



**CANADIAN CONFERENCE
OF THE ARTS**

**CONFÉRENCE CANADIENNE
DES ARTS**

Status of the Artist in Canada

An Update on the 30th Anniversary of the UNESCO *Recommendation Concerning the Status of the Artist*

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Status of the Artist describes a category of legislation and other public policies directed at improving the economic and social status of professional artists. The concept has two components.

- The important role that artists play in every human society should be acknowledged.
- Government legislation and programs should encourage creative expression and ensure equitable treatment for artists by responding to the atypical manner in which they work.

UNESCO Recommendation Concerning the Status of the Artist

Status of the Artist was first used in a process launched by the United Nations Educational, Scientific and Cultural Organization that culminated in 1980 in Belgrade, when the General Conference adopted the *Recommendation concerning the Status of the Artist*. This was the end of a process of consultation with civil society and discussion among governments about issues of critical importance to the world's artists and creators. The 1980 *Recommendation* is comprehensive in its survey of issues and contains substantive recommendations to governments for concrete actions to support artists.

The *Recommendation* defines "status" as signifying "on the one hand, the regard accorded to artists [...] in a society, on the basis of the importance attributed to the part they are called upon to play therein and, on the other hand, recognition of the liberties and rights, including moral, economic and social rights, with particular reference to income and social security, which artists should enjoy." It then addresses issues and recommends government actions on the following:

- Employment, working and living conditions of artists.
- Recognition of the rights of their professional and union organizations.
- Social status, including measures to ensure equivalent status to other workers in areas such as health and insurance.
- Protection of freedom of expression and protection of intellectual property rights.
- The education and training of artists.
- The importance of arts education.

- Measures related to income, support during periods of unemployment, and retirement issues.¹

The UNESCO *Recommendation* was embraced by artists and their associations, who welcomed the depth of the recognition and scope of the recommendations. They left Belgrade with high hopes that governments around the world would act on the issues in the coming years.

CANADIAN ISSUES

To understand the issues that have an impact on the social and economic circumstances of professional artists, and how these apply in Canada, it is important to look briefly at the atypical way that artists do their work.

The work of artists has certain defining characteristics and each artist will combine a few or many depending on the nature of their art. While some of the individual characteristics are shared by other professions, taken as a whole for all artists they create a pattern of work very different from most others in the labour force.

- Most become an artist because of their love of the art form. A person must first of all love to dance, paint, write, sing, act or play a musical instrument, and they often do so for many years before becoming a professional.
- They can spend a substantial amount of time preparing to earn income, in training, rehearsal, study, research or in creating a finished product.
- They sometimes work for a number of engagers simultaneously, or for none at all. They may sell nothing for long periods and then suddenly a great deal.
- They often have to train and rehearse even when they are working, either as an artist or outside their art.
- Experience and skills are no guarantees of marketplace success. The creative element of the work is difficult to define and perhaps impossible to teach.

¹ The UNESCO *Recommendation* can be found at http://portal.unesco.org/en/ev.php-URL_ID=13138&URL_DO=DO_TOPIC&URL_SECTION=201.html

- Many professional artists must supplement their income with revenue generated from part-time work outside their area of professional expertise, in order to survive economically. For some, this may come to represent the bulk of their income.
- Because of the creative nature of the work, they often have an ongoing economic interest in their completed work, either through copyright law or contracts, and they can receive income from it long after the work is finished.

There is a distinction between creative artists (such as authors, visual artists, composers and designers) and interpretive artists (such as actors, dancers and musicians) since the artists in these categories generally have different working relationships and are engaged in different ways for purposes of earning artistic income. Creative artists are more likely to work on their own to create their art and will often do so without a pre-existing contract. The works will be sold after they have been created, although some may be created under a commission or contract. Interpretive artists are more likely to work in an ensemble and to be engaged by someone else for professional purposes. They are asked to give life and meaning to an artistic work created by others.

According to census data and studies on the cultural labour force,² the number of professional artists is growing rapidly; a high proportion of artists are self-employed; artists are highly-educated but their earnings are low compared to other Canadians; and their income can fluctuate dramatically from year to year. Most artists do not have access to the social benefits generally enjoyed by other Canadian workers, such as paid vacations and holidays, income maintenance when there is no work or they are sick; maternity/paternity and adoption leave; medical, dental and life insurance; and retirement/pension plans.

An overarching concern is the generally low levels of income earned by professional artists. According to analyses of census data, the average annual income for artists overall is \$23,500, or 26 percent lower than the average earnings for the labour force as a whole, despite the fact that over 40 percent of artists have completed university degrees, certificates or diplomas, compared with 22 percent for the overall labour force. Other relevant figures include:

- Between 1991 and 2001 earnings in the arts increased at a lower rate than for the overall labour force (26 percent versus 29 percent).
- Artists are in the lowest quarter of average earnings of the 500+ occupation groups surveyed by Statistics Canada.

² Hill Strategies Research Inc, July 2004.
http://www.culturalhrc.ca/research/G738_CHRC_AnnexA_intro_E.pdf

- Statistics Canada calculates that a single person living in a community of 500,000 or more is “low-income” if they earn \$18,400 or less. Average earnings in some arts occupations are less than or close to this cut-off point, including:
 - dancers (\$14,500)
 - artisans and craftspersons (\$15,500)
 - musicians and singers (\$16,000)
 - other performers (\$18,200) and
 - painters, sculptors and other visual artists (\$18,700).

These characteristics play out in Canada to create the following challenges for artists and their professional organizations.

Taxation

Maintaining status as an independent contractor or freelancer is essential for most artists. This is the case because it enables them to deduct their legitimate business expenses against earned income and because they (rather than their “employer”) would have the first copyright interest in the works they create.

The exceptions to this general rule are musicians employed in some symphony orchestras; dancers employed in most companies; and isolated other artists with long term contracts. These artists generally create ephemeral works and thus have limited opportunity to receive residual income. On the other hand, under Canada Revenue Agency rules, they may claim certain expenses against employment income, such as costs associated with the purchase and maintenance of a musical instrument, and all employed artists may claim expenses up to lesser of \$1,000 or 20 percent of the artistic income.

Key issues that arise with respect to the tax status of artists and their income include:

- A number of artists who are acknowledged as professionals in the community are not considered to be professionals by the Canada Revenue Agency under the “reasonable expectation of profit” test. Thus, they are considered to be hobbyists and ineligible to deduct their legitimate expenses against income. This can be the case even for artists who have received grants from one of the arts councils which give awards only to recognized professionals.
- Over the years, the Canada Revenue Agency and its predecessors have periodically reassessed certain artists on longer-term contracts to be employees rather than independent contractors. This results in the disqualification of legitimate business expenses for the artists and a requirement to pay Employment Insurance premiums. It also brings a requirement for the company to contribute retroactive EI and Canada Pension Plan premiums, and penalty payments, a challenging situation for not-for-profit

organizations. Some reclassifications may have affected the copyright ownership or residual/royalty income, but these cases were resolved. These reclassifications have caused much tension between the arts community and tax authorities for many years.

