



Submission to the Changing Workplaces Review:

Respect the Artist

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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. 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 history, beginning 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.

On June 25, 1996, the Canadian Artists and Producers Professional Relations Tribunal (CAPPRT) certified ACTRA to represent performers under the federal Status of the Artist Act. This decision was renewed by the Canada Industrial Relations Board (CIRB) on June 25, 2014.

Like many other unions in the media production industries, ACTRA negotiates scale agreements with engagers that 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 opportunity to make our submission to the Changing Workplaces Review to recommend amendments to Ontario labour and employment legislation that will increase the efficiency and competitiveness of the Ontario media production sector, ensure that the voices of our members and other Ontarians working in the sector are heard in their workplace and provide them with equitable access to the same protections and benefits that other Ontario workers commonly enjoy.

OBJECTIVES OF THE REVIEW

As outlined in the *Terms of Reference* for this Review, workplaces and the nature of work have changed considerably over the past several decades. Changes include:

- The rising prominence of the service sector.
- An increase in non-standard employment relationships, some of which put workers in more precarious situations.
- Globalization and trade liberalization which, among other things, put pressure on employers to reduce costs, boost productivity and be innovative.
- Accelerating technological change which poses new challenges and risks.
- Greater workforce diversity.

The mobile workforce of independent contractors in the recorded entertainment industry has struggled with the challenges of precarious work for many years. Study after study has demonstrated the price of that precariousness. It has been observed that the greatest subsidy to cultural work in Canada is made by cultural workers whose earnings are consistently lower than those of their fellow citizens.

The changes enumerated above have added to the challenge of making a living in the media production sector, even though production levels are at an all-time high. With more than 40 years of international experience in film and television production and post-production, Toronto is the third largest production centre in North America, after Los Angeles and New York. The industry has contributed more than \$1 billion annually since 1999 into the local economy and supports almost 30,000 jobs.

ACTRA, along with the other unions and guilds in the entertainment industry, has been lobbying government to update the legislative framework to reflect the realities facing workers in our industry for decades. At a time when increasing numbers of Ontario workers are facing the same uncertainties, the same long hours, the same low pay and the same exploitation that artists have faced for many years, we are hopeful that our voice will at last be heard, that our

expertise in organizing and protecting self-employed independent contractors will be recognized and that Ontario will at last provide its performers with the benefits and protections of the LRA and the ESA as it contemplates amendments to deal with our *Changing Workplaces*.

The recent passage of Ontario Bill 17 Protecting Child Performers Act with the unanimous support of all parties in the Legislature has shown us that there is an Ontario consensus and the necessary political will to provide protection from exploitation to those who need it. The *Changing Workplaces Review*, is, itself, another hopeful sign of Ontario's commitment to equity, opportunity and prosperity for all of her children.

We embrace the opportunity provided by the *Changing Workplaces Review* to recommend changes to the Employment Standards Act, 2000 and the Labour Relations Act, 1995 to better protect professional performers in the recorded and live transmitted entertainment industry.

PURPOSE OF THE SUBMISSION:

Promoting Efficiency, Equity & Voice in Ontario Media Production Sector

It is time for the Labour Relations Act to specifically reference the Ontario media production industry , to unambiguously recognize the mature collective agreements currently existing in this sector as collective agreements under the Act and to establish the OLRB as the appropriate tribunal to resolve disputes between the parties.

It is time to change some definitions in the Employment Standards Act to include performers and other artists and to provide them, to the fullest possible extent, the same rights to overtime, minimum working conditions and standard protections enjoyed by other Ontario workers.

After years of promises, the Status of Ontario's Artists Act was finally enacted in 2007. A key goal of *Status of the Artist* legislation is to establish a collective bargaining framework that reflects the workplace realities of artists and those who employ them. When the Act was first introduced, the Minister of Culture said it was a "starting point", but the single achievement of note on the file to date has been the passage of Bill 17 Protecting Child Performers Act.

The Ontario Government plays a leadership role in safeguarding the stability of the well-established Ontario media production industry and providing the right conditions to add jobs and attract business. Risk-averse international investors competing in a globalized industry are attracted by production incentives but they also expect a mature, robust and predictable labour relations regime with unambiguous rules for the resolution of disputes between the parties.

CHANGING WORKPLACES REVIEW QUESTIONS

The Review invited participants to consider 16 questions. ACTRA Toronto has focused its response on the following 6 questions:

Q2: What type of workplace changes do we need to both improve economic security for workers, especially vulnerable workers, and to succeed and prosper in the 21st century?

