



**Submission to the Standing Committee**

**on General Government:**

**Bill 71 – *Protecting Child Performers Act, 2013***

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#### **INTRODUCTION**

ACTRA Toronto is the largest branch of ACTRA (the Alliance of Canadian Cinema, Television and Radio Artists), the union representing performers in the film, radio, television and new media industries. It is the largest organization of cultural workers in Canada. ACTRA Toronto represents over 15,000 of ACTRA's 22,000 members, and its jurisdiction covers all of Ontario, except the National Capital Region (Ottawa).

ACTRA has a proud 70 year history, which began with the foundation of the Radio Artists of Toronto Society in 1941. Since then, ACTRA has played an important and vital role in protecting performers and building the industry in which they work.

ACTRA negotiates contracts on behalf of its members with engagers. Our contracts determine minimum standards of pay and working conditions under which performers can be engaged in a diverse industry which includes independent film production, commercials, radio and television drama, telephony, video games and web-based content.

We welcome the introduction of the proposed *Protecting Child Performers Act* (Bill 71), which is directed at child performers who are under 18 years of age, and are paid or entitled to be paid for their work in the entertainment industry as performers. ACTRA Toronto is pleased to provide these comments to further strengthen the provisions of

the Bill, and promote the best interests and well-being of all child performers in the live and recorded entertainment industry.

## **NEED FOR BILL 71**

Unlike other industries where child labour is forbidden, the entertainment industry regularly employs children on stage and screen, often from an early age.

To protect child performers, ACTRA and the Canadian Actors' Equity Association (Equity) have negotiated strong collective agreement provisions that deal specifically with the welfare of children on set and on stage.

Many children, however, work in the entertainment industry without the protection of an ACTRA or Equity contract. Children working on non-union productions have little protection under the law. **For the immediate benefit of those children with no collective agreement protection, we want the law of Ontario to be improved as soon as possible.**

In Ontario, The *Child Performers Guideline* (Appendix "A") offers a solid foundation, but must be enshrined in legislation so that the full weight of the law may be brought to bear when necessary.

In British Columbia, minimum standards for wages and working conditions for children working in the live and recorded entertainment industry are defined in the *Employment Standards Act* and the *Employment Standards Regulation*. The legislation covers minimum age; daily hours; split shifts; breaks; time before a recording device; hours free from work; work week; chaperones; and income protection.

In Manitoba, the *Worker Recruitment and Protection Act* improves protections for children in the talent and modeling industry by making the agency and the parents/guardians of child performers jointly responsible for the safety and well-being of the child. It helps parents/guardians and agencies recognize and prevent the potential for exploitation before it happens. A child under the age of 17, who will be promoted by a talent agency, must have a Child Performers Permit from Employment Standards. The offence of operating without a licence or contravening the legislation is subject to fines from \$25,000-\$50,000.

Ontario's Bill 71 addresses the vulnerability of all child performers by providing needed protection in five key areas:

- Tutoring requirements;
- Income protection;
- Workday and rest period provisions;
- Parental involvement and responsibility; and
- Appropriate health and safety rules.

## TUTORING

For the recorded entertainment industry, Bill 71 (Part II, Section 7) requires an employer to provide tutoring to a child performer who is of compulsory school age, when the school absence is more than two days in a week or more than five school days over the term of the child performer's employment.

To be qualified under the Bill, the tutor must be a member of the Ontario College of Teachers or meet any alternative qualifications required for teachers at the child performer's regular school.

Bill 71 further requires that tutoring shall:

- follow the *Education Act* curriculum as much as possible;
- take place in the language of instruction used at the child performer's regular school;
- be a minimum of two hours per work day and a maximum of five hours per work day;
- take place in blocks of at least 30 minutes at a time, with the first block occurring within the first three hours of the child performer's work day;
- have no more than five child performers being tutored by the same tutor at the same time; and
- take place in an area that is safe, quiet, clean and appropriately lit and ventilated.