- The income of artists can fluctuate greatly from year to year. For example, a writer may spend several years researching and writing a work which can generate income in a future year when it is published or made into a movie. While this income is compensation for many years' of work, it is fully taxed in the year it is received. A 2004 government study of the income of 14,000 Québec artists found that income of over one quarter of artists fluctuated at least 50 percent from year to year due to the nature of their work. These artists pay higher taxes than they would if their income were more stable. Various studies have shown there is an equity problem in the taxation of fluctuating income.
- Many artists, particularly younger artists or those who are exploring new artistic forms or media, rely on grants or prizes they may receive from arts councils, competitions, foundations and other sources. These grants are taxable and there are special CRA rules regarding expenses. Others who receive analogous income, such as lottery winners and athletes, are not taxed on this income.

Social Benefits

Their status as independent contractors and generally low levels of income mean that many artists do not enjoy equivalent social benefits to other workers. Key issues include:

- Aside from those few artists who have long-term contracts with well-established companies, artists generally do not have the benefit of employer-based insurance and pension programs. Some may enjoy insurance and health benefits through a spouse or partner, or through employment outside of their art.
- All Canadians participate in the Canada and/or Québec Pension Plan. As independent contractors, artists are required to pay both the employer and employee premiums. Due to the low average earnings of artists, some may not contribute at all in certain years and many do not contribute at the highest level. Therefore, they will qualify to receive only minimal benefits in their retirement years. This problem is compounded for artists in fields like dance where careers are relatively short and must end at an early age either because of injury or the aging process. The bigger issue for artists however is simply finding the necessary income to survive in the present, let alone to contribute to a plan for retirement. For many artists, making the contribution to CPP/QPP is a significant challenge. The Québec study of 14,000 artists found that more than one quarter (26.7 percent) did not contribute to any pension/retirement fund in 2001.

- The relationship of artists to the Employment Insurance program is challenging. While a small step forward, the new EI special benefits program for self-employed people will not resolve a significant problem, and an inequitable situation that exists for some artists. If an artist is employed at another job and also receives self-employed income from their art, they are ineligible to collect regular EI benefits when they are not working, even though they may make maximum premium payments from their employment.

Training and Professional Development

- Like other workers, artists must keep their skills and knowledge current. In the recorded media, the pace of technological change is breathtaking. As independent contractors, artists generally do not have access to public retraining programs, particularly where those are funded through the EI program. Because individual engagers of artists generally need access to a diverse pool of talent, there is little incentive for them to fund training, since they may end up training an artist whom they will never engage again.
- Unlike most other professionals, some artists also have significant career transition issues. For example, the average age at which professional dancers leave the career in Canada is the early 30s, the age at which other professionals are just entering their prime earning years. Some actors will also need to transition from their career because of the industry's obsession with youth and beauty, or due to physical issues. This transition can be challenging emotionally and financially for individuals who have invested so much of themselves for a generally meager economic return.

Health and Safety

- All Canadians enjoy basic public health coverage. But few artists enjoy supplementary coverage through an employer.
- Particular concerns affect some artists. For example, visual artists may be exposed to hazardous chemicals or toxic materials. A simple sore throat may be a nuisance to most, but a serious impediment for a voice performer. Dancers have special physical challenges, as may some musicians; the work of a stunt performer is risky by its nature.
- A few artists may receive coverage under provincial workers' compensation programs when they are working under a contract with an engager or producer. But others may have no protection for a work related injury, such as a visual artist, or a musician who must rehearse daily to prepare for the next opportunity.

Collective bargaining

In some sectors, particularly performing arts and the recorded media, where artists work in ensembles, artists associations and unions have achieved some successes. Beginning in the 1940s, they have negotiated voluntary recognition agreements with groups of engager/producers. Artists covered by these agreements generally enjoy compensation and other contractual provisions that are superior to artists who are not covered by collective agreements. Artists covered by agreements may also receive RRSP payments, health insurance and other benefits.

While unions and guilds of creative artists were organized in the 1960s and 1970s, they have generally been unable to negotiate collective bargaining agreements. The difficulties for these unions and guilds arise because:

- For some artists, contracting takes place only after they have created the work.
- Many artists work alone and are contracted individually by the publisher, producer or gallery. Thus, there is little collective strength.

When Status of the Artist was first on the agenda in Canada, the integrity of the existing agreements was being threatened.

- Investigation by competition authorities arising from complaints that, since these were not agreements reached with trade unions, they were not exempt from the provisions of the *Competition Act*.
- In the recorded media sector, production was shifting from federal jurisdiction (directly by broadcasters) to provincial jurisdiction (independent producers).
- Labour boards were increasing the scope of who is covered by the various Labour Relations Acts to include “dependent” contractors. Where this approach was taken federally, it affected the jurisdiction of existing artists’ unions at the CBC, and where this approach was taken provincially it threatened the integrity of the existing national agreements of organizations such as ACTRA, Canadian Actors Equity Association, and the Directors’ Guild of Canada.³

Thus, it is not surprising that these issues were front and centre in the early considerations of Status of the Artist and not surprising that the legislation federally, as well as in Québec, sought to resolve them.

³ For a more detailed analysis of these issues, see the collective bargaining section of this Report: <http://www/tpcs.gov.sk.ca/Status-Artist-EN>

For many organizations in the cultural community Status of the Artist continues to be equated with collective bargaining rights.

Other Issues

There are a wide range of areas in which the everyday reality of artists creates other issues. Some examples are:

- The availability and affordability of housing and workspace for artists is an important concern, particularly in the visual arts and crafts. The nature of the profession and the generally low and fluctuating income make it essential for many professionals in these fields to live and work in the same space. This can create health and safety concerns, and challenges with local zoning by-laws.
- Children are used regularly in the performing arts and the recorded media. They have particular physical and educational needs, and sometimes their interests are different from their parents. Typically, child welfare authorities and school officials are reluctant to intervene and leave it to the industry to self-regulate.
- Because of their status as independent contractors, artists are often disadvantaged if an engager, publisher or gallery goes into bankruptcy. Examples have included visual artists being unable to reclaim their works which were being sold on a commission basis by a bankrupt gallery, and books being liquidated when a publisher has gone into bankruptcy overriding the ongoing royalty interest of the authors in their works.

Community responses to the issues

Before looking at public policies responses, it is important to note that the community has developed many of its own programs which attempt to level the playing field for professional artists. There are myriad examples across the country, from local initiative to major national programs.

Virtually all associations, guilds and unions of artists are working to improve the rates and conditions of their members through collective agreements, codes of conduct, training and professional development programs, etc. In many sectors, the engagers, publishers and producers collaborate in these efforts.

There are many insurance schemes. The Writers Union of Canada and the Periodical Writers Association of Canada have group insurance plans available to members on an individual basis, with premiums payable by the artist. The program includes life insurance, extended health care and basic dental. The Directors Guild of Canada (DGC) similarly has life insurance, extended health and dental benefits, with premiums contributed by engagers. The American Federation

of Musicians of the United States and Canada (AFM) offers accident disability, critical illness, health and dental plans, with premiums paid by the artist.

Other unions, such as the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), Union des artistes, Canadian Actors Equity Association and the Writers Guild of Canada (WGC) have comprehensive insurance schemes for their members. In most cases, premiums are paid by the engager, in some cases deductions are also made from the artist's contractual fees. The Actra Fraternal Benefits Society, the largest of the sector programs, now offers coverage to a wide range of individual artists beyond their ACTRA/WGC base, where the individual artist is prepared to pay their own premium. A new insurance program designed in collaboration with a coalition of writer organizations launched in 2010.

