

1988, chapter 69

**AN ACT RESPECTING THE PROFESSIONAL STATUS
OF ARTISTS IN THE VISUAL ARTS, ARTS AND
CRAFTS AND LITERATURE, AND THEIR CONTRACTS
WITH PROMOTERS**

Bill 78

Introduced by Madam Lise Bacon, Minister of Cultural Affairs

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Acts amended:

Act respecting the Ministère des Affaires culturelles (R.S.Q., chapter M-20)

Act respecting the professional status and conditions of engagement of performing, recording and film artists (1987, chapter 72)





CHAPTER 69

An Act respecting the professional status of artists in the visual arts, arts and crafts and literature, and their contracts with promoters

[Assented to 23 December 1988]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

SCOPE AND DEFINITIONS

- Applicability** **1.** This Act applies to self-employed artists who create works in the fields of visual arts, arts and crafts and literature and to the promoters of such works.
- Interpretation** **2.** For the purposes of this Act, the said fields include the following artistic activities:
- “visual arts”** (1) “visual arts”: the production of original works of research or expression, which are unique or in limited copies and are conveyed by painting, sculpture, engraving, drawing, illustration, photography, textile arts, installation work, performance, art video or any other form of expression of the same nature;
- “arts and crafts”** (2) “arts and crafts”: the production of original works which are unique or in multiple copies, intended for a utilitarian, decorative or expressive purpose and conveyed by the practice of a craft related to the working of wood, leather, textiles, metals, silicates or any other material;
- “literature”** (3) “literature”: the creation and the translation of original literary works such as novels, stories, short stories, dramatic works, poetry, essays or any other written works of the same nature.

- Interpretation
"association" **3.** In this Act, unless the context indicates a different meaning, "association" means any group of artists from a particular field or, if the association belongs to a group, from a particular activity, which is incorporated as a non-profit legal person whose object is the defence of the professional and socioeconomic interests of its members;
- "promoter" "promoter" means any person, body or corporation who or which, as its main or secondary activity, operates for profit or not a circulation enterprise and enters into contracts with artists;
- "circulation" "circulation" means the sale, lending, lease, exchange, deposit, exhibition, publishing, public presentation, publication or any other use of the works of artists;
- "group" "group" means a group of associations of artists from a particular field.
- Legal person **4.** The fact that an artist offers his works through a legal person which he controls is no obstacle to the application of this Act.
- Provisions not applicable **5.** This Act does not apply to an artist whose services are retained by a promoter to work as an employee within the meaning of the Labour Code (R.S.Q., chapter C-27).
- Applicability **6.** This Act applies to the Government, its departments, agencies and other mandataries in all cases where they enter into contracts with artists in respect of their works.

CHAPTER II

RECOGNITION OF PROFESSIONAL ARTISTS

DIVISION I

PROFESSIONAL STATUS OF ARTISTS

- Professional artist's status **7.** Every creator in the field of visual arts, arts and crafts or literature has the status of a professional artist if
- (1) he declares himself to be a professional artist;
 - (2) he produces works on his own behalf;
 - (3) his works are exhibited, produced, published, presented in public or marketed by a promoter;
 - (4) he has been recognized by his peers as a professional artist by way of an honourable mention, an award, a prize, a scholarship, an

appointment to an adjudication committee or an invitation to participate in a salon or by any other similar means.

8. Every artist who is a professional member of an association recognized under section 10 or forming part of a group recognized under section 10 is deemed to be a professional artist.

9. Every professional artist is free to join any association and to participate in its establishment, activities and administration.

DIVISION II

RECOGNITION OF PROFESSIONAL ASSOCIATIONS

§ 1.—*Right to recognition*

10. Recognition shall be granted by the Commission de reconnaissance des associations d'artistes, established by section 43 of the Act respecting the professional status and conditions of engagement of performing, recording and film artists (1987, chapter 72), to only one association or one group in each of the following fields:

- (1) visual arts;
- (2) arts and crafts;
- (3) literature.

11. The Commission shall grant recognition to the association or group which is the most representative of all the professional artists working in a particular field.

The most representative association is the association which, in the opinion of the Commission, unites the greatest number of professional artists from a particular field and whose members are the most evenly distributed among the greatest number of artistic activities within that field and the most widely distributed over the greatest area of the territory of Québec.

The most representative group is the group which, in the opinion of the Commission, unites the most representative associations from the greatest number of artistic activities in a particular field.

12. No association shall be recognized unless its by-laws

(1) prescribe conditions of membership based on independence and professional requirements specific to artists in the activity or field in question;

(2) prescribe ethical standards which impose obligations on its members toward the public;

(3) confer on the members the right to take part in the meetings of the association and to vote;

(4) prescribe that all decisions as to membership requirements for artists to whom this Act applies shall be submitted to the members for approval;

(5) confer on the members the right to vote by secret ballot on the content of any agreement that the association may negotiate with promoters;

(6) make the calling of a general meeting or the polling of the members to whom this Act applies mandatory where 10% of such members request it.

