

BILL

No. 68 of 2006-07

An Act respecting the Status of the Artist and Professional Relations between Artists and Engagers in Saskatchewan

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(Assented to _____)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

PART I

Title, Interpretation and Application

Short title

1 This Act may be cited as *The Status of the Artist Act, 2007*.

Interpretation

2 In this Act:

- (a) **“artist”** means any individual who creates, performs, gives creative expression to or works in any artistic field, including all or any of the following:
 - (i) literary arts;
 - (ii) visual arts and crafts;
 - (iii) electronic, recording and media arts, including film and video;
 - (iv) performing arts, including theatre, opera, music, dance, mime, circus and variety entertainment;
 - (v) any other artistic field prescribed in the regulations;
- (b) **“artists’ association”** means an organization of artists, or a branch or local of an organization of artists, that has among its objectives the negotiation of scale agreements with representative engagers’ associations, and includes a federation of artists’ associations;
- (c) **“board”** means the Labour Relations Board continued pursuant to section 4 of *The Trade Union Act*;
- (d) **“certified engager”** means an engager respecting which an artists’ association has been issued a certification order pursuant to section 25;
- (e) **“engager”** means a person who contracts with, or retains the services of, a professional artist or professional artists for any of the following purposes on a non-profit or for-profit basis:
 - (i) to produce an artistic work or production;
 - (ii) to present an artistic work or production to the public;
 - (iii) to engage in an enterprise that circulates or disseminates artistic works to the public, including selling, lending, leasing, exchanging, depositing, exhibiting, publishing, publicly presenting or using in any other similar fashion;

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- (f) **“engagers’ association”** means an organization of engagers that has among its objectives the negotiation of scale agreements with registered artists’ associations;
- (g) **“minister”** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;
- (h) **“pressure tactic”** includes:
- (i) a cessation of work or a refusal to work or to continue to work by professional artists or artists’ associations in combination, in concert or in accordance with a common understanding, and a slowdown of work or other concerted activity by professional artists or artists’ associations respecting the provision of their services to engagers, done to compel an engagers’ association to agree to terms or conditions of engagement; or
 - (ii) the closing of a place of work, a suspension of production or a refusal to continue the engagement of one or more professional artists by the members of an engagers’ association, done to compel professional artists to agree to terms or conditions of engagement;
- (i) **“professional artist”** means an artist who:
- (i) is an independent contractor;
 - (ii) receives, or has received, compensation from his or her artistic activity including, but not limited to, sales, fees, commissions, salaries, royalties, residuals, grants and awards, any of which may reasonably be included as income of a self-employed person or a business; and
 - (iii) meets at least three of the following criteria:
 - (A) the individual has received public or peer recognition:
 - (I) in the form of honours, awards, professional prizes, scholarships, honourable mentions, appointments to an adjudication committee or invitations to participate in a group exhibition or performance; or
 - (II) by publicly disseminated critical appraisal;
 - (B) the individual’s artistic activity has been presented to the public by means of exhibitions, publications, performances, readings, screenings or any other means;
 - (C) the individual promotes or markets his or her work:
 - (I) by means including attending auditions, seeking sponsorship, agents, engagements or exhibitions and by similar activities appropriate to the nature of his or her work; or
 - (II) by being represented by a dealer, publisher, agent or similar representative appropriate to the nature of his or her artistic activity;
 - (D) the individual has received training or acquired traditional knowledge:
 - (I) in an educational institution or from a practitioner or teacher recognized within his or her profession; or
 - (II) within the established practice of his or her cultural traditions;

(E) the individual has membership in an organization representing his or her artistic activity:

(I) whose membership, or categories of membership, is or are limited under standards established by the organization;

(II) that is an artists' association; or

(III) that is a recognized Aboriginal Society;

(F) the individual holds copyright in his or her own work and has received royalty or residual payments based on that copyright;

(j) **“registered artists' association”** means an artists' association that has been issued a registration order pursuant to section 15 and whose registration order has not been revoked;

(k) **“representative engagers' association”** means an engager or engagers' association that has been issued a designation order as a representative engagers' association pursuant to section 19 and whose designation order has not been revoked;

(l) **“scale agreement”** means an agreement in writing between a registered artists' association and a representative engagers' association respecting the minimum terms and conditions for the provision of professional artists' services and other related matters, and includes:

(i) a scale agreement that is negotiated between an artists' association and an engagers' association covering the engagement of professional artists in more than one province or territory in Canada; and

(ii) any agreement that is mentioned in section 31.

Crown bound

3 The Crown in right of Saskatchewan is bound by this Act.

PART II

Recognition of Artists

Recognition of artists

4 The following are affirmed and recognized:

(a) the important contribution of artists to the cultural, social, economic and educational enrichment of Saskatchewan;

(b) the value of artistic creativity in advancing Saskatchewan's cultural, social, economic and educational life;

(c) the valuable contribution of artists to Saskatchewan's cultural heritage and development;

(d) the importance to artists of being fairly compensated for the creation and use of their artistic works.

Minister's responsibility respecting artists

5 The minister is responsible for all matters not by law assigned to any other minister, department, branch or agency of the Government of Saskatchewan relating to artists, including developing and implementing the Government of Saskatchewan's policy respecting artists.

Policy respecting artists

6 The policy mentioned in section 5 is to be developed after taking into consideration the following principles:

- (a) the right of artists to free speech and freedom of artistic and cultural expression;
- (b) the right of artists to form associations to promote their professional, social and economic interests;
- (c) the right of artists to form advisory bodies in which they may express their views and advance their cause with respect to their status in society and with respect to any other questions related to their creative environment and conditions of work;
- (d) the ability of artists in all artistic fields to earn a living from the making of their art;
- (e) the right of artists to be fairly treated by government and society;
- (f) the right of artists to enjoy the same economic and social benefits that are available to other workers in Saskatchewan;
- (g) the ability of artists to obtain education, professional development and training;
- (h) the desirability of making artistic works available to the public.