Legislation should be updated to embrace the current reality that “the workplace” is not necessarily a fixed location but rather the place where work is done. One of the things that performers have in common with other precarious workers is the fluid and variable nature of their workplaces.

Q3: As workplaces change, new types of employment relationships emerge, and if the long term decline in union representation continues, are new models of worker representation, including potentially other forms of union representation, needed beyond what is currently provided in the LRA?

To the greatest extent possible, Ontario workers should be encouraged to organize and bargain collectively under an amended LRA that protects Ontarians facing the challenges of precarious employment.

ACTRA and other unions in the media production industries have a lot to contribute to a conversation about how labour law could be amended to better serve performers and other precarious workers because of our long experience in negotiating collective agreements in the media production sector.

ACTRA has been bargaining collectively for serially employed, independently contracted performers, hired by now-you-see-them-now-you-don't production companies that often cease to exist, once the project is complete. We have been doing it for a long time and we're good at it.

ACTRA's collective agreements are similar to sectoral arrangements. They cover many different workplaces with a minimum standard. They can be adapted to any size of production. Both employers and workers are represented by associations or unions. Under our collective agreements, employers have been making contributions to performers' insurance and retirement benefits for forty years.

Our agreements cover performers who sometimes work in more than one workplace and for more than one engager in a single day. The variety of engagements and types of work underscores the value of the sectoral scope of these agreements but also draws attention to the risks associated with transient employers and variable workplaces (particularly in remote shooting locations).

Collective bargaining between designated bargaining units composed of independent contractors, on the one hand, and employer associations, on the other, has directly contributed to the stability and efficiency of the media production sector by fostering the development of an experienced, professional workforce, improving safety, and providing benefits and protection for workers, just as it has in traditional industrial sectors, currently governed by the LRA and ESA.

The Labour Relations Act should be amended to specifically reference the Ontario media production industry, to unambiguously recognize the mature bargaining relationships and collective agreements currently existing in this sector and to clearly establish the OLRB as the appropriate tribunal to resolve disputes arising between the parties.

Q8: In the context of the changing nature of employment, what do you think about who is and is not covered by the ESA? What specific changes would you like to see? Are there changes to definitions of employees and employers or to existing exclusions and exemptions that should be considered? Are there new exemptions that should be considered?

While retaining their tax status as independent contractors, performers should be designated as employees for the purposes of the Employment Standards Act and should enjoy the same employment rights and protections as other Ontario workers.

There should be no “contracting out” of labour standards.

When performers go to work, their relationship with their engager is much the same as any other employee/employer relationship. However, as independently contracted artists, performers are excluded from the Employment Standards Act and do not receive the rights enjoyed by other Ontario workers, such as: minimum wage, vacation, statutory holidays, limits on hours of work, eating periods and overtime provisions.

As an example, “Cash background” performers in ACTRA Toronto’s jurisdiction have no limitation on their work days, receive no overtime pay and end up working for less than minimum wage, after paying up to 15% or 20% commission to the agent who booked them on the job. Compare their lot to that of their counterparts in British Columbia who are covered by BC Employment Standards, who do receive overtime, who do have limitations on their work hours and whose talent agencies are regulated under the BC ESA so that commissions may not exceed 15% and so that the performer's gross income from work booked by the agency, net of commissions paid to the agency in respect of that work, may not be less than provincial minimum wage.

Q11: In the context of the changing nature of employment, what do you think about who is and is not covered by the LRA? What specific changes would you like to see?

Producers, performers and other workers in the media production industries should be specifically included in an amended LRA that clearly recognizes the bargaining relationships and agreements which currently exist in their sector.

Q12: In the context of changing workplaces, are changes required to the manner in which workers choose union representation under the LRA? Are changes needed in the way that bargaining units are defined, both at the time of certification and afterwards? Are broader

bargaining structures required either generally or for certain industries? Are changes needed in regard to protecting bargaining rights?

The first rule of reformers should be "**Do No Harm**". Currently existing bargaining relationships and agreements in this sector must be grandfathered, with appropriate provisions made for certification, renewal and de-certification of employer and workers bargaining associations.

The right to organize is a Charter right. Organization and certification procedures should be simple and transparent.

Q16: Are there any other issues related to this topic that you feel need to be addressed? Are there additional changes, falling within the mandate of this review, that should be considered?

Stunt performers are not currently covered by WSIB. This should be addressed in Ontario, as it has been in other provinces. Stunt performers are not in the business of taking risks. They are in the business of reducing the risks involved in creating the spectacular illusions that contribute to the success of an important Ontario industry through training, planning and professional experience.

