



**Canadian
Heritage** **Patrimoine
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**EVALUATION OF THE PROVISIONS AND
OPERATIONS OF THE STATUS OF THE ARTIST
ACT**

Volume I: Final Report

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EXECUTIVE SUMMARY

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 benefit 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.

¹Producers 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.



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*



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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*.



1.0 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.

1.1 Purpose of the evaluation

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 *Status of the Artist Act* as a first step in this review. In designing and carrying out the research, we were guided by the evaluation framework in Appendix A (see Volume II of this report).

This report presents the evaluation findings, offers conclusions, and provides recommendations for legislative and operational changes.



1.2 Structure of the report

This report is divided into several sections. Section 2.0 describes the methodology we used to carry out the evaluation, while Section 3.0 describes the policy context that led to implementation of the *Status of the Artist Act*. The evaluation findings are presented in Section 4.0. Section 5.0 concludes and provides recommendations.

Four appendices accompany this report and have been bound separately in Volume II. These include the evaluation framework that guided the study, as well as three interim reports (Appendices B, C, and D) submitted over the course of the evaluation. The appendices are as follows:

- ▶ Appendix A — Evaluation Framework
- ▶ Appendix B — Document Review
- ▶ Appendix C — Report on Interviews
- ▶ Appendix D — Report on Surveys.

Although findings from the interim reports have been integrated to form the final report, the interim reports themselves should be consulted for more detailed information.

2.0 Methodology

We used four data collection methods in this evaluation:

- ▶ document review
- ▶ key informant interviews (n=65)
- ▶ survey of artists (n=296)
- ▶ survey of federal producers (n=8).

We prepared all data collection instruments with input from the Department of Canadian Heritage and the Department of Human Resources Development Canada. This report consolidates the findings obtained through these methods.

2.1 Document review

The document review (see Appendix B, Volume II) provides contextual information for the evaluation as a whole and responds directly to some of the evaluation issues and questions. It describes the economic challenges confronting professional artists, as well as the policy context that led to implementation of the legislation; it also describes the legislation in detail, including key players and their respective roles, as well as Tribunal procedures. Furthermore, it provides an overview of activities to date and reviews some of the key issues that have emerged in the seven years since the Act was implemented.

We reviewed a wide range of documents in order to prepare the document review, including:

- ▶ CAPPRT web site and documents
- ▶ independent research reports and journal articles
- ▶ status of the artist legislation and regulations (federal and province of Québec)
- ▶ relevant Minutes of Proceedings and Evidence of the Standing Committee on Communications and Culture
- ▶ relevant House of Commons Debates
- ▶ reports of several federal commissions and task forces on arts and culture
- ▶ web sites and publications of a variety of arts and cultural organizations.

A complete bibliography is included with the document review in Appendix B.



2.2 Key informant interviews

We conducted in-depth interviews with 65 key informants through a combination of individual and group interviews. We prepared a separate report on the interview findings, which can be found in Appendix C, Volume II.

The Department of Canadian Heritage identified appropriate individuals and mailed them letters of invitation to participate. PRA then telephoned each individual to schedule a suitable time for the interview. In some cases, the person identified by Canadian Heritage was not available for an interview during the time period of the study or suggested another person within the organization as an alternate. In addition, a few key informants declined an interview or did not respond to our repeated attempts to contact them (we made at least three attempts per key informant).

We grouped key informants into four categories:

- ▶ government
- ▶ artists' associations¹
- ▶ federal producers
- ▶ other key informants

and prepared a separate interview guide for each group. All key informants were given the opportunity to review the interview guide in advance and had the option of completing the interview in either English or French. We conducted the majority of interviews by telephone.

2.3 Survey of artists

We conducted a mail-out survey of self-employed professional artists who are members of certified and non-certified artists' associations. The Department of Canadian Heritage compiled an initial list of 36 associations and sent each one a letter explaining the survey and inviting their members to participate. The letter also requested the assistance of artists' associations in making their membership lists available to PRA for the purposes of the survey.

¹Although we invited both certified and non-certified artists' associations to participate in the interview process, only two non-certified associations agreed to an interview. A certified association is one that has been granted the sole right, under the *Status of the Artist Act*, to represent an artistic sector for the purpose of collective bargaining with producers in federal jurisdiction.



PRA followed up on the introductory letter with telephone calls to each association. As a result of these calls, 31 of the original 36 associations identified agreed to participate in the survey. Of these, 11 were prepared to provide us with their membership lists, while the remaining 20 agreed to distribute the survey to a sample of their members on our behalf.

Based on the size of each association's membership and their certification status, and given a total sample size of 1,000, we determined the number of surveys to be allocated to each association using the following formula:

- ▶ Non-certified associations received 15 surveys each.
- ▶ Certified associations with fewer than 1,000 members received 25 surveys each.
- ▶ Certified associations with between 1,000 and 10,000 members received 50 surveys each.
- ▶ Certified associations with more than 10,000 members received just over 90 surveys each, to make up a total sample of 1,000.

For the 11 associations that provided us with their membership lists, we selected a random sample of their members and mailed each one a package containing the survey, an introductory letter, and a self-addressed, stamped return envelope. For the remaining 20 associations (those that wished to distribute the surveys themselves), we prepared an appropriate number of survey packages and sent these to the relevant associations along with instructions for their distribution to a random sample of their members.

In addition, we invited all associations to inform their members that if they did not receive a copy of the survey in the mail but still wished to participate, they could access the PRA web site to request a copy.

All survey recipients received the survey in both English and French. Individuals who accessed the PRA web site could request the survey in the language of their choice.

It should be noted that although one non-certified association was sent 15 surveys for distribution to its members, these were returned to PRA due to an incorrect mailing address. PRA telephoned this association and left a message requesting that the association contact us should it wish to be included in the survey. However, we received no response to this call.



Some 985 surveys (rather than 1,000) were initially distributed to artists, either directly by PRA or by an artists' association. In addition, we received six requests for a survey through our web site. Overall, a total of 991 surveys were therefore distributed to artists, of which we received 296 in return, resulting in a response rate of 29.9%. We suspect that some survey recipients may have felt that they were not sufficiently knowledgeable about the legislation to respond to the survey.

Table 1 on the next page shows the associations that participated in the survey, the size of their membership, the number of surveys allocated to each, the number of surveys received from each, and the response rate for each.