Government undertaking

7 The Government of Saskatchewan undertakes to do the following:

- (a) to promote and protect the status of the artist by considering artistic work, including innovation and research, as a public good and service to the community;
- (b) to promote within government the working conditions of artists.

Advisory committee

8(1) The minister may establish one or more advisory committees to investigate and report to the minister with respect to the following matters concerning artists:

- (a) professional relations and the right to bargain collectively in the arts sector;
- (b) the application of workers' compensation legislation and occupational health and safety legislation to artists;
- (c) pension plans for artists;
- (d) education, professional development and training programs for artists;
- (e) taxation of artists;
- (f) any other matters that the minister considers appropriate.

(2) The minister shall obtain the approval of the Lieutenant Governor in Council before appointing an advisory committee for a period longer than one year.

(3) An advisory committee shall report to the minister within the time that the minister may direct.

Individual contracts—goods or services from professional artists

- 9(1) Subject to the regulations, no engager shall contract with, or retain the services of, a professional artist for a purpose mentioned in subclause 2(e)(i), (ii) or (iii) without having entered into a written contract with that professional artist.
- (2) Every written contract entered into for the purposes of this section must contain the elements prescribed in the regulations.

PART III

Professional Relations

DIVISION 1

Application of Part and General Principles

Application of Part and general principles

- 10(1) The application of this Part to a professional artist is not affected by the fact that his or her services are provided as an employee of, or on behalf of, a corporation controlled by the professional artist.
- (2) For the purposes of this Part, a corporation is controlled by a person if:
- (a) securities of the corporation to which are attached more than 50% of the votes that may be cast to elect directors of the corporation are held, other than by way of security only, by or for the benefit of that person; and
 - (b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation.
- (3) An artists' association and its acts are not deemed to be unlawful by reason only that one or more of its objects are in restraint of trade.
- (4) For the purposes of this Part, every artists' association and every engagers' association is deemed to be a person, and may sue or be sued and prosecute or be prosecuted under its own name.

Implementation of sectoral bargaining

11 This Part is to be interpreted so as to implement sectoral bargaining of scale agreements between registered artists' associations and representative engagers' associations.

DIVISION 2

Registration of Artists' Association

Prerequisites for sectoral registration

- 12(1) No artists' association shall be issued a registration order pursuant to section 15 unless it adopts bylaws that:
- (a) establish membership requirements for professional artists;
 - (b) give its members who are professional artists the right to take part and vote in meetings of the artists' association and to participate in a ratification vote on any scale agreement that affects them; and
 - (c) provide its members with the right of access to a copy of a financial statement of the affairs of the artists' association to the end of the previous fiscal year, certified to be a true copy by the authorized officer of the artists' association.

(2) No bylaws of the artists' association shall have the effect of discriminating against a professional artist so as to prevent the professional artist from becoming or continuing as a member of the artists' association.

Procedure for obtaining sectoral registration

13(1) If duly authorized by its members who are professional artists, an artists' association may apply to the board in writing for a registration order pursuant to section 15 for one or more sectors:

- (a) at any time, for a sector for which no artists' association has been issued a registration order and no other application for a registration order is pending before the board;
 - (b) in the three months immediately preceding the date that the registered artists' association registration order or renewed registration order for a sector is to expire, if at least one scale agreement is in force for the sector; or
 - (c) after two years, or any shorter period that the board may set on application, after the date of the registered artists' association registration order or a renewed registration order, if no scale agreement is in force for the sector.
- (2) An artists' association shall establish, in accordance with subsection (3), that it has been duly authorized to apply for a registration order for the sector with respect to which the application is being made by its members who are professional artists and who are ordinarily resident in Saskatchewan.
- (3) An artists' association shall establish its authorization pursuant to subsection (2) by filing with the board evidence that its members mentioned in subsection (2) have indicated in writing, within the 12 months before the date that the application for a registration order is made, their selection of the artists' association to be their agent in negotiating scale agreements with certified engagers and representative engagers' associations.
- (4) An application for a registration order must include:
- (a) the membership list of the professional artists in the artists' association;
 - (b) a certified copy of the artists' association constitution and bylaws;
 - (c) a description of the proposed sector; and
 - (d) any other information the board may require.
- (5) On receipt of an application pursuant to this section, the board shall:
- (a) set any period in which another application may be made by any other artists' association, notwithstanding subsection (1), for a registration order for that sector; and
 - (b) notify the applicant of the period set pursuant to clause (a).
- (6) In a notice provided pursuant to clause (5)(b), the board may specify:
- (a) the artists' associations or persons on whom the applicant must serve notice pursuant to subsection (7); and
 - (b) the manner in which the notice pursuant to subsection (7) must be served.

(7) On receipt of the board's notice pursuant to subsection (5), the applicant shall serve the required notice, in the manner that the board may specify pursuant to subsection (6):

- (a) on the artists' associations mentioned in clause (6)(a); and
- (b) on any other person specified by the board pursuant to clause (6)(a).

(8) No application for a registration order for a sector may be made, except with the consent of the board, after expiration of the period set by the board pursuant to subsection (5).

