

REVIEWS OF THE STATUS OF THE ARTIST ACT

This section contains two reviews of the Status of the Artist Act:

1. *Prairie Research Associates, "Evaluation of the Provisions and Operations of the Status of the Artist Act", was commissioned in 2002 by the Department of Canadian Heritage, in fulfilment of the requirements of the Status of the Artist legislation. The Executive Summary is reprinted below; the full review can be found at www.pch.gc.ca/progs/em-cr/eval/2002/2002_25/tm_e.cfm.*
2. *Danielle Cliche, "Status of the Artist or of Arts Organizations?: A Brief Discussion on the Canadian Status of the Artist Act", Canadian Journal of Communication, Vol.21, No.2 (1996). This article is reprinted with permission of the author.*

EVALUATION OF THE PROVISIONS AND OPERATIONS OF THE STATUS OF THE ARTIST ACT

Prairie Research Associates

Introduction

The Status of the Artist Act (hereinafter known as the Act) received Royal Assent in June 1992 and was brought fully into force in May 1995. The legislation recognizes the importance of artists in Canadian society and establishes a framework to govern professional relations between artists and producers.

The Status of the Artist Act is comprised of two main parts. Part I establishes the Canadian Council on the Status of the Artist, whose purpose is to act as an advisory body to the Minister of Canadian Heritage. Broadly speaking, the Council is responsible for supporting and promoting the professional status of artists in Canada through such activities as information gathering, advising the Minister, and liaising with artists' associations. Part II of the Act establishes the Canadian Artists and Producers Professional Relations Tribunal (CAPPRT or the Tribunal), a labour board responsible for administering the provisions of the Act that govern relations between self-employed artists and producers in the Canadian cultural sector, within federal jurisdiction. The Tribunal reports to Parliament through the Minister of Labour. Responsibility for the cultural aspects of the Act (Part I) lies with the Department of Canadian Heritage. The Act contains a provision requiring that the Minister of Canadian Heritage, in consultation with the Minister of Labour, undertake a review of the legislation in the seventh year after its coming into force. The purpose of the review is to assess the effectiveness of both parts of the legislation, and to identify what, if any, amendments are required. Prairie Research Associates (PRA) Inc. was engaged by the Department of Canadian Heritage to undertake an evaluation of the legislation as a first step in this review. This report presents the evaluation findings, offers conclusions, and provides recommendations for legislative and operational changes.

Methodology

We used four data collection methods in this evaluation:

- ☞ document review
- ☞ interviews with key informants representing artists'

associations, government, federal producers, and others (n=65)

- ☞ survey of artists who are members of artists' associations, both certified and non-certified (n=296)
- ☞ survey of federal producers (n=8).

This report consolidates the findings obtained through these methods.

Findings

Relevance

Those whose opinions we canvassed in this evaluation affirmed the value and ongoing relevance of the Status of the Artist Act, both for its statements of principle in Part I and for the legal framework it establishes in Part II to govern collective bargaining between associations of self-employed professional artists and producers within federal jurisdiction.(1) The Act's provision of a legal foundation for collective bargaining relationships that were previously voluntary, without foundation in law, and (at least in theory) vulnerable to prosecution under the Competition Act is widely seen as invaluable, although some producers and producers' associations believe the legislation is unnecessary because voluntary collective agreements were the norm in their industries prior to the Act's implementation.

Although the Status of the Artist Act was strongly endorsed by almost all of those whom we consulted in this evaluation, there was also a consensus that the legislation by itself is insufficient to bring about significant change in artists' socio-economic circumstances. The Act's restriction to federal producers, the fact that it addresses only labour relations, and the fact that it does not apply to producers sub-contracted by producers within federal jurisdiction are seen as its main shortcomings. There was general agreement that other kinds of measures are necessary if the socio-economic circumstances of self-employed artists are to improve. Artists themselves perceive other kinds of measures to be at least as important as the legal right to collective bargaining. Respondents to the artists' survey rated this right as the least important of ten existing and potential measures to improve artists' economic circumstances, and gave measures such as deductions for business expenses, copyright, income averaging, and government grants a considerably higher rating of importance.

The preference expressed by artists for measures that ben-

efit them as individuals may reflect the reality that collective bargaining is not equally relevant or easily applicable to all categories of artistic and cultural workers. Collective bargaining is most effective as a means of advancing the economic interests of collectivities or groups of workers, but it is less effective at advancing the interests of individuals who, by the very nature of their chosen pursuit, work alone. Two examples from the arts and cultural sector can serve to illustrate the point: the relevance of collective bargaining to the members of a symphony orchestra seems clear enough, but its relevance to a novelist or to a visual artist is not as immediately obvious.

This is not to say that the Status of the Artist Act is irrelevant to certain categories of artists, but merely that other kinds of initiatives, especially those that treat the self-employed artist as entrepreneur rather than as employee, may benefit a larger number and greater variety of artists. Moreover, a variety of other measures could potentially be implemented that would benefit all self-employed artists.