Key findings from the survey of artists have been incorporated into this report. It should be noted that large proportions of survey respondents did not respond to certain survey questions or indicated having no opinion. This was especially true of questions related to the impact of the legislation and its strengths and weaknesses. Although detailed results from the survey of artists can be found in Appendix D, Volume II, the final report focuses on survey questions that a majority of respondents were able to answer—that is, mainly on questions related to the relevance of the legislation.



Table 1: Survey of artists: sample distribution and response rates

Association	Total members	Surveys allocated	Surveys returned	Response rate
<i>Certified associations</i>				
Association of Canadian Television and Radio Artists	18,000	93	17	18.3%
American Federation of Musicians of the United States and Canada	16,000	92	22	23.9%
Union des artistes ¹	6,000	51	16	31.4%
Canadian Actors' Equity Association	5,000	50	19	38.0%
Guilde des musiciens du Québec	3,500	50	0	0%
Canadian Artists' Representation	4,000	50	17	34.0%
Writers' Guild of Canada	1,600	50	20	40.0%
Regroupement des artistes en arts visuels du Québec	1,600	50	24	48.0%
The Writers' Union of Canada	1,400	50	31	62.0%
Union des écrivaines et écrivains québécois	1,200	50	19	38.0%
Société des auteurs de radio, télévision et cinéma	850	25	6	24.0%
Conseil des métiers d'art du Québec	700	25	1	4.0%
The Canadian Association of Photographers and Illustrators in Communications	500	25	5	20.0%
Periodical Writers' Association of Canada	500	25	8	32.0%
Association des réalisateurs et réalisatrices du Québec	400	25	10	40.0%
Playwrights' Union of Canada	400	25	8	32.0%
Associated Designers of Canada ²	165	30	9	30.0%
Association des professionnels des arts de la scène du Québec	160	25	12	48.0%
Association québécoise des auteurs dramatiques	150	25	14	56.0%
Société professionnelle des auteurs et des compositeurs québécois	147	25	8	32.0%
<i>Non-certified associations</i>				
Fight Directors Canada	1,000	15	4	26.7%
Association des professionnelles de la vidéo du Québec	900	15	0	0%
Writers' Guild of Alberta	720	15	5	33.3%
Association of Canadian Film Craftspeople (BC)	600	15	1	6.7%
League of Canadian Poets	300	15	6	40.0%
Centre des auteurs dramatiques	200	15	7	46.7%
Writers' Federation of New Brunswick	174	15	4	26.7%
Association des journalistes indépendants du Québec	150	15	0	0%
Literary Translators' Association of Canada	100	15	1	6.7%
Canadian Alliance of Dance Artists (ON)	50	15	2	13.3%
Total	66,466	991	296	29.9%

¹ One survey was requested through the web site; however, it was not returned.

² Five surveys were requested through the web site; two were returned.



2.3.1 Survey of producers

PRA conducted a survey of federal producers subject to the legislation. The Department of Canadian Heritage identified 27 federal producers to participate in the survey. PRA mailed surveys to these 27 producers and asked respondents to return their completed surveys to us in a stamped, self-addressed return envelope or by toll-free fax. We asked survey recipients who felt that another individual from their organization was more qualified to respond, to return the blank survey, along with that individual's name, to PRA. We then invited the identified individual to participate in the survey.

Twelve of 27 surveys were returned to PRA. Three of the returned surveys were blank, and one indicated that the questionnaire did not apply.² These four surveys were excluded from the analysis. Thus, the total sample size was eight; of these, seven were in English, and one was in French.

The response rate for the survey was 29.6%, which was somewhat lower than expected. We were told that some of the producers identified by the Department of Canadian Heritage chose not to return their surveys because they were members of a producers' association that had already participated in the research through the interview process. The association representative whom we interviewed informally canvassed the views of the association's membership prior to completing the interview and spoke on behalf of the entire organization. Fifteen of the producers in our sample were members of this producer association.

Detailed results from the producer survey are in Appendix D, Volume II. Due to the small sample size, caution must be used when interpreting these results.

²This respondent's organization was not represented by the categories of federal producers listed in the questionnaire.



3.0 Context for the legislation

When it came into force in 1995, the *Status of the Artist Act* was intended to express the federal government's commitment to improving the working conditions and economic circumstances of artists. The legislation was meant to rectify what was perceived as insufficient recognition of Canadian artists and their working and living conditions compared to other workers. It had been acknowledged for some time that professional artists were among the highest educated but lowest paid individuals in the country. Furthermore, artists were disproportionately engaged in part-time or seasonal work, and a disproportionate number were self-employed. As a consequence, many artists did not enjoy the same job security and employment benefits that were available to others.

During the several decades preceding the legislation, intense lobbying by the cultural community, along with a variety of government commissions and task forces, had brought the arts and the economic circumstances of professional artists to the forefront of public policy debate. The 1951 report of the Royal Commission on National Development in the Arts, Letters and Sciences (the Massey-Lévesque Commission) was the first to acknowledge that artists were unable to live by the sale of their work alone, and proposed a minimum subsistence wage as a possible solution.³ More than two decades later, the federal government, in the "Disney Report," released the first comprehensive portrait of the economic difficulties facing Canadian artists. The report recommended introducing dual status for artists, which would give them self-employed status for taxation purposes while simultaneously permitting them access to programs such as employment insurance and the Canada Pension Plan.⁴

Although the federal government did not take action following the Disney Report, Canada signed the UNESCO recommendation on the status of the artist (the Belgrade Convention) in 1980. Shortly thereafter, Canada established the Federal Cultural Policy Review Committee (the Applebaum-Hébert Committee) to examine not only the status of the artist, but to perform a comprehensive review of all Canadian cultural institutions and cultural policy. When it

³Danielle Cliche. "Status of the Artist or of Arts Organizations? A Brief Discussion on the Canadian Status of the Artist Act." *Canadian Journal of Communications* 21 (2) (1996).

⁴Cliche, *ibid.*



reported in 1982, the Committee noted that despite decades of pressure from the arts community and despite 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.*⁵

Several years later, another task force was established specifically to investigate the living and working conditions of Canadian artists and to make recommendations that could lead to improvements in these conditions. In 1986, the Task Force on the Status of the Artist released the results of its investigations (the Siren-Gélinas Report). Among its recommendations, the Report proposed changes to income tax legislation to offer more financial security to artists (including tax exemptions and income averaging); changes to copyright rules; and legislation that would recognize organizations representing self-employed professional artists as collective bargaining agents.⁶

One year after the release of the Siren-Gélinas Report, the Government of Québec enacted the *Loi sur le Status professionnel et les conditions d'engagement des artistes de la scène, du disque et du cinéma*. This legislation was the first to grant collective bargaining rights to associations of independent professional artists (in this case, those working in the fields of theatre, opera, music, dance, variety entertainment, film-making, and sound recording). In 1988, the province enacted similar legislation pertaining to artists who create works in the fields of visual arts, arts and crafts, and literature.

