

NATIONAL ASSEMBLY
Thirty-third Legislature, first session

1987, chapter 72

**AN ACT RESPECTING THE PROFESSIONAL STATUS
AND CONDITIONS OF ENGAGEMENT OF PERFORMING,
RECORDING AND FILM ARTISTS**

Bill 90

Introduced by Madam Lise Bacon, Minister of Cultural Affairs

Introduced 12 November 1987

Passage in principle 2 December 1987

Passage 17 December 1987

Assented to 17 December 1987

Coming into force: 17 December 1987, except sections 1 to 8 and 42 to 75, which will come into force on 1 April 1988, and sections 9 to 41, which will come into force on 1 November 1988

Act amended: None



CHAPTER 72

An Act respecting the professional status and conditions of engagement of performing, recording and film artists

[Assented to 17 December 1987]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

SCOPE AND DEFINITIONS

Scope **1.** This Act applies to artists and to producers who retain their professional services in the following fields of artistic endeavour: the stage, including the theatre, the opera, music, dance and variety entertainment, the making of films, the recording of discs and other modes of sound recording, dubbing, and the recording of commercial advertisements.

**Interpreta-
tion** **2.** In this Act, unless the context indicates a different meaning,

"artist" **"artist"** means any natural person who practises an art on his own account and who offers his services for remuneration, as a creator or performer in any field of artistic endeavour referred to in section 1;

"film" **"film"** means a work produced with the use of technical means resulting in a cinematographic effect, regardless of the medium, and includes a video;

"producer" **"producer"** means a person or company who or which retains the services of artists in view of producing or presenting to the public an artistic work in a field of endeavour contemplated in section 1.

Business
firm

3. The fact that an artist furnishes personal services through a business firm is no obstacle to the application of this Act.

Binding ef-
fect

4. This Act is binding on the Crown.

Inapplica-
bility

5. This Act does not apply to a person whose services are retained for an occupation contemplated by a certification granted under the Labour Code (R.S.Q., chapter C-27) or a decree passed under the Act respecting collective agreement decrees (R.S.Q., chapter D-2).

CHAPTER II

PROFESSIONAL STATUS OF ARTISTS

Status

6. For the purposes of this Act, an artist who regularly binds himself to one or several producers by way of engagement contracts pertaining to specified performances is deemed to practise an art on his own account.

Choice of
association

7. Every artist is free to join any artists' association he chooses and to participate in its establishment, activities and administration.

Conditions
of engage-
ment

8. Every artist is free to negotiate and agree the conditions of his engagement by a producer. An artist and a producer bound by the same group agreement cannot, however, stipulate a condition that is less advantageous for the artist than the condition stipulated in the group agreement.

CHAPTER III

RECOGNITION OF ARTISTS' ASSOCIATIONS

DIVISION I

RIGHT TO RECOGNITION

Recognition

9. Every artists' association which

(1) is a professional syndicate or an association having an object similar to that of a professional syndicate within the meaning of the Professional Syndicates Act (R.S.Q., chapter S-40),

(2) comprises the majority of artists in any negotiating sector defined by the Commission de reconnaissance established by section 43, is entitled to recognition.

By-laws

10. No association may be recognized unless it adopts by-laws

(1) prescribing membership requirements based on the professional attributes of artists;

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

(3) conferring on the members included under a draft group agreement the right to vote by secret ballot on its contents where the draft agreement contains an amendment to the rates of remuneration provided in an existing agreement binding between the association and an association of producers or another producer in the same sector;

(4) prescribing that all decisions as to membership requirements shall be submitted to the qualified members for approval;

(5) making the calling of a general meeting or the polling of the members mandatory where 10% of the members request it.

Prohibition

11. The by-laws of an artists' association shall contain no provision whereby an artist would be unjustly prevented from joining or maintaining his membership in the association or from qualifying for membership in the association.