They are Ontario workers, referenced in the Section 21 Health and Safety Guidelines pertaining to the Film and Television Industry and covered by provincial workers insurance in other jurisdictions. There is no reason why they should not be covered by provincial workers insurance in Ontario as they are elsewhere.

CONCLUSION

We are very grateful for having been given the opportunity to present to the Review Panel. We hope our analysis and comments are of assistance, and we would be pleased to further discuss the need for this legislation. We look forward to the opportunity to provide more background information with respect to our submission.

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STATUS OF THE ARTIST TIMELINE: A History of Unfinished Business

As it pertains to performers, the *Changing Workplaces Review* can be viewed as the latest exchange in a very long conversation. The following timeline demonstrates that the need to recognize artists' rights through meaningful Status of the Artist legislation has been discussed for almost 30 years in Canada, and has been debated for an even longer time in other countries around the world.

1976: The 19th session of the General Conference of UNESCO* in Nairobi, Kenya, suggests undertaking a study on the status of the artist on a world scale.

1977: A meeting of the ILO* considers the status of the artist in relation to working conditions and other matters within the scope of the ILO. A joint ILO/UNESCO meeting of Experts on Status of the Artist is convened in Geneva, Switzerland, as a result of the previous independent meetings in 1976 and early 1977.

1980: At the 21st session of the UNESCO General Conference in Belgrade (formerly Yugoslavia), Canada signs the **UNESCO Recommendation on the status of the artist** (known as the Belgrade Recommendation).

1986: A **Task Force on the Status of the Artist** is created to consult with artists, arts organizations and cultural labour organizations to develop a series of recommendations to shape a Canadian status of the artist policy. The Task Force receives strong interventions which focus on the issue of professional labour relations within the arts and culture sector as the most critical issue affecting the socio-economic status of artists, creators and arts professionals.

*UNESCO: United Nations Educational, Scientific and Cultural Organization

*ILO: International Labour Organization

The **UNESCO Recommendation** urges signatory states to consider a broad range of policy development, including funding, training, professional status for artists and access to social programs.

Under Canadian law, it was illegal for self-employed individuals to bargain collectively with engagers. Under the **Canadian Competition Act** this was viewed as a "conspiracy to control market forces", notwithstanding that labour organizations like the *Alliance of Canadian Television, Radio Artists (ACTRA)*, *Union des artistes (UDA)*, *Canadian Actor's Equity Association (Equity)* have a long history of collective bargaining on behalf of their self-employed membership.

Negotiations with producers and engagers

1987: Québec is the first jurisdiction in Canada to develop measures specifically focused on improving the social and economic status of professional artists. ***An Act Respecting the Professional Status and Conditions of Engagement of Performing, Recording and Film Artists*** is enacted. The following year, the province enacts ***An Act Respecting the Professional Status of Artists in the Visual Arts, Arts and Crafts and Literature and their Contracts with Promoters***.

1988: Draft legislation, referred to as the **Canadian Artists' Code** is developed by the Canadian Advisory Committee on the Status of the Artist.

Federal tax laws are amended and provisions for **income averaging are abolished**.

1992: Canada enacts the ***Status of the Artist Act***, making it the first signatory state to the ***UNESCO Belgrade Recommendations on the Status of the Artist*** to enact a federal status of the artist law.

were completely voluntary and highly restrictive. If the cultural labour organizations' demands were considered to be unreasonable or a nuisance, the producer/engager could file a complaint with the *Competition Bureau* which would trigger an investigation by the *Royal Canadian Mounted Police*.

Québec is considered a world-leader in the field, with measures such as making certain copyright royalties tax free, annuity provisions allowing artistic income to be spread over several years, and specific measures relating to artists' health and safety.

The ***Canadian Artists' Code*** outlines comprehensive taxation and social benefits measures. Although not adopted, it provides an overview of correlated legislation and amendments crucial to improving the Status of Artists.

The ***Status of the Artist Act*** removes the legal impediment to collective bargaining on behalf of self-employed or independent contractors and establishes a professional relations regime to manage the collective bargaining process between cultural labour organizations and engagers/producers.

1997: UNESCO issues its **Final Declaration** on the implementation of the recommendation concerning the Status of the Artist in Paris, France.

2000: Québec introduces measures to protect children working in filmmaking and other artistic productions.

2002: Saskatchewan adopts **An Act respecting Artists**, which identifies equity for artists in the workforce as a key issue. It also launches a process to implement “practical measures” to improve the situation for professional artists in the province.

