

STATUS OF THE ARTIST ACT

A proposal for amendment of the Saskatchewan Status of the Artist Act (Chapter S-58.1 of the *Statutes of Saskatchewan, 2002*) to accommodate inclusion of Collective Bargaining Rights for Professional Artists.

Introduction

This Saskatchewan Arts Alliance (SAA) proposal for amendment of the *Status of the Artist Act* is produced at the suggestion of members of the Saskatchewan legislature who are interested in receiving SAA's views on how collective bargaining rights could be incorporated into the *Status of the Artist Act*. It will serve also as an illustration to concerned cultural organizations.

SAA does not pretend to be expert in drafting legislation. What is proposed here is an outline of the elements required to amend legislation. It is informed by the example of both federal and Québec status of the artist legislation^{footnote 1}. SAA is also proposing amendment to the Status Act to include provision for a permanent Status of the Artist Committee.

Background

Collective bargaining rights for artists and producers should be understood in the context of past experience. Equally, the proposed legislation should be understood to be permissive. This means artists and producers are free to utilize the rights provided in the legislation as they are willing, able and organized to do so.

Some artists' and producers' organizations have successfully used "voluntary" collective bargaining for a number of years in Canada. Successful, in that by mutual agreement and necessity, agreements have been reached that provide collective terms for engagement. Such agreements have been primarily in the areas of performance and writing in film, television, stage and audio production. National agreements established under this voluntary system should be protected by any amendment to the provincial Status Act.

For the most part artists do not work in traditional employer/employee relationships with identifiable work places. They are more likely to be in freelance and independent contractor work. Nonetheless artists have common concerns such as payment, work conditions, benefit provision and copyright. To achieve these collective rights within a legal framework will be a major step forward in providing equity and improved work conditions for artists in Saskatchewan.

In the cultural sector it is the case that artists and producers often alternate roles and have collaborative relations. Nothing in amending the Act should be constructed to prohibit artists' and producers' crossover membership.

This proposal argues for clear definition of professional artist, and terms, conditions and protections that are the basis of collective rights in Status labour legislation. Nothing in this proposal contemplates opening of the Trade Union Act to amendment, it is solely a proposal for amending the Status of the Artist Act to enable inclusion of collective rights.

The Status of the Artist Act

(Effective July 3, 2002)

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CHAPTER S-58.1

An Act respecting Artists

Short title

- 1 This Act may be cited as *The Status of the Artist Act*.

Interpretation

- 2 In this Act:

- (1) This Act applies to professional artists working in any artistic field: **“artist”** means ~~any professional creator, interpreter or performer working in any artistic field,~~ including:
- (a) literary arts;
 - (b) visual arts;
 - (c) electronic and multimedia arts and Internet arts;
 - (d) film and video arts;
 - (e) crafts;
 - (f) performing arts, including theatre, opera, music, dance and variety entertainment;
 - (g) the recording of sound; and
 - (h) the recording of commercial advertisements;

Provide a definition of “professional artist “ to conform with the recommendations of the two Minister’s Advisory Committees (1993 and 2004).^{footnote 2}

- (2) Definition of Professional Artist:

A person may be determined to be an artist through a combination of four of the following criteria, one of which must be (a), (b), or (c):

- a) an artist receives or has received, compensation from her/his work including, but not limited to, sales, fees, commissions, salaries, royalties, residuals, grants and awards, any of which may reasonably be included as professional or business income;
- b) an artist has a record of income or loss relevant to the history of her/his work and appropriate to the span of her/his artistic career;
- c) an artist has received public or peer recognition in the form of honours, awards, professional prizes, scholarships, honourable mention, an appointment to an adjudication committee or an invitation to participate in a group exhibition or performance or by publicly disseminated critical appraisal or by any other similar means;
- d) an artist has presented her/his work to the public by means of exhibitions, publications, performances, readings, screenings, or by any other means appropriate to the nature of her/his work;

- e) an artist is represented by a dealer, publisher, agent, or similar representative appropriate to the nature of her/his work;
- f) an artist devotes a reasonable proportion of her/his professional time to promoting or marketing her/his work, including, but not limited to, attending auditions, seeking sponsorship, agents, or engagements, and similar activities appropriate to the nature of her/his work;
- g) an artist has received professional training either in an educational institution or from a practitioner or teacher recognized within her/his profession or through traditional training;
- h) an artist has membership in a professional association appropriate to her/his artistic activity whose membership or categories of membership, is or are, limited under standards established by the association; or which is a trade union or its equivalent appropriate to her/his artistic activity;
- i) an artist holds copyright in her/his own work and has received royalty or residual payment based on that copyright.