Implementation

Part I of the Status of the Artist Act mandates the existence of the Canadian Council on the Status of the Artist as an advisory body to the Minister of Canadian Heritage. A temporary Council consisting of twelve full-time professional artists was appointed in 1991 prior to implementation of the legislation. However, its existence was never made official by the Governor-in-Council as required by the legislation, and it effectively ceased to function in 1996, approximately one year after the Act was implemented.

There are several related explanations for the early demise of the Council, including lack of time and expertise on the part of the Council's members and lack of direction from the Department of Canadian Heritage. Perhaps most importantly, establishing the Council as an official entity was at odds with the federal government's wish to avoid creating new entities and to eliminate overlap and duplication among existing ones. Indeed, the mandate of the Council is somewhat similar to that of existing advocacy organizations, particularly the Canadian Conference of the Arts and the Canada Council for the Arts. One possibility would be to amalgamate the Canadian Council on the Status of the Artist with organizations of similar purpose. Alternatively, some key informants suggested amending Part I of the legislation to eliminate the Council entirely, given that the federal government already funds several arts organizations that play advisory roles similar to the one mandated for the Council.

Part II of the Status of the Artist Act establishes a legal framework to govern professional relations between associations of self-employed artists and federal producers, and creates the Canadian Artists and Producers Professional Relations Tribunal (CAPPRT or the Tribunal) to administer it.

After seven years of operation, the Tribunal has largely accomplished its primary function of certifying artists' associations for the purpose of collective bargaining with federal producers; since May 1995, it has defined 23 sectors as suitable for collective bargaining and certified 21 associations to represent those sectors. The Tribunal has, however, been less active in carrying out other aspects of its mandate, such as hearing matters dealing with failure to bargain in good faith and complaints of unfair labour practices. While

the Tribunal's volume of work in the latter area may increase in the future, some key informants said that the structure of the Tribunal may be too elaborate for the work it is required to do and suggested that its functions be transferred to an existing labour relations board, such as the Canada Industrial Relations Board (CIRB).

Merging CAPPRT with another federal labour board or tribunal could have several benefits, including more efficient use of expert staff resources, greater coherence and consistency of decisions relating to labour relations, improved client service through a single access point and faster turnaround, and reduced costs. However, key informants cautioned that such a merger may not be well received by the arts community, which believes that CAPPRT is more informed about and therefore more sensitive to the concerns of artists than are existing labour relations boards. A transfer of CAPPRT's functions to the CIRB could therefore be contemplated, key informants emphasized, only if specialized training were provided to CIRB personnel or if CAPPRT personnel were retained.

The administrative provisions and procedures set out in Part II of the Act are generally regarded as appropriate by the parties concerned. However, negotiation requires significant expenditure of time and financial resources that can be burdensome, particularly for the smaller artists' associations. Key informants identified two potential changes to the legislation that would help to mitigate this difficulty and lead to more successful negotiations. First, the legislation should include a provision for first contract negotiation within a stipulated time frame and provide for arbitration if the parties are unable to come to an agreement within that period.

Such a change would help to avoid lengthy mediation processes and would make the Status of the Artist Act consistent with the Canada Labour Code and provincial status of the artist legislation in Québec. Second, the legislation should contain a mechanism to encourage federal producers to form associations for the purpose of collective bargaining. In this context, there is considerable support among artists' associations, government representatives, and federal departments and agencies for the creation of a single, centralized bargaining authority for all federal government departments. This could lead to reductions in the time and expense that artists' associations and producers alike must devote to negotiation, and would considerably rationalize the collective bargaining process.

There were two other suggestions for minor amendments to the administrative provisions of the Act. Some key informants said that section 46 of the legislation should be amended so that the right to apply pressure tactics in first agreement situations is linked to the date of notice to bargain, rather than the date of certification; the provision as written enables artists' associations, at least in theory, to apply pressure tactics without first sending notice to bargain. Secondly, a few key informants suggested that the legislation should be amended so that any question may be put to the Tribunal for a determination or declaration outside a proceeding.

Two main issues related to the clarity of the legislation and its interpretation by CAPPRT emerged from this evaluation.

At the root of the first is a fundamental philosophical disagreement over the meaning of the term "artist." Some key informants believe the Tribunal has gone too far in categorizing certain cultural workers as artists, while others believe it has been suitably forward-thinking in this regard. With the exception of a few key informants who recommended revising the Professional Category Regulations to include a wider range of artistic functions, no clear suggestions for changes to the legislation were offered.

The second issue was a perceived lack of clarity regarding the appropriate scope and content of scale agreements that may be negotiated pursuant to the Act, particularly with respect to copyright. While most key informants do not perceive any conflict, either real or potential, between the Status of the Artist Act and the Copyright Act, some parties, including some federal government departments, argue that certain Tribunal decisions have led to uncertainty over which statute governs copyright and the fixing of royalties payable for the use of copyright works. Despite the Federal Court of Appeal's dismissal of the Attorney-General of Canada's application to set aside a Tribunal certification decision with respect to pre-existing work, the issue remains unresolved from the perspective of various interested parties, which maintain that the current interpretation puts the Status of the Artist Act in direct conflict with the Copyright Act. Despite strong opinions on both sides of the issue, the matter is really one for the courts, and not for this evaluation, to decide. However, the situation will certainly continue to evolve over time.

