

Submission
to the
Minister's Advisory Council for
Arts and Culture

Workers in the
Arts and Cultural Sector:
Status, Organizing and
Collective Bargaining Rights

by the
Ontario Federation of Labour

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Introduction

The Ontario Federation of Labour (OFL) is the central labour body, chartered by the Canadian Labour Congress, representing the majority of unions in the Province of Ontario. The OFL represents approximately 700,000 affiliated members in more than 1,500 affiliated locals. OFL members include hundreds of occupations from public sector employees to construction workers, from teachers to manufacturing workers and a growing number of private and service sector employees. The OFL provides its affiliated unions, union locals and labour councils with services in the fields of communications, education, health care, research, legislative and political action, human rights, health and safety, workers' compensation and arts and labour.

The Importance of the Cultural Sector in Ontario

In 1993, the OFL passed a policy on the arts, *Towards a Living Culture*, that addressed the issues that workers in the cultural industry face on a daily basis. In 1997, the OFL adopted a Policy Paper entitled *Cultural Work* that acknowledged that the arts and culture sector is one of the largest and fastest growing industries in Ontario. It pointed out the important contribution that artists make towards the cultural, social, economic and political richness of Ontario. We also acknowledged that artists by nature have to adopt multiple roles in the workplace to survive. For example, they can be independent contractors one day, dependent contractors the next day and the following week be employees, all the while switching back from provincial to federal jurisdiction. One of the main recommendations in the policy paper was the need for the Ontario government to recognize that artists should have equal access to the same rights as other working people.

The Purpose of the Submission

As a central labour body, the OFL is advocating for legislation that would give collective bargaining rights to those cultural workers who are not able to be represented by a union or association under current labour legislation. It was confirmed by the working group that legislation is needed. An Ontario-specific Status of the Artist legislation would be a way to give thousands of cultural workers, both organized and unorganized, the right to be represented by unions and associations through fair and enforced legislative protections.

The definition of "employee" in the *Employment Standards Act* should be expanded to include artists while maintaining their status as independent contractors for tax purposes. Artists should be entitled to basic rights such as overtime pay and rest breaks.

The welfare of child artists must be a priority. Child artists are an essential part of the performing arts and they need standards enshrined in legislation that protects their physical and moral health, education and earnings.

The Ontario Federation of Labour's Cultural Industries Working Group

The OFL formed the Cultural Industries Working Group as a sub committee of the OFL Arts and Labour Committee. The Ontario Federation of Labour and unions in the arts and cultural sector meet to consider the concerns that workers face in the arts and culture sector. A priority for the working group was establishing guidelines for the implementation of an Ontario Status of the Artist legislation. We gave consideration to three pieces of legislation: the Ontario's *Labour Relations Act*, the Status of the Artist legislation in Quebec and the federal Status of the Artist legislation. The OFL Cultural Industries Working Group formulated a summary of remedies and recommendations that we will outline in this submission. It emphasizes the need for separate legislation for artists who are presently without bargaining rights. The legislation would address their unique working arrangements and empower professional associations and unions to represent artists through the collective bargaining process.

The OFL Cultural Industries Working Group includes the American Federation of Musicians (AFM), Toronto Musicians' Association (TMA), Writers' Union of Canada, Writers' Guild of Canada (WGC), Directors Guild of Canada (DGC), Alliance of Canadian Cinema Television and Radio Artist (ACTRA Toronto Performers) and (ACTRA National), Canadian Artists' Representation/le Front des artistes canadien Ontario (CARFAC Ontario) and (CARFAC National), Canadian Actors' Equity Association (CAEA), Ontario Public Service Employees Union (OPSEU), the International Alliance of Theatrical and Stage Employees (IATSE), Communications Energy and Paper Workers Union (CEP).

Moving Forward: Recommendations for an Ontario-specific Status of the Artist legislation

Cultural workers have variety of classifications. They may be employees or dependent contractors whose union or association can exert organizing, bargaining and representation rights under *Ontario Labour Relations Act (OLRA)*. There are independent contractors represented by a union or association that bargains voluntary agreements with producers and employers setting out minimums for wages, benefits and working conditions. There are workers employed in the sector who are not covered by any voluntary agreements, but are represented by unions/associations.

The one thing that we have to recognize and understand is that many performers, creators and contributors and other artists in the art and cultural sector are unique in relationship to the rest of the workforce. They deserve equal access to all the rights and protections that other workers enjoy.

The OFL and its Cultural Industries Working Group formulated recommendations that focus on the right to organize and the right to bargain collective agreements.

Collective Bargaining Rights

Cultural workers need the right to organize and be represented by a union or association. They should be covered by collective agreements which are enforceable by legislation. There should be a legal mechanism for those in the sector who are not presently covered by legislation or represented by a union or association. This should be done through Ontario Status of the Artist law. This legislation should ensure that the ability to bargain national agreements is not adversely affected by the Ontario Status of the Artist legislation. It should not interfere with unions and associations who bargain effectively through the *Ontario Labour Relations Act*. Status of the Artist Legislation in Ontario should not dismantle current bargaining units.

The Ontario government needs to respect existing statutes, structures and agreements which need to be considered as rights are expanded in this sector. For example, Status of the Artist legislation at the Federal level is designed to allow collective bargaining for independent contractors in this sector. National Agreements exist for many Ontario cultural workers in this sector and any provincial legislation should not interfere these specific agreements. Secondly, the agreements that are used by engagers cover minimum wage, terms and conditions of agreements. Independent contractors and workers should be allowed the ability to individually bargain higher wages and better benefits. Thirdly, Voluntary Agreements exist that should still be allowed to be adjudicated at the Ontario Labour Relations Board if a dispute arises. Finally, Status of the Artist Legislation should improve the status of artists in other areas including access to employment standards, the welfare of child artists, income support for older artists, pensions, training and career transition issues. It would also address equity issues, tax status, role of agents and insolvency rules.

Conclusion

In 1990, the Government of the day proposed legislation to address the needs of artists. The legislation was to cover a number of issues including the tax status of artists, their status under the Employment Insurance legislation and the Canada

Pension Plan. Some Ontario artists who are not covered under Collective agreements and represented by unions like ACTRA, IATSE, CEP-NABET, EQUITY and the AFM are still waiting for those rights to organize and bargain.

In 1992, *"The Status of the Artist in Ontario, Summary of Consultations"* pointed out that the existing provincial and federal legislative framework may be inappropriate for labour rights and social benefits because it does not recognize or take into consideration the unique characteristics of the art's sector. This lack of recognition imposes one of the most serious obstacles for improving the status of artists. Such recognition is a much needed catalyst for establishing the art's sector within the mainstream of Canada's workforce and Canadian society.

Ontario needs Status of the Artist legislation that would recognize the uniqueness and special circumstances faced by artists and their employers when they are not covered by collective agreements. It is necessary for the provincial government to establish a legislative framework to govern relations between artists who are not presently organized and their potential employers.

We urge the provincial government to work with the affiliates and organizations that represent cultural workers to make sure that there is effective Status of the Artist legislation which ensures that all workers in the arts sector have representation rights while doing no harm to those who do.

The Ontario Federation is prepared to continue the proactive and collective work with our affiliates and arts organizations. We are willing to convene more cultural industry's roundtables to discuss the implementation of Status of the Artist in Ontario that would include recognition of bargaining rights for cultural organizations not represented by unions or associations through Status of the Artist legislation.

We look forward to hearing your response to the submission.

Respectfully submitted,

ONTARIO FEDERATION OF LABOUR