



Information Bulletin

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Feature: A look at collective bargaining...

...from the vantage point of participants.

In keeping with our mandate of encouraging and facilitating collective bargaining in the arts and culture sector, we use our Information Bulletins to provide information about bargaining. With this Bulletin, we present some observations by people who have been involved in bargaining scale agreements. We hope to make this a semi-regular feature, with voices from both producers and artists' associations.

For this edition of the Bulletin, we talked to Stephen Waddell, Executive Director of the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), and Linda Smith, Manager of Labour Relations at the National Film Board (NFB). The NFB and ACTRA recently concluded a scale agreement under the *Status of the Artist Act*, including innovative provisions for new media – a central issue in collective bargaining in the arts, both in Canada and internationally.

ACTRA Executive Director Stephen Waddell shared his thoughts about aspects of negotiating new media provisions.

On getting to the 2007 Independent Production Agreement with the Canadian Film and Television Production Association (CFTPA): “After the first strike in ACTRA’s history in January and February 2007, we reached an equitable understanding with respect to rates for performers for use of material on new media, both

derivative from television product and also made for new media.

“It was a very complex and challenging process ... to argue [before provincial labour boards, because the independent producers are not governed by the *Status of the Artist Act*] that our members’ agreement was a valid collective agreement, and that artists, in respect of their labour relations, were governed by provincial labour statutes as dependent contractors....

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“Happily after seven weeks, we did find a solution and get to a settlement. Elizabeth MacPherson [at the time, head of the Federal Mediation and Conciliation Service, now Chair of the Canadian Industrial Relations Board] has a number of times proven to be a very valuable mediator in those disputes. She was part of our 1999 negotiations and was helpful bringing us to a successful conclusion in 1999, and also was involved in settling the strike of 2007.”

On the 2008 agreement with the National Film Board: “The NFB agreement is one of our agreements that’s been around the longest. We used to negotiate with the NFB and the independent producers together. They were part of the same bargaining unit until the *Status of the Artist Act* came into effect, and then the NFB chose to withdraw from that group, and we have been negotiating with them separately ever since under the *Status of the Artist Act* provisions.

“The NFB has a lot of use on non-revenue-generating new media – educational use, free material available to people online. For existing material used in non-revenue-generating new media – again, performers’ consent is required – 10 percent of the performer’s net fees is paid as a residual payment for 5 years’ use, or 15 percent for 7 years use. The NFB can secure additional blocks of 5 or 7 years’ periods respectively, provided they continue to pay the 10 or 15 percent for such use.

“For use on revenue-generating new media, they pay the performers a step-up of 10 percent of the fees plus 5 percent of the gross revenue.”

On taking the long view: “... In 2000, we agreed with the CBC to form a working committee to monitor and address the issue of new media, with performers being paid pursuant to the current applicable agreement while we negotiated an understanding. It took until just this past year to

actually reach that understanding [in the 2008 scale agreement].”

**Scale agreement between ACTRA and NFB:
Some provisions regarding new media
(from Article B7)**

- B701** For Use on non-revenue-generating New Media controlled by the NFB, the NFB shall pay to the Performer the following percentages of the Performer’s Net Fees as a residual payment for such use:
(i) 10% for five (5) years Use as of the first day it is made available online or,
(ii) 15% for seven (7) years Use as of the first day it is made available online.
The NFB may secure additional blocks of five (5) or seven (7) years Use, provided that payments for such extended Use are made to the Performer prior to the expiry date of the initial five (5) of seven (7) years Use period.
- B702** For Use on revenue-generating New Media, the NFB shall pay to the Performer ten (10%) percent of the Performer’s Net Fees. In addition to this amount, the NFB shall pay Use fees in the amount of five (5%) percent of the NFB’s Gross Revenue arising from the New Media exploitation of the Production, earned from first dollar of such New Media Use.
- B709** Production “Made for” New Media Upon payment of minimum fees to the Performer as per Sections B or D of the Agreement for a performance in a Production “Made for New Media” only, the NFB shall be entitled to One (1) year Use in New Media. Prior to the expiry of the one (1) year Use period, should the NFB wish to continue distribution of such Production in New Media, the NFB shall pay to the Performer Use fees in the amount of five percent (5%) of the NFB’s Gross Revenue derived from the New Media exploitation of the Production.

