Columbia is produced by companies which are operating on perpetually tight budgets and a heavy dependence on government funding. The

Committee has kept these non-profit arts organizations in mind in framing the recommendation. A balance was sought between the best interests of the artist and the best interests of the production. If a minimum period of notification for termination of employment is to be required under law, then it should be a reasonable period from the perspective of both the artists and the engagers involved. Live art and entertainment are characterized by the immediacy of its audiences' demands or lack thereof. If the box office suddenly dries up, then the engager should be permitted to respond with reasonable haste. To leave the provision as it now reads would leave the artist who is without a suitable contract also without protection under the Act. He or she would be left wide open to the possibility of no notice and no severance pay. But to require by law that artists receive 2 weeks' notice even before the engagement has run for 6 months would be an onerous burden for many non-profit operations. Of course, artists can always request a longer notification period. The amendment would do nothing to alter the right of individuals or associations to negotiate above the statutory minimums. Those agreements already in effect would be unaffected. Those agreements negotiated in the future could state a notification period no less than what is stipulated in the Act.

## **#2 Child Performers**

The Committee recommends that the engagement of artists under the age of 15 be governed by Part 6 "Child Employment" of the Act. Provisions should be drafted with the following in mind:

- a. All contracts involving child artists should be filed with the Director of Employment Standards for review (or with the Public Trustee under Part 2.1 "Infants' Contracts" of the *Infants Act*).

Although the recommendation is designed with all child artists in mind, children engaged for film, television or commercial work are of particular concern. They deserve the same level of protection as children employed elsewhere in our society. Currently, artist associations set and enforce minimum standards for children's wages and working conditions. But children engaged outside the jurisdiction of collective agreements have limited protection. Under the *Infants Act*, the Public Trustee is empowered to review the terms of an infant's contract, but only upon application for such review.

- b. Contracts and conditions of work should be assessed in light of industry standards and practices and approved according to guidelines set in consultation with producers, artists and artist associations.

Artist associations in the film and television industry have developed standards for the engagement of children. Those standards form part of their production agreements, with provisions addressing a child's time before camera, presence of parent or guardian, dangerous work and tutoring. The requirements should not be too onerous a burden on producers, but, as with any instance of child employment, the health and welfare of the child must be given paramount consideration.

- c. In general, all contracts should be filed prior to the engagement, but there should also be a mechanism for advance rulings on film, television and commercial contracts.

For example, a production company with continuing operations in British Columbia (one year or more prior to application) could be allowed to apply to the Director (or Public Trustee) for an advance ruling on the terms of its contracts. Similarly, children contracted under collective agreements negotiated by artist associations could be allowed to register with the Director (or Public Trustee) for advance rulings as to terms, conditions and rates of pay. Submission of the actual contracts would be required within a reasonable period of time (seven days) following the commencement of the engagement.

### **#3 Entertainment Agents**

The Committee recommends that special provisions governing entertainment agents be added to Part 10 "Employment Agencies" of the Act. Provisions should be drafted with the following in mind:

- a. "Entertainment agency" and "entertainment agent" should be defined to cover both talent and booking agents operating in the music, theatre, variety entertainment, and film and television industries. It should also be defined to cover agents who represent artists only. Those who represent engagers should be viewed as "employment agencies" and governed by the provisions already in place.

In the performing arts and entertainment industries the lines between agents who represent artists and agents who represent engagers are becoming blurred. Some agents attempt to do both. They view themselves as representing both sides of the contract. Some even collect fees from both sides. Other agents think that they are representing the artist when, both in fact and in law, they are actually representing the engager. They will be under an agreement, possibly formalized in writing but not necessarily, to find talent for a particular film production company or to find entertainers for a particular club or group of clubs. But who is the agent actually representing when hammering out a deal? To any observer the potential for conflicts of interest should be self-evident.

Theoretically, at least, the Act already covers agents who represent engagers. They are in many respects little different from employment agencies. They find people to work for companies. That is the agency service they offer. But, to date, they have not been recognized as employment agencies. There is an assumption they are working on behalf of the artist. After all, artists are being engaged through their offices; artists are paying them a percentage of their engagement fees. If an agent is actually representing the engager, why would the artist pay the agent's commission? Why indeed. Under the Act, employment agencies can request fees from an employer only, not from an employee.

Many of the elements in the Committee's recommendation have been drawn from legislation enacted in California and New York. Both of those states licence and regulate talent and

booking agents. California does so under its *Labour Code* and New York does so under its general business legislation. But some of the requirements of those statutes, such as finger printing and a \$10,000 surety bond, were considered to be unreasonable demands for B.C.'s industry and unwarranted given the nature of the problems which the recommendations are attempting to address. The apparent conflicts of interest have not been presented as being criminal in nature; rather, they are viewed as being inherently unfair to artists. The recommendation attempts to address the problem without representing it as something other than what artists have said it is.

- b. An agent should be required to
  - register with the Director and renew registration annually;
  - file contract forms as well as a schedule of fees upon seeking and renewing registration; and
  - post the registration in a conspicuous place in his or her office.However, there should also be a mechanism for advance registration of agents who have agreements with artist associations as well as for general approval of contracts and fees established by those associations.

Agents who are already registered with artist associations should not be compelled to register with the Director also. If artist associations are already approving agency and engagement contracts as well as agency services, rates and fees, then the Director should benefit from that process and not duplicate the service. Instead of each agent registering and filing documents, the artist association could do so on behalf of all of its signatory agents.

- c. An agent's application for registration or renewal, including standard forms and fee schedules, should be assessed in light of industry standards and practices and approved according to guidelines set in consultation with agents, artists and artist associations.

The Committee stresses the need to consult with all parties involved. The formulation of any rules governing agents' practices or any new standards affecting agents' businesses can best be done, and should only be done, with the participation of the agents themselves. Obviously, the input of artists, the people who actually contract for and pay for the services of entertainment agents, is of equal importance.

- d. Registration should be refused or revoked in the event of
  - breach of the Act or any other statutory violation;
  - bankruptcy; or
  - activities contrary to the best interests of artists seeking engagements.
- e. An entertainment agent should be allowed to represent artists only and to receive a fee for agency services from, or on behalf of, artists only. Conversely, an employment agency operating in an arts industry should be allowed to represent employers only and to receive a fee for agency services from, or on behalf of, employers only.

One way to make sure that agents work on behalf of their artist clients and not for engagers is to designate artists as the only parties from whom an agent can receive a commission or other

fee. It should then become crystal clear to all within the industry exactly who the agent is representing in contractual negotiations, who the agent is providing a service for the benefit of, and, essentially, who the principal is in the agent-principal relationship. In all cases it should be the artist. If it is not the artist, but the engager, then the agent should be recognized and regulated as an employment agency.

The recommendation is not, however, intended to stop the common practice of artists' fees being paid directly to agents and then distributed to artists with commission deducted. That is an administrative matter which should be addressed in a contract between the artist and the agent (see below).

- f. Agreements between agents and artists should be in writing and should contain provisions which address
- the field(s) of artistic endeavour for which the agent has been retained;
  - the nature and scope of the services provided by the agent;
  - any limits on the application of the power of attorney;
  - the amount of commission and any other fee charged by the agent;
  - the rates and charges under a co-agency or sub-agency arrangement;
  - the terms of payment when money received by the artist;
  - the terms of payment and deductions permitted when money received by the agent; and
  - the resolution of disputes by a mutually-agreed, independent arbitrator or by the Director.

The Committee notes that the recommendation does not make reference to particular types of fees or specific rates of commission, unlike the New York statute, for instance, which stipulates a maximum level of 10% commission on theatrical engagements. The intention is not to write the contract for the parties, but merely to require that certain key elements be considered within the terms of the document. The scope and language concerning those elements, like most other issues, are still matters for negotiation.

## **ART AGENCY AGREEMENT ACT**

Historically, visual artists and craftspeople have shown little inclination to form groups for the purposes of collective bargaining. Certainly, many have formed associations over the years, some incorporated as non-profit societies, some characterized as guilds, some known as artist-run centres. But such groups do not negotiate agreements with those who use their members' works. One organization which stands apart from that history is the CARFAC Copyright Collective, which does in fact represent visual artists in the negotiation of rates and terms for the exhibition and reproduction of their works. But that representation is limited in scope -- it only pertains to the copyright of the artist's work, and not to any other contractual capacity or economic right which the artist may exercise. Thus, there is no artist association which addresses the contractual relationship which artists have with art representatives or agents.