Determination of appropriate sector

14 After the application period set in subsection 13(5) has expired, the board may determine the sector or sectors that are appropriate for the negotiation of a scale agreement, taking into account:

- (a) the common interests of the professional artists with respect to whom the application is made;
- (b) the history of professional relations among the professional artists, artists' associations and engagers and representative engagers' associations concerning the negotiation of scale agreements and any other agreements respecting the terms of engagement of professional artists;
- (c) the geographic jurisdiction of the artists' association, if more than one artists' association has traditionally represented professional artists in one sector;
- (d) any linguistic affiliation shared by the professional artists in the sector; and
- (e) any other criteria the board considers relevant.

Sectoral registration order

15(1) If the board is satisfied that an artists' association that has applied for registration for a sector is the most representative of professional artists in that sector, the board may issue a registration order to the artists' association for that sector.

(2) A registration order:

- (a) is valid for a period of three years after the date that the board issues the registration order; and
- (b) subject to subsection (3), is automatically renewed for additional three-year periods.

(3) If, in the three months immediately preceding the date that the registration order or renewed registration order of a registered artists' association is to expire, an application for a registration order for the same or substantially the same sector or part of the sector, or an application for revocation of a registration order, is filed, the period of validity of the registered artists' association's registration order is extended until the date that the application is accepted or rejected.

(4) If the application mentioned in subsection (3) is rejected, the renewal of the registered artists' association's registration order takes effect from that date.

(5) The board shall keep a register of all registration orders that it issues and of their dates of issue.

(6) After a registration order has been issued to a registered artists' association for a sector:

- (a) the registered artists' association has exclusive authority to bargain scale agreements on behalf of professional artists in the sector;
- (b) the registration order of any artists' association that previously represented professional artists in the sector is revoked insofar as it related to them; and
- (c) the registered artists' association is substituted as a party to any scale agreement that affects professional artists in the sector, to the extent that it relates to them, in place of the artists' association named in the scale agreement or its successor.

Revocation of sectoral registration order

16(1) A professional artist in a sector may apply to the board for an order revoking a registered artists' association's registration order for that sector:

- (a) at any time, on the ground that the registered artists' association's bylaws contravene the requirements of subsection 12(1); or
- (b) on the ground that the registered artists' association is no longer the most representative of professional artists in the sector or has failed to make reasonable efforts to conclude a scale agreement:
 - (i) in the three months immediately preceding the date that the registered artists' association's registration order or renewed registration order is to expire, if at least one scale agreement is in force for the sector; or
 - (ii) two years, or any shorter period that the board may set on application, after the date of the registered artists' association registration order or renewed registration order, if no scale agreement is in force.

(2) The board may stay any proceedings for revocation of a registered artists' association's registration order pursuant to clause (1)(a) if the association adopts bylaws that meet the requirements of subsection 12(1) within any period that the board may set.

(3) Revocation of an artists' association's registration order pursuant to this section is effective:

- (a) on the date of the board's order to revoke it; or
- (b) if an artists' association fails to adopt bylaws within a period set by the board pursuant to subsection (2), on the expiration of that period.

(4) If the board revokes a registered artists' association's registration order pursuant to this section, any scale agreement for the sector with respect to which the registration order had been made ceases to have effect from the date of the revocation order or from any later date that the board may specify.

Successor rights and obligations

17(1) An artists' association that succeeds a registered artists' association as a result of a merger, amalgamation or transfer of jurisdiction among artists' associations acquires the rights, privileges and duties of that registered artists' association pursuant to this Part, whether under a scale agreement or otherwise.

(2) On application by an artists' association affected by a merger, amalgamation or transfer of jurisdiction, the board shall determine the rights, privileges and duties that the artists' association has acquired pursuant to this Part or pursuant to a scale agreement as a result of the transaction.

DIVISION 3

Designation of Engagers' Associations

Prerequisites for designation as representative engagers' associations

18(1) No engagers' association shall be issued a designation order pursuant to section 19 unless it adopts bylaws that:

- (a) establish membership requirements for engagers;
 - (b) give its members the right to take part and vote in meetings of the engagers' association and to participate in a ratification vote on any scale agreement that affects them; and
 - (c) provide its members with the right of access to a copy of a financial statement of the affairs of the engagers' association to the end of the previous fiscal year, certified to be a true copy by the authorized officer of the engagers' association.
- (2) No bylaws of the engagers' association shall have the effect of discriminating unfairly against an engager so as to prevent the engager from becoming or continuing as a member of the association.

Designation of representative engagers' association

19(1) If the board makes a determination of an appropriate sector pursuant to section 14, the board shall issue a designation order that designates, in accordance with subsection (4), an engagers' association as the representative engagers' association to act as the exclusive agent to bargain on behalf of certified engagers for the sector.

(2) An engagers' association that wishes to obtain a designation order from the board pursuant to subsection (1) shall file with the board all of the following materials:

- (a) a notice stating that it wishes to be issued that designation order;
 - (b) a copy of its constitution and bylaws.
- (3) An engagers' association shall file the materials mentioned in subsection (2):
- (a) within 30 days after the day on which the board determines the sector to be appropriate for the negotiation of a scale agreement; or
 - (b) within any longer period that the board may set on application by the engagers' association.
- (4) In determining to which engagers' association to issue a designation order as the representative engagers' association pursuant to subsection (1), the board shall consider the representative character of any engagers' association that has given notice that it wishes to be issued that designation order.
- (5) If no engagers' association applies for a designation order as the representative engagers' association within the time limits set in subsection (3), the board may, on the application of a registered artists' association and after hearing from the certified engager, issue a designation order that designates the certified engager to be the representative engagers' association, until an engagers' association is issued a designation order pursuant to subsection (1) or section 24.

Rights of certified engagers

20 If a representative engagers' association is issued a designation order pursuant to subsection 19(1), each certified engager in the appropriate sector is entitled to join the representative engagers' association and participate in its activities.