There are a number of retirement plans. The AFM has a registered pension plan for its members. This is unique in the sector and could not be replicated today, since the Canada Revenue Agency would require an employee/employer relationship to exist as a prerequisite to registering a pension plan. Thus, all of the others are Registered Retirement Savings Plans. Artists' contributions are sometimes supplemented by contributions made by their producer/engagers. The Québec study of 14,000 artists found that just over one-half contributed to a registered retirement savings plan in 2001.

The Actors Fund of Canada provides emergency assistance to professionals in the entertainment industry from all over Canada. Similar benevolent funds are found in other sectors.

The Performing Arts Lodges works to provide affordable housing for senior professionals in the performing arts. There are homes for senior artists in Toronto and Vancouver, active Chapters in other centres and plans to expand into other communities in the coming years. PAL also pioneered a volunteer assistance program called Supporting Cast which provides companionship, personal care and health assistance to individual colleagues.

The Al and Malka Green Artists' Health Centre is located at the Toronto Western Hospital. The Centre offers both medical and complementary care to professional creative and performing artists. The specialized expertise focuses on the specific health care issues and needs of artists, providing a holistic approach to health within an evidence-based framework. The knowledge acquired through the Artists' Health Centre will benefit artists across Canada and internationally through e-health communications and research.

The Dancer Transition Resource Centre is an organization which assists dancers in their transitions into, during and from their professional performance career. It provides information, counseling and retraining grants.

Often in collaboration with provincial governments, the sector has spawned a number of specialized health and safety initiatives. These include various safety guidelines for film and television production, and the performing arts, in Ontario, British Columbia, Québec and elsewhere.

In the area of training and professional development, Canada has many excellent professional training programs, from the National Theatre School, to the Banff Centre and the Canadian Film Centre. The federal government's Canadian Arts Training Fund provides essential funding to many of these. They also receive substantial support from the private sector and other levels of government.

The greatest training gap concerns the needs of existing professionals to keep their skills up-to-date given the rapid pace of technological change. There are many sector programs, involving associations and unions, together with the engagers, but these are constantly searching for funding, and often cannot qualify for existing programs that are tied to EI eligibility. At the national level, in 1995 the sector launched the Cultural Human Resources Council, which brings together representatives of arts disciplines and cultural industries to address the training and career development needs of employers and cultural workers including artists, technical staff, managers and all others engaged professionally in the sector. There are provincial sector councils in a number of provinces. These Councils have studied the training and professional development needs in various sectors and have developed concrete programs to address the most critical gaps. They also encourage and support initiatives launched in the sector. But here as well, the challenge is to obtain funds for the essential initiatives.

FEDERAL INITIATIVES – *STATUS OF THE ARTIST ACT*

Canada responded to the UNESCO *Recommendation* by creating the Siren-Gélinas Task Force on the Status of the Artist which reported in August 1986. The 37 recommendations urged action by all levels of government on taxation, copyright, collective bargaining rights, payment of professional rates by governments and their agencies, social benefits, health and safety provisions, education, training and freedom of expression.

In response to the Siren-Gélinas *Report*⁴, the federal government appointed an Advisory Committee on the Status of the Artist, comprised of artists and officials from associations and

⁴ Task Force on the Status of the Artist (Siren-Gélinas). *The Status of the Artist: Report of the Task Force*. Ottawa. August 1986.

guilds, which drafted and recommended adoption of a *Canadian Artists Code*⁵. This led to the enactment of the federal [Status of the Artist Act](#), which was proclaimed into law in June 1992.

Part 1 of the *Act* outlines important principles, including:

“The Government of Canada hereby recognizes:

- (a) the importance of the contribution of the artists to the cultural, social, economic and political enrichment of Canada;
- (b) the importance to Canadian society of conferring on artists a status that reflects their primary role in developing and enhancing Canada’s artistic and cultural life, and in sustaining Canada’s quality of life;
- (c) the role of the artist, in particular to express the diverse nature of the Canadian way of life and the individual and collective aspirations of Canadians;
- (d) to propose measures, based on research and studies, to improve the professional working conditions of artists....”

Part 1 also enables the creation of the Canadian Council on the Status of the Artist as a vehicle to give voice to the concerns of the artistic community and to recommend appropriate action by the government. While a temporary Council was appointed in 1991, its appointment was never confirmed by the Governor-in-Council as required by the *Act*. It effectively ceased to function in 1996, roughly a year after the substantive provisions of the *Act* were implemented. As reported below, the Council was eliminated in 2010.

The operative provisions of the *Act* are found in Part II, which establishes a legal framework to govern the relations between associations, guilds and unions representing professional self-employed artists and producers operating in the federal jurisdiction.⁶

Canadian Artists and Producers’ Professional Relations Tribunal

The Canadian Artists and Producers Professional Relations Tribunal (CAPPRT) was opened in 1993 and began to operate in May 1995 when the *Act* came into force. The functions of the Tribunal are: defining the sectors of cultural activity that are suitable for bargaining; certifying the artists’ associations to represent these sectors and; hearing and deciding complaints that may be filed by artists, associations or producers

Certification by the Tribunal gives an artists’ association the exclusive right to represent self-employed artists in a specific sector with respect to collective bargaining and their relations with producers. The *Act* establishes rights and obligations of the certified associations, rules for bargaining and use of pressure tactics, and minimum standards for the agreements.

⁵ Canadian Advisory Committee on the Status of the Artist. *A Proposed Act on the Professional Status of the Artist: Canadian Artists’ Code*. Ottawa. 1988.

⁶ The *Act* can be found at http://www.capprt-tcrpap.gc.ca/eic/site/capprt-tcrpap.nsf/eng/h_tn00043.html

2002 Review of the Act

As required by the Act, the federal government undertook a review of the legislation in 2002. Prairie Research Associates, an independent firm, interviewed key informants, surveyed artists and offered several recommendations, including:

- While the Act serves a useful purpose, “the Department of Canadian Heritage may wish to explore other policies and programs to improve the socio-economic circumstances of self-employed artists.” The authors noted that in the perception of most artists and arts administrators, a perception which appears to be confirmed by the available data, the Act has not improved the economic status of professional Canadian artists.
- Since other organizations funded by the government provide advice on behalf of artists, there may be no role for a Council.
- A series of comments on CAPPRT relating to its procedures, a recommendation for additional authority in the case of first agreements and an analysis of the continuing independence of the Tribunal.⁷

One of the observations emerging from the report was that, after close to 10 years operation, CAPPRT had largely accomplished its primary function of certifying associations of artists for purposes of collective bargaining. It has now certified 24 associations as exclusive bargaining agents in 26 defined sectors. As an apparent consequence of the legal recognition of artists’ associations, the competition authorities closed their investigations of the collective agreements of several unions.

More studies

While the [official response](#) to the review was superficial, the report did seem to trigger a renewed interest in the topic among officials in the Department of Canadian Heritage who commissioned several new studies. One reviewed Québec’s copyright income exemption and estimated the cost of this measure to the provincial treasury. Another was a *Report on Improving the Socio-Economic Situation of Canadian Artists*, prepared as an update of a 1993 fiscal issues report, which was completed in January 2005. Neither report has been released publicly.