Impacts

As previously noted, there is consensus that the Status of the Artist Act has accomplished its primary objective of providing a legal framework for collective bargaining between artists' associations and federal producers. Although such collective bargaining had been occurring for decades prior to implementation of the legislation, it was on a voluntary basis only and had no foundation in law. The Status of the Artist Act has rectified this situation by creating a legal foundation for collective bargaining that previously did not exist. To date, the legislation has had its most significant impact on professional artists' associations. Certified artists' associations we interviewed reported that certification gives their organizations a legitimacy and credibility they otherwise would not have. Artists' associations value the Act highly for giving them the ability to "speak with one voice" with employers and to bring economic pressure to bear; many associations said that in the absence of the legislation, their ability to represent the interests of their members would be seriously compromised. Overall, many key informants agree that artists' associations are now better organized than when the legislation was first implemented and better able to work on behalf of their members.

On the other hand, with very few exceptions, artists' associations reported that the Act has so far had little effect on the socio-economic circumstances and working conditions of their members.

Artists' associations offered three main explanations for the Act's limited impact in this area. First, many of the larger, more established associations already had voluntary scale agreements in place with federal producers; second, most of

the smaller and more recently established associations have not yet negotiated any scale agreements under the Act; and third, the majority of artistic and cultural production falls under provincial jurisdiction.

Producers, for their part, reported that the Act has so far had little, if any, impact on their organizations. Some were involved in collective bargaining with artists' associations on a voluntary basis prior to implementation of the Act; others said that the impact of the Act has been negligible because they do not employ a large number of self-employed artists. Some producers did, however, have concerns about the legislation and its potential implications for their organizations. Concerns were expressed about the appropriateness of collective bargaining for third party organizations, about the applicability of the legislation to certain artistic sectors, and about what some producers perceived as the Tribunal's bias in favour of artists' associations.

At the same time, it should be noted that several producers acknowledged the importance of the legislation for providing a legal framework for collective bargaining and for clarifying the respective roles of artists' associations and producers with respect to professional relations. These ideas were echoed by artists' associations and government representatives, who also praised the Act for providing a democratic process that allows the parties involved to come to their own agreements and for creating predictability and stability within the labour market by establishing normal pay rates.

Recommendations

1. The Status of the Artist Act serves a useful purpose in recognizing the importance of artists in Canadian society and in providing a legal framework for collective bargaining between associations of self-employed artists and federal producers. The Department of Canadian Heritage may also wish to explore other policies and programs to improve the socio-economic circumstances of self-employed artists.
2. Given that the federal government funds arts organizations that provide advocacy and advice on behalf of Canadian artists, consideration should be given to whether these organizations could fulfill the role of the Canadian Council on the Status of the Artist while respecting the intent of Part I of the Status of the Artist Act.
3. The Department of Human Resources Development Canada, in consultation with the Department of Canadian Heritage, should consider ways of streamlining the administration and service delivery structure of the Canadian Artists and Producers Professional Relations Tribunal while remaining sensitive to the concerns of artists and artists' associations. Consideration should be given to a variety of options, ranging from the status quo to amalgamation of CAPPRT with another federal labour board or tribunal.
4. Part II of the Status of the Artist Act should be amended to include a provision for ensuring first contract negotiation and arbitration. Such a change would make the legislation consistent with the Canada Labour Code and provincial status of the artist legislation in Québec.

5. Section 46 in Part II of the Status of the Artist Act should be amended to link the right to apply pressure tactics in first agreement situations to the date of notice to bargain, rather than to the date of certification. Such a change would align the legislation with standard labour relations practices.

6. Possible mechanisms to increase the efficiency of the collective bargaining process should be explored. To this end, consideration should be given to establishing one bargaining authority for all federal government departments.

7. The Department of Human Resources Development Canada, in consultation with the Department of Canadian Heritage, should consider how the Professional Category Regulations defining the categories of cultural workers eligible for coverage under the Status of the Artist Act should be reviewed.

8. The Department of Canadian Heritage may wish to undertake more research to explore and clarify the relationship between the Status of the Artist Act and the Copyright Act.

Notes

1. Producers in the federal jurisdiction include all broadcasting undertakings under the jurisdiction of the Canadian Radio-television and Telecommunications Commission, federal government departments, and the majority of federal government agencies and Crown corporations.