Child performers under the compulsory school age shall be provided with basic toys and a room that is safe, quiet, clean and appropriately lit and ventilated to allow the child to rest and play.

Provision Rationale:

The intent of this provision is to provide the child performer with the opportunity to make educational progress even when s/he is working and unable to attend school. While it is impossible to replicate the total school experience through tutoring, the employer must provide the instruction necessary to enable the child to keep up with his/her studies, and minimize any educational deficit that might result from the child performer's absence from school while employed. A working child must not have his/her education compromised because of his/her employment.

Placing limits on the duration of tutoring, and requiring that it take place within the first three hours of the child performer's work day allows the child to participate in the lessons before s/he is so tired from working that s/he cannot learn. Furthermore, a low student-to-teacher ratio ensures child performers get the attention they need and increases student achievement. The ideal learning environment is exciting, stimulating and welcoming. From experience, we have also learned that productions must identify a safe and healthy area for child performers to be tutored.

It is worth noting that, when language on provision of tutoring was first introduced into negotiations of ACTRA's collective agreements, it was suggested by some that the business would be ruined. Today the tutoring provisions are accepted as normal costs associated with the hiring of child performers and children's programming continues to

be a thriving and important part of this economic sector in Ontario. We also worked with educators to align our contract provisions with education policies, especially when dealing with absences from school.

Examples of abuse:

- Shirley Douglas, star of the well-loved Canadian Television series *Wind at My Back* discovered to her horror that the children on the show were regularly receiving their instruction in an unventilated room used to store paint products - a room that the show's crew did not enter without respiratory protection.
- ACTRA responded to a call from a production shooting on Manitoulin Island. Although there was a tutor on set, no tutoring had taken place because the child performers' busy shooting schedule did not allow for it.
- Many child performers lost years of schooling because of "unexcused absence" thresholds established by school boards.

## **INCOME PROTECTION**

Children have property rights in Ontario and parents and others who receive property on behalf of minors have specific obligations under the law. These rights and obligations are little known, poorly understood and largely unenforced, however, with the result that many former child performers reach their majority only to discover that the money they earned as children has been spent by those entrusted to protect it.

According to Bill 71 (Part II, Section 8), if a child performer earns more than \$1,000 on a production or project, the employer shall remit 25 per cent of any earnings over \$1,000 to a person prescribed in the regulations and the money shall be held in trust for the child performer until s/he reaches the age of 18.

Child performers covered by a collective agreement are exempted from this provision if the terms of their employment require that at least 25 per cent of their lifetime earnings over \$5,000 are held in trust until they reach the age of 18. Money held in trust must be dealt with in accordance with the *Trustee Act*, and an annual statement must be provided to the child performer and his/her parent or guardian.

### Provision Rationale:

In the United States, Coogan Accounts (a.k.a. Blocked Trust Accounts) are required in California, New York, Louisiana and New Mexico. Fifteen per cent of a young performer's gross wages are required to be withheld by the employer and deposited into the Coogan account, within 15 days of employment.



The Coogan Law is named for the famous child actor, Jackie Coogan. Coogan was discovered in 1919 by Charlie Chaplin and soon after cast in the comedian's famous film, *The Kid*. Jackie-mania was in full force during the 1920s, spawning a wave of merchandise dedicated to his image. It was not until his 21<sup>st</sup> birthday, after the death of his father, and the dwindling of his film career that Jackie realized he was left with none of the earnings for which he had worked so hard as a child. Under California law at the time, the earnings of a minor belonged solely to the parent.

Coogan eventually sued his mother and former manager for his earnings. As a result, in 1939, the Coogan Law was put into effect to protect future young actors from finding themselves in the same terrible situation that Jackie Coogan encountered.

Jackie Coogan went on to recover a small portion of his earnings after battling his mother in court. He became well-known for playing Uncle Fester in the television series, *The Addams Family*, and will always be remembered for the role he played in protecting child actors from losing their earnings.