⁷ Prairie Research Associates. *Evaluation of the Provisions and Operations of the Status of the Artist Act*. Ottawa. July 2002. Report is available at www.pch.gc.ca

PROVINCIAL INITIATIVES

Québec is the World Leader

In 1987, the government of Québec enacted Canada's first legislation in this field, *An Act Respecting the Professional Status and Conditions of Engagement of Performing, Recording and Film Artists*. The following year, the province enacted *An Act Respecting the Professional Status of Artists in the Visual Arts and Crafts and Literature and their Contracts with Promoters*. Both Acts have been amended since they came into effect.

Collective Bargaining and Contracts

In each case, the primary purpose of the statute is to recognize the unions, guilds and professional associations representing artists, and to regulate or encourage collective bargaining between them and the producers, promoters and employers who engage artists.

In the Act covering performing, recording and film artists, there is explicit acknowledgement that those covered by the *Act* are independent contractors. Since 1987, there has been only one case where artists on long term contracts in the covered sectors in the province were reclassified as employees by Revenue Canada, and this was resolved.

The key difference between the two *Acts* is that the one governing performing, recording and film artists, in a sector with a long established history of voluntary collective bargaining, includes a provision for first contract negotiations and an arbitration process if the parties are unable to reach agreement within a set time. The other *Act* has provisions requiring the use of individual contracts between the artists and their engagers and promoters, and provides authority for the government to establish minimum standards for such contracts through regulation.

Fiscal Issues

The government followed its legislation with a number of important initiatives. In the process, it has become the leading jurisdiction in the world with respect to improving the socio-economic situation of its artists and implementing the provisions of the UNESCO *Recommendation*. Québec was the first jurisdiction to implement special legislation on Status of the Artist and it has the broadest range of measures that address explicitly the particular circumstances of individual artists.

In 1995, the government introduced a measure to provide that annual copyright income up to \$15,000 received by creators can be deducted from their taxable income for provincial income tax purposes. The copyright income tax exemption was expanded in 2003 to include income earned by authors through the public lending right and the limits were raised to \$30,000 on a

declining basis. The budget in 2004 again expanded the income that qualifies for the deduction, adding copyright income received by performing artists (neighbouring rights). That same budget established a limited system of income averaging for artists with fluctuating income through the purchase of a qualifying annuity.

Other Issues

The province also has some creative measures, such as coverage for workers compensation purposes of performers when they participate in the reimbursement program for training classes administered by the Regroupement québécois de la danse and when training is not covered in their work contract.

In 2004, the Québec Minister of Culture issued an action plan on the improvement of the socio-economic conditions of artists, entitled *Pour mieux vivre de l'art*. The document reviews issues such as workplace safety, pensions, income security and employment insurance. It includes an invaluable study of the income tax returns of 14,000 Québec artists. Later that same year, the Minister of Culture created within the ministry the *Secrétariat permanent sur la condition socio-économique des artistes* and appointed a permanent advisory committee, comprised of representatives of the arts and culture sector.

Some contemporary developments in Québec are covered below. Work continues on a number of fronts and the Advisory Committee is looking at various issues. In March 2010, a ministerial task force tabled 25 recommendations regarding the two pieces of legislation. A consensus was reached on several of these, including providing authority for the governing tribunal to receive complaints alleging bad faith bargaining, making the legislation technology neutral and including the restoration of historical structures in the definition of *Métier d'art*. Further actions are likely and discussions remain active.

Saskatchewan

The province first considered the Status of the Artist issues in 1992 but took no action.

In 2002, Saskatchewan adopted legislation which identified equity for artists in the workforce as a key issue. It also launched a process to implement “practical measures” to improve the situation for professional artists in that province. The Saskatchewan *Act* is broad in its scope and touches on most of the issues addressed in the UNESCO *Recommendation*, including:

- the important contribution artists make to society;
- the right of artists to free speech, freedom to create and freedom to form associations;
- the right and need for artists to earn a living from their art;
- education and training.⁸

⁸ The Saskatchewan *Act* is available through www.publications.gov.sk.ca

In May 2005, a second Ministerial Advisory Committee on the Status of the Artist was appointed and in July 2006, the Committee released its final report.⁹ The 123-page report entitled, *Laying the Groundwork*, outlines three goals of and for Saskatchewan professional artists: engagement in viable careers; access to thriving markets and; access to information that supports efforts to achieve viable careers. The report's 30 recommendations cover the full range of issues.

Following a further study of labour relations, [*The Arts Professions Act*](#)¹⁰ was tabled and approved, and its provisions came into force June 1, 2010. The *Act* has a new definition of professional artist, which is similar to the wording of the 1988 *Canadian Artists Code*, a definition of engager, making the *Act* binding on the Crown, and providing a requirement for written contracts between engagers and artists. An enabling provision permits the government to implement regulations relating to such contracts.

The *Act* recognizes the artist as a professional and emphasizes the importance of fair compensation. Written contracts are now required between artists, including performers, and anyone wanting to engage, hire, or contract them for their work or performance.

Ontario

Like other provinces, Ontario first considered Status of the Artist issues in 1992-3 and undertook extensive research and community consultations, and produced several reports. That process did not bring any action. When it revisited the issues over a decade later, the roll out of the initiative highlights many of the challenges in Canada around Status of the Artist.

In the 2003 provincial election, the platform of Ontario's majority government stated it would create a Minister's Advisory Council for Arts and Culture which would table, within two years, "a Report on the Status of the Artist in Ontario in the 21st Century, to be used to develop Status of the Artist legislation for our artists."

In 2004-05, there was an extensive consultation process, involving meetings, briefs, focus groups and an on-line survey between May and July 2005. There were more than 3,600 respondents to the survey. Given the high response rate and the fact its distribution accurately reflects the demographics in the community by artistic category and age, this data may have substantial and ongoing value if it is made available. For example, of the more than 3,300 individual artists who participated, it was reported that 67.0 percent had to work outside of their artistic activity to survive economically. On average, the respondents spent 67.2 percent of their time on their artistic activity.

⁹ *Laying the Groundwork*, Final Report of MACSA, Regina, 2006 is found at www.publications.gov.sk.ca

¹⁰ <http://www.publications.gov.sk.ca/details.cfm?p=30198>

The Report of the Status of the Artist Sub-Committee¹¹, which was dated October 2006, was released on-line days before Christmas. It has 23 recommendations, including new funding for the arts council, new programs and funds for training and business development, housing initiatives that benefit artists, and actions on health care, marketing and promotion, and arts infrastructure development. The Sub-Committee recommended that legislation be introduced that would include tax measures such as a provincial tax credit based on a range of eligible expenses and measures to provide standard protection for children working in the performing arts. On the issue of collective bargaining, the Sub-Committee recommended a time-limited process to review collective bargaining issues and to seek a consensus among all stakeholders.

The government responded with the *Status of Ontario's Artists Act, 2007* which was passed later that year. The purpose of the Act is to "recognize that artists make contributions to Ontario's economy and quality of life." The operative provisions of the Act are modest. The first assigns responsibility to the Minister to develop "a strategy on arts and culture to guide the development of policies as they relate to artists" and authorizes the appointment of a committee to advise the Minister on these issues. The second provides that the first weekend every June will be Celebrate the Artist Weekend. A final section commits the Government to undertake to do certain things, such as implement marketing strategies, facilitate training programs, and promote health and safety, etc., "as far as it considers it reasonable and appropriate to do so." The only reference to collective bargaining is oblique; the Government undertakes to "strengthen the ability of arts and culture organizations to provide support to artists."

