



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-THIRD LEGISLATURE

Bill 90

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

Introduction

Introduced by
Madam Lise Bacon
Minister of Cultural Affairs

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EXPLANATORY NOTES

The object of this bill is primarily to

- recognize the professional status of performing, recording and film artists who practise their art as creators or performers on their own account;*
- establish a system for the negotiation of group agreements;*
- create a body called “Commission de reconnaissance des associations d’artistes” with the duties and powers required for the implementation of the negotiation system.*

For the purposes of the system of negotiation, the bill establishes, with respect to the status of artists, the presumption that creators and performers act on their own account so far as they regularly bind themselves to one or several producers by way of engagement contracts pertaining to separate performances.

The bill guarantees an artist’s freedom to join an artists’ association. It also allows him to negotiate and agree the conditions on which he provides services to a producer. Such conditions, however, may in no case be less advantageous than those stipulated in a group agreement concluded by that producer and the recognized association representing the artist under the Act.

The proposed system of collective negotiation will allow a recognized artists’ association to negotiate, with a producer or an association of producers in a predetermined negotiating sector, a group agreement with a term of not over three years, that will be binding on the producers and on the artists represented by the recognized association.

The bill provides for possible recourse to mediation and arbitration. The right of the parties to resort to pressure tactics is clearly defined and made subject to certain conditions. Boycotting a third party in order to exert pressure on the opposite party is prohibited. During the term of a group agreement, neither party is permitted to use pressure tactics.

The Commission established by the bill is composed of three members. Its main duties are to define sectors for the negotiation of group agreements, to grant recognition to professional artists' association and to act as a mediator at the request of a party negotiating a group agreement or as an arbitrator at the request of both parties.

In addition, the bill contains penal provisions imposing fines on offenders. Finally, it provides for the continued application of group agreements in force at the time of coming into force of the Act.

Bill 90

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

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

SCOPE AND DEFINITIONS

1. This Act applies to artists and producers who engage their services in the following fields of artistic endeavour: the stage, including the theatre, the opera, music, dance and variety entertainment, the making of films and video material within the meaning of the Cinema Act (R.S.Q., chapter C-18.1), the recording of discs and other modes of sound recording, dubbing, and commercial advertising.

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

“**artist**” means any natural person who practices an art on his own account for remuneration, as a creator or performer in any field of artistic endeavour referred to in section 1;

“**producer**” means a person or company in charge of producing an artistic work in a field referred to in section 1.

3. This Act does not apply to occupations 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

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

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

6. Every artist is free to negotiate and agree the conditions on which he is engaged by a producer, notwithstanding any group agreement. 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

7. 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) is formed exclusively of artists and, where such is the case, persons training to become qualified artists,

(3) comprises the majority of artists in any negotiating sector defined by the Commission de reconnaissance established by section 38, is entitled to recognition.

8. 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 by secret ballot on any draft group agreement;

(3) conferring on the general meeting the exclusive power to determine membership requirements;

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

9. 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

10. 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 members of the association and signed by representatives specially mandated for that purpose.

11. The application for recognition may be made for one or several sectors.

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

13. 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.

14. Where an application for recognition is being considered, only the artists and the artists' associations in the sector concerned are interested parties with respect to the matter of whether or not the members of the association seeking recognition are in the majority.

The producers may intervene with respect to the definition of the negotiating sector.

15. 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.

16. The Commission shall render its decision in writing, giving the reasons therefor, and shall transmit it to the interested parties.

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

17. On the application of not less than 10% of the artists in the sector in which an association is recognized or on the application of a producer affected by the recognition, the Commission shall verify whether the association comprises the majority of artists in the sector.

An application for verification may be made only in the six months preceding the expiry of a group agreement contemplated in Division V. Failing a group agreement, an application for verification may be made only after the expiry of one year from the date of recognition.

18. 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.

19. Where the Commission is called upon to rule on an application for withdrawal of recognition, it shall proceed according to such rules of evidence as it determines.

20. Before rendering a decision, the Commission shall give the association concerned an opportunity to present its case.

The Commission shall render its decision in writing, giving the reasons therefor, transmit it to the parties and publish a notice thereof as in the case of a decision granting recognition.

DIVISION IV

EFFECTS OF RECOGNITION

21. Recognition confers and imposes the following powers and duties on an artists' association:

(1) to defend and promote the economic and professional interests of its members;

(2) to represent the artists in the sector in which it is recognized in every instance where it is in the general interest of the artists that it should do so, and to cooperate 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 its members;

(4) to fix membership dues and collect any amounts due to its members and remit the amounts to them;

(5) to establish for its members model contracts for the performance of services in the sector in which the association is recognized;

(6) to negotiate a group agreement with a producer or association of producers in the sector in which the association is recognized.

