

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

Findings

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

Relevance

Among those whose opinions we canvassed in this evaluation, there is almost unanimous agreement that the circumstances that led the federal government to introduce the *Status of the Artist Act* still prevail. Virtually all key informants agreed that the socio-economic position and working conditions of self-employed artists have not changed substantially since 1995, although some qualified their remarks by saying that they lack evidence to substantiate their opinion.⁽⁹⁾ The artists we surveyed expressed a similar opinion. Among survey respondents, more than half (52%) believe that the working conditions and economic circumstances of self-employed artists have not improved since 1995, and almost all (93%) believe that it is impossible for the majority of self-employed artists in Canada today to earn a living unless they supplement their art with non-artistic work.

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

4.1.1 Limitations of the legislation

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

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

Key informants see the limited jurisdiction of Part II of the Act as the most significant factor limiting its ability to bring about changes in artists' socio-economic circumstances. Although the majority of artistic and cultural production occurs outside the scope of the federal legislation, none of the provinces and territories, with the exception of Québec, currently has similar legislation in place.⁽¹⁰⁾ CAPPRT itself, in its latest performance report, noted that compared to the total amount of work in the cultural sector in Canada, the amount of work offered to self-employed artists by producers within its jurisdiction is modest.⁽¹¹⁾ Self-employed artists working in the cultural sector therefore do so, for the most part, without the collective bargaining rights that are available to them under the federal Act. Many of the individuals we interviewed advocated the introduction of complementary legislation at the provincial level.

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

A second perceived shortcoming of the *Status of the Artist Act* is the fact that it is limited to a statement of general principles and the establishment of a legal framework for collective bargaining. Most key informants believe that other measures, in addition to the *Status of the Artist Act*, must be implemented if the economic circumstances of self-employed artists are to improve, and three-quarters of the artists we surveyed expressed a similar opinion. Key informants and some artists recommended introducing a variety of other measures in the pursuit of this objective, including income averaging, tax exemptions on a proportion of copyright income, and access to employment insurance and other social benefits. A few key informants criticized the federal government for what they perceive as its failure thus far to articulate a comprehensive and coherent policy vis-à-vis artists. They argued that although Part I of the *Status of the Artist Act* sets out important statements of principle, few concrete measures have been introduced to put those principles into practice.

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

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

Although the jurisdiction of the Act and its restriction to labour relations are seen, by far, as the most significant limits on the Act's ability to achieve improvements in artists' socio-economic status, key informants also identified two other constraints. First, the provisions set out in Part II do not apply to third party contractors. Key informants pointed out that sub-contracting is increasingly common in artistic and cultural production, including among federal producers. Second, key informants said that artists who are not members of certified associations can not benefit from the legislation.⁽¹²⁾

These caveats notwithstanding, it bears repeating that with the exception of some producers, there is considerable support for the Status of the Artist Act. The Act is widely viewed as a necessary, though not a sufficient, measure to improve artists' socio-economic status. Furthermore, the Act's provision of a legal foundation for collective bargaining relationships that were previously voluntary, without foundation in law, and (at least in theory) vulnerable to prosecution under the Competition Act is seen as invaluable.

Implementation

4.2.1 Part I: General Principles

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

4.2.2 Canadian Council on the Status of the Artist

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

- to provide information and advice to the Minister of Canadian Heritage in order to ensure the highest quality of decision-making in respect of artists in Canada
- to defend and promote the professional status of artists in Canada
- to maintain close contacts with associations representing artists across Canada in various disciplines of the arts in order better to assess artists' needs and propose useful responses
- to propose measures, based on research and studies, to improve the professional working conditions of artists
- to carry out such studies as the Minister of Canadian Heritage may direct.

The legislation specified that the Council was to consist of seven to twelve members appointed by the Governor-in-Council on the recommendation of the Minister of Communications.⁽¹³⁾ Members of the Council were to sit on a part-time basis. The federal government announced the creation of a provisional Council in February 1991, following the tabling of the Bill on the Status of the Artist in the House of Commons in December of the previous year. In April 1991, the Minister of Communications appointed twelve full-time professional artists, representing diverse artistic disciplines and regions of the country, as members of the Council.⁽¹⁴⁾ The membership of the temporary Council was to be confirmed by the Governor-in-Council upon enactment of the legislation.