A concrete outcome of the process was the development and launch of www.ontarioartist.ca, a website filled with information for professional artists. There is information on these topics: tax and business information; funding, grants and awards; legal and copyright; health and safety; marketing; professional development and training; and associations and organizations. Importantly, the information is not just limited to Canadian government and industry sources; for example, in the health and safety section for visual artists and craftspeople, there is a link to an excellent Arizona website which has detailed and extensive information about various hazardous materials they may use.

When the recent process began in Ontario, there was considerable enthusiasm among Ontario artists. Thousands of artists and their organizations participated in the public consultation process, and the report of the Advisory Committee was greeted warmly. However, the fact the report was released surreptitiously may have hinted at coming disappointments. The mood shifted dramatically with the tabling of the legislation.

¹¹ *Report on the Socio-Economic Status of the Artist in Ontario in the 21st Century*, Status of the Artist Sub-Committee, Toronto, 2006 is available at www.macac.on.ca

At best, the Ontario government actions are seen as being far too modest. There is yet no concrete action that will improve the daily working lives of Ontario artists or assist them to make a living as professionals. The Premier's Award announced in 2006 is given for the "arts", not for an artist. The Celebrate the Artist Weekend is seen cynically as a "take a starving artist to lunch" initiative.

Others in the community believe that government actions reveal a serious misunderstanding about the very purpose of a Status of the Artist project. An early statement in the proposed legislation is "artists make contributions ... by strengthening and invigorating our arts and culture sector." They point out that artists don't "make contributions (to the) sector," they are the heart of the sector. Without them there is no "arts and culture sector" as it is the artists who give expression to culture. The proposal to develop an arts and culture policy is seen as missing the point. While artists would welcome a coherent policy, Status of the Artist is about acknowledging and improving the situation of individual professional artists.

The Ontario government did increase the budget of the Ontario Arts Council as recommended by the Advisory Committee. But some note that 75 percent of OAC resources are granted to arts organizations and only 15 percent flow to individual artists. Obviously, some organizational grants are used to engage artists. However, as the only funding measure adopted from the Advisory Committee report, it seems to reinforce a producer-driven view of arts and culture, rather than the artist-centred approach implied by Status of the Artist.

Other Provinces

British Columbia

The province first began to consider Status of the Artist issues in 1992 and commissioned a number of studies and reports over the next few years. But, little came from these initiatives. It has not subsequently considered the issue and the current challenge in the arts community relates to surviving in the face of massive cutbacks in provincial arts funding made in 2010.

Meanwhile, the British Columbia Labour Relations Board has been the most aggressive in the country in finding that artists can be considered "employees" for purposes of labour relations in the province. This has had enormous implications, particularly in the film and television production sector. To be valid in the province, an agreement must be negotiated and ratified locally. This has led to a restructuring of organizational relationships. For example, the Union of British Columbia Performers, the B.C. division of ACTRA, is responsible for negotiating and administering an agreement to cover independent producers who work there. This agreement has a number of substantive differences from the nationally-bargained agreement that applies in every other province.

Newfoundland and Labrador

In March 2006, the government released *Creative Newfoundland and Labrador: The Blueprint for Development and Investment in Culture*¹². In its schematic outlining The Culture System, the report places the artist at the very centre, and developing and nurturing creative talent is seen as a fundamental requirement for developing the creative economy. Among the ten aims of the strategy are to; “support excellence in artistic endeavour,” and “improve the conditions under which professional artists and other cultural workers create and produce.”

Strategic Direction One is to recognize and support professional artists. It acknowledges that many professional artists live a “fragile existence with low incomes and a general lack of employment benefits full-time workers take for granted.” Among other measures, the government commits to recognize the special place of professional artists in the creative economy and to improve their living and working conditions. It pledges to accomplish this “by exploring the feasibility of Status of the Artist legislation and a Newfoundland and Labrador Artists’ Code. Topics to be looked at include labour relations and collective bargaining rights in the arts sector; possible improvements through taxation measures; pension plans; and professional development and training.”

Work continues in the province and new programs and policies respecting the arts provide some place for artists. Additional actions are anticipated in the coming months.

CONTEMPORARY DEVELOPMENTS CURRENT ISSUES

Freelance Tax Status

The Canada Revenue Agency has developed special rules which acknowledge that the timeframe for artists to become profitable may be longer than for others. This gives latitude to investigators to extend the assessment period during which an artist would be expected to have “a reasonable expectation of profit.” While a welcome development, some professional artists continue to be considered as hobbyists by the tax authorities.

In an important ruling in March 2006, the Federal Court of Appeal set aside the decision of the Tax Court and the determination of the Canada Revenue Agency, and found that dancers were not employees of the Royal Winnipeg Ballet. The Court awarded costs to the RWB. The Court found that the tax authorities had erred by giving insufficient consideration to the intention of the Company, the individual dancers and the union, who all understood the artists to be self-

¹² *Creative Newfoundland and Labrador* is available at www.tcr.gov.nl.ca/tcr/publications/2006/culturalplan2006.pdf?

employed. This decision has stabilized the situation for the present time but has not resolved it permanently. The CRA continues to insist that each situation is unique and must be analyzed on its merits and the Court acknowledged that the intention of the parties is only one factor.

Copyright

Copyright protection is essential for the livelihood of most professional artists. For the third time in recent years, in June 2010 the federal government introduced into Parliament a bill that would amend Canada's woefully out-of-date *Copyright Act*. The other two bills did not proceed. While it is beyond the scope of this report to analyze the provisions of Bill C-32, it is interesting to note that the two umbrella organizations which bring together virtually all of the artists' associations, unions and guilds, in Canada and Québec, believe that the legislation would be bad for creators. Droit d'auteur|Multimédia|Internet|Copyright (DAMIC) and the Creators Copyright Coalition (CCC) will be working in the coming months to seek significant changes to the Bill so that it will benefit individual artists rather than erode existing protections.

Canadian Council on the Status of the Artist

In March 2010, the federal government eliminated the Canadian Council on the Status of the Artist. While the Council has not existed since the federal *Status of the Artist Act* came into effect, the official elimination of the Council would seem to signal a retreat from one of the principles of the *Act*.

Employment Insurance Special Benefits for the Self-Employed

In November 2009, the Canadian government announced that self-employed Canadians can enroll in the Employment Insurance program and become eligible to receive maternity, parental, compassionate care and sickness benefits effective 1 January 2011. Self-employed people who enroll will be required to pay the standard employee premium on insurable earnings up to the regular maximum.

While this program is designed for the entire self-employed workforce, it has relevance for artists and a detailed analysis of its potential impact can be found at www.culturalhrc.ca.

According to that analysis, the program is potentially of most interest to freelance cultural workers who have insurable earnings as an employee, do not already make the maximum premium payment, and do not otherwise enjoy benefits comparable to the EI special benefits. In the Ontario survey, two-thirds of artists reported earning money outside their art, often from employment. The 2004 Québec study found that a third of artists reported both employment and freelance income, and 11 percent of artists had received an employment insurance payment in the previous year. Enrolling in the program and topping up their premiums will maximize the special benefits they are eligible to receive.