In November 1989, the Standing Committee on Communications and Culture established a Sub-Committee on the Status of the Artist and gave it a mandate to review previous reports on issues related to the status of the artist. When the Sub-Committee

⁵Report of the Federal Cultural Policy Review Committee, 1982, p. 4.

⁶It should be noted that some artists' associations, such as the American Federation of Musicians of the United States and Canada, had been successful over the years in establishing and negotiating scale agreements with many producers. However, all such agreements were established on good faith and had no legal recognition in the courts. Furthermore, because the contract negotiations and agreements reached by associations of self-employed artists did not come under the ambit of the *Canada Labour Code*, artists' associations could become subject to investigation and prosecution under the *Competition Act* for conspiring to fix prices.



reported in February 1990, it gave a series of eleven recommendations, including implementation of status of the artist legislation that would recognize the professional status of artists and that would give certified associations representing self-employed artists working in areas of federal jurisdiction the right to collective bargaining. The Sub-Committee also recommended that the proposed legislation address a variety of other issues, including a presumption of self-employed status for artists for tax purposes; access to unemployment insurance; compensation for the free use of artistic works in libraries; bankruptcy protection; and the right to set aside part of artistic income in an “Artist Account” on which tax liability would be deferred.

The federal government responded to the Standing Committee Report in May 1990.⁷ It committed to introducing legislation on the status of the artist that would give artists the right to form associations and negotiate minimum employment conditions. It also pledged to address some of the Standing Committee’s other recommendations through administrative measures and changes to existing legislation. Among the issues the government proposed to address outside of the new legislation were bankruptcy protection; tax deductions for expenses incurred through artistic work; and tax treatment of charitable donations of works by visual artists.

The status of the artist legislation that was tabled in the House of Commons in December 1990 was therefore not as wide ranging as the Standing Committee had recommended. It had two main parts. Part I consisted of a statement of general principles concerning the status of the artist and mandating the existence of the Canadian Council on the Status of the Artist, while Part II established a legal framework to govern professional relations between associations of self-employed artists and federal producers. The *Status of the Artist Act* received Royal Assent in June 1992. Part I was proclaimed in May 1993, while Part II was brought into force in May 1995.

⁷Government of Canada. *Government Response to the Report of the Standing Committee on Communications and Culture Respecting the Status of the Artist*. May 1990.



4.0 Findings

In this section, we present the aggregated findings from all data collection methods used in this research. We present the findings according to the issues in the evaluation framework (Appendix A).

4.1 Relevance

Among those whose opinions we canvassed in this evaluation, there is almost unanimous agreement that the circumstances that led the federal government to introduce the *Status of the Artist Act* still prevail. Virtually all key informants agreed that the socio-economic position and working conditions of self-employed artists have not changed substantially since 1995, although some qualified their remarks by saying that they lack evidence to substantiate their opinion.⁸ The artists we surveyed expressed a similar opinion. Among survey respondents, more than half (52%) believe that the working conditions and economic circumstances of self-employed artists have not improved since 1995, and almost all (93%) believe that it is impossible for the majority of self-employed artists in Canada today to earn a living unless they supplement their art with non-artistic work.

Opinions on the relevance of the legislation reflected the different interests of the groups involved. Almost all of the artists we surveyed (93%) believe that measures to improve the economic circumstances of self-employed artists are necessary in Canada, and three-quarters believe that measures specifically intended to improve labour relations between artists' associations and producers are necessary. Similarly, most key informants affirmed the value and ongoing relevance of the Act, both for what they regard as its important 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 federal producers. A small number of producers and representatives from producers' associations, however, expressed a dissenting view. They believe that the legislation is unnecessary, primarily because collective agreements were the norm in the industries they represent prior to the Act's implementation.

⁸Pending the release of 2001 Census data, data from the 1996 Census are the most current figures available on artists' earnings.



4.1.1 Limitations of the legislation

Despite the strong support expressed by key informants and artists for the *Status of the Artist Act*, there is a consensus that the legislation, by itself, is insufficient to bring about significant change in artists' socio-economic circumstances. Two main limitations of the legislation emerged from this study:

► ***The Act is limited to the federal jurisdiction.***

Key informants see the limited jurisdiction of Part II of the Act as the most significant factor limiting its ability to bring about changes in artists' socio-economic circumstances. Although the majority of artistic and cultural production occurs outside the scope of the federal legislation, none of the provinces and territories, with the exception of Québec, currently has similar legislation in place.⁹ CAPPRT itself, in its latest performance report, noted that compared to the total amount of work in the cultural sector in Canada, the amount of work offered to self-employed artists by producers within its jurisdiction is modest.¹⁰ Self-employed artists working in the cultural sector therefore do so, for the most part, without the collective bargaining rights that are available to them under the federal Act. Many of the individuals we interviewed advocated the introduction of complementary legislation at the provincial level.

► ***The Act is limited to labour relations.***

A second perceived shortcoming of the *Status of the Artist Act* is the fact that it is limited to a statement of general principles and the establishment of a legal framework for collective bargaining. Most key informants believe that other measures, in addition to the *Status of the Artist Act*, must be implemented if the economic circumstances of self-employed artists are to improve, and three-quarters of the artists we surveyed expressed a similar opinion. Key informants and some artists recommended introducing a variety of other measures in the pursuit of this objective, including income averaging, tax exemptions on a proportion of copyright income, and access to employment insurance and other social

⁹The Province of Saskatchewan has recently tabled and will debate status of the artist legislation.

¹⁰CAPPRT. *Performance Report*. For the period ending March 31, 2001. Ottawa: Minister of Supply and Services Canada, 2001.



benefits. A few key informants criticized the federal government for what they perceive as its failure thus far to articulate a comprehensive and coherent policy vis-à-vis artists. They argued that although Part I of the *Status of the Artist Act* sets out important statements of principle, few concrete measures have been introduced to put those principles into practice.