Recognition
of group

13. No group shall be recognized unless it meets the following requirements:

(1) it was established to achieve, within a particular field, the objectives set out in section 25;

(2) it has adopted a by-law determining, for the purposes of this Act, which functions shall be assumed by its own governing bodies and which shall be assumed by the governing bodies of the associations forming part of the group;

(3) only professional members of the associations forming part of the group have the status of professional members of the group;

(4) the by-laws of the group or the by-laws of the associations forming part of the group, depending on the determination made pursuant to paragraph 2, meet the requirements set out in section 12.

Restriction

14. An association shall not be recognized if its by-laws unjustly prevent an artist working in the field in question from belonging to the association. The same shall apply to a group if its by-laws or those of one of its member associations unjustly prevent an artist working in the field in question from belonging to a member association.

§ 2.—*Application for recognition*Application
for recogni-
tion

15. An association or group shall apply for recognition by way of a written application addressed to the Commission.

Authoriza-
tion by
resolution

The application must be authorized by a resolution of the association or group and signed by representatives specially mandated for that purpose.

Required
documents

16. The application for recognition must be accompanied with a certified copy of the by-laws of the association or group and a list of its members.

Time of
application

17. Recognition may be applied for

(1) at any time in respect of a field in which no association or group is recognized;

(2) within the three months preceding every third anniversary of the date of taking effect of a recognition.

Determina-
tion of
representa-
tiveness

18. Where the Commission is called upon to rule on an application for recognition, it may take any measure it considers necessary to ascertain the representativeness of the association or group. The Commission may, for instance, hold a referendum.

Notice in
newspapers

The Commission shall publish, at least twice in two daily newspapers having general circulation in Québec, a notice indicating that it intends to ascertain the representativeness of the association or group and indicating what measures it has decided to take for that purpose.

Representa-
tions

19. Where an application for recognition is being considered, only the artists and associations of artists in the field in question may present their opinions with respect to the representativeness of the applicant association or group.

Notice

20. Where the Commission grants recognition, it shall publish a notice thereof in the *Gazette officielle du Québec* at the expiry of 15 days after transmission of the decision to the interested parties. The recognition takes effect on the date of the publication.

§ 3.—*Withdrawal of recognition*Representa-
tiveness
questioned

21. On the application of a number of professional artists in the field in which a recognition has been granted, equal to 25% of the membership of the recognized association or group, or on the

application of an association of promoters, the Commission shall ascertain the representativeness of the recognized association or group.

Period An application under the first paragraph may be made only in the period defined in paragraph 2 of section 17.

Withdrawal The Commission shall withdraw recognition from an association or group if it considers that it is no longer representative of the professional artists in the field.

Withdrawal **22.** Recognition of an association or group withdraws recognition from any other association or group in the field contemplated by the new recognition.

Unenforcement of by-laws **23.** On the application of an interested party, the Commission may withdraw recognition at any time if it is proved that the by-laws of the association or group or, taking into account paragraph 2 of section 13, of an association forming part of the group, no longer meet the requirements of this Act or are not enforced.

Notice of withdrawal **24.** Where the Commission withdraws recognition, it shall publish a notice thereof in the *Gazette officielle du Québec* in the same manner as for a decision granting recognition. The withdrawal takes effect on the date of the publication.

§ 4.—*Effects of recognition*

Duties of association or group **25.** In the field in question, the recognized association or group shall

(1) ensure that the honour of the artistic profession and the freedom to practise such profession are upheld;

(2) promote favourable conditions for the creation and circulation of the artists' works;

(3) defend and promote the economic, social, moral and professional interests of professional artists;

(4) represent professional artists in every instance where it is in the general interest that it should do so.

Duties and powers **26.** In the performance of its duties, the recognized association or group may, in particular,

(1) conduct research and surveys on the development of new markets and on any matter which may affect the economic and social situation of professional artists;

(2) represent its members for the negotiation and performance of their contracts with promoters;

(3) fix and collect dues;

(4) collect, at the request of an artist whom it represents, any amounts due to him and remit such amounts to him;

(5) establish and administer special retirement funds;

(6) dispense technical support services to professional artists;

(7) organize activities for further training;

(8) draw up model contracts stipulating the minimum conditions of circulation of the works of professional artists and propose the use of such contracts to promoters.

Special
retirement
funds

Sections 14 and 16 to 18 of the Professional Syndicates Act (R.S.Q., chapter S-40), adapted as required, apply to the special retirement funds that a recognized association or group may establish and administer.

Recognized
group

27. In the case of a recognized group, an association forming part thereof may be, by by-law, assigned duties and invested with powers provided for in sections 25 and 26 in respect of an artistic activity.