Several visual artists have expressed doubts as to the likelihood of organizations being formed in the near future to negotiate collectively with those individuals, companies or societies who benefit financially through the representation of an artist's work. But at the same time they have repeatedly requested some form of legislation to protect themselves and their works in their relationships with dealers.

### **GENERAL RECOMMENDATION**

The Committee recommends that legislation be drafted to establish minimum provisions for art agency contracts as well as to establish certain additional protections for visual artists and craftspeople who have entered into such agreements.

Many visual artists and craftspeople do not use written contracts when they arrange for the representation of their works. In order to acquire the services and/or space offered by art dealers, exhibitors or distributors, the artist will forego the formality of negotiating the terms of the relationship or preparing any documentation. Details and duties are left to be worked out in practice. But an informal, unwritten agreement is not in the best interests of the artist, especially, during times of disagreement or difficulty. The possibility of agency bankruptcy is alone sufficient justification for formalizing their arrangements with art agents.

Three statutory models were drawn upon in the formulation of the following recommendations: Quebec's Bill 78 as it applies to individual contracts between artists and distributors, and two statutes from the American states of Oregon and Washington which concern the contractual and trust relationships between art dealers and artists.

### **SPECIFIC RECOMMENDATIONS**

The Committee recommends that provisions be drafted with the following in mind:

- a. "Art agency" and "art agent" should be defined so as to mean any type of paid or recompensed representation, agency or consignment with respect to the works of visual artists or craftspeople.

The statute should apply to dealers, exhibitors and distributors – essentially, any person, company or society operating a business, enterprise or public display with both a view to the sale or use of the works of visual artists or craftspeople and an expectation of some form of remuneration from the artist or share in the proceeds upon such sale or use.

Those exhibitors who simply exhibit works are outside the intended scope of the Act. They offer the viewing of artistic works as something which is worthwhile and valuable in and of itself and are expected to pay the artist for that use of his or her work. Copyright law already addresses the artist's economic rights in relation to the exhibition. But some exhibitors engage in activities and take on roles outside of simple exhibition. On behalf of the artist, they hold out the exhibited works for sale. This is not in itself a bad thing; artists are usually as interested in selling their works as in showing them. A clearer understanding between parties of the exact arrangement is necessary, however. The proposed statute would apply to those exhibitors who are not simply exhibiting works, who charge the artist either a fee for inclusion in an exhibition or a commission should the exhibition result in a sale. Whether or not the exhibitor is publicly funded is irrelevant to the issue of whether or not an agency relationship exists.

Some distinction can be made between agents who represent artists, such as entertainment agents, and agents who represent the works of artists. While the latter relationship is the focus here, a contract characterized as the former must equally meet any legislated standards. An exclusive contract to represent an artist's work could be viewed more as an agreement to represent the artist than as one to represent the work. But as long as there is a commission, fee or share of proceeds tied to the sale or use of the artist's work, the relationship would fall within the Act.

- b. Any agreement concerning the representation of the works of visual artists or craftspeople for the purposes of sale or use should be in writing and contain provisions which address:
- the nature of the agreement and the scope of the services provided by the agent;
  - the work(s) which forms the object of the agreement;
  - both the value of the work(s) and the minimum price for its sale;
  - the amount of commission and any other fee charged by the agent;
  - the rates and charges under a co-agency or sub-agency arrangement;
  - the terms of payment and deductions permitted when money is received by the agent;
  - the frequency with which the agent shall report to the artist on transactions concerning the work(s);
  - any restriction or condition on any transfer of rights or any grant of licence contained therein;
  - any restriction or condition on any reservation over future work(s) contained therein; and
  - the resolution of disputes by a mutually-agreed, independent arbitrator.



Many of the elements are similar to those recommended for artists' contracts with entertainment agents. As with that recommendation, the intention here is not to write the contract for the two parties, but rather to bring more balance to the legal relationship and a greater degree of security to both artist and agent. By first requiring that the terms of the relationship be in writing and then requiring that certain key elements be addressed within those terms, the Act would assist artists when approaching or being approached by commercial galleries. Discussions would not commence with the issue of whether or not to put the agreement in writing. The statute would remove the need to even raise the question, an awkward moment most artists would prefer to avoid. Instead, business would start at the next level of legitimacy; negotiations would begin with more substantive issues -- what should the terms of the relationship be, what should the responsibilities of each party be. The statute requires that certain subjects be addressed, matters which are generally in the best interests of both artist and agent to set down in writing, but the language and figures are left to be drafted by the parties involved.

- c. Art agents have certain duties and responsibilities which should be reflected in the contract:
  - the agent is a trustee for the benefit of the artist in relation to both the work(s) and the proceeds from its sale;
  - the agent must keep a separate accounting for the work(s) which is subject to the agreement;
  - if given reasonable notice, the agent must permit the artist to examine accounting entries relating to the work(s); and
  - while the work(s) is in the agent's possession, the agent is liable for damage to or the loss of the work(s).
  
- d. If the art agent becomes insolvent or bankrupt, then the contract should be deemed to be terminated. Any work(s) kept on premises leased by the agent should be presumed to be there temporarily and its return to the artist should be a priority.

Without a written contract describing the works covered, or at least a signed inventory list of those works, an artist is in a difficult position should the dealer go bankrupt. The law cannot be ignored at such times, with the federal *Bankruptcy and Insolvency Act* applying in such cases. Because other parties are likely to be equally affected by the bankruptcy, an artist's informal, unwritten arrangement with a dealer suddenly becomes immersed in legal technicalities. Retrieval of works and payment for works sold becomes complicated as others also attempt to retrieve property and make requests for payment. Some will have priority before the law, such as employees with wages owed. Others will have clarity on their side; suppliers with invoices in hand, for instance. Authorities would have to be convinced that there was, in fact, some kind of agency arrangement and that the works were not owned by the dealer, but simply in the dealer's possession pending its sale or return.

A similar argument would have to be made should the dealer suddenly disappear with bills or rents outstanding. Once the doors are locked, things become complicated for the artist. Again, he or she would have to argue for the return of the works. Those charged with enforcing the law cannot be expected to accept without question the artist's claim to works left on the premises. Not everyone is aware of the casual arrangements that often exist between artist and dealer. But

if the artist's ownership is clearly documented, there will be fewer reasons for delays in returning those works.

- e. Any provision of a contract that waives any of these requirements or protections should be deemed void.

## WORKERS' COMPENSATION AND OCCUPATIONAL HEALTH AND SAFETY

The B.C. *Workers' Compensation Act*, prior to recent amendments, did not apply to "players, performers and similar artists". The amended *Act*, however, applies to all workers and all employers in the province with the exception of those exempted by order of the Workers' Compensation Board (WCB). The term "worker" refers to employees and trainees generally, but also includes independent operators who are admitted by order of the Board. Significantly, the province's *Workplace Act* is closely tied, in both application and administration, to the *Workers' Compensation Act*.

### GENERAL RECOMMENDATION

Both artists as well as the industries in which they work must benefit in general from their inclusion under the *Workers' Compensation Act* and related legislation and regulations. The Committee recommends that exemptions from the provincial plan be considered in light of the best interests of both artists and art production.

The processes and guidelines for exemptions and admissions by the WCB are of particular interest to artists and their associations. According to a recent Discussion Paper (October 6, 1993), the WCB is considering making "general exemptions" from the provincial plan. Included within their short-list are "persons in the sports and entertainment industries where a high level of risk is an accepted and essential element in their occupation". Unfortunately, much in that statement is left undefined. The phrase "high level of risk" is a dangerously subjective test. True, the examples cited are all taken from the world of sports, including boxing, hockey and car racing. But this is little comfort to those performing artists, dancers, in particular, who have long requested workers' compensation coverage. After finally being recognized within the scope of the *Act*, it would be more than unfortunate to be excluded by way of WCB policy -- it would be wrong.