On negotiating in a changing technological landscape: “Our first agreement in new media was in commercials, in 1999. That was when we established that we had jurisdiction in new media, and established the minimum rates.

“For the minimum fee the engager would be entitled to use a commercial on a website for 365 days. Sounds good, right? It was an excellent agreement, because it paid the performer for each website in which the commercial was there.

“Well, that was well and good back in 1999 and up until commercial advertising aggregators came into existence. You take a single commercial and you put it through an aggregator, and that same commercial can be on 2500 websites. If you take the session fee of \$600.00 times 2500 websites, you’re talking about 54 million dollars being paid to a performer for such use. So we had to negotiate caps, essentially, on the number of websites on which a commercial could be used.”

On future negotiations: “It’s getting easier, in that once you establish the model, they become variations on each other – one becomes modelled on the other, and a pattern evolves.”

NFB Manager of Labour Relations Linda Smith talked about the process of reaching a scale agreement with ACTRA covering new media uses. The negotiations, she pointed out, rested on a long-standing and respectful relationship and a history of working together towards common goals:

“Back around 2001, we had started a project called ‘Cineroute,’ which used a dedicated broadband on which a number of our films could be viewed within institutions, and we asked the different artists’ associations with which we had agreements if they would like to venture with us in this. The project permitted us to test this new way of transmitting and get some data on the public’s use and reactions to audiovisual works on the Internet.

“From there, we started building to draft letters of agreement which covered, for the most part, what we would be able to put on the digital stream, and what use rights would be paid to do so. Technology was evolving at a very rapid pace and we were convinced that we could not just let it pass by us. We had to show creativity while still respecting rights issues, and it had to be done quickly. As our collection dates back to 1939, we could have gone ahead with many of our productions not under artists’ associations’ jurisdiction, but our goal was to be accompanied in the understanding of this new era. Therefore, we had these discussions with ACTRA and with the other associations we have signed agreements with.

“In 2004 we already had signed a letter of agreement with ACTRA which mostly covered our collection. In our last negotiations we continued to build on our past experience, finally resulting in an article within the scale agreement addressing new media.”

Scale agreements now available through our website

To support the collective bargaining process, the Tribunal now provides easy access through its website to scale agreements between artists’ associations and producers in the Tribunal’s jurisdiction.

Human Resources and Skills Development Canada’s Workplace Information Directorate offers free [on-line](#) access to Negotech, its labour relations database. Negotech is a database of collective agreements from across the country, and includes scale agreements pursuant to the federal *Status of the Artist Act*.

The Tribunal has placed links to Negotech in the “Collective Bargaining” section of its website, to allow instant access to scale agreements

concluded under the *Status of the Artist Act*. This is a continuing project, and new links will be added as the agreements are made available on Negotech.

Negotech has a search and retrieval component and allows customized searches for contract language, for example, by subject (pension benefit, health and safety, etc.), by region, by industry, by union and by company.

What goes into a notice to bargain?

We were asked recently by one of our stakeholders about notices to bargain: what should be included in them, whether there is any specific format, and so on.

Artists' association that have been granted certification by the Tribunal pursuant to the *Status of the Artist Act* have the right, pursuant to the *Act*, to bargain collectively with producers under federal jurisdiction. The first step in the negotiation process is to inform the other party of the intention to begin negotiations. To do so, one party – either the artists' association or the producer – sends the other party a notice to bargain. This is usually done by letter.

Section 31 of the *Act*, which deals with this, does not set specific requirements as to the contents of a notice to bargain, and there is no prescribed format. We suggest that the following information should be included:

- the name of the organization issuing the notice;
- a copy of the Certification Order issued by the Tribunal;
- the provision under which the notice is being issued (section 31 of the *Status of the Artist Act*, S.C. 1992, c. 33);
- an indication of the steps the recipient is expected to take (for example, they should

phone you, you will phone them or you expect a response by a specified date).