Status of the Artist or of Arts Organizations?: A Brief Discussion on the Canadian Status of the Artist Act

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Abstract: *This article provides a historical background and description of the new federal Status of the Artist Act. In particular, it explores the role of the Canadian Artists and Professional Relations Tribunal, discusses the certification process for national artist associations, and raises questions regarding the implications of the Act for Canadian artists. A brief review of foreign measures to address the socioeconomic status of artists is also included.*

Résumé: *Cet article propose une approche historique et une description de la nouvelle Loi fédérale concernant le statut de l'artiste. Il explore, notamment, le rôle du Tribunal canadien des relations professionnelles entre artistes et producteurs, examine le processus d'accréditation des associations nationales d'artistes aussi bien que les implications de la Loi pour les artistes canadiens. On y trouve également un récapitulatif des initiatives prises à l'étranger pour adresser le statut socioéconomique de l'artiste.*

Introduction

Marginalized in an ambiguous position for decades, Canadian artists have ceaselessly lobbied to acquire access to economic and social rights enjoyed by other Canadian labourers. Their message has been clear--they have not been looking for special treatment, just equal treatment. In May 1995, the Federal Government of Canada proclaimed the Status of the Artist Act. This new law represents the first national public policy attempt to address the economic rights of artists in Canada. Based on a long, much studied and debated consultative process, this precedent-setting, albeit limited, federal framework establishes a labour relations regime for artists and officially recognizes an artist as professional for the purposes of collective bargaining and taxation (see Minister of Communications, 1992).

Many maintain that despite its shortcomings, the new law is the first concrete step towards procuring for artists an economic status equal to manual labourers, such as fishermen, enabling them access to universal social welfare programs from which they are currently excluded. On the other hand, there is a reasonable concern that the law creates a new system of classification to institutionalize and legitimize artists, as well as to promote established patterns of artistic practice and products and to regulate the environment in which they work.

This law raises new issues regarding the economic and legal status of artists and begs certain questions, including: Who will gain? Who will lose? Who will hold the power? Will "non-professional" artists be further marginalized if they do not conform to the status quo? Will employers be able to hire "non-professional" artists at labour rates cheaper than those of professional artists? Is this new Canadian model on the status of the artist appropriate to address the demands

artists have made over the years?

As this law was recently proclaimed, it is important to first explore some of the factors that influenced its development as well as to have an understanding of the law and its implications for artists today.

The long search for legitimacy

Enduring almost two centuries, the arts community in Canada has pursued many objectives including recognition and compensation for their work. In the early 1800s, the purpose of art was mutual entertainment and nourishment of one's soul. Artists often had "traditional" full-time jobs to support themselves and their artistic endeavours. There were virtually no policies and very few institutions or organizations supporting the artist. The dominant source of recognition and compensation for Canadian artists came from their peers.

One of the factors influencing the transition from "art for art's sake" to "for commercial purposes" was the introduction of art into the national curriculum. This movement, coupled with, for example, a new commercialized marketplace, the formation and rise of a new middle class, and indications of the commodification of information and ideas, inspired a new appreciation and application for the arts and aesthetics and influenced the development of cultural consumption. Strengthening their position in the emerging marketplace, the federal government began to recognize that the arts community was an untapped resource that could be used to support its public agenda. During the First World War, the Canadian government sent a group of painters to Europe to visually record "the glorious war effort". During the Second World War, the government was motivated to use the artist to stimulate a declining support for the war effort in Canada.

Initiatives such as the Artist War Program encouraged artists, for the first time, to believe that their contribution to the development of Canadian society was significant. In fact, the reality was that they were being used to promote "a war for men's minds, a propaganda war which employed the new techniques of mass persuasion" (Nelson, 1988, p. 166). This was especially true of filmmakers, who were co-ordinated by the new government film agency (National Film Board) to produce an abundance of films concentrating on the "inspirational message with little or no analysis of fascist ideology" (Nelson, 1988, p. 100). Artists were used to establish the necessary conditions for the government to gain support for their war efforts. Arthur Lismer, a member of the Group of Seven painters who frequently criticized the state's art agenda, accused the government of making the artist a "servant of the state" throughout the war.

With the demands of the war having evaporated, the government withdrew this narrow support for artists and refocused its attention on agriculture, forestry, transportation, and trade. Determined to convince the government that art was just as important during times of peace, Canadian artists began to organize in groups such as the Federation of Canadian Artists (FCA) and lobbied the government to strengthen copyright protection and to create a Ministry of Cultural Affairs. Founded by Lawren Harris, also of the Group of Seven, the FCA became the most powerful arts lobby group in Canada.

By the late 1940s, approximately 16 artist associations had been formed and the collective voice of the arts community was becoming stronger, a reality that the government could no longer ignore. In the western provinces, the rise of the socialist Co-operative Commonwealth Federation (CCF), whose cultural platform gained public support, posed a threat to the existing Liberal government. Brooke Claxton, Minister of Defence, expressed his concern to Prime Minister Louis St. Laurent that the members of the arts community, who were traditional supporters of the Liberals, were extending their patronage to the CCF. He concluded that it was mandatory for the government to become involved in the arts community in order to retain the loyalties they had lost. Claxton advised the Prime Minister to authorize a Royal Commission (Tippett, 1990). The resultant landmark Massey-Lévesque Report of 1951, which directly influenced the development of Canadian cultural policy, recognized that artists were unable to live by the sale of their work alone—a monumental statement that would rear itself in public policy documents four decades later.