Add Section 2 (3)) to provide a definition of producer/promoter/engager.

Proposed definition of producer/promoter/engager: "means any person body or partnership who or which enters into contracts with artists or purchases artists' work as its main or secondary activity." Further, provide definition of pressure tactics as articulated in the Federal Status Act, and any other necessary definitions as required for the clarity of the amended Act.

Other interpretations "artists' association" and "minister" remain as in the present Status Act.

"artists' association" means any organization, or a branch or local of any organization, that has among its objectives the management or promotion of the professional and socio-economic interests of artists who are members of the organization, and includes a federation of artists' associations;

"minister" means the member of the Executive Council to whom for the time being the administration of this Act is assigned. ^{footnote 3}

Recognition of artists

- 3 The following are affirmed and recognized:
 - (a) the important contribution of artists to the cultural, social, economic and educational enrichment of Saskatchewan;
 - (b) the value of artistic creativity in advancing Saskatchewan's cultural, social, economic and educational life;

- (c) the valuable contribution of artists to Saskatchewan's cultural heritage and development;
- (d) the importance to artists of being fairly compensated for the creation and use of their artistic works.

Minister's responsibility respecting artists

4 The minister is responsible for all matters not by law assigned to any other minister, department, branch or agency of the Government of Saskatchewan relating to artists, including developing and implementing the Government of Saskatchewan policy respecting artists (See footnote 3.)

Policy respecting artists

5 The policy mentioned in section 4 is to be developed after taking into consideration the following principles:

- (a) the right of artists to free speech and freedom of artistic and cultural expression;
- (b) the right of artists to form associations to promote their professional, social and economic interests;
- (c) the right of artists to form advisory bodies in which they may express their views and advance their cause with respect to their status in society and with respect to any other questions related to their creative environment and conditions of work;
- (d) the ability of artists in all artistic fields to earn a living from the making of their art;
- (e) the right of artists to be fairly treated by government and society;
- (f) the right of artists to enjoy the same economic and social benefits that are available to other workers in Saskatchewan;
- (g) the ability of artists to obtain education, professional development and training;
- (h) the desirability of making artistic works available to the public.

Government undertaking

In Section 6, amend the Act by deleting the words "as far as it considers it reasonable and appropriate to do so";

6 The Government of Saskatchewan undertakes, ~~as far as it considers it reasonable and appropriate to do so,~~ to do the following:

- (a) to promote and protect the status of the artist by considering artistic work, including innovation and research, as a public good and service to the community;

Amend Section 6 (b) "to promote within government the working conditions of artists.

- (b) to promote within government the working conditions of artists inclusive of the requirement that artists shall be contracted for any engagement or purchase;

- (c) to respect, honour and in good faith abide by scale agreements of relevant artists' associations representing the interests of artists engaged by the government;
- (d) to respect, honour and in good faith abide by protocols respecting working conditions that have been established by relevant artists' associations representing the interests of artists engaged by the government.

New section to precede current section 7:

Provide wording that would align the Saskatchewan Act with the Federal Act in exempting organizations coming under the Act from the terms of Federal Competition Act.

Section 7:

Add the following to provide for Collective Bargaining Rights for Artists/Producers:

7. Professional Relations Provisions:

Proposed for inclusion in the Status Act are the following general propositions for terms that will provide:

1. authority: the Minister of Culture, Youth and Recreation and / or Minister of Labour;
2. provide that nothing in the application of the Act shall alter the status of a professional artist who is self-employed or an independent contractor;
3. recognition, regulation and administration of the provisions of the Act regarding Collective Rights to be vested in the Saskatchewan Labour Relations Board (SLRB)^{footnote 4}. It is the intent and understanding of this proposal that representatives be selected to be appointed members of SLRB from artists and engagers knowledgeable in culture sector professional relations, production and work patterns. Such members would form hearing panels where decisions related to the provisions of the Act would be referred. Further that the Chair or Vice-Chair of the SLRB would preside over such hearing processes.
4. National Agreements: The Act recognizes those arts sector agreements that are presently recognized and negotiated by artists' organizations and producer associations and give them full force of application in Saskatchewan. Where artists and producers have achieved recognition through CAPPRT^{footnote 5} such recognition would be automatically valid under this Act;
5. recognition of Artists Associations: Proposed that Saskatchewan Act adopt the approach of the Federal Act, which includes recognition of Artists' Associations and Producers by sector (i.e. Film performers, film writers, theatre performers etc.) and provides for limits to recognition under the determination of

the SLRB. This approach is similar to both Federal and Quebec legislation and is the standard in the present voluntary recognition process;

6. provide assurances in the Act that artists and producers Associations in their constitution /bylaws provide for non-discrimination terms and that nothing in the Association terms shall be contradictory to the Human Rights Act or the Canadian Charter of Rights;

