



ACTRA TORONTO PERFORMERS'
BRIEF TO THE STATUS OF THE ARTIST SUBCOMMITTEE

of the

MINISTER'S ADVISORY COUNCIL FOR ARTS AND CULTURE

July 11, 2005

I INTRODUCTION

In 1980 UNESCO promulgated its ground-breaking *Recommendation Concerning the Status of the Artist*. In that document, UNESCO stressed the vital importance of art and culture in society, and highlighted the fundamental truth that art cannot thrive without artists. Vibrant, healthy societies must support their artists, improve their status¹ and promote their ability to earn a living through their art.

As part of a comprehensive set of recommendations, UNESCO urged UN Member States to address the following:

- measures to ensure that artists are accorded the same rights and social protection as other workers;
- measures to ensure that the ILO standards relating to work and employment be applied to artists, including standards relating to hours of work, weekly rest and paid leave;
- measures for the protection of child artists;
- measures relating to pension rights for artists;
- measures which take into account in the taxation system the particular conditions of artists' work; and
- measures which recognize the role of professional and trade union organizations in the arts, and recognize the right of artists' organizations to represent and defend the interests of their members, and speak on their behalf in matters of public policy.

Since 1980, Canada and its provinces have been engaged in efforts to translate this *Recommendation* into legislation in order to give enforceable vitality to its principles. Quebec enacted 'status of the artist' legislation in 1988. The federal government followed in 1992. Saskatchewan passed enabling legislation in 2002, and is well advanced in the process of fleshing out the principles adopted in that statute.

Ontario lags far behind. In 1990, the government prepared a background paper on the status of the artist, and initiated extensive consultations during 1991 with the Ontario arts community. In 1992, a report summarizing those consultations was issued. In concluding that report, the Ministry made a commitment to work with the arts community to develop measures to ensure that "the social and

¹ "The word 'status' signifies on the one hand, the regard accorded to artists in a society, on the basis of the importance attributed to the part they are called upon to play therein and, on the other hand, recognition of the liberties and rights, including moral, economic and social rights, with particular reference to income and social security, which artists should enjoy": *Recommendation Concerning the Status of the Artist*, UNESCO, 1980.

economic value of artists is recognized and valued.”² No legislative action was ever taken.

An Ontario *Status of the Artist Act* is long overdue. ACTRA Toronto Performers is pleased to see that the status of the artist is once more on the government’s policy agenda, but is concerned to ensure that *this* time, action follows consultation. We call upon this subcommittee to recommend to the Ontario government *immediate legislative action* based on the following principles:

- recognition of the importance of art and artists to communities and to society;
- recognition of the necessity to provide meaningful social and economic support to individual artists; and
- recognition of the importance of artists’ organizations in promoting cultural and artistic expression and the welfare of artists, and of the need to develop a legal framework which will support and enhance the ability of artists’ organizations to represent their members.

II ACTRA AND ACTRA TORONTO PERFORMERS

ACTRA is a national organization of 21,000 Canadian performers working in the English-language recorded media: film, television, video and all other recorded media. ACTRA Toronto Performers, the largest branch of ACTRA, represents ACTRA members within the important industry centre of Toronto, and currently has 13,000 members.

The aims and objectives of ACTRA, as set out in the ACTRA Constitution, include:

- a) organization and representation of its members and all persons eligible for membership, regardless of national or racial origin, sex, age, creed, colour, disability, marital status or sexual preference;
- b) promotion and protection of the economic, professional and social interests of the members, and the establishment and maintenance of unity of action among its members;
- c) promotion and maintenance of high professional standards among its members;
- d) entrance into agreements with engagers and employers on behalf of the members, and the securing and enhancement of the compensation and conditions of employment;

² *The Status of the Artist in Ontario, Summary of Consultations*, September 1992, Ministry of Culture and Communications, p.106

- e) promotion of the well being of the arts and assistance in the development and perpetuation of the recorded media production and distribution industry;
- f) entrance into agreements, locally, regionally, nationally and internationally, with any other organization(s) that share these aims and objectives;
- g) performance of all such lawful acts as are incidental to or conducive to the attainment of these aims and objectives, and performance of any and all things which a professional association or trade union may do on behalf of its members;
- h) through the ACTRA Insurance and Retirement Plan:
 - (i) maintenance of an insurance plan to provide life, accident, health and welfare benefits for the individuals belonging to ACTRA;
 - (ii) provision for a retirement plan; and
 - (iii) provision for such other plans as may be beneficial for its members from time to time; and
- i) preparation to take any and all action available in the defence of its jurisdiction.

Pursuant to these constitutional objectives, ACTRA and its predecessors have been negotiating agreements for ACTRA members since the 1940s. ACTRA agreements deal with such matters as regulated working hours, meal periods, residual payments, safe sets, health and insurance plans and better protection of child and other performer's rights. It currently has 11 agreements with producers/engagers and their associations, as follows:

- Independent Production Agreement ("IPA")
- Commercial Agreement ("CA")
- Canadian Broadcasting Corporation TV Agreement
- Canadian Broadcasting Corporation Radio Agreement
- CTV Agreement
- Global TV Agreement
- National Film Board Agreement
- BC Master Production Agreement ("BCMPA")
- TVOntario Agreement
- Citytv Agreement
- Vision TV Agreement

ACTRA has been certified by the Canadian Artists and Producers Professional Relations Tribunal under the federal *Status of the Artist Act* since 1996 to represent:

a sector composed of independent contractors engaged by any producer subject to the *Status of the Artist Act* to perform the function of principal actor, actor, background performer, dancer, stunt performer, stunt co-ordinator, announcer, commentator, disc-jockey, host, narrator, panelist, singer, variety principal, sportscaster or puppeteer, in a live or recorded television or radio production intended for broadcast or other use, with the exception of:

- a) independent contractors engaged as performers in live theatre, opera, ballet, dance, industrial show, cabaret show or concert performance within the scope of the certification issued to Canadian Actors' Equity Association on April 25, 1996 and subject to any reciprocal agreements between ACTRA Performers Guild and Equity;
- b) musicians within the jurisdiction of the American Federation of Musicians of the United States and Canada (AFM), as described in the agreement between ACTRA Performers Guild and the AFM dated May 14, 1996;
- c) performers within the jurisdiction of the Union des Artistes, as described in the agreement between ACTRA Performers Guild and the Union des Artistes dated May 17, 1996.