Following Massey-Lévesque, the government funded countless institutions such as the Canadian Arts Council with a mandate to promote Canada to Canadians. While these institutions were welcomed by the arts community, they failed to implement strategies that would sufficiently recognize and support the arts profession as an official means of employment. Issues such as working conditions and protection of artists' works did not become a public policy priority until the late 1960s when Jack Chambers, a Canadian painter, received a notice from the National Gallery of Canada informing him that it was planning to reproduce one of his paintings on a postcard with no intention of offering any compensation. Chambers categorically refused to allow the Gallery to use his painting explaining that "no artist should expect to allow his copyrighted image to be used without adequate compensation" (Yates, 1989, p. 19). He began writing letters to artists and associations across Canada outlining his position in the hope of uniting artists and garnering support for his cause. The purpose of his crusade was to "enlighten" artists and to persuade them to lobby for just treatment and a fair exchange of payment for services rendered. Receiving a tremendous response from local artists, Chambers established the Canadian Artists' Representation (CARFAC) in order to provide a central agency that remains today a watchdog for visual artists. By the mid-1970s, many artist associations had formed, were urging the government to recognize the difficulties experienced by the average artist, and reminded them of the minimum subsistence wage that had been suggested in the now-20-year-old Massey-Lévesque Report. In 1978, the government released the first comprehensive portrait of the economic difficulties facing Canadian artists. The infamous "Disney Report" recommended the adaptation of income tax measures that would help strengthen the economic status of artists. Included in the recommendations was the introduction of dual status which would allow artists to retain their self-employed status for taxation purposes while accessing programs such as unemployment insurance and the Canadian Pension Plan. There was no federal government action following the report.

Concern for the status of the artist was also expressed in

multilateral fora such as UNESCO and the International Labour Organization. In 1980, the Canadian government signed the UNESCO recommendation on the status of the artist (the Belgrade Convention) which encouraged all signatory states to implement policies addressing the professional and social status of artists including training and development, labour relations, and taxation. Canada's response to the Belgrade "call for action" was the establishment of a special committee (the Federal Cultural Policy Review Committee) to examine not only the status of the artist, but the entire cultural sector.

The Federal Cultural Policy Review Committee (also known as the Applebaum-Hébert Committee, 1982) produced the first federal cultural policy review since the Massey-Lévesque Report. Despite almost 40 years of pressure from the arts community, the report concluded that irrespective of "[artists'] overwhelming contribution to Canadian life, [their] living conditions were virtually unchanged; the income of many if not most of these artists classifies them as highly specialized working poor" (Federal Cultural Policy Review Committee, 1982, p. 4). This is a reality also expressed in cultural policy documents of the 1990s.

From the beginning to the end of the 1980s there were at least 12 federal undertakings that studied, debated, and made recommendations on the economic and social status of the artist. Each of the reports reached virtually the same conclusions. Over the years, extensive evidence has been gathered and hundreds of recommendations have been repeatedly made. The following issues were referred to most often:

1. Granting a professional status to artists in order to differentiate them from arts hobbyists for the purposes of taxation;
2. Access to universal programs such as unemployment insurance and the Canada Pension Plan;
3. Improved taxation measures including income averaging, dual status, and the ability to receive a charitable receipt for donated works of art;
4. Training and development;
5. Copyright and neighbouring rights;
6. Extending the safety net of social benefits to artists;
7. Legal recognition of artists' associations as collective bargaining agents for both employed and self-employed artists;
8. A secured or preferred classification for artists in the event of middlemen bankruptcies;
9. Access to occupational health and safety compensation;
10. Establishment of an artists' account setting aside part of their income on which tax liability would be deferred; and
11. Artistic freedom.

Collectively, these and other recommendations provided a greater understanding of the concerns of artists and a new legitimacy for the government to launch measures addressing the social and economic status of artists. An examination of the new legislation will demonstrate that few of the recommendations have actually been addressed.

The de facto status of the artist in Canada

In a speech to the Canadian Conference of the Arts in September 1995, Michel Dupuy, the Minister of Canadian Heritage, announced that there are over 670,000 people

working in the arts and culture, representing six times as many employed in fisheries and three times greater than in the forestry industry. In total, the arts and culture sector contributes over 24 billion dollars to the GNP annually. In the same year the Federal Department of Human Resources released a series of reports claiming that the structure of the cultural sector is a model for the Canadian workplace of the future, composed of self-employed, entrepreneurial, and highly motivated individuals. An optimistic statement, it has discouraging implications.

