

THE STATUS OF THE ARTIST

- A DISCUSSION PAPER -

**MINISTRY OF CULTURE AND
COMMUNICATIONS**

FEBRUARY, 1990

THE "STATUS OF THE ARTIST"

- A DISCUSSION PAPER -

1. INTRODUCTION

The economic, social and legal circumstance of Canadian artists is receiving considerable attention both nationally and in a number of provinces. Of particular note, in this regard, is the recent passage of precedent-setting legislation in Quebec and the probable introduction, this year, of federal initiatives to address the status of the artist.

Purpose and Scope of this Discussion Paper

The Ontario government is concerned about issues affecting artists and seeks a better understanding of what is, and what contributes to, the status of the artist in Ontario. To this end, and in response to this paper, the Ministry of Culture and Communications is seeking input from Ontario's arts community on the economic, social and legal needs and priorities of the individual, professional artist.

Representatives of the province's arts community have suggested, in the past, that before they can provide meaningful comments and suggestions on this issue, they require more information on what factors contribute to their circumstances and who or what controls these factors (e.g., what level of government, which laws). It is hoped that this paper will provide some assistance in this regard by:

- . describing the current situation of individual, professional artists and identifying some of the factors contributing to it;
- . outlining what measures have been or are being taken by other jurisdictions to improve the status of artists;
- . identifying which level of government has constitutional jurisdiction over which issues affecting artists; and,
- . posing questions to stimulate thought on issues for which the province has some responsibility.

Responses to this discussion paper will provide the basis for a provincial position paper. The position paper will propose a role for the Ontario government in addressing factors affecting the status of this province's artists.

This paper focusses on the circumstances of the individual, professional artist. Although not clearly defined, a professional artist has been characterized as one who is trained in their field, who devotes a significant proportion of their time to their artistic endeavour and who seeks to earn a living from, and gain public and peer recognition for, their work.

Sources of information for the discussion paper include existing studies on the issue as well as on informal discussions with federal and Quebec government officials and representatives of the Quebec and Ontario arts communities.

2. BACKGROUND

Over the past number of years, there has been much debate, discussion and inquiry regarding the role and status of the artist in Canadian society. The following brief history provides the context for Ontario's examination of the factors contributing to the role and socio-economic status of artists.

At the federal level, Royal Commissions such as Massey-Levesque in 1947 and Applebaum-Hebert in 1982 addressed the status of the artist, either in whole or in part. In 1986, the Siren-Gelinas Task Force on the Status of the Artist was established to consult broadly with the Canadian artistic profession, and to develop recommendations for improving conditions for Canadian artists in all disciplines. In May 1987, the federal government issued its response to the report of the Standing Committee on Taxation of Artists and the Arts. In 1988, the first phase of a revised Copyright Act, which now provides for greater economic rights for artists, was completed; phase two is expected to be completed in 1990.

The Siren-Gelinas Task Force report provides the foundation for much of the current work being done at the federal level. One of its principal recommendations was the creation of the Canadian Advisory Committee on the Status of the Artist (CACSA) to provide the federal government with advice and opinions on the promotion and strengthening of the status of professional artists in Canada. In January 1987, CASCA was established and, in June 1988, the Committee proposed an Act, known as the Canadian Artists' Code, to recognize the professional status of the artist.

Quebec too has undertaken a major review of issues affecting its professional artists and is taking steps to improve their social and economic status. An important first step in this regard was the introduction of legislation giving professional artists the same legal rights as all other Quebec workers.

3. THE ISSUE

Federal and provincial governments have directed a large proportion of resources toward the promotion of cultural products and industries. Attention is now being turned to supporting the creators and performers themselves - the individual artists.

The issue of the status of the artist can be described as follows. Increasingly, the cultural sector is being recognized as a major component of, and contributor to, the national identity and economy.

Moreover, above and beyond their significance in economic and employment terms, Canada's cultural accomplishments are increasingly viewed as a source of national pride. In spite of this recognition, little of the economic benefit generated by an artist is returned to that individual. A number of factors, moreover, are cited as preventing artists from realizing their potential.

UNESCO has identified two broad factors that have a bearing on the artist's economic, legal and social "status", or place in society. Artists' status is defined by society's regard for the role artists are called upon to play in society. Simply put, their role is seen to be that of protector and promoter of Canada's national cultural values and identity. Artists' status is also defined by the recognition of the rights, particularly income and social security, which artists should enjoy.

It may be concluded then, that enhancing the status of the artist requires public recognition of the artist's efforts and their contribution to the "public good" of society. As well, and in support of this, it requires measures which acknowledge and accommodate the unique characteristics of the artistic profession.

