



# **ABC on the Status of the Artist**

**Presented by the  
Canadian Conference of the Arts**

**Published October 16 2008**

## **ABC on the Status of the Artist – A Model for Professional Relations in the Creative Economy?**

### **Background**

There is a growing school of thought that contends that developed economies are undergoing a fundamental transformation. This transformation affects the perceived basis and nature of the economy, from industrial/agrarian to an information economy, from a knowledge economy into a creative economy.

The public policy framework still remains firmly rooted in the industrial/agrarian paradigm dominated by the employer/employee relationship and life-long careers with a single employer. Unfortunately, these realities are largely inconsistent with the concept of the creative economy.

In the creative economy, an individual is likely to elect self-employment as the preferred mode of operation, seeking and obtaining income from a variety of sources and activities related to the creative process. This may mean that an individual is required, by virtue of the diversity of activity, to engage in a life-long continuing re-education or professional training circuit to ensure that changing technologies or media can be exploited for their creative and income generating potential.

The challenge for public policy-makers is to adapt to these fundamental changes in the labour market, encourage creativity and innovation while the transformation to a creative economy is in progress. These changes must accommodate those elements of the labour market which have not substantially moved from other economic models (manufacturing, agri-foods etc.).

These challenges have been addressed through legislation at both the federal and Quebec government levels through a series of measures described as status of the artist policies.

### **What is the Status of the Artist?**

In 1982 Canada joined other UNESCO member countries in becoming a signatory to the *UNESCO Belgrade Recommendations on the Status of the Artist*. This non-binding document outlines a variety of measures that could be undertaken by signatory states to improve the socio-economic conditions of artists and creators.

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The document touches on health and safety, education and training, intellectual social benefits, labour relations, government programs and services. In 1985, the government of Canada, through the Minister of Communications, the Hon. Marcel Masse, began an examination of how the *Belgrade Recommendations* could be applied to the realities of the Canadian artistic profession.

The Minister was encouraged to focus on issues related to labour relations within the arts and culture sector as the prime objective of any status of the artist policy. The Minister of Communications also shared joint responsibility for the *Copyright Act* which was under revision at that time.

In 1986, Minister Masse created a Task Force on the Status of the Artist to consult with artists, arts organizations and cultural labour organizations to develop a series of recommendations to shape a Canadian status of the artist policy.

The Task Force received strong interventions which focused on the issue of professional labour relations within the arts and culture sector as the most critical issue affecting the socio-economic status of artists, creators and arts professionals.

Under Canadian law, it was illegal for self-employed individuals to bargain collectively with engagers. In fact, under the *Canadian Competition Act* this was viewed as a “conspiracy to control market forces”, notwithstanding the fact that Canadian cultural labour organizations such as the *Alliance of Canadian Television, Radio Artists*, *Union des artistes*, *Canadian Actor’s Equity Association* and others have a long history of collective bargaining on behalf of their self-employed membership.

These negotiations with producers and engagers were completely voluntary and highly restrictive in terms of the demands that the cultural labour organizations could put forward. If the demands were considered to be unreasonable or merely a nuisance, the producer/engager could file a complaint with the *Competition Bureau* which would trigger an investigation by the *Royal Canadian Mounted Police*. The RCMP raided the offices of the cultural labour organizations involved in the complaint, seizing documents to determine if allegations of a conspiracy to control market forces could be substantiated. The threat of this action was seen as serious impediment by the cultural labour organizations in their quest for improvements in the socio-economic status of their membership.

By 1991, the government had received the recommendations of the Task Force, the *Canadian Advisory Committee on the Status of the Artist* and those of the *Parliamentary Standing Committee on Communications* and decided to move forward with legislation and other policy changes to better accommodate the

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realities of professional artists, creators and arts professionals within the federal policy framework.

In 1992, Canada became the first signatory state to the *UNESCO Belgrade Recommendations on the Status of the Artist* to enact a federal status of the artist law.