The agreements with the CBC, CTV, Global TV, the National Film Board, City TV, and Vision are negotiated under this federal sectoral certification. The other agreements listed above have been negotiated within provincial jurisdiction pursuant to voluntary recognition agreements with producers/engagers or industry associations. The IPA and CA, while negotiated under provincial jurisdiction, are national in scope.

ACTRA is affiliated with the Canadian Labour Congress and the International Federation of Actors.

III ISSUES THAT SHOULD BE ADDRESSED BY THE SUBCOMMITTEE

ACTRA Toronto Performers urges this subcommittee to recommend comprehensive legislation addressing a number of important issues concerning the social and economic welfare of artists at all stages of their careers and life cycles. ACTRA will address in Part IV of this brief the following specific issues:

- the welfare of child artists
- income support for artists in the following areas:
 - employment standards

- income tax relief
- the welfare of older artists
- career transition issues

ACTRA also requests that this subcommittee support a review of the eligibility criteria and design of certain provincial programmes, such as training and housing programmes, with a view to improving the ability of these programmes to accommodate the unique conditions under which artists live and work.

In addition, ACTRA Toronto Performers urges the subcommittee to recommend a process for addressing, on an urgent basis, the development of a collective bargaining framework for the arts which would enable unions and associations representing artists to negotiate agreements for their members where such agreements do not already exist, and which would support those agreements which have already been negotiated on a voluntary basis. These issues will be addressed in more detail in Part V of this brief.

ACTRA recognizes that some of the issues important to the social and economic welfare of individual artists lie within the jurisdiction of the federal rather than the provincial government. ACTRA calls on the subcommittee to recommend that the Ontario government promote a national policy on the arts, and urge the federal government to enact legislation in its areas of responsibility which will support and enhance the ability of individual artists to pursue careers in the arts with some measure of comfort and dignity. Such measures include:

- income tax measures which would (i) deem artists to be independent contractors for income tax purposes; (ii) provide some tax relief for artists' income; and (iii) permit income averaging of artists' income;
- clarification that artists' organizations and trade unions are exempt from the application of the *Competition Act*; and
- revisions to CPP and EI programmes to recognize the unique conditions under which artists earn their living from their art.

IV MEASURES PROMOTING THE WELFARE OF INDIVIDUAL ARTISTS

(a) The Welfare of Child Artists

ACTRA currently represents approximately 1,750 performers under the age of 19. The conditions under which these children perform have long been an important priority for ACTRA in its bargaining with producers/engagers.

Attached as Appendix A is Article 27 of ACTRA's national agreement with the Canadian Film and Television Production Association (the IPA Agreement). This agreement addresses minimum terms and conditions of engagement for child

performers in the important areas of health, education, morals and safety. Minimum standards have been negotiated addressing such key issues as:

- protection of physical and moral health through:
 - regulation of the length of the working day, rest periods and limitations on overtime;
 - regulation of dangerous work situations;
 - regulation of exposure to moral hazards;
 - mandatory attention to the nutritional requirements of children ;
- protection of education through tutoring requirements;
- protection of earnings through a requirement to put a portion of earnings in trust; and
- mandating parental responsibilities for child performers.

ACTRA urges this subcommittee to recommend that minimum standards for child performers be enshrined in legislation, that such standards address all of these issues, and that such standards in all cases provide no less protection to child performers in Ontario than is currently provided by the ACTRA IPA agreement.

(b) Income Support for Artists

The committee will already have before it the data to support the proposition that artists in this province are substantially over-represented among poor Ontarians (see Ontario Arts Council report, <http://www.arts.on.ca/English/page-1-2016-1.html>). In the spirit of the UNESCO Recommendation, and as a matter of simple justice, measures to improve this situation are urgently needed. ACTRA urges this subcommittee to recommend the following:

- **Employment Standards Act:** The definition of “employee” should be expanded to ensure that all performers obtain the benefit of the minimum standards provided by this act, particularly in such key areas as hours of work, overtime and rest breaks, regardless of whether or not they are classified as independent contractors for tax purposes.
- **Provincial income tax relief:** ACTRA is seeking a significant tax exemption for artists’ income, and recognition of income tax averaging to take fair account of the unstable nature of artists’ income. While we recognize that the interrelationship of the provincial with the federal tax system poses some challenges to Ontario in addressing these issues, they are critical ones for ACTRA members, and we urge the committee to recommend that the government pursue all available avenues for implementing such measures. Quebec has already taken some steps in this direction by providing tax exemptions for certain types of artists’ income, and permitting the averaging of artists’ incomes for tax

purposes over a seven year period.³ The Quebec model can certainly be improved upon. In particular, ACTRA objects to the application of the tax exemption only to copyright income, since this provides no relief for most of the income of performing artists in the film and television industry. The Quebec initiative illustrates, however, that a great deal can be done in this area at the provincial level.

(c) The Welfare of Older Artists

Because artists have been so poorly remunerated, many artists who have contributed enormously and over many years to the cultural life of this province find themselves facing poverty when old age or debilitating illness robs them of their ability to earn a living. Typically, artists do not earn enough to bank significant credit in the Canada Pension Plan, and do not participate in employer pension plans.