The program might be of moderate interest to established professional artists who earn a consistent and reasonable living exclusively from self-employed work, either in their artistic

field or outside of it. If the person does not have any other equivalent benefits, they may see this program as a reasonable way to obtain important insurance coverage.

There are several elements of the new EI program that mitigate its effectiveness for artists and demonstrate that the unique situation of artists was not considered in its design:

- Once you claim benefits, you must remain in the program as long as you earn income. Even if an artist is no longer creating new works, many will continue to receive income from works they created years before, such as royalties, residuals, public lending right, exhibition right and other copyright payments, for the rest of their lives.
- The minimum net self-employed income must be \$6,000 each year (this is the amount for 2010 and it will be adjusted in future years). Thus, the program will be of little value to many artists, either because they fall below this amount or because their income may fluctuate above and below this threshold from year to year.
- Even if an artist is unable to work due to childbirth or sickness, they may receive income from works created previously. This will reduce the benefits payable during their leave.

Senior Artists Research Project

In 2006, a group of artists' associations and individuals came together in response to the growing awareness that senior Canadian artists are experiencing significant challenges. Before they could develop the programs and services to respond to these challenges, they realized they needed quantitative data. In 2009, they launched the Senior Artists Research Project, a three-year project which is investigating the circumstances, situation, needs and interests of Canadian senior artists, looking at what services are presently available to them, and examining relevant international models.

The research has confirmed that senior artists experience challenges in the areas of finances, housing, health/isolation and career, some of which are shared by other seniors and some of which are unique to artists. The group is now working on how to collaborate to meet the needs identified in the research.

Collective Bargaining

The impact of the federal and Québec efforts to provide a legislative framework for the collective bargaining between artists' associations and their engagers has been mixed and generally not substantial.

The Federal Act has not significantly changed collective bargaining in the cultural sector. While the work of the established artists' associations has been given a secure legal footing, there has been only minor expansion of jurisdictions to areas that had previously operated outside a

union agreement. To date, the certification process has not brought collective agreements in sectors in which such agreements did not exist prior to the entry into force of the *Act*.

The Guild of Canadian Film Composers is still trying to reach agreement with the CBC. Canadian Artists' Representation/Le Front des artistes canadiens (CARFAC) and the Regroupement des artistes en arts visuels du Québec (RAAV) have been negotiating with the National Gallery of Canada on behalf of visual artists for many years. In October 2010, CAPPRT will consider an application brought by CARFAC and RAAV alleging that the Gallery is bargaining in bad faith. CARFAC has also concluded a new schedule of conditions for galleries, but this is a voluntary code of appropriate fees and conditions and not a collective bargaining agreement. The code has no more force of law than any code promulgated before the enactment of the federal *Act*.

The reason that the *Act* has not changed bargaining in the sector is primarily because of the narrow scope of federal jurisdiction. Outside of the CBC and other broadcasters¹³, National Film Board, National Arts Centre, National Gallery and a few other agencies and selected government departments, few artists are engaged to work under federal jurisdiction.

In Québec, on 1 July 2009, the *Commission de reconnaissance des associations d'artistes et des associations de producteurs* was abolished and responsibility for the two *Acts* was transferred to the *Commission des relations de travail* (CRT), the provincial tribunal overseeing all labour relations in provincial jurisdiction. The CRT is now in charge of the recognition of associations of artists and producers, as well as the definition of the bargaining sectors. At the same time, the province expanded the film *Act* to include certain technical functions in the film and television sector.

The Québec *Acts* have had a greater impact than the federal law. They have provided to the established unions a legal foundation for the voluntary agreements they had already been able to negotiate with producers in the province, and have allowed them to enforce their jurisdiction over some productions that had previously taken place outside of the agreement. In publishing, visual arts and crafts, individual contracts are now standard. However, even in Québec, associations of creative artists have not been able to negotiate new agreements with their engager/producers.

There have also been challenges in certain areas, including:

- When the Québec film and television production association (APFTQ), applied for recognition as a producers' association under the *Act* and therefore legally responsible

¹³ According to *Profile 2009, An Economic Report on the Canadian Film and Television Production Industry*, in-house production by broadcasters represented 22.2 percent of total production activity. This was primarily news and some current affairs programming which tends to use journalists employed by the broadcaster. See <http://www.cftpa.ca/newsroom/pdf/profile/profile2009-en.pdf>

to bargain on behalf of all producers working in the province, the U.S. film and television producers and distributors threatened to boycott Québec. The challenge was resolved at the bargaining table, with a special status being given to the U.S. producers in bargaining with provincially-based unions and guilds.

- After several years of bargaining between the Writers' Guild of Canada and the Québec producers' association respecting English-language scriptwriters, the parties reached a settlement in 2004. Some of the agreement provisions vary from the provisions of the agreement negotiated nationally between the WGC and the Canadian Film and Television Production Association (CFTPA). It took WGC and CFTPA several years to satisfactorily resolve the claim by the producers that these provisions were more favourable than the national terms.
- When the Directors Guild of Canada applied for recognition, several of the classifications it has historically represented were found not to be "artists." Issues around bargaining between DGC and the Québec producers remain unresolved.

It is likely that Saskatchewan's *The Arts Professions Act* will expand the use of individual contracts between engagers and artists.

Arising from decisions of the British Columbia Labour Relations Board, ACTRA has tabulated the ratification vote on its national agreements on a provincial basis for many years. Other unions do something similar. In 2006-07, ACTRA and the CFTPA were involved in a challenging round of negotiations and ACTRA engaged in the first strike in its history, in every province outside British Columbia. In moving to a strike, ACTRA followed the rules in each province and rolled-out the strike call based on provincial labour laws and mediation efforts. ACTRA argued that its members are covered by these statutes, that it is a trade union and that its agreement is a legal collective agreement. The producers challenged ACTRA's legal authority to take strike action asserting that ACTRA members are not employees (or dependent contractors), that they are outside the scope of provincial labour laws and that the agreement is not a collective bargaining agreement. The labour boards found in ACTRA's favour in Ontario and Nova Scotia, and may well have done elsewhere if the strike had not been settled.

INTERNATIONAL SURVEY

UNESCO

In 1997, UNESCO convened the World Congress on the Status of the Artist to assess the progress made, and to continue the dialogue. The Final Declaration noted: "The 1980

Recommendation is more relevant than ever and is an indispensable source of inspiration for the state and for society.” It reiterated many of the observations made 17 years earlier in all of the areas covered.

As a consequence of this Congress, UNESCO launched its Observatory on the Status of the Artist, which was designed to contain information on best practices and legislation in specific countries and regions. Unfortunately, little substantive and authoritative information has been accumulated by the Observatory. For example, the only information you will find about Canada are copies of the federal and Québec *Acts*. The more recent legislation from Saskatchewan and Ontario are not included, there is no information about special rules that do exist, such as the various CRA Interpretation bulletins that deal with the situation of artists, and there is no analysis or interpretation to assist a user. When the author met with UNESCO officials and offered to provide relevant, accurate and up-to-date information about Canada, the response was that this could not happen since UNESCO is an intergovernmental agency that relies on its members (governments) to provide the information.