Legal Recognition to Achieve Fair Treatment

The characteristics of the artistic profession coupled with the motivations that inspire artists to pursue this profession preclude artists from relying solely on market forces to be successful in their field. This reality, together with the "public good" orientation of their endeavours, is the basis for their call for government intervention.

Nonetheless, there is unlikely to be one simple solution for addressing the many factors contributing to the problems inherent in the present status of artists. These problems relate to many areas which fall under the jurisdiction of numerous departments within at least two levels of government. (Refer to Appendix A for a summary of the key issues affecting artists.) Indeed, the diffusion of jurisdiction results in many artists expressing frustration at having to lobby on numerous fronts to achieve their objectives.

The lack of legislative recognition, however, imposes one of the most serious obstacles for artists. The federal Income Tax Act is the focal point of many grievances, as it does not provide a framework for recognizing the realities and needs of artistic professions. Also receiving much attention are Canada's labour codes and the absence of legislative recognition of the rights of artists to bargain collectively.

Inquiry at the federal level has resulted in a conclusion that only through legal recognition of artists' professional status can improvements be made to their socio-economic circumstances and their contribution to society adequately rewarded. Moreover, a single piece

- 4 -

of legislation, which guides all departments on issues affecting artists, is seen to be the most effective means for heightening awareness and ensuring consideration of artists' needs when decisions are made.

4. THE CANADIAN ARTISTS' CODE

The Canadian Artists' Code is an achievement of the CACSA. The Code's principal objective is to make it official federal government policy to:

...recognize the professional status of the artist (and his or her contribution) to the enrichment and continued development of the cultural, political, social and economic fabric of Canada as a nation.

More specifically, the Code is proposed as a means for recognizing the professional artist as an important thread in the fabric of society and for providing artists with rights and benefits available to other sectors.

The Code is intended to redefine the legal, economic and social status of the artist by proposing changes in areas of Canadian law at the federal level and in areas of federal jurisdiction. Essentially, the Code addresses recommendations taken from the reports of the Standing Committee on Communications and Culture and of various task forces on the arts.

In its introductory section, the Code defines terms, provides a statement of the fundamental principles governing the status of the artist, and contains a section which deals with their professional recognition, economic and social rights. Part Two of the Code provides, among other things, that the government will amend all existing legislation and regulations to promote and support the arts. This Part provides for a base level of financial support for all artists and also sets out changes to the Income Tax Act and the Unemployment Insurance Act. Part Three deals with collective bargaining and the freedom to organize professional artists' associations.

Drafted in the form of a Bill, the Code is seen to be an important step in the process leading to the federal legislative recognition sought by the professional artist. Released in June 1988, it is now before the arts community and the federal government for consideration.

Constitutional Limits

The federal government's jurisdiction to legislate in areas affecting the status of the artist is defined and limited by the Constitution.

For example, the federal government has the power to legislate in the

areas of copyright and taxation. Proposed changes to the tax treatment of artists will, therefore, affect all artists, regardless of the field or jurisdiction within which they work. Federal jurisdiction over labour, however, is limited to labour relations affecting organizations established by a federal statute or falling within federal jurisdiction (e.g., banks, airlines) and their employees. Federal labour legislation, therefore, would most likely affect artists working in broadcasting and in such institutions as the National Film Board and several libraries and museums. Outside of this narrow area, labour relations are within the exclusive jurisdiction of the provinces.

5. FEDERAL GOVERNMENT COMMITMENT

The federal Minister of Communications, Marcel Masse, has committed his department to work toward the establishment of a policy framework for the arts which will give priority to improving the socio-economic situation of professional artists. This framework will encompass a set of initiatives, including legislation, to assist individual artists in securing bargaining rights and the social and economic benefits available to other Canadian workers.

Mr. Masse has been working to solicit the support of his Cabinet colleagues, in an attempt to facilitate smooth passage of his initiatives later this year. Officials in the Department of Communications are also working with their counterparts in departments with responsibility for policies and programs that affect artists' economic, social and legal status. For example, representatives from the departments which administer social benefit programs such as unemployment insurance (Employment and Immigration) and the Canada Pension Plan (Health and Welfare) have been approached. As well, the Department of Communications is discussing possible revisions to the Bankruptcy Act with the Department of Consumer and Corporate Affairs.

More recently, Mr. Masse tabled the issue of the status of the artist with the Parliamentary Committee on Communications and Culture. In his speech to the Committee, the Minister expressed the view that Canadian law does not appropriately accommodate the artist. Whether one considers laws governing labour relations, fiscal policy or social programs, almost without exception, "artists fall into the categories of eligibility without properly belonging to any".