ACTRA, through the Actra Fraternal Benefit Society, administers individual RRSP accounts for artists. ACTRA agreements require producers/engagers to make RRSP contributions on behalf of engaged artists. Because of their low earnings, however, ACTRA members do not as a rule have significant RRSP contribution room. Furthermore, many artists are forced to collapse their plans during periods of low or no earnings; in essence, they are forced to use their plans during their working lives as a form of income averaging. They lose both accumulated savings and RRSP contribution room which cannot be recovered. RRSP savings are therefore often not available to artists to fund their retirements.

Artists typically cannot afford to own their own homes. They have a pressing need for retirement housing tailored to their unique circumstances. Toronto arts unions, including ACTRA Toronto Performers, have funded the Performing Arts Lodges of Canada (PAL) to provide housing for older artists who are not able to work any longer, and are in financial need. More assistance is needed to provide affordable housing tailored to the needs of older artists.

We urge the committee to support the following measures of benefit to older artists:

- a statement of legislative principle that Ontario recognizes the contribution of older artists to the cultural life of our province and our communities;
- income support measures for artists throughout their working lives, such as those recommended in this brief, in order to alleviate poverty in old age; and

³ The Quebec provisions, which are very detailed, are more fully explained in Appendix B.

- revisions to the province's housing grants programmes to ensure that these programmes are funded and designed to meet the needs of older artists.

(d) Career Transition Issues

Because of the nature of their engagements, professional performers are often required to supplement their artistic work with other work to “tide them over” between professional work engagements. In addition, many performers are also forced to leave the acting profession well before retirement age. The lack of opportunities available for older actors is an issue that has been identified by the ACTRA's Women's Committee as a particular hardship for women performers over the age of 40. Artists face unique career challenges throughout and after their careers.

Support for training programmes for performers would greatly assist them to lead productive, rewarding lives, both during their artistic careers, and when they are engaged in career transition. Provincial training programmes are often restricted to recipients of Employment Insurance benefits; performers are often ineligible to participate in training programmes because they are not eligible for EI when they are out of work. This is an unnecessary and unhelpful barrier that needs to be removed. Eligibility for regular provincial training programmes would greatly assist artists in their career and post-career stability. In addition, the province needs to develop sectoral training and career transition programmes specifically tailored to the special needs of artists such as those who work in the film and television industry.

ACTRA urges this subcommittee to support a review of provincial training programmes in order to ensure that they are accessible to artists and tailored to their training needs.

V COLLECTIVE BARGAINING ISSUES

Artists' associations and trade unions have played a key role in protecting and improving terms and conditions of engagement for their members, and will continue to do so. The importance of this role, and the need for governments to enact measures which promote freedom of association and recognize the right of artists associations to represent their members are given broad support in the 1980 UNESCO Recommendation.

Many unions and associations in the arts have no history of collective bargaining, and very little bargaining power without a legal framework within which to compel bargaining by those who purchase the fruits of their members' artistic expression. ACTRA is sensitive to the fact that for those unions, a mechanism for collective

bargaining in the industry is a priority. However, as is evident from the description of ACTRA's history and activities in Part II of this brief, ACTRA has had some measure of success in bringing producers/engagers who operate in provincial jurisdiction to the bargaining table on a voluntary basis and negotiating agreements which mandate minimum terms and conditions of engagement for ACTRA members.

This does not mean that ACTRA is not interested in a legislative framework for collective bargaining in arts and cultural industries in Ontario: far from it! But it does mean that ACTRA has a critical interest in ensuring that any such framework improves the situation for its members and does not weaken protections which have been negotiated for them over the years. ACTRA's first priority for new collective bargaining legislation for the arts in Ontario is therefore:

FIRST DO NO HARM!

This may seem like a fairly obvious point, but we make it for an important reason. From ACTRA's perspective, the type of 'status of the artist' collective bargaining regimes which have been enacted federally and in Quebec do little to improve the situation for ACTRA members already covered by ACTRA agreements, and contain elements which may actively damage rights already enjoyed by ACTRA members. In particular, these regimes:

- contemplate that all agreements negotiated under the regime will be "first agreements", and therefore fail to recognize and protect already existing agreements;
- fail to recognize that some artists' unions with mature bargaining relationships have already negotiated agreements on a *national* basis in order to establish *national* industry standards, and will be negatively affected by legislative requirements which focus too narrowly on provincial boundaries artificial to the industry;
- fail to provide an effective mechanism for bringing 'outlier' producers/engagers to the bargaining table, either under the umbrella of existing agreements, or through the negotiation of new agreements;
- limit coverage to artists who are independent contractors, a feature which divides many unions in the film and television industry.

ACTRA Toronto Performers would like to see 'status of the artist' legislation in Ontario that, at a minimum, avoids these deficiencies and provides for the following:

- recognition of the legal status of artists' organizations;
- recognition of the legal status and enforceability of existing agreements;
- support for and promotion of national bargaining within the context of provincial jurisdiction;

- coverage for all union members, without regard to whether they are employees, dependent contractors or independent contractors for income tax purposes;
- an effective mechanism for addressing the problem of non-union producers/engagers.

ACTRA Toronto Performers would like to see such legislation enacted as soon as possible. We believe, however, that it would be premature to enact legislation without more dialogue and consultation with all stakeholders in the arts community. Extensive consultation is the only way to ensure that the legislative model that is ultimately adopted respects the bargaining structures that have evolved over time in some sub-sectors of the industry, and provides clear and positive gains for all participants.

We therefore ask that this subcommittee recommend to the government:

The creation of a stakeholder committee representing artists' organizations and producer/engager organizations to identify and discuss the issues involved in collective bargaining legislation for the arts sector in the Province of Ontario, to report to the Ministers of Labour and Culture within 12 months with concrete recommendations.

VI CONCLUSIONS

ACTRA Toronto Performers urges this committee to recommend that the protections we seek on behalf of individual artists be enacted immediately. ACTRA believes that legislation implementing these measures is severable from the important and difficult issue of collective bargaining in the arts sector, and that the issues addressed in Part IV of our brief can and should be dealt with immediately in an *Ontario Status of the Artist Act*.