DIVISION II

RECOGNITION PROCEDURE

Application

12. An artists' association shall apply for recognition by way of a written application addressed to the Commission.

Authoriza-
tion

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

Negotiating
sectors

13. An association may apply for recognition for one or several negotiating sectors.

Periods for
application

14. Recognition may be applied for

(1) at any time in respect of a sector for which no association is recognized;

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

- 15.** The application for recognition must be accompanied with a certified copy of the by-laws of the association and the membership list.
- 16.** Where the Commission is called upon to rule on an application for recognition, it may take any measure it considers necessary to ascertain whether the membership of the association accounts for the majority of artists in the sector concerned. The Commission may, for instance, hold a referendum.
- The Commission shall publish, at least twice in two daily newspapers having general circulation throughout Québec, a notice indicating that it intends to ascertain the representativeness of the association and indicating what measures it considers it necessary to take for that purpose.
- In the case of an application for recognition relating to a negotiating sector defined for only part of the territory of Québec, the notice provided for in the second paragraph may be given once in a daily newspaper having general circulation throughout Québec and once in a daily newspaper having circulation in the part of the territory included under the recognition.
- 17.** Where an application for recognition is being considered, the artists, the artists' associations and any producer may address the Commission on the question of defining the negotiating sector.
- Notwithstanding the foregoing, only the artists and the artist's associations in the sector so defined are interested parties with respect to whether the members of the applicant association are in the majority.
- 18.** If the Commission is satisfied that the association comprises the majority of artists in the sector concerned and that its by-laws fulfil the requirements of this Act, it shall grant recognition to the association.
- 19.** Where the Commission grants recognition, it shall publish a notice thereof in the *Gazette officielle du Québec* at the expiry of fifteen days after transmission of the decision to the interested parties. The recognition takes effect on the date of the publication.

DIVISION III

WITHDRAWAL OF RECOGNITION

- 20.** On the application of not less than 25% of the artists in the sector in which an association is recognized or on the application of an association of producers affected by the recognition, the Commission

shall verify whether the association comprises the majority of artists in the sector.

Periods for application An application for verification may be made only in the periods contemplated in paragraph 2 of section 14.

Withdrawal The Commission shall withdraw recognition from an association if it considers that its membership no longer comprises the majority of artists in the sector.

New recognition **21.** Recognition of an artists' association withdraws recognition of any other artists' association in the sector contemplated by the new recognition.

Period for withdrawal **22.** On the application of any interested party, the Commission may withdraw recognition at any time if it is proved that the by-laws of the association no longer fulfil the requirements of this Act or are not enforced.

Publication of notice **23.** Where the Commission withdraws recognition, it shall give notice thereof in the *Gazette officielle du Québec* in the same manner as for a decision granting recognition. The withdrawal takes effect from the date of publication of the notice.

DIVISION IV

EFFECTS OF RECOGNITION

Rights and powers of associations **24.** Recognition confers, in the sector defined therein, the following rights and powers on an artists' association:

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

(2) to represent the artists in every instance where it is in the general interest that it should do so, and to cooperate for that purpose with any organization pursuing similar ends;

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

(4) to fix the dues for the artists;

(5) to collect any amounts due to the artists whom it represents, and remit the amounts to them;

(6) to establish model contracts for the performance of services and make agreements with the producers as to the use of such contracts;

(7) to negotiate a group agreement, which may include a model contract for the performance of services by the artists.

Membership list **25.** At the request of the Commission, a recognized association shall transmit its membership list to the Commission in the form prescribed thereby.

Amendments to by-laws The association shall also transmit a copy of any amendment to its by-laws to the Commission.

Recognition **26.** Every association of producers and every producer who is not a member of an association of producers shall, for the purposes of negotiating a group agreement, recognize the artists' association recognized by the Commission as the sole representative of the artists in the negotiating sector concerned.

DIVISION V

GROUP AGREEMENT

Group agreement **27.** In a negotiating sector, the recognized association and the association of producers or a producer who is not a member of an association of producers may negotiate and conclude a group agreement providing minimum conditions with respect to the engagement of artists.