Some artists also envision problems with a policy permitting individual exemptions. In its Discussion Paper the WCB notes that such exemptions should be granted only in "exceptional situations where it is demonstrated that coverage would be inconsistent with the overall scheme and intent of the (Act)". But that statement is not in itself enough to assuage the fears of some performing artists, in particular, musicians. For instance, what if an engager decides to avoid the expense of additional workers' compensation premiums by engaging only those players who have been exempted from the plan. For some musicians, at least, the need to work would be incentive enough to apply for exemption. Again, it would be more than unfortunate if artists were forced to choose, even if only indirectly, between work and plan coverage because of a WCB policy -- it would be wrong.

Several other matters also have yet to be settled concerning the implementation of the amended *Act*. Artists' employers are wondering what the cost of the provincial scheme will be to them and

what its effect on the production of art in the province will be. Artists are also concerned about the types of injuries which will be recognized and the scope of compensation for those injuries.

## **SPECIFIC RECOMMENDATIONS**

### **#1 Consultation and Education**

- The Committee recommends that artists, their associations and their employers be
- (a)** consulted with respect to the application of the amended Act to their industries and involved in its implementation and administration;
  - (b)** consulted with respect to the drafting of occupational health and safety regulations that will affect their workplaces and industries; and
  - (c)** provided with information and training on occupational health and safety problems and preventative measures.

Regulations and policies affecting artists' activities and environments must be framed not only with artists in mind, but with artists involved. Artists are best qualified to speak about the injuries that plague their communities and industries as well as the hazards jeopardizing not only art production, but people's careers. They are also best qualified to speak about the scope of their "work-related" activities, particularly with respect to rehearsals for performances and productions. Furthermore, artists are sensitive to the potential dangers of over-regulation of their creative endeavours. They would be the first to know if increased health and safety standards impinged upon their freedom of artistic expression. Their experiences and perspectives must be relied upon in the formulation of any rules and guidelines.

Education could help address many of the health and safety problems which artists face today. Information and instruction covering the hazards and toxicity of art-making and craft materials would, for instance, be useful to visual artists and craftspeople.

### **#2 Practices and Standards**

The Committee recommends that WCB assessments and judgments concerning injuries and benefits, as well as the rules and inspections concerning the occupational environment, take the customary practices and industry standards of the particular field of artistic endeavour into account.

Some degree of flexibility is needed with respect to the enforcement of regulations covering the artistic workplace. Just as adjudicators and administrators do not expect all artists to understand the legal and technical side of enforcement, artists do not expect all authorities to understand the creative conventions of each form of art. There should be some mechanism for adapting the rules to meet the unique circumstances of each artistic discipline and each arts industry.

### **#3 Coverage of Cumulative Injuries**

The Committee recommends that the WCB recognize repetitive strain injuries and other cumulative injuries as "work-related" injuries and cover them under the provincial plan. Such injuries must be assessed according to the requirements of the artistic endeavour as well as the expectations of the industry's employers.

Repetitive strain injuries plague certain types of artistic activity and can affect an artist's ability to perform or produce art, thereby threatening his or her ability to earn an income. They may even end an artist's career. Tendinitis and carpal tunnel syndrome are currently the most common among artists. Dancers, musicians, craftspeople and writers are particularly susceptible to these injuries because of the repetitive nature of their work. There are some indications that the provincial plan is broadening its scope in regard to cumulative injuries in the arts. The WCB has recently announced that hearing loss sustained by musicians will soon be covered and an education program on the merits of ear protection will soon be launched. Such policy revisions must be encouraged for repetitive strain injuries as well.

## C. EDUCATION AND CREATIVITY

A great deal depends on education. Attitudes towards creativity and art, to the role of artists in society, and to the status of artistic disciplines as suitable careers are often set in the classroom. Knowledgeable and enthusiastic audiences for the arts can be created there too, but too often our young people leave high school or university with no introduction to the arts and no knowledge of the traditions or their own cultures and communities.

The subject of art in education is a vast one in which the arts community has an obvious and vital interest. The Advisory Committee heard a great deal about the deteriorating state of arts education in the province, and about the erratic availability and arbitrary quality of arts courses and programs at all levels of study.

### PRIMARY AND SECONDARY EDUCATION

#### GENERAL RECOMMENDATION

Every child in the province must be assured access to arts programs from Kindergarten through Grade 12. Artists must be involved in the development and implementation of programs and policies concerning arts education.

#### SPECIFIC RECOMMENDATIONS

##### #1 *School Act* and School Regulation

The Committee recommends that the *School Act* and School Regulation be amended to include arts and culture within its language and spirit.

The B.C. *School Act* is the starting point for the formulation of educational programs and policies at the primary and secondary school levels. It is the foundation on which all decisions are made in the province's educational system. The status of art within the *Act* is non-existent. Neither culture nor art are mentioned as part of the overall social objectives for public education. This means when retrenchment takes place (as it is now) and art courses are the first withdrawn, the laws governing education offer no written resistance. What is unwritten becomes the unwritten rule of exclusion and the neglect of the creative side of human development and expression.

- a. The preamble to the Act should be amended to read:  
*WHEREAS it is the goal of a democratic society to ensure that all its members receive an education that enables them to become personally fulfilled and publicly useful, thereby increasing the strength and contributions to the health and stability of that society;*  
*AND WHEREAS the purpose of the British Columbia school system is to enable learners to develop their individual potential and to acquire the knowledge, skills and attitudes needed to contribute to a healthy, democratic and pluralistic society, a vibrant culture and a prosperous and sustainable economy;\**
- b. The definition of "educational program" in the Act should be amended to read:  
*"educational program" means an organized set of learning activities that, in the opinion of*  
*(a) the board, in the case of learning activities provided by the board ...*  
*is designed to enable learners to develop their individual potential and to acquire the knowledge, skills and attitudes needed to contribute to a healthy, democratic and pluralistic society, a vibrant culture and a prosperous and sustainable economy;*
- c. The provision in the Act concerning the purchase of educational or other services should be amended to read:  
*A board may ... enter into an agreement concerning the promotion, development or operation of recreational, cultural and community services.*
- d. The duties of teachers as set out in the Regulation should be amended to read:  
*The duties of a teacher include the following:*  
*(d) assisting to provide programs to promote students' intellectual development, human and social development, artistic development and career development;*  
*(g) evaluating students' intellectual development, human and social development, artistic development and career development and evaluating educational programs for students as required by the minister or the board;*

## #2 Educational Programs and Policies

Inclusion within the language and spirit of the Act is only part of what is needed. Policies and programs must follow at both ministry and district levels. Along with sharing responsibility for implementing change (expanding curricula to include the arts, and teaching to include artists in the schools), the policy makers, politicians and teaching professionals must be accountable. Not only must a variety of arts disciplines be taught in the schools, students must be encouraged to value creativity and the role art and artists have in transmitting history, culture and tradition as well as shared values, skills and experience.

According to a recent policy statement issued by the Ministry of Education (November 1993), the arts will "continue" to form part of the foundation for the intellectual development of students in B.C.'s public school system, and in various forms (creative arts, fine arts, practical arts) will be required study for children up to Grade 12. We applaud this as an objective which

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\* Note: The statute's existing language is in *italics*, the proposed additions are in bold.

has yet to be implemented, and call upon the Ministry of Education to develop a strategy for its realization.

With respect to educational programs, each level of the education bureaucracy, both within the Ministry of Education and within each of the school districts, has certain statutory duties and responsibilities. It is therefore possible for each to contribute to the development and implementation of educational programs that include instruction in a variety of art disciplines, and teach students about art and creativity and its role in their own lives.

For the purposes of the following recommendations, "artist-educator" means "a person who is a working artist and has either training or experience as an instructor in his or her particular field of artistic endeavour."