It is important not to lose sight of the collective bargaining issue, however, since it is ACTRA's belief that the social and economic welfare of artists is indissolubly and directly linked to the ability of artists' organizations and trade unions to represent their members in collective bargaining. We urge, therefore, that Ontario's new *Status of the Artist Act* mandate a short and effective study and consultation process for a collective bargaining framework, as discussed in Part V of this brief.

APPENDIX A

EXTRACT FROM THE ACTRA-IPA AGREEMENT RE CHILD PERFORMERS

A27 – MINORS

A2701 Preamble The Parties recognize the special situation that arises when Minors are engaged in the workplace. The Parties are dedicated to ensuring a safe environment for all Performers, with extra care given to the proper health, education, morals, and safety of Minors. For the purposes of this Agreement, the term “Minor” shall refer to Performers under the age of 18 years. The term “Parent” shall include the Minor’s legal guardian. Furthermore, the Parties agree that they shall be guided in all respects by what is in the best interests of the Minor, which shall always prevail in the interpretation, application, and administration of the terms of this Agreement. Although the following special provisions apply only to Minors, Minors are also subject to the minimum terms and conditions stipulated elsewhere in this Agreement. In the event of a conflict between Article A27 and the other terms of this Agreement, then the terms of Article A27 shall prevail.

A2702 Violations The Parties acknowledge that a breach or violation of the provisions of Article A27 may result in harm to a Minor, and therefore the Parties undertake to act expeditiously when a violation is alleged to have occurred. In this regard ACTRA and the Associations may agree that the circumstances are such that any time periods or steps established pursuant to the Grievance procedure may be abridged, in order that the dispute may be resolved or breach or default be cured as soon as possible. The Joint Standing Committee shall be entitled to award damages to an aggrieved party for breach of the provisions of Article A27 where the Committee feels such damages are warranted.

A2703 Conditions of Engagement

(a) The Producer shall advise the Minor’s Parent(s) at the time of engagement of the complete terms and conditions of the employment, including, but not limited to, studio; location; estimated hours, including any night shoots (i.e., between 19h00 and 06h00); hazardous work; and special abilities required, including performances where a Minor is asked to perform activity with a level of physical proficiency or other physical skill superior to that of the average Minor. The Producer shall furnish the Parents with a script, plus all revisions, prior to shooting.

(b) In case of night shoots, thirty-six (36) hours’ notice shall be provided to a Parent responsible for the Minor, subject to the exigencies of production. In the event that less than thirty-six (36) hours’ notice is provided, such notice shall be provided to the Minor’s Parent and to ACTRA.

(c) When, prior to the Audition, it is known that a Minor will be required for a night shoot during the course of the Production and it is not possible to provide at least forty-eight (48) hours’ notice of the night shoot, details will be provided to a Parent responsible for the Minor prior to the Audition Call, to allow each Parent to make an informed decision as to whether they wish the Minor to Audition for

the Role.

(d) In the case of work requiring superior physical skill, a description of the activity required will be provided in the Minor's contract, if known at the time of contracting. If not notified at the time of contracting, a Parent responsible for the Minor shall be notified at least forty-eight (48) hours in advance of when the Minor will be asked to perform work requiring superior physical skill. In the event that forty-eight (48) hours' notice cannot be given, the Minor shall not be required to perform work requiring superior physical skill unless the Minor's Parent consents, such consent not to be unreasonably withheld. In such instances, notice shall also be given to ACTRA.

A2704 Parental Responsibilities

(a) The Parent shall familiarize himself or herself with the requirements of the Role as described in the script or otherwise disclosed to the Parent. The Parent shall be given a copy of Appendices 14 and 15. Appendix 14 and, if applicable, Appendix 15 shall be completed and delivered to ACTRA and the Producer after Booking by the Producer, but prior to the delivery of a contract to the Parent, or in the case of a Minor engaged in the Background Performer categories, prior to the commencement of work.

(b) The Parent shall disclose, in writing, any medical history or condition or any attitudinal or psychological condition of which the Parent is aware that might foreseeably interfere with or have an impact on the Minor's ability to carry out the Role for which the Minor is being considered.

(c) Subject to Article A2708(b), where the Parent is not present with the Minor at all times, the Parent shall execute, and deliver with the contract, an Emergency Medical Authorization (see Appendix 15) enabling the Producer to obtain emergency medical treatment for the Minor in the event that the Parent cannot be located immediately when such treatment is required.

A2705 Workday and Rest Periods

(a) Subject to A2705(c), the workday shall not exceed eight (8) consecutive hours per day, excluding meal periods but including tutoring time.

(b) For Minors under 12 years of age, overtime is forbidden.

(c) For Minors aged 12 to 15, a maximum of two (2) hours per day of overtime may be permitted, provided that in the event that a Minor is required to work a cumulative maximum of four (4) hours of overtime on three (3) consecutive days, the Minor shall not be required to work any overtime on the immediately following day, notwithstanding that the Parent consents. Such Minors shall be given rest periods of not less than twelve (12) hours between the end of one workday and the beginning of the next workday.

(d) For Minors under 12 years of age, there shall be a rest period of not less than twelve (12) hours between the time the Minor arrives at home (or place of accommodation while at a Distant Location) and the time that the Minor leaves for the set for the next Call.

(e) When the Producer is required to provide transportation, Minors shall leave the set within thirty (30) minutes of the end of the Minor's working day. The Producer shall ensure that transportation home (or to place of accommodation) is provided for any Minor wrapped after dark.

(f) For Minors aged 16 to 18, the overtime provisions of Article A12 shall be applicable.

A2706 Minimum Call The minimum Call for a Minor under the age of 12 shall be four (4) hours. The minimum fee for such four (4) hours shall be half (½) the minimum daily fees provided for in Article B101. Where the Call extends beyond four (4) hours, the Call shall automatically revert to an eight (8) hour Call.

