

Evaluation of the Provisions and Operations of the Status of the Artist Act

Context for the legislation

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

During the several decades preceding the legislation, intense lobbying by the cultural community, along with a variety of government commissions and task forces, had brought the arts and the economic circumstances of professional artists to the forefront of public policy debate. The 1951 report of the Royal Commission on National Development in the Arts, Letters and Sciences (the Massey-Lévesque Commission) was the first to acknowledge that artists were unable to live by the sale of their work alone, and proposed a minimum subsistence wage as a possible solution.⁽¹⁾ More than two decades later, the federal government, in the "Disney Report," released the first comprehensive portrait of the economic difficulties facing Canadian artists. The report recommended introducing dual status for artists, which would give them self-employed status for taxation purposes while simultaneously permitting them access to programs such as employment insurance and the Canada Pension Plan.⁽²⁾

Although the federal government did not take action following the Disney Report, Canada signed the UNESCO recommendation on the status of the artist (the Belgrade Convention) in 1980. Shortly thereafter, Canada established the Federal Cultural Policy Review Committee (the Applebaum-Hébert Committee) to examine not only the status of the artist, but to perform a comprehensive review of all Canadian cultural institutions and cultural policy. When it reported in 1982, the Committee noted that despite decades of pressure from the arts community and despite artists' overwhelming contribution to Canadian life, [their] living conditions were virtually unchanged; the income of many if not most of these artists classifies them as highly specialized working poor.⁽³⁾

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

changes to copyright rules; and legislation that would recognize organizations representing self-employed professional artists as collective bargaining agents.⁽⁴⁾

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

In November 1989, the Standing Committee on Communications and Culture established a Sub-Committee on the Status of the Artist and gave it a mandate to review previous reports on issues related to the status of the artist. When the Sub-Committee reported in February 1990, it gave a series of eleven recommendations, including implementation of status of the artist legislation that would recognize the professional status of artists and that would give certified associations representing self-employed artists working in areas of federal jurisdiction the right to collective bargaining. The Sub-Committee also recommended that the proposed legislation address a variety of other issues, including a presumption of self-employed status for artists for tax purposes; access to unemployment insurance; compensation for the free use of artistic works in libraries; bankruptcy protection; and the right to set aside part of artistic income in an "Artist Account" on which tax liability would be deferred.

The federal government responded to the Standing Committee Report in May 1990.⁽⁵⁾ It committed to introducing legislation on the status of the artist that would give artists the right to form associations and negotiate minimum employment conditions. It also pledged to address some of the Standing Committee's other recommendations through administrative measures and changes to existing legislation. Among the issues the government proposed to address outside of the new legislation were bankruptcy protection; tax deductions for expenses incurred through artistic work; and tax treatment of charitable donations of works by visual artists.

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

Notes

1. Danielle Cliche. "Status of the Artist or of Arts Organizations? A Brief Discussion on the Canadian Status of the Artist Act." *Canadian Journal of Communications* 21 (2) (1996).
2. Cliche, *ibid.*
3. Report of the Federal Cultural Policy Review Committee, 1982, p. 4.
4. It should be noted that some artists' associations, such as the American Federation of Musicians of the United States and Canada, had been successful over the years in establishing and negotiating scale agreements with many producers. However, all such agreements were established on good faith and had no legal recognition in the courts. Furthermore, because the contract negotiations and agreements reached by associations of self-employed artists did not come under the ambit of the Canada Labour Code, artists' associations could become subject to investigation and prosecution under the Competition Act for conspiring to fix prices.
5. Government of Canada. Government Response to the Report of the Standing Committee on Communications and Culture Respecting the Status of the Artist. May 1990.