Respondents to the survey of artists perceive other kinds of measures to be at least as important as the legal right to collective bargaining established by the *Status of the Artist Act*. In fact, survey respondents rated the legal right to collective bargaining as the least important of ten existing and potential measures to improve the economic circumstances of artists, and gave measures such as deductions for business expenses, copyright, and income averaging a considerably higher rating of importance. Of the four potential measures that respondents were asked to rate (income averaging, tax exemptions on copyright income, protection from producer bankruptcy, and access to employment insurance and other social programs), all four are seen as more important than the legal right to collective bargaining. See Table 2 for the details.

Table 2: Artists' rating of measures to improve economic circumstances of artists	
Measure	Very important/important (n=296)
Existing measures	
Deductions for business expenses under the <i>Income Tax Act</i>	95%
Protection of the economic rights of creators (Copyright)	92%
Creation, production, and touring grants from arts councils and government departments	87%
Program of payments to Canadian authors for their eligible books catalogued in Canadian libraries (Public Lending Right)	79%
Compensation for public display of art works (Exhibition Right)	76%
Legal right to collective bargaining	69%
Potential measures	
Income averaging	88%
Tax exemption on copyright income	81%
Protection from producer bankruptcy	78%
Access to employment insurance and other social programs	77%

Although the jurisdiction of the Act and its restriction to labour relations are seen, by far, as the most significant limits on the Act's ability to achieve improvements in artists' socio-economic status, key informants also identified two other constraints. First, the provisions set out in Part II do not apply to third party contractors. Key informants pointed out that sub-contracting is increasingly



common in artistic and cultural production, including among federal producers. Second, key informants said that artists who are not members of certified associations can not benefit from the legislation.¹¹

These caveats notwithstanding, it bears repeating that with the exception of some producers, there is considerable support for the *Status of the Artist Act*. The Act is widely viewed as a necessary, though not a sufficient, measure to improve artists' socio-economic status. Furthermore, 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 seen as invaluable.

4.2 Implementation

4.2.1 Part I: General Principles

Part I of the *Status of the Artist Act* ("General Principles") recognizes the contribution that artists make to Canadian cultural, social, economic, and political life, and establishes a policy on the professional status of the artist that is based on the right of artists and producers to freedom of association and expression; the right of associations representing artists to be recognized in law and to promote the professional and socio-economic interests of their members; and the right of artists to have access to advisory forums in which they may express their views on their status and on any other questions concerning them.

4.2.2 Canadian Council on the Status of the Artist

Part I also establishes the Canadian Council on the Status of the Artist (hereinafter CCSA or the Council), whose mandate is:

- ▶ *to provide information and advice to the Minister of Canadian Heritage in order to ensure the highest quality of decision-making in respect of artists in Canada*
- ▶ *to defend and promote the professional status of artists in Canada*

¹¹Note that artists' associations are certified to represent artistic sectors, not just their members.



- ▶ *to maintain close contacts with associations representing artists across Canada in various disciplines of the arts in order better to assess artists' needs and propose useful responses*
- ▶ *to propose measures, based on research and studies, to improve the professional working conditions of artists*
- ▶ *to carry out such studies as the Minister of Canadian Heritage may direct.*

The legislation specified that the Council was to consist of seven to twelve members appointed by the Governor-in-Council on the recommendation of the Minister of Communications.¹² Members of the Council were to sit on a part-time basis.

The federal government announced the creation of a provisional Council in February 1991, following the tabling of the Bill on the Status of the Artist in the House of Commons in December of the previous year. In April 1991, the Minister of Communications appointed twelve full-time professional artists, representing diverse artistic disciplines and regions of the country, as members of the Council.¹³ The membership of the temporary Council was to be confirmed by the Governor-in-Council upon enactment of the legislation.

For several years following their (interim) appointment, members of the Council met occasionally and engaged in consultations with the artistic community, preparation of policy briefs, and related activities. However, the official nomination of CCSA members by the Governor-in-Council did not materialize. By the time the legislation was implemented in May 1995, a new government had been elected and was engaged in a fundamental process of reform related to streamlining the number of advisory committees, boards, and Governor-in-Council appointees for which it was responsible. Part of that reform would have seen the Council on the Status of the Artist move from the Governor-in-Council appointments (which require Cabinet approval) to appointments made directly by the Minister of Canadian Heritage. The omnibus legislation dealing with this matter died on the Order Paper, and the federal

¹²The Minister of Communications has since become the Minister of Canadian Heritage.

¹³Department of Communications. *Marcel Masse names members of Canadian Council on the Status of the Artist*. News Release, April 9, 1991.



government simply continued to renew Council members' contracts at the end of March of each year. Eventually, the Council's membership was allowed to lapse; it effectively ceased to function in 1996, approximately one year after the Act was implemented. The matter of appointments has never been resolved.

Given the economic environment, the early and mid-1990s were a difficult time for the establishment and operation of new advisory bodies, including the Council. Establishing the Council as an official entity was perceived as contrary to other federal priorities; more specifically, it was at odds with the federal government's wish to avoid creating new entities and to eliminate overlap and duplication among existing ones. Furthermore, the mandate of the Council was perceived as somewhat similar to that of existing organizations, particularly the Canadian Conference of the Arts and the Canada Council for the Arts. In fact, amalgamating the Canadian Council on the Status of the Artist with one of the other two organizations was considered to be an option. Potential advantages of amalgamation included reduced appearance of overlap between the mandates of the Council and the organizations, greater independence for the Council from the Minister, and reallocation of funds.

Key informants who commented on the Council (there were very few) offered several related explanations for its early demise. First, they said that the full-time professional artists who made up the Council's membership had neither the time nor the expertise (despite their best intentions) to deal with what were essentially policy and bureaucratic issues. As a consequence, the Council relied heavily on public servants within Canadian Heritage to prepare its recommendations. There was also concern that Canadian Heritage did not provide the Council with the leadership and direction that it required to function effectively; some key informants were strongly critical of the federal government for allowing the Council to lapse.

Key informants identified three possible courses of action with respect to the Council:

- ▶ appoint a new Council with a more varied membership (representatives from artists' associations as well as government and policy) and a direct link to the Minister
- ▶ transfer the mandate and functions of the Council to an existing body; it was noted that the Canadian Conference



of the Arts has expressed a willingness to assume the Council's role

- ▶ revise the Act to eliminate the Council entirely since the federal government already funds several arts organizations that play advisory roles quite similar to the one mandated for the Council.

