



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-THIRD LEGISLATURE

Bill 78

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

Introduction

**Introduced by
Madam Lise Bacon
Minister of Cultural Affairs**

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EXPLANATORY NOTES

The object of this bill is, first, to recognize the professional status of artists who practise their creative profession in the fields of visual arts, arts and crafts and literature.

The bill also establishes a legal framework for granting recognition to the association or group of associations which best represents the professional artists in each of these fields. The Commission de reconnaissance des associations d'artistes, established by the Act respecting the professional status and conditions of engagement of performing, recording and film artists (1987, chapter 72), will be responsible for granting such recognition. Moreover, the powers held by the Commission pursuant to the aforementioned Act are extended to the application of the rules proposed by the bill in this respect.

The bill deals with contracts concluded by distributors with artists in respect of their works and, in this regard, imposes certain obligations on the distributors and recognizes certain rights of the artists.

Thus, in order to be set up against an artist, contracts must henceforth be evidenced in writing and clearly state that there is an agreement between the parties on certain subjects which will have to be specified in the contract. Furthermore, any clause that reserves for a distributor an artist's future works will have to specify the length of the period of time or the number of works and will also provide that it will be voided if the distributor does not avail himself of it within an agreed period of time. The bill provides as well that any disagreement over the interpretation of a clause of the contract may be submitted to arbitration at the request of the artist or the distributor, except in the event of express renunciation. Furthermore, the contract is terminated should the distributor become insolvent or bankrupt.

Distributors will have to keep a separate account in their books for every contract concluded with an artist. At intervals agreed upon with the artist, a distributor will report to him on all transactions

made with respect to his works. The artist may, if necessary, hire an expert of his choice to examine accounting entries in the distributor's book which concern him. Distributors will be required to keep a written record of the visual art works and arts and crafts works which are in their possession, but which they do not own, so that the artist who owns each of the works may be identified. When the works are kept in premises leased by a distributor, they will be considered as being on such premises only temporarily.

Finally, the bill provides that a recognized association of professional artists may negotiate and conclude an agreement, with a distributor or association of distributors, for a maximum term of three years, on the minimum conditions of distribution of the works of the artists whom it represents.

ACTS AMENDED BY THIS BILL:

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

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

Bill 78

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

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

SCOPE AND DEFINITIONS

1. This Act applies to artists who create works independently in the fields of visual arts, arts and crafts and literature and to the distributors of such works.

2. For the purposes of this Act, the said fields include the following artistic activities:

(1) “visual arts”: the production of original, non-utilitarian works of research or expression which are unique or in limited copies and conveyed, in particular, by painting, sculpture, engraving, drawing, photography, textile arts, installation work, performance and art video;

(2) “arts and crafts”: the production of original works which are unique or in limited 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;

(3) “literature”: the creation and the translation of literary works which are inventions of the imagination or which have an aesthetic

purpose such as novels, stories, short stories, dramatic works, poetry, essays, cartoons and any other written works of the same nature.

3. In this Act, unless the context indicates a different meaning,

“association” means any group of artists from a particular field, or any group of associations uniting such artists, which is incorporated as a non-profit legal person whose object is the defence of the professional and socioeconomic interests of its members;

“distributor” means any person or partnership who or which, for profit or not, operates an enterprise with a view to the sale, lending, lease, exchange, deposit, exhibition, publishing, public presentation, publication or any other use of the works of artists.

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.

5. 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

6. 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; and

(3) his works are exhibited, produced, published, presented in public or marketed by a distributor, or, in the case of works in the fields of visual arts and arts and crafts, if they are recognized as such by his peers.

7. Every artist who is a member of an association recognized under section 9 is presumed to be a professional artist.

8. 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*

9. 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 of professional artists in each of the following fields:

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

10. The Commission shall grant recognition to the association 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.

11. 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 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 distributors;

(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.

12. 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.

13. Recognition may be granted in a particular field to an association consisting of two or more professional artists' associations if such association meets the following requirements:

(1) it was established in order to achieve the objectives set out in paragraphs 1 to 4 of section 25;

(2) the members of the associations belonging to the applicant association have the status of members of such association;

(3) 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 belonging to the association.

14. In the case of an association consisting of artists' associations, the by-laws of such associations shall be considered to be by-laws of the association for the purposes of sections 11, 12, 23, 27 and 46 of this Act, even if they continue to apply only to the members of the association concerned.