The Minister argued that artists "should be able to count on a government committed to providing them with access to normal social benefits and recognition of their special place in society". He further suggested that artists could count on the federal government by reiterating the Prime Minister's recent statement in the House of Commons: "I am confident that in the near future the Government of Canada will be able to present legislation and initiatives favourable to all Canadian artists."

Mr. Masse asked the Committee confirm that, to improve the status of

the artist, legislation is indeed in order. He also asked that the Committee report on what this legislation should include.

In response to this request, the Committee has studied the issue and has submitted its report to the government. The report suggested that measures to improve the status of the artist should be Mr. Masse's top priority. Among the Committee's recommendations is the introduction of legislation on the status of the artist which would give artists self-employment status for taxation purposes, collective bargaining rights and other rights which will enable them to benefit from the country's social programs. The government's response to the report is expected to include a commitment to passing such a law (likely to be based on the Canadian Artists' Code) by the end of this year.

6. QUEBEC TAKES STEPS

The Quebec government was the first government in Canada to pass legislation to improve the status of the artist. Quebec government officials point out that Bills 90 and 78 are not merely the end result of a single or even a series of studies. Rather, the Quebec legislation is the outcome of a number of years of thought about finding a comprehensive approach to improving the socio-economic circumstances of artists.

Similarly, legislative hearings, held in 1986, in and of themselves, did not result in any specific solutions being immediately found to the issues raised. Nonetheless, they were seen to be a milestone in that they prompted officials to realize that without providing legal status to artists, it would not be possible to improve their socio-economic status.

These hearings were followed by several years of further consultation with arts groups, evaluation of options and drafting of recommendations. Among the issues identified by leading professional artists' associations as critical, was legal recognition and legitimization of their right to collectively bargain on behalf of their artists. Associations, such as Union des Artistes, were no longer content to rely solely on the good will of those who employed them, for recognition. Only through legal recognition, they argued, could artists gain the assurance that minimum working conditions could be secured.

Legislation: The Selected Option

Several options were considered by the Ministry of Cultural Affairs for granting statutory recognition of collective bargaining rights to organizations representing (self-employed) artists. Although amending existing legislation was among these, it soon became apparent that the "logic" of Quebec's existing labour code could not accommodate the unique character of artists' work patterns.

Traditionally, workers are required to negotiate employment conditions with their employer. Typically, these workers have a single employer or a group of employers. Artists, on the other hand, are more likely to have numerous employers; negotiating a separate agreement with each would be administratively unworkable. This set of circumstances made simply changing the Quebec labour code impractical. Compounding the limitations of the legislation, was the resistance within the ministry responsible for labour to adopting changes which were contrary to the traditions of labour relations in Quebec. In light of the foregoing, the Minister of Cultural Affairs requested that additional legislation, to deal with these areas of concern, be considered.

Two Acts

As the problems and circumstances affecting the performing and film artists were found to vary considerably from those impacting on literary and visual artists, and as it was the government's intent that any measure reflect, rather than break down, the sectors' respective circumstances, two bills were ultimately prepared.

The first bill, affecting performers only, (Bill 90, the Act respecting the professional status and conditions of engagement of performing, recording and film artists) was passed in December 1987. Subsequent consideration of the appropriateness of legislation for literary and visual artists resulted in the tabling and passage of Bill 78, in December 1988, of the Act respecting the professional status of artists in the visual arts and crafts and literature and their contract with promoters.

Impact on Quebec Labour Relations

Although Bills 90 and 78 provide Quebec artists with professional recognition, essentially they are laws concerning the labour relations between artists and promoters or producers. As Bill 78 has not yet been fully enacted, the legislation has, so far, had an impact almost exclusively on the performing arts sector.

Nonetheless, there appears to be consensus within the arts community that, at minimum, the legislation symbolizes improved status for artists and has served to heighten awareness of their circumstance in the minds of the government, the industry and the public as a whole. From this, it is hoped, more tangible benefits will be realized.

Quebec artists applaud the introduction of a framework in which labour issues can be addressed. In essence, Bill 90 has legally recognized previously established relationships between creators and producers or promoters. (Six associations, already in place before the legislation was enacted, have filed their collective agreements for recognition by the Commission, an agency instituted under Bill 90.) Bill 90, moreover, provides artists' associations with a means of negotiating on their members' behalf and requires that producers negotiate with them, in good faith. Artists who are not members of any association have

also benefited from the new law as they too are afforded the right to negotiate, on their own behalf, and the right to conditions no less advantageous than those secured by an association.