- a. The Education Advisory Council, which is appointed to advise the Minister of Education on policy matters respecting education including curriculum and assessment, should include art teachers and artist-educators.
- b. In conjunction with the Ministry of Education and the school boards, the Education Advisory Council should devise a plan for expanding the arts curriculum across the board, Kindergarten through Grade 12.
- c. Arts courses should be recognized as compulsory full-credit courses within the educational programs at both the primary and secondary school levels.
- d. Subject matter within arts courses should reflect and stress British Columbia's multi-ethnic and aboriginal character and heritage.
- e. Accountability for the maintenance of arts courses should exist at both the ministry and the district level.
- f. Teachers should receive training in a variety of arts disciplines and such training should be fully recognized within their professional development plans.
- g. School boards should give greater employment to artist-educators as arts instructors and as arts administrators. Those school districts without fine arts coordinators should establish (or re-establish) such positions.
- h. Art teachers and artist-educators should be provided with adequate facilities and resources to teach artistic disciplines properly and effectively.
- i. Funding for arts courses and for artist-educators as either instructors or administrators should come from funds allocated for primary and secondary school education generally and should not be dependent, in whole or in part, upon other sources or other ministries.



- j. The Minister of Education and/or the school districts should take immediate action to legalize the practice of photocopying copyright material in the school system by purchasing a licence from CANCOPY, the recognized reprography collective of authors and publishers.

## **POST-SECONDARY EDUCATION AND TRAINING**

In post-secondary education, the issues surrounding the status of art as a course of study or training are strikingly similar to those which affect primary and secondary education. The main problems are the irregularity of arts courses in British Columbia generally, and the lack of a coherent policy on arts training.

### **RECOMMENDATIONS**

#### **#1 Regional Arts Education and Training**

The Committee recommends that the Ministry of Advanced Education and the post-secondary institutions currently involved with providing arts education re-evaluate regional arts programs and take steps to alleviate the current inequalities of access.

At the moment, the only fine arts offering at any of the three colleges and one university serving the North and northern interior of the province are those offered by the one full time instructor in art at Northern Lights College in Dawson Creek/Fort St. John. This wasn't always the case, but retrenchment and centralization of resources over the last decade has taken its toll.

In the case of the visual arts several locally based programs were disbanded in the early eighties in favour of the Emily Carr College of Art's Outreach Program. This was intended to provide short-term courses and professional workshops, but in the North the program scarcely exists any longer as people have found it too expensive and its offering too sporadic to be useful. Centralizing responsibility for visual arts education has not worked, in short, and must be rethought. It also rather smacks of cultural imperialism, an attitude that seems out of step with late twentieth century thinking on the subject of culture, and it is not surprising that many artists in many communities around the province want to see professional art programs developed within their own communities.

#### **#2 Policy Revision and Financial Support**

The Committee recommends that the Ministry of Advanced Education and the Ministry Responsible for Culture take the lead in sponsoring a revision of provincial policy on

arts training which would recognize and provide support for community run apprenticeship programs as well as institutionalized, diploma/degree programs.

The Committee notes that the Cultural Services Branch funds students engaged in professional training through its program of scholarships (\$174,750 in 1992/93). These are token scholarships, (under \$2500) but the program is nonetheless important and should become part of the mandate of the Artist Council of B.C. However, we note that these grants are available only to students studying in accredited institutions while attention must also be paid to alternative forms of training such as apprenticeship. Various artistic traditions, particularly among aboriginal cultures, are based on apprenticeship systems and these must be recognized and provided with the resources available to mainstream arts training. There has also been considerable experimentation over the past decade with community based professional workshops. Some artist groups have begun organizing workshops with minority artists in efforts to address racial inequities in professional training.

### **#3 Entrance Requirements**

The Committee recommends that the Ministry of Advanced Education encourage post-secondary institutions to recognize the arts stream as entrance credits.

It is essential that those students wishing a career in the arts receive credit and encouragement for taking arts courses at the high school level. Entrance requirements for post-secondary arts programs should be constructed so that core subjects such as "Grade 11 math" do not themselves become the main requirement for admission. As post-secondary institutions are the major site of formal (credited and recognized) arts training, consideration must be given especially to those students who are disadvantaged by geography or educational background.

### **#4 Artists' Fees**

The Committee recommends that the Ministry of Advanced Education encourage post-secondary institutions to pay professional rates to artists who teach courses, give lectures or participate in other educational programs on campus.

Universities and artists have always been an uneasy fit perhaps because of the fact that artists are brought onto campus because of their reputations and accomplishments as artists and are then paid not to create. Of course, no one is prohibited from continuing their art production while teaching; on the contrary artists are usually encouraged to continue with their own work and it is assumed they will. However, teaching is time and energy consuming and, like any day job, it crowds creativity into the after hours.

Universities and colleges in the province have to find better (more flexible and imaginative) ways to engage practising artists in arts education; ways, moreover, which do not penalize those artists who prefer to work occasionally or teach on short term, part-time contracts. The pay differential for the same work can be as high as a factor of ten, the underlying logic being

that fully professional wages will only be paid to those who sign on for full-time (tenure track) positions. The practice of expecting artists to work for minimum wage, or for nothing (as is often the case when academics invite artists to give lectures or participate in conferences) must end and universities and colleges as a community must come to regard artists as a professional resource, not as an occasional workforce there for the exploitation.

## **D. PROVINCIAL COMMITMENT**

In the matter of respecting and protecting the cultural rights of citizens -- it being a fundamental right of individuals to have access to their heritage as well as to artistic expression -- the province has a responsibility to represent the cultural interests of the public in all operations of government. Were public policy informed by an awareness of the value of the arts sector to employment (job creation), to consumer spending (economic impact), to tourism (advertising) and international trade (promotion and public relations) arts policy would not appear as a special interest but as a general advantage to everyone. The Ministry of Tourism might then understand it has a stake in supporting activities which produce the "local colour" it uses in ads attracting visitors and tourist dollars to the province; the Ministry of Finance might then understand it has a stake in supporting activities which make communities attractive to business; the Ministry of Health might then understand it has a stake in supporting activities which promote healing and health.

### **RECOMMENDATIONS**

#### **#1 Intra-Governmental Relations**

The Committee recommends that the Minister Responsible for Culture play a strong advocacy role in representing cultural issues and opportunities to other ministries. To that end the Minister should convene quarterly meetings with other ministers to discuss cultural issues and their effect on various portfolios.

#### **#2 Inter-Governmental Relations**

The Committee recommends that the province of British Columbia become an advocate for artists' rights at the federal level lobbying for changes in income tax regulations (averaging), for copyright protection, for access to unemployment insurance, and for a system of public sector contribution to an artists' pension plan.

#### **#3 Housing**

- a. The Committee recommends that the government of British Columbia make a commitment through the Minister of Municipal Affairs, Recreation and Housing to create a co-operative housing/workspace program which is specifically designed to meet the needs of artists. The Committee further recommends that the Ministry of Housing

work with artists' co-operatives and organizations, such as the Musicians Association for Co-operative Housing (MACH), in developing the program.

- b. The Committee recommends that the provincial government take a leadership role in lobbying for the re-establishment of a co-operative housing program at the federal level.

Housing is one area where the province can have a major impact on the lives of working artists, and dramatically improve the status of artists in our communities. This area deserves a much more detailed investigation than the Committee was able to undertake, but it is clear from our consultations that adequate and affordable live/work spaces for artists is one of the pre-eminent needs of artists across the board. Artists typically spend at least 50% of their income on live/work space. The revision of the City of Vancouver's bylaws to permit the development of such housing spaces was certainly a move in the right direction but projects developed so far have been seriously flawed as they are priced far out of the reach of most artists and therefore have not benefited them.

Granville Island is one example of a success story when it comes to the marriage of urban renewal, artists' work spaces, cultural and sporting activity, light industry and small business. Live/work housing projects for artists which are strategically placed near or within commercial zones such as Granville Island can pay huge dividends to the province in terms of cultural, social and economic benefits, substantially improving the quality of life for the affected local community and for B.C. artists at the same time. The appropriate and proven route to take is that of providing assistance in the development and creation of artists housing and workspace co-operatives. This step has been taken in Ontario with the development of housing co-operatives for artists only. The stumbling block in British Columbia (aside from the phasing out of federal support for new co-operative housing as of January 1st, 1994) is the extremely low number of co-operative housing units authorized by the Ministry of Housing -- just over 500 units in the entire province in 1993 -- and the policy stipulation that these units be reserved primarily for seniors, the differently abled and aboriginal people.