Best Practices from other Countries

It is extremely difficult to make comparisons between countries on these issues. The first reason is because there are very few people who understand them fully, as the paucity of Canada’s information on the Observatory illustrates. There is also no universally accepted definition of the employment status of artists. Finally, as in Canada, the situation can vary substantially between different types of artists, different parts of the country, and most particularly between creative and interpretive artists.

However, some patterns are clear and there are some concrete examples of “best practices” provided below, from Western Europe, North America and Australia. In general, there are three overriding models for providing rights and benefits to artists.

- In some countries, particularly the Nordic countries and the former socialist countries that are now in the European Union, social programs have been adapted to deal with the reality of the work of artists.
- In countries such as France, Belgium and the United States, some categories of artists are deemed to be employees, and this enables them to obtain relevant benefits.
- In virtually every country, there are some provisions that have been designed uniquely for some categories of artists.

A significant study on the Status of the Artist undertaken by Ericarts for the European Parliament in November 2006 summarized several innovative or alternative measures:

“Contractual or employment relations

- The "presumption of an employment contract" model for performers and a special status for "intermittent artists" (France);
- A "quasiemployed" status for self-employed artists who are economically dependent (Germany);
- Simplified procedures for freelance artists to create limited partnership companies (Hungary);
- Various types of administrative, contractual and financial services for artists, such as the "portage salarial" (France) or the "tiers-payant" (Belgium).

Collective bargaining (labour law)

- Extension of negotiating rights to self-employed or economically dependent artists (Germany).

Social security measures

- Extension of all forms of social insurance including unemployment benefits to all artists (Belgium);
- Social security funds for all self-employed artists (Germany);
- Special social funds for independent artists (Austria), for stage professionals or writers (Italy);
- Voluntary unemployment insurance for self-employed (Denmark);
- Social assistance for low-income professionals (Netherlands, Luxembourg);
- Alternative means to fund social security contributions (France, Germany);
- Adjustment of the qualifying criteria for social insurance (France, Italy).

Taxation (in several countries)

- Flat-rate professional expense deductions;
- The spreading of income and expenditure over several years;
- Reduced VAT rates (equivalent to Canada's Goods and Services Tax, or Harmonized Sales Tax);
- Tax exemptions for self-employed artists."¹⁴

Tax Rules

Perhaps the most famous measure of all is the tax exemption for creative artists (visual artists, writers and composers) resident in **Ireland**. All earnings derived from sales of artistic works or copyright fees to a maximum of €250,000 are exempt from income tax for the year in which the claim is made. The only tax on this income is a 5 percent Pay-Related Social Insurance scheme, which provides a minimal level of insurance and pension. In February 2006, the Canadian Council of Chief Executives released *From Bronze to Gold: A Blueprint for Canadian Leadership*

¹⁴ The Report is available at www.ericarts.org

in a Transforming World. The CCCE is composed of the chief executives of 150 of Canada's leading enterprises. Among other recommendations, the CCCE called for taxes on creativity to be abolished and cited the Irish model as an example.

Income averaging is a widely used mechanism to support artists and other independent contractors. **Sweden, Germany, the Netherlands, France,** and the **United Kingdom** each have income averaging measures. **Australia** classifies artists (along with a few other categories such as inventors and sportspeople) as "special professionals" who can average income for tax purposes for a period of up to five years. In January 2005, **Australia's** Taxation Office published a ruling which addresses "the principles to be applied in determining whether an artist is carrying on a business as a 'professional artist'." A key distinction from the Canadian test is that the "profit motive" is considered to be pivotal, thus relying on the intention of the taxpayer.

In **Germany**, most professional artists are covered by tax laws as freelancers, with an ability to deduct professional expenses against earned income. In some cases they can deduct a lump sum on their turnover instead of deducting individual expenses. Occasional artists may deduct 5 percent of their turnover and self-employed writers and journalists can deduct 30 percent; in each case to a maximum amount. In **Bulgaria, Poland** and **Slovenia**, creative artists can deduct 40-50 percent of earnings generated from their artistic work without documenting or detailing expenses.

In **Australia** and the **United Kingdom** arts grants are income tax exempt. In several other countries, grants may enjoy an exemption, depending on their purpose and duration.

Grants and Financing

Grants can be provided as a kind of "salary" to outstanding artists in **Sweden, Finland** and **Norway**. These income schemes can either be for a defined period in an artist's career (for example at the beginning or near the end), or for life. What distinguishes the Nordic model is that funding is directed at individual artists, not to support artistic objectives, but rather to support the individual artist who has achieved a certain artistic excellence. These grants are awarded by arm's-length experts in consultation with the appropriate professional association. In **Finland**, these grants have also been used to ensure that retired artists receive the full benefits from the public pension program and to compensate for years when the artists' income was low.

In the **Netherlands**, artists whose incomes are below a certain level can claim a social security benefit the same as other citizens under the *National Assistance Act (ABW)*. However, under the *Income Provision for Artists Act (WIK)* there are special rules to support artists in launching their careers. Young artists can receive a basic income (70 percent of welfare payments) for a period of four years to help build their professional careers. An independent advisory board decides on applications. This incentive does not prevent artists from selling their work and collecting a value of up to 125 percent of the benefit they receive. They are entitled to use this

provision for a maximum of four years, which do not necessarily have to be consecutive, but artists must claim it within a period not exceeding 10 years.

Social Benefits

Certain artists in **France**, including directors, stage managers, cinematographers and sound and lighting technicians, have always been considered to be employees and are covered by the Labour Code. In 1969, special legislation provided that performing artists are also considered to be employees and thus covered by the Code, except in limited circumstances. This means that all provisions apply to them including minimum pay rates and a comprehensive benefits system providing medical care, protection for workplace accidents, wage continuation in the case of illness or disability, unemployment benefits, professional training, holidays and vacations, maternity leave and a retirement plan.

While writers, visual artists, photographers and others similar creative artists are not considered to be employees under the Code in **France**, a special social security insurance package is available for professional artists with minimum earnings of roughly €7,000. The Maison des artistes manages this scheme for the government and acts as the “employer” of some of these categories, and an equivalent body plays the same role for photographers, illustrators and authors of software programs and audiovisual works.

In **Croatia**, independent artists have the right to retirement and disability payments and to health insurance on the basis of their artistic work and the contributions are paid by the state budget.

In **Germany**, the *Kunstler Sozialkasse* (KSK) was established to provide independent artists with some social security protection. It covers health insurance and pensions, but not unemployment benefits. The artist contributes 50 percent of the premium, the government pays 20 percent and enterprises “regularly using artists’ work” pay 30 percent. In 2000, more than 112,000 artists were registered:

- 39 percent visual artist;
- 26 percent musicians and composers;
- 24 percent authors, journalists and translators;
- 11 percent performing artists.

Changes in 2005-06 in **Belgium** created a social security system for all professional artists, offering a comprehensive range of benefits. As in **France**, effectively, the scheme is premised on artists being deemed to be employees. A 13 percent deduction is taken from the fees of the artist and a 35 percent contribution is paid by the employer. Artists have access to public funds to compensate their share of social security costs. If an artist certifies that they are providing services on a self-employed basis, they will be required to make all of the social security payments themselves and they will be eligible for a far less comprehensive package of benefits, but will have greater scope in deducting business expenses from their income.