A2707 Time before Camera or in Rehearsal Minors shall not be continually required before the camera or under lights for longer periods of time during a work session than specified below. Breaks shall be taken away from the set when and wherever possible.

2 years and under 15 consecutive minutes (minimum break 20 minutes)

age 3–5 30 consecutive minutes (minimum break 15 minutes)

age 6–11 45 consecutive minutes (minimum break 10 minutes)

age 12–15 60 consecutive minutes (minimum break 10 minutes)

A2708 Presence of Parent

(a) A Parent of a Minor under 16 years of age must be at the studio or the location and accessible to the Minor at all times when a Minor is on set and must accompany the Minor to and from the set or location, and shall have the right to accompany the Minor on hair, makeup, and wardrobe calls, if the space can accommodate the Parent, and provided that the Parent is not disruptive.

(b) The Parent shall advise the Producer if and when he or she will be present. When the Parent is not present, a responsible chaperon not less than 21 years of age shall be appointed by the Parents to assume full supervision of the Minor for the duration of the engagement.

(c) The appointment of the Minor's chaperon shall be completed in triplicate on the form provided in Appendix 15, one copy of which shall be provided to the Producer, one copy sent to ACTRA, and one retained by the Parent.

(d) The Parent shall not interfere with production unless interference is required to ensure the Minor's safety.

(e) The Producer shall bear the travel expenses and per diem of one (1) Parent accompanying a Minor to a Distant Location. The amounts of such travel expenses and per diem shall be equivalent to those paid to a Performer under this Agreement (see Article 17). A Minor aged 16 or 17 living with a Parent shall have the right to travel to a Distant Location with a mutually agreed-to Chaperon provided by the Producer, unless the Minor's Parent(s) consents in writing to such Performer travelling alone. If the Minor travels alone, a Parent or Chaperon shall accompany the Minor between the airport, train station, or the like, and the set or the Minor's hotel. In no case shall the Minor work or be held on a Distant location without a Parent or Chaperon.

A2709 Dangerous Work

(a) No Minor shall be required to work in a situation that places the Minor in clear and present danger to life or limb, or if the Minor or Parent believes the Minor is in such a situation. Where a Minor is engaged to perform subject matter that the Producer knows, or ought reasonably to know, could be psychologically damaging to the Minor, a psychologist or therapist properly accredited by the

applicable provincial ministry shall be hired by the Producer to guide and assist the Minor to handle the emotional and mental stress of such subject matter. The Producer shall be required to carry out the psychologist's or therapist's recommendations, which may include such psychologist or therapist being present on set.

(b) Scenes Depicting Child Abuse, Disturbing Violence or Carnal Acts

Without limiting the generality of subparagraph (a), when a Minor is engaged to perform in a scene that depicts child abuse, disturbing violence, or carnal acts, the Producer shall consult with the Parent and, should the Parent agree, make available to the Minor and his or her Parent a psychologist or therapist properly accredited by the applicable provincial ministry to assist the Minor in preparing for and participating in any such depiction. A Minor shall not be present during such scenes unless it is essential for the Child to be on camera.

(c) In cases where the Parent or tutor observes that a Minor is or appears to be suffering emotional, physical, or mental stress during the course of production (which may be evidenced by changes in behaviour), a psychologist or therapist properly accredited by the applicable provincial ministry shall be, subject to the Parent's consent, engaged by the Producer to assess the situation and suggest reasonable and effective means to deal with the stresscausing factors.

A2710 Tutoring

(a) When a Producer engages a Minor as a Performer, the education of such Performer will not be jeopardized or hampered by such engagement. The Performer must be provided with tutoring appropriate to the Minor's educational requirements. For Performers under the age of 6, no tutoring is required.

(b) Where a Minor is engaged in a Production such that the Minor is required to miss at least two (2) days of regular school in a given school week, or at least five (5) days of regular school in a school year over the course of a Production or Series, the Producer agrees to employ a tutor to provide educational instruction to the Minor from the first day of such engagement. The Parent shall be responsible for providing to the tutor the Minor's schoolbooks and assignments from the Minor's regular school. Call sheets prepared by the Producer shall reflect scheduled time planned for tutoring, subject to paragraph (f) of this Article.

(c) If the Production schedule is subsequently changed such that the Minor is required to miss, or actually misses, at least two (2) days of regular school in a given school week, or at least five (5) days of regular school in a school year over the course of a Production or Series, then the Producer shall be obligated to employ a tutor to provide educational instruction to the Minor only from the date of the change of the Production schedule (and not from the start of the Minor's engagement), and subject to the Producer's instituting those measures for tutoring proposed by the Minor's principal or teacher.

(d) Tutors will be properly qualified. The Producer and ACTRA shall advise the Parent to consult with the Minor's school and secure the Minor's regular school assignments and school books that will be used by the Minor and the tutor. Any tutor employed by the Producer shall have proper provincial certification(s) and/or teaching credentials as required by the Minor's regular school. If a

Minor's regular instruction primarily occurs in some language other than English, teaching in that language will be provided.

(e) During the course of a Minor's workday the Minor is entitled to tutoring (i.e., educational instruction from a tutor) for a minimum of two (2) hours per Production workday, in blocks of no less than thirty (30) minutes of tutoring sessions at a time, provided that the maximum amount of instructional time per day is five (5) hours per day.

(f) All educational instruction must commence within the first three (3) hours of any Minor's workday and must be completed within the Minor's workday. Tutoring time is exclusive of the Performer's personal break time. When Tutoring is required, the Minor shall have access to the tutor during the workday when the Minor is not required to work.

(g) The ratio of tutors to Minors who are engaged as regulars on a Series or are engaged to perform in leading Roles (Series regulars) shall not exceed one (1) tutor for every five (5) Minors in the classroom. A maximum of ten (10) Minors (Series regulars and nonregulars) may be instructed in the classroom by one (1) tutor provided that there is no adverse effect on the educational needs of the Series regulars.

