

**The Writers' Union of Canada's submission to
the Standing Committee on Human Services
with respect to Bill No. 40 of 2006-07 An Act to
amend the Status of the Artist Act,
Saskatchewan**

February 2007

INTRODUCTION

The Writers' Union of Canada is a national organization representing the interests of Canadian writers, including our membership of over 1,500 professional writers of books, including more than 50 who live and work in Saskatchewan. Since its founding in 1973 by writers for writers, the Writers' Union, with its headquarters in Toronto, has evolved into the national voice for writers of books with a mandate to promote their common interests and foster writing in Canada. We welcome the opportunity to present our views on amendments to *The Status of the Artist Act* to the Standing Committee on Human Services of the Saskatchewan Legislature. Following some general comments, we will focus on the need for an amendment providing for collective bargaining legislation.

Writer Economics

A major goal of the Writers' Union is to improve the economic position of writers. In 2001, the average annual earnings of employed and self-employed Canadian creators were \$23,500.ⁱ Close to one in two creators was self-employed,ⁱⁱ with earnings considerably less than this average and without the private and public employee benefits typically associated with paid, full-time work. By contrast, the average income of the entire working population in 2001, of whom fewer than 10% were self-employed,ⁱⁱⁱ was \$31,800.^{iv} In most creative sectors there has been no substantial rise in income in decades. For example, the average net professional income of Canadian freelance book and periodical writers was measured at \$11,480 in 1998, close to the level it had been in 1979, and this constituted only 39% of the average writer's income, with 61% coming from teaching, editing and other work.^v

Current studies indicate that creators still struggle to get their fair share. In 2005 the Professional Writers Association of Canada found that the average annual pre-tax income of respondent freelancers to its survey of members and non-members, including

part-time freelancers who have other jobs, was approximately \$21,000. The average 2005 income reported by Prairie periodical writers was \$22,284, slightly more than periodical writers in Ontario and British Columbia but less than periodical writers in Quebec, whose average income of \$24,082 made them the highest-earning freelancers in Canada. Most self-employed writers in Canada today must supplement their writing with other work. This is even more necessary for book writers than it is for periodical writers.

Why such modest earnings?

There is an imbalance in bargaining power between creators and producers that generally leads to their undercompensation and frequently a disrespect for their moral rights. This can be partly remedied by collective bargaining. Whatever the legal rights of creators, it must be recognized that the real value of authors' rights is drastically diminished where an individual author cannot afford either to enforce his or her rights through legal action or to risk loss of work or future work by challenging a producer. For this reason, creators look to their organizations for assistance. Organizations representing creators can sometimes support their members by negotiating minimum terms agreements with producers or by recommending model contracts for their members' guidance.

Remedying the Power Imbalance

Minimum terms agreements, often also referred to as "scale" or "framework" agreements, are negotiated between producers' organizations and creators' organizations to establish minimum terms of the engagement of the independent creator by the producer. The creator may negotiate better terms but the producer may not offer less favourable terms. Scale agreements have been negotiated on a voluntary basis by a number of organizations, mainly in or closely tied to the performing arts, for example, ACTRA (Alliance of Canadian Cinema, Television and Radio Artists) Equity (Canadian Actors' Equity Association) and the screenwriters' union (Writers Guild of Canada).

A number of other organizations have not been able to negotiate scale agreements but have “model contracts” and recommend that their members endeavour to obtain terms comparable to the recommended terms. Model agreements have been developed in the writing sector by The Writers’ Union of Canada, the Professional Writers Association of Canada and the Literary Translators Association of Canada. But while these model agreements are useful to creators who negotiate for themselves with producers and may gradually help to raise standards, they are not often accepted by producers because the average individual creator has little bargaining power where there is no labour relations framework.

For creators in some sectors, the necessary leverage may be provided by “status of the artist” legislation, which is unique to Canada.

History of “Status of the Artist” Labour Relations Regimes

The abysmal working and living conditions of writers and other artists have long been widely recognized. In 1989 a federal cabinet minister told a Parliamentary Standing Committee on Communications and Culture that little had changed since the 1951 report of the Royal Commission on National Development in the Arts, Letters and Sciences (the “Massey Report”) stating that:

“No novelist, poet, short story writer, historian, biographer or other writer of non-technical books can make even a modestly comfortable living by selling his work in Canada.”