2002: The Department of Canadian Heritage undertakes a review of the **Status of the Artist Act**, as mandated in the legislation.

2003: The Ontario Liberals make an election promise to introduce Status of the Artist legislation to improve the lives and incomes of Ontario’s artists in the cultural sector.

2007: MPP Cheri DiNovo introduces **Bill 191**, an Act to amend the Employment Standards Act with respect to

New Regulation provides that the prohibition against employing a child to work between 11 pm and 6 am does not apply to work that is creation or interpretation in the following fields of artistic endeavour: the performing arts including theatre, opera, music, dance and variety entertainment, the making of films and records and other sound recordings, dubbing and the recording of commercials.

The **Act** includes provisions regarding:

- * the contribution artists make to society;
- * the right of artists to free speech, freedom to create and freedom to form associations;
- * the right and need for artists to earn a living from their art; and
- * access to education and training.

The review makes several recommendations to improve the socio-economic circumstances of artists. No action is taken on the recommendations arising from the review.

After three years of a majority term in government, the Liberals’ promise is reiterated in May 2006 by the Minister of Culture.

It receives First Reading.

child actors.

2007: *Status of Ontario's Artists Act* is introduced in the Liberals' ***Budget Measures Act*** (Schedule 39). The purpose of the Act is to "recognize that artists make contributions to Ontario's economy and quality of life."

Under the provisions of the **Act**, it assigns responsibility to the Minister to develop "a strategy on arts and culture to guide the development of policies as they relate to artists," and authorizes the appointment of a committee to advise the Minister on these issues.

It also provides that the first weekend every June will be "Celebrate the Artist Weekend."

Finally, it commits the Government to implement marketing strategies; facilitate training programs; promote health and safety; etc., "as far as it considers it reasonable and appropriate to do so."

The only indirect reference to collective bargaining is to "strengthen the ability of arts and culture organizations to provide support to artists."

2007: Newfoundland and Labrador announces the establishment of a **status of the artist working committee**.

2009: Manitoba introduces the ***Worker Recruitment and Protection Act*** to improve protections for children in the talent and modeling industry.

Meanwhile, British Columbia’s regulatory framework for child labour is eroded by exceptions granted to the entertainment industry (film, radio, video or television). A child actor of any age can now be employed without a permit from the Director of Employment Standards. (Previously, children 15 and younger required a permit.) Written consent from one of the child’s parents or guardians is sufficient. Only infants less than 15 days old cannot be employed in the entertainment industry.

2009: MPP Peter Tabuns introduces **Bill 165**, An Act to amend the Employment Standards Act with respect to artists.

2009: The ***Status of Ontario’s Artists Act*** is amended.

2010: Saskatchewan adopts ***The Arts Professions Act***.

2010: MPP Peter Tabuns introduces **Bill 137**, Labour Stability in the Industries of Film, Television, Radio and

It passes Second Reading and is sent to the Standing Committee on Regulations and Private Bills.

The amendment removes the reference to “[t]he first weekend wholly in June in every year”, and simply designates one weekend in each year as “Celebrate the Artist Weekend.”

The **Act** has a new definition of professional artist, which is similar to the wording of the 1988 ***Canadian Artists’ Code***, a definition of engager, making the **Act** binding on the Crown, and providing a requirement for written contracts between engagers and artists. An enabling provision permits the government to implement regulations relating to such contracts. The **Act** recognizes the artist as a professional and emphasizes the importance of fair compensation. Written contracts are now required between artists, including performers, and anyone wanting to engage, hire, or contract them for their work or performance.

It passes Second Reading and is sent to the Standing Committee on Regulations and

New Media Act.

2012: MPP Peter Tabuns introduces **Bill 127**, Fairness in Film and Media Production Act.

2012: Beijing Treaty concluded at the World Intellectual Property Organization's (WIPO) Diplomatic Conference.

2012: Nova Scotia government passes ***Status of the Artist Act***.

2013: MPP Paul Miller introduces **Bill 71**, Protecting Child Performers Act.

Private Bills.

It receives First Reading.

The Treaty establishes new moral and economic rights in international law for performers who work in film, TV and digital media.

The next step is for United Nations member-states to ratify what is formally known as the WIPO Audiovisual Performances Treaty (WIPO AVPT), and implement its provisions in domestic law.

The **Act** defines who is an artist, establishes credentials, and allows artists associations to set levels of pay for artists' work and services.