For several years following their (interim) appointment, members of the Council met occasionally and engaged in consultations with the artistic community, preparation of policy briefs, and related activities. However, the official nomination of CCSA members

by the Governor-in-Council did not materialize. By the time the legislation was implemented in May 1995, a new government had been elected and was engaged in a fundamental process of reform related to streamlining the number of advisory committees, boards, and Governor-in-Council appointees for which it was responsible. Part of that reform would have seen the Council on the Status of the Artist move from the Governor-in-Council appointments (which require Cabinet approval) to appointments made directly by the Minister of Canadian Heritage. The omnibus legislation dealing with this matter died on the Order Paper, and the federal government simply continued to renew Council members' contracts at the end of March of each year. Eventually, the Council's membership was allowed to lapse; it effectively ceased to function in 1996, approximately one year after the Act was implemented. The matter of appointments has never been resolved.

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

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

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

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

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

4.2.3 Part II: Professional Relations

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

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

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

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

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

4.2.4 Canadian Artists and Producers Professional Relations Tribunal

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

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

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

Key informants who commented on CAPPRT's organization and service delivery structure generally agree that these are adequate to meet the Tribunal's legislated responsibilities under the *Status of the Artist Act*. They reported that the Tribunal has largely accomplished its primary function of certifying artists' associations for the purpose of collective bargaining with federal producers, but has been less active in carrying out other aspects of its mandate, such as hearing matters dealing with failure to bargain in good faith and complaints of unfair labour practices.

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

Table 3: Certified artists' associations	
Association	Date of issue*
Société des auteurs de radio, télévision et cinéma	January 30, 1996
Union des écrivaines et écrivains québécois	February 2, 1996
Canadian Actors' Equity Association	April 25, 1996
Association québécoise des auteurs dramatiques	April 26, 1996
Canadian Association of Photographers and Illustrators in Communications	April 26, 1996
Société professionnelle des auteurs et des compositeurs du Québec	May 17, 1996

Periodical Writers' Association of Canada	June 4, 1996
Writers' Guild of Canada	June 25, 1996
Association of Canadian Television and Radio Artists	June 25, 1996
Union des artistes	August 29, 1996
Playwrights' Union of Canada	December 13, 1996
American Federation of Musicians of the United States and Canada	January 16, 1997
American Federation of Musicians of the United States and Canada	January 16, 1997
Guilde des musiciens du Québec	January 16, 1997
Regroupement des artistes en arts visuels du Québec	April 15, 1997
Conseil des métiers d'art du Québec	June 4, 1997
Association des réalisateurs et réalisatrices du Québec	December 30, 1997
Union des artistes (re: stage directors)	July 24, 1998
The Writers' Union of Canada	November 17, 1998
Canadian Artists' Representation	December 31, 1998
Editors' Association of Canada	September 27, 2001
Associated Designers of Canada	January 4, 2002
Association des professionnels des arts de la scène du Québec	January 4, 2002
*Note that some certifications have since been amended. Descriptions of the certifications can be found at the CAPPRT web site, under "Certification Register." Available at capprt-tcrpap.ic.gc.ca/decisions/registreaccre/index.html	

The Tribunal had received six complaints as of March 31, 2001, of which four were withdrawn or resolved without the need for a hearing. A few key informants believe that the Tribunal will likely hear more complaints in the future as certified associations increasingly pursue negotiations with producers, and will likely also be called upon to review existing certifications and to certify associations to represent emerging sectors. However, a larger number believe that the structure of the Tribunal may be too elaborate for the work it is required to do and suggested that its functions be transferred to an existing labour relations board, such as the Canada Industrial Relations Board (CIRB).