(h) **Tutoring Area** The Producer will be responsible for providing an adequate teaching area that, where practicable, approximates a classroom setting and that is quiet, clean, climate-controlled, and adequately lighted and ventilated. Minors must not receive educational instruction while being transported to or from a location or set.

(i) The Producer will provide basic schooling supplies and appropriate furniture and equipment, including a computer, printer, and other applicable equipment, if required by the Minor's school curriculum. For Minors 5 years of age and under the Producer will provide a separate, cheerful playroom, complete with basic toys and games, where practicable.

(j) The Producer shall require the tutor to prepare a weekly written report for each Minor covering attendance, grades, and the like. These reports (or copies) shall be given to Minor's Parent to deliver to the Minor's regular school at the end of each assignment or as required by the school.

A2711 Banking of Tutoring Time

(a) Banking of tutoring time shall be permitted only when the combined work/school schedule is unusually heavy in a particular week. Banking of tutoring hours is a privilege that requires permission of the tutor and the Parent of the Minor. At any time, a tutor and the Parent may decide that it is in the best interest of the Minor to cease the banking of hours.

(b) Banking of hours shall be allowed in order to permit that, during the course of a Minor's work week, the average amount of instructional time per day that the Minor shall receive is two (2) hours per workday, subject to the maximum of five (5) hours per day as per subparagraph (d) below. Subject to subparagraphs (c) and (d) of this Article, in no event shall there be a total of less than ten (10) hours of educational instruction per work week.

(c) A maximum of four (4) hours of tutoring time can be accumulated per week by the Minor and credited against the minimum requirements set out in Article A2710(e). At no time will the Minor

have accumulated more than four (4) hours of Tutoring time. Such accumulated tutoring time may commence no earlier than the week immediately prior to principal photography and shall not occur on Production down days or weekends (unless the Minor has been called to work during that time).

(d) A maximum of four (4) hours of tutoring time can be owed to the Minor on an ongoing basis and debited against the minimum requirements set out in Article 2710(e). At no time will the Minor be owed more than four (4) hours of tutoring time. The fulfillment of owed tutoring time shall be concluded no later than the week immediately following principal photography and shall not occur on production down days or weekends.

(e) Banked hours may not extend the work day as defined in Article A2705.

(f) In the event that a Minor is called to work for the sole purpose of being instructed by the tutor, such day shall be paid as a full day at the contracted daily fee, during which the instruction time with the Tutor shall not exceed five (5) hours.

(g) It is the Producer's responsibility to ensure that an accurate weekly record is kept reflecting when tutoring time is banked and when it is used.

(h) To qualify as banked time, the Minor must always be under the immediate supervision of the tutor.

(i) Homework is not to be counted as banked tutoring time.

A2712 Minor's Coordinator When Minors are engaged, one individual on each set or location will be designated by the Producer to coordinate all matters relating to the welfare and comfort of such Minors. The Minors' Parents will be notified of the name of the individual designated as coordinator. On any set on which six (6) or more Minors are engaged, the coordinator's primary responsibility shall be the welfare and comfort of the Minors, in which case such coordinator shall not double as a tutor, unless all Minors are being tutored at the same time.

A2713 Time of Calls Auditions, interviews, individual voice and photographic tests, fittings, wardrobe tests, makeup tests, and photographic conferences for Minors shall take place only after school hours on school days and will end before 20h00 on days before school. Calls for actual production shall not be so limited. However, Minors shall not be required to work after 23h00 without the consent of the Parent.

A2714 Food The Producer recognizes the special nutritional requirements of Minors. To that end, the Producer shall provide Minors with a selection of milk, juices, and healthy snacks. All Minors under the age of 14 shall be fed meals on the basis of a schedule reasonably approximating their normal meal times, which may be provided during a break and shall not require a meal period as set out in Article A14.

A2715 Infants

(a) An Infant means a person who is less than 2 years old and more than 15 days old. A person who is less than 15 days old shall not be permitted to be engaged.

(b) It is recommended that the Parent/guardian secure a written statement from a physician confirming that he or she has examined the Infant, that the Infant is in good health, and whether there is any reason why the Infant should not be engaged.

(c) The Producer will provide a separate, sanitary room for the care and rest of Infants employed. This will include a crib, a changing table, and a private, quiet, and warm room where the Infant may be fed and may rest without being held. Infant accessories provided by the Production company, such as bassinets, cribs, and changing tables must be sanitized at the time of delivery to set and on a regular basis.

(d) Once wardrobe and props have been issued by the Production for use on/with an Infant, the wardrobe and props may not be reissued for another Infant until the wardrobe has been laundered and the props sanitized. Bottles, nipples, and pacifiers must not be exchanged among Infants.

(e) When more than one Infant of a Parent is employed on the same Production at the same time, it is the responsibility of the Parent/guardian to ensure that there is one adult to care for each Infant.

A2716 Trust Account After a Minor's total lifetime remuneration reaches \$5,000.00, twenty-five percent (25%) of the Minor's gross remuneration shall be deducted from the total payment due to the Minor by the Producer and remitted to the ACTRA PRS, which shall hold such monies in trust for the Minor upon terms and conditions consistent with the obligations of the ACTRA PRS to act as a Trustee. The ACTRA PRS shall keep track of the Minor's earnings to determine whether the \$5,000.00 level is reached.

APPENDIX B

Extracts from the Quebec Government publication *Additional Information on Budgetary Measures, 2004-5*, pp. 44-52⁴

1.7 Eligibility of performers for the deduction respecting copyright income

The current tax system provides that an individual who, in a taxation year, is a professional artist within the meaning of the *Act respecting the professional status of artists in the visual arts, arts and crafts and literature, and their contracts with promoters* or an artist within the meaning of the *Act respecting the professional status and conditions of engagement of performing, recording and film artists*, hereinafter referred to as a "recognized artist" that files his income tax return according to the rules of the general tax system may claim, for that year, a deduction in the calculation of taxable income so as to exempt from income tax part of the income from copyrights of which he is the first owner.