§ 2.—Application for recognition

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

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

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

17. Recognition may be applied for

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

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

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. 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 the measures it has decided to take for that purpose.

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.

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*

21. On the application of a number of professional artists in the field in which an association is recognized equal to 25% of the membership of such association or on the application of an association of distributors, the Commission shall ascertain the representativeness of the recognized association.

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

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

22. Recognition of an artists' association withdraws recognition from any other artists' association in the field contemplated by the new recognition.

23. 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 meet the requirements of this Act or are not enforced.

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*

25. In the field in question, the recognized association 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 distribution 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.

26. In the performance of its duties, the recognized association 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 distributors;

(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 conditions of distribution of the works of professional artists and propose the use of such contracts to distributors.

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 may establish and administer.

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

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

28. A recognized association may exercise, on behalf of any artist whom it represents, any recourse of the artist arising from the application of this Act, an agreement binding the association to a distributor or an association of distributors or a contract binding an artist and a distributor, 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 DISTRIBUTORS

DIVISION I

INDIVIDUAL CONTRACTS

29. This division applies to every contract between an artist and a distributor which has a work of the artist as its object.

30. To be set up against the artist, 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 every licence granted to a distributor;

(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 distributor shall report to the artist on the transactions made in respect of every work that is subject to the contract.

31. The contract is made when it is signed by the parties.

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

32. No distributor may invoke any condition or obligation not stipulated in a written contract taking effect in accordance with section 31.

33. No distributor may, without the consent of the artist, give as security the rights he obtains from the latter or grant a security on the artist's work unless it has been published and distributed in several copies, in which case, a copy shall be reserved for the artist.

34. To be set up against the artist, every clause in a contract which reserves, for the distributor, an exclusive right over future works must

(1) be stipulated for a specified term or affect a specified number of future works;

(2) specify that the exclusive right ceases to apply where the distributor, after coming into possession of a work so reserved, refuses, though given formal notice to do so, to distribute the work and specify the term at the expiry of which the exclusive right ceases to apply.

35. The contract shall be terminated if the distributor becomes insolvent or is liquidated. The same shall apply if the distributor becomes bankrupt or has made a proposal or committed an act of bankruptcy, or has had a receiver order issued against him pursuant to the Bankruptcy Act (Statutes of Canada) or if his property is the subject of a taking of possession according to law.

36. 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.

Where a dispute arises, the parties shall execute a submission and designate an arbitrator. Articles 940 to 951 of the Code of Civil Procedure, adapted as required, apply to such arbitration.

37. For every contract binding him to the artist, the distributor 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 type of all transactions made corresponding to the payments recorded and, where such is the case, the number of copies sold.

The distributor shall, at intervals agreed upon by the parties but not less than once a year, report to the artist, in writing, on the payments he has collected.

38. The artist may, at his own expense, cause to be examined by an expert of his own choosing any accounting entry in the distributor's books which concerns him.

39. The distributor shall keep up to date, at each of his places 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.

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 distributor.

The entries shall be kept in the record of the distributor for as long as he assumes responsibility for the works pursuant to a contract. An artist bound by contract to the distributor may consult the record and make copies thereof at any time during the business hours of the distributor.

40. Every work which is subject to a deposit contract, consignment contract or any similar contract binding an artist and a distributor and which is on premises leased by the distributor is presumed to be there temporarily.

DIVISION II

GROUP AGREEMENTS RESPECTING MINIMUM CONDITIONS OF DISTRIBUTION

41. Any recognized association and any distributor or distributors' association may negotiate and conclude an agreement providing minimum conditions with respect to the distribution of the works of the artists represented by the recognized association.

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

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

43. Any agreement between a recognized association and a distributors' association binds every person who is a member of one or the other of such associations 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 that concluded the agreement or such association is dissolved.

CHAPTER IV

VARIOUS PROVISIONS

44. 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 37 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.

45. Every distributor who contravenes any provision of section 39 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.

46. 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).

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

48. 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*.

49. Section 56 of the Act respecting the professional status and conditions of engagement of performing, recording and film artists (1987, chapter 72) is amended by adding, after the first paragraph, the following paragraph:

“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 distributors (1988, chapter *insert here the chapter number of that Act in the annual volume of statutes for 1988*).”

50. The provisions of this Act will come into force on the date or dates fixed by the Government.