The concept of an administrative merger of CAPPRT with the CIRB is not new. In fact, during the standing committee hearings on the status of the artist bill, there was

considerable debate over an appropriate structure to administer Part II of the Act. At issue was whether the Canada Labour Relations Board (CLRB)⁽¹⁵⁾ or a new, entirely separate board should administer these provisions. The decision to create a separate board was made specifically in order to respond to the unique circumstances and characteristics of self-employed workers.⁽¹⁶⁾

The possibility of merging CAPPRT with other federal labour boards and tribunals was re-examined in a 1998 discussion paper.⁽¹⁷⁾ The paper recommended consolidating the CLRB, the Public Service Staff Relations Board (PSSRB), and CAPPRT into one new board that would have one chairperson but separate divisions, and that would assume responsibilities for duties assigned under the Canada Labour Code Part I, the Public Service Staff Relations Act, and the *Status of the Artist Act*. Among the anticipated benefits of such a merger, the discussion paper cited more efficient use of expert staff resources; greater coherence and consistency of decisions relating to labour relations; improved client service through a single access point and faster turnaround; and reduced costs in the magnitude of \$3 million to \$4 million per year. The discussion paper said that some opposition to the proposed merger from the artistic community could be expected but ventured that any concerns could be mitigated by assurances that CAPPRT personnel would be transferred to the new board.

Similarly, key informants who advocated a merger of CAPPRT with the CIRB pointed out that such a change would not be well received by the arts community, which believes that CAPPRT is more informed about and therefore more sensitive to the concerns of artists than existing labour relations boards. A transfer of CAPPRT's functions to the CIRB could be contemplated, key informants emphasized, only if specialized training were provided to CIRB personnel or if CAPPRT personnel were retained.

4.2.5 Administrative provisions and procedures

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

Application for certification

Most of the certified associations we interviewed, with the exception of those from Québec, said that the application process required a significant commitment of time and/or financial resources and diverted them from their other activities and responsibilities. The different opinion expressed by Québec associations may be due to their past experiences with the certification process under the Québec legislation. Almost all of the certified associations said that the application process is relatively simple and straightforward. In most but not all cases, artists' associations retained legal

counsel; those that did not retain counsel tended to find the application process more difficult. However, these associations reported that the Tribunal was extremely helpful in assisting them through the application process.

Serving notice to bargain

Approximately half of the certified artists' associations we interviewed reported that they have served notice to bargain to federal producers since being certified, and for the most part, these interviewees see the process of serving notice to bargain as relatively straightforward. Associations that have not yet served notice to bargain have not done so for a variety of reasons, including a lack of financial and other resources to undertake negotiation; successful voluntary negotiation of scale agreements with federal producers (i.e., no need to serve notice to bargain); and certifications currently or imminently under review.

Negotiations

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

At present, CAPPRT has no control over whether the parties pursue negotiations after certification or over the results achieved in negotiations. Nonetheless, successful negotiations are among the expected results of the regime it administers; in fact, one of the Tribunal's performance measures is that all certified artists' associations should have negotiated at least one first scale agreement within five years of certification. This target, however, has proven elusive. CAPPRT's Performance Report for 2000-2001 reports that as of March 31, 2001, and of 15 associations that had been certified for five years, seven had negotiated a total of 10 first agreements. Three others had served notice to bargain a first agreement to at least one producer but had not yet negotiated agreements, while five had not yet issued a notice to bargain.⁽¹⁸⁾

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

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

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

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

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

Other procedures and provisions

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

4.2.6 Issues of clarity and interpretation

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

- **The definition of an "artist" for the purpose of the legislation is unclear.** Some key informants criticized the Tribunal for what they regard as its over-inclusive definition of an artist. According to this line of argument, the Tribunal has gone too far in categorizing some cultural workers as artists, such that the

term now encompasses what they regard as non-artistic aspects of the creative process. However, others believe that the Tribunal has been suitably forward-thinking in its broad interpretation of the term. These key informants believe that artistic production is a collaborative process and that, therefore, the term "artist" legitimately refers to a wide range of cultural workers. In a related vein, some key informants argued that the Professional Category Regulations accompanying the Act do not consider some of the artistic functions that should be addressed by the legislation and should be revised. In particular, representatives from some artists' associations believe that the Tribunal erred in certifying editors as "joint authors" under the legislation. These associations believe that editors should be certified as editors, rather than as joint authors. However, this is not possible under the current Regulations.