Notwithstanding the support for Bills 78 and 90, some have voiced concern. On the whole, artists in literature, visual arts and crafts are more cautious in their support for the legislation and its implications than their performing counterparts. As a much more fragmented sector, characterized by numerous regional groups and hundreds of independent artists, creators not only view the need to organize much less enthusiastically but complain that an unnecessary tension has been created by the requirement that each sector be represented by only one association. (Bill 78 stipulates that only one association shall represent each of the three sectors covered by the Bill precisely in order to prevent fragmentation in labour negotiations.)

Criticism can also be heard from the performing arts sector. Some performing artists claim that by formalizing negotiating activities, previously cordial relationships with producers have been strained. Others suggest that tension has emerged between artists groups claiming (or wishing) to represent artists in a particular sector. (Bill 90 stipulates that only the group representing the majority of artists in a defined sector will be recognized by the tribunal established by the legislation for this purpose.) Also criticized is the definition of an "artist" adopted by Bill 90 which has already divided one association by not recognizing all of its members. (It is anticipated that the proposed Canadian Artists' Code will be less problematic in this regard as the definition of "artist" appears to be broader.)

Beyond the Legislation

Labour relations was only one of a long list of issues identified by Quebec artists during the legislative committee hearings. Others included social security, artists' fiscal status, copyright, health and safety in the workplace and arts education. The Ministry of Cultural Affairs continues to work with other government departments to address these issues.

One outcome of its efforts has been the decision of the Quebec Ministry of Revenue to grant artists, who practice art in one of the fields stipulated in Bill 90, the status of self-employed artists for taxation purposes. As labour legislation, Bill 90 does not directly affect the tax status of the artist. By defining what constitutes a self-employed artist, however, the new legislation has clarified, for the Ministry of Revenue, who may be eligible for certain tax provisions.

The effect of decision of the Ministry of Revenue is that Quebec performers no longer have to prove their fiscal status by resorting to an assortment of complex criteria designed to determine if they are an employee or are self-employed; self-employed status is now assured if the artist is engaged in a recognized contractual arrangement. Thus,

many artists, previously unable to deduct arts- related expenses from income, are now able to do so.

7. FOR ONTARIO

Before any decision can be made, as to where provincial attention should be turned, detailed input, from Ontario's arts community, is required. Specifically, the Ministry of Culture and Communications seeks artists' views/suggestions on:

- . what and who defines a professional artist;
- . what are the key economic, social and legal factors which interfere with the ability of a professional artist to achieve his or her economic and artistic potential in Ontario; and,
- . what are the provincial measures required to address these factors.

Matters for Provincial Consideration

Informal discussions with representatives of a number of Ontario's arts service organizations have already pointed to several issues of concern which fall within provincial responsibility. An overview of these is presented below.

Labour Matters

While the federal government has jurisdiction over labour matters in areas such as broadcasting and other activities which are national in scope, this is an area of primarily provincial responsibility.

(a) collective bargaining rights/employment standards

Ontario's Labour Relations Act provides the framework within which the majority of employers, employees and trade unions may engage in collective bargaining. Self-employed workers, however, are not covered by the Act, and, by extension, associations of self-employed workers (e.g., artists' professional associations) do not receive any legislative or negotiating powers. Also, the Employment Standards Act, which sets out minimum standards (e.g., minimum rates of pay, severance pay, etc.), does not afford any protection to the self-employed artist.

Currently, the only way artists' associations may be recognized as the bargaining agents for their members, is by way of voluntary recognition by the employers with whom they deal. Such recognition, however, is not assured.

Short of securing clout in the minds of their employers, how can artists' associations protect their members' rights in the same way as fully accredited labour organizations? Is there a way to

protect the rights of, and ensure standards for, all self-employed artists, regardless of membership in an association?

(b) health and safety in the workplace

The provisions of the Occupational Health and Safety Act apply to all workplaces where an employer-worker relationship is said to exist. While in some cases it has been held that independent contractors fall within the meaning of worker, this is determined on a case by case basis. Therefore, while self-employed artists may be protected against health and safety hazards in their workplace, such protection cannot be guaranteed outright. (It should be noted that some associations have, nonetheless, secured safety standards in their collective agreements.)

Also of concern is the fact that self-employed workers are unable to obtain workers' compensation protection through their employers. Although they are able to apply independently for personal coverage artists argue that they often do not have the means to support insurance schemes.