7. pressure tactics: terms shall govern when artists' organizations may appropriately undertake pressure tactics, up to and including strike action;

8. artists' rights: provide individual artists with assurances of fair representation processes; access to relevant information and access to the SLRB in determination of representation questions;

9. provide mediation and conciliation terms;

10. provide for first agreement mediation/arbitration process;

11. dues check off and benefits: these should be provided as the parties decide, benefits to be provided as negotiated, the language being permissive without being mandatory;

12. provide terms related to binding effects of Agreements on producers/promoters/ engagers and artists;

13. provide terms that protect artists' contract terms and rights, copyright and protection from bankruptcy, further provide terms that shall protect artists' work from a promoter use of work in his possession as collateral or security where the ownership of the work remains with the artist; and further provide for financial access to information on the sale or rental of an artists' work. (Such terms are provided in the Quebec Status Act.);

14. provide for terms of agreement – such as length of first agreement, in subsequent agreements no terms except as the parties decide;

15. provide agreements shall be “scale” or “minimum “ terms but where artists and producers /engagers/promoters may negotiate terms over minimum or scale;

16. provide for grievance and arbitration processes that first: allow the parties to determine terms, second: provide for expedited processes, third: mandatory processes;

17. provide for successor rights;

18. provide for complaints process where an artist or an engager may take action under the Act for inquiry on contravention of the Act;

19. provide that where this Act is silent the Labour Standards Act shall apply. The intent of this proposal is to provide access to the protection of the Labour Standards Act where provisions are not made under the Status Act

20. Provide that where an employee /employer relationship is determined to exist the Trade Union Act shall apply.

Advisory committee

8(1) The minister may establish one or more advisory committees to investigate and report to the minister with respect to the following matters concerning artists:

- (a) labour relations and collective bargaining rights in the arts sector;
- (b) the application of workers' compensation legislation and occupational health and safety legislation to artists;
- (c) pension plans for artists;
- (d) education, professional development and training programs for artists;
- (e) taxation of artists;
- (f) any other matters that the minister considers appropriate.

(2) The minister shall obtain the approval of the Lieutenant Governor in Council before appointing an advisory committee for a period longer than one year.

(3) An advisory committee shall report to the minister within the time that the minister may direct.

Regulations

9 The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

Coming into force

10 This Act comes into force on assent.

footnote 1: The federal Status of the Artist Act can be found at http://www.cappprt-tcrpap.gc.ca/epic/internet/incappprt-tcrpap.nsf/en/h_tn00040e.html.

The Québec Acts are at

http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=%2F%2FS_32_1%2FS32_1_A.htm and

http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=%2F%2FS_32_01%2FS32_01_A.htm.

footnote 2 Definitions of "Artist" vary. The Federal Act and Quebec differ, as does the Belgrade 1980 UNESCO definition, which is: "Artist" is taken to mean any person who creates or gives creative expression to, or recreates works of art; who considers her/his artistic creation to be an essential part of her/his 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. The word "artist" also signifies any person who devotes a qualitatively important part of her/his life to expressing and communicating an aesthetic vision of the world.

The 1993 Minister's Committee Report applied a definition adapted from the Canadian Artists Code. MACSA Committee added to the 1993 list "traditional training" as option under training acknowledging Aboriginal training processes.

The concept of "Status of the Artist" centres on rights of and economic and social equity for professional artists.

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

footnote 3 The Federal Status Act combines responsibility for the Act under both the Minister of Canadian Heritage (Culture portfolio) and the Minister of Labour. The section of the Act covering professional relations is assigned to the Minister of Labour's responsibility.

footnote 4 Rationale: The vesting of application and administration of the collective bargaining process with the SLRB is the most appropriate, efficient and economical course. The Board has experience and can involve knowledgeable people (i.e. those with knowledge of the arts / cultural industries sector and working relations within it) and has appropriate mechanisms in place. The Federal and Quebec Acts have established separate Tribunals. This option is regarded as unnecessary in Saskatchewan as the anticipated activity would be less.

However an alternative would be empowering a separate Panel to undertake hearings under the Professional provisions of the Status Act with assignment to the SLRB of administrative role and provision that hearing would be conducted under the Chair or Vice-Chair of the Board. An option to be considered if the SLRB's powers under the Trade Union Act would be compromised.

footnote 5 CAPPRT (Canadian Artists and Producers Professional Relations Tribunal, Tribunal established under the Federal Status of the Artist Act). The intent of this proposal is to ensure that National Agreements that are in place, having been negotiated voluntarily between associations and are recognized by CAPPRT, are protected.