For the purposes of application of this deduction, the amount of public lending rights received under a federal program administered by the Public Lending Right Commission are considered as copyright income. However, this deduction does not apply to performers' income from their copyright in their performance or a neighbouring right.

This deduction, which cannot exceed \$15 000 of such income per year, is reduced by \$0.50 for every dollar of copyright income that exceeds \$30 000. Thus, a recognized artist who earns income of \$60 000 or more in a given year from the copyrights in works of his creation cannot claim any deduction in this respect for that year.

Aware of the contribution artists make to Québec's identity and vibrant culture, as well as the monetary problems suffered by many artists due to the special nature of their field, the government has undertaken to introduce measures to help them make a better living from their art.

Changes will therefore be made to the deduction respecting copyright income to reflect certain amendments made to the *Copyright Act* since this deduction was introduced.

□ Recognition of a performer's copyright in his Performance

Currently, an amount derived from an exclusive right conferred upon an individual in relation to his performance as a performing artist cannot give entitlement to the deduction respecting copyright income.

⁴ The entire document is available on the Quebec Government website at www.budget.finances.gouv.qc.ca/budget/2004-2005/index-en.asp

However, the *Copyright Act* confers upon a performer a copyright in the performer's performance. As a rule, the performer's copyright in his performance includes the exclusive right to authorize or prohibit the fixation of the performance in any material form and the renting out of the sound recording. It also gives performers a certain degree of control over the communication of their performance to the public, where the performance is not already fixed, and over the reproduction of the fixation of their performance.

Consequently, the tax legislation will be amended to extend the deduction respecting copyright income to income derived from a performer's copyright in his performance.

More specifically, the rules used to determine eligible income for this deduction, for a recognized artist, will be changed so that the amounts derived from a performer's copyright in his performance is included in the calculation of the performer's copyright income, where these amounts are included in the calculation of the performer's income for the year.

□ **Recognition of performers' right to equitable remuneration**

Under the *Copyright Act*, performers are generally entitled to equitable remuneration for the performance in public or the communication to the public by telecommunication of the sound recording of their performance.²⁹ Thus, royalties may be paid where, for example, such a sound recording is broadcast on the radio or is used as mood music in certain establishments, such as restaurants.

In short, the royalties paid pursuant to the right to equitable remuneration are, in the case of sound recordings of musical works, primarily levied by a collective society according to the tariff certified by the Copyright Board of Canada. The royalties are then divided among the performers according to specific terms and conditions.

To account for the fact that the amounts received by performers pursuant to their right to equitable remuneration are closely related to the royalties received by authors of musical works for their copyright, notably for radio play of their music, the tax legislation will be amended so that these royalties are also considered for the purposes of the deduction respecting copyright income.

More specifically, the rules used to determine eligible income for this deduction, for a recognized artist, will be changed so that the amounts derived from the right to equitable remuneration conferred by the *Copyright Act* for the performance in public or the communication to the public by telecommunication of a sound recording of the performer's performance are included in the calculation of the performer's copyright income, where these amounts are included in the calculation of the performer's income for the year.

□ **Recognition of authors' and performers' right to remuneration for private copying**

The *Copyright Act* allows for the reproduction of a sound recording of a musical work or the performance of a musical work on certain recording media for private use, without violating a copyright.

Consequently, authors and performers are generally entitled, under the *Copyright Act*, to remuneration for the private copying of sound recordings of musical works or performances of a musical work.³⁰ In accordance with this right, manufacturers and importers of blank audio media pay royalties according to a tariff certified by the Copyright Board of Canada.

This right was essentially introduced to compensate authors and performers, among others, for lost earnings due to the reproduction of recordings or performances of their musical works for private use.

In short, royalties are paid to a collection body designated by the Copyright Board, namely, the Canadian Private Copying Collective, which represents collective societies representing, among others, authors and performers. The collected royalties are divided among the various right holders of a single group based on representative samples of radio play and album sales.

To enable recognized artists to claim the deduction respecting copyright income relating to these royalties, the rules used to determine eligible income for this deduction will be changed so that the amounts arising from the right to remuneration conferred by the *Copyright Act* for the private copying of sound recordings are included in the calculation of the recognized artist's copyright income, where these amounts are included in the calculation of the artist's income for the year.

□ **Clarification**

For greater clarity, a recognized artist must be the first owner of the copyright in his performance, the right to equitable remuneration for the sound recording of his performance and the right to remuneration for the private copying of sound recordings in order to claim the deduction respecting copyright income for income derived from such rights.

□ **Application date**

These measures will apply as of the 2004 taxation year.

1.8 Averaging of income from artistic activities

On February 24, 2004, the Minister of Culture and Communications released a socioeconomic portrait of artists drawn from the income tax returns of some 14 000 artists.

One of the observations arising from this portrait is that the income of many artists fluctuates significantly from one year to the next. In fact, over one quarter of artists see their income fluctuate at least 50% from year to year due to the special nature of their field.

Given the government's commitment to implementing a policy to help artists make a better living from their art, a new measure will be introduced to enable some of them to defer the tax on a portion of their income.

In short, a recognized artist who acquires an eligible income-averaging annuity may spread, over a maximum period of seven years, the tax applicable to the portion of his year's income derived from artistic activities that exceeds \$50 000.

- **Deduction of the amount paid to acquire an eligible income-averaging annuity**

A recognized artist for a given taxation year may deduct, in the calculation of his income for the year, an amount not in excess of the income eligible for averaging for the year that the artist pays, during the year or the 60 days following the end of the year, to acquire an eligible income-averaging annuity, to the extent that such amount was not deducted the previous taxation year.