In 1980 Canada became a signatory to the UNESCO Recommendation Concerning the Status of the Artist. Among the guiding principles set out in this document were recognition of the essential role of art in the life and development of the individual and society and of the consequent obligation of member states to “ensure, that artists have the freedom and the right to establish trade unions and professional organizations of their choosing....”

In 1986 in Canada, the Siren-Gélinas report in 1986 included a proposal for legislation that would recognize artists' organizations as collective bargaining agents for self-employed artists. By 1988 Quebec had enacted two acts on the status of the artist, establishing two different regimes for certification of artists' organizations and collective bargaining in various artistic fields.

A year later, in 1989, the Parliamentary Standing Committee on Culture and Communications referred to above unanimously recommended enactment of federal status of the artist legislation that would deal with professional relations between federal producers and self-employed artists. This led in 1992 to the passing of the federal *Status of the Artist Act*, which became operational with respect to its provisions governing labour relations between federal producers and self-employed artists in 1995. Certification of an artists' organization under the federal *Status of the Artist Act* exempts it from the restraint of trade provisions of the *Competition Act*, which may inhibit or prevent collective bargaining by artists' organizations.

The Writers' Union of Canada was certified as an artists' organization under the federal *Status of the Artist Act* in 1998. However, our members and most other independent writers do all or almost all of their work for publication by producers who are not covered by this federal status of the artist legislation because they are not federal producers, in other words, not federal government institutions or broadcasting undertakings under the jurisdiction of the Canadian Radio-television Commission.

Most cultural work in Canada falls under provincial jurisdiction, and the labour relations regime under the federal *Status of the Artist Act* is consequently of little value to most writers of books. Freelance writers are not protected by existing provincial labour legislation, which deals only with traditional employee/employer relations.

As you know, Saskatchewan's *The Status of the Artist Act* was passed in 2002 but without a labour relations regime though it opened the door for this in future. This is the only issue on which we propose to comment to the Committee, although we recognize that the Committee is dealing with other important issues.

A labour relations regime for self-employed artists and producers

We urge that you recommend a labour relations regime that will provide for certification of artists' organizations representing professional artists and mandatory collective bargaining for minimum terms agreements with producers that would cover all professional artists working in a particular sector. We also submit that producers should be required to negotiate as groups of producers.

The Writers' Union's recommended trade book contract covers a multitude of points that may become important in the relationship between author and publisher such as: When should the writer be paid? What should the minimum royalty be? What is the difference between e-book rights and multimedia rights? What information should go in a royalty statement? When should rights revert? What will happen if the publisher fails to pay or goes out of business?

Some publishers meet most of the Writers' Union's recommended minimum standards and occasionally exceed them for a few authors. Other writers are unprotected in the negotiation process and forced to settle for much less. Individuals often have little bargaining power on their own, and even those who do have some clout frequently do not understand or anticipate the need for certain protections in their contracts. There is consequently a need for enforceable minimum terms agreements. An individual author could negotiate for more, but he or she would get no less than the minimums agreed with a publisher or a group of publishers. This will not happen without mandatory collective bargaining for writers and producers in the provincial sphere.

A labour relations component in the Saskatchewan *Status of the Artist Act* would exempt the artists and producers from competition laws on restraint of trade and would allow artists' organizations in the province, such as the Saskatchewan Writers Guild, to apply for standing as the exclusive bargaining agent for writers in the province and, on their behalf, to negotiate minimum terms agreements with individual publishers or producers or groups of producers. This legislation must also require producers or groups of producers to bargain with creators' organizations and provide mediation services, where

necessary, to assist the parties to reach a contract. This would mean that individual authors, although free to negotiate better terms, would at least be assured of guaranteed minimum terms and basic protections including contributions by producers to artists' pension and benefit plans. It is important to remember that minimum terms agreements are not only important with respect to compensation and working conditions. They have also made it possible for artists' organizations to establish pension plans under existing benefits legislation.