- **The appropriate scope and content of scale agreements is unclear, particularly with respect to copyright.** The definition of a scale agreement in section 5 of the Act refers to "an agreement in writing between a producer and an artists' association respecting minimum terms and conditions for the provision of artists' services and other related matters." In recent years, some disagreement has arisen over what is meant by "other related matters," and whether, in particular, the term includes copyright. More broadly, a small number of key informants, as well as some respondents to the producer survey, said that certain Tribunal decisions have resulted in uncertainty over which statute properly governs copyright and the fixing of royalties payable for the use of copyright works. This issue is discussed in greater detail below.

4.2.7 Jurisdictional issues vis-à-vis the Copyright Act

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

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

In its certification decision, the Tribunal declined to make the proposed modification. It agreed that the *Status of the Artist Act* is essentially labour relations legislation but rejected the implication that this limits the subject matter that can be bargained under its aegis.⁽¹⁹⁾ An application by the Attorney-General of Canada with the Federal Court of Appeal to set aside CAPPRT's certification decision with regard to pre-existing work was subsequently dismissed.⁽²⁰⁾ In its judgment, the Federal Court noted that "nothing in the certification order indicates the scope of actual bargaining or whether pre-existing works may be included or excluded," and further, that the Tribunal's powers "extend only to the certification of a sector, and not to limiting or expanding matters for subsequent negotiations."⁽²¹⁾

Notwithstanding the Federal Court's position, the issue remains unresolved from the perspective of various interested parties (such as the Society of Composers, Authors and Music Publishers of Canada, and certain federal government departments). These parties maintain that the current interpretation puts the *Status of the Artist Act* in direct conflict with the provisions of the Copyright Act that prescribe that the only remedy for compensation available to a copyright owner is through a collective society that has tariffs approved by the Copyright Board.⁽²²⁾

Most interviewees, however, do not perceive any conflict, either real or potential, between the *Status of the Artist Act* and the Copyright Act. In the majority view, the two statutes treat distinctly separate aspects of artistic production.⁽²³⁾ In fact, the Status of the Artist Act is generally regarded as a unique piece of legislation that complements the Copyright Act, the Canada Labour Code, and the Province of Québec's status of the artist legislation.

4.2.8 Role of other bodies

This evaluation found no controversy over the respective mandates and functions of Canadian Heritage and Human Resources Development Canada. With respect to Federal Mediation and Conciliation Services (FMCS), which provides mediation assistance under Ministerial appointment to parties involved in collective bargaining under the Status of the Artist Act, key informants reported that the service is not often used. To date, FMCS has provided mediation assistance in two instances under the Act. It has also carried out preventive mediation functions, including providing several Interest Based Negotiations and problem solving workshops.

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

Impacts

There is consensus that the *Status of the Artist Act* has accomplished its primary objective of providing a legal framework for collective bargaining between artists' associations and federal producers. Although such collective bargaining had been occurring for decades prior to implementation of the legislation, it was on a voluntary basis only and had no foundation in law. As a result, the legality of these agreements and bargaining relationships was open to challenge under the Competition Act. The Status of the Artist Act has rectified this situation by creating a legal foundation for collective bargaining that previously did not exist.

To date, the legislation has had its most significant impact on professional artists' associations. Certified artists' associations we interviewed reported that certification gives their organizations a legitimacy and credibility they otherwise would not have. Artists' associations value the Act highly for giving them the ability to "speak with one voice" with employers and to bring economic pressure to bear; many associations said that in the absence of the legislation, their ability to represent the interests of their members would be seriously compromised. Overall, many key informants agree that artists' associations are now better organized than when the legislation was first implemented and better able to work on behalf of their members.