The development of co-operatively run artists' live/work housing would achieve a number of goals. It would provide artists with more disposable income to support artistic production; it would create hives of cultural activity capable of supporting local business and tourism while promoting the export of B.C. art.

#### **#4 Percent-for-the-Arts**

The Committee recommends that building and facility construction projects undertaken by the provincial government or its Crown corporations be obliged to invest in living B.C. artists by including public visual art and/or performance space with funding for programming.

The provincial government, in its pre-election arts and culture statement, promised that policies would be developed to "encourage a minimum level of B.C. artistic content in all buildings and other facilities constructed by Government and its Crown corporations". The

implementation of a "percent-for-the-arts" policy in public buildings would represent an important step in improving the economic climate for B.C. artists and artistic production. As a tangible demonstration of the commitment to invest in B.C. artists, this action would follow in the spirit of setting an example for the private sector while providing members of the public with access to artistic works in settings other than galleries and theatres.

#### **#5 Awards**

The Committee recommends that the provincial government acknowledge the centrality of culture to the well-being of the province through a series of awards.

The provincial government must end the practice of turning to artists only when diplomatic gifts or photos for tourist brochures are needed. As a first step we suggest the government institute a series of prizes for excellence and achievement in the arts and letters to be awarded annually at a suitably formal occasion in the provincial legislature, each to carry a cash award of \$10,000. Following Quebec's example, the prizes should each be named in honour of an acclaimed B.C. artist in the discipline. Each year a medal should be commissioned and struck (in B.C.) for each recipient.

### **III. CONSULTATIONS**

#### **A. THE PROCESS AND THE EXPERIENCE**

##### **OVERVIEW**

From the outset, the B.C. Status of the Artist Advisory Committee took the position that its role should not only be to advise the Minister Responsible for Culture on the Status of the Artist, but to act as a collective voice for all artists in the province. To that end we committed ourselves to undertaking as broad a consultation with our constituencies as possible.

We were, in the first instance, confronted with the huge task of educating ourselves about the various dossiers and the attendant issues involved with Status of the Artist. As our investigation proceeded, one issue led to another, one concern uncovered others, and the workload expanded accordingly. Our first step, therefore, was to develop a set of background papers on various key topics; these proved enormously useful in our consultations and are appended to this report. (See Appendix A)

Our second step was to organize ourselves into sub-committees to coordinate consultations with specific disciplines and communities. In doing so, we were aware that some of these communities are better organized than others, that some are well versed in the issues and were able to help us coordinate and publicize meetings while others lack representative associations even to make presentations on behalf of a membership. Our process was constrained as a result, and not as exhaustive as it might have been in some areas. But, in any case, it is clear to us that what we have achieved should be rightly understood as the beginning of a much longer process which now has to be assumed by the proposed Artists' Council of British Columbia and the Ministry Responsible for Culture.

Although the Committee was not mandated or funded to carry out formal public hearings, we discovered a deep determination on the part of the community to speak on a range of Status of the Artist issues and so decided to keep the process open, to meet with whomever wished to meet with us. As this was the first time any such open consultation has been undertaken with the province's artists, we felt it our responsibility to listen as long and as hard as time would permit (and indeed there were meetings going on until mid-December), and to facilitate artists' responses where and whenever we could. This required a commitment of time (and foregone income) on the part of committee members (all but two of whom are practising artists) who contributed an average of twenty-five full working days over the Committee's ten month life.

At the same time, listening required a response on our part and our first was to acknowledge that Status of the Artist as a concept has to be defined in relation to the particular circumstances and history of British Columbia. Our report would have to speak to the realities of current policies and attitudes, and this would mean redefining Status of the Artist in our own terms.

As noted in our report, the Committee encountered widespread cynicism about governmental initiatives such as this ministerial advisory committee due to a long history of commissions whose investigations result in much talk but no action or any tangible improvement in the arts sector. Artists expressed an unwillingness to engage in more talk, and some voiced resentment that the community would be asked, yet again, to donate its time and expertise. (The irony of being asked to subsidize a process addressing the economic inequality of artists was not lost on anyone.) There is no question either that disadvantage made it extremely difficult for some people and some communities to participate. Frankly impossible for many. Moreover, late in the day and into our process we were still hearing from artists who hadn't been aware of our existence and who wanted to participate. The informality of our process meant we could be flexible, but it also meant our reach to those artists isolated by geography or resources was limited.

### **THE SUB-COMMITTEE PROCESS**

The Committee set itself up according to broad artistic disciplines (music, theatre, visual arts and crafts, dance, literary arts and media arts), assigning two or more members to each disciplinary sub-committee which were charged with organizing consultations in their areas. Each member also worked on one of three other sub-committees formed to research and analyze community input in the general categories of Economic Rights, Social Rights, and Education. Economic Rights included employment standards, child performers, arts and entertainment agents, pensions and income tax; Social Rights included cultural rights, collective bargaining, workers' compensation and occupational health and safety; and Education included arts education and training as well as general arts awareness.

During the first half of the Committee's work, five members found it necessary to drop out. Despite their substantial and invaluable contribution during the critical early months, the departure of Evan Adams, John Lazarus, Jean Rysstad, Loretta Todd and Henry Tsang did alter the racial and gender balance of the Committee and without their representation we had to find alternative means of consulting some communities. (These five represented artists working in theatre and dance, the visual arts, film and video, and writing as well as working among northern, visible minority and First Nations communities.) A special consultation was organized in the case of First Nations artists and the report of that effort follows this section.

Regional equity was another area of special concern. The constraints of funding and time, and the loss of one of the Committee's two northern members meant delays, but meetings took place in Castlegar, Prince George, Terrace and Kamloops as well as two meetings in Victoria. Similarly, racial equity was addressed by one group in Vancouver which met twice. The Committee feels in both cases that consultations have only just begun.



The Committee also engaged in discussions with the province's Inter-ministerial Committee, with the B.C. Arts Board, and with the Canadian Advisory Council on the Status of the Artist; contact was maintained and information shared with Saskatchewan's Status of the Artist Committee, and Ontario's Status of the Artist Coalition through letters and telephone calls and meetings where possible.

## FORM OF CONSULTATIONS

Each sub-committee designed its own consultation strategy and as these reflected the different structures and work practices of the various artistic discipline, they were quite diverse. In addition to open meetings convened for artists in a given discipline, public meetings were held on specific topics (on art and entertainment agents in Vancouver, for example) and some focused study sessions were conducted by invitation. In the literary arts, an afternoon working session was convened in August with representatives of various writing and publishing organizations. Individuals unable to attend were consulted by telephone. In dance, a working group comprised of a cross-section of representatives from the dance community was organized which met regularly to discuss the issues and to make recommendations to the Advisory Committee. The Committee held or attended over fifty constituency meetings between April and December.

Informational articles and updates on the Committee's progress were publicized by a number of umbrella organizations including the Community Arts Council (*Arts Vancouver*), the Assembly of B.C. Arts Councils (*Quarterly Report*), the Crafts Association of B.C. (*Craft Contacts*), ACTRA (*Coastline*), the Dance Centre (*Dance Central*), the Vancouver Musicians' Association (*Upbeat*), and the Pacific Music Industry Association (*Pacific Music News*). Coverage of the Status of the Artist initiative was published in *Boulevard Magazine*, the *Vancouver Sun* and the *Georgia Straight*.

A one day public study session was held in Vancouver on October 30th following the distribution of a discussion paper containing the Committee's preliminary recommendations. The working conference was preceded by an evening reception with speakers Victor Reece (First Nations storyteller), Jean Cunningham (dance educator), Sadhu Binning (poet), and Louise Rose (singer and musician).

Within the areas of Economic Rights, Social Rights and Education the sub-committees conducted research consultations with knowledgeable individuals and government officials. Committee members attended and made presentations at various events and gatherings including board meetings and annual general meetings of several organizations (Vancouver Musicians' Association, B.C. Music Educators Association, Writers' Union of Canada/Pacific Region, Canadian Actors' Equity Association, and S.W. Regional Arts Council), a day long seminar on self-management issues for visual arts sponsored by Canadian Artists' Representation (CAR/FAC), a meeting of the Entertainment Law Subsection of the Canadian Bar Association, and a meeting with the Employment Standards Act Review Commissioner.