Despite high levels of education and training and in comparison to other occupations, the average income of artists remains below the poverty line. In 1991, self-employed painters and sculptors earned an average of \$11,947; artisans and craftspeople, \$10,020; musicians and singers, \$14,473; dancers, \$13,757; actors, \$21,800; broadcast technicians, \$26,756; film and video camera operators, \$30,278; and conductors, composers, and arrangers, \$26,201. The average wage for all other occupations in 1991 was just over \$25,000 (Cheney, 1995). Many artists, therefore, still have to supplement their income with other types of employment to survive. They have limited access to pensions, workers' compensation, and unemployment insurance; they spend over 50% of their income on housing and workspace; and they often work in conditions that are hazardous. In other words, notwithstanding Canada's highly developed social system and progress made in the development of cultural policies, measures to directly address the economic and social status of the artist remain few and their position in relation to the broader field remains relatively unchanged.

How can the new Status of the Artist Act help change this situation? The Act directly addresses two of the issues raised over the years—granting a professional status to artists in order to differentiate them from arts hobbyists for purposes of taxation and according legal recognition to artists associations as collective bargaining agents for employed and self-employed artists.

What is professional status?

In all of the policy debates on the status of the artist to date, recommendations have been made to enunciate parameters to define an artist, more specifically a professional artist, in order to ensure that society and the marketplace recognize and compensate artists for their works. A qualification of "professional," therefore, not only becomes a measurement of quality or excellence, but signifies a degree of potential economic and social status.

Revenue Canada has admitted that artists would never receive fair tax treatment until their status was defined as professional and consequently differentiated from that of art hobbyists. Once professional status is achieved, artists' income tax applications will be assessed under the same conditions as commercial enterprises to the extent to which their work demonstrates a reasonable expectation of profit. According to the Status of the Artist Act, an artist must meet the requirements for membership of a "national certified association" in order to receive professional status (explained further below). Once the artist has been deemed professional, he or she will benefit from those conditions negotiated by the certified association on his or her behalf, in particular, minimum wage agreements. The provisions of

this law will only apply to independent contractors or "professional" artists who engage in a working relationship with producers falling within federal jurisdiction, for example, performers or broadcast producers employed by the National Film Board, the Canadian Broadcasting Corporation, the National Arts Centre, and so forth. This law does not apply to visual artists as they fall constitutionally within provincial jurisdiction.

A new labour relations regime for artists

Two new public institutions have been constituted by the Status of the Artist Act to regulate relations between the artist, the artist's work, and the environment—the Canadian Artists and Producers Professional Relations Tribunal and the Canadian Council on the Status of the Artist.

Established in June 1993, the Canadian Artists and Producers Professional Relations Tribunal (CAPPRT) is responsible for implementing the terms and conditions of the Act which govern professional relations between artists, as independent contractors, and producers under federal jurisdiction including those employed by the Canadian Broadcasting Corporation, the National Film Board, and the National Arts Centre. The rationale for creating a tribunal was to recognize that artists are not labourers in the traditional sense of the word and therefore require a separate "labour board." This approach was inspired by the French-Canadian Commission de reconnaissance des association d'artistes model, established to settle mediation disputes in accordance with the terms of Bill 90 and 78 on the status of performing and creative artists in Quebec. According to Keith Kelly, National Director for the Canadian Conference of the Arts, the experience of the Quebec "cultural labour board" has demonstrated that in order for the CAPPRT to succeed, members from the cultural community must reside on the new federal board. To date, only members from the labour community sit on the Commission de reconnaissance des association d'artistes which has caused tremendous problems.

The Tribunal has three responsibilities: to define those disciplines that comprise the arts sector; to certify a national artist association to represent artists from each discipline; and to regulate scale agreements between these associations and federal producers. Acting as state regulator for relations between self-employed artists and producers, the CAPPRT will hold tremendous powers enabling "the institutional validation of artists and art forms," according to Philip Fry, visual artist (Cliche & Lenet, 1992). As well, it will fragment the cultural field into traditional artistic disciplines and determine those arts associations eligible for certification. It has also been suggested that this approach may lead to further discrimination of those artistic disciplines or arts communities which, to date, have not been recognized by policy-makers, including works by indigenous or ethnic artists. Anselmi & Gouliamos warn us that "politics of fragmentation are also politics of power which perpetuate and further an unequal allocation of resources" (Anselmi & Gouliamos, 1994, p. 7).

The Tribunal will have the power to interpret the Act's definition of an artist and to authorize certain art practices as superior to others. For example, if you are a singer, the law will recognize you as an artist and, therefore, eligibility for

professional status is granted. What will happen to the artist who declares him or herself to be an artist and is not recognized in the legal definition set out in the Act, for example, a multimedia artist or a record producer? Communications technologies are creating new art and cultural forms which are not being addressed and which will raise great questions of intensity and intent of form. Any future amendments will need to consider that technological developments will alter not only the economic and social position of an artist but also the expression of creativity and the products artists will produce.