22. Every recognized association shall transmit its membership list to the Commission each year at the time and in the form determined by the Commission.

The association shall also inform the Commission of any amendment to its by-laws.

23. Every producer or 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 engaged by the producer or association in the negotiating sector concerned.

DIVISION V

GROUP AGREEMENT

24. In a negotiating sector, the recognized association and a producer or association of producers may negotiate and conclude a group agreement providing minimum conditions with respect to the engagement of artists.

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

25. The recognized association or the producer or 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.

Where the parties are already bound by a group agreement, the recognized association or the producer or association of producers may give such a notice in the 120 days preceding the expiry of the agreement.

26. The party who gives a notice provided for in section 25 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.

27. The parties must begin to negotiate at the time fixed in the notice provided for in section 25 and conduct the negotiations in good faith.

28. At any stage of the negotiations, either party may request the Commission to act as mediator.

29. Where the Commission receives an application for mediation, it shall convene the interested parties and attempt to bring them to a settlement.

The Commission may make recommendations to the parties concerning the conditions of engagement of the artists.

30. 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.

31. Unless an agreement has been reached or the parties have submitted their dispute to arbitration, the recognized association may, after the expiry of 60 days after the date the Commission received the notice provided for in section 25, initiate concerted action against the other party so as to induce him to conclude a group agreement.

After the expiry of the same time, the producer may suspend all or part of his operations so as to induce the recognized association to conclude a group agreement.

32. The term of a group agreement or of an arbitration award, where such is the case, shall be of not over three years.

33. 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.

34. No recognized association nor any artist represented thereby may use pressure tactics against any person that results in preventing a producer to whom the association is bound by a group agreement from presenting or producing a work.

35. The group agreement binds the producer and every artists 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.

36. 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.

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

CHAPTER V

COMMISSION DE RECONNAISSANCE
DES ASSOCIATIONS D'ARTISTES

DIVISION I

ESTABLISHMENT

38. A body is hereby established under the name "Commission de reconnaissance des associations d'artistes".

39. 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.

The chairman shall perform his duties full time.

The Government shall fix the remuneration and the other conditions of employment of the chairman.

The other members of the Commission shall not be remunerated except in such cases, on such conditions and to such extent as may be determined by the Government. They shall be entitled, however, to the reimbursement of expenses they incur in the performance of their duties on the conditions and to the extent determined by the Government.

40. The secretary and the other employees of the Commission are appointed in the manner and according to the staffing requirements determined by the Commission.

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.

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.

41. The Government may, for the proper dispatch of the business of the Commission, appoint members on a temporary basis for such period as it may determine and determine their fees.

42. The Commission shall have its head office in the territory of the Communauté urbaine de Montréal.

The Commission may sit at any place in Québec.

43. The vice-chairman shall exercise the powers of the chairman in case of his absence or inability to act.

44. 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.

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

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

47. 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.

48. The fiscal year of the Commission ends on 31 March each year.

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

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

50. 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 act as 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.

51. The Commission may define negotiation sectors in respect of which recognition may be granted.

For that purpose, the Commission shall take into consideration the community of interests of the artists concerned and the history of relations between artists and producers in negotiating group agreements.

52. The Commission may, on an application, decide whether a person is comprised in a negotiating sector, or any other question relating to recognition.

53. 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.

The members of the Commission are, for the purposes of inquiries or hearings, vested with the powers and immunity conferred on public inquiry commissioners by the Act respecting public inquiry commissions (R.S.Q., chapter C-37).

54. 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.

55. Every decision of the Commission is final and without appeal.

56. 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.

57. 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 VI

OFFENCES AND PENALTIES

58. Every person who contravenes any of sections 23, 27 and 37 is guilty of an offence and is liable, in addition to costs, to a fine of \$100 to \$1 000.

59. Every person who contravenes section 33 or 34 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.

60. Proceedings under this Act are brought in accordance with the Summary Convictions Act (R.S.Q., chapter P-15).

CHAPTER VII

TRANSITIONAL AND FINAL PROVISIONS

61. Any group agreement which binds an artists' association and a producer or association of producers on (*insert here the date of coming into force of this Act*) is presumed to have been concluded under this Act.

62. Any artists' association contemplated in section 61 is presumed to have been recognized under this Act in respect of the negotiation sector corresponding to the field covered by the group agreement it is a party to at the time of coming into force of this Act.

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

64. This Act comes into force on (*insert here the date of assent to this Act*).