Presentations were made by several organizations to the Committee in person, and we received letters and submissions from individuals and organizations in addition. (See Appendix C)

**B.**  
**FIRST NATIONS ARTISTS: A REPORT**

**Presented to the Minister's Advisory Committee on the Status of the Artist**

**By Viola Thomas**  
**December 1993**

*This report may not address all the terms of reference of the Status of the Artist Advisory Committee, in relation to First Nations, nor does it profess to represent the views or concerns of all First Nations artists in British Columbia. Due to time and financial constraints a more comprehensive, region by region, consultation of Aboriginal artists was not possible. Consultations were held at the following locations: En'owkin Centre, Penticton; Native Fine Arts Department, Merrit; Victoria Native Friendship Centre, Victoria; and Vancouver Aboriginal Centre, Vancouver. In total, approximately 60 Aboriginal artists had one occasion to discuss the immense topic of Status of the Artist and more specifically Status of Aboriginal artists in British Columbia. Needless to say, it was not enough!*

### **Introduction**

Since British Columbia's First Nations do not represent one homogeneous group, it is important to recognize, discern and respect the diverse nations with their distinct cultures, languages, customs and spiritual practices. For example the following paragraph taken from a recent issue of the *First Nations Health Council Newsletter* is a good description of the First Nations population in British Columbia.

Today there are 80,742\* registered Aboriginal people in B.C. representing six major linguistic groups. These groups include approximately 30 distinct languages, with English being the principal language for 90% of the population. There are a total of 196 reserves.

For centuries prior to contact with the European colonizers, Aboriginal people throughout North America exercised their sovereign authority and jurisdiction with respect to First Nations art. The desire to ensure that the tradition of interdependence and respect between Aboriginal artists and the communities in which they live was expressed often by different artists attending the four sessions set aside to discuss the Status of Aboriginal Artists in British Columbia.

The artists spoke of how generally impossible it was to separate their individual work from their cultures. From one came the reflection that the traditional arts were seen as more than

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\* This figure does not represent off-reserve, Metis or Inuit people.

"pieces" or "performances" or "art to be displayed, sold or used, simply for entertainment". And in the words of another art was described as not being separate from First Nations cultures, but rather "it is embraced as part of our every day lives".

Historically, First Nations artists were truly honoured and they had special status within all First Nations societies. During the sessions there was an expressed frustration with the limitations of most current white dominated arts education. That frustration comes from the fact that white society's approach to education does not consider the link between Aboriginal artists and their communities. As some artists described it, "aboriginal artists were [traditionally] groomed and trained from childhood in the artistic discipline that would be their life's work".

Traditional First Nations art reflected the morals, values, customs and traditions of Aboriginal societies. Consequently, Aboriginal art was deeply rooted in spiritual and cultural values. With responsibility for formal education located outside of the hands of First Nations peoples there is a diminishing of understanding of those cultural values most particularly among young aboriginal artists.

White society's approach to Aboriginal art has been to treat it as an exotic and market it as Canadian product or to institutionalize (appropriate) the works of art in museums like the Royal British Columbia Museum, but not to respect the work or the customs or spirit represented within it by encouraging it's development. Participants spoke out against both the commodification of the work of First Nations artists by white society and its insistence that the art as art continue to be analyzed according to pre-established, rigid, European art history definitions.

An example of this pre- or re-defining was provided by one First Nations artist who told of how she has been and continues to be labeled and acknowledged as a performance artist rather than a story teller.

A story teller, in Aboriginal communities, has a much more significant role and responsibility than a contemporary performance artist practising in the European tradition. The story teller is a teacher of the language, stories, songs, and values which reflect the special role of the story teller within Aboriginal cultures. They are held accountable by their communities for maintaining the integrity of each story. Performance artists, on the other hand, thrive on their personal artistic freedom and expression. While story telling and performance art are, by origin and tradition, totally different, their confusion and categorization by grant-giving agencies continues.

Until the 1980's, the affairs of Aboriginal peoples of British Columbia were largely managed by the federal Department of Indian and Northern Affairs. This included providing limited funding for films focusing on Aboriginal people and purchasing visual art from Aboriginal artists for official, federal government collections. Today, the Department of Indian Affairs maintains a data bank of Aboriginal visual artists. The official collection is loaned out to galleries, museums and other institutions for exhibitions, without input from the Aboriginal artists or the communities.

Artists at all sessions expressed how important it is for Aboriginal artists and their own communities to regain control over the community purchase, marketing, sale and use of their own work. First Nations artists as expressed by these brief discussion sessions reject the marginalization of their work, the lack of creative control they have over how their own work is published or produced, the lack of cultural sensitivity or understanding of the diversity of First Nations art, lack of consultation with First Nations artists regarding appointments of juries assessing Aboriginal art, lack of Aboriginal worldview in the teaching of art in Eurocentric art and educational institutions.

In response and even in the absence of complete self-determination B.C.'s First Nations artists have already taken serious steps to establish three of their own organizations. The Aboriginal Arts Alliance of Canada, the First Nations Film and Video Association and En'owken International School of the Arts have been established without the support of the Ministry of Tourism's Cultural Services Branch.

In December 1991, the government of British Columbia declared that it would commit to the recognition of Aboriginal title and the inherent right to Aboriginal self-government. This relationship will be further defined and articulated in future policy developments in the areas of program design and delivery, government services and Aboriginal governance.\*

Yet in 1992 Cultural Services Branch of the Ministry of Tourism, introduced, under the direction of the former Minister, Darlene Marzari, an initiative entitled "Aboriginal Arts Development Awards Program". This initiative was implemented without province-wide consultation from the Aboriginal arts community with respect to program criteria or selection of jury members.

Few participants at the four sessions even knew of the existence of the program. Those who did wondered why it was not being administered by First Nations people and at arms length from the CSB bureaucracy.

Although the intention of the program is to assist Aboriginal artists there was no formal dialogue with First Nations artists as to the development of this initiative. Given the diversity of Aboriginal cultures in British Columbia it is critical that Aboriginal artists have the opportunity for policy input and funding criteria. This type of imposition is unacceptable particularly since the government of British Columbia claims to be committed to developing a new partnership respecting self-government.

The Aboriginal Arts Development Awards Program was launched with, at best, very hit-and-miss promotion and no outreach to Aboriginal artists. To make matters worse, it took more than a year to hire an Aboriginal coordinator and that as with all government appointments, was done without community consultation.

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\* From the report of Organization of the Ministry of Aboriginal Affairs, June 1992, p.3, para.27.

In the area of Status of Aboriginal Artists as in much of the rest of its dealings with issues of concern to First Nations Peoples residing in B.C., the provincial government must face the challenge of honouring its promises with action. Its declared policy statements around Aboriginal self-government and self-determination will have major, long-term effects on both Aboriginal artists and First Nations institutions. Meanwhile there are changes that can be implemented in the short term. The following recommendations are some.

### **A SPECIAL WORD ABOUT PETROGLYPHS**

An issue which was raised on more than one occasion during the four meetings is of serious concern to Aboriginal artists. Though the subject is admittedly outside the mandate of the Status of the Artist Advisory Committee, it bears mentioning. Petroglyphs, the original works produced by First Nations Peoples, are suffering destruction as a result of defacing. Many artists are calling upon the provincial government to establish legislation to protect these ancient works of art, particularly in light of their sacred meanings within Aboriginal cultures.

### **RECOMMENDATIONS**

- #1** A separate Aboriginal Arts Council must be established in consultation with the Aboriginal artists' community of B.C. This council would be far more than a granting institution. Rather a main objective of the council would be to facilitate better communications about rights, programs and services available to Aboriginal artists. Currently, B.C. has no clearinghouse to inform First Nations artists on what is available to them and how to access it. However a council would also establish and administer grants programs specifically aimed at Aboriginal artists such as the Aboriginal Arts Development Awards Program.
- #2** First Nations artists must be the ones to define what is "traditional" and what is "contemporary" art. In addition, clearly articulated policies are needed to describe the special role played by Aboriginal artists within both the First Nations cultures and Canadian society.
- #3** The government of British Columbia has a responsibility to acknowledge the harsh reality of "cultural appropriation" and its impact on First Nations communities by establishing official policies rejecting cultural appropriation and criteria both for returning artifacts from its institutions and for protecting against the continued abuse of Aboriginal heritage and culture. (One model that could serve as a point of reference comes from the State of California, Public Law #101-644 -- *Indian Arts and Crafts Act of 1990*.)
- #4** The government of British Columbia and its arts organizations and institutions (as well as the business community) must take steps to eradicate the practice of homogenizing all First Nations artists in British Columbia by recognizing their distinctiveness and individuality according to region and tribe.