It is important to note that paragraph 32(a) of the *Act* requires the artists' association and the producer to meet and begin to bargain in good faith “without delay, but in any case within twenty days after the notice was issued, unless they otherwise agree....”

Subsection 31(5) of the *Act* requires that the party issuing the notice to bargain send a copy of it to the Minister of Labour.

We appreciate it if a copy of the notice to bargain is also sent to the Tribunal Secretariat. It helps us to update the tables available on our website that monitor developments in negotiations.

Certification 101

When we talk to the public, we explain that an important part of our mandate is to certify bargaining agents in the arts and culture sector. Since the meaning of that is not always clear, we're pleased to offer, below, our 60-second full-credit course, Certification 101:

Pursuant to the *Status of the Artist Act*, the term "certification" is used to mean the recognition granted to an artists' association by the Tribunal. Obtaining such certification 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 within federal jurisdiction.

A certification issued under the *Status of the Artist Act* is valid for three years after the date that the Tribunal issues the certification. It is automatically renewed for an additional three-year period, unless a competing application for certification in

respect of the sector, or an [application for revocation](#) of certification, is filed.

Certifications Renewed During the 2008-2009 Fiscal Year

The certifications of the following 12 artists' associations were renewed for another three years in the 2008-2009 fiscal year:

Artists' Association

Renewed for three years on:

CAEA April 25, 2008

- Canadian Actors' Equity Association

AQAD April 26, 2008

- Association québécoise des auteurs dramatiques

CAPIC April 26, 2008

- Canadian Association of Photographers and Illustrators in Communications

SPACQ May 17, 2008

- Société professionnelle des auteurs et des compositeurs du Québec

PWAC June 4, 2008

- Periodical Writers Association of Canada

WGC June 25, 2008

- Writers Guild of Canada

ACTRA June 25, 2008

- Alliance of Canadian Cinema, Television and Radio Artists (Performers Guild)

EAC/ACR November 1, 2008

- Editors' Association of Canada / Association canadienne des réviseurs

PGC December 13, 2008

- Playwrights Guild of Canada

AFM January 16, 2009

- American Federation of Musicians of the United States and Canada

GMO January 16, 2009

- La Guilde des musiciens du Québec

AQTIS March 4, 2009

- Alliance québécoise des techniciens de l'image et du son

Certification Renewals in 2009-2010

Two certification orders have issued so far in:

Artists' Association

Renewal Date

RAAV April 15, 2009

- Le Regroupement des artistes en arts visuels du Québec

CGFC May 23, 2009

- Canadian Guild of Film Composers

The following three certification orders are up for renewal 2009-2010:

Artists' Association

Expiry Date

DGC July 16, 2009

- Directors Guild of Canada

ARRQ December 30, 2009

- Association des réalisateurs et réalisatrices du Québec

UdA December 30, 2009

- Union des artistes

To obtain further information regarding each of these sectors for which an artists' association has been granted certification, please consult our [home page](#) or contact the Tribunal Secretariat.

A reminder: Mediation assistance

When parties are unable to reach agreement in negotiations for a scale agreement or to resolve a dispute under the *Status of the Artist Act*, they may wish to call on the services of a neutral facilitator. Either or both parties may request mediation assistance from the federal Minister of Labour. Mediation is provided by the Federal Mediation and Conciliation Service (FMCS), and is free for the parties. The appointment of a mediator does not affect the right of an artists' association or producer to use pressure tactics as permitted under the *Act*.

For more on mediation, have a look at the [Federal Mediation and Conciliation Service website](#). You might also be interested in the [interview](#) we conducted in 2007 with then-Director General of the FMCS, Elizabeth MacPherson.

Requests for mediation are made under section 45 of the *Act*, and should be directed to:

Minister of Labour
Federal Mediation and Conciliation Services
Labour Program
Human Resources Development Canada
Ottawa, Ontario, K1A 0J2

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Are you currently preparing a course or organizing a
conference on professional relations in the cultural sector?

Tribunal personnel are available to make presentations regarding the
Status of the Artist Act and the role, procedures and activities of the Tribunal.