Once the art sectors have been identified, the Tribunal will determine which artist associations are suitable for certification and will subsequently authorize each of these same associations the exclusive right to collectively bargain on behalf its membership. The purpose of the certified association is to establish minimum working conditions and pay-scale agreements for artists within a given discipline. Only one association is eligible for certification per sector. It is expected that this will create a great deal of competition among members of the community for cultural legitimacy. A case in point is Quebec where, first, there was resistance among creative artists to organize and be represented by only one association and, second, it created new rivalries among artists' groups seeking certification and, hence, control over the resources, adding a new competitive dimension to an already fragmented sector. Some artists in Quebec also argued that the laws created new formalities through the collective bargaining process which strained previously amicable relationships with producers (Ontario Ministry of Culture and Communication, 1992). It is quite possible that similar problems will surface as the federal legislation is implemented.

As a result of the Status of the Artist Act, there will be three new scenarios for self-employed artists wishing to work for federal institutions:

1. As a self-employed artist and a fully fledged paying member of a certified artist association and, therefore, a professional artist, one will be able to work within the cultural field and have access to and participate in all benefits negotiated by the association. Benefits include negotiated pay-scale agreements.
2. If one is not a member of an association and, therefore, does not hold an official professional status, one may still benefit from these negotiations on the condition that an amount equivalent to the certified association's union dues is deducted from one's pay by the producer /employer.
3. If one is a self-employed artist and not a member of a certified association and if the scale agreements negotiated by the certified associations have included a provision that "requires membership in a specified artists' association as a condition of engagement" (Article 5[b] of the Status of the Artist Act), federal institutions will be prohibited, by law, from hiring self-employed artists who are not members of certified associations.

These scenarios indicate that there is a potential for those artists not belonging to certified associations to be excluded from the collective bargaining process and therefore the

benefits that are subsequently negotiated on their behalf. In this case, there appears to be a possibility that employers may hire "non-professional" artists at cheaper labour rates than those outlined in the pay-scale agreements negotiated by artist associations on behalf of professional artists. Professional legitimacy and, hence, conditions of access to the field of cultural production will be granted by the state through the Tribunal as well as by other forces influencing the direction and persuasion of the state including national and multinational corporations. If so, this could facilitate a greater inequitable distribution of wealth resulting in the formation of a new class of artists.

The path forward

Throughout the Status of the Artist exercise, many critics, including the Canadian Conference of the Arts, have argued that while this piece of legislation is a step forward, there is still a great deal of work to be done. Others such as Greg Graham, National Director of CARFAC, have asserted that "the law is not about the status of artists at all but about the status of arts organizations" (Cliche & Lenet, 1992) and, therefore, the government needs to introduce strategies that will expedite Canadian artists from their current economic realities. Although Canada is the only country in the world with a specific Status of the Artist law, inspiration for the future can be found in foreign measures or policies which indirectly address the socioeconomic status of artists.

For example, in Ireland artists are exempt from paying income tax. New provisions in the Australian Sales Tax Law exempt creative artists from paying tax on materials and equipment. Creative artists in Denmark are currently looking forward to a new law that will provide them with unemployment insurance support. Self-employed artists working in France and Belgium have dual status for the purposes of taxation and social benefits.

Swedish writers and artists are allowed to defer payment of taxes by depositing a portion of their income into special interest accounts in any Swedish bank; however, they are taxed heavily when withdrawing funds from this account. German self-employed artists have the ability to income average and have access to health and pension plans (membership in an arts association is not required).

Performing artists from the Nordic countries have access to unemployment insurance schemes. As well, artists' unions in these countries negotiate minimum payment and working conditions on behalf of their memberships. The Netherlands' social assistance programs for artists, including the Artists' Provident Fund, are administered by government and private artists associations. Funds for this program are collected from a matching fund of government money and fees collected from artists' unions and are used to provide for a weekly minimum wage, holiday allowance, some occupational expenses, and a health insurance contribution (Blanc, 1989).

One of the most advanced developments has been recently made in the U.K. by Yorkshire-Tyne Tees Television, an ITV (Independent Television) group member. The broadcasting company has recently granted contract staff "full staff status" including pension rights. It is expected to come into force at the beginning of 1996. This achievement was in response to

a down-sizing trend of permanent staff and an increasing reliance on staff with short-term contracts. Mr. Ward Thomas, chairman of Yorkshire-Tyne Tees Television, has commented that "it is right that people should feel secure about their employment" (in Snoddy, 1995).

Concluding remarks

Despite the new Canadian Status of the Artist Act as well as amendments made to the Income Tax Act and the Bankruptcy Act, efforts to ameliorate the economic status of artists remain outstanding. These include, but are not limited to: allowing self-employed artists to claim dual status in order to benefit from new income tax deduction; a new classification for artists as preferred or secured creditors in the event of a bankruptcy; access to occupational health and safety and other social benefit programs; and most importantly, an income averaging mechanism--similar to that of fishermen--to help stabilize artists' economic situation as well as that of other self-employed persons. It is, however, unlikely that these issues will be addressed in the current political and economic climate. In fact, the implications of the Axworthy social program review suggest that the government intends to discontinue unemployment insurance coverage for seasonal workers such as fishermen. This reality virtually eliminates any hopes that the arts community will have a chance in the future to acquire access to unemployment insurance coverage or any other social benefit programs.