How can health and safety standards be secured for all artists? What steps can be taken to provide artists represented by professional associations with the same protections as other workers? Is there a way to accommodate and/or to take into account artists' low and often fluctuating incomes?

Income Issues

(a) taxation

Fiscal incentives are viewed by some to be an effective way for governments to ensure direct financial support for artistic activity. Although the majority of responsibility for taxation rests with the federal government, the provinces have some latitude in this area.

Provinces (other than Quebec) may levy a provincial income tax as a percentage of federal taxes owed. In Ontario, there is special provision for a tax reduction for low income earners and for a surtax for high income earners. To the extent that an artist falls within the low income bracket, he or she may be eligible for a tax reduction.

Other mechanisms employed by Ontario to achieve specific goals include tax credits, tax rebates and exemptions from provincial sales tax.

Are fiscal measures a suitable means for improving the economic status of Ontario's artists? How will eligibility be determined and enforced?

(b) pensions

Although eligibility for the Canada Pension Plan is a federal matter, Ontario legislation (the Pension Benefits Act) governs private and public pension programs offered by employers. As with Ontario's labour legislation, the Act does not contemplate the circumstances of self-employed individuals who typically have numerous employers.

As the Act does not compel an employer to provide a pension plan, it could be argued that a self-employed artist is no worse off than a worker whose employer does not offer a pension plan. Moreover, the artist, like any other worker, has the option of opening a Registered Retirement Savings Plan. Unlike other workers, however, artists are likely to have a lower and uncertain income, which, they argue, leaves them with little left over for long-term planning.

What are the obstacles that confront employers wishing to offer pension benefits to artists? What are the options for providing pension coverage for artists? What models exist and what new mechanisms should be considered?

c) arts education

The provinces have primary responsibility for education, job training and employment. Although it is well acknowledged that arts education is the primary vehicle for developing an appreciation of the arts, school programs in Ontario are uneven in quality. The lack of a central co-ordinating and curriculum planning mechanism, limited resources compounded by budget cutbacks and a lack of skilled teachers are all said to be contributing factors.

At the provincial level, the Siren-Gelinas report calls for strong links between the departments of education and culture to increase understanding of the needs of artists among teachers and government officials. Among the specific measures sought is the introduction of an arts education program as a core subject for all primary and secondary students and consideration of employing professional artists as arts educators.

Notwithstanding current provincial initiatives to address this issue, what other means can be considered for encouraging and supporting arts education?

KEY FACTORS CONTRIBUTING TO THE STATUS OF THE ARTIST

What is at issue with respect to the status of the artist can be summarized as follows: the characteristics of the artistic profession, coupled with public perception of the arts and artists, impact on the social, economic and legal circumstances of the Canadian/Ontario artist. Some of these contributing factors, some of which fall within the federal government's jurisdiction, are discussed below.

1. ECONOMIC FACTORS (TAXATION)

There are four major components to the issue of taxation and the artist:

- artists' fiscal status
- incentives for donations
- designation of charitable status
- federal sales/goods and services tax

Fiscal Status of the Artist

Perhaps of greatest concern to artists in the area of taxation, is that current federal tax legislation does not adequately deal with institutions/professions which do not fall within the "traditional" employee-employer relationship. Changes to the legislation are sought which would, on the one hand, enable artists to pay a "fair share" of the tax burden, while recognizing the characteristics of their occupation, and on the other hand, provide artists with the opportunity to participate in social assistance programs. (See discussion of social factors below.)

1) **different treatment for employed and self-employed artists**

Under the Income Tax Act, the artist-employee is treated differently from the self-employed artist. Unlike a self-employed artist, an artist deemed to be an employee cannot deduct "reasonable" expenses incurred in order to earn income from his profession/craft.

While for the majority of artists, the fiscal benefits of self-employment outweigh those of salaried employment, self-employment status is not without problems. Self-employed artists are treated as a business for tax purposes. As such, they are required to meet the "expectation of profit test" in order to be eligible to deduct expenses from income. Artists, with uncertain and often fluctuating incomes, may not be able to meet this test and therefore find themselves unable to deduct business expenses from earned income. Self-employed artists, moreover, cannot obtain unemployment insurance, are not covered by provincial workers' compensation schemes, and must contribute both the

employer and employee share to the public pension plan. (At present, only farmers and fisherman may take advantage of a special unemployment insurance scheme which takes into account the seasonal nature of their employment)

Although self-employed artists have made gains in obtaining an interpretation of the Income Tax Act to better recognize their needs, they have yet to achieve the "dual status" (i.e., consideration of the artist as both an employee and as self-employed for taxation purposes) they have been seeking for some time. The same can be said for artists deemed to be employees who still cannot benefit from the same level of deduction of employment-related expenses as their self-employed colleagues, without losing access to their social benefits.