4.2.3 Part II: Professional Relations

Part II of the *Status of the Artist Act* establishes a legal framework to govern professional relations between associations of self-employed artists and producers in federal jurisdiction. The Act grants collective bargaining rights to several categories of artists:

- ▶ **authors** of artistic, dramatic, literary, or musical works within the meaning of the *Copyright Act* (such as writers, photographers, and music composers)
- ▶ **directors** responsible for the overall direction of audio-visual works
- ▶ **performers** (such as actors, musicians, singers, and dancers)
- ▶ **other professionals** who contribute to the creation of a production and fall within a professional category prescribed by regulation.

The Professional Category Regulations, which came into force in April 1999, define the additional categories of “other professionals” eligible for coverage under the Act. Under the Regulations, practitioners who contribute directly to the creative aspects of a production by carrying out one or more of the following activities are eligible for coverage:

- ▶ category 1 — camera work, lighting, and sound design
- ▶ category 2 — costumes, coiffure and make-up design
- ▶ category 3 — set design
- ▶ category 4 — arranging and orchestrating
- ▶ category 5 — research for audio-visual productions, editing and continuity.



With respect to federal producers, the Act applies to broadcasters regulated by the Canadian Radio-television and Telecommunications Commission (CRTC), to federal government departments and ministries of state, and to the majority of federal government agencies and Crown corporations.

4.2.4 Canadian Artists and Producers Professional Relations Tribunal

The *Status of the Artist Act* establishes a labour board, the Canadian Artists and Producers Professional Relations Tribunal (CAPPRT), to administer the collective bargaining provisions under Part II. Charged with a mandate to “*encourage constructive professional relations between artists, as independent entrepreneurs, and producers in the federal jurisdiction,*” the Tribunal’s responsibilities are threefold. It is responsible for:

- ▶ defining the sectors of cultural activity within federal jurisdiction that are suitable for collective bargaining
- ▶ certifying artists’ associations to represent these sectors
- ▶ hearing and deciding complaints of unfair practices filed by artists, artists’ associations, or producers, and prescribing appropriate remedies.

The Tribunal is composed of a Chairperson, a Vice-chairperson, and from two to four full-time or part-time members, all of whom are appointed by the Governor-in-Council on the recommendation of the Minister of Labour in consultation with the Minister of Canadian Heritage. The Chairperson is appointed for a term not exceeding seven years; the Vice-chairperson and any full-time member for a term not exceeding five years; and any other member for a term not exceeding three years. The Tribunal has a staff that currently numbers eleven. CAPPRT reports to Parliament through the Minister of Labour.

Key informants who commented on CAPPRT’s organization and service delivery structure generally agree that these are adequate to meet the Tribunal’s legislated responsibilities under the *Status of the Artist Act*. They reported that the Tribunal has largely accomplished its primary function of certifying artists’ associations for the purpose of collective bargaining with federal producers, but has 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.



Since it began operating in May 1995, CAPPRT has defined 23 sectors as suitable for collective bargaining under the Act and has granted certification to 21 artists' associations (two associations are certified to represent two sectors). The bulk of the Tribunal's certification activity occurred in the first three years of its existence. Since December 31, 1998, only three new certifications have been granted.

Table 3: Certified artists' associations	
Association	Date of issue*
Société des auteurs de radio, télévision et cinéma	January 30, 1996
Union des écrivaines et écrivains québécois	February 2, 1996
Canadian Actors' Equity Association	April 25, 1996
Association québécoise des auteurs dramatiques	April 26, 1996
Canadian Association of Photographers and Illustrators in Communications	April 26, 1996
Société professionnelle des auteurs et des compositeurs du Québec	May 17, 1996
Periodical Writers' Association of Canada	June 4, 1996
Writers' Guild of Canada	June 25, 1996
Association of Canadian Television and Radio Artists	June 25, 1996
Union des artistes	August 29, 1996
Playwrights' Union of Canada	December 13, 1996
American Federation of Musicians of the United States and Canada	January 16, 1997
Guilde des musiciens du Québec	January 16, 1997
Regroupement des artistes en arts visuels du Québec	April 15, 1997
Conseil des métiers d'art du Québec	June 4, 1997
Association des réalisateurs et réalisatrices du Québec	December 30, 1997
Union des artistes (re: stage directors)	July 24, 1998
The Writers' Union of Canada	November 17, 1998
Canadian Artists' Representation	December 31, 1998
Editors' Association of Canada	September 27, 2001
Associated Designers of Canada	January 4, 2002
Association des professionnels des arts de la scène du Québec	January 4, 2002
*Note that some certifications have since been amended. Descriptions of the certifications can be found at the CAPPRT web site, under "Certification Register." Available at capprt-tcrpap.ic.gc.ca/decisions/registreaccre/index.html	

The Tribunal had received six complaints as of March 31, 2001, of which four were withdrawn or resolved without the need for a hearing. A few key informants believe that the Tribunal will likely hear more complaints in the future as certified associations increasingly pursue negotiations with producers, and will likely also be called upon to review existing certifications and to certify associations to represent emerging sectors. However, a larger



number believe 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).

The concept of an administrative merger of CAPPRT with the CIRB is not new. In fact, during the standing committee hearings on the status of the artist bill, there was considerable debate over an appropriate structure to administer Part II of the Act. At issue was whether the Canada Labour Relations Board (CLRB)¹⁴ or a new, entirely separate board should administer these provisions. The decision to create a separate board was made specifically in order to respond to the unique circumstances and characteristics of self-employed workers.¹⁵

The possibility of merging CAPPRT with other federal labour boards and tribunals was re-examined in a 1998 discussion paper.¹⁶ The paper recommended consolidating the CLRB, the Public Service Staff Relations Board (PSSRB), and CAPPRT into one new board that would have one chairperson but separate divisions, and that would assume responsibilities for duties assigned under the *Canada Labour Code Part I*, the *Public Service Staff Relations Act*, and the *Status of the Artist Act*. Among the anticipated benefits of such a merger, the discussion paper cited 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 in the magnitude of \$3 million to \$4 million per year. The discussion paper said that some opposition to the proposed merger from the artistic community could be expected but ventured that any concerns could be mitigated by assurances that CAPPRT personnel would be transferred to the new board.