- #5** The appointments of Aboriginal artists to the promised B.C. Arts Council should be done in consultation with both First Nations artists and First Nations arts organizations. In addition, the development of a B.C. Arts Council with representation from the Aboriginal arts community should not inhibit the development of an independent Aboriginal Arts Council for B.C.
- #6** The Ministry Responsible for Culture or the proposed Arts Council should, pending the establishment of a specific Aboriginal Arts Council, begin immediately the sponsorship of information sessions and workshops in order that Aboriginal artists might learn about the availability of programs and the process for accessing available resources in the various government ministries.
- #7** Support programs from CSB and or newly created arts councils must recognize the need and provide financial support for projects aimed at sensitizing students, exhibitors and the business community in the traditional protocols of First Nations as a means of minimizing both the exploitation of First Nations cultures and the disregard for sacred meanings inherent in the objects of certain clans or families.
- #8** Elders and traditional teachers must be involved in the jury process when "traditional art" is being evaluated, by the Cultural Services Branch, for grants programs.
- #9** Priority for funding productions or published works of Aboriginal artistic endeavours should be given to Aboriginal arts organizations.
- #10** Geography must be considered in the solicitation of applications and the granting of awards in order to correct province-wide inequities that currently exist in granting programs.
- #11** Additional resources should be made available in order that Aboriginal artists throughout the province might fully participate in the process of recommending important arts policy changes.
- #12** An assessment should be made of the economic impact of Aboriginal art sales on the whole of B.C.'s economy.

**C.**  
**PERFORMING ARTISTS AND THE LABOUR  
RELATIONS CODE: AN ESSAY  
IN SUPPORT OF THE ADVISORY COMMITTEE'S  
RECOMMENDATIONS**

**COLLECTIVE BARGAINING RIGHTS**

To many people, collective bargaining rights form the core of the Status of the Artist initiative. By creating a statutory regime in which artists can unite to negotiate the terms and conditions of their engagement, an effective means of correcting the imbalance inherent in individual negotiations is established. Performing artist organizations which have lobbied for Status of the Artist legislation have long recognized the critical advantage legal recognition of their right to negotiate as a group would be to their members. With statutory protection comes the assurance that artists can define their own conditions of work and negotiate fair compensation for their works and services.

Because of the structures of artist associations and the nature of artistic endeavours, access to the collective bargaining provisions of the *Labour Relations Code* is uneven. While there is some trade union representation in film production, live theatre, and music, some performing artists (for instance, dancers) have been unable to bargain collectively on basic matters.

Although created for the traditional workplace, the *Code* can provide the structure for bargaining of agreements in areas not contemplated by the framers of the law. Contract clauses in a collective agreement are restricted only by the imagination and will of the two parties doing the bargaining. By itself, the *Code* is no obstacle. Members of the Alliance of Canadian Cinema, Television and Radio Artists [ACTRA] and the American Federation of Musicians [AFM] have utilized the *Code* by fulfilling traditional certification criteria: by establishing an appropriate bargaining unit, proving membership support, and negotiating a collective agreement. Resulting contracts have recognized the unique working conditions of performers: collective agreements for actors contain provisions governing residuals and use payments, for example; stunt performance, nudity, the engagement of minors, dubbing of vocal performance, publicity stills, make-up, hair dressing and wardrobe, and safety procedures for working when fire, fog, smoke or "other airborne special effects" are being used are also addressed.

In other ways, however, the statute is ill-suited to the working lives of artists. The *Code* was written to cover traditional employer-employee relationships where a known staff complement in a definable workplace is providing on-going service to an employer and is recompensed on a regular basis through wages or salary. In the majority of contracts, hours of work, payment of wages, discipline, and resolution of disputes - matters of the workplace are key considerations. When a tradesperson completes work on a construction project, compensation usually ends.



When an actor or musician completes a filmed or recorded performance, payments in the form of royalties or residuals may be forthcoming for years after performance when a television program is rerun, a commercial jingle is mixed and replayed, or an advertisement is broadcast to a new market. Each time, with each use, the performer may wish to protect his or her image against exploitation.

There are other problems associated with trying to bring artists within a collective bargaining regime. To many artists, the Code's procedures for acquiring collective bargaining rights preclude organizing. To obtain certification, a trade union must provide evidence of majority support of employees on the date of an application for certification. On its face, this test would not preclude organization: there may well be a preponderance of members on the day an application is filed. But "continuity of employment" is a fundamental consideration in establishing a bargaining unit, and this is the area where an actors' union can be challenged. Can the actors working on one day in a limited number of scenes bind future actors in hundreds of other scenes, in different episodes or different programs, working for the same producer? Should an actor whose character is eliminated in one episode determine bargaining representation for other actors, not yet cast, playing other roles?

Procedures established under the Code to protect the interests of employers and workers may not apply to performing artists. Technical requirements create complex legal questions with unclear answers when applied to the artists' milieu, and this confusion may help explain the reluctance of some artists organizations to seek status under the Code as it is now written. Some of these organizations believe they must shed their "professional status" and assume the cloak of trade unions if they are to be covered by the Code.

Also many artists may be denied coverage by the Code because of their employment status. An actor may work one day in a commercial, another in episodic television, two weeks on stage, and nights as a waiter or taxi driver - stereotypes which are not uncommon: is this the work profile of an employee or an independent contractor?

Does the fact that movie actors have individual talent agents who negotiate their fees for services undermine their protection under the Code? After all, does this not suggest status akin to an individual businessperson who has an agent negotiate terms of a sale?

Is the dancer who performs at one point in one company and later engages other dancers as a choreographer an employee or employer? Since a trade union cannot be "employer-dominated," would the mere membership of this individual undermine trade union status for his or her organization? Should this person have the right to ratify collective agreements?

The provisions in an actor's agreement; the differing lengths of engagement for a musician; the sporadic nature of television performance; the shifting status of dancers and choreographers. Each consideration highlights a unique element in a field of artistic endeavour and forms an important foundation for the Advisory Committee's recommendation on collective bargaining. Each underscores the necessity, recognized by the Advisory Committee, of crafting legislative recommendations which will support the artists' right to bargain collectively in a structure which preserves their institutions and respects their practices.

## EQUITY AND PACT

Canadian Actors' Equity Association and the Professional Association of Canadian Theatres (PACT) negotiate a Canada-wide agreement governing stage actors. Equity is not a union and PACT fails the provincial employer test, but the parties have a long tradition of collective bargaining and joint contract administration. This they wish to protect through the Status of the Artist process. According to their custom, disputes are resolved through a mediative Joint Standing Committee rather than the adversarial grievance procedure contemplated by the *Labour Relations Code*.

Equity members may perform different functions in several disciplines. As the stage actors' organization explains:

One artist may work as an actor in theater and a director in opera. An artistic director of one company often works as a freelance director, choreographer or performer with another company. A substantial portion of theatrical endeavour in Canada, particularly on the West Coast, is self-initiated. [Equity] members are engaged not only as interpretive artists, but also function as the primary creators of new work for the professional stage. They also self-produce as artists cooperatively under joint venture or partnership arrangements with their peers.