The legislation removed the legal impediment to collective bargaining on behalf of self-employed or independent contractors and established a professional relations regime to manage the collective bargaining process between cultural labour organizations and engagers/producers. The legislation created the *Canadian Artists and Producers Professional Relations Tribunal* to certify cultural labour organizations as exclusive representatives of professionals within a specified discipline or artistic activity.

Engagers/produces could also seek certification as exclusive negotiators within a discipline or artistic activity. This was seen as option to simplify the collective bargaining process.

Artists, creators or arts professional who were not members of a cultural labour organization certified by the Tribunal enjoyed whatever standards that had been negotiated by a certified organization. The minimum pay rates applied to all arts professionals in a field where a certified organization had reached a collective agreement with engagers/producers. The Tribunal was also empowered to mediate and arbitrate in the event of a stalemate or deadlock in the negotiation process.

As well as the professional relations provisions of the status of the artist legislation, the Minister of Finance introduced amendments to the Income Tax Act to further improve the socio-economic status of artists, creators and arts professionals, including an employment expense deduction for employed artists, creators and arts professionals, deductions for the upkeep and insurance of musical instruments, and the creation of quasi-charitable status for national arts service organizations.

Given the division of powers between the federal and provincial governments inscribed in the *Constitution Act*, the federal legislation affected only areas of federal labour jurisdiction such as banking, transportation, communications and international trade, and all federal institutions engaging artists and creators.

The government of Quebec was the first jurisdiction in Canada to implement status of the artist legislation which addresses those artists, creators and arts professionals operating in all other areas of provincial jurisdiction. The Quebec model informed the development of the federal legislation.

Quebec has continued to implement measures rewarding creativity and innovation and improving the socio-economic status of their arts professionals. It

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has introduced tax measures that exempt the first \$ 15,000.00 of copyright or residual income from provincial income tax to provide a tangible reward for creativity and innovation. The federal government has been pressed to adopt a similar measure.

Other provinces have shown limited interest in the development of status of the artist legislation. Saskatchewan passed a very modest status of the artist bill in 2002 and attempted a more robust version in 2007 but pulled the legislation before it was passed into law. Ontario began looking at status of the artist legislation in the 1990s, and introduced token measures to recognize Ontario's artists in 2007, that did not address the larger labour and social benefit issues.

For an overview of the provincial/territorial efforts in this regard, Garry Neil has written a comprehensive examination of these.

### **Painting on a Broader Canvas –Managing Professional Relations in the Creative Economy**

In the development of a broader professional relations regime in a creative economy, policy-makers will be dogged by the same challenges as the ones that were encountered in the elaboration of a status of the artist policy.

The division of jurisdiction of the labour market between the federal and provincial governments is a major hurdle in the quest for a more supple system. The status of the artist is an instructive example: since the passage of the federal legislation in 1992 not one other province or territory has adopted similar professional relations or socio-economic measures to improve in legislation the status of artists, creators or arts professionals. The 1989 Quebec professional relations measures actually pre-date the federal legislation.

Nonetheless, the collective representation of independent contractors would be an important innovation to promote the socio-economic status of professionals of all sorts, in the creative economy. The development of a national consensus on the public policy agenda to promote innovation and creativity and economic stability for professionals is a priority for federal/provincial and territorial discussions.

Access to the social safety net is another area that needs to be addressed. Programs such as *Employment Insurance* and *Canada Pension Plan* are firmly rooted in the employer/employee paradigm. How can these programs be adapted to ensure that all Canadians, employees and the self-employed can enjoy the benefits associated with them?

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Intellectual property legislation is another element that must be reviewed. To what extent does the current legislative framework promote or impede creativity and innovation? Does this framework adequately recognize and reward creativity by independent contractors?

In the era of convergence of technologies and media, do our legislative and regulatory regimes provide material support for creativity and innovation, and if so, how can we ensure that they will continue to do so? What is the correct balance of regulation and freedom to innovate for producers, and independent contractors alike?

Finally, the challenge is to develop a public policy approach to the creative economy that can be quickly adapted or fine-tuned to meet changing conditions and opportunities.