Junior artists In negotiating a group agreement, the parties shall take into consideration the objective of facilitating the inclusion of junior artists.

Stipulations The agreement may also contain any stipulation not contrary to public order nor prohibited by law.

Initiation of negotiation **28.** The recognized association or the association of producers, or the producer who is not a member of an association of producers, as the case may be, may initiate the negotiation of a group agreement by giving the other party written notice of at least ten days, requesting a meeting in view of the conclusion of a group agreement.

Notice Where the parties are already bound by a group agreement, the recognized association or the association of producers, or the producer who is not a member of an association of producers, may give such a notice in the 120 days preceding the expiry of the agreement.

- 29.** The party who gives a notice provided for in section 28 must send a copy thereof on the same day to the Commission by registered or certified mail. The Commission shall inform the parties of the date on which it received a copy of the notice.
- 30.** The parties must begin to negotiate at the time fixed in the notice provided for in section 28 and conduct the negotiations in good faith.
- 31.** At any stage of the negotiations, either party may request the Commission to appoint a mediator.
- 32.** The mediator appointed by the Commission shall convene the interested parties and attempt to bring them to a settlement.
- The parties must attend every meeting to which they are convened by the mediator.
- The mediator may make recommendations to the parties as to the conditions of engagement of artists.
- 33.** The parties may jointly submit their dispute to arbitration by the Commission.
- In that case, the arbitration award has the same effect as a group agreement.
- 34.** Unless an agreement has been reached or the parties have submitted their dispute to arbitration, the recognized association may, after the expiry of 30 days after the date the Commission received the notice provided for in section 28, initiate concerted action against the other party so as to induce the party to conclude a group agreement.
- After the expiry of the same time, the association of producers and, as the case may be, the producer who is not a member of an association of producers may initiate concerted action against the recognized association so as to induce it to conclude a group agreement.
- 35.** The party having taken the initiative in the negotiation shall, within 30 days from the signature of a group agreement, transmit a copy of the agreement to the Commission. The same rule applies to any amendment subsequently made to that group agreement.
- 36.** The term of a group agreement or of an arbitration award, where such is the case, shall be of not over three years.

New association **37.** A newly recognized association replaces the association formerly recognized in the same sector in respect of all the rights and obligations resulting from a group agreement concluded by the latter association and still in force.

Termination of agreement **The withdrawal of recognition unaccompanied with recognition of a new association terminates any group agreement concluded by the association whose recognition is withdrawn.**

Prohibitions **38.** During the term of a group agreement or arbitration award,

(1) no recognized association nor any artists it represents may boycott or advise or enjoin artists to boycott a producer or association of producers bound by the agreement or award, or use any similar pressure tactics against them;

(2) no producer may use any pressure tactics that result in depriving of work artists bound by that agreement or award.

Pressure tactics **39.** No recognized association nor any artist represented thereby may use pressure tactics against any person that are designed to prevent a producer to whom the association is bound by a group agreement from producing an artistic work or presenting it to the public, or designed to induce a third person to use pressure tactics against a producer to conclude a group agreement.

Effect of agreement **40.** The group agreement binds the producer and every artist belonging to the negotiating sector who is engaged by the producer. In the case of an agreement concluded with an association of producers, the agreement binds every producer who is a member of the association 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 the association is dissolved.

Recourses **41.** The recognized association may exercise the recourses of the artists it represents under the group agreement without having to establish an assignment of the claim of the member concerned.

Exercise of rights **42.** No producer may refuse to engage an artist on account of his exercising his rights under this Act.