ACTRA protects the unique interests of minors through the Performers' Rights Society (PRS). PRS collects and disburses use fees, royalties, residuals and all other forms of compensation or remuneration that performers may be entitled to as a result of their work. PRS makes sure performers get the money they are owed – no matter where and how the production is seen.

ACTRA's Minor's Trust is inspired by the 'Coogan Law.' The provision first came into effect in the 1999 Independent Production Agreement (IPA), when ACTRA negotiated

the following language to secure income earned by a performer who had not reached the age of 18:

**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.

As of June 2002, ACTRA's National Commercial Agreement (NCA) also contains the same Minor's Trust provisions.

ACTRA PRS provides detailed reports to all minors with earnings and mails them out semi-annually. Once a minor's earnings reach \$5,000, 25% is remitted to ACTRA PRS. As of today, PRS administers 779 minors' trust accounts, with a book value of almost \$4,000,000. Under the direction of ACTRA PRS, the Creative Arts Savings and Credit Union invests the Minors' Trust Funds in Guaranteed Investment Certificates (GIC's) where both the principal and the interest earned on the investment are guaranteed and every dollar invested in the Trust Fund is protected and guaranteed.

With no legal requirement in place to set aside a child performer's earnings, many Ontario child performers currently face a Hobson's choice upon reaching their majority; accept the loss of their rightful property and potentially absorbing a significant tax liability or pursue their own parents/guardians at law.

ACTRA Toronto believes that protecting minors' earnings by holding them in trust is preferable to a complaint-based approach that forces young people into court to attempt to recover money after (usually long after) it has already been inappropriately spent.

The Office of the Children's Lawyer plays an important role in the protection of the interests of Ontario minors but neither it nor the *Children's Law Reform Act* were established to deal with children's earnings. ACTRA is strongly of the view that what is proposed in Bill 71 will not conflict with the role of the Office of the Children's Lawyer but will provide performers who have not attained the age of majority with a pragmatic and effective level of protection for the monies they earned as minors. Further, the income protection regime proposed in Bill 71 does not conflict with any existing provincial legislation.

ACTRA supports income protection measures for child performers for a number of reasons:

- The Office of the Children's Lawyer does not have a field staff to monitor whether minors are earning monies or whether those receiving property on behalf of minors are complying with applicable law. As a result, there exists a real possibility that the Office of the Children's Lawyer might not become aware of an issue until after a problem has occurred. If the misappropriated earnings have already been spent, it may be impossible to find an effective remedy that restores the lost property and protects the interests of the child performer.
- In our experience, producers, minor performers, agents and parents are unaware of how the earnings of minors are to be handled from a legal perspective. While

ACTRA favours continued efforts to educate these parties about their obligations, ACTRA is of the view that it is better to act in a proactive way.

- The regime proposed in Bill 71 is what ACTRA does already. Child performers who are ACTRA members are already the beneficiary of an agreement that requires the producer to place 25 per cent of the child performer's earning into a trust fund that ACTRA PRS administers on behalf of the child performer. When the child attains age 18 these funds plus any investment income is forwarded to the former child performer.
- What is proposed in Bill 71 is a codification of an existing practice. By making it mandatory throughout the sector, the Legislature will be ensuring that the interests of child performers are protected in an effective and pragmatic way.

Examples of abuse:

- Upon reaching her majority, one child performer discovered that none of her earnings had been set aside but had been used instead to pay the family's rent and other expenses, including clothing, food, etc. Her mother spent everything the child performer earned, including her residual income and kept no records. The performer remembers one residual cheque for \$1,300 that was spent on a new washing machine and dryer.
- In a disturbing number of cases, divorcing parents have treated monies earned by their child performer children as joint assets in dispute.