Similarly, key informants who advocated a merger of CAPPRT with the CIRB pointed out that such a change would not be well received by the arts community, which believes that CAPPRT is more informed about and therefore more sensitive to the concerns

¹⁴Now the Canada Industrial Relations Board (CIRB).

¹⁵Lorraine Farkas. "Self-employed Workers and Collective Bargaining." *Workplace Gazette* 2 (2) (Summer 1999).

¹⁶*Consolidation of Federal Labour Boards: Considerations and Recommendation*. Discussion Paper. March 1998.



of artists than existing labour relations boards. A transfer of CAPPRT's functions to the CIRB could be contemplated, key informants emphasized, only if specialized training were provided to CIRB personnel or if CAPPRT personnel were retained.

4.2.5 Administrative provisions and procedures

The administrative provisions and procedures set out in Part II of the legislation are perceived differently by artists' associations, depending on their size and their experience with collective bargaining. In general, the larger, more established associations with a history of collective bargaining regard the provisions and procedures as relatively straightforward — or at least not any more onerous than those to which they were previously accustomed. The smaller associations and those that are new to collective bargaining see these provisions and procedures as somewhat more onerous.

Application for certification

Most of the certified associations we interviewed, with the exception of those from Québec, said that the application process required a significant commitment of time and/or financial resources and diverted them from their other activities and responsibilities. The different opinion expressed by Québec associations may be due to their past experiences with the certification process under the Québec legislation.

Almost all of the certified associations said that the application process is relatively simple and straightforward. In most but not all cases, artists' associations retained legal counsel; those that did not retain counsel tended to find the application process more difficult. However, these associations reported that the Tribunal was extremely helpful in assisting them through the application process.

Serving notice to bargain

Approximately half of the certified artists' associations we interviewed reported that they have served notice to bargain to federal producers since being certified, and for the most part, these interviewees see the process of serving notice to bargain as relatively straightforward. Associations that have not yet served notice to bargain have not done so for a variety of reasons, including a lack of financial and other resources to undertake negotiation; successful voluntary negotiation of scale agreements



with federal producers (i.e., no need to serve notice to bargain); and certifications currently or imminently under review.

Negotiations

Of the certified associations we interviewed, approximately half reported having entered into negotiations with federal producers since certification, and of this group, about half reported having negotiated a new scale agreement (several have renegotiated existing agreements). There is a general consensus among artists' associations that the negotiation process is typically arduous, time-consuming, and costly. In most but not all cases, artists' associations retain legal counsel to negotiate on their behalf.

At present, CAPPRT has no control over whether the parties pursue negotiations after certification or over the results achieved in negotiations. Nonetheless, successful negotiations are among the expected results of the regime it administers; in fact, one of the Tribunal's performance measures is that all certified artists' associations should have negotiated at least one first scale agreement within five years of certification. This target, however, has proven elusive. CAPPRT's Performance Report for 2000-2001 reports that as of March 31, 2001, and of 15 associations that had been certified for five years, seven had negotiated a total of 10 first agreements. Three others had served notice to bargain a first agreement to at least one producer but had not yet negotiated agreements, while five had not yet issued a notice to bargain.¹⁷

According to key informants, the legislation has two main shortcomings that hamper negotiation:

- ▶ ***The legislation contains an obligation for federal producers to negotiate in good faith but no obligation to conclude a first agreement.*** As a consequence, key informants told us, producers often resort to mediation processes that can take years to conclude, in effect defeating the intent of the legislation. Key informants advocated a provision ensuring the signing of an initial agreement within a stipulated time frame and providing for arbitration if the parties are unable to come to an agreement within that period. Many noted that both the *Canada Labour Code* and provincial status of the artist legislation

¹⁷A complete list of notices to bargain and scale agreements is available on CAPPRT's web site at www.capprt-tcrpap.ic.gc.ca.



in Québec contain such a provision. However, it should be noted that producers were not among those making this recommendation.

- ▶ ***The legislation contains no mechanism to encourage federal producers to form associations for the purpose of collective bargaining.*** The legislation does contain a provision permitting federal producers to form associations, but producers have, for the most part, elected not to do so. As a result, artists' associations must serve notice to and negotiate with each producer separately, which requires significant expenditure of time and money and which can be especially burdensome for the smaller associations. Some federal departments and agencies also believe that the current arrangements are unnecessarily complex and recommended the establishment of a single bargaining authority to represent them in negotiations. Indeed, there is considerable support among artists' associations, government representatives, and these producers for the creation of a single, centralized bargaining authority for all federal government departments.

Revising the *Status of the Artist Act* to include a provision for first contract negotiation and arbitration and a provision encouraging producers to form associations would, in the opinion of many key informants, facilitate negotiation of scale agreements, thus enabling the legislation to better achieve its objectives.

Other procedures and provisions

A small number of key informants suggested other changes to the administrative provisions of the Act. Several suggested revising section 46 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, since the provision as written enables artists' associations, at least in theory, to apply pressure tactics without first sending notice to bargain. In addition, a few key informants recommended revising the legislation so that any question may be put to the Tribunal for a determination or declaration outside a proceeding. As it is currently written, the legislation limits the questions the Tribunal can deal with in this manner (sections 30, 33(5), 41, 47, and 48).



4.2.6 Issues of clarity and interpretation

The majority of those who were asked to comment on the clarity of the *Status of the Artist Act* either believe that it is clearly written, contains no areas of ambiguity, and has not been subject to inconsistent interpretation, or had no comment on the subject. Two main concerns related to the clarity of the legislation and its interpretation by CAPPRT nonetheless emerged from our evaluation.

- ▶ ***The definition of an “artist” for the purpose of the legislation is unclear.*** Some key informants criticized the Tribunal for what they regard as its over-inclusive definition of an artist. According to this line of argument, the Tribunal has gone too far in categorizing some cultural workers as artists, such that the term now encompasses what they regard as non-artistic aspects of the creative process. However, others believe that the Tribunal has been suitably forward-thinking in its broad interpretation of the term. These key informants believe that artistic production is a collaborative process and that, therefore, the term “artist” legitimately refers to a wide range of cultural workers. In a related vein, some key informants argued that the Professional Category Regulations accompanying the Act do not consider some of the artistic functions that should be addressed by the legislation and should be revised. In particular, representatives from some artists’ associations believe that the Tribunal erred in certifying editors as “joint authors” under the legislation. These associations believe that editors should be certified *as editors*, rather than as joint authors. However, this is not possible under the current Regulations.
- ▶ ***The appropriate scope and content of scale agreements is unclear, particularly with respect to copyright.*** The definition of a scale agreement in section 5 of the Act refers to “*an agreement in writing between a producer and an artists’ association respecting minimum terms and conditions for the provision of artists’ services and other related matters.*” In recent years, some disagreement has arisen over what is meant by “other related matters,” and whether, in particular, the term includes copyright. More broadly, a small number of key informants, as well as some respondents to the producer survey, said that certain Tribunal decisions have resulted in uncertainty over which statute properly governs copyright and the fixing of



royalties payable for the use of copyright works. This issue is discussed in greater detail below.