List of
members

28. At the request of the Commission, a recognized association or group shall transmit the list of its members to the Commission in the prescribed form.

Amendment
to by-laws

The association or group shall also transmit to the Commission a copy of any amendment made to its by-laws and, in the case of a group, of any amendment made to the by-laws of the association forming part of the group.

Recourse

29. A recognized association or group may exercise, on behalf of any artist whom it represents, any recourse of the artist arising from the application of this Act or an agreement binding the association or group to a promoter or an association of promoters, without having to establish any mandate to do so or the assignment of any claim of the artist concerned.

CHAPTER III

CONTRACTS BETWEEN ARTISTS AND PROMOTERS

DIVISION I

INDIVIDUAL CONTRACTS

Applicability **30.** This division applies to every contract between an artist and a promoter which has a work of the artist as its object.

Applicability It also applies to every contract, where the object of such contract is the publication of a book, between a promoter and a person who is not contemplated by Chapters I and II.

Form and content of contract **31.** The contract must be evidenced in a writing, drawn up in duplicate, clearly setting forth

(1) the nature of the contract;

(2) the work or works which form the object of the contract;

(3) any transfer of right and any grant of licence consented to by the artist, the purposes, the term or mode of determination thereof, and the territorial application of such transfer of right and grant of licence, and every transfer of title or right of use affecting the work;

(4) the transferability or nontransferability to third persons of any licence granted to a promoter;

(5) the consideration in money due to the artist and the intervals and other terms and conditions of payment;

(6) the frequency with which the promoter shall report to the artist on the transactions made in respect of every work that is subject to the contract and for which monetary consideration remains owing after the contract is signed.

Contract **32.** The contract is made when it is signed by the parties.

Performance The artist is not bound to perform his obligations until such time as he is in possession of a copy of the contract.

Stipulation of contract **33.** Every agreement between a promoter and an artist pertaining to one of the artist's works shall be stipulated in a contract which shall be made and take effect in accordance with section 31 and shall contain stipulations concerning the matters which must be set forth under section 31.

Exclusivity
agreements

34. Every agreement between a promoter and an artist which reserves, for the promoter, an exclusive right over any future work of the artist or which recognizes the promoter's right to determine the circulation of such work shall, in addition to meeting the requirements set out in section 31,

(1) contemplate a work identified at least as to its nature;

(2) be terminable upon the application of the artist once a given period agreed upon by the parties has expired or after a determinate number of works agreed upon by the parties has been completed;

(3) specify that the exclusive right ceases to apply in respect of a reserved work where, after the expiration of a period for reflection, the promoter, though given formal notice to do so, does not circulate the work;

(4) stipulate the duration of the period for reflection agreed upon by the parties for the application of paragraph 3.

Prohibition

35. No promoter may, without the consent of the artist, give as security the rights he obtains by contract from the artist or grant a security on a work subject to a contract and of which the artist remains the owner.

Termination
of contract

36. The contract shall be terminated if the promoter commits an act of bankruptcy or has a receiver order issued against him pursuant to the Bankruptcy Act (Statutes of Canada), if his property is taken possession of according to law or, in the case of a legal person, if such legal person is liquidated.

Arbitrator

37. In the absence of an express renunciation, every dispute arising from the interpretation of the contract shall be submitted to an arbitrator at the request of one of the parties.

Designation
of arbitrator

The parties shall designate an arbitrator and submit their dispute to him according to such terms and conditions as may be stipulated in the contract. The provisions of Book VII of the Code of Civil Procedure, adapted as required, apply to such arbitration.

Separate
account

38. For every contract binding him to the artist, the promoter shall keep, in his books, a separate account in which he shall record, upon receipt, in respect of every work or works subject to the contract,

(1) every payment from a third person with particulars permitting to identify such third person;

(2) the number and nature of all transactions made which correspond to the payments recorded and, where applicable, the number of copies printed and the number of copies sold.

Promoter to
report on
transactions

Where monetary consideration remains owing to the artist after the contract is signed, the promoter shall, at intervals agreed upon by the parties of not more than one year, report to the artist, in writing, on the transactions and on the payments he has collected in respect of his work.

Examination
of books

39. The artist may, at his own expense and after he has notified the promoter in writing, cause to be examined by an expert of his own choosing any accounting entry in the promoter's books which concerns him.

Up-to-date
records

40. The promoter shall keep up to date, at his principal place of business, a record in respect of the works by artists from the fields of arts and crafts and visual arts which are in his possession, but of which he is not the owner.

Content

The record shall set out

- (1) the name of the person who holds title to each work;
- (2) a note permitting to identify the work;

(3) the nature of the contract pursuant to which the work is in the possession of the promoter.