- ACTRA has had cases of parents using child performers' earnings to go on holidays or buy cars. In one case, parents wanted access to monies in trust for the child performer so they could move to the Carribean.
- A child performer turned 18 to discover that his parents had not only spent his earnings but had left him with a bill for three years' unpaid taxes. The child performer's agent had sent the parents money expressly to pay the taxes but they had used it on other expenses.

## HOURS OF WORK

For the recorded entertainment industry, Bill 71 (Part III, Sections 11, 12, 13) does not permit a child performer to work more than four hours on a production day if the child performer is under two years of age, and eight hours if s/he is two years of age or over.

Limited overtime may be permitted for child performers according to their age. Child performers who are at least 12 but under 16 may perform up to two hours of overtime per work day. Sixteen to 17-year olds may perform up to four overtime per work day.

An employer shall give a child performer at least 12 consecutive hours free from work in every 24-hour period, and 48 consecutive hours in every seven-day period.

Unpaid meal breaks will be excluded from the calculation of the number of hours of work, but tutoring periods shall be included.

The employer will also provide breaks and limit the amount of time a child performer is in front of a recording device according to the table below.

<b>Child Performer's Age</b>	<b>Time before recording device</b>	<b>Break (minimum)</b>
Less than 3-years-old	15 consecutive minutes	20 minute break
Between 3 and 5-years-old	30 consecutive minutes	15 minute break
Between 6 and 11-years-old	45 consecutive minutes	10 minute break
Between 12 and 15-years-old	60 consecutive minutes	10 minute break
Between 16 and 17-years-old	60 consecutive minutes	5 minute break

Child performers will not work split shifts and their unpaid meal breaks will not be longer than one hour each.

#### Provision Rationale:

As we stated earlier, unlike other industries where child labour is forbidden, the entertainment industry employs children on stage and on screen from an early age. Special efforts must be taken to ensure the health and well-being of child performers at all times. This principle is upheld by the Universal Declaration of the Rights of the Child, and acknowledged in Canada's child labour laws which establish minimum age for employment and compulsory education. Bill 71 puts realistic limits on the number of hours a child may work and sets out age-appropriate breaks. The goal is to ensure child performers have sufficient breaks and time away from work so they can develop as children.

#### Examples of abuse:

- On the popular Canadian television series *Road to Avonlea*, child performer Sarah Polley's mom was signing work reports that did not show overtime. The practice was widespread because everyone thought that "playing ball" was the only way to get work.
- On occasion, parents of child performers have been offered and have sometimes accepted bribes to circumvent provisions of collective agreements intended to protect child performers.

- One of our volunteer On Set Liaison Officers (OSLO), visited the set of a Santa Claus movie where infants under two were appearing as elves in the background. She discovered babies who had been wearing prosthetic elf ears for nine hours. Parents had to get kids out of the hot studio and out of hot velvet costumes and prosthetics. The production company was grieved and fined and ACTRA produced an educational publication called *Just Say No*.
- Many commercials are filmed at night. ACTRA OSLOs have seen parents force-feeding coffee to their children at midnight in order to keep them awake.



## **SUPERVISION IN THE WORKPLACE**

For the recorded entertainment industry, Bill 71 (Part III, Sections 14, 15) requires that every child performer who is under 16 years of age must be accompanied by a parent, guardian, or authorized chaperone, who is present at the workplace and accessible to the child performer at all times.

The authorized chaperone must be at least 21 years of age; must be designated in writing by the child performer's parent or guardian; may not be an employer of the child performer; and may not be the child performer's tutor.

An employer shall designate a child performers' co-ordinator to be responsible for co-ordinating matters related to the welfare, safety and comfort of child performers. If there are six or more child performers, the co-ordinator shall not also act as the child performers' tutor.

### Provision Rationale:

Bill 71 requires a child's parent, guardian or authorized chaperone to accompany a child performer under the age of 16 to and from the set or location, and to be accessible to the child at all times. The child's health and well-being is always paramount. If a production has a special request that makes anyone uncomfortable or threatens a child performer's health or welfare, it is everyone's responsibility to speak up on behalf of the child, but the parent, guardian or chaperone is the best judge of the child performer's capabilities.