Effect of designation of representative engagers' association

21(1) In this section, "**rights, duties and obligations**" means the rights, duties and obligations imposed by or arising out of this Act and the regulations.

(2) If a designation order is issued pursuant to section 19 to a representative engagers' association:

- (a) all of the rights, duties and obligations of certified engagers in the sector vest in the representative engagers' association to the extent that it is necessary to give effect to this Act;
- (b) the representative engagers' association is the exclusive agent to bargain scale agreements on behalf of certified engagers in the sector;
- (c) the registered artists' association for that sector shall bargain with the representative engagers' association with respect to professional artists in that sector; and
- (d) a scale agreement that is made after the date of the designation order with any person or organization other than the representative engagers' association is void.

Responsibility for negotiating settlement of grievances

22 Notwithstanding section 21, the responsibility for negotiating the settlement of grievances arising under a scale agreement is the responsibility of the certified engager and the registered artists' association.

Certified engager to be represented by sectoral representative engagers' association

23(1) If a designation order is issued pursuant to section 19, section 21 applies to an engager who subsequently becomes a certified engager in that sector.

(2) If subsection (1) applies, the certified engager is bound by the terms and conditions of any scale agreement that is in effect between the representative engagers' association and the registered artists' association for that sector.

Revocation and replacement of designation of representative engagers' association

24(1) On application by an engagers' association, the board may revoke a designation order issued to a representative engagers' association and issue an order designating another engagers' association as the representative engagers' association for the sector.

(2) An applicant who applies pursuant to this section to replace a representative engagers' association shall comply with the requirements set out in subsection 19(2).

(3) An application to replace a representative engagers' association may be made:

- (a) in the three months immediately preceding the date that the registered artists' association's registration order or renewed registration order is to expire, if a scale agreement is in force for the sector; or
- (b) two years, or any shorter period that the board may set on application, after the date of the registered artists' association registration order or a renewed registration order, if no scale agreement is in force.

(4) In determining whether to grant an application pursuant to subsection (1), the board shall consider the representative character of each engagers' association.

(5) A scale agreement between a registered artists' association and a representative engagers' association for the sector remains in force for its term notwithstanding that another engagers' association becomes the representative engagers' association for the sector.

DIVISION 4

Certification respecting Engagers

Certification order respecting an engager

25 On application by a registered artists' association, the board may issue a certification order to the registered artists' association as the representative of professional artists engaged by an engager in the sector for which the registered artists' association has been registered, when any one of the following conditions is met:

- (a) before the coming into force of this Act, the engager was bound by a scale agreement between an artists' association and an engagers' association with respect to professional artists engaged by the engager in the sector;
- (b) after the coming into force of this Act, the engager agrees to be bound by a scale agreement between the registered artists' association and the representative engagers' association with respect to professional artists engaged by the engager in the sector;
- (c) the engager is a successor to a certified engager;
- (d) the engager is controlled, directly or indirectly, by another certified engager or group of certified engagers;
- (e) a majority of professional artists engaged by the engager in the sector during the three-month period immediately preceding the date of the application are members of the registered artists' association.

Effective date of certification order

26 The effective date of any certification order issued pursuant to section 25 to a registered artists' association with respect to an engager is:

- (a) if the order is made in reliance on clause 25(a), the date the artists' association is issued a registration order for the sector;
- (b) if the order is made in reliance on clause 25(b), the date the engager agrees to be bound by the scale agreement between the registered artists' association and the representative engagers' association with respect to professional artists engaged by the engager in the sector;
- (c) if the order is made in reliance on clause 25(c), the date the engager became a successor to a certified engager;
- (d) if the order is made in reliance on clause 25(d):
 - (i) if the engager is incorporated by a certified engager or group of engagers, the date that the engager is incorporated; or

(ii) if a certified engager or group of engagers obtained control of the engager, the date that the certified engager or group of engagers obtained control of the engager; or

(e) if the order is made in reliance on clause 25(e), the date the board issues the certification order.

Rules to determine successorship of engagers

27 Without limiting the application of sections 51 and 54, section 37 of *The Trade Union Act* applies, with any necessary modification, in determining if an engager is a successor to a certified engager for the purposes of clause 25(c).

DIVISION 5

Revocation of Certification Orders

Application to revoke certification respecting an engager

28(1) A professional artist engaged by a certified engager may apply to revoke the certification order issued to the registered artists' association if a majority of the professional artists engaged by the engager in the sector during the three-month period immediately preceding the date of the application and employed in accordance with any scale agreement then in effect, indicate their desire in writing to no longer be represented by the registered artists' association in negotiation of a scale agreement.

(2) The application to revoke the certification order issued to a registered artists' association may be made:

(a) if a scale agreement is in force for the sector for a period of two years or less, during a period of not less than 30 days and not more than 60 days before the end of the term of the scale agreement;

(b) if a scale agreement is in force for the sector for a period of more than two years, in the eleventh and twelfth month of the second or any subsequent year of the term; or

(c) if there is no scale agreement in force for the sector, in the period of not less than 30 days and not more than 60 days before the second anniversary of the registration order.

Effect of revocation of certification respecting an engager

29 If the board revokes the certification order issued pursuant to section 25 to a registered artists' association for an engager in a sector, the scale agreement for the sector no longer applies to professional artists whose services are engaged by the engager in that sector.

Determining majority support

30(1) In this section, "**professional artists who are eligible to vote**" means:

(a) in the case of a vote for the purposes of section 25, the professional artists who have been engaged by an engager during the three-month period immediately preceding the date of the application pursuant to that section; and

(b) in the case of a vote for the purposes of section 28, the professional artists who have been engaged by the engager during the three-month period immediately preceding the date of the application pursuant to that section and who have been employed in accordance with any scale agreement then in effect.