Access to
record

The entries shall be kept in the record of the promoter for as long as he assumes responsibility for the works pursuant to a contract. An artist bound by contract to the promoter may consult the record at any time during the office hours of the administrative services.

Presumption

41. Every work subject to a contract and which is on premises leased by the promoter is presumed to be there temporarily in all cases where he is not the owner of the work.

Prohibition

42. Subject to sections 35 and 37, no person may waive application of any provision of this chapter.

DIVISION II

GROUP AGREEMENTS RESPECTING MINIMUM CONDITIONS OF CIRCULATION

Negotiation
of agreement

43. Any recognized association or group and any promoter or association of promoters may negotiate and conclude an agreement

providing minimum conditions with respect to the circulation of the works of the artists represented by the recognized association or group.

Model
contracts

The agreement may relate to the use of model contracts or contain any other stipulation not contrary to public order nor prohibited by law.

Term

44. The term of an agreement shall be not more than three years.

Agreement
binding

45. Any agreement between a recognized association or group and an association of promoters binds every person who is a member of one or the other of such associations or group at the time of the signing of the agreement or who subsequently becomes a member thereof, even if he ceases to belong to the association or group that concluded the agreement or if such association or group is dissolved.

CHAPTER IV

VARIOUS PROVISIONS

Offence and
penalty

46. Every person who, in order to avoid payment of any amount owed to an artist, fails to record an entry prescribed in the first paragraph of section 38 or makes a false or inaccurate entry in the separate account is guilty of an offence and is liable to a maximum fine of \$5 000 and, for every subsequent offence within two years, to a maximum fine of \$10 000.

Offence and
penalty

47. Every promoter who contravenes any provision of section 40 or whose record contains what he knows to be false or inaccurate information is guilty of an offence and is liable to a maximum fine of \$5 000 and, for every subsequent offence within two years, to a maximum fine of \$10 000.

Commission
de recon-
naissance
des associa-
tions
d'artistes

48. The Commission de reconnaissance des associations d'artistes shall exercise, for the purposes of Chapter II, the powers conferred upon it by the Act respecting the professional status and conditions of engagement of performing, recording and film artists (1987, chapter 72).

Minister
responsible

49. The Minister of Cultural Affairs is responsible for the administration of this Act.

c. M-20,
s. 4.3, am.

50. Section 4.3 of the Act respecting the Ministère des Affaires culturelles (R.S.Q., chapter M-20) is amended by inserting the words

“, on the conditions he determines,” after the word “aid” in the first line of paragraph *b*.

1987, c. 72,
s. 14, am.

51. Section 14 of the Act respecting the professional status and conditions of engagement of performing, recording and film artists (1987, chapter 72) is amended by replacing the words “the third” in the first line of paragraph 2 by the words “every third”.

1987, c. 72,
s. 16, am.

52. Section 16 of the said Act is amended by replacing the second and third paragraphs by the following paragraphs:

Publication
of notice

“The Commission shall publish, in at least two daily newspapers having general circulation in Québec, a notice of the filing of an application for recognition. The Commission shall similarly publish a notice indicating that it intends to ascertain the representativeness of the association and indicating what measures it has decided to take for that purpose.

Notice in
recognized
territory

Where an application for recognition relates to a negotiating sector defined for only part of the territory of Québec, a notice provided for in the second paragraph may be given once in a daily newspaper having general circulation in Québec and once in a daily newspaper having circulation in the part of the territory included under the recognition.”

1987, c. 72,
s. 47.1,
added

53. The said Act is amended by inserting, after section 47, the following section:

Quorum

“**47.1** A quorum of the Commission shall consist of three members.”

1987, c. 72,
s. 56, am.

54. Section 56 of the said Act is amended by adding, after the first paragraph, the following paragraph:

Jurisdiction

“It shall also be the duty of the Commission to decide upon any other matter in respect of which it has jurisdiction under the Act respecting the professional status of artists in the visual arts, arts and crafts and literature, and their contracts with promoters (1988, chapter 69).”

1987, c. 72,
s. 62, am.

55. Section 62 of the said Act is amended by adding, after the first paragraph, the following paragraph:

Suspension
of negotia-
tions

“Subsequent to an application for recognition or for withdrawal of recognition or an application for verification of the representativeness of a recognized association, the Commission may order that negotiations and the time in which to initiate concerted action and

prevent the renewal of a group agreement be suspended. In such a case, the minimum conditions provided in the group agreement remain in effect and section 38 applies until the Commission has ruled on the applications before it.”

1987, c. 72,
s. 67, am.

56. Section 67 of the French text of the said Act is amended by replacing the word “les” in the first line of paragraph 2 by the word “des”.

Coming into
force

57. The provisions of this Act will come into force on 1 April 1989, except the provisions of sections 8, 10, 29, 43 to 45, 48 and 54, which will come into force on the later dates fixed by the Government.