One of the main objectives of the proposed Canadian Artists' Code is to secure dual status for Canada's artists.

ii) fluctuating levels of income

Artists' annual income are often subject to factors beyond their control and, consequently, may fluctuate from one year to the next. Averaging provisions continue to be favoured by artists as a mechanism for minimizing the impact of these fluctuations.

Recent federal tax reforms eliminated all income averaging provisions. Department of Finance officials explain that these provisions are no longer required due to the introduction of lower and fewer marginal tax rates which should serve to minimize peaks and valleys in taxes owed due to fluctuating income.

iii) grants and business income

Often grants to artists serve as the primary income source in lieu of regular employment income and enable artists to pursue an artistic endeavour. Expenses related to the pursuit of their activity, however, are only deductible if the grants are considered as business income.

Despite several Revenue Canada interpretation bulletins which allow for the consideration of grants as business income, artists claim that this often does not occur. Moreover, grants are only treated as income if Revenue Canada decides that the artist is operating as a business (rather than pursuing a hobby), as per the expectation of profit test.

Incentives For Donations

Fiscal incentives are seen as a mechanism for governments to provide (indirect) financial support for artistic activity.

i) limits on deductibility

Currently, individual and corporate donors may deduct the value of a cash donation from their taxable income up to a limit of 20% of taxable income. Any amount of a gift over this level may be carried forward for a period of five years.

To stimulate private giving to arts organizations, artists are calling for, among other things, the elimination of 20% limit on deductibility, which artists feel is arbitrary.

ii) tax credit vs. deduction from income

A tax credit allows donors to deduct the value, or portion of the value, of a gift directly from tax payable rather than from taxable income. From a taxpayer's point of view, a tax credit provides greater incentive to give to charities.

Tax credits are now available for donations to political parties. This is seen to encourage political donations, perhaps at the expense of contributions to the arts. What is sought, therefore, is either the extension of federal tax credits to all donations, or their withdrawal from political contributions.

Designation of Charitable Status

Only those organizations which have obtained a number designating them as charitable institutions are allowed to issue receipts entitling their donors to a tax deduction. Arts organizations are seeking charitable status under the Income Tax Act so as to encourage businesses and individuals to increase their financial assistance to artists and artistic activity.

While Revenue Canada is currently streamlining regulations concerning designation, cultural organizations fear they will be excluded.

Goods and Services Tax (GST)

Artists have labelled the GST as a tax on creativity and, as such, claim it denies the importance of the role of the arts to Canadian society. In light of the "public good" element of the arts, it has been argued that this sector should be tax free, at best. At minimum, the Canadian Conference of the Arts recommends that monies levied from the sector, through the GST, should be returned to the sector in the form of increased allocations to federal agencies such as the Canada Council and the CBC.

A number of specific arguments have been raised by artists with respect to the GST:

- Revenue-generating activities undertaken by arts charities and non-profit organizations to meet their objectives should not be subject to the tax.

- The tax-free status granted to non-residents will encourage companies to "save" by hiring/engaging foreign professionals and encourage Canadians to buy lower cost foreign goods.
- As salaries will not be taxed, many arts organizations will chose to employ rather than contract artists whose fees will be subject to a 7% tax.
- Self-employed artists not able to meet the "reasonable expectation of profit test", will be denied the ability to claim the full input tax credit.
- The \$30,000 small traders' exemption to the GST will be problematic for artists whose incomes fluctuate above or below this limit from year to year.
- The small traders' exemption will mean that some artists are part of the tax system (i.e., required to charge a tax on their services) while others are not, thus establishing a two-tiered system which may result in some "engagers" preferring to contract with those who do not charge the tax.
- The GST will likely result in less consumer spending on artistic services and products. (With no precedent to serve as a model, however, the extent of this reduction in spending levels cannot be approximated.)

2. SOCIAL FACTORS

Three broad areas are considered in this section:

- social benefits
- professional organizations
- health and safety in the workplace

a. Social Benefits/Pensions

One issue that has been the focus of much attention is that of access, or lack thereof, by artists to social benefit programs. The problem of access stems partly from the nature of artists' work, which is largely autonomous for creative artists, and largely short-term and of a contractual nature for performing artists. Compounding this is a lack of sufficient income to ensure long-term social security.

Unemployment Insurance

The Unemployment Insurance Program is administered by the Canada Employment and Immigration Commission (CEIC).