It acknowledges the working conditions of artists; maintains the government's dedication to the rights of artists, including safe working environments and freedom of expression and association; and ensures that the necessary tools to support Nova Scotian artists and their unique needs are secured by the government.

It passes through Committee and gets as far as Third Reading before dying on the Order Paper when the provincial election is called in 2014.

2015: Ontario passes MPP Paul Miller's **Bill 17**, An Act to protect child performers in the live entertainment industry and the recorded entertainment industry.

The child performer legislation covers both the live and the recorded entertainment industries and contains provisions to protect a portion of minors' income, ensure their education is not compromised, guarantees parental supervision, age-appropriate hours of work and breaks, and health and safety measures. Under the terms of the Act, the law comes into effect on February 5, 2016.

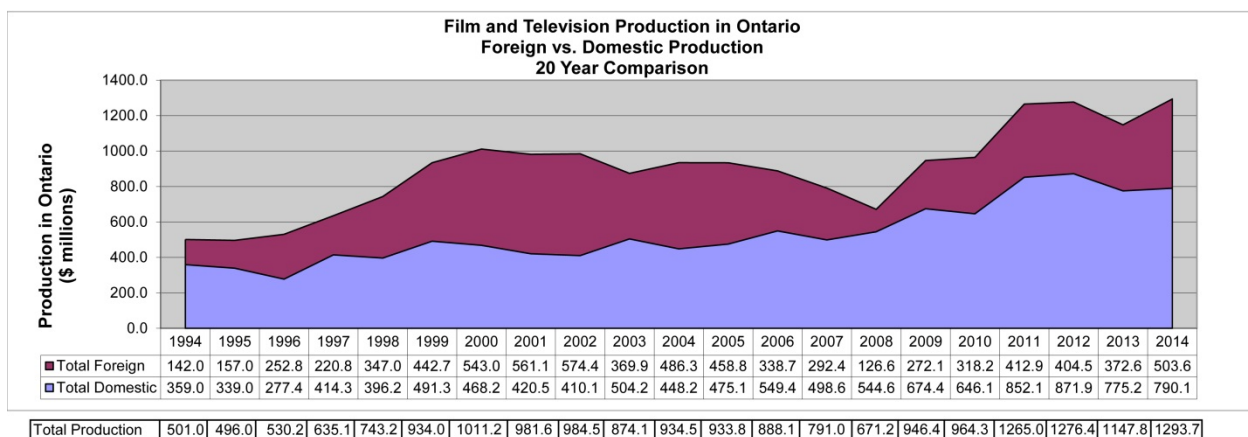
ONTARIO FILM AND TELEVISION PRODUCTION ACTIVITY IN 2014: Return on Investment

Thanks to the partnership of industry investment and policy stability, Ontario has had significant, steady growth in industry volumes and employment since 2009, especially youth employment, and attraction of private sector capital, reflected in the expansion of physical infrastructure such as shooting stages, studios, visual effects and animation studios, and the breadth and depth of equipment facilities and digital infrastructure.

According to the Ontario Media Development Corporation (OMDC):

- Film and television production contributed \$1.29 billion to the provincial economy in 2014 – the fourth year in a row over the one billion dollar mark – sending a welcome message of jobs and stability, and reflecting Ontario’s reputation as a top-quality and reliable jurisdiction.
- The film and television industry accounts for almost 28,000 full time direct and spin-off jobs, an increase of 2,600 over the previous year.

The chart below demonstrates the growth in foreign and domestic production from 1994 to 2014.



The chart above represents productions shot in Ontario which have received facilitation services and/or applied for tax credits from the OMDC.

IN TORONTO

- Toronto provides a full scope of services, suppliers, talent, crew and facilities delivering everything required for success in pre-production through post production. There is over 1.1 million square feet of dedicated studio and stage space available, and Toronto has a long history of being at the forefront of technological development and innovation from the invention of IMAX, development of Maya and Houdini software and various rigs.
- In 2014, domestic and international screen-based production companies invested a record \$1.23 billion in on-location filming in Toronto. These investments in the city's economy exceeded the \$1-billion mark for the fourth consecutive year, with a 4.3 per cent increase over the \$1.18 billion reported in 2013.
- Commercial production investment in 2014 (\$195 million) showed a 48 per cent increase from 2013, which is an unprecedented level of growth for the city in this area.
- Investment in major domestic productions reached \$652.25 million, exceeding \$500 million for the second consecutive year, with an unprecedented 21 per cent increase over 2013. This increase can be attributed to the growth in domestic TV series spending.
- The number of location filming shoot days jumped by 19 per cent in 2014 over 2013 (6,361 days).