4.2.7 Jurisdictional issues vis-à-vis the *Copyright Act*

Concern about concurrent or overlapping jurisdiction between the *Status of the Artist Act* and the *Copyright Act* arose in the context of several applications for certification that came before the Tribunal, but came to the fore in 1998, when The Writers' Union of Canada (TWUC) and the League of Canadian Poets (LCP) filed jointly for certification to represent "authors of literary works" for collective bargaining purposes. The Departments of Canadian Heritage and Public Works and Government Services Canada, which were granted intervener status in the certification hearings, argued that the proposed sector was defined too broadly. More precisely, it was defined in such a way as to enable the artists' association to bargain in respect of *pre-existing* works.

The interveners argued that whereas the *Status of the Artist Act* is essentially labour relations legislation that establishes a framework for collective bargaining with respect to artists' *services*, the *Copyright Act* is essentially *property* legislation. The interveners observed that authorship involves both a service component (the labour to produce a work) and a property component (the final product) and noted that CAPPRT in its decisions to date had not clearly delineated the jurisdictional spheres of the *Status of the Artist Act* and the *Copyright Act*. They urged the Tribunal to make a clear pronouncement on the matter by revising the sector definition to exclude pre-existing work.

In its certification decision, the Tribunal declined to make the proposed modification. It agreed that the *Status of the Artist Act* is essentially labour relations legislation but rejected the implication that this limits the subject matter that can be bargained under its aegis.¹⁸ An application by the Attorney-General of Canada with the Federal Court of Appeal to set aside CAPPRT's certification decision with regard to pre-existing work was subsequently dismissed.¹⁹ In its judgment, the Federal Court noted that "*nothing*

¹⁸Decision of the Canadian Artists and Producers Professional Relations Tribunal No. 028. In the Matter of an Application for Certification Filed by The Writers' Union of Canada and the League of Canadian Poets. November 17, 1998.

¹⁹The CAPPRT, l'Union des écrivaines et écrivains québécois, the Society of Composers, Authors and Music Publishers of Canada, the Writers' Guild of Canada, and the Playwrights



in the certification order indicates the scope of actual bargaining or whether pre-existing works may be included or excluded,” and further, that the Tribunal’s powers “extend only to the certification of a sector, and not to limiting or expanding matters for subsequent negotiations.”²⁰

Notwithstanding the Federal Court’s position, the issue remains unresolved from the perspective of various interested parties (such as the Society of Composers, Authors and Music Publishers of Canada, and certain federal government departments). These parties maintain that the current interpretation puts the *Status of the Artist Act* in direct conflict with the provisions of the *Copyright Act* that prescribe that the only remedy for compensation available to a copyright owner is through a collective society that has tariffs approved by the Copyright Board.²¹

Most interviewees, however, do not perceive any conflict, either real or potential, between the *Status of the Artist Act* and the *Copyright Act*. In the majority view, the two statutes treat distinctly separate aspects of artistic production.²² In fact, the *Status of the Artist Act* is generally regarded as a unique piece of legislation that complements the *Copyright Act*, the *Canada Labour Code*, and the Province of Québec’s status of the artist legislation.

4.2.8 Role of other bodies

This evaluation found no controversy over the respective mandates and functions of Canadian Heritage and Human Resources Development Canada. With respect to Federal Mediation and Conciliation Services (FMCS), which provides mediation assistance under Ministerial appointment to parties involved in collective bargaining under the *Status of the Artist Act*, key

Union of Canada all had intervener status in this matter.

²⁰*Judgment of the Court*. File No. A-750-98. The Attorney-General of Canada (Applicant) and The Writers’ Union of Canada and the League of Canadian Poets (Respondents). November 15, 2000.

²¹*Memorandum of Fact and Law of the Intervener: Society of Composers, Authors and Music Publishers of Canada (SOCAN)*. File NO. A-750-98. The Attorney-General of Canada (Applicant) and The Writers’ Union of Canada and the League of Canadian Poets (Respondents).

²²Despite strong opinions on both sides of the issue, the matter is really one for the courts to decide.



informants reported that the service is not often used. To date, FMCS has provided mediation assistance in two instances under the Act. It has also carried out preventive mediation functions, including providing several Interest Based Negotiations and problem solving workshops.

Key informants believe that the mandate and functions of FMCS are still appropriate insofar as FMCS has the necessary expertise to provide dispute resolution services. However, some re-emphasized the lack of a provision for arbitration or conciliation in the legislation itself.

4.3 Impacts

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. As a result, the legality of these agreements and bargaining relationships was open to challenge under the *Competition Act*. 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. As for the opinions of artists who are members of these associations, many of those we surveyed were unable to answer questions about the impact of the legislation. In fact, although forty-five percent of survey respondents had heard of the *Status of*



the Artist Act before they received the survey, just as many had not. Thus, although almost half (47%) of respondents believe that the legislation has made no difference to their own economic circumstances, one-quarter do not know or did not respond. Similarly, only about one in six (17%) respondents believes that the legislation has improved the economic circumstances of professional artists in Canada in general, but almost half do not know or did not respond. The suspicion, expressed in interviews by some artists' associations, that their membership remains largely unaware of or unknowledgeable about the legislation appears therefore to be confirmed by the survey results.

Artists' associations offered three main explanations for the Act's limited impact on artists' socio-economic circumstances. First, many of the larger, more established associations already had voluntary scale agreements in place with federal producers. For these associations, the primary effect of the Act has been to give legal standing to these voluntary agreements. Second, the smaller and more recently established associations, for the most part, have not yet negotiated any scale agreements under the Act. Third, and perhaps most significantly, many artists' associations reiterated that the Act is limited in its ability to achieve improvements in socio-economic status because 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. The opinion was expressed that collective bargaining is inappropriate for contracting organizations and that the applicability of the legislation to certain artistic sectors is questionable (the visual arts were specifically singled out). There was also concern that the legislation does not allow for adequate representation of or consultation with producers and that the Tribunal, in its decisions, does not balance the interests of all stakeholders.