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- (2) In determining which artists' association, if any, represents a majority of the professional artists engaged by an engager pursuant to clause 25(e) or section 28, the board may, in its discretion, direct a vote to be taken by secret ballot of all professional artists who are eligible to vote.
- (3) The board may conduct the vote by mail-in ballot or any other means that it determines to be reasonable in the circumstances.
- (4) A majority of those professional artists who are eligible to vote and who do vote determines whether or not:
- (a) if the vote is for the purposes of section 25, the registered artists' association should be issued a certification order respecting the engager; or
 - (b) if the vote is for the purposes of section 28, the certification order issued to the registered artists' association should be revoked.

DIVISION 6

Negotiating Scale Agreements

Continuance of other scale agreements

31 Nothing in this Act prevents the operation and renegotiation of any scale agreement that is in effect immediately before the coming into force of this Act between an artists' association and an engagers' association governing the engagement of professional artists in an appropriate sector.

Effect of continuance of a scale agreement

32 If an artists' association that is party to a scale agreement mentioned in section 31 does not apply to be issued a registration order or is not issued a registration order pursuant to section 15 for the sector of professional artists to which its scale agreement applies, the scale agreement is deemed to apply to the registered artists' association that is registered for the sector, in the same manner as if the registered artists' association had signed the scale agreement, until the scale agreement is amended or ceases to apply in accordance with this Act.

Negotiation of scale agreements

33(1) The registered artists' association for the sector or the representative engagers' association may issue a notice requiring the other party to begin bargaining for the purpose of entering into a scale agreement.

(2) If a scale agreement is in force, either party to the scale agreement may, in the three months immediately preceding the date that the scale agreement expires or within any longer period stipulated in the scale agreement, issue a notice to the other party to begin bargaining in order to renew or revise it or to enter into a new scale agreement.

(3) A registered artists' association substituted as a party to a scale agreement pursuant to clause 15(6)(c) may issue, within six months after the date that a registration order was issued to it, a notice requiring the representative engagers' association that is a party to the scale agreement to begin bargaining for the purpose of renewing or revising it or entering into a new scale agreement.

(4) If a scale agreement provides for revision during its term, a party to the scale agreement that is entitled to do so by the scale agreement may give notice to the other party to begin bargaining in order to revise any provision of the scale agreement.

(5) Any party that issues a notice to the other party to begin bargaining shall send a copy of the notice to the minister without delay.

Requirements to meet, etc.

34(1) If a notice to begin bargaining has been issued pursuant to section 33, the registered artists' association and the representative engagers' association shall:

- (a) meet, or send authorized representatives to meet, and begin to bargain in good faith; and
 - (b) make every reasonable effort to enter into a scale agreement.
- (2) The parties mentioned in subsection (1) shall meet:
- (a) within 20 days after the notice to begin bargaining was served on the other party; or
 - (b) within any longer or shorter period that the parties may agree to.

Duration and effect of scale agreements

35(1) For the term set out in a scale agreement, the scale agreement binds:

- (a) the parties to it;
 - (b) every certified engager in the sector; and
 - (c) every professional artist in the sector engaged as a professional artist by the certified engagers.
- (2) Neither party may terminate the scale agreement, except if a notice to bargain is issued pursuant to subsection 33(3).
- (3) The parties to a scale agreement shall file a copy of the scale agreement with the minister without delay.
- (4) A scale agreement applies notwithstanding any inconsistency with a contract between a professional artist and an engager, but it shall not be applied so as to deprive a professional artist of a right or benefit under the contract that is more favourable to the professional artist than is provided for under the scale agreement.

Board may change termination date

36 On the joint application of the parties to a scale agreement, the board may change the termination date of a scale agreement in order to establish a common termination date for two or more scale agreements that bind the representative engagers' association or the registered artists' association.

Duty of fair representation

37 A registered artists' association and its representative shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the professional artists in relation to their rights under the scale agreement that is applicable to them.

DIVISION 7

Content and Interpretation of Scale Agreements**Provision for settlement without pressure tactics**

38(1) Every scale agreement must contain a provision for final settlement without pressure tactics, by arbitration, of all differences between the parties bound by the scale agreement concerning its interpretation, application, administration or alleged contravention, including a question as to whether a matter is arbitrable.

(2) Notwithstanding anything in the scale agreement, a difference between the parties to a scale agreement that does not contain the provision for final settlement required by subsection (1) must be submitted for final settlement:

- (a) to an arbitrator selected by the parties; or
- (b) if the parties are unable to agree on an arbitrator and either party makes a written request to the minister, to an arbitrator appointed by the minister.

(3) Notwithstanding anything in the scale agreement, a difference between the parties to a scale agreement that contains a provision for final settlement by an arbitration board shall, if either party fails to name its nominee to the board, be submitted for final settlement to an arbitrator in accordance with subsection (2).

(4) If a scale agreement contains a provision for final settlement without pressure tactics of differences described in subsection (1) by an arbitrator or arbitration board and the parties to the scale agreement cannot agree on the selection of the arbitrator or arbitration board chairperson, either party or its nominee may, notwithstanding anything in the scale agreement, make a written request to the minister to appoint the arbitrator or arbitration board chairperson, as the case may be.

(5) On receipt of a request made pursuant to subsection (4), the minister shall appoint an arbitrator or arbitration board chairperson.

(6) An arbitrator or arbitration board chairperson appointed pursuant to clause (2)(b) or subsection (3) or (5) is deemed to be selected in accordance with the scale agreement.