The social benefits available in the **United Kingdom** are funded by contributions made by employers and deductions taken from employees. Employed workers have Class 1 benefits, while freelancers pay for their own benefits as either Class 2 or Class 4. Actors have a true Dual Status, since their employers are required to make contributions on freelance income for Class 1 benefits, while they continue to enjoy the ability to deduct all legitimate expenses against their earned income and yet still have certain legal rights in their performance as freelancers. Class 1 benefits include a full range of protections, from medicare, disability insurance, unemployment insurance, to pensions.

In the **United Kingdom**, other freelancers pay both portions of the National Insurance Contributions for a reduced level of benefits. Some unions operate programs to supplement the public scheme for such freelance artists.

Income Maintenance

The general unemployment insurance system in **Denmark** is based on voluntary membership in an unemployment insurance fund. A self-employed artist who has to “close his business” will be entitled to benefits if a number of conditions are met such as membership in an unemployment insurance fund for at least one year and full-time self-employed activities for at least 52 weeks within the previous three years.

Provisions relating to specific financial remuneration for periods of unemployment for freelance artists exist in three other European countries, **Sweden, Belgium** and the **Netherlands**, but each is limited in scope and the amount of compensation paid. The challenge of determining when a freelance artist is “unemployed” also remains for these systems. For example, a few years ago in **Belgium**, a musician, novelist and sculptor each had received unemployment benefits. However, as each continued to practise their art (by playing, writing and sculpting) during the period of benefits, they were declared ineligible and ordered to repay the benefits, even though they had not received payment, or sold their art work during the period in question.

In the **United States**, performers and others engaged in the performing arts, and film and television, are considered to be “employees.” Under U.S. tax laws, all employees may deduct business expenses. This also means that unions and guilds are covered by the labour laws and that the producer is the first owner of the copyright in their work. But, these artists are entitled to collect unemployment benefits in appropriate conditions. Once again, there may be some difficulty collecting benefits because of the intermittent nature of the work and the need to practise and rehearse. However, while Ronald Regan was President, there was a famous photograph of his son, Ron Jr., lining up to collect unemployment benefits when he was laid-off from his job as a professional dancer.

Future Opportunities

The 2006 European Report prepared by Ericarts was preparatory to adoption, by the European Parliament, of a resolution on the social status of the artist. While culture is in the competence of member states to decide, since artists in one member state have a right to work in another member state, and this is becoming increasingly common, the differing national systems for taxation and social benefits is highly problematic. There are several studies which show how these differences affect professional artists, usually negatively, and work to discourage mobility. As a result, the European Commission has begun to take steps to address this issue and it is widely expected that, over the next few years, efforts will be made to harmonize the rules. This creates a real opportunity for artists and their association to work for positive changes.

The European Parliament resolution calls on member states to adopt measures to improve the situation of artists in the areas of “contracts, social security, sickness insurance, direct and indirect taxation and compliance with European rules.” The resolution then goes on to tackle the issue of mobility and calls on member states and the Commission to introduce a “Europass” for artists, to permit them to transfer pension and welfare entitlements, to have recognition of their professional qualifications in the field, and to coordinate in other ways to enable mobility.

RELEVANCE OF STATUS OF THE ARTIST TODAY

In the wake of the UNESCO *Recommendation* and the Canadian studies, artists in Canada and globally had been anticipating the introduction of concrete measures and programs that would improve their social and economic circumstances. It is fair to say there is profound disappointment about the slow pace of developments in virtually every country. On the 30th Anniversary of the *Recommendation*, the International Federation of Actors (FIA), which represents more than 100 performer unions from around the world, and the International Federation of Musicians (FIM), which represents 65 musician unions, guilds and association from every continent, joined together to issue a Manifesto on the Status of the Artist¹⁵. The Manifesto calls for the following:

- New legal and institutional frameworks geared towards the atypical situation of performing artists.
- A core of employment rights for performing artists.
- Better coordination and clear information to facilitate mobility.
- Strong intellectual property protection for performing artists.
- Involvement of performing artists in decision-making.

¹⁵ The Manifesto can be found at http://www.fia-actors.com/uploads/manifesto_EN.pdf.

In Canada there have been many advisory committees and numerous studies that have examined how to improve the circumstance of professional artists, and all have recommended concrete actions on a range of issues. There are five laws on Status of the Artist which contain (sometimes strong) statements about the importance of artists to our society and the need to improve the social and economic situation of professional artists through legislation and policies. But, outside of Québec, few concrete measures have been adopted federally or provincially, and none of these has made a significant difference to the lives of those who are striving to earn a living as an artist.

Some in the community believe that, after 30 years characterized largely by brave talk and no action, the concept of Status of the Artist should be allowed to fade into historical irrelevance. The concept of “special treatment” is seen by some pundits to be contrary to the market economy or to be adding privileges to what they believe is an already privileged class, and thus the language may be unhelpful. The problems around collective bargaining are complex and seem intractable.

But 2010 is the perfect time for a renewed initiative because, if Canada is to succeed in the digital and knowledge economy of the 21st Century, the skills and talents of its present and future artists are essential.

In a groundbreaking study in 2008, the Conference Board of Canada looked at the culture sector and concluded that the value of the sector to the Canadian economy was far greater than anyone had previously thought.

“The Conference Board estimates that the economic footprint of Canada’s culture sector was \$84.6 billion in 2007, or 7.4 per cent of Canada’s total real GDP, including direct, indirect, and induced contributions. Culture sector employment exceeded 1.1 million jobs in 2007.¹⁶”

But the health of that culture economy, and therefore the future economic health of Canada, depends on having a large and diverse pool of professional artists at the very heart of the economy. Unless we take action today to develop that talent pool and allow it to prosper as an engine of economic growth, we will be left behind.

The government of Newfoundland and Labrador got it right when it placed artists at the very centre of The Culture System and when it said developing and nurturing creative talent is a fundamental requirement for developing the creative economy. They were right when they said that it is essential “to support excellence in artistic endeavour” and “to improve the conditions under which professional artists and other cultural workers create and produce.”

¹⁶ <http://www.conferenceboard.ca/documents.aspx?DID=2671>

Individual associations, guilds and unions of artists will continue to work to achieve positive changes for their respective members, both federally and provincially. They may do this work under the rubric of Status of the Artist or not.

But, it is also an appropriate time for the national community of artists and their organizations to come together around one common objective that would benefit every professional artist in Canada:

Provide in Canada's Income Tax Act that the first \$10,000 of net income earned from artistic activity is free from federal income tax liability.

If backed by a coordinated campaign involving every association, union and guild, such a measure could be achieved in the next few years.

The basic definitions necessary to administer such a provision are already included in the *Income Tax Act* and would be relatively straightforward to administer. In Québec, the tax form includes a separate line for reporting all copyright income. Also, the *Act* already contains unique rules for farmers, fishers, parents, clergy, northern residents, members of the Canadian forces serving in war zones, persons with disabilities, persons who have taken a "vow of perpetual poverty," employees of certain international organizations, Members of Parliament and others.

If enacted, this measure would:

- Be universal and apply equally to all artists regardless of discipline or their career stage.
- Would provide the greatest relative benefit to the professional artists with the lowest incomes.
- Could be seen to compensate for the atypical work pattern.

The public policy rationale for this measure is simple. To ensure success in the digital and knowledge economy, Canada must find a way to ensure it has the artists it needs to drive that economy. This incentive would be a strong tool to achieve that goal.