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'



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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.



5.0 Conclusions and recommendations

The *Status of the Artist Act* is unique legislation whose value and ongoing relevance was affirmed by those whose opinions we canvassed in this evaluation. It is valued both for its important 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 artists and federal producers. However, the Act's ability to improve the socio-economic circumstances of self-employed artists is limited by its restriction to federal producers, by the fact that it addresses only labour relations, and by the fact that it does not apply to producers sub-contracted by producers within federal jurisdiction.

Just as importantly, it needs to be recognized that the legislation, and collective bargaining in particular, is not equally relevant or easily applicable to all categories of artistic and cultural workers. The legislation applies best to artists who work in companies (such as ballet corps and symphonies), but it is less applicable to those who, by the very nature of their chosen pursuit, work alone (such as novelists and visual artists). Furthermore, many artists do not view themselves as cultural "workers," but rather as entrepreneurs who seek to create an asset that they can copyright or brand. For these reasons, initiatives other than the *Status of the Artist Act* may benefit a larger number and greater variety of artists. In order to achieve significant change in artists' socio-economic circumstances, the Department of Canadian Heritage may wish to explore other policy and program approaches, including increased grants and commissions for original work. Other suggested measures, such as income averaging, clarification of eligible business cost deductions, and access to employment insurance and other social benefits, would require consultations with and interventions by other departments and agencies.

Nonetheless, several amendments to the *Status of the Artist Act* would improve its operation and clarify its application. On the operational side, the Canadian Council on the Status of the Artist essentially ceased to function soon after the Act was implemented, and its advisory role is already being fulfilled by other organizations. The Department of Canadian Heritage may therefore wish to consider whether organizations with similar purpose could fulfill the role of the Council while respecting the intent of Part I of the legislation. As for CAPPRT, ways of streamlining its administrative and service delivery structure may be worth exploring, given its light workload. Finally, several relatively straightforward procedural amendments would help to



clarify the legislation and improve its operations, including successful negotiation of scale agreements.

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*.**



Background

Enacted in 1993 and brought into force in 1995, the *Status of the Artist Act* officially recognizes the contributions artists make to Canadian cultural, social, economic and political life and establishes a policy on the professional status of the artist. It also recognizes rights of freedom of association and expression of artists and producers, as well as the right of artists' associations to be recognized in law and to promote the socio-economic well being of those they represent. The *Act* consists of two parts. Part I establishes the Canadian Council on the Status of the Artist, an advisory body which reports to the Minister of Canadian Heritage. Part II of the *Act*, which is under the purview of the Minister of Labour, establishes the Canadian Artists and Producers Professional Relations Tribunal, and puts into place a framework for the conduct of professional relations between artists and producers within federal jurisdiction.

According to article 66 of the *Act*, in the seventh year after the coming into force of the legislation the Minister of Canadian Heritage, in consultation with the Minister of Labour, must undertake a review of the provisions and operations of the *Status of the Artist Act*. The Minister must submit a report on this review to both Houses of Parliament including a statement of any potential changes to the *Act* that the Minister would recommend.

In order to fulfill this legislative requirement, the Department of Canadian Heritage, in collaboration with the Labour Program at Human Resources Development Canada, selected Prairie Research Associates to conduct an evaluation of the legislation. The evaluation, completed in July 2002, consists of a document review of information relating to the *Act*; interviews with 65 "key informants" representing artists' associations, federal producers, government and others; a survey of almost 300 artists; and a survey of federal producers to whom Part II of the *Status of the Artist Act* applies.

Overall Conclusions of the Report

Overall, the evaluation concluded that the statements of principle and the legal framework for collective bargaining contained within the *Status of the Artist Act* continue to have relevance and value. However, it also found that the legislation's impacts are limited by its scope, as the *Act* applies only to labour relations within federal jurisdiction, while the majority of artistic activity actually falls within provincial jurisdiction. However, with the exception of Quebec, and more recently some enabling legislation in Saskatchewan, none of the provinces have enacted legislation aimed at improving the socio-economic situation of self-employed artists. Despite the strong support expressed by key informants and artists for the *Status of the Artist Act*, there is a consensus that the federal legislation by itself is insufficient to bring about significant change in the socio-economic circumstances of artists. The evaluation recommended that other policies and programs be explored to improve the situation of artists, in addition to possible amendments to the *Act* itself.

Government's Landmark Investment in the Arts



In May of 2001, the Prime Minister announced the most significant investment in the arts since the creation of the Canada Council. Subsequently, new programs in support of sustainability, infrastructure and arts presentation, as well as additional funding to the Canada Council for the Arts were announced. This additional support for the arts is extended over a three-year time period. Highlights included:

- *an investment of \$288 million to encourage the growth, development and diversity of the arts in this country, including \$75 million to the Canada Council for the Arts;*
- *an investment of \$24 million to preserve Canada's architectural heritage;*
- *an investment of \$108 million to promote Canadian content on the Internet and to develop the new media industry;*
- *an investment of \$56 million in the book and sound recording industries; and*
- *an investment of \$32 million to help build new markets for Canadian artists and cultural industries.*

Proposed Action Plan

The new and enhanced programs described above impact artists directly through additional investment in organizations, facilities and increased access by Canadians to artistic works. The Government recognizes, however, that there are elements of the working lives of artists which are not addressed through program funding alone. Addressing issues relating to the *Status of the Artist Act* would help us to ensure that our cultural institutions, artists and performers can continue to offer high-quality artistic offerings from a diverse array of disciplines and backgrounds to Canadians and to the world. In so doing, our artists are giving voice to our experiences and perspectives, challenging our perceptions, enriching our quality of life and building a creative Canada.

The Department of Canadian Heritage and Human Resources Development Canada are satisfied with the evaluation conducted by Prairie Research Associates on the provisions and operations of the *Status of the Artist Act*. Their report provides a balanced and comprehensive overview of a complex piece of legislation.

The recommendations in this report have been noted by both the Department of Canadian Heritage and Human Resources Development Canada. These Departments will undertake further policy work which will include consultations with the arts community and other government departments. As a result of this work and consultations, amendments to the *Act* and other related legislation could be developed.