(7) Unless otherwise provided in the scale agreement or agreed to by the parties, each party shall pay:

- (a) its own costs, fees and expenses, including the fees and costs of its nominee; and
- (b) an equal portion of the fees and expenses of the arbitrator or arbitration board.

Determination under arbitration

39(1) Every determination of an arbitrator or arbitration board is:

- (a) final and conclusive;
- (b) binding on the parties with respect to all matters within the legislative jurisdiction of the Government of Saskatchewan; and
- (c) enforceable in the same manner as an order of the board made pursuant to *The Trade Union Act*.

(2) An arbitrator or arbitration board, as the case may be, may exercise the same powers as are granted to arbitrators or the chairperson of an arbitration board pursuant to subsection 25(2) of *The Trade Union Act*.

(3) If a professional artist's services have been terminated by an engager pursuant to the scale agreement and there is no specific penalty in either the scale agreement or the contract between the professional artist and the engager, the arbitrator or arbitration board has the power to substitute for the termination of services any other penalty that seems to the arbitrator or the arbitration board to be just and reasonable in the circumstances.

- (4) If a professional artist has been disciplined by an engager pursuant to the scale agreement and there is no specific penalty in either the scale agreement or the contract between the professional artist and the engager, the arbitrator or arbitration board has the power to substitute for the discipline any other penalty that seems to the arbitrator or the arbitration board to be just and reasonable in the circumstances.
- (5) There is no appeal from an order or decision of an arbitrator or an arbitration board pursuant to this Act.
- (6) The arbitrator or arbitration board may determine any question of fact necessary to its jurisdiction.
- (7) The proceedings, orders and decisions of the arbitrator or arbitration board shall not be reviewable by any court of law or by any *certiorari*, mandamus, prohibition, injunction or other proceeding whatever.
- (8) *The Arbitration Act, 1992* does not apply to any arbitration pursuant to this Act.

Copy of arbitration decision to be filed with minister

40 A copy of every determination of an arbitrator or arbitration board shall be sent to the parties and filed with the minister.

Referral of issues to board

41(1) An arbitrator or arbitration board shall refer to the board for hearing and determination any question that arises in a matter before it as to:

- (a) the existence of a scale agreement;
- (b) the identification of the parties to a scale agreement; or
- (c) the application of a scale agreement to a particular sector or professional artist.

(2) Referral of a question to the board pursuant to subsection (1) does not suspend the proceeding before the arbitrator or arbitration board, unless:

- (a) the board so orders; or
- (b) the arbitrator or arbitration board decides that the nature of the question warrants suspension of the proceeding.

Provision for settlement continues in force after termination of scale agreement

42 Notwithstanding anything in a scale agreement, the provision for final settlement required by subsection 38(1) remains in force after termination of the scale agreement and until a new or revised scale agreement is reached.

Association dues to be deducted

43(1) This section applies to professional artists who are engaged by a certified engager and who are subject to a scale agreement to which the certified engager is bound, whether or not the professional artists are members of the registered artists' association that is a party to the scale agreement.

(2) At the request of a registered artists' association, a scale agreement shall include a provision requiring a certified engager to deduct and remit to the registered artists' association, without delay, from the remuneration of each professional artist mentioned in subsection (1) the amount of the dues regularly paid by a member of the registered artists' association in accordance with its bylaws.

DIVISION 8
Settlement of Disputes

Mediation

44 The minister may, on request or on the minister's own motion, name a mediator to confer with a registered artists' association and a representative engagers' association that are unable to reach agreement and to assist them to enter into a scale agreement.

First scale agreement assistance

45(1) Either a registered artists' association or a representative engagers' association may apply to the board for assistance in the conclusion of a first scale agreement, and the board may provide assistance pursuant to subsection (6) if:

- (a) the registered artists' association and the representative engagers' association have engaged in bargaining and have failed to conclude a first scale agreement; and
- (b) in the opinion of the board, it is appropriate to assist the registered artists' association and the representative engagers' association in the conclusion of a first scale agreement pursuant to subsection (6).

(2) If the board decides, pursuant to subsection (1), to assist the registered artists' association and the representative engagers' association to conclude a first scale agreement, neither of them shall engage or continue to engage in pressure tactics.

(3) An application for assistance must include:

- (a) a list of the issues in dispute; and
- (b) a statement of the position of the applicant on the issues mentioned in clause (a), including the applicant's last offer on those issues.

(4) All materials filed with the board in support of an application pursuant to subsection (1) must be served on the other party within 24 hours after filing the application with the board.

(5) Within 14 days after receiving the information mentioned in subsection (4), the other party must:

- (a) file with the board:
 - (i) a list of the issues in dispute; and
 - (ii) a statement of the position of that party on the issues mentioned in subclause (i), including that party's last offer on those issues; and
- (b) serve on the applicant a copy of the list and statement.

(6) On receipt of an application pursuant to subsection (1):

- (a) the board may require the registered artists' association and the representative engagers' association to submit the matter to mediation if they have not already done so; and
- (b) if the registered artists' association and the representative engagers' association have submitted the matter to mediation or 120 days have elapsed since the appointment of a mediator, the board may do any of the following:

- (i) conclude any term or terms of a first scale agreement between the registered artists' association and the representative engagers' association;
 - (ii) order arbitration by a single arbitrator to conclude any term or terms of the first scale agreement.
- (7) Before concluding any term or terms of a first scale agreement, the board or a single arbitrator may hear:
- (a) evidence adduced relating to the positions of the registered artists' association and the representative engagers' association on disputed issues; and
 - (b) argument by the registered artists' association and the representative engagers' association or their counsel.
- (8) The expiry date of a first scale agreement concluded pursuant to this section is deemed to be two years from its effective date or any other date that the registered artists' association and the representative engagers' association agree on.