On the other hand, with very few exceptions, artists' associations reported that the Act has so far had little effect on the socio-economic circumstances and working conditions of their members. As for the opinions of artists who are members of these associations, many of those we surveyed were unable to answer questions about the impact of the legislation. In fact, although forty-five percent of survey respondents had heard of the *Status of the Artist Act* before they received the survey, just as many had not. Thus, although almost half (47%) of respondents believe that the legislation has made no difference to their own economic circumstances, one-quarter do not know or did not respond. Similarly, only about one in six (17%) respondents believes that the legislation has improved the economic circumstances of professional artists in Canada in general, but almost half do not know or did not respond. The suspicion, expressed in interviews by some artists' associations, that their membership remains largely unaware of or unknowledgeable about the legislation appears therefore to be confirmed by the survey results.

Artists' associations offered three main explanations for the Act's limited impact on artists' socio-economic circumstances. First, many of the larger, more established associations already had voluntary scale agreements in place with federal producers. For these associations, the primary effect of the Act has been to give legal standing to these voluntary agreements. Second, the smaller and more recently established associations, for the most part, have not yet negotiated any scale agreements under the Act. Third, and perhaps most significantly, many artists' associations reiterated that the Act is limited in its ability to achieve improvements in socio-economic status because the majority of artistic and cultural production falls under provincial jurisdiction.

Producers, for their part, reported that the Act has so far had little, if any, impact on their organizations. Some were involved in collective bargaining with artists' associations on a voluntary basis prior to implementation of the Act; others said that the impact of the Act has been negligible because they do not employ a large number of self-employed artists. Some producers did, however, have concerns about the legislation and its potential implications for their organizations. The opinion was expressed that collective bargaining is inappropriate for contracting organizations and that the applicability of the legislation to certain artistic sectors is questionable (the visual arts were specifically singled out). There was also concern that the legislation does not allow for adequate representation of or consultation with producers and that the Tribunal, in its decisions, does not balance the interests of all stakeholders.

At the same time, it should be noted that several producers acknowledged the importance of the legislation for providing a legal framework for collective bargaining and for clarifying the respective roles of artists' associations and producers with respect to professional relations. These ideas were echoed by artists' associations and government representatives, who also praised the Act for providing a democratic process that allows the parties involved to come to their own agreements and for creating predictability and stability within the labour market by establishing normal pay rates.

Notes

1. Pending the release of 2001 Census data, data from the 1996 Census are the most current figures available on artists' earnings.
2. The Province of Saskatchewan has recently tabled and will debate status of the artist legislation.
3. CAPPRT. Performance Report. For the period ending March 31, 2001. Ottawa: Minister of Supply and Services Canada, 2001.
4. Note that artists' associations are certified to represent artistic sectors, not just their members.
5. The Minister of Communications has since become the Minister of Canadian Heritage.
6. Department of Communications. Marcel Masse names members of Canadian Council on the Status of the Artist. News Release, April 9, 1991.
7. Now the Canada Industrial Relations Board (CIRB).
8. Lorraine Farkas. "Self-employed Workers and Collective Bargaining." Workplace Gazette 2 (2) (Summer 1999).

9. Consolidation of Federal Labour Boards: Considerations and Recommendation. Discussion Paper. March 1998.
10. A complete list of notices to bargain and scale agreements is available on CAPPRT's web site at www.capprt-tcrpap.ic.gc.ca.
11. Decision of the Canadian Artists and Producers Professional Relations Tribunal No. 028. In the Matter of an Application for Certification Filed by The Writers' Union of Canada and the League of Canadian Poets. November 17, 1998.
12. The CAPPRT, l'Union des écrivaines et écrivains québécois, the Society of Composers, Authors and Music Publishers of Canada, the Writers' Guild of Canada, and the Playwrights Union of Canada all had intervener status in this matter.
13. Judgment of the Court. File No. A-750-98. The Attorney-General of Canada (Applicant) and The Writers' Union of Canada and the League of Canadian Poets (Respondents). November 15, 2000.
14. Memorandum of Fact and Law of the Intervener: Society of Composers, Authors and Music Publishers of Canada (SOCAN). File NO. A-750-98. The Attorney-General of Canada (Applicant) and The Writers' Union of Canada and the League of Canadian Poets (Respondents).
15. Despite strong opinions on both sides of the issue, the matter is really one for the courts to decide.