To avoid a potential conflict of interest, chaperones should not also be working for the production in any other capacity, nor should they be employed as tutors on the production. The intent is to have an individual whose sole concern is the child's well-being.

Finally, every production employing a child performer should have a child performers' co-ordinator to coordinate all matters relating to the welfare and comfort of the child performer(s).

Examples of abuse:

- Parents of child performers on a TV show were not allowed access to their kids but only able to watch them on a video monitor as the children sat in a holding room. ACTRA grieved the production to secure the parents' access to their children.
- During the filming *The Adventures of Baron Munchausen* (released in 1988), Uma Thurman (17), travelled with a studio chaperone or guardian while Sarah Polley (9) travelled by herself and got lost in the Brussels airport.
- Another child performer was shooting a film in Prague. Production didn't want to pay for the parents to go. On his day off from set, he went exploring by himself and got lost.
- On *Wind at My Back*, Shirley Douglas discovered young cast members experimenting with smoking while supposedly under the care of the Assistant Director.

- Child performers are children in an adult workplace, with hundreds of people coming and going; anyone can be there and constant supervision is required to keep child performers safe.

## HEALTH AND SAFETY

In addition to the employer's duties under the *Occupational Health and Safety Act* to protect the health and safety of workers, Bill 71 (Part V, Sections 23, 24, 25, 26) specifies that an employer shall provide appropriate training for a child performer and for his/her parent or guardian for each location at which the child performer works.

Training will cover:

- Emergency procedures;
- Restricted areas;
- Safe waiting areas;
- Location of washrooms, make-up areas and other relevant areas to the child performer's work; and
- Procedure for identifying and remediating unsafe working conditions.

The child performer's parent or guardian may exercise the child performer's right to refuse to work under subsection 43 (3) of the *Occupational Health and Safety Act*.

The employer shall ensure that appropriate medical and psychological care is provided to the child performer if s/he is employed to perform in scenes containing subject matter that the employer knows or ought reasonably to know would cause significant mental or emotional stress to the child performer.

The employer shall provide healthy snacks and meals for child performers as close to their regular meal and snack times as possible, and ensure that the food meets the child performer's needs with respect to food allergies and special dietary requirements.

Provision Rationale:

The intent of Bill 71's health and safety provisions is to raise awareness and protect child performers as well as other workers. Health and safety on the job applies to everyone. There are hazards in every workplace, and young workers are especially at risk because they sometimes lack work experience and often have not had any workplace safety training. Young workers need to know and understand their health and safety rights from day one.

The legislation requires the employer to orient the child and his/her parent to the health and safety hazards at each location, as well as review their rights and responsibilities at work. It also requires the employer to ensure the appropriate medical and psychological care is available if the child performer is employed to perform scenes containing stressful (mental or emotional) subject matter. In the rush to capture a scene, the instinct to do the right thing is not always present on a film set. The employer needs to take the necessary precautions to prepare the child and deal with sensitive issues in advance. Provisions for healthy food are designed to develop awareness and educate producers about children's nutritional needs.

## Examples of abuse:

- An ACTRA OSLO was on set a couple of years ago with a child performer who was shooting a scene involving fire and stunts in a treehouse. The treehouse was quite high and a stunt performer was holding the kid's leg in the treehouse and screaming as part of the scene. The child's mother was watching video footage of the scene with the director but was not accessible by nor within sight of the child who was by himself in the tree with the stunt performers.
- A cereal commercial originally required a child performer to jump from a bunk bed on to a floor piled high with cereal. After the risk of injury arising from repetitive jumping over the eight-hour day was pointed out, the action was changed.
- A similar situation to the foregoing arises when child performers playing baseball on camera are required by the script to "slide home" or to slide to get on base. Specialized training is required to protect a performer from the risks associated with the repetition of such potentially risky action performances. In these situations, trained stunt performers are required. Kids need help to identify risks in the work place and to know their own limits.
- Kids in moving vehicles on a movie set need the protection of age-appropriate car seats at least as much as they do in their daily lives.
- In a soft drink commercial, a child performer was put into a harness and "flown" upside down with cola running into his mouth. Proper supervision, advocacy and active intervention is essential in such cases to protect against physical injury from