Equity offers a passionate argument for preserving a 40-year-long bargaining relationship with producers which recognizes artistic vision as the central factor in the relationship and the root of its contractual discussions:

Professional theater in Canada is almost entirely produced by members of Equity, either as self-producing members or through production companies. Considerable work by our staff is directed to assisting our members' initiation of their own self-productions and the creation of production companies. We take enormous pride in our ability to foster the development of new producing entities and to support their growth to full-formed, arms-length status. There is a history and a relationship with our producers as members of this Association which precedes the arms-length collective bargaining relationship. This history and the respectful memories of the membership relationships are available and highly beneficial to both parties in the course of our collective bargaining. We sit at the negotiating table as the collective bargaining representative of our members and conduct negotiations with our own members who represent professional producing entities. The boards of our production companies [who are trustees] permit this, and do not perceive a conflict of interest because they appreciate the historical development of our profession and the realities of the producer's function. We could not tolerate the implementation of another kind of collective bargaining regime which would sever the historical ties to our producers as members. We seek a balanced model that will serve the needs of our members by recognizing their professional association as the legitimate collective bargaining representative while

preserving the artist's independent status and the production needs of the various disciplines of our profession.

Equity's partners in this relationship, the members of PACT, have a shared interest in preserving the contractual arrangements embodied in the Canadian Theatre Agreement, an omnibus document setting out conditions of engagement for theatres of all sizes. PACT also wishes to protect its unique collective association with stage actors: the fact that "management" negotiators are usually Equity members, the frequency of negotiated concessions for particular productions, and the importance of a non-legalistic dispute-resolution mechanism.

## **CURRENT GROUP CONTRACTS FOR B.C. PERFORMING ARTISTS**

Despite the difficulty of accessing the *Code*, several bargaining regimes covering artists exist in the province. Some have spawned agreements which are legally enforceable; others create the fiction of a collective agreement. All reflect the will of performers and producers to set out the conditions for their collaboration.

ACTRA negotiates an agreement for motion pictures (the B.C. Production Agreement) which is an enforceable collective agreement in the province. It is negotiated with individual employers and ratified by provincial members, and the Labour Relations Board has confirmed its legal status. At the same time, ACTRA and two Toronto-based advertising associations negotiate a National Commercial Agreement - a document which for technical reasons fails the tests of collective agreement status under provincial law even though it covers the same performers, carrying out the exact same activity -- performance in front of a camera and behind a microphone.

In many dance companies, there is a consensual form of negotiation which establishes scale contracts for dancers. There appears to be a will on both sides of this particular table to recognize the severe financial limitations faced by dance companies while protecting dancers' working conditions and providing some compensation.

## **INITIATIVES IN OTHER JURISDICTIONS**

In the province of Quebec, Status of the Artist legislation has developed a unique regime for artists. Quebec's laws created a system in which major artists organizations are "recognized" as the exclusive bargaining agents for specified sectors of artists such as, English stage performers, French actors, directors and creative technicians. The laws were written in such a way as to create a new body of jurisprudence where precedents can be found in the conditions of particular "fields of artistic endeavour" rather than the body of the province's labour laws and traditions.

Under the Quebec statutes, the recognized trade union becomes the only bargaining agent. Employers must sign agreements with the union and all working artists are represented. The

legislation carries a social and cultural mandate of support for cultural unions through what is in essence a government-sponsored monopoly.

The federal *Status of the Artist Act* suggests a similar system, but its application is limited to independent contractors in broadcasting or in government institutions such as the National Arts Centre. Artists who are employees will continue to be governed by the *Canada Labour Code*.

The statutes are administered by tribunals other than the Quebec or federal Labour Relations Boards, a significant administrative and financial burden that the governments in both cases have justified by the unique character of the legislation's focus.

## DISCUSSION

The extension of bargaining rights - leveling the field to provide the same protections accorded other occupational groups - can be accomplished in a manner different from that tried in other jurisdictions. Separate legislation and a separate artists' board - the Quebec and federal models - would engender high costs for a limited workload as fewer than 12,000 artists would be likely to access the collective bargaining provisions of the *B.C. Code*. At a time of stretched public resources, one cannot ignore the public investment already made in the Labour Relations Board: there is an infrastructure in place which can address the needs of the community.

There are those artists who believe that a tribunal other than the Board would be better suited to adjudicate matters related to artists. This concern is unwarranted given the involvement of the "artist vice chairs" (see page 19), and the fact that standards and conditions particular to artists would be applied in any case involving artists or their organizations. The artist vice chairs would seek practical means to determine whether bargaining rights should be awarded. In the case of the actors on one television series episode seeking to bind future performance, for instance, the Board may determine that a certification vote should be ordered of all members in the talent pool from which the cast is drawn - those people regularly auditioned. Or it might restrict the certification vote to the lead cast.

Questions about independent contractor versus employee status would be irrelevant. An artist would be defined by the type of work, the field of endeavour, or the standards of existing artist associations; tax status would not be a consideration. If the practice in the dance and theatre communities includes movement across disciplines and between management and managed, that would be accepted by the Board. The intention in the Committee's recommendation is to apply the realities of the artistic working life and adopt models which reflect that life. Institutions which have nurtured the arts and artists should be supported, not forced to change, as long as they reflect the will of their members.

The *Code* was not written to cover defined industries or crafts; instead, it was intended to permit a contractual relationship in which individual contracts are replaced by collective bargaining. The group can substitute its overall demands for those of the individual; a contractual breach is one between a union and an employer, not an individual; and the property

of a grievance - the right to dispute an infraction - rests with the bargaining agent, not the employee.

The *Code* protects individual rights in the face of this subrogation to the group's interest. There are rules on the conduct of unions and employers; there are guidelines for contract negotiations, and restrictions on coercion to achieve bargaining ends. There is protection against certain behaviour by a trade union towards an individual: simply put, a union must act in good faith, without discrimination, and in a non-arbitrary manner towards those from whom the union has received its bargaining mandate. These considerations protect the individual in the face of the collective will. None affronts creative independence or artistic integrity.

Today, there are occupational groups covered by the *Code* whose manner of employment would have seemed inappropriate for collective bargaining in the past. Moreover, there are many parallels to be found between the working situations of artists and circumstances in other fields. For example, a farm worker's employment is as seasonal and transient as an actor's. There are organizations representing social workers, psychiatric nurses, and others whose standards of professionalism are as rigid as an actors' association's. There are increasing numbers of people in all lines of work who operate primarily from their homes, but this does not preclude organization. Indeed, many unionized employees who have moved home from the office, working by fax, phone, or modem for their employers, continue to be represented by their existing trade unions. Finally, there are unionized workers at the same employment sites as actors and dancers, stage technicians, for example, who have enforceable collective agreements; stage performers should obviously have the same protection.

The Quebec model which creates monopoly unions with which employers are compelled to negotiate and artists are required to join would not be appropriate in British Columbia. Group bargaining should be encouraged, but the Quebec paradigm in our context seems coercive so a new direction is sought here, one which would allow artist vice chairs to use their experience and expertise to expand collective bargaining as a protection to artists. But the Committee's recommendations stop short of granting exclusivity throughout the province. By eliminating barriers to organizing, the opportunities for strengthening traditional organizations are increased, but the impetus must still come from individual artists, from the roots of each community. Artists seeking collective bargaining must demonstrate their support for a bargaining agent; it is not for government to declare a monopoly.

Although the comments in this section have focused on performing artists, there are others who may seek coverage under the proposed provisions. In Quebec, for example, directors and creative technicians have been covered; in B.C., trade unions representing these crafts declined to become involved in the Status of the Artist investigation since they already function as trade unions. Nothing in these proposals, however, preclude their participation as the amendments take effect. At the same time, those artists who have defined themselves as "employees" as currently defined in the *Code* may continue to do so: existing provisions will continue, and artist trade unions would not be required to change their status to "artist associations".

## APPENDIX D

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## APPENDIX F

### UNESCO DEFINITIONS

#### DEFINITION OF "ARTIST"

"Artist" is taken to mean any person who creates or gives creative expression to, or recreates works of art, who considers his/her artistic creation to be an essential part of his/her life, who contributes in this way to the development of art and culture and who is or asks to be recognized as an artist, whether or not she/he is bound by any relations of employment or association.

#### DEFINITION OF "STATUS"

The word "status" signifies, on the one hand, the regard accorded to artists, defined as above, in a society, on the basis of the importance attributed to the part they are called upon to play therein and, on the other hand, recognition of the liberties and rights, including moral, economic and social rights, with particular reference to income and social security, which artists should enjoy.

Source: *Recommendation concerning the Status of the Artist* (United Nations Educational, Scientific and Cultural Organization, General Conference, 21st Session, Belgrade, October 27, 1980) at 5.