Pressure tactics

46 No professional artist, artists' association, engager or representative engagers' association shall participate in, authorize or apply pressure tactics during the term of a scale agreement.

DIVISION 9

Unfair Practices**Prohibitions relating to engagers**

47 No engager, engagers' association or person acting on behalf of an engager or an engagers' association shall:

- (a) refuse to engage a professional artist or to honour a professional artist's contract, or discriminate against a professional artist with respect to any engagement or remuneration or any other term or condition of engagement, or intimidate, threaten or discipline a professional artist, because the professional artist:
 - (i) is or proposes to become, or seeks to induce any other person to become, a member, officer or representative of an artists' association, or participates in the promotion, formation or administration of an artists' association;
 - (ii) has testified or participated in a proceeding pursuant to this Part, or may do so;
 - (iii) has made or is about to make a disclosure that may be required in a proceeding pursuant to this Part;
 - (iv) has made an application or filed a complaint pursuant to this Part;
 - (v) has exercised any right pursuant to this Part or participated in pressure tactics that are not prohibited by it; or
 - (vi) has been expelled or suspended from membership in a registered artists' association for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by members of the association as a condition of acquiring or retaining membership;
- (b) impose any condition in a contract of engagement that prevents or has the effect of preventing a professional artist from exercising rights pursuant to this Part;

- (c) terminate a professional artist's contract, or impose a financial or other penalty or take disciplinary action against a professional artist, because the professional artist refuses to perform any of the duties of another professional artist who is participating in or is subject to pressure tactics that are not prohibited by this Part;
- (d) seek by intimidation, threat of termination of a contract, imposition of a financial or other penalty, or by any other means, to compel a person to refrain from becoming or to cease to be a member, officer or representative of an artists' association or to refrain from:
 - (i) testifying or participating in a proceeding pursuant to this Part;
 - (ii) making a disclosure that may be required in a proceeding pursuant to this Part; or
 - (iii) making an application or filing a complaint pursuant to this Part;
- (e) terminate a professional artist's contract, or impose a financial or other penalty or take disciplinary action against a professional artist engaged by the engager or representative engagers' association, for refusal to perform an act that is prohibited by this Part;
- (f) bargain for the purpose of entering into a scale agreement, or enter into a scale agreement with an artists' association for a sector, if the certified engager or engagers' association knows or, in the opinion of the board, ought to know that another artists' association has been issued a registration order as the registered artists' association for that sector;
- (g) if no scale agreement is in force, unilaterally change any term or condition of engagement, including rates of remuneration, or any right or privilege of a professional artist or the registered artists' association, without bargaining respecting the change with the registered artists' association; or
- (h) engage in pressure tactics during the term of a scale agreement or when prohibited pursuant to subsection 45(2).

Prohibitions relating to registered artists' associations

48 No registered artists' association and no person acting on behalf of a registered artists' association shall:

- (a) bargain for the purpose of entering into a scale agreement, or enter into a scale agreement, with a certified engager or representative engagers' association for a sector if the registered artists' association or person knows or, in the opinion of the board, ought to know that another artists' association has been issued a registration order as the registered artists' association for that sector;
- (b) bargain for the purposes of entering into or enter into an agreement in writing respecting the minimum terms and conditions for the provision of professional artists' services and other related matters, with a certified engager or engagers' association for a sector that the registered artists' association or person knows or, in the opinion of the board, ought to know is represented by a representative engagers' association;
- (c) require an engager to terminate the contract of a professional artist engaged by the engager because the professional artist has been expelled or suspended from membership in the registered artists' association for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by members of the registered artists' association as a condition of acquiring or retaining membership;

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- (d) take disciplinary action against or impose any form of penalty on a professional artist by applying the standards of discipline of the registered artists' association to that professional artist in a discriminatory manner;
 - (e) expel or suspend a professional artist from membership in the registered artists' association, or take disciplinary action or impose any penalty against the professional artist, for refusal to perform an act that is prohibited by this Part;
 - (f) discriminate against a professional artist with respect to becoming or continuing as a member of the registered artists' association or being expelled from it, if the parties have included in a scale agreement a provision that:
 - (i) requires membership in the registered artists' association as a condition of engagement; or
 - (ii) grants a preference in engagement to members of the registered artists' association;
 - (g) intimidate, coerce or impose a financial or other penalty on a professional artist because the professional artist:
 - (i) has testified or participated in a proceeding pursuant to this Part, or may do so;
 - (ii) has made or is about to make a disclosure that may be required in a proceeding pursuant to this Part; or
 - (iii) has made an application or filed a complaint pursuant to this Part; or
 - (h) engage in pressure tactics during the term of a scale agreement or when prohibited pursuant to subsection 45(2).

Intimidation or coercion prohibited

49 No person shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to cease to be a member of an artists' association or an engagers' association.

Complaints to the board

50(1) Any person may make a complaint in writing to the board that an engager, an engagers' association, a person acting on behalf of an engager or an engagers' association, an artists' association, a person acting on behalf of an artists' association, a professional artist or any other person has allegedly contravened or failed to comply with this Act.

(2) The board shall hear a complaint made pursuant to subsection (1), unless the board is of the opinion that the complaint:

- (a) is moot;
- (b) is frivolous, vexatious or in bad faith;
- (c) is not within the board's jurisdiction; or
- (d) could be referred by the complainant to an arbitrator or arbitration board pursuant to a scale agreement.