Irrespective of the mountain of evidence collected over the past 50 years, the Canadian government has been unable to deliver sufficient policies that would contribute to a healthy environment for artists. Canada's cultural policies have supported the growth of a culture industry as well as the maintenance of arts institutions rather than concentrating on liberating artists from their marginal economic position. In fact, only "0.49% of total federal contributions to the arts and culture is given directly to artists" (British Columbia Advisory Committee on the Status of the Artist, 1994, p. 3). While advancements have been made in the cultural sector, for example, in museums, broadcasting, and copyright, little investment has been made in artists due to such factors as a lack of political will and comprehensive understanding of the arts as well as a perpetually unstable climate for policy development.

Creating a policy on the status of the artist is not easy. It is an initiative that requires a break from the traditional sectoral approach to arts or cultural policy development in order to achieve an integrated policy framework that has the ability to address all issues associated with the status of the artist. Decision-makers need to reflect, embrace, and incorporate not only principles of cultural policy but of economics (finance, competition laws, tax laws, copyright, and neighbouring rights), social welfare (access and participation, housing, occupational health and safety, workers' compensation), labour law (collective bargaining, employment standards), education (creativity, training, and development), and human rights (cultural rights, rights to expression) as well as to ensure provincial commitment. In essence, a policy on the status of the artist is an exercise about ensuring sustainable human development for artists.

A successful policy on the status of the artist requires a

strong political commitment to drive co-operation among all government departments. To date, there has been little or no co-operation among federal departments, such as the Departments of Canadian Heritage, Finance, Human Resources and Development, and Revenue Canada, whose policies each affect the economic and social status of the artist; nor has there been any agreement on fundamental issues such as a universal definition of a professional artist. This has created many barriers to developing an integrated public policy to address the needs of artists. This brief examination of the new Status of the Artist Act demonstrates the inability of conventional policies, whether they are arts, labour, or social policies, to be multifaceted or flexible enough to recognize and meet the distinctive needs of individuals who are living, in this case, at the margins of Canadian society.

Notes

1 In his work *Distinction: A Social Critique of the Judgement of Taste*, Pierre Bourdieu (1984) recognizes that arts and their respective producers do not exist independent of a complex institutional framework which authorizes, empowers, and legitimizes them. Competition for what he terms cultural capital perpetuates the process of domination by legitimizing certain artistic practices as naturally superior to others. Once cultural capital has been accumulated, cultural legitimacy is achieved (Bourdieu, 1993).

2 These include: the UNESCO Belgrade Convention (UNESCO, 1980); the Applebaum-Hébert Report of the Federal Cultural Policy Review (1982); the Report of the Standing Committee on Communications and Culture, *The Taxation of Visual and Performing Artists and Writers* (1984); *A Charter of Rights for Creators* (Department of Communications, 1985); the Siren-Gélinas Task Force on the Status of the Artist (1986); the Bovey Task Force Report, *Funding of the Arts in Canada to the Year 2000* (Task Force on Funding of the Arts in Canada, 1986); the Canadian Advisory Committee on the Status of the Artist (set up in 1987 by Department of Communication Minister Flora MacDonald); *Review of Taxation of Artists and the Arts* (Department of Communications, 1988); a research report, *Rethinking the Status of the Artist: Toward a Balance of Equity and Excellence* (Ekos Research Associates, 1988); *Canadian Artist Code* (Department of Communications, Canadian Advisory Committee on the Status of the Artist, 1988); *Report of the Standing Committee on Communications and Culture Respecting the Status of the Artist* (Standing Committee on Communications and Culture, 1989); and the government response to the Standing Committee's Report (Department of Communications, 1990).

3 One of the problems is that the legal recognition of the right of artists to bargain collectively calls into question their status as independent entrepreneurs under the Income Tax Act as well as the right of artist associations to negotiate as a labour union.

4 In January 1995, the Culture Human Resources Council was also established independent of this Act to address the professional development and training needs of the cultural labour force. Professional development and training will undoubtedly figure into the criteria used to evaluate and grant certification to associations and therefore professional

status to artists. What form of co-operation will take place between the Council and the Tribunal?

5 In their November 21, 1991, submission to the Standing Committee on Communications and Culture, the Canadian Office of the American Federation of Musicians argued that section 43 of the bill, which "dictates that non-members must pay regular dues to the certified association, is of some concern to us because, very frankly, it has never been our policy to accept dues from musicians whose professional deportment we cannot control and for whom we cannot provide services and benefits commensurate with the dues payment" (American Federation of Musicians, Canadian Office, 1991).

6 The term culture industry first appeared in Adorno & Horkheimer's book, *Dialectic of Enlightenment*, published in Amsterdam in 1947 (translated into English in 1973). The culture industry "fuses the old with the familiar into a new quality. In all its branches, products which are tailored for consumption by masses, and which to a great extent determine the nature of that consumption, are manufactured more or less according to plan" (Adorno, 1991, p. 85).

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