inertial forces, psychological trauma from feeling pressured into a fearful situation and the obvious choking hazard attendant on drinking cola while in motion and upside down.

- On another occasion, one of our stewards discovered a child performer screaming after five minutes suspended in a flying harness. Production wouldn't take him down. When our steward attempted to intervene, the Assistant Director said, "I'll call the shots." The child's father stood by and did nothing.
- A nine-year old boy who had been asked to do a burn sequence in a film, panicked during the stunt and started to wave his arms around. He was simply too young to understand and to follow the instructions.
- A young girl (four or five years old) was in a scene with performers playing her parents. The child performer was not told what was going to happen because production wanted a spontaneous and realistic reaction. In the scene, the performer playing the father put a gun into the child's hand and made her shoot the performer who was playing her mother. The child was so traumatized that the generator operator cut the power supply to the set and called the President of ACTRA Toronto at home to tell her what was going on. The parents, afraid of blacklisting, would not press charges.
- A 12-year old child performer was to audition for a film in which her character was scripted to discover an exposed penis sticking out of the sand, while walking along a beach. The child performer's talent agent brought the scene to the attention of the performer's parents who chose to withdraw their daughter from the audition.

- The same young performer at age 16 was asked to perform a scene in which her character would be topless and kiss another female performer. Although potentially disturbing, a skilled and sensitive director and cast kept in touch with the union and made sure that the young performer was comfortable and protected.
- An American advertising agency bribed parents to allow overtime. They were shooting on location with toddlers. The performers' holding area was a loading dock smelling of urine with rusty nails and broken glass everywhere. Parents called ACTRA. The agency was fined \$25,000. That fine put the industry on notice and changed the climate in the commercial sector.
- On another project, child performers were told they wouldn't be paid unless their performance measured up in some way. Production sometimes tries to excuse this type of behaviour, saying that the director was "just being funny." The child performers may or may not understand or appreciate the humorous side of withholding pay, but they do understand a threat.
- A six-year old got a 13-day role on a Christmas movie. When they were in post-production and recording additional dialogue, the assistant director offered to make the child performer cry in order to record a particular scene. Instead, the child's mother, herself a performer, wisely chose to work with her son to get the desired result.
- Tabby Johnson, ACTRA Toronto's current Child Advocate remembers her first film, a National Film Board (NFB) feature. The script called for an infant to cry. Production staff don't generally receive special training to work or deal with children and no one



knew what to do. When Tabby proposed that everyone simply move back, the child began to cry. The crew on that set may have thought they had learned a neat trick. Tabby learned that a film set is not necessarily a safe or comforting environment for an infant.

- A young performer was working on the set of a TV series. The boy was waiting in the make-up room since the American star of the series was late returning from lunch and nothing could be filmed in his absence. When the star finally showed up, the child performer said “We’ve been waiting ...” “Fuck off!” said the star and kicked the boy across the room. The child performer ran away and was found, cowering under a table, in the studio prop shop. Afraid that the boy wouldn’t work again, his parents wouldn’t press charges. ACTRA called the Screen Actors’ Guild (SAG) who encouraged the star to seek help.

## **CONCLUSION**

We are very pleased with the introduction of Bill 71 and its potential to protect all child performers in the live and recorded entertainment industry. We hope our analysis and comments are of assistance, and we would be pleased to discuss further the need for this legislation. We look forward to the opportunity to provide more background information with respect to Bill 71, its implementation, and related matters.

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