CHAPTER IV

COMMISSION DE RECONNAISSANCE
DES ASSOCIATIONS D'ARTISTES

DIVISION I

ESTABLISHMENT

- Establishment** **43.** A body is hereby established under the name "Commission de reconnaissance des associations d'artistes".
- Composition** **44.** The Commission is composed of three members, including a chairman and a vice-chairman, appointed by the Government for a fixed term of not over five years.
- Exclusivity of office** The chairman shall perform his duties full time.
- Remuneration** The Government shall fix the remuneration and the other conditions of employment of the members of the Commission.
- Chairman** **45.** The chairman of the Commission is responsible for the administration of the Commission and the direction of its staff.
- Employees** **46.** The secretary and the other employees of the Commission are appointed in the manner and according to the staffing requirements determined by the Commission.
- Conditions of employment** The standards and scales of remuneration and the other conditions of employment of the secretary and the other employees of the Commission shall also be determined by the Commission.
- Approval** The staffing plan, the standards and scales of remuneration and the conditions of employment shall be submitted for approval to the Government, and take effect on their date of approval.
- Additional members** **47.** The Government may, for the proper dispatch of the business of the Commission, appoint additional members on a temporary basis for such period as it may determine and determine their remuneration.
- Head office** **48.** The Commission shall have its head office in the territory of the Communauté urbaine de Montréal.
- Sittings** The Commission may sit at any place in Québec.
- Vice-chairman** **49.** The vice-chairman shall exercise the powers of the chairman in case of his absence or inability to act.

Decision af-
ter expiry of
term **50.** A member of the Commission may continue to examine any application or request referred to him and make a decision notwithstanding the expiry of his term.

Conflict of
interest **51.** No member of the Commission may, under pain of forfeiture of office, have any direct or indirect interest in an undertaking putting his personal interest in conflict with that of the Commission.

Forfeiture Forfeiture is not incurred if the interest devolves to the member by succession or gift, provided he renounces or disposes of it with dispatch.

Immunity **52.** The members and employees of the Commission cannot be prosecuted on account of acts done in good faith in the performance of their duties.

Records of
Commission **53.** Any writing or document forming part of the records of the Commission and signed or attested by the chairman or a person designated by him for that purpose is authentic and is proof of its contents, without the necessity of proving the signature thereof.

Fiscal year **54.** The fiscal year of the Commission ends on 31 March each year.

Report of
activities **55.** Not later than 30 June each year, the Commission shall submit a report of its activities for the preceding fiscal year to the Minister.

Tabling The Minister shall table the report in the National Assembly within thirty days of receiving it if the Assembly is in session or, if it is not sitting, within thirty days after resumption.

DIVISION II

DUTIES AND POWERS

Duties **56.** The duties of the Commission are

(1) to decide any application for recognition submitted by an artists' association;

(2) to decide as to the conformity to this Act of the by-laws of recognized associations regarding membership requirements and see to it that the associations enforce those by-laws;

(3) to appoint a mediator at the request of a party to the negotiation of a group agreement;

(4) to arbitrate any dispute submitted to it jointly by the parties negotiating a group agreement;

(5) to advise the Minister on any matter relating to the administration of this Act, particularly on the implementation of appropriate measures to foster protection of the professional status of artists in harmony with the development of production enterprises.

Negotiating
sectors

57. The Commission, upon application, may define negotiating sectors in respect of which recognition may be granted.

Decision of
Commission

58. The Commission, of its own initiative, upon receiving an application for recognition, and at any time on the motion of an interested person, may decide whether a person is comprised in a negotiating sector or decide any other matter relating to recognition.

Interest of
artists

59. For the purposes of sections 57 and 58, the Commission shall take into particular account the common interest of the artists concerned and the history of relations between artists and producers in respect of the negotiation of group agreements.

Examination
of docu-
ments

60. The Commission may require any information from artists' associations and producers and examine any document, as may be necessary for the performance of its duties.

Inquiry

61. The Commission may inquire into any matter relating to the implementation of this Act.

Powers and
immunity

The members of the Commission have, for the purposes of any inquiry or hearing, the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions (R.S.Q., chapter C-37), except the power to impose imprisonment.

Decisions

62. The Commission may decide an application in part only. It may also make any provisional order it considers necessary for the protection of the rights of the parties.