- **Recognized artist**

A recognized artist, for a given taxation year, means an individual who, during that year, is a professional artist within the meaning of the *Act respecting the professional status of artists in the visual arts, arts and crafts and literature, and their contracts with promoters* or an artist within the meaning of the *Act respecting the professional status and conditions of engagement of performing, recording and film artists*.

- **Income eligible for averaging**

A recognized artist's income eligible for averaging for a given taxation year will be equal to the amount by which the part of the artist's income for the year that may reasonably be considered attributable to the artistic activities for which he is a recognized artist exceeds the aggregate of \$50 000 and, where applicable, the amount of the deduction respecting copyright income to which he is entitled for the year.

- **Eligible income-averaging annuity**

- **Person authorized to offer an eligible income-averaging annuity**

An eligible income-averaging annuity must be acquired from a person licensed or otherwise authorized under the laws of Québec or Canada to carry on an annuities business or offer trustee services in Québec and who is authorized by the Minister of Revenue to offer eligible income-averaging

annuities, hereinafter referred to as an “authorized person.”

The Minister of Revenue may authorize a person to offer eligible income-averaging annuities where the following conditions are met:

- the person has previously submitted to the Minister of Revenue a standard income-averaging annuity contract that meets the requirements of an eligible income-averaging annuity contract;
- the person has undertaken with the Minister of Revenue to ensure that the eligible income-averaging annuity contracts to which the person will be party comply with the standard contract.

• **Characteristics of an eligible income-averaging annuity**

For an annuity to be considered an eligible income-averaging annuity, the agreement establishing the income-averaging annuity must meet the following requirements:

- the income-averaging annuity must be acquired through a single payment;
- the amounts provided for under the income-averaging annuity must be paid in equal annual or more frequent periodic payments of sufficient amount to ensure full payment of the annuity over no more than seven years from the date of the first payment;
- the first annuity payment must be made no later than ten months after the date of the single payment made to acquire the annuity;
- the individual must be entitled to request full or partial commutation of the annuity at any time;
- an income-averaging annuity payment may be made only to the individual or, if that individual dies, to his succession or designated beneficiary, as the case may be;
- except in the case of death, the interest of the annuitant in the contract may not be disposed of other than by the surrender or cancellation of the annuity by the authorized person;
- the interest of the individual in the contract may not be pledged or transferred as security by any manner;
- the contract must comply with the standard contract previously approved by the Minister of Revenue.

□ **Tax treatment of amounts received under an eligible income-averaging annuity**

Amounts from an eligible income-averaging annuity will be considered as income and subject to a special tax.

The expression “amount from an eligible income-averaging annuity” means:

— a periodic amount received under an eligible income-averaging annuity contract;

— an amount received as payment for full or partial commutation of the eligible income-averaging annuity;

— an amount received as proceeds of disposition following the surrender or cancellation of the eligible income-averaging annuity by the authorized person party to the annuity contract.

• **Special tax**

A special tax applicable to any amount paid under an eligible income-averaging annuity contract will be introduced.

More specifically, a taxpayer who receives an amount from an eligible income-averaging annuity during a given taxation year must pay, for the year, income tax equal to 24% of the amount so received.

An authorized person who pays an amount from an eligible income-averaging annuity must withhold this special tax. That person must remit the amounts thus withheld to the Minister of Revenue, on behalf of the taxpayer required to pay the tax, no later than 30 days following the date of the payment under an eligible income-averaging annuity.

The authorized person must pay to the Minister of Revenue, on behalf of the taxpayer, any portion of the income tax payable by the taxpayer that was not withheld at source upon the payment of the amount from an eligible income-averaging annuity. However, the authorized person may recover from the taxpayer the amount of income tax thus paid

Furthermore, an authorized person will be required to file an information return with the Minister of Revenue, on a prescribed form, regarding any payment made by the person under an eligible income-averaging annuity during a given calendar year. The information return must be filed no later than the last day of February each year regarding the preceding calendar year.

• **Personal income tax**

Taxpayers must include, in the calculation of their income for a given taxation year, any amount from an eligible income-averaging annuity received during

that year.

However, to ensure that amounts from an eligible income-averaging annuity are not taxed twice, an individual who is resident in Québec at the end of a given taxation year will be entitled to a refundable tax credit equal to the amount withheld at source as the special tax respecting any amount from an eligible income-averaging annuity that the individual included in the calculation of his income for the year.

For the purposes of application of this tax credit, where an individual dies or ceases to reside in Canada during a given taxation year, the last day of his taxation year will be deemed to be the day of his death or the last day on which he resided in Canada, as the case may be.

❑ **Clarification regarding borrowing costs**

An individual will not be authorized to deduct, in the calculation of his income, borrowing costs, including interest, where the borrowing is used to acquire an eligible income-averaging annuity contract.

❑ **Consequential amendments**

Various consequential amendments will be made to the current tax legislation and regulations following implementation of the eligible income-averaging annuity measures. These amendments will essentially provide that:

— the interest of a person in an eligible income-averaging annuity contract is not covered by the rule providing for deemed disposition of the property of an individual who ceases to reside in Canada;

— an eligible income-averaging annuity contract is not covered by the rule requiring inclusion, in the calculation of income, of certain income, calculated in the prescribed manner, accumulated under annuity contracts;

— no amount may be deducted, in the calculation of income, as a return of capital regarding an amount from an eligible income-averaging annuity;

— an amount from an eligible income-averaging annuity does not give entitlement to the tax credit respecting retirement income;

— an amount from an eligible income-averaging annuity to which an individual was entitled, under an eligible income-averaging annuity contract, prior to his death and which is paid under such contract following the individual's death will be deemed to be an amount from an eligible income-averaging annuity;

— an amount deducted by the individual for the year, in the calculation of his income, for an amount paid to acquire an eligible income-averaging annuity may also be deducted in the calculation of total

income subject to the contribution to the Health Services Fund, where such an amount is attributable to income included, for the year, in the calculation of income subject to the contribution.

- **Application date**

These measures will apply as of the 2004 taxation year.