The characteristics of the artistic profession make it difficult to define the "employed" artist and, consequently, the "unemployed" artist.

For example:

- . Artists are frequently engaged part-time or full-time for short periods and by many successive employers;**
- . Artists are constantly looking for new engagements;**
- . Artists' incomes are not always fixed and sometimes depend on profits realized by employers;**
- . Artists' professional incomes are often not sufficient to meet basic needs.**

The result is difficulty in determining when an artist should be considered unemployed and seeking employment. More to the point, characteristics of the profession often restrict artists' ability to secure unemployment benefits. This is particularly true for visual artists and writers.

It is clear to artists that these difficulties make the general standards applied to determine eligibility inappropriate for artists.

Further to the Forget Inquiry on Unemployment Insurance, and as part of its current efforts to address the status of the artist, the federal government is considering ways in which the arts sector can be accommodated in the unemployment insurance scheme. (The recently announced new system for calculating insurance benefits is meant to address broad issues rather than to respond to the needs of specific groups.)

pensions

All Canadians are eligible for the Old Age Security pension, subject to certain restrictions (e.g., years of residence in Canada). This is a universal benefit.

The Canada Pension Plan (CPP) is based on compulsory contributions. All workers whose net earnings are greater than a specified amount are required to contribute to the CPP. Their employers are required to contribute an equal amount. Self-employed individuals are subject to the same requirement as other workers. They, however, have the additional responsibility of contributing the employer's share into the plan. This requirement in some cases may be a significant financial burden to the self-employed artist. Another issue is that the artist's income may be too low to accumulate a significant CPP benefit.

As self-employed workers without one major employer, artists are not usually in a position to be part of private pension plans. The lack of bargaining status compounds the artists' limitations in this regard.

Artists affiliated with large associations (e.g., ACTRA) may be able to take advantage of self-directed social programs usually administered by the association. These programs are generally financed by the membership base although employer participation is not uncommon.

Coverage can run from basic health care and pension plans to life insurance.

On the whole, however, access to pension plans and other benefits is considered inadequate.

b. Professional Organizations

While the provinces have jurisdiction over matters concerning collective agreements, the federal government can exercise its jurisdiction in areas such as communications, on federally incorporated associations and on any type of business whose activities are national in scope.

Federal and provincial labour codes were developed many years ago to protect Canadian workers - that is, employees - and to establish a number of minimum standards (e.g., minimum wage, health and safety and various social benefits). Existing codes, moreover, extend the right to collective bargaining to certified professional or occupational groups. To become certified, however, a traditional employee-employer relationship must exist.

While artists considered "employees" are protected under some form of a labour code, self-employed workers, who may enter into numerous contracts annually, are not covered by any existing code. They, therefore, have no vehicle through which their rights and interests can be represented. As well, associations of self-employed workers (e.g., artists' professional organizations) do not receive any legislative or negotiating powers. Some organizations, however, by virtue of their size and clout, have secured voluntary recognition, from their employers, as the bargaining agent for their members.

As representatives of self-employed artists, existing professional artists organizations are also not legally recognized and therefore have no legislative or negotiating power. Not only are they not able to engage in collective bargaining but organizations could be subject to inquiries under the federal Competition Act if they are viewed to be trying to control market forces.

Legal recognition of artists' associations is therefore sought in order that they may protect members' rights, including the right to negotiate collective agreements in the same way as can fully accredited labour organizations.

The Canadian Artists' Code, now under consideration, proposes that legal status be granted to "recognized" artists organizations as well as to those which presently do not enjoy any collective bargaining rights. It also describes the establishment of a Recognition and Mediation Commission which would judge, administer and mediate questions arising from the collective bargaining process.

c. Health and Safety in the Workplace

Industrial health and safety legislation falls within provincial

jurisdiction (although the federal government has authority for establishing some standards.)

Visual artists and dancers are particularly vulnerable to work-related accidents or health problems. While some arts organizations have secured safety standards for their members (as ACTRA has done for its dancers, for example), some artists (e.g., visual artists) remain unprotected.

Also of note is the fact that many artists are self-employed and therefore not eligible to benefit from employer-supported workers' compensation programs.

Self-employed artists whose interests are represented by professional associations seek participation in such programs through collective agreements stipulating that contributions be shared jointly by the employers and the artists. Artists, such as writers and visual artists, who usually do not have designated or organized "employers" or "producers" are seeking health and safety protection for themselves.