Representa-
tions

63. Before rendering a decision on an application for recognition or for withdrawal of recognition, the Commission shall give the association concerned an opportunity to make representations.

Representa-
tions

In the case of a motion relating to the matter of which negotiating sector a person belongs to, the Commission shall give every producer and every interested association intervening in the case an opportunity to make representations.

Substantiated decision Every decision of the Commission must give reasons in writing and be transmitted to the persons having intervened in the case.

Inadmissible application **64.** The Commission may rule that any application or motion that is, in its opinion, manifestly frivolous, vexatious or in bad faith, is inadmissible.

By-laws **65.** The Commission, by by-law, may

- (1) provide for its internal management;
- (2) adopt rules of proof and procedure, which shall come into force upon approval by the Government.

Final decision **66.** Every decision of the Commission is final and without appeal.

Revision or revocation **67.** The Commission may revise or revoke any decision or order it has made

(1) where a new fact is discovered which, if it had been known in due time, might have justified a different decision;

(2) where a party interested in the issue was, for reasons considered sufficient, prevented from being heard;

(3) where a substantive or procedural defect is likely to invalidate the decision.

Extraordinary recourses **68.** Except on a question of jurisdiction, article 33 of the Code of Civil Procedure (R.S.Q., chapter C-25) does not apply to the Commission and no extraordinary recourse provided in articles 834 to 850 of that Code may be exercised nor any injunction granted against the Commission acting in its official capacity.

CHAPTER V

OFFENCES AND PENALTIES

Offence and penalties **69.** Every person who contravenes any of sections 26, 30 and 42 is guilty of an offence and is liable, in addition to costs, to a fine of \$100 to \$1 000.

Offence and penalties **70.** Every person who contravenes section 38 or 39 is guilty of an offence and is liable, in addition to costs, to a fine

(1) of \$50 to \$200, in the case of an artist;

(2) of \$500 to \$5 000, in the case of an officer or employee of an artists' association or of a director, agent or advisor of an artists' association or producer;

(3) of \$2 500 to \$25 000, in the case of a producer, artists' association or association of producers or in the case of any union, federation, confederation or central labour body to which an artists' association is affiliated or belongs.

Proceedings **71.** Proceedings under this Act are brought in accordance with the Summary Convictions Act (R.S.Q., chapter P-15) by the Attorney General or by any person generally or specially authorized by him for that purpose.

CHAPTER VI

TRANSITIONAL AND FINAL PROVISIONS

Filing of agreement **72.** An artists' association bound to an association of producers by a group agreement on the conditions of engagement of artists in force on 12 November 1987 may file the agreement with the Commission within 60 days of the coming into force of section 43.

Copy of by-laws Such an association may, within the same time, file with the Commission a copy of its by-laws and, subsequently, a copy of any amendment to its by-laws.

Recognition **73.** An artists' association which complies with section 72 is deemed to have been recognized under this Act on 1 April 1988 for the negotiating sector corresponding to the field to which the filed group agreement applies.

Effective date For the purposes of section 14, the date mentioned in the first paragraph is considered to be the date of taking effect of recognition.

Presumption **74.** Every group agreement binding an artists' association recognized by the effect of section 73 and an association of producers is deemed to have been concluded under this Act.

Provisions applicable Sections 38 to 41 apply to the associations of producers, producers, artists' associations and artists included under the agreement, from the date of its filing with the Commission.

Decision of disputes **75.** The Commission, upon the application of one of the parties bound by a group agreement contemplated in section 74, may decide any dispute as to the definition of the negotiating sector corresponding

to the field to which the group agreement applies, unless the agreement provides that the dispute may be submitted to arbitration.

Minister
responsible

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

Coming into
force

77. The provisions of this Act come into force on 17 December 1987, except those of sections 1 to 8 and 42 to 75, which will come into force on 1 April 1988, and those of sections 9 to 41, which will come into force on 1 November 1988.