Lessons from the existing status of the artist legislation

In recommending a labour relations regime for self-employed professional artists, we ask that you take note of the problems with the existing federal *Status of the Artist Act* and the Quebec status of the artist legislation governing writers, which contain nothing to ensure that even a first contract will be reached.

Federal legislation provides for the possibility of mediation and of pressure tactics such as cessation of work, which would be totally inappropriate and ineffective in the case of a writer or other artist engaged in solitary work. We do believe that mediation services should be available to facilitate the reaching of first and subsequent contracts. We also submit that collective bargaining must be mandatory and that, if an artists' organization and the producer or group of producers fail to reach a voluntary agreement within a stipulated time frame, and if mediation has failed, there should be binding arbitration.

In Quebec under the status of the artist act which applies to literature, visual arts and arts and crafts, producers are not required to negotiate with artists' organizations and few have done so. Nothing requires producers to form groups in order to negotiate and it is costly and time-consuming for artists' associations to negotiate producer by producer. In any case, no agreements have actually been concluded under this act, and the rights given by this act to artists' organizations to represent their members in negotiating agreements have been of no practical benefit.

Under Quebec's other status of the artist act, which covers self-employed artists in the performing arts, about twelve associations have been recognized. Producers are permitted but not required to form producers' groups, and no producers' groups have been recognized, so negotiations are producer by producer. A collective agreement negotiated binds the producer and every artist in the sector who does business with that producer, not just members of the artists' association that negotiated the agreement. If a producer's association were to be recognized as "most representative" in its field of economic activity, its collective agreements would have even wider application, as they would bind non-member producers as well as member producers working throughout that field.

We do not think it is necessary to have a separate, specialized tribunal to administer the labour relations regime for artists, provided that there is recognition of the necessity to appoint some tribunal members to the Saskatchewan Labour Relations Board who have expertise in the arts to deal with *The Status of the Artist* matters.

CONCLUSION

The Writers' Union of Canada appreciates the work which has been done by the Minister's Advisory Committee on the Status of the Artist and welcome this opportunity to express our support and to participate in this important review by the Standing Committee on Human Services.

The federal *Status of the Artist Act* has had and can have only limited impact on the socio-economic conditions of artists, largely because most work in the cultural sector falls within provincial jurisdiction. We are of the view that a labour relations component in Saskatchewan's *Status of the Artist Act* would hugely benefit artists working in Saskatchewan, but must be established in such a way that it does not permit producers to resile from national agreements that already exist between artists' organizations and producers across the whole of Canada or to prevent national agreements in future.

In conclusion, we call upon you to make recommendations that amend the *The Status of the Artist Act* in Saskatchewan to include effective measures dealing with:

- a labour relations regime for self-employed, professional artists and producers, including certification of artists’ organizations and mandatory collective bargaining for minimum terms agreements with producers’ organizations, with sectoral bargaining, mediation available, and binding arbitration if necessary.

Such a regime will greatly enhance the ability of Saskatchewan’s writers and other artists to continue to create for the benefit of all citizens of Saskatchewan and beyond – including other Canadians and others outside Canada who enjoy the creations and productions of Saskatchewan creators and their producers.

**RESPECTFULLY SUBMITTED
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FOR THE WRITERS’ UNION OF CANADA**

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ⁱHill Strategies Research Inc., “A Statistical Profile of Artists in Canada Based on the 2001 Census,” *Statistical insights on the arts*, v.3, n.1 (September 2004) at 2-3. In which, artists are referred to as those Canadians 15 or older reporting employment or self-employment earnings in any of the following nine occupation groups: actors; artisans and craftspersons; conductors, composers and arrangers; dancers; musicians and singers; other performers; painters, sculptors and other visual artists; producers, directors, choreographers and related occupations; and writers. Hill Strategies Research Inc. notes that the earnings statistics it reports include wages, salaries and net self-employment earnings, but exclude government transfers, investment income and pension income. Moreover it notes that the earnings statistics include amounts received from all employment in 2000, not just the position at which the respondent worked the most hours.

ⁱⁱ *Ibid.* at 15.

ⁱⁱⁱ *Ibid.* at 5.

^{iv} *Ibid.* at 15.

^v *Quill and Quire* survey, September 1999.