3. LEGAL ISSUES

Two issues are discussed in this section, copyright and bankruptcy. Both fall under the federal government's sphere of responsibility.

a. Copyright

Canada's Copyright Act is the responsibility of the federal Department of Consumer and Corporate Affairs. Copyright in Canada is the legal recognition of a creator to determine the use of a work and to share the benefits produced by that use.

It has become increasingly acknowledged that the income earned by some artists for their creativity often does not amount to more than that said to represent poverty level. The Copyright Act is seen to be a mechanism for reducing unauthorized exploitation of creative works and as a means, therefore, for improving the economic reward to artists.

Traditionally, economic value has been placed on works of art only upon the sale or reproduction of the art object. This, however, did not recognize the many other ways in which the public benefits from art and, therefore, denied artists appropriate recognition and reward for their efforts.

Recent and proposed amendments to the Copyright Act are meant to expand artists' economic rights by placing value on the use and public exhibition of their work. The amended Act expands the economic horizon for artists by placing value on the public exhibition of their work. The amendments, therefore, have generally been supported by the arts community.

Subsumed under the concept of economic rights are: the exhibition right which entitles the artist to payment for art work at public exhibition

(for purposes other than for sale or hire); the reproduction right which entitles the artist to payment when art is reproduced; the reprography right which entitles the artist to payment when material is photocopied; and, the public performance right which entitles the artist to payment for screenings of film, video, etc.

Other changes to the Copyright Act, such as increased penalties for copyright pirates and introducing collectives as a means of administering these rights on artists' behalf, are measures intended to improve the status of the artist.

The second phase of amendments is expected this year. Issues which will be addressed include:

- the definition of fair dealing
- a single copy exemption
- home taping and rental of sound recording
- the expansion of the sound recording right
- copyright of performers' performances; and,
- crown copyright

b. Bankruptcy

Another legal issue of concern to artists is the rights of creators in the disposition of assets following bankruptcy of firms in the cultural sector. The current federal Bankruptcy Act only protects the rights of literary authors to payment of outstanding royalties and other payments owed.

As this is a matter of federal responsibility, the federal departments of Communications and Consumer and Corporate Affairs are currently investigating the problems artists have had in collecting money owed (for works or services rendered) after a bankruptcy, and in retrieving property.

4. PUBLIC AWARENESS

Public perception of the artistic profession is an issue of considerable concern. Generally, artists feel that their profession is perceived as marginal and of little value to society. Artists often feel that the arts are not viewed as a source of livelihood or as a profession but as an opportunity for self-indulgence or as a hobby.

Artists believe that only when Canadians become more aware of the contributions which the artistic profession makes to society, will professional recognition be really achieved. To heighten this awareness, the artistic community advocates using the education system and the role of the mass media.

a. Arts Education

Arts education is considered the best way to develop an appreciation of, and interest in, the arts. School programs in this area however

are criticized as being uneven in quality and/or receiving little attention.

With responsibility for education decentralized (i.e., among the provinces and, within each province, among local school board), artists are concerned that there is no central body for overall planning of arts education. The consequence is that arts programs in the formal education curriculum vary considerably from school to school.

Artists also argue that the tendency of governments to reduce arts programs when faced with financial restraint contributes to the questionable quality and quantity of arts education in schools. In an age of automation and uniformity, the lack of priority (and therefore resources) assigned to programs which encourage creativity is seen to be particularly problematic.

Artists seek a more prominent role for arts education, within the formal education system and especially at the elementary and secondary levels.

b. Mass Media

The mass media are seen to be another major force contributing to public perception of the artistic community. Artists point to the inconsistent level of critical skills in the Canadian mass media and urge the media to take responsibility for the development of credible, skilled journalists - as has been done to ensure professional and comprehensive coverage of sports, for example.

A national awareness raising campaign similar to "Participaction" is seen as a means for heightening awareness of the importance of the arts to the general public.

5. JOB CREATION AND TRAINING

If artists are to compete nationally and internationally and keep abreast of changes within their profession, they must continually upgrade or refine their skills.

Concern has been expressed about the funding and future of national training institutions - if Canada is committed to the development of the artistic profession, greater attention and resources must be channelled to national training centres.

Professional development for artists who have already begun a career is another area of concern. In order to pursue such training, artists may have to forego income and relocate. Artists are frustrated with the level of financial support to assist them in their professional development.

Finally, the lack of re-training opportunities for those who must abandon their career due to injury, burn-out, etc. (such as what is provided through the federally-funded Dancers Transition Centre), is

another issue which artists feel requires attention.

To address these concerns, artists advocate a more strategic approach and a long-term financial commitment to supporting professional development.