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- (3) In relation to complaints made pursuant to clauses 47(a) to (f):
- (a) a written complaint that the engager, engagers' association or other person failed to comply with any of these provisions is proof, in the absence of evidence to the contrary, that the failure actually occurred; and
 - (b) if any party to the complaint proceedings alleges that the failure did not occur, the burden of proof is on that party.

DIVISION 10

Board Powers

Board powers re proceedings

51 The board may, in relation to any proceeding before it:

- (a) set requirements for public notice with respect to any application made pursuant to this Part; and
- (b) decide any question that arises in the proceeding, including whether or not:
 - (i) a person is an engager or a professional artist;
 - (ii) a professional artist is a member of, or is represented by, an artists' association;
 - (iii) a person or organization constitutes an engagers' association or an artists' association;
 - (iv) a group of professional artists constitutes a sector suitable for bargaining;
 - (v) a scale agreement has been entered into or is in force, and the dates that it comes into force and expires; and
 - (vi) any person or organization is a party to or is bound by a scale agreement.

Board powers re certain matters

52 The board may make orders:

- (a) revoking a certification order issued to a registered artists' association with respect to an engager;
- (b) determining whether or not an unfair practice has occurred;
- (c) determining whether this Act or the regulations or any orders of the board are being or have been contravened; and
- (d) requiring compliance with this Act and the regulations as they relate to bargaining for the purpose of entering into scale agreements, or any decision of the board with respect to a matter before the board.

Remedial authority of board

53(1) In order to ensure that the purposes of this Part are achieved, the board may, in addition to or in lieu of any other order authorized pursuant to subsection (2), order a professional artist, an artists' association, an engager, or an engagers' association or any other person to do or refrain from doing anything that it is equitable to require of them, so as to counteract or remedy the contravention of or non-compliance with this Act.

- (2) Without limiting the generality of subsection (1), the board may:
- (a) with respect to a failure to comply with section 34, require a registered artists' association or a representative engagers' association to bargain in accordance with section 34;
 - (b) with respect to a failure to comply with section 37, require a registered artists' association to pursue the rights and remedies of any professional artist affected by that failure, or to assist the professional artist to pursue any rights and remedies that, in the opinion of the board, it was the duty of the association to pursue;
 - (c) with respect to a failure to comply with clause 47(a), (c), (d) or (e), order an engager, representative engagers' association or any other person:
 - (i) to engage or continue to engage, if possible, a professional artist who has been dealt with in the prohibited manner;
 - (ii) to pay to any professional artist affected by that failure compensation not exceeding the amount of remuneration that, in the opinion of the board, would, but for that failure, have been paid to that professional artist pursuant to the scale agreement or the contract; or
 - (iii) to rescind any disciplinary action taken against any professional artist affected by that failure, and pay the professional artist compensation not exceeding the amount that, in the opinion of the board, is the amount of any financial or other penalty provided for in the scale agreement or the contract and imposed on the professional artist by the engager or engagers' association;
 - (d) with respect to a failure to comply with clause 48(e) or (f), order a registered artists' association to reinstate or admit the professional artist as a member;
 - (e) with respect to a failure to comply with clause 48(d), (e), (f) or (g), order a registered artists' association to rescind any disciplinary action taken against any professional artist affected by the failure, and pay the professional artist compensation not exceeding the amount that, in the opinion of the board, is the amount of the professional artist's actual loss or of any financial or other penalty; and
 - (f) with respect to a failure to comply with clause 47(h) or 48(h), order a party to a scale agreement to cease engaging in pressure tactics.

General powers of board

- 54(1)** In addition to the powers conferred on it by this Act, the board has all the powers conferred on it by *The Trade Union Act*.
- (2) Orders and decisions of the board pursuant to this Act are enforceable in the same manner as orders of the board made pursuant to *The Trade Union Act*.
 - (3) There is no appeal from an order or decision of the board made pursuant to this Act.
 - (4) The board may determine any question of fact that is necessary to its jurisdiction.
 - (5) The board's proceedings, orders and decisions are not reviewable by any court of law or by any *certiorari*, *mandamus*, prohibition, injunction or other proceeding whatever.

Additional board members

55(1) The Lieutenant Governor in Council shall appoint not more than four additional members to the board for the purposes of interpreting and administering this Act.

(2) The four members appointed pursuant to subsection (1):

(a) must be selected so that professional artists who are members of recognized artists' associations and engagers are equally represented; and

(b) are subject to the same terms and conditions as members appointed pursuant to *The Trade Union Act*.

(3) Without restricting clause (2)(b), section 4 of *The Trade Union Act* applies to the board members appointed pursuant to this section.

PART IV

General

Regulations

56 The Lieutenant Governor in Council may make regulations:

(a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;

(b) prescribing additional artistic fields for the purposes of the definition of "artist" in clause 2(a);

(c) prescribing elements to be included in written contracts required by section 9 and, for that purpose, establishing classes of engagers, professional artists and transactions and prescribing different elements for different classes of engagers, professional artists and transactions;

(d) exempting engagers, professional artists or transactions, or classes of engagers, professional artists or transactions, from the requirement to have a written contract pursuant to section 9;

(e) prescribing any other matter or thing required or authorized by this Act to be prescribed in the regulations;

(f) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

PART V

Repeal and Coming into Force

S.S. 2002, c.S-58.1 repealed

57 *The Status of the Artist Act* is repealed.

Coming into force

58 This Act comes into force on proclamation.

THIRD SESSION
Twenty-fifth Legislature
SASKATCHEWAN

B I L L

No. 68 of 2006-07

An Act respecting the Status of the Artist and
Professional Relations between Artists and
Engagers in Saskatchewan

Received and read the

First time

Second time

Third time

